Comments on The Presbyterian Hospital's and Novant Health, Inc.'s Acute Care Bed Certificate of Need Application, Project ID # F-12293-22

December 1, 2022

Competitive Comments on Mecklenburg County
Acute Care Bed Applications

submitted by

The Charlotte-Mecklenburg Hospital Authority

In accordance with N.C. GEN. STAT. § 131E-185(a1)(1), The Charlotte-Mecklenburg Hospital Authority[1] (CMHA) hereby submits the following comments related to the application filed by The Presbyterian Hospital and Novant Health, Inc. (collectively referred to herein as Novant Health) to add 30 new acute care beds to The Presbyterian Hospital d/b/a Novant Health Presbyterian Medical Center (NH Presbyterian) in response to the need identified in the *2022 State Medical Facilities Plan* (*SMFP*) for 65 additional acute care beds in Mecklenburg County. CMHA's comments include "*discussion and argument regarding whether, in light of the material contained in the application and other relevant factual material, the application complies with the relevant review criteria, plans and standards*." *See* N.C. GEN. STAT. § 131E-185(a1)(1)(c).[2] In order to facilitate the Agency's ease in reviewing these comments, CMHA has organized its discussion by issue, specifically noting the general Certificate of Need (CON) statutory review criteria and regulations creating the non-conformity relative to each issue, as they relate to Novant Health's NH Presbyterian application, Project ID # F-12293-22. CMHA's comments include general comments regarding the review, as well as issue-specific comments on the NH Presbyterian application and a comparative analysis related to its applications:

- Atrium Health Pineville, Add 11 acute care beds, Project ID # F-12280-22
- Carolinas Medical Center (CMC), Add 38 acute care beds, Project ID # F-12281-22
- Atrium Health University City, Add 16 acute care beds, Project ID # F-12282-22

As detailed above, given the number of proposed additional acute care beds, all of the applications cannot be approved as proposed. The comments below include substantial issues that CMHA believes render Novant Health's NH Presbyterian application non-conforming with applicable statutory criteria and regulatory review criteria. However, as presented at the end of these comments, even if the NH Presbyterian application was conforming, the concurrent and complementary applications filed by CMHA are comparatively superior to the application filed by Novant Health and represent the most effective alternatives for expanding access to acute care services in Mecklenburg County.

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[1] The Charlotte-Mecklenburg Hospital Authority is part of the Atrium Health, Inc. enterprise. Atrium Health, Inc. is a nonprofit corporation that manages and oversees the activities, personnel, shared services, and business facilities of its enterprise including The Charlotte-Mecklenburg Hospital Authority and Wake Forest University Baptist Medical Center.

[2] CMHA is providing comments consistent with this statute; as such, none of the comments should be interpreted as an amendment to its applications filed on October 17, 2022 (Project ID #s F-12280-22, F-12281-22, and F-12282-22).

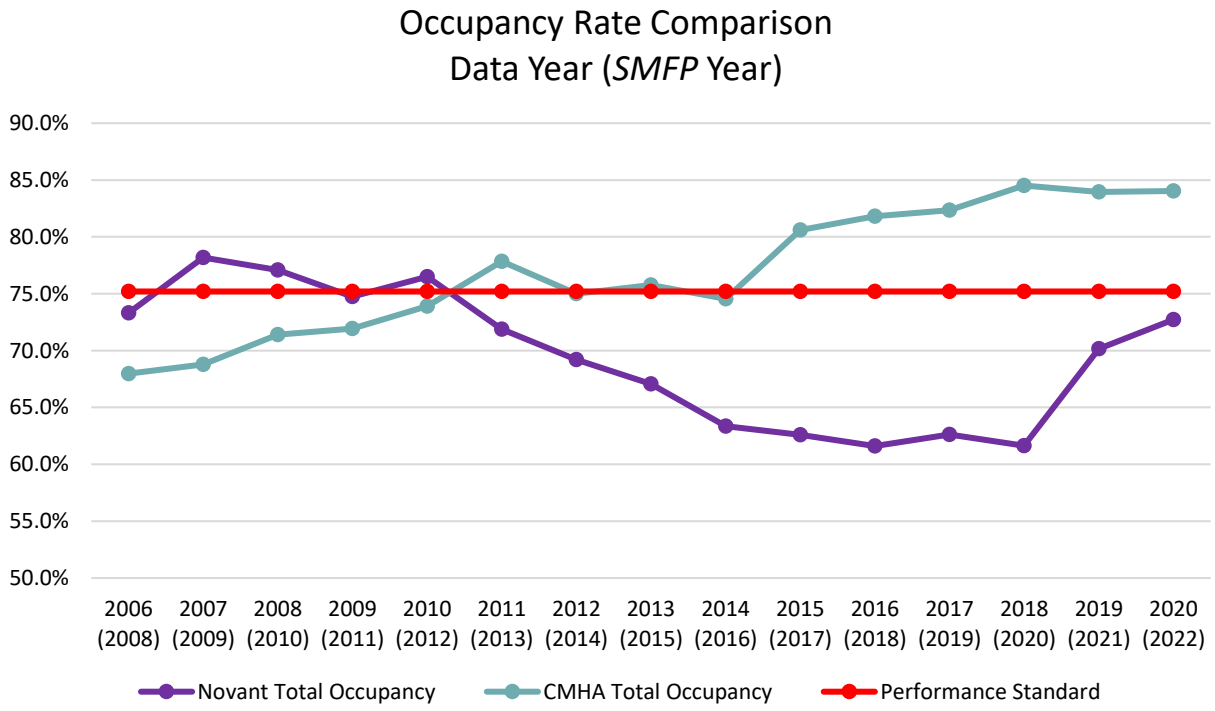
GENERAL COMMENTS

The *2022 SMFP* identifies a need for 65 additional acute care beds to be located in Mecklenburg County based on application of the acute care bed need methodology. The following sections outline general comments related to the applications for the additional acute care beds. As discussed below, CMHA demonstrates a significantly greater need for additional licensed acute care bed capacity than Novant Health.

CMHA's Need is Greater

CMHA's need for acute care beds is greater than Novant Health's need and has been for some time. The year 2020 marked the first time since 2010 that NH Presbyterian operated above the performance standard for acute care beds as found in 10A NCAC 14C .3803. Internal data in the application reveals that NH Presbyterian is expected to operate below the target occupancy rate again in FFY 2022. (*See* NH Presbyterian application, p. 124.) Further, the acute care bed need as defined in the *SMFP* is determined at the system level, not by individual facility. According to the *2022 SMFP*, Novant Health as a system is operating below target occupancy.

Meanwhile, CMHA's bed utilization, occupancy rates, and resulting bed need have consistently outpaced Novant Health's for a **decade.** CMHA has operated five to nine percentage points above the performance standard and has been running a bed deficit in the *SMFP* since 2015, as demonstrated in the chart below.



Source: *2009 – 2022 SMFPs*.
Note: Occupancy rates are based on inpatient days of care and currently licensed acute care beds (without adjustments for CONs/previous need) according to each respective *SMFP*.

CMHA's current need is also significantly greater. While not a perfect comparison, NH Presbyterian's current occupancy rate is far below each of the existing CMHA facilities, as demonstrated in the table below. Further, NH Presbyterian's FFY 2022 occupancy rate is below target occupancy while **CMHA facilities are operating 20 to 35 percentage points above the performance standard.**

Comparison of Occupancy Rates of Existing Hospitals Proposing Additional Beds During Most Recent Time Period

	CMC CY 2022	*Atrium Health Pineville CY 2022*	*Atrium Health University City CY 2022*	*NH Presbyterian FFY 2022*
Acute Care Days	305,899	99,651	41,813	129,872
ADC	838	273	115	356
Existing Beds	868	278	104	519
Occupancy Rate	**96.6%**	**98.2%**	**110.1%**	**68.6%**

Sources: NH Presbyterian Federal Fiscal Year 2022 days based on internal data for October 1, 2021 to July 31, 2022 annualized per NH Presbyterian's bed application, page 124. NH Presbyterian's existing licensed acute care bed count per NH Presbyterian's bed application, page 121. NH Presbyterian's ADC was calculated for use in this table. CMHA Calendar Year 2022 days based on internal data for January to July 2022 annualized per CMHA's beds applications, Form C Assumptions and Methodology, page 21. CMHA's ADC and existing licensed acute care bed count by facility per CMHA's bed applications, Form C Assumptions and Methodology.

Further, even with the existing, approved, and proposed beds in this review, CMHA is expected to maintain much higher occupancy rates than NH Presbyterian through Project Year 3 as demonstrated in the table below. This is especially noteworthy considering CMHA's projections are significantly more conservative than Novant Health's as discussed in a later section.

Comparison of Occupancy Rates of Existing Hospitals Proposing Additional Beds During Project Year 3

	CMC CY 2030	*Atrium Health Pineville CY 2027*	*Atrium Health University City CY 2028*	*Novant Health Presbyterian FFY 2026*
Acute Care Days	343,493	99,384	43,594	171,786
ADC	941	272	119	471
Total Beds	1,059	288	128	542
Occupancy Rate	**88.9%**	**94.5%**	**93.3%**	**86.8%**

Sources: NH Presbyterian Projected Federal Fiscal Year PY3 days per NH Presbyterian's bed application, page 131. NH Presbyterian's licensed acute care bed count following the proposed project per NH Presbyterian's bed application, page 19. NH Presbyterian's ADC was calculated for use in this table. CMHA Projected Calendar Year PY3 days per CMHA's beds applications, Form C Assumptions and Methodology, page 21. CMHA's ADC and licensed acute care bed count by facility following the proposed project per CMHA's bed applications, Form C Assumptions and Methodology.

Ultimately, CMHA has a greater historical, current, and future need for additional licensed acute care bed capacity than Novant Health. Further, CMHA's need is greater and much more difficult to manage given that CMHA has already pursued every available avenue for additional operational capacity. For

years, two out of the three existing CMHA Mecklenburg County hospitals have been using temporary licensed beds, for which a hospital can apply every 60 days if it operates at or above 90 percent occupancy pursuant to N.C. GEN. STAT. § 131E-83 and 10A NCAC 13B. 311. CMC has been on temporary bed overflow for over a decade and Atrium Health Pineville has been since April 2018. Were it not for the availability of additional capacity through the COVID-19 waiver, Atrium Health University City also would be operating under the temporary licensed bed provision today. Although the temporary spaces have been approved by DHSR's Licensure and Construction Sections as safe for patient care, they are not required to, nor do they, meet the same FGI standards as licensed acute care beds. CMHA is currently caring for inpatients in overflow areas that lack private bathrooms, natural light from windows, or even space for patients to ambulate outside of their rooms. Further, CMHA is *running out of physical space* to operate these temporary beds. **CMHA has already exhausted every available option for additional capacity, which further demonstrates that its need far surpasses any need Novant Health might assert.**

Temporary and Observation Beds

As discussed above, CMHA's need is far greater than any purported by Novant Health. In addition, based on Novant Health's own arguments in prior bed reviews, the NH Presbyterian application ignores its own declarations of available solutions and in doing so presents a false narrative of ongoing need, as discussed below.

In 2021, Novant Health filed comments in opposition to CMHA's bed applications. In these comments, Novant Health indicated multiple times that temporary licensed *and* observation beds provide additional capacity and should be considered when evaluating a facility's total available capacity. Please see Attachment 1 for the comments filed by Novant Health in 2021. Consider the following excerpts:

> "AH does not count the observation beds or temporarily licensed beds in its occupancy calculations, and thus ***understates its physical capacity*** to manage its inpatient census." (See p. 10, emphasis added)
>
> "Further, AH fails to consider the observation beds and temporary beds that were in place in 2019, which increased operational capacity and lowered operational occupancy." (See p. 7)
>
> "Both of these bed sources (*temporary licensed beds and observation beds*) provide additional capacity that lowered the effective inpatient occupancy rate at AH hospitals." (See p. 9)
>
> "When the COVID-19 bed waiver is no longer available, AH argues AH Pineville will again need to rely on temporary bed overflow status to meet demand while operating at reasonable occupancy levels (p. 69). If this is true, it is not a problem. AH has been very successful in obtaining temporary bed increases, and should have no concerns about obtaining them in the future." (See p. 27)
>
> "AH continuously uses the provision in North Carolina Administrative Code 10A NCAC 13B.3111 to temporarily increase its licensed bed capacity by up to 10 percent. A

temporary increase lasts 60 days but ***can be renewed indefinitely.***" (See p. 8, emphasis added)

On page 30, Novant Health goes on to conclude that,

> "AH's inventory of Agency-approved and temporary licensed beds and unlicensed observation beds provides sufficient capacity for future inpatient demand."

In its current application, Novant Health is proposing to convert 30 existing observation beds to licensed acute care beds. However, according to its own argument, these unlicensed observation beds already provide sufficient capacity for NH Presbyterian's future inpatient demand as they can be used for inpatients during surges in census or as temporary licensed capacity. Further, when discussing in this instant application why it did not choose to maintain the status quo, Novant Health states that it,

> "…could seek temporary bed capacity approval pursuant to the Licensure Rule at 10A NCAC 13B .3111; however, the capacity relief afforded by such requests is limited to a period of 60 consecutive days following approval by the Division of Health Service Regulation. Based on the information and data provided in Section C.3, Novant Health demonstrates the need for additional bed capacity at Novant Health Presbyterian is not temporary" (see p. 66).

This statement suggests that Novant Health did not consider temporary licensed capacity to be a viable solution to its stated capacity issues – ***even though it has 30 existing observation beds available and ready*** – because it does not see this provision as a long-term solution to capacity issues. Meanwhile, CMHA has been forced to operate temporary beds for years. Further, in its 2021 comments, Novant Health argued that CMHA understated its capacity by not including observation and temporary beds in its occupancy calculations. Novant Health also suggested that temporary beds would be a good long-term solution for CMHA facilities. While it is true that CMC and Atrium Health Pineville operated temporary bed licenses continuously for a number of years prior to the COVID-19 bed waivers, CMHA has always maintained that its temporary beds are not, nor are intended to be, a permanent solution. Novant Health appears to believe that temporary beds are a reasonable long-term solution and should be considered when evaluating whether or not a facility has sufficient capacity for future inpatient demand when commenting on CMHA's applications. Novant Health contradicts itself when it states that temporary beds are not a good alternative at NH Presbyterian but that temporary and unlicensed observation beds should be considered when evaluating overall capacity at CMHA facilities.

According to Novant Health's argument in opposition to CMHA in 2021, the 30 existing observation beds it proposes to convert into licensed acute care beds, as well as any temporary beds that could be applied for, "…provide sufficient capacity for future inpatient demand." However, in its 2022 application, Novant Health argues that,

> "…Novant Health Presbyterian's days of care increased by 3.5% from FY2017 to FY2022; however, discharges actually decreased during the same time due largely to the ***inability to accept additional admissions***" (see p. 42, emphasis added).

The 30 observation beds referenced in this application have been operational at Novant Health Presbyterian since 2020 and are suitable for licensure as acute care beds per the application. There was – and is – nothing preventing Novant Health from utilizing these beds by requesting temporary overflow status to accommodate more demand. The process of utilizing temporary beds has been made even easier during the pandemic with the COVID-19 bed waivers. **It is disingenuous to argue that physical, licensed bed capacity has prevented NH Presbyterian from admitting patients.** In contrast, even with the additional beds afforded by the COVID-19 bed waiver, the CMHA system is physically at its maximum with occupancy rates across all three facilities pushing or exceeding 100 percent. As discussed previously, two out of three CMHA facilities utilized temporary beds before the pandemic and all three would be leveraging this flexibility if it weren't for the ongoing COVID-19 bed waivers. CMHA has explored and exhausted every alternative and *still* struggles to keep up with demand. Meanwhile, Novant Health does not intend to apply for temporary licensed beds "that can be renewed indefinitely" nor has it acknowledged that, according to prior statements, the 30 observation beds it proposes to convert to licensed acute care beds are able to "increase operational capacity and lower operational occupancy" in their current state without any necessary conversion or construction costs. In Novant Health's own words, it has ignored its own declared solutions and in doing so presents a disingenuous narrative of ongoing need that is far below the years-long need at CMHA facilities.

ALOS and Discharges

In the same 2021 comments filed by Novant Health in opposition to CMHA's bed applications, Novant Health asserted:

> "AH also failed to explain the primary reason for its past growth in acute care days because doing so would make clear to the Agency that the growth was substantially due to an increasing average length of stay. Publicly available LRA data show AH's Mecklenburg system discharges declined from 2016-2019 and 2016-2020. This reason alone makes the utilization projections for all three AH applications unreasonable and without adequate support" (see p. 17).

On page 39 of its current bed application, Novant Health presents inpatient utilization data including NICU. As demonstrated in the table below, the ALOS increased by 24.5 percent from FFY 2017 to FFY 2022. At the same time, discharges decreased by 3.4 percent.

Novant Health Presbyterian Inpatient Utilization (Including NICU)

	ALOS	***Discharges***
FFY 2017	4.9	25,650
FFY 2022*	6.1	24,776
Percent Change	**+24.5%**	**-3.4%**

*Annualized based on ten months of data (Oct-July).

Utilization data on page 40 excludes NICU data and shows a similar trend, as demonstrated in the table below.

Novant Health Presbyterian Inpatient Utilization (Excluding NICU)

	ALOS	*Discharges*
FFY 2017	4.4	25,079
FFY 2022*	5.4	23,972
Percent Change	**+22.7%**	**-4.4%**

*Annualized based on ten months of data (Oct-July).

According to Novant Health's own argument from its 2021 opposition to CMHA, growth that is substantially due to an increasing length of stay as discharges decline is "reason alone" for utilization projections to be unreasonable and without adequate support. Novant contradicts its own position by applying for beds while its ALOS increases substantially and discharges decline. Beyond the historical decline in discharges, Novant Health's growth projections in the instant application are significantly less conservative than CMHA's. As demonstrated above, Novant Health's historical CAGR is largely affected by an increasing length of stay, but Novant Health projects that NH Presbyterian's acute care days will grow at its historical CAGR (3.5 percent) and that ALOS will remain constant over future project years, resulting in a projected increase in discharges. In contrast, CMHA attempts to account for a potential future decline in ALOS, recognizing that some of the factors that have driven higher lengths of stay during the COVID-19 pandemic are not likely to be sustained. Furthermore, despite the fact that demand at CMHA facilities is expected to be higher based on the recent growth when CMHA had more bed capacity under the COVID-19 bed waiver, CMHA was forced to restrict its projected growth rate to the projected Mecklenburg County population growth rate of 1.7 percent; otherwise, occupancy rates at CMHA facilities would approach or exceed 110 percent – beyond the capacity afforded by the temporary bed rule – by CY 2030, the third project year of CMC's proposed project. Thus, CMHA's projected utilization is based on much more conservative assumptions than NH Presbyterian's, yet its future need remains much higher than Novant Health's.

<u>CMHA serves a disproportionately higher share of underserved patients</u>

Not only are CMHA's capacity limitations greater, it also serves a disproportionately higher share of underserved patients. The Department of Health and Human Services has recognized the need to ensure access to healthcare in as equitable a manner as possible. As noted on page 2 of the *2022 SMFP*, "[t]*he SHCC assigns the highest priority to a need methodology that favors providers delivering services to a patient population representative of all payer types in need of those services in the service area*." CMHA seeks to address this principle by developing additional acute care bed capacity at CMHA facilities.

In 2021, 65.3 percent of all Medicaid inpatients from Mecklenburg County were treated at a CMHA facility, compared with CMHA's 57.8 percent share of all patients. In addition, 60.7 percent of Medicare and 74.0 percent of Self-Pay acute care discharges in Mecklenburg County were treated at a CMHA facility (<u>*See*</u> p. 29 of the instant applications). Notably, CMHA served twice the percentage of Medicaid patients and three times the percentage of Self-Pay patients served by Novant Health. This means that

while CMHA facilities served the majority of acute care discharges originating from Mecklenburg County in 2021, it served a **disproportionately higher share** of these underserved patients compared to Novant Health. In contrast, Novant Health served a higher share of commercial patients. Moreover, with its expansion of temporary bed capacity in 2021 through the COVID-19 waiver, CMHA's service to the medically underserved increased in CY 2021 compared with CY 2020. In CY 2020, CMHA served 55.1 percent of all Mecklenburg County discharges, 63.5 percent of Mecklenburg Medicaid patients, 56.7 percent of Medicare and 67.5 percent Self-Pay. Thus, CMHA's need is also greater because it has demonstrated that it will use additional capacity to increase access to these underserved patients.

NH PRESBYTERIAN, ADD 30 ACUTE CARE BEDS, PROJECT ID # F-12293-22

Issue-Specific Comments

1. The NH Presbyterian application to add 30 acute care beds should not be included in the 2022 Mecklenburg County Acute Care Bed review as it is incomplete as submitted pursuant to 10A NCAC 14C .0203(e)(4). The NH Presbyterian application to add 30 acute care beds should not be approved, as it is incomplete and fails to include all information necessary for the Agency to conduct the review pursuant to N.C. GEN. STAT. § 131E-182(b).

   According to 10A NCAC 14C .0203(e)(4), an application is complete for inclusion in the review period if, "each applicant identified in Section A of the application form signed the certification page that asks the applicant to certify that the information in the application is correct and they intend to develop and offer the project as described in the application." Novant Health has failed to identify the applicants and complete the required certification, as discussed in more detail below. As a result, the NH Presbyterian application is non-conforming with 10A NCAC 14C .0203(e)(4) and should not be considered in the 2022 Mecklenburg County Acute Care Bed review.

   NH Presbyterian fails to provide all requested information required in response to the CON application form as it fails to properly and unambiguously identify its applicants. Thus, the NH Presbyterian application cannot be found conforming with any of the applicable review criteria and cannot validly receive a CON (even if otherwise conforming). The Agency cannot properly review the various statutory review criteria without knowing which purported "applicant shall" "show," "demonstrate," or "provide evidence" of conformity with the relevant criteria. *See* N.C. Gen. Stat. § 131E-183(a)(3), (4), (5), (6), (7), (8), (12), (13), (18a), and (20). Moreover, pursuant to N.C. Gen. Stat. § 131E-181(a), a "certificate of need shall be valid only for the defined scope, physical location, and person named in the application." (emphasis added).

   The numerous different responses in the NH Presbyterian application are internally inconsistent on this topic. Therefore, without an amendment of the NH Presbyterian application, which is forbidden by 10A NCAC 14C.0204, the Agency cannot identify the proper applicants (or persons capable of receiving a CON) without guessing which of the variously listed purported applicants were intended. In the NH Presbyterian application, the applicants are alternatively and inconsistently identified as follows:

   1. The face page of the application identifies the applicants as Novant Health Presbyterian Medical Center and Novant Health, Inc.
   2. The unnumbered "fee sheet" page inconsistently identifies the applicants as Novant Health, Inc. and The Presbyterian Hospital.
   3. The certification page (page 2) purports to identify the applicants differently again, this time as Novant Health, Inc. and Presbyterian Medical Care Corporation.
   4. The capital cost section (at page 132) then lists a new name, Presbyterian Medical Center, Inc., as one of the applicants.

Therefore, the Agency cannot identify the applicants without guessing which of the variously listed purported applicants were intended. Accordingly, the NH Presbyterian application is <u>not</u> an approvable application. *<u>See</u>* N.C. Gen. Stat. § 131E-183(a)(3), (4), (5), (6), (7), (8), (12), (13), (18a), and (20) and § 131E-181(a).

2. <u>Novant Health's own arguments would tender that the NH Presbyterian application fails to adequately demonstrate the need for the proposed project insofar as it does not demonstrate a need for the proposed project.</u>

As discussed in the General Comments, NH Presbyterian proposes to develop 30 additional medical/surgical acute care beds by converting existing observation beds in Units 3A and 4A. Novant Health has unequivocally argued in multiple Mecklenburg County bed reviews that there are other operational tactics that can be deployed in lieu of adding licensed bed capacity. In addition to its comments opposing CMHA applications in the 2021 bed review, Novant Health's expert, Dr. Ron Luke, has opined on behalf of Novant Health that observation beds—such as those currently operated by NH Presbyterian on Units 3A and 4A—can be used interchangeably with acute care beds. Please see Attachment 2 for excerpts from Dr. Luke's expert report as well as his trial and deposition testimony in *The Charlotte-Mecklenburg Hospital Authority d/b/a Atrium Health Lake Norman v. NC DHHS and Presbyterian Medical Care Corporation and Novant Health, Inc.*, 20 DHR 01836 and 20 DHR 03986 stating that CMHA had sufficient bed capacity to accommodate the patients it proposed to serve in the 30 beds it was seeking to develop at Atrium Health Lake Norman (AHLN). As demonstrated in Attachment 2, Novant Health is clearly on the record stating that existing acute care bed providers can create bed capacity without the need for additional licensed beds by using the following operational tactics:

- Avoid using licensed acute care beds for observation patients;
- Operate acute care beds up to 90% occupancy rates, on average annually;
- Once reaching the 90% "operational threshold," request temporary licensed beds via 10A NCAC 13B .3111.

Novant Health contradicts itself by applying for additional beds when, according to its own arguments, it has more than sufficient capacity with its existing acute care bed complement.

Furthermore, as illustrated in the table below, Novant Health projects a system-wide total of 251,817 days in CY 2026, or an average daily census of 690 patients. Assuming that Novant Health does not use its licensed acute care beds for observation patients, as Dr. Luke opined, Novant Health would need 766 beds in 2026 to operate at a 90 percent occupancy rate. Novant Health currently has 879 existing and approved acute care beds (excluding NICU beds), resulting in a surplus of 113 beds in CY 2026 based on Novant Health's argument in 2020 and 2021. In addition, as Dr. Luke opined, Novant Health would be eligible to apply for temporary bed capacity once operating at 90 percent, providing another 88 beds, or 967 total. Thus, Novant Health can operate at a surplus of 201 beds in CY 2026, without the award of additional beds in the 2022 review, by executing the tactics for which it opined in both the 2020 contested case and the 2021 comments opposing CMHA's applications. According to its own arguments, it

would appear that Novant Health has more than adequate capacity to accommodate the 251,817 patient days that are projected for CY 2026 in its application.

CY 2026 Projected Days (excluding NICU)	251,817
CY 2026 Projected ADC	690
Beds Needed at 90% Occupancy	766
Existing Licensed and Approved Beds (excluding NICU)	879
CY 2026 Deficit/(Surplus) at 90% Occupancy	(113)
Beds w Maximum Temporary Bed Capacity	967
CY 2026 Deficit/(Surplus) at 90% Occupancy w Temporary Beds	(201)

Additionally, as specified in Policy GEN-3: Basic Principles, a certificate of need applicant, "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." In accordance with prior arguments asserted by Novant Health, if observation beds and acute care beds are interchangeable, approval of the NH Presbyterian application does not provide Mecklenburg County with any additional capacity that it does not already have and therefore fails to demonstrate fulfillment of maximizing healthcare value for resources expended.

As discussed previously in the General Comments, Novant Health argues in its 2021 opposition to CMHA that growth substantially due to an increasing length of stay as discharges decline is "reason alone" for utilization projections to be unreasonable and without adequate support. In the instant application, NH Presbyterian's growth in patient days has resulted from an increasing length of stay while discharges have declined; thus, Novant Health's own words would find the application non-conforming.

3. Novant Health's own arguments would tender that the NH Presbyterian application fails to adequately demonstrate that the financial and operational projections are based on reasonable assumptions and therefore fails to demonstrate the immediate and long-term financial feasibility of its proposal.

   As discussed above relative to Criterion 3, by means of its previously asserted arguments, Novant Health would find that its application fails to adequately demonstrate the need the population has for its proposed project and fails to demonstrate that its projected utilization is based upon reasonable assumptions and that the proposed project is financially feasible under Criterion 5.

In summary, based on the issues detailed above, the NH Presbyterian application should be found incomplete and non-conforming with the review criteria established under N.C. GEN. STAT. § 131E-183, specifically Criteria 1, 3, 4, 5, 6, 7, 8, 12, 13, 18a, and 20. The NH Presbyterian application should not be approved.

COMPARATIVE ANALYSIS

The NH Presbyterian application (Project ID # F-12293-22), the Atrium Health Pineville application (Project ID # F-12280-22), the CMC application (Project ID # F-12281-22), and the Atrium Health University City application (Project ID # F-12282-22) each propose to develop acute care beds in response to the *2022 SMFP* need determination for Mecklenburg County. Given that multiple applicants propose to meet all or part of the need for the 65 additional acute care beds in Mecklenburg County, not all can be approved as proposed. To determine the comparative factors that are applicable in this review, CMHA examined recent Agency findings for competitive acute care bed reviews. Based on that examination and the facts and circumstances of the competing applications in this review, CMHA considered the following comparative factors:

- Conformity with Review Criteria
- Scope of Services
- Geographic Accessibility
- Meeting the Need for Additional Acute Care Bed Capacity
- Competition
- Geographic Reach
- Access by Underserved Groups
    - Projected Medicare and Medicaid
    - Projected Charity Care
- Average Revenue per Patient Day
- Average Operating Expense per Patient Day
- Provider Support

CMHA believes that the factors presented above and discussed in turn below should be used by the Agency in reviewing the competing applications.

Conformity with Applicable Statutory and Regulatory Review Criteria

The Atrium Health University City application, the Atrium Health Pineville application, and the CMC application adequately demonstrate that their acute care bed proposals are conforming to all applicable statutory and regulatory review criteria. By contrast, the NH Presbyterian application does not adequately demonstrate that its proposal is conforming to all applicable statutory review criteria as discussed previously. An application that is not conforming to all applicable statutory and regulatory review criteria cannot be approved. Therefore, with regard to conformity the Atrium Health University City application, the Atrium Health Pineville application, and the CMC application are equally effective alternatives and more effective than the NH Presbyterian application.

Scope of Services

Atrium Health Pineville, CMC, Atrium Health University City, and NH Presbyterian are all existing acute care hospitals that provide a broad spectrum of acute care services. Of these existing facilities, only one

– CMC – is a Level I trauma center and a quaternary care academic medical center.[3] Therefore, based on the Agency's past position on this comparative factor – that the application proposing to provide the greatest scope of services is the more effective alternative – the CMC application is the most effective with regard to scope of services.

Geographic Accessibility

All four applications submitted in response to the need identified in the *2022 SMFP* for 65 additional acute care beds in Mecklenburg County propose to add acute care beds to an existing facility. Given that all four applications propose to locate additional acute care beds at existing hospitals, the applications are comparable with regard to geographic accessibility.

Meeting the Need for Additional Acute Care Bed Capacity

The table below shows acute care bed utilization for existing facilities based on acute care days as reported in Table 5A of the *2022 SMFP*. As shown in the *2022 SMFP,* the Atrium Health system has a total deficit of 176 acute care beds including deficits of 27.5, 22.7, and 155.8 beds at Atrium Health University City, Atrium Health Pineville, and CMC/Atrium Health Mercy, respectively. By comparison, the Novant Health system has a total deficit of 12.3 acute care beds.

Mecklenburg County Facilities' Acute Care Bed Need/Surplus

	2024 Projected ADC	*2024 Beds Adjusted for Target Occupancy*	*Current Bed Inventory*	*Projected 2024 Deficit/ (Surplus)*
Atrium Health Lake Norman	0	0	30	(30.0)
Atrium Health Pineville	226	301	278	22.7
Atrium Health University City	88	132	104	27.5
CMC/Atrium Health Mercy	1,014	1,298	1,142	155.8
Atrium Health Total	**1,328**	**1,730**	**1,554**	**176.0**
NH Ballantyne Medical Center	0	0	36	(36.0)
NH Huntersville Medical Center	87	131	151	(20.2)
NH Matthews Medical Center	129	180	174	6.3
NH Mint Hill Medical Center	23	35	36	(0.8)
NH Presbyterian Medical Center	463	592	497	95.0
NH Steele Creek Medical Center	0	0	32	(32.0)
Novant Health Total	**702**	**938**	**926**	**12.3**

Source: *2022 SMFP*.

As shown above, almost all of the need for additional acute care beds in the *2022 SMFP* for Mecklenburg County was triggered by the utilization of CMHA facilities; every CMHA facility shows a

[3] As designated by the Healthcare Planning and Certificate of Need Section and as listed in Appendix F of the *2022 SMFP*. *See* page 423 of the *2022 SMFP*.

deficit of beds and **CMC shows the largest bed deficit of any facility or health system in the state**. As such, with regard to meeting the need for additional acute care bed capacity, the CMC application is the most effective alternative and the Atrium Health Pineville and Atrium Health University City applications are more effective alternatives than the NH Presbyterian application.

Further, as discussed in Section C.4 of each of CMHA's applications, it is also important to note that Novant Health's 12-bed deficit in the *2022 SMFP* does not account for the 15 beds that it was awarded for NH Presbyterian from the 2021 Mecklenburg County acute care bed review. After accounting for the additional capacity approved for NH Presbyterian in 2021, Novant Health shows a surplus of beds according to the *2022 SMFP* methodology as shown in the table below.

Novant Health Deficit / (Surplus)

Facility	*Licensed Acute Care Beds**	*Adjustments for Previous CONs / Previous Need**	*Total Licensed and Approved Acute Care Beds**	*2024 Beds Adjusted for Target Occupancy**	*Projected 2024 Deficit / (Surplus)**	*+ / (-) Beds from 2021 Review***	*Adjusted Projected 2024 Deficit / (Surplus)*
NH Ballantyne Medical Center	0	36	36	0	(36.0)		(36.0)
NH Huntersville Medical Center	139	12	151	131	(20.2)		(20.2)
NH Matthews Medical Center	154	20	174	180	6.3		6.3
NH Mint Hill Medical Center	36	0	36	35	(0.8)		(0.8)
NH Presbyterian Medical Center	519	(22)	497	592	95.0	15	80.0
NH Steele Creek Medical Center	0	32	32	0	(32.0)		(32.0)
Total	**848**	**78**	**926**	**938**	**12.3**	**15**	**(2.7)**

*Source: *2022 SMFP*

**Includes 15 undeveloped beds from the 2021 Mecklenburg County acute care bed review.

In contrast, CMHA, after adjusting for the beds awarded in the 2021 Mecklenburg County review, remains in need of additional acute care beds based on high patient demand as shown in the table below. Of note, CMHA is projected to have a deficit of 67.6 beds in 2024, after adjusting for beds from the 2021 review. This deficit is greater than the overall bed need of 65 beds in Mecklenburg County in Table 5A of the *2022 SMFP.*

Atrium Health Deficit / (Surplus)

Facility	*Licensed Acute Care Beds**	*Adjustments for Previous CONs / Previous Need**	*Total Licensed and Approved Acute Care Beds**	*2024 Beds Adjusted for Target Occupancy**	*Projected 2024 Deficit / (Surplus)**	*+ / (-) Beds from 2021 Review***	*Adjusted Projected 2024 Deficit / (Surplus)*
Atrium Health Pineville	233	45	278	301	22.7	25	(2.7)
Atrium Health University City	100	4	104	132	27.5	8	19.5
CMC / Atrium Health Mercy	1,055	87	1,142	1,298	155.8	75	80.8
Atrium Health Lake Norman	0	30	30	0	(30.0)		(30.0)
Total	**1,388**	**166**	**1,554**	**1,730**	**176.0**	**108**	**67.6**

*Source: *2022 SMFP*

**Includes 108 undeveloped beds from the 2021 Mecklenburg County acute care bed review.

Historically, the Agency has conducted such a comparative analysis of need. For example, in the 2013 Mecklenburg County Acute Care Bed Review, the Agency's comparative analysis included "Meeting the Need for Additional Acute Care Beds" as a comparative factor. *See* Exhibit C.4-2 of the CMHA applications. This factor compared the projected bed deficit and surplus of each applicant as shown in the *2013 SMFP* and found the applicant with the greatest deficit to be more effective. CMHA believes that applicants with existing facilities should be evaluated based on need in comparison to existing utilization and those with deficits of capacity or higher utilization rates found to be superior to those with surpluses or lower utilization rates. In the 2020 Mecklenburg County Acute Care Beds and Operating Rooms Review, the Agency's comparative analysis included "Historical Utilization" as a comparative factor similar to "Meeting the Need for Additional Acute Care Beds." However, application of the factor in that review compared the historical occupancy rates of each facility as shown in the *2020 SMFP* and found the individual facility with the highest occupancy rate to be more effective. In a service area such as Mecklenburg County with two, established, multi-hospital systems, CMHA does not believe that the Agency should compare acute care bed deficits and surpluses – or occupancy rates – among individual facilities but rather should make these comparisons at the system-level. A core principle of the *SMFP* acute care bed need methodology is an analysis of need by system in Mecklenburg County; it is the system-based deficits/surpluses that determine whether or not additional beds are needed. Moreover, both existing systems in Mecklenburg County have been approved for projects – still under development – that proposed to shift both resources and patients between facilities, which is further evidence that a system-to-system comparison under these circumstances is more appropriate and that a facility-specific analysis would create artificial results. An analysis of historical bed need in the *SMFP,* as shown in the General Comments, demonstrates that the need for additional acute care bed capacity in Mecklenburg County has been overwhelmingly at CMHA facilities compared to Novant Health facilities. Therefore, with regard to meeting the need for additional acute care bed capacity, the Atrium Health University City application, the Atrium Health Pineville application, and the CMC application are the more effective alternatives.

Competition

In some prior reviews, the Agency has used other comparative factors, such as "Competition," to compare applicants' total bed complement without considering whether the applicants' existing capacity demonstrates a deficit or surplus of beds or such factors as occupancy rate, which found any applicant with fewer beds more effective than applicants with a greater number of beds. As an example of the Agency's rationale under this application of the "Competition" comparative factor, an existing provider with a hundred acute care beds that served zero patients would be found to be a more effective alternative than another provider with two hundred beds that served hundreds of patients and demonstrated a deficit of capacity. CMHA believes that the "Competition" comparative factor applied in this way is contrary to the purpose of the CON statute and should not be applied in such a narrowly defined manner.

The concept of competition is complex, particularly in relation to healthcare and, therefore, cannot be singularly defined as a simple comparison of existing assets. While the Agency has the explicit authority to evaluate competition in CON reviews per N.C. GEN. STAT. § 131E-183(18a), it is not charged with protecting a specific facility's market share. Specifically, the Basic Principles found in Chapter 5 of the *2022 SMFP*, which address acute care hospital beds, indicate that "*it is not the policy of the state to guarantee the survival and continued operation of all the state's hospitals, or even any one of them*." *See* page 34 of the *2022 SMFP*. Given that it is not the State's responsibility to guarantee the operation

of any single hospital, it follows that it is likewise not the State's responsibility to manage competition by counting resources between hospitals, particularly without any regard for need.

CMHA and Novant Health are two existing, mature, and well-established acute care service providers in Mecklenburg County. As such, neither CMHA nor Novant Health would qualify as a "new or alternative provider" under the Agency's historical reasoning of the "Competition (Patient Access to a New or Alternative Provider)" comparative factor in competitive reviews over the last decade. Specifically, the Agency has stated in numerous competitive reviews over the last several years that an applicant proposing to increase access to a "new provider" is a more effective alternative with regard to "Competition/Patient Access to a New or Alternative Provider." *See* Exhibit C.4-3 of the CMHA applications. In the 2019 Forsyth County MRI review, the Agency specifically noted with regard to the two applicants that are well-established providers in Forsyth County (Wake Forest Baptist and Novant Health):

> *"Both applicants and/or related entities provide MRI services in the service area of Forsyth County; therefore, neither applicant would qualify as a new or alternative provider in the service area. Thus, with regard to this comparative factor, the proposals are equally effective." See Findings, p. 74*

Likewise, both CMHA and Novant Health provide acute care services in the Mecklenburg County service area. Neither system qualifies as a new or alternative provider of acute care services in Mecklenburg County. However, CMHA has documented in its applications the direct impact the lack of sufficient acute care beds has had on its ability to compete for inpatient services. As discussed in its applications, temporary bed waivers were replaced by COVID-19 waivers after the onset of the pandemic and CMC/Atrium Health Mercy, Atrium Health Pineville, and Atrium Health University City continue to utilize this temporary capacity today. Every CMHA hospital in Mecklenburg County has been able to grow significantly over the last two years due to the availability of additional temporary beds afforded by the COVID-19 waiver. From CY 2021 to CY 2022, overall acute care days at CMHA hospitals grew 9.8 percent and occupancy levels rose to a staggering 97.4 percent. This growth is almost three times the average growth from CY 2016 to CY 2019, or prior to the COVID-19 pandemic. (e.g., <u>*See*</u> p. 60 of the CMC application). CMHA's staggering system-wide growth rates following the implementation of additional temporary beds afforded by the COVID-19 waiver suggest that growth at CMHA hospitals has historically been constrained by insufficient acute care bed capacity. In contrast, the Novant Health system has had underutilized beds and adequate capacity to grow for years. Competition is not enhanced, but rather is ***stifled*** in a service area where one provider has available capacity to grow and accommodate new patient demand while the other provider operates at maximum capacity and has limited-to-no ability to compete for growing patient demand. Such has been the circumstance in Mecklenburg County for a number of years. When given the opportunity to operate as many beds as physical space would allow through the COVID-19 bed waiver, CMHA facilities grew significantly, improving competition for inpatient services in Mecklenburg County – especially for the medically underserved. With the expiration of the COVID-19 bed waiver in the near future, it is incumbent upon the Agency to consider more than just the number of assets; clearly more capacity is needed at CMHA facilities, not Novant Health facilities, to enhance competition for acute care inpatients.

Geographic Reach

According to patient origin data submitted on license renewal applications (LRAs), less than 60 percent of patients served by Mecklenburg County acute care bed providers originate from within the county. As shown in the table below, South Carolina patients comprise roughly 14 percent of total acute care bed admissions provided by Mecklenburg County acute care providers followed by neighboring North Carolina counties.[4]

Total Patient Origin for
Mecklenburg County Acute Care Bed Providers

NC County/State of Origin	*2020 % of Total*	*2021 % of Total*
Mecklenburg	56.8%	58.0%
South Carolina	12.9%	13.7%
Union	6.6%	7.1%
Gaston	4.2%	4.3%
Cabarrus	3.2%	3.5%
Iredell	1.9%	2.1%
Lincoln	1.9%	1.8%
Cleveland	1.4%	1.4%
Rowan	1.0%	1.2%
Other States*	4.2%	1.0%
Stanly	1.0%	1.1%
Catawba	-	0.9%
All Others**	5.0%	4.1%
Total	**100.0%**	**100.0%**

Source: 2020-2021 Patient Origin Reports as compiled by NC DHSR.
*Other States includes all other states.
**All Others includes all other North Carolina counties.

As noted in CMHA's applications, without the demand for acute care services originating from outside of Mecklenburg County, there would not be a need for additional acute care bed capacity to be located in Mecklenburg County. As CMHA demonstrates in its applications, Mecklenburg County would have a surplus of 1,114 acute care beds, or almost half of its existing capacity, if not for the demand for acute care bed services originating from outside of the county. Under these circumstances, CMHA believes the Agency should recognize that the need for additional acute care capacity in Mecklenburg County is driven by residents across the region and evaluate an applicant's geographic reach in assessing the need for additional beds in Mecklenburg County.

Please note that previous Agency reviews have included an "Access by/Service to Service Area Residents" comparative factor. As detailed below, CMHA believes that this comparative factor would be

[4] Please note, given the impact of the COVID-19 pandemic which emerged in the U.S. in 2020, CMHA has included the most recent patient origin data from 2021 as well as the patient origin data from 2020. While the COVID-19 pandemic did not have much effect, if any, on patient origin, it did affect patient days.

inappropriate for a review of the proposed project. In the Agency Findings for the 2019 Mecklenburg County Acute Care Bed and Operating Room Review, the Agency's comparative analyses included a comparative factor, "Access by Service Area Residents," but did not draw any conclusions about the factor. Pages 236 and 237 of the Agency Findings for the 2019 Mecklenburg County Acute Care Bed and Operating Room Review state, "*Atrium is correct that the Acute Care Bed Need Determination in the 2019 SMFP is based on the total number of acute care days at each hospital and not based on anything related to Mecklenburg County-specific acute care days. Further, Mecklenburg County is a large urban county with over one million residents, two large health systems plus other smaller healthcare groups, and is on the border of North Carolina and South Carolina… the Agency believes that in this specific instance attempting to compare the applicants based on the projected acute care bed access of Mecklenburg County residents has little value* [emphasis added]." Subsequently, the Agency maintained this position in its Findings for the 2020 Mecklenburg County Acute Care Bed and Operating Room Review in which it did not evaluate this comparative factor and in its Findings for the 2021 Mecklenburg County Acute Care Bed review found this factor to be inconclusive.

CMHA agrees with the Agency's findings regarding this factor in the 2019, 2020 and 2021 Acute Care Bed and Operating Room Reviews and maintains its belief that this comparative factor, if applied, would be inappropriate or inconclusive for a review of the proposed project. The need for additional acute care bed capacity in Mecklenburg County, and specifically, the need determination in the *2022 SMFP*, is a result of the utilization of all patients that utilize acute care beds located in Mecklenburg County. Mecklenburg County residents comprise less than 60 percent of that utilization and there would be a large surplus of capacity if not for the demand for acute care bed services originating from outside the county. Under these circumstances, it would not be appropriate to determine the comparative effectiveness of an applicant based on service to Mecklenburg County residents when the need as identified for the proposed additional acute care bed capacity is not based solely on Mecklenburg County patients. (Other methodologies in the *SMFP*, such as nursing facility beds, are based only on the population residing in the county; a factor for "Access by/Service to Service Area Residents" may be more appropriate in such a review, but that is not the case with acute care beds.) Rather, if anything, CMHA believes the Agency should recognize that the need for additional acute care bed capacity in Mecklenburg County is driven by residents across the region and evaluate an applicant's geographic reach in assessing the need for additional acute care bed capacity located in Mecklenburg County.

Access by Underserved Groups

Projected Medicare and Medicaid

The following table illustrates each applicant's percentage of acute care utilization to be provided to Medicare and Medicaid patients as stated in Section L.3 of the respective applications.

	% of Medicare	*% of Medicaid*
Atrium Health Pineville	33.0%	13.0%
Atrium Health University City	27.0%	17.3%
CMC	36.6%	28.3%
NH Presbyterian	30.1%	18.8%

Source: Section L.3.

Novant Health's application includes inpatient surgery, emergency department services provided to an admitted patient, all services to obstetric patients and newborns, imaging provided during an inpatient stay, and applicable ancillary services. The CMHA applications include acute care bed charges only and do not include ancillary services such as lab, radiology, or surgery that generate additional revenue for acute care inpatients. As shown in the table above, CMC projects to serve the highest percentage of Medicare patients and the highest percentage of Medicaid patients, making this application the most effective alternative.

Further, and as noted previously and in the CMHA applications, Atrium Health facilities serve a disproportionately high share of the medically underserved compared to Novant Health. Based on CMHA's demonstrated experience serving the underserved, the approval of the proposed CMHA projects will serve to enhance access for the medically underserved that are served disproportionately by CMHA.

Projected Charity Care

The following table illustrates each applicant's projected charity care as a percentage of net and gross revenue in the third full fiscal year of operation.

	Charity Care	***Net Revenue***	***Charity Care as a % of Net Revenue***	***Gross Revenue***	***Charity Care as a % of Gross Revenue***
Atrium Health Pineville	$17,555,060	$102,434,256	17.1%	$395,775,029	4.4%
Atrium Health University City	$13,448,851	$58,372,941	23.0%	$204,292,236	6.6%
CMC	$97,169,863	$530,338,548	18.3%	$1,935,047,001	5.0%
NH Presbyterian	$54,784,215	$651,710,978	8.4%	$2,281,372,363	2.4%

Source: Form F.2.

As shown in the table above, Atrium Health University City projects to provide the highest percentage of charity care while CMC and Atrium Health Pineville propose to serve the second and third highest percentage of charity care, respectively. NH Presbyterian projects to serve the lowest percentage of charity care. Therefore, the Atrium Health University City application is the most effective alternative with regard to charity care while the CMC and Atrium Health Pineville applications are more effective alternatives than the NH Presbyterian application with regard to charity care.

These findings can be validated by Section L.4. NH Presbyterian projects a combined 4.0% of patients are charity care or reduced cost. All three AH applications project charity care in excess of 5.0% confirming they are more effective alternatives in regard to charity care.

Average Net Revenue per Day

The following table shows average net revenue per patient day and per patient in the third full fiscal year of operation.

	Net Revenue	# of Days	Net Revenue per Day	# of Patients	Net Revenue per Patient
Atrium Health University City	$58,372,941	43,594	$1,339	8,959	$6,516
Atrium Health Pineville	$102,434,256	99,384	$1,031	20,933	$4,893
CMC	$530,338,548	343,493	$1,544	49,070	$10,808
NH Presbyterian	$651,710,978	171,786	$3,794	28,552	$22,825

Source: Form F.2.

Novant Health's application includes inpatient surgery, emergency department services provided to an admitted patient, all services to obstetric patients and newborns, imaging provided during an inpatient stay, and applicable ancillary services. The CMHA applications include acute care bed charges only and do not include ancillary services such as lab, radiology, or surgery that generate additional revenue for acute care inpatients. As shown in the table above, Atrium Health Pineville projects the lowest net revenue per patient day and per patient and NH Presbyterian projects the highest.

Average Expense per Day

The following table shows average operating expense per patient day and per patient in the third full fiscal year of operation.

	Operating Expense	# of Days	Expense per Day	# of Patients	Expense per Patient
Atrium Health University City	$43,604,117	43,594	$1,000	8,959	$4,867
Atrium Health Pineville	$86,259,603	99,384	$868	20,933	$4,121
CMC	$422,079,060	343,493	$1,229	49,070	$8,602
NH Presbyterian	$645,215,145	171,786	$3,756	28,552	$22,598

Source: Form F.2.

Novant Health's application includes inpatient surgery, emergency department services provided to an admitted patient, all services to obstetric patients and newborns, imaging provided during an inpatient stay, and applicable ancillary services. The CMHA applications include acute care bed charges only and do not include ancillary services such as lab, radiology, or surgery that generate additional revenue and expenses for acute care inpatients. As shown in the table above, Atrium Health Pineville projects the lowest operating expense per patient day and per patient and NH Presbyterian projects the highest.

Provider Support[5]

Given the substantial projected acute care bed deficit for CMHA, as well as the significant difference between the level of provider support for CMHA's projects compared to Novant Health's, CMHA

[5] While not used in every competitive review, there have been numerous reviews recently in which provider support has been used as comparative factor, including the 2019 Orange County Operating Room Review and, in 2018, the Orange County Operating Room Review, the Mecklenburg County Operating Room Review, the Durham County Operating Room Review, the Wake County Operating Room Review, the Buncombe County Operating Room Review, and the Forsyth County Operating Room Review.

believes the use of the provider support comparative factor could be of particular importance to the Agency in this review.

The following table illustrates the number of letters of support included with each application from physicians and community members/patients[6].

	Physicians/Providers	***Community/Patients***
Atrium Health Pineville	58	51
Atrium Health University City	52	21
CMC	88	15
NH Presbyterian	19	0

Source: Support letter exhibits.

As shown above, the CMC application included the most letters of support from physicians/providers and the Atrium Health Pineville application included the most letters of support and community members/patients. The NH Presbyterian application provided the fewest letters of support from physicians, the fewest letters of support from community members/patients, and the fewest letters combined. Therefore, with regard to provider support, the Atrium Health Pineville application, the Atrium Health University City application, and the CMC application are the more effective alternatives.

[6] While the table notes the differences in community support, the Agency has rarely, if ever, used community support as a comparative factor.

Summary of Comparative Analysis

The following table summarizes the comparative analysis for acute care beds.

Comparative Factor	*Atrium Health Pineville*	*Atrium Health University City*	*CMC*	*NH Presbyterian*
Conformity with Review Criteria	Yes	Yes	Yes	No
Scope of Services	Less Effective	Less Effective	**Most Effective**	Less Effective
Geographic Accessibility	Equally Effective	Equally Effective	Equally Effective	Equally Effective, But Not Approvable
Meeting the Need for Additional Acute Care Bed Capacity	More Effective	More Effective	More Effective	Less Effective
Competition	More Effective	More Effective	More Effective	Less Effective
Geographic Reach	Equally Effective	Equally Effective	Equally Effective	Equally Effective, But Not Approvable
Projected Medicare	More Effective	Less Effective	**Most Effective**	Less Effective
Projected Medicaid	Less Effective	Less Effective	**Most Effective**	Less Effective
Projected Charity Care	More Effective	**Most Effective**	More Effective	Least Effective
Average Revenue per Day	Inconclusive	Inconclusive	Inconclusive	Inconclusive
Average Expense per Day	Inconclusive	Inconclusive	Inconclusive	Inconclusive
Provider Support	More Effective	More Effective	More Effective	Less Effective

To summarize the comparative review for acute care beds, CMHA believes that its three complementary applications are clearly the most effective alternatives for 65 acute car beds needed in Mecklenburg County. They are also fully conforming to all applicable statutory and regulatory review criteria and comparatively superior on the relevant factors in this review. As such, the three proposals by CMHA should be approved.

Please note that in no way does CMHA intend for these comments to change or amend its concurrent and complementary applications as filed on October 17, 2022. If the Agency considers any statements to be amending CMHA's applications, those comments should not be considered.

Attachment 1

December 1, 2021

COMMENTS IN OPPOSITION FROM NOVANT HEALTH INC.

Regarding Atrium Health Applications for Acute Care Beds in Mecklenburg County

Filed October 15, 2021

Atrium Health Carolinas Medical Center Project I.D. #F-012149-21: Add 75 acute care beds at Carolinas Medical Center (CMC) pursuant to the need determination in the 2021 State Medical Facilities Plan.

Atrium Health Pineville Medical Center Project I.D. #F-012147-21: Add 36 acute care beds at AH Pineville pursuant to the need determination in the 2021 State Medical Facilities Plan.

Atrium Health University City Project I.D. #F-012146-21: Add 12 acute care beds at AH University City pursuant to the need determination in the 2021 State Medical Facilities Plan.

Executive Summary

The 2021 SMFP contains a need for 123 acute care beds in Mecklenburg County. As shown above, Atrium Health (AH) applied for all 123 acute care beds. Novant Health (NH) applied for 22 additional acute care beds at NH Presbyterian Medical Center (NH Presbyterian) in Project I.D. #F-012144-21.

For each AH application these comments include "discussion and argument regarding whether, in light of the material contained in the application and other relevant factual material, the application complies with the relevant review criteria, plans and standards."[1] Due to the significant overlap in the AH applications, appearing as largely duplicative sections in all three applications, these comments are organized by comments applicable to all AH applications and then comments applicable to specific AH applications. These comments show:

- AH's version of the "History" of Acute Care Bed Need in Mecklenburg County is incomplete, draws inaccurate conclusions, and is irrelevant in analyzing the need for each specific AH application with respect to Criterion (3).

- AH's past occupancy rates on licensed beds, and any concerns related to capacity, are irrelevant to analyzing future need at the specific AH Mecklenburg facilities requesting beds. The past occupancy rates do not account for volume AH has acknowledged will shift to other hospitals, nor do they account for recent AH acute care bed approvals that will increase capacity as they become operational. AH has not demonstrated in the applications as filed that the current or past perceived capacity issues raised in its applications will exist in the future.

[1] See N.C. GEN. STAT. § 131E-185(a1)(1)(c).

- In addition to having the same irrelevance as past occupancy rates, AH's current (2021) occupancy rates are only based on a partial year impacted by COVID-19. Further, AH does not demonstrate why an unadjusted seven months of CY 2021, annualized, is reasonable to use as the base year to project future acute care days of care, particularly in light of the discussion in the application regarding the impact of COVID-19 and the publicly available information on the impact of COVID-19, which is ongoing.

- For all three AH applications, projected utilization and occupancy rates for acute care beds are not reasonable and not adequately supported. These comments show publicly available data calls the projected growth rates chosen by the applicant into question because AH's growth rates are based solely on past acute care day growth. For each hospital, AH assumed acute care discharges would growth at the same rate as acute care days, which is not supported by past growth trends in acute care discharges. Further, the applicant's own statements regarding capacity limitations do not support a projected annual increase in utilization at CMC.

- The CMC application is non-conforming with CON Review Criteria (1), (3), (5), (6), and (18a), and the performance standards for acute care beds.

- The AH Pineville application is non-conforming with CON Review Criteria (1), (3), (4), (5), (6), (12), and (18a), and the performance standards for acute care beds.

- The AH University application is non-conforming with CON Review Criteria (1), (3), (5), (6), and (18a), and the performance standards for acute care beds.

The Agency cannot approve a non-conforming application. Based on these comments, NH respectfully urges the Agency to deny the CMC, AH Pineville and AH University City applications as non-conforming with CON Review Criteria. These comments also compare the NH Presbyterian acute care bed application to the three AH applications and show it is more effective than the AH Pineville and AH University City applications. If the Agency finds the AH applications conforming with all CON criteria and performance standards, the AH Pineville and AH University applications are less effective proposals than the NH Presbyterian application and should be denied or partially approved on that basis.

Atrium Health's History of Acute Care Bed Need in Mecklenburg County

The three AH applications have a nearly identical 11-page narrative in Section C called, "History of Acute Care Bed Need in Mecklenburg County."

Page References for Sections Titled, "History of Acute Care Bed Need in Mecklenburg County"

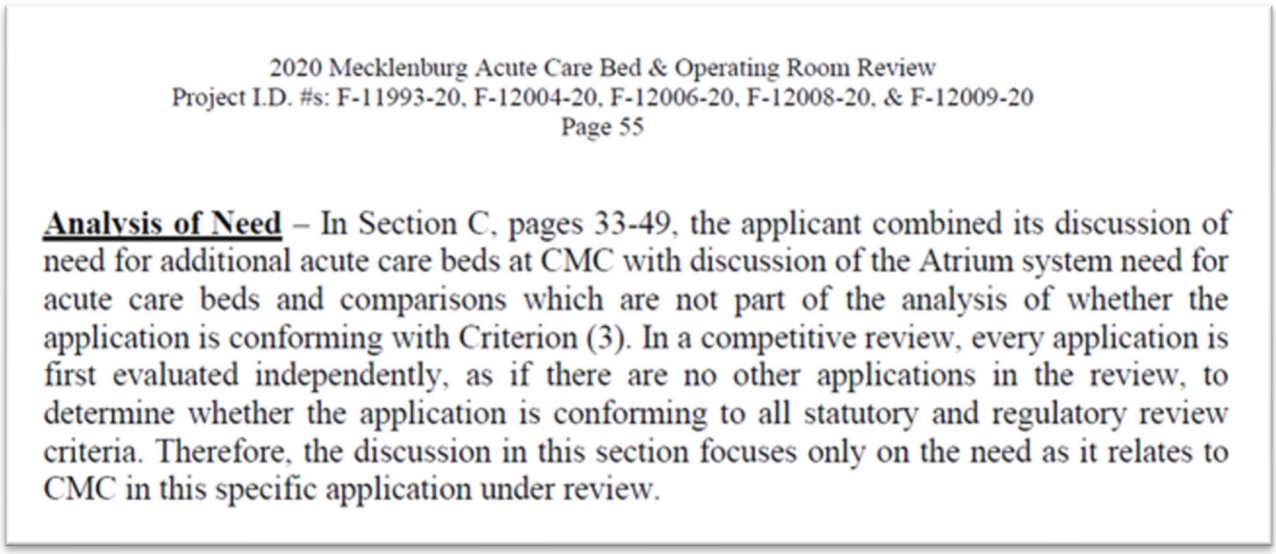
Applicant Hospital	Project I.D.	Introductory Paragraph	Entire Section
CMC	#F-012149-21	Page 43	Pages 44-54
AH Pineville	#F-012147-21	Page 42	Pages 42-52
AH University	#F-012146-21	Page 40	Pages 41-51

Relevance to Conformity with Criterion (3)

Each statutory review criterion is addressed in a separate section of the application form and the language of the statutory review criterion is provided at the beginning of the section. AH's history lesson appears in Section C – Criterion (3) of all three applications. AH admits in the introductory paragraphs these sections describe market demand "[P]rior to demonstrating the need patients have for the proposed project…" While these 11-page sections give AH's version of SMFP history, AH perceived system need, and comparisons to other North Carolina health systems, they do not inform the Agency why the specific projects in the applications conform to Criterion (3). These self-serving narratives are irrelevant to the statutory criteria and should be given no weight in determining whether the applications are conforming to Criterion (3).

AH also says the narratives "provide a brief overview of the negative impacts that result from an inadequate supply of acute care beds at Atrium Health hospitals…" AH alleges negative impacts to the AH system but not to the specific hospitals where the projects are proposed. The impacts address: AH hospitals (collectively) in Mecklenburg County; AH EDs and FSEDs (collectively) in Mecklenburg County, AH PACUs (collectively) in Mecklenburg County, and the Carolinas Hospitalist Group which practices at all AH hospitals. None of these system-wide issues demonstrate conformity with Criterion (3) for the specific applications under review.

Most of AH's version of history appeared in past AH acute care bed applications. As shown in the excerpt below from the 2020 Mecklenburg Acute Care Bed Review, system need and system comparisons *are not* part of the Agency's analysis of whether a specific application is conforming with Criterion (3).



2020 Mecklenburg Acute Care Bed & Operating Room Review
Project I.D. #s: F-11993-20, F-12004-20, F-12006-20, F-12008-20, & F-12009-20
Page 55

Analysis of Need – In Section C, pages 33-49, the applicant combined its discussion of need for additional acute care beds at CMC with discussion of the Atrium system need for acute care beds and comparisons which are not part of the analysis of whether the application is conforming with Criterion (3). In a competitive review, every application is first evaluated independently, as if there are no other applications in the review, to determine whether the application is conforming to all statutory and regulatory review criteria. Therefore, the discussion in this section focuses only on the need as it relates to CMC in this specific application under review.

The Agency has not found AH's "history lesson" persuasive before, and it should not find it persuasive now. However, because Atrium has used this section to exaggerate its own historical bed need in Mecklenburg County, NH provides other relevant factual material below to set the record straight.

AH is not Entitled to Any Beds

In these sections AH admits "…a provider that generates the need for additional capacity is not entitled to that need." In the 2019 and 2020 Mecklenburg Acute Care Bed and OR Reviews, the Agency agreed and clearly stated[2,3] an applicant must justify each project, based on the information in the application and Agency file, and show it satisfies the CON review criteria and performance standards.

However, despite the admission, AH devotes several pages to discussing which Mecklenburg provider generated the SMFP acute care bed need as far back as 2009 and which provider was awarded beds. All three applications state:

- "Atrium Health has been chronically under-bedded **as a result** of not being awarded additional acute care beds for which it generated the need." (*emphasis added)*

- "CMHA continues to be seriously constrained in its ability to meet patient demand **as a result** of not being awarded a sufficient number of beds to dramatically reduce its bed deficit." (*emphasis added*)

- Each section concludes with the identical statement, "Patients, physicians, nurses, and operators suffer when acute care beds needed at Atrium Health facilities repeatedly go to other providers in Mecklenburg County."

As NH is the only other acute care provider in Mecklenburg County, "other providers" refers to NH. AH implies that because the Agency approved past NH applications and partially approved or denied past AH applications, the Agency endangered patients and their healthcare providers. This false narrative of entitlement is only possible because AH's history lesson is incomplete and inaccurate. Thus, AH argues that whenever there is a bed need in Mecklenburg County, it should be awarded all the beds, all the time, and that the Agency is wrong to approve anyone other than AH. But AH is not entitled to any beds, and the Agency does not owe AH anything.

AH focuses only on the outcome of each Review Cycle and ignores reasons NH beds were approved and specific AH bed applications were partially approved or denied:

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[2] 2019 Mecklenburg Acute Care Bed and OR Review Findings, p. 38. "Anyone may apply to meet the need, not just Atrium. Atrium has the burden of demonstrating the need for the proposed acute care beds and ORs in its applications as submitted"

[3] 2020 Mecklenburg Acute Care Bed and OR Review Findings, p. 90. "… Atrium states the need for 126 acute care beds in Mecklenburg County was generated entirely by Atrium hospitals. However, anyone may apply to meet the need, not just Atrium. Atrium has the burden of demonstrating the need for the proposed acute care beds in its applications as submitted."

- In the 2018 Mecklenburg Acute Care Bed and OR Review the Agency found the NH Huntersville bed application a more effective alternative than the AH Pineville bed application.

- In the 2019 Mecklenburg Acute Care Bed and OR Review the AH Lake Norman application could not be approved because it was found non-conforming to the CON Criteria.

- In the 2020 Mecklenburg Acute Care Bed and OR Review the Agency found the NH Steele Creek application was a more effective alternative than the CMC application.[4]

AH's allegation that any current occupancy constraints result from past denials is false, because AH assumes that if the beds were awarded to AH, they would be in operation today. In 2017, AH was awarded all the beds it requested and those beds are operational. Since then, the table below shows AH has been denied or partially approved three times. All three projects had first project years *after* 2021. Therefore, even if AH had been awarded all beds it applied for in the last four cycles, its occupancy rates on licensed beds from 2019 – 2021 would be exactly the same.

Facility Name	SMFP	Project I.D.	Beds Requested	Beds Approved	Beds Denied	Project Years 1-3*
CMC	2017	F-11362-17	45	45	0	CY 2019-2021
AH Pineville	2017	F-11361-17	15	15	0	CY 2019-2021
AH Pineville	2018	F-11622-18	50	38	12	CY 2022-2024
CMC	2019	F-11811-19	18	18	0	CY 2022-2024
AH Pineville	2019	F-11813-19	12	12	0	CY 2022-2024
AH University City	2019	F-11812-19	16	16	0	CY 2022-2024
AH Lake Norman	2019	F-11810-19	30	0	30	CY 2023-2025
CMC	2020	F-12006-20	119	87	32	CY 2028-2030
AH Pineville	2020	F-12009-20	7	7	0	CY 2022-2024
Total			312	238	74	

* First full fiscal year of project

The table shows that since 2017, AH has been approved for 76% of the beds available in the SMFP. There is no denying that AH has been extremely successful with its bed applications. Moreover, when AH was not awarded all the beds it requested the Agency awarded AH enough acute care beds the following year to more than offset the previous denials. The excerpt below from its recent 2021 AH Steele Creek application shows AH is well aware of these opportunities in subsequent Review Cycles.[5]

[4] 2020 Mecklenburg Acute Care Bed and OR Findings, p. 191.
[5] AH Steele Creek Medical Center Acute Bed Application, Project I.D. No. F-012084-21, p. 53.

Allowing patients to shift away from the Atrium Health Pineville campus to Atrium Health Steele Creek will be beneficial, as demonstrated previously. Additionally, given the time horizon of the proposed project and need identified in the *2021 SMFP* for additional acute care beds in Mecklenburg County, as well as the historical and projected growth in utilization of CMHA facilities in Mecklenburg County, CMHA reasonably believes that it will have an opportunity to apply for additional capacity in the near-term and future *SMFPs* will identify the need for additional acute care beds in the county. Furthermore, of

The following table summarizes the Agency's approval of acute beds for each system in the past five review cycles:

Mecklenburg County SMFP Acute Care Bed Approval by System, 2017 - 2021

		Atrium Health			Novant Health		
SMFP Year	SMFP Need Determination	Beds Requested	Beds Awarded	AH% of Awarded	Beds Requested	Beds Awarded	NH% of Awarded
2017	60	60	60	100%	18	0	0%
2018	50	50	38	76%	12	12	24%
2019*	76	76	46	70%	20	20	30%
2020	126	126	94	75%	32	32	25%
2021	123	123	*(TBD)*	*(TBD)*	22	*(TBD)*	*(TBD)*
2022	65						

** NOTE: The Agency awarded 66 of the maximum 76 beds in the 2019 review cycle.*

The Agency's annual awards of new acute care beds to AH contradict AH's allegation it cannot "dramatically decrease its bed deficit." The Agency awarded AH the vast majority (76 percent) of the beds it requested in the 2017-2020 review cycles. The previously denied AH beds would not yet be operational in 2021. If there is a perceived capacity problem at AH hospitals now, it is not because the Agency did not award AH enough beds in years past. As discussed in these comments, AH has tools at its disposal to manage capacity constraints, and AH has definitely used those tools.

Atrium Health's False Portrayal of Bed Need and Bed Deficits

All three applications present two graphs falsely titled "Atrium Health and Novant Health Acute Care Bed Need."[6] The graphs actually show the results of Step 8 of the SMFP Acute Care Bed Need Methodology. This step is intended to project **future** hospital and system acute care bed surpluses and deficits in a service area **before adjusting the service area by subtracting from that number any beds for prior year need determinations for which a CON has not yet been issued** in Step 9 of the SMFP Acute Care Bed

[6] CMC Acute Bed Application, Project I.D. No. F-012149-21, pp. 44 and 47; AH Pineville Acute Bed Application, Project I.D. No. F-012147-21, pp. 43 and 45; AH University Acute Bed Application, Project I.D. No. F-012146-21, pp. 41 and 44.

Need Methodology. The role of the SMFP in the CON process is to set the upper limit on the new assets the Agency may approve in a review. It does not prove "need" for an application by any provider or health system.

AH's graphic portrayal of bed need based on past SMFP deficits is grossly exaggerated because it makes no adjustments for prior year need determinations in which it was awarded acute care beds. Months before AH filed its applications, acute care bed CON approvals were final in all past Mecklenburg Review Cycles, yet AH continues to depict the SMFP published bed deficit in these charts, unadjusted for final CON approvals, as its own "need".

Atrium Health's Unlicensed Acute Care Capacity[7]

The only mention of occupancy at specific hospitals appears in the bulleted sections on pages 53, 51, and 50 of the CMC, AH Pineville, and AH University applications, respectively. While **historically** accurate, none of these occupancy rates establishes **future** bed need at any of the hospitals. The entire paragraph is misleading with regard to establishing need for the projects as proposed because (1) the occupancy rates are based on 2019 patient days and 2019 licensed beds; (2) AH fails to mention the CON approvals for an additional 136 acute care beds at its Mecklenburg hospitals; and (3) AH does not show that those beds when implemented will not reduce occupancy levels. Further, AH fails to consider the observation beds and temporary beds that were in place in 2019, which increased operational capacity and lowered operational occupancy.[8]

- Not only do Atrium Health facilities have the highest occupancy rates in Mecklenburg County, but Atrium Health Pineville also had the highest occupancy rate (89.2 percent) of any hospital in the entire state in FFY 2019 according to the *2021 SMFP* and all three of Atrium Health's Mecklenburg County facilities had occupancy rates in the top 10 in the state (CMC/Atrium Health Mercy and Atrium Health University City operated at 83.6 and 76.3 percent occupancy, respectively). Notably, none of Novant Health's Mecklenburg County facilities operated in the state's top 10 hospitals with regard to occupancy rate. Moreover, from a system level (defined as hospitals under common ownership in the same county as presented in the *SMFP*), the Atrium Health system in Mecklenburg County had the highest occupancy rate overall of any system in the state (84 percent) while Novant Health's Mecklenburg County system had the second lowest (70.2 percent) followed only by Community Health Systems in Iredell County (25.8 percent). Please see Exhibit C.4-1.

AH claims that AH's Mecklenburg hospital inpatient units have sustained high licensed occupancy rates and can only handle growth in demand if the Agency approves all 123 additional beds it requested. This is false. In failing to mention the 136 acute care bed approvals in determining what licensed occupancy

[7] CMC Application, p. 53; AH Pineville Application, p. 51; AH University Application, p. 50.

[8] Pursuant to Project ID #s F-11622-18, F-11813-19, and F-12009-20, Atrium Health Pineville was approved to develop a total of 57 additional acute care beds. Twelve additional beds were operational as of November 2021. The 45 additional acute care beds approved will be developed in CY 2022. (AH Pineville Application, Form C Assumptions and Methodology, p. 12.)

rates it can sustain, AH failed to consider the full complement and capacity of licensed beds it will have in the future.

AH argues in its applications that the daily census figures at its Mecklenburg hospitals are effectively higher than those reported in the SMFP because of patients being admitted in the morning, before the majority of its daily discharges have occurred.[9] There is a constant "turnover" of patients being admitted and discharged from a hospital during midday. These routine variations in admission volume are the reason hospitals operate a supply of temporary and observation beds. Using observation beds is one method used by hospitals to manage this turnover, including AH hospitals.[10]

There are several ways AH increased its operational capacity above licensed capacity without increasing the number of permanently licensed beds:

- In its 2021 License Renewal Applications, AH's three Mecklenburg hospitals reported 160 observation beds. Observation beds are not limited to use by observation patients only. They are also available to admitted acute care patients, so long as the total number of admitted acute care patients does not exceed licensed capacity, including temporary increases. The Agency has interpreted the CON law to allow a hospital to use all physical beds for inpatients so long as the midnight census does not exceed the number of licensed beds.[11]

- AH continuously uses the provision in North Carolina Administrative Code 10A NCAC 13B.3111 to temporarily increase its licensed bed capacity by up to 10 percent. A temporary increase lasts 60 days but can be renewed indefinitely. A hospital qualifies for a temporary increase if its census is at least 90 percent of its permanent licensed bed capacity. The hospital must also explain what triggered the need for a temporary increase. Justifications may include but are not limited to: natural disaster, catastrophic event, or disease epidemic. AH used this provision routinely to increase bed capacity at CMC and AH Pineville well before the coronavirus pandemic.

- AH Pineville and CMC received approval for 102 "temporary" licensed beds that can accommodate many types of admitted patients. These temporary beds have been renewed for many years. They are not tied to additional beds needed for COVID-19 patients.

    - Since March 2018 AH Pineville has consistently had 20 to 22 additional licensed beds.[12] Letters to the Agency say, "Atrium Health Pineville plans to utilize existing observation

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[10] Licensable bed spaces can be acute care beds or observation beds on any day, so long as the number of beds in use at midnight does not exceed the number of permanent and temporary licensed beds *See*: Payne, Mark. Email Correspondence RE: Declaratory Ruling by the Charlotte-Mecklenburg Hospital Authority FID# 943092, May 18, 2017.

[11] See **Exhibit 7** for a copy of this letter.

[12] AH received seven approvals from the Agency to temporarily operate 20 additional acute care beds from March 2018 to June 2019. Due to an increase in total bed count at AH Pineville, AH received approval for 22 additional acute care beds from June 2019 to April 2020.

beds to achieve this temporary increase."[13] (The cited correspondence is included in **Exhibit 1** that accompanies these comments.) This statement proves AH has enough unlicensed beds to handle the overflow. The Division of Health Service Regulation approved 20 temporary beds at AH Pineville on March 20, 2018. This increase in beds was extended through bimonthly requests approved through June 15, 2019. In April 2019, AH Pineville applied for and was approved to operate 22 temporary inpatient beds. These temporary beds received extensions through April 2020.

- CMC used this same process to increase its licensed bed capacity. Beginning on January 13, 2015, CMC was approved for an additional 80 temporary beds by the Department of Health Service Regulation. This expanded capacity was extended through bimonthly requests to DHSR that were approved through April 2020.[14]
- Both of these bed sources provide additional capacity that lowered the effective inpatient occupancy rate at AH hospitals.

- Beds at CMC and AH Pineville that are delicensed when beds are transferred to a new hospital like AH Lake Norman or AH Steele Creek still physically exist and can be used to manage the inpatient census. Beds at these hospitals that are delicensed when beds are relocated to a new bed tower may also still physically exist.

AH cites high occupancy challenges at its Mecklenburg hospitals as a trigger for reaching critical capacity activation status on multiple occasions in 2020.[15] AH asserts that during these events normal operational processes related to patient care are disrupted, e.g., the need for ambulance diversions and delaying or canceling surgeries. Such instances were not unique to AH hospitals in 2020 due to the unanticipated strain on hospital resources during the COVID-19 pandemic. AH does not specify the volume of COVID-19 patients during these surges, but it seems likely that patients infected with COVID-19 and requiring hospitalization contributed to the high occupancy levels at AH's hospitals.

DHSR also offered North Carolina hospitals an option for adding temporary beds during the pandemic. This emergency waiver suspended the usual qualification criteria in 10A-NCAC-13B.3111.[16] (See **Exhibit 2** for the DHSR memorandum dated March 20, 2020). AH applied for and was approved for 173 COVID-19 expansion beds at AH Pineville and 379 beds at CMC, although according to Atrium none of these beds

[13] Christopher Hummer, correspondence with Azzie Conley, RE: Request for Temporary Operation Above Licensed Bed Capacity, March 20, 2018.
[14] CMC received 31 approvals from the Agency to temporarily operate 80 additional acute care beds from January 2015 to April 2020.
[15] AH Pineville Application, pp. 71-72; AH University City Application, p. 71.
[16] Mark Payne, North Carolina Department of Health and Human Services Memorandum to North Carolina Hospital CEOs RE: Request for Temporary Waiver of 10A NCAC 13B.3111 to Provide Services to Patients That May Be Stricken by COVID-19, March 12, 2020.

were in use at the time of the 2021 LRA submission.[17] These beds were available in the first half of 2021 to manage the patient census AH cites in its applications and would have mitigated many of these operational difficulties without requiring a CON approval. AH did not implement these beds as of September 30, 2020,[18] presumably because it did not need them.

All three AH applications limit all occupancy rates to licensed beds. AH did not quantify the actual number of physical bed spaces it had available to manage its inpatient census in recent years, but the following table shows the reported inventory of licensed, unlicensed, and approved beds at AH's Mecklenburg hospitals.

2021 Atrium Health Mecklenburg Reported Acute Care Bed Inventory

Hospital	Licensed Beds	Observation Beds	Temporary Beds*	Temporary COVID-19 Beds	CON Approved Beds
CMC/Mercy	1,055	110	80	379	87
AH Pineville	233	31	22	173	45
AH University City	100	19	0	N/A	4
Total	1,388	160	102	552	136

*Approved temporary beds as of April 15, 2020. Beginning in 2020, additional COVID-19 temporary beds were approved but not in use at the time of AH's 2021 HLRA submissions.

AH's unlicensed and temporarily licensed beds increased the inpatient capacity of its Mecklenburg hospitals by 19 percent in 2021. AH does not count the observation beds or temporarily licensed beds in its occupancy calculations, and thus understates its physical capacity to manage its inpatient census. It also exaggerates its physical occupancy rate. Beyond limited reference to the total not being enough, AH also does not address why the recent CON bed approvals which are not yet operational, will not address any current occupancy constraints.

There is no urgency for the beds AH requests. AH will continue constructing the Pineville bed tower whether or not any beds are awarded in this cycle. It can, and most likely will, build out floors with unlicensed observation beds that do not require CON approval. AH does not need all 123 beds requested.

Atrium Health's False Assertions about NH's Increased Market Share[19]

AH falsely claims NH's patient days and market share grew in recent years because AH was turning away patients due to lack of licensed beds. The truth is NH's inpatient acute care discharges, patient days, and market share in Mecklenburg County grew because of the growth and expansion of NH's medical group, its investment in service line development and its ability to attract independent physicians. In other words,

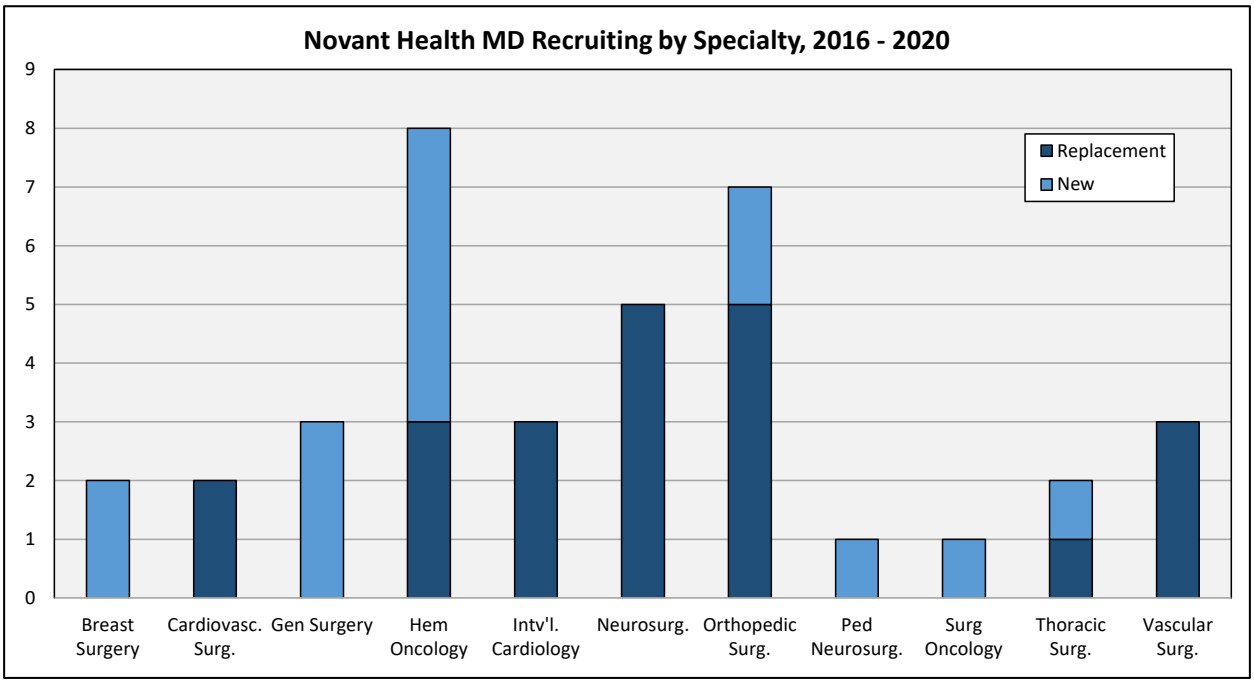
[17] 2021 CMC and AH Pineville Hospital License Renewal Applications, COVID-19 Addendum. Atrium had not implemented any of the approved beds under the waiver for the service dates from October 1, 2020 through September 30, 2021 at the time of submission.
[18] Ibid.
[19] CMC Application, p. 57; AH Pineville Application, p. 55; AH University Application, p. 54.

NH competed for the privilege to serve patients and patients increasingly *chose* NH physicians and facilities. They were not driven from AH due to a so-called lack of licensed beds at AH. NH predicted this decrease in AH market share and increase in NH market share in its Response to Comments in the 2018 Mecklenburg County Acute Care Bed Review. (See **Exhibit 4**.)

AH was the first Mecklenburg County health system to increase its employed physician roster. AH began a massive acquisition of physician practices about ten years ago. Over the last decade, AH has added locations and medical providers to expand specialty care programs such as the Sanger Heart and Vascular Institute. NH did not respond immediately with equivalent acquisitions of physician practices, and the result was a dramatic shift in patient volumes from NH to AH, as reflected in the SMFP.

Since 2016, NH has successfully acquired practices and recruited new physicians to its Mecklenburg medical group. NH has developed service line institute models for specialties that include Heart and Vascular, Cancer, Neurosciences, and Orthopedics & Sports Medicine. In 2020, the Novant Health Medical Group employed over 5,000 team members, including nearly 1,400 physicians and extenders, in the Greater Charlotte market.[20]

Expanding the NH Medical Group increased the number of medical and surgical specialists that admit patients to NH's Mecklenburg hospitals. NH added over 37 new specialists to the Greater Charlotte market between 2016 and 2020, with significant additions in Oncology, Orthopedics, Neurosciences and Thoracic/Cardiovascular Surgery.

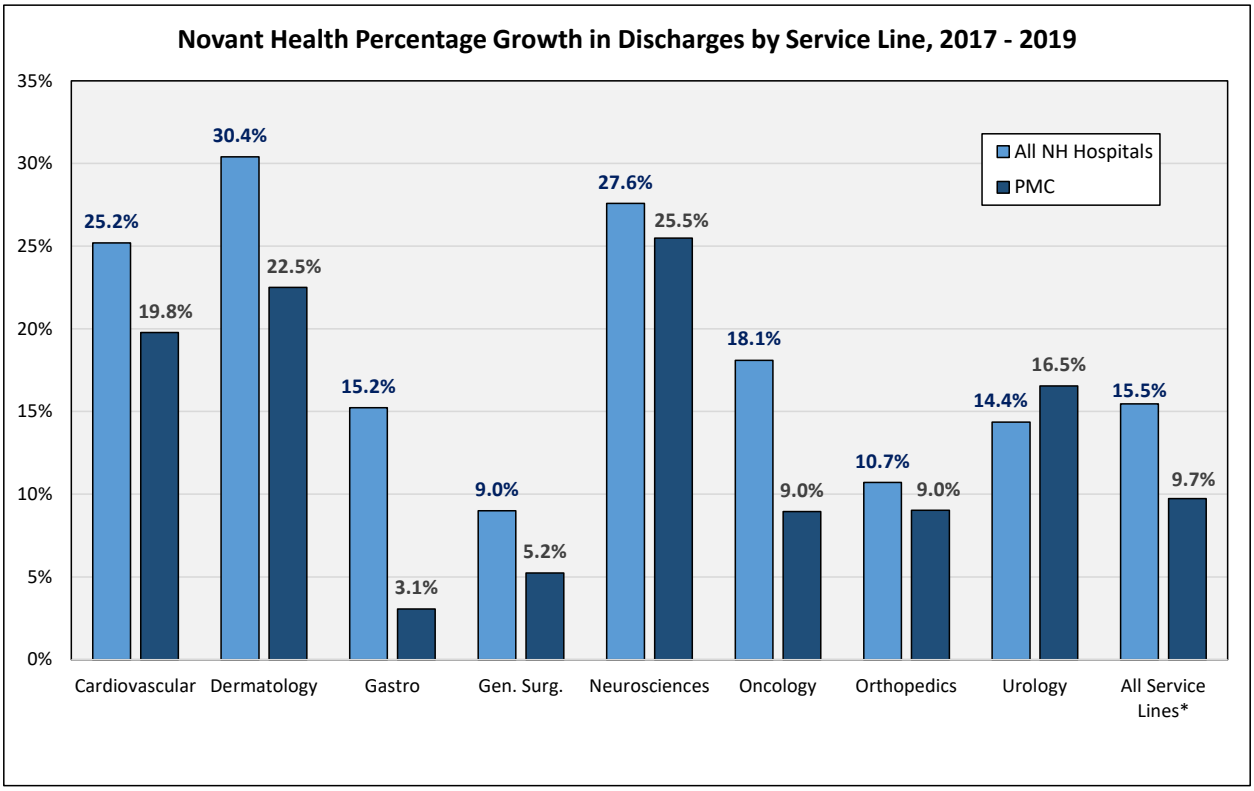


Source: NH internal data.

[20] Novant Health Medical Group 2020 Annual Report, p. 3.

This response to AH's strategy has reversed NH's previous losses in market share. NH experienced significant growth in inpatient discharges for these targeted specialties from 2017 to 2019 before COVID-19. The chart below shows conspicuous gains in the service lines NH identified as recruiting priorities. Orthopedics discharges grew 10.7%, Oncology increased 18.1%, Cardiovascular grew 25.2% and Neurosciences increased 27.6%. This growth over just two years is far more than one would expect from patients being diverted from AH hospitals operating at capacity. Rather, the growth is attributable to hard work, remarkable patient care, and investing in the communities NH serves.

Growth in NH's inpatient volume and market share will likely continue to increase as these employed specialists continue building their practices and become better known in Mecklenburg County and the surrounding communities. It is reasonable to assume that patients will follow NH specialists to the hospitals where they admit patients. This includes growth projected for new NH hospitals in Mint Hill, Ballantyne and Steele Creek. The volume projections for these NH hospitals accepted in the Agency's reviews include market share growth resulting from the capture of additional patients in these markets.



Source: NH internal data.

AH's need analysis and utilization projections fail to account for volume and market share shifts to recently approved NH hospitals in Mecklenburg County. The Agency approved NH's application for a 36-bed acute care hospital in Ballantyne (Project I.D. # F-011625-18) that is scheduled to open in 2022, and approved the application for a 32-bed hospital in Steele Creek (Project I.D. # F-11193-20) that will begin operations in 2025. Both of these facilities will draw patients from existing acute care providers in Mecklenburg County, including AH Pineville.

NH Ballantyne will have over 1,600 acute discharges in CY 2023, the first full year of operation. This figure will grow by 800 discharges by 2025. In NH Steele Creek's first full operating year (CY 2026), NH projected nearly 1,400 discharges of patients from Mecklenburg County zip codes. This will increase to over 2,100 discharges by CY 2028. For both projects, the Agency determined that "the projected utilization is reasonable and adequately supported."[21,22]

NH's program development and investment in service lines and provider resources is also reflected in its growth in acute patient days of care. NH increased its share of patient days of care relative to AH from 2017 to 2021, despite AH receiving the majority of available acute care beds in the Agency's decisions during this period. In the 2022 SMFP, NH hospitals have a COVID-19-adjusted total of 225,109 patient days of care, representing 34.6% of patient days for Mecklenburg County hospitals. This is an increase of 1.6 percent compared to 2017, despite NH having a smaller share of licensed and approved beds.

	% of Licensed + Approved Beds	% of Licensed + Approved Beds	% of Patient Days of Care	% of Patient Days of Care
SMFP Year	AH System	NH System	AH System	NH System
2017	61.2%	38.8%	67.0%	33.0%
2018	61.2%	38.8%	67.7%	32.3%
2019	61.8%	38.2%	68.1%	31.9%
2020	60.8%	39.2%	68.0%	32.0%
2021	61.9%	38.1%	66.0%	34.0%
2022*	62.1%	37.9%	65.4%	34.6%

Source: SMFP.

** NOTE: Bed percentages do not include the Agency's pending 2021 award decision.*

AH's Overview of Unmet Need and 2021 SMFP Acute Care Bed Need Methodology

All three AH applications also contain lengthy, nearly identical sections called, "*Overview of Unmet Need" and "2021 SMFP Acute Care Bed Need Methodology*."

Page References for Sections Titled,
"Overview of Unmet Need" and "2021 SMFP Acute Care Bed Need Methodology"

Applicant Hospital	Project I.D.	Overview of Unmet Need	2021 SMFP Acute Care Bed Need Methodology
CMC	#F-012149-21	Pages 54-55	Pages 56-66
AH Pineville	#F-012147-21	Pages 52-53	Pages 54-65
AH University	#F-012146-21	Pages 51-52	Pages 52-65

[21] 2018 Mecklenburg Acute Care and OR Competitive Review Findings, p. 74.
[22] 2020 Mecklenburg Acute Care and OR Review Findings, p. 28.

For the brief "Overview of Unmet Need" section in each application, AH says two factors support the specific need for the proposed project.

> The overall need for the proposed project is based on the need for additional acute care beds in Mecklenburg County as identified by the *2021 SMFP.* The specific need for the project proposed in this application is comprised of the following factors:
>
> - The need for additional capacity at Atrium Health [Applicant Hospital], and
> - The dynamic population growth in the region served by Mecklenburg County providers, including the growth in the population over age 65.
>
> Each of these factors will be discussed in turn below. A detailed analysis of the quantitative need for the proposed project is discussed in the assumptions and methodology for Form C and is incorporated herein by reference.

Relevance to Conformity with Criterion (3)

AH states these factors will be discussed "in turn below". However, in the next 10-page sections titled, "2021 SMFP Acute Care Bed Need Methodology," AH again discusses the 2021 SMFP, AH System deficits, and the comparison of the AH System to other providers in North Carolina. Repeating the same irrelevant argument is not helpful to AH's cause. The discussion above about the irrelevance of this information to the analysis of the applications with conformity with Criterion (3) is incorporated herein. This section of the application also discusses what AH calls its "Superior Need" which appears to be provided in anticipation of other co-batched applications. The discussion of the AH system need for acute care beds and these comparisons do not show the individual applications are conforming with Criterion (3).

2020 SMFP Mecklenburg County Growth Rate Multiplier

In all three AH applications, AH shows the calculation of the 2020 SMFP Mecklenburg County Growth Rate Multiplier (CGRM) and then admits, "Of note, Novant Health's total days increased at a faster rate from 2015 to 2019 than did Atrium Health's over the same period of time…" The following table breaks down the 2020 CGRM by health system, showing AH's CGRM is lower than NH's CGRM and the service area CGRM.

Mecklenburg County Acute Care Growth Rate Multiplier 2020 SMFP

Mecklenburg Total	FFY 2015	FFY 2016	FFY 2017	FFY 2018	FFY 2019	CGRM*
Acute Care Bed Days	562,638	565,440	581,200	596,723	638,866	1.0325
Difference from Previous Year		2,802	15,760	15,523	42,143	
Percent Change		0.5%	2.8%	2.7%	7.1%	

Novant Health	FFY 2015	FFY 2016	FFY 2017	FFY 2018	FFY 2019	CGRM*
Acute Care Bed Days	185,521	182,594	185,596	190,746	217,163	1.0417
Difference from Previous Year		-2,927	3,002	5,150	26,417	
Percent Change		-1.6%	1.6%	2.8%	13.8%	

Atrium Health	FFY 2015	FFY 2016	FFY 2017	FFY 2018	FFY 2019	CGRM*
Acute Care Bed Days	377,117	382,846	395,604	405,977	421,703	1.0284
Difference from Previous Year		5,729	12,758	10,373	15,726	
Percent Change		1.5%	3.3%	2.6%	3.9%	

** 1 + Four Year Average Percent Change.*
Source: 2017 – 2021 SMFPs

AH states its system growth "is curtailed solely by capacity constraints experienced at CMC"[23] and "Atrium Health as a Mecklenburg County system is facing such significant capacity constraints and bed deficits that it simply has not had the ability to grow over the last four years at the same rate of the Novant Health system that has underutilized beds and adequate capacity to grow."[24] AH blatantly ignores competition as a factor.

The table below shows AH's annual acute care day growth. Compared to previous years, Atrium's system growth has been among the highest in the last three years when it claims the system, "simply has not had the ability to grow at the rate of the Novant system..."

[23] CMC Application, p. 58.
[24] CMC Application, p. 59.

Atrium Health Mecklenburg Facility Acute Care Patient Day Growth

SMFP Year	FFY Data Period	Acute Care Days	Annual Change	Growth Rank
2013	2011	346,410		
2014	2012	344,089	-0.7%	8
2015	2013	352,853	2.5%	5
2016	2014	347,252	-1.6%	9
2017	2015	377,117	8.6%	1
2018	2016	382,846	1.5%	6
2019	2017	395,604	3.3%	3
2020	2018	405,977	2.6%	4
2021	2019	421,703	3.9%	2
2022	2020*	425,778	1.0%	7

Source: SMFPs

For years AH has stated in its acute care bed applications that it has a proven ability to shift patients between its Mecklenburg County and Union County facilities and that it has actively shifted acute care patients from CMC to its other hospitals. In its CMC Application, AH states it has, "developed strategies over many years to manage utilization at CMC. CMHA has sought to decompress capacity at CMC by adding beds at, and shifting patients to, Atrium Health Mercy, Atrium Health University City, and Atrium Health Pineville."[25] The growth at AH's other Mecklenburg hospitals would appear to be a direct result of AH shifting system utilization from CMC to those hospitals. AH provides no reasonable basis to assume that its system wide growth rate would be any higher than it was in the years that contribute to the SMFP CGRM.

Comments on Quantitative Need Applicable to All AH Applications

In all three applications, AH states, "A detailed analysis of the quantitative need for the proposed project is discussed in the assumptions and methodology for Form C." [26] All three AH applications contain nearly identical Form C - Assumptions and Methodology (Form C A&M) which begins page renumbering at 1.

The foundation of Atrium's quantitative need analysis is the idea that absent the opening of approved but not yet operational hospitals, "Baseline" acute care patient days will grow at either the historical CMC growth rate or the 2020 Mecklenburg CGRM, as shown in the table below from the CMC Application Form C A&Ms, Page 6. AH then adjusts for projected shifts of acute care patients from its existing hospitals to selected approved hospitals in the future.

[25] CMC Application, p. 33.
[26] CMC Application, p. 55; AH Pineville Application, p. 53; AH University Application, p. 52.

Assumed Projected Growth Rates

	16-21 CAGR	*22-26 Projected CAGR*	*27-30 Projected CAGR*	*Assumption*
Atrium Health Pineville	6.03%	3.25%	3.25%	3.25% is the Mecklenburg County Growth Rate Multiplier used in the *2021 SMFP.*
Atrium Health University City	7.67%	3.25%	3.25%	3.25% is the Mecklenburg County Growth Rate Multiplier used in the *2021 SMFP.*
CMC	1.61%	1.61%	3.25%	1.61% is CMC's historical CY 16-21 CAGR. 3.25% is the Mecklenburg County Growth Rate Multiplier used in the *2021 SMFP.*
Atrium Health Mercy	7.17%	3.25%	1.61%	3.25% is the Mecklenburg County Growth Rate Multiplier used in the *2021 SMFP.* 1.61% is CMC's historical CY 16-21 CAGR.
Atrium Health Total	**3.33%**	NA	NA	NA

AH relied on its Mecklenburg system's past acute care patient day growth since 2016 as the reasonableness for its acute care utilization projections. According to the Form Cs, AH assumes the acute care average length of stay (ALOS) at each of its facilities will remain constant at its CY 2020 experience and acute care discharges at each facility will grow at the same rate as acute care days.

AH provides no support for its assumptions on patient days and ALOS in the applications as filed. The Agency will find AH did not disclose any data on past acute care patient discharges or ALOS or provide any discussion of these trends in any of the three AH applications. Other than its presence on Form C, the only mention of ALOS in all three application is the single sentence, "With shorter lengths of stay in today's healthcare environment, physicians find it necessary to consolidate a significant volume of clinical care to patients before discharge."[27]

AH also failed to explain the primary reason for its past growth in acute care days because doing so would make clear to the Agency that the growth was substantially due to an increasing average length of stay. Publicly available LRA data show AH's Mecklenburg system discharges declined from 2016 – 2019 and 2016 – 2020. This reason alone makes the utilization projections for all three AH applications unreasonable and without adequate support.

However, the Agency will also find AH failed to adequately quantify the impact of approved new hospitals in Mecklenburg and adjacent counties and significantly understated the shift of acute care utilization from AH Pineville to Piedmont Fort Mill.

As shown in the comments below, AH also does not demonstrate why an unadjusted seven months of CY 2021, annualized, is reasonable to use as the base year to project future acute care days of care, particularly in light of the discussion in the application regarding the impact of COVID-19 and the publicly available information on the impact of COVID-19, which is ongoing.

[27] CMC Application, p. 72; AH Pineville Application, p. 70; AH University City, p. 69.

Atrium Health's Growth Rates

For hospitals that are projected to grow at CGRM, the only support Atrium provides is the statement, "CMHA believes use of the Mecklenburg County Growth Rate Multiplier from the 2021 SMFP acute care bed need methodology is a reasonable basis to project future acute care days for Atrium Health facilities in Mecklenburg County. This projected growth rate of 3.25 percent is conservative relative to Atrium Health's system-wide historical experience..."

AH assumes the acute care average length of stay (ALOS) at each of its facilities will remain constant at its 2020 experience and acute care discharges at each facility will grow at the same rate as acute care days. According to its LRAs, AH's Mecklenburg System acute care discharges actually *declined* 3.2 percent from FFY 2016 to FFY 2019. AH did not provide actual acute care discharges in 2021 from which growth could be measured.[28]

Atrium Health Mecklenburg System Acute Care Discharges

LRA:	2017	2018	2019	2020	2021
FFY Data:	FFY 2016	FFY 2017	FFY 2018	FFY 2019	FFY 2020
CMC/Mercy	61,312	61,064	56,105	55,753	52,279
AH Pineville	15,310	16,362	16,855	17,288	16,229
AH University	6,059	6,442	6,970	6,999	6,741
Total	82,681	83,868	79,930	80,040	75,249

The CMC application provides the following support for the growth rates at CMC and Mercy (Form C A&M, Page 6):

[28] On the Form Cs for all existing AH facilities, AH calculated an estimated number of 2021 acute care discharges by dividing annualized 2021 patient days (Jan – July) by CY 2020 ALOS for each facility. Actual 2021 patient discharges, days, and ALOS for the period January – July 2021 are not provided in the applications as filed.

The *2021 SMFP* Mecklenburg County Growth Rate Multiplier was applied to historical acute care days to project future utilization for each facility through CY 2030, the third full fiscal year of the CMC project, with two exceptions. Growth at CMC has been severely restricted due to occupancy levels in excess of 90 percent for three out of the last five years with no ability to develop any significant number of additional acute care beds for several more years. Until CMC has significant additional acute care bed capacity, its growth will continue to be constrained. As such, CMHA reasonably projects that CMC's acute care days will grow at its historical CY 2016 to 2021 CAGR of 1.61 percent through CY 2026 prior to the opening of a new patient tower on the CMC campus in CY 2027 at which time 87 previously approved beds from the 2020 acute care bed review and 66 of the 75 additional beds proposed in CMC's application in response to the need identified for Mecklenburg County in the *2021 SMFP* become operational. Beginning in CY 2027 through CY 2030, the third full fiscal year of the CMC project, CMHA assumes that CMC's acute care days will grow at the Mecklenburg County Growth Rate Multiplier rate of 3.25 percent annually. Similarly, CMHA projects that Atrium Health Mercy's acute care days will grow at 3.25 percent annually through CY 2026 as it continues to offer relief to CMC, with which it shares a license. With Atrium Health Mercy's projected occupancy rate after CY 2026, its growth will be forced to slow. The development of additional acute care bed capacity at CMC beginning in CY 2027 will allow CMC room to grow, at which time CMHA assumes that Atrium Health Mercy will grow at CMC's historical, capacity-restricted growth rate of 1.61 percent, as shown in the table above.

CMC and Mercy are reported as a combined licensed facility on the LRAs. Acute care discharges have decreased every year at CMC/Mercy since 2016. The only reason acute care days at CMC grew during this time was because of an increasing ALOS. AH failed to explain this increasing ALOS, and further, assumed there would be no increase in the ALOS at any AH Mecklenburg facility at any time in the future as projected in the three applications.

AH did not explain the reasons for the decline or the factors that will or will not stop or reverse the decline in future years. The impact of COVID-19 does not explain the declining discharges because the steady decline in discharges between FFY 2016 and FFY 2019 occurred *before* any cases of COVID-19 were detected. AH assumed baseline growth in acute care days (and thus discharges) at its Mecklenburg hospitals 2.59 percent per year through 2030. The growth per year in discharges is not supported by historical growth trends.

Atrium Health Mecklenburg County Facilities Projected Baseline Utilization

	CY21*	CY22	CY23	CY24	CY25	CY26	CY27	CY28	CY29	CY30	Resulting CAGR
Atrium Health Pineville**	81,874	84,535	87,282	90,119	93,048	96,072	99,194	102,418	105,746	109,183	3.25%
Atrium Health University City	32,574	33,633	34,726	35,854	37,020	38,223	39,465	40,748	42,072	43,439	3.25%
CMC^	286,864	291,471	296,151	300,907	305,739	310,649	320,745	331,169	341,932	353,045	2.33%
Atrium Health Mercy^^	55,054	56,844	58,691	60,598	62,568	64,601	65,639	66,693	67,764	68,852	2.52%
Total Days	456,366	466,482	476,850	487,479	498,374	509,545	525,043	541,028	557,514	574,520	2.59%

AH admits that the past 2016-2021 acute care days CAGR of 1.61 percent at CMC was only possible because CMC added additional bed capacity of 45 beds in late 2018.[29]

> A detailed analysis of Atrium Health's growth and occupancy rates by facility/campus, demonstrates that its growth is curtailed solely by capacity constraints experienced at CMC. The growth CMC experienced from CY 2018 to CY 2019 is clearly indicative of the practical capacity limits CMC has reached when operating at 90 percent occupancy throughout the year. As demonstrated in the table below, from CY 2016 to CY 2018, CMC's occupancy hovered around 90 percent and it experienced limited growth over those years. In CY 2019, after 45 additional beds became operational in late CY 2018, it immediately filled those beds—continuing to operate at 90 percent capacity over the course of CY 2019—but the additional bed capacity permitted CMC to grow by nearly five percent that year, though it still had to turn away some patients because of capacity limits.

This contradicts AH's assumption that CMC will grow at its past 2016-2021 CAGR from 2021 through 2026 when CMC is only expected to make nine additional beds operational (2022). In justifying its assumed CMC growth rate in the following excerpt, the applicant's own statements do not support a projected annual increase in acute care patient days or discharges at any growth rate at CMC before at least CY 2027.[30]

[29] CMC Application, p. 58.

[30] CMC Application, Form C Assumptions and Methodology p. 6. Similar language appears in the AH Pineville and AH University applications, Form C Assumptions and Methodology, also on page 6.

The *2021 SMFP* Mecklenburg County Growth Rate Multiplier was applied to historical acute care days to project future utilization for each facility through CY 2030, the third full fiscal year of the CMC project, with two exceptions. Growth at CMC has been severely restricted due to occupancy levels in excess of 90 percent for three out of the last five years with no ability to develop any significant number of additional acute care beds for several more years. Until CMC has significant additional acute care bed capacity, its growth will continue to be constrained. As such, CMHA reasonably projects that CMC's acute care days will grow at its historical CY 2016 to 2021 CAGR of 1.61 percent through CY 2026 prior to the opening of a new patient tower on the CMC campus in CY 2027 at which time 87 previously approved beds from the 2020 acute care bed review and 66 of the 75 additional beds proposed in CMC's application in response to the need identified for Mecklenburg County in the *2021 SMFP* become operational. Beginning in CY 2027 through CY 2030, the third full fiscal year of the CMC project, CMHA assumes that CMC's acute care days will grow at the Mecklenburg County Growth Rate Multiplier rate of 3.25 percent annually. Similarly, CMHA projects that Atrium Health Mercy's acute care days will grow at 3.25 percent annually through CY 2026 as it continues to offer relief to CMC, with which it shares a license. With Atrium Health Mercy's projected occupancy rate after CY 2026, its growth will be forced to slow. The development of additional acute care bed capacity at CMC beginning in CY 2027 will allow CMC room to grow, at which time CMHA assumes that Atrium Health Mercy will grow at CMC's historical, capacity-restricted growth rate of 1.61 percent, as shown in the table above.

The AH applications indicate AH Mecklenburg hospitals reach practical operational capacity at 90 percent occupancy on licensed beds. However, AH projects future acute care occupancy as projected on Form C to exceed 90 percent at CMC, Mercy, AH Lake Norman, and AH University City.

Shifts to Other Hospitals[31]

AH's utilization projections did not adequately account for the impact of new hospitals, particularly on AH Pineville. AH's CMC-Fort Mill application was filed more than 10 years ago and its hospital was projected to be operational January 1, 2015. Since that time, Piedmont's Fort Mill hospital received final approval and its hospital will now be operational in late 2022 with a first full project year of CY 2023. AH is unreasonably assuming the same absolute patient day impact it projected in early 2011 in its Fort Mill application (See Form C Assumptions & Methodology, Page 8 and the tables below.)[32]

[31] CMC Application, Form C Assumptions and Methodology, p.8; AH Pineville Application, Form C Assumptions and Methodology, p. 7; AH University Application, Form C Assumptions and Methodology, p. 7.

[32] Reduced to account for the ownership change from Atrium to Tenet by only shifting those expected to be admitted through the ER (Form C Assumptions and Methodology, pp. 8-9).

Originally Proposed Shifts of Acute Care Days to CMC-Fort Mill

	CY24	CY25	CY26
Atrium Health Pineville	-7,276	-7,482	-7,693
Atrium Health University City	-85	-88	-90
CMC	-5,257	-5,403	-5,553
Atrium Health Mercy	-946	-973	-1,000
Total Days to Shift	**-13,565**	**-13,945**	**-14,336**

Source: CMC-Fort Mill application and Project ID #s F-10215-13, F-10221-13, F-11361-17, F-11362-17, and F-11622-18.

Adjusted Shifts of Acute Care Days to Piedmont Fort Mill Medical Center by Facility of Origin

	CY23	CY24	CY25	CY26	CAGR
Atrium Health Pineville	-4,996	-5,137	-5,282	-5,431	2.8%
Atrium Health University City	-57	-58	-60	-62	2.8%
CMC	-2,475	-2,543	-2,614	-2,687	2.8%
Atrium Health Mercy	-493	-506	-521	-535	2.8%
Adjusted Total Days to Shift	**-8,021**	**-8,244**	**-8,477**	**-8,715**	**2.8%**

In all AH applications, the only support provided for the assumed Piedmont Fort Mill shifts is that the projected shift of acute care days to Piedmont Fort Mill is consistent with AH's projections in these previous acute care bed applications:

Application Project IDs	Application Year
CMC Fort Mill Application	2011
#F-10215-13, #F10221-13	2013
#F-11361-17, #F-11362-17	2017
#F-11622-18	2018
#F-012147-21	2021

The excerpt below is from the original 2011 CMC-Fort Mill application regarding the impact of its proposed hospital on AH Pineville. This excerpt was taken from an attachment to the #F-10215-13 application and is provided with these comments as **Exhibit 5**.

2. *Shift of Discharges from other CHS facilities.*

CHS calculated the historic market share for CHS Mecklenburg facilities for each of the three submarkets. CHS assumed that a portion of its existing market share for each of the three submarkets would shift to CMC-Fort Mill:

- CHS projected to shift 75 percent of the 2009 Northern York County market share held by CHS Mecklenburg facilities to CMC-Fort Mill.
- CHS projected to shift 80 percent of the 2009 Rock Hill market share held by CHS Mecklenburg facilities to CMC-Fort Mill.
- CHS projected to shift 50 percent of the 2009 Western York County market share held by CHS Mecklenburg facilities to CMC-Fort Mill.

While over the years AH has the data available to update and recalculate future impact using the same assumptions it used in 2011, it has instead held the absolute volume impact on patient days constant. Since the Agency first accepted AH's impact projections in a 2013 North Carolina application, York County population, AH Pineville's total acute care utilization, and the number of acute care patients at AH Pineville from York County has increased significantly.

AH's projections of impact from a new Fort Mill hospital, regardless of ownership, are now out of date and understated. The table below shows that when the agency first accepted the impact projections in a 2013 North Carolina application, AH projected about 15 percent of AH Pineville's acute care days would shift to CMC Fort Mill. In the current Pineville application, the assumed shift to an Atrium-owned Fort Mill hospital now amounts to only 8 percent of AH Pineville's acute care days. These days are further reduced by AH since the hospital in Fort Mill will be owned by Piedmont.

In 2013 Applications	AH Pineville Total Acute Care Days	To AH Fort Mill	Percent of AH Pineville Patient Days
2015	51,380	7,276	14%
2016	52,078	7,482	14%
2017	52,785	7,693	15%

In 2021 AH Pineville Application	AH Pineville Baseline Acute Care Days	To AH Fort Mill	Percent of AH Pineville Patient Days
2023	87,282	7,276	8%
2024	90,119	7,482	8%
2025	93,048	7,693	8%

The table below shows AH Pineville's projected year three volume has nearly doubled and AH Pineville is more reliant on patients from South Carolina now than it was when AH filed its CMC-Fort Mill application in 2011, yet AH's projected shift of patient days from AH Pineville has decreased.

Application Project ID	CMC- Fort Mill	#F-012147-21
Application Date	2011	2021
Approved York County Hospital	CMC-Fort Mill 64 Beds	Piedmont Fort Mill Medical Center 100 Beds
Proposed Hospital Year 3	CY 2017	CY 2025
Projected AH Pineville Total Acute Care Days (before shift)	52,785	93,048
Acute Care Days Shifted from AH Pineville	7,693	5,282
% of Total Pineville Days Shifted	14.6%	5.7%
AH Pineville LRA:	2011 LRA	2021 LRA
Most Recent Year of Data	FFY 2009	FFY 2020
Acute Care Discharges	7,957	16,229
Acute Care Days	34,218	69,521
Acute Care Discharges from South Carolina	3,040	7,391
% from South Carolina	38.2%	45.5%

This does not make sense. If AH Pineville is more reliant on South Carolina patients now than it was in 2011, then the days and percent shifted from AH Pineville to Fort Mill should be higher, not lower.

AH also did not account for impact on AH Pineville from these approved new hospitals:

- CaroMont Belmont (Gaston County)
- NH Ballantyne
- NH Steele Creek

CaroMont and NH projected, and the Agency accepted, the new hospitals would change acute care market share patterns in southern Mecklenburg County. NH also showed how NH Steele Creek will affect EMS patterns between NH and AH. While not addressed in the NH Ballantyne application, NH Ballantyne will also affect EMS patterns to reduce transports to AH Pineville. AH only addresses the approved hospitals relative to the acute care bed performance standards (page 18 A&M) and based on projected utilization found on Form C. However, NH's comments show AH's Form C utilization projections are unreasonable and inadequately supported. The reduction of future acute care volume at AH Pineville due to the opening of new acute care hospitals is a critical piece of analyzing the future quantitative need for the proposed AH Pineville project. For all these reasons the AH Pineville application should be found non-conforming with Criterion (3).

Atrium Health's Inappropriate Use of Data

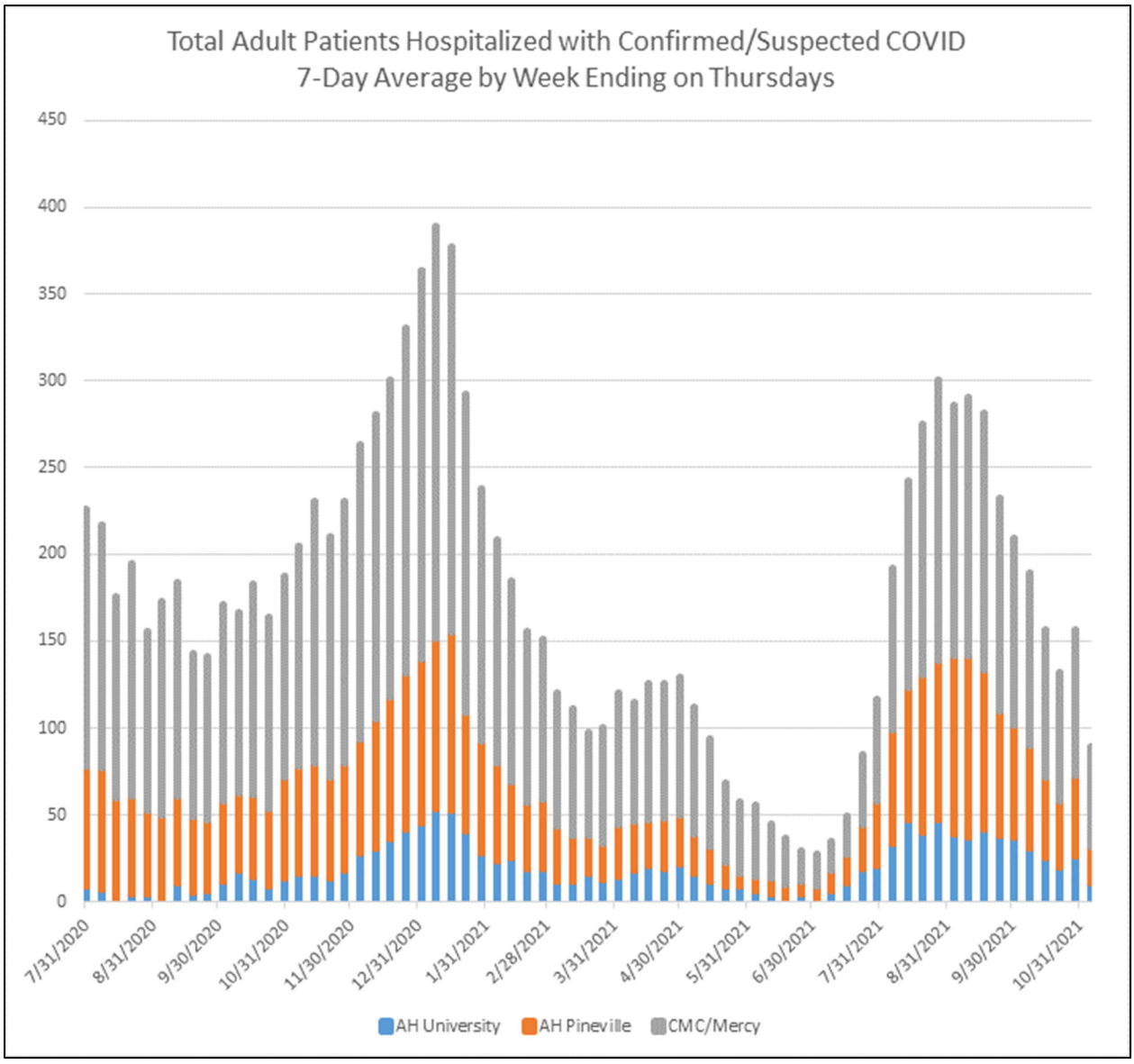
AH used misleading data to support its need analysis and utilization projections in all three applications. The Agency and the State Health Coordinating Council (SHCC) recognized the variances in acute care utilization that began in 2020 due to the COVID-19 pandemic, and issued recommendations for normalizing the data. (See **Exhibit 6** for the SHCC acute adjusted patient days methodology.) The utilization projections in the AH applications ignored these significant variances. AH used its annualized inpatient utilization data from January – July 2021 as a base year for projections and to calculate the past growth rates for its Mecklenburg hospitals.[33] The first quarter of 2021 coincided with the residual surge of COVID-19 hospitalizations from the previous winter, while the subsequent surge in North Carolina due to the Delta variant began in early summer. AH made no adjustment to its census or occupancy rate for the effects of COVID-19 in 2021. AH did not explain how COVID-19 impacted its 2021 utilization. AH's use of unadjusted, annualized, internal data for the first half of 2021 makes the need analysis and utilization projections in the three applications unreasonable and inadequately supported.

The need analysis in the AH Pineville application has other major flaws. AH relied on anecdotal information about capacity issues on one day: September 1, 2021.[34] Public data shows this was the peak of the Delta variant surge at AH Pineville.[35] Even if the Agency accepts at face value AH's description of operational difficulties on September 1, 2021, it is not a description of normal demand or the expected demand in 2023 and later years. High bed demand due largely to COVID-19 patients on a single day is not reasonable support of the future need for additional beds.

The following chart shows the 7-day average census of adult COVID-19 patients at AH Mecklenburg hospitals for each week from August 2020 through October 2021.[36] The three AH hospitals had a

[33] AH Pineville Application, Form C Assumptions and Methodology, p. 3.
[34] AH Pineville Application, Form C Assumptions and Methodology, p. 41.
[35] Source: U.S. Department of Health and Human Services, COVID-19 Reported Patient Impact and Hospital Capacity by Facility. Viewed Nov. 17, 2021. https://catalog.data.gov/dataset/COVID-19-reported-patient-impact-and-hospital-capacity-by-facility-raw
[36] Seven-day average total adult patients hospitalized with confirmed or suspected COVID-19 at CMC/Mercy, AH Pineville, and AH University (300.6). Source: U.S. Department of Health and Human Services. COVID-19- Reported

combined average census of 300 adult COVID-19 patients for the week beginning August 27, 2021 and ending September 2, 2021. Since data collection began in the summer of 2020, this was the highest weekly average adult COVID-19 patient census after the January 2021 peak. The COVID-19 census at AH Mecklenburg hospitals has steadily declined since that peak. It was not a representative week and should not be used for health planning purposes. These COVID-19 patients were 21 percent of the total average adult inpatient census at AH hospitals during the week ending September 2, 2021.[37]



Patient Impact and Hospital Capacity by Facility, Updated: November 16, 2021. https://catalog.data.gov/dataset/COVID-19-reported-patient-impact-and-hospital-capacity-by-facility-raw

[37] Seven-day average total adult hospital inpatient beds occupied at CMC/Mercy, AH Pineville, and AH University (1,411.9). Source: U.S. Department of Health and Human Services. COVID-19 Reported Patient Impact and Hospital Capacity by Facility, Updated: November 16, 2021. https://catalog.data.gov/dataset/COVID-19-reported-patient-impact-and-hospital-capacity-by-facility-raw

Source: U.S. Department of Health and Human Services.

Basing the need for additional beds on the September 1, 2021 census is unreasonable without adjusting for the large number of COVID-19 cases at AH hospitals. The census with COVID-19 cases is not adequate support for the need for beds in future years. AH had the data to make the adjustment but chose to present data for only this one date, without adjusting for the COVID-19 census. If AH needed additional beds for COVID-19 patients it had a COVID-19 exemption to add more beds. It did not see the need to do so. It is true that some normal admissions were deferred due to COVID-19. NH's experience was admissions deferred due to COVID-19 in fall 2021 were much less than the COVID-19 cases. AH presented no data on admissions deferred to show its situation was different.

Quantitative Need Comments Specific to AH Pineville

Need for Additional Capacity at Atrium Health Pineville (Pages 65-74)

On pages 65-74, AH explains why it believes the AH Pineville project is needed. Atrium argues AH Pineville operated at nearly 83 percent occupancy in CY 2020 and is expected to operate above 95 percent occupancy this year, more than demonstrating its urgent need for additional bed capacity (p. 67). This past occupancy rate is not relevant to the future bed need at AH Pineville. 2020 and 2021 are periods with substantial patient days due to COVID-19. It is misleading because (1) AH makes no adjustment for COVID-19 and (2) AH fails to mention the additional 57 licensed acute care beds AH Pineville is approved to implement by 2022.[38]

AH then argues AH Pineville's high utilization levels already support the need for 62 more beds today, more than one and a half times the proposed 36 additional acute care beds (p. 68). The table at the top of page 68 ignores the approved beds not yet operational. As AH acknowledges in the next sentence, "assuming Atrium Health Pineville's bed inventory was increased by the proposed 36 beds in addition to 45 previously approved beds that have not yet been developed, its occupancy rate in CY 2021, not accounting for any future growth, would be approximately 71 percent." Occupancy calculated on 2021 volume and licensed beds is irrelevant to analyzing future need at AH Pineville because it does not account for volume AH has acknowledged will shift to other hospitals and recent AH acute care bed approvals that will increase capacity as they become operational. Regardless, this 70.7% rate is below the threshold rate of 75.2% for hospitals with >200 ADC.

When the COVID-19 bed waiver is no longer available, AH argues AH Pineville will again need to rely on temporary bed overflow status to meet demand while operating at reasonable occupancy levels (p. 69). If this is true, it is not a problem. AH has been very successful in obtaining temporary bed increases, and should have no concerns about obtaining them in the future. AH Pineville operated above 90% capacity every single day in January of 2021 (p. 70). In the application AH never projects AH Pineville will have an

[38] Pursuant to Project ID #s F-11622-18, F-11813-19, and F-12009-20, Atrium Health Pineville was approved to develop a total of 57 additional acute care beds. 12 additional beds were operational as of November 2020. The 45 additional acute care beds approved will be developed in CY 2022. (AH Pineville Application, Form C Assumptions and Methodology, p. 12)

occupancy rate of 90 percent or more when all approved beds are operational (Form C), even without the 36 beds. The occupancy rate is even lower with the 22 non-COVID-19 temporary licensed beds.

All statistics and charts in Section C.4 are based on the 221 licensed beds at AH Pineville in 2019 or the 233 licensed beds in 2020 and 2021. By project year 3, 45 more approved beds (F-11622-18, F-12009-20) will be developed in the new AH Pineville patient tower under development and will become operational in CY 2022. AH has not demonstrated in the application as submitted that any current capacity constraints at AH Pineville may exist in the future, when occupancy is reduced by shifts of patients to other hospitals (further discussed below) and the approved beds that will become operational in 2022. AH also bases its need on annualized 2021 patient utilization data, when there were multiple surges of hospitalized COVID-19 patients placing unusually high demand on hospitals. This additional demand cannot reasonably be expected to continue in calculations of future need.

In summary, the above reasons do not adequately explain why the population to be served needs the 36 acute care beds as proposed at AH Pineville in the future.

CON Criteria and Acute Care Bed Performance Standards

The proposed projects by NH and AH must be reviewed according to criteria described in G.S. 131E-183(a). This review process does not grade the applicant relative to competing applications; it is a binary analysis of whether the application is conforming or non-conforming with the specific criterion.

Based on these requirements, all three of the AH applications are non-conforming with Criteria (1), (3), (5), (6) and (18a). In addition, the AH Pineville application is non-conforming with Criteria (4) and (12). The following discussion of these review criteria describes the reasons AH's applications do not conform with these criteria.

Criterion (1)

Criterion (1): NCGS § 131E-183(a)(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 service facility, health service facility beds, dialysis stations, operating rooms, or home health offices that may be approved.

The information AH presents under Criterion (1) is not relevant to that criterion. The need determination in the 2021 SMFP allows the Agency to approve up to 123 acute care beds. The Agency is not required to award *all* the beds. It cannot approve all four applications as proposed, as AH applied for 75 beds at CMC, 12 beds at AH University City and 36 beds at AH Pineville, while NH applied for 22 beds at NH Presbyterian.

The Agency can approve all four acute care applications if it approves 101 or fewer of the beds AH requested.[39]

AH argues all its 2021 applications should be approved because AH hospitals generated the acute care bed need in Mecklenburg County. The role of the SMFP in the CON process is to limit the number of new assets the Agency can award in a review cycle. The SMFP does not indicate which applications should be approved. The SMFP clarifies that "[A]ny person can apply to meet the need, not just the health service hospital or hospitals that generated the need."[40] The Agency supported this in its Findings on the 2019 Mecklenburg Bed and OR Review, stating that "anyone may apply to meet the need, not just AH. Atrium has the burden of demonstrating the need for the proposed acute care beds and ORs in its applications as submitted."[41] An applicant must justify each project, based on the information in the application and Agency file, and show it satisfies the CON review criteria and performance standards. AH's refrain it generated the need is entitled to no weight.

Granting approval to these projects contradicts the Agency's objectives within Policy GEN-3: Basic Principles. AH does not demonstrate that it will "maximize value for resources expended." "Maximizing healthcare value" in the 2021 review cycle should mean the Agency takes a balanced approach that allows both systems to compete in ways that benefit the population. It will not be accomplished by denying any new assets to either system. It would not maximize health care value to approve an application awarding additional beds to a hospital that has not operationalized all approved beds. The three AH hospitals have a combined total of 136 approved but not yet operational beds (87 at CMC, 45 at AH Pineville, 4 at AH University City).[42] They do not require additional licensed beds to manage the census at their hospitals.

AH's projects will stockpile unnecessary beds at a cost of more than $158 million. The table below shows the cost per bed for the applications AH submitted in this review cycle. AH Pineville's cost per new bed is the second-highest of the four applications. The more cost-effective alternative at AH Pineville is to license existing temporary beds now in operation.

	Total Capital Expenditure	Requested Beds	Cost per Bed
NH Presbyterian	$289,369	22	$13,153
CMC-Main	$120,474,107	75	$1,606,321
AH Pineville	$32,575,000	36	$904,861
AH University City	$5,016,500	12	$418,041

Source: AH Acute Care Beds Applications, Form F.1a

[39] By making this comment, NH does not intend to suggest that Atrium's applications conform with all applicable criteria and rules. Rather, it is NH's position that the AH applications are non-approvable. If, however, the Agency decides otherwise, NH is merely noting that there is a way to approve the AH applications for the majority of the assets they seek, while also approving NH's more modest request.

[40] 2022 Proposed North Carolina State Medical Hospitals Plan, Chapter 5, p. 48.

[41] 2019 Mecklenburg Acute Care Bed and OR Review Findings, p. 38.

[42] 2022 SMFP Final Draft, Table 5A: Acute Care Bed Need Projections.

For these and other reasons the Agency may discern, the Agency should find the CMC, AH Pineville and AH University City applications are non-conforming with Criterion (1).

Criterion (3)

Criterion (3): NCGS § 131E-183(a)(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.

Section C.4 of the AH applications discuss the qualitative need for the proposed additional acute care beds. The comments above show AH did not adequately explain why the population to be served needs the services proposed. In summary:

- AH's inventory of Agency-approved and temporary licensed beds and unlicensed observation beds provides sufficient capacity for future inpatient demand
- AH relies on anecdotal information from September 2021, during the height of the Delta variant-fueled surge in hospitalized COVID-19 patients, to illustrate its operational challenges resulting from high patient census
- AH wrongly concludes that NH's increase in inpatient discharges and market share results from patients being redirected from AH hospitals at full capacity. NH has expanded its employed medical group and developed specialty service lines in Mecklenburg County that account for this growth, and any diversion of AH patients to NH facilities is minimal

In Form C Assumptions and Methodology, AH presents the quantitative need for the proposed additional acute care beds. The above comments (see "Comments on Quantitative Need Applicable to all AH Applications", beginning on page 16) show utilization projections are not reasonable nor adequately supported. In summary:

- AH bases future growth rates on unadjusted data from the first half of 2021 that coincides with abnormally high surges of hospitalized COVID-19 patients
- AH's growth rates are unreasonable and not adequately supported
- AH uses outdated assumptions about market share shifts to Piedmont Fort Mill hospital in South Carolina, understating the acute care volume that will move to the new facility
- AH does not incorporate Agency-approved market share growth assumptions at new NH hospitals in Ballantyne and Steele Creek

For these and other reasons the Agency may discern, the Agency should find the CMC, AH Pineville, and AH University acute care bed applications non-conforming with Criterion (3).

Criterion (4)

Criterion (4) NCGS §131E-183(a)(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.

AH presented three alternatives in the AH Pineville application: (1) Maintain the status quo; (2) Develop the requested beds in existing space at AH Pineville; and (3) Develop a different number of beds at AH Pineville.[43] AH failed to fully consider Alternative #2 for AH Pineville. AH failed to consider permanently licensing the 22 temporarily licensed bed spaces. Building out an entire floor of the CON-exempt Pineville patient tower for new patient rooms and support space instead of permanently licensing patient rooms that already exist and are operational is not the least costly or most effective alternative.

AH also failed to consider Alternative #3 for AH Pineville. The Applicant reasoned that developing fewer than 36 beds would prevent AH Pineville from accommodating growth, but developing over 36 beds would prevent CMC and AH University from increasing capacity for growth as proposed in the concurrent applications. This contradicts Form C of the AH applications, which project significantly higher occupancy rates at CMC and AH University than AH Pineville. Furthermore, the utilization projections are not reasonable and not adequately supported.

For these and other reasons the Agency may discern, the Agency should find the AH Pineville application to be non-conforming with Criterion (4).

Criterion (5)

Criterion (5) NCGS §131E-185(a)(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

AH's projections of acute care bed days and utilization are not reasonable, reliable, or adequately supported. The projections in its three applications are based on several unreasonable assumptions, including incorporating COVID-19-affected 2021 data as the base year, growth rates based on patient days with no consideration of historical trends in discharge volumes, average lengths of stay not validated by historical trends, and failure to consider volume shifts to competing hospitals. Please see the discussion under Criterion (3). With unreliable utilization projections, all projections of operating revenues and expense are also unreliable. The applications do not show the long-term financial feasibility of the project.

[43] AH Pineville Application, p. 97.

As discussed in Criterion (3) of this document, AH can admit all projected Mecklenburg patients without the 123 acute care beds in its applications. It will have more than enough acute care beds if the Agency awards NH 22 beds and awards AH part or all of the remainder.

For the above-stated reasons, plus any additional reasons the Agency may discern as it reviews the AH applications, the CMC, AH Pineville and AH University City applications are non-conforming with Criterion (5).

Criterion (6)

Criterion (6) NCGS § 131E-183(a)(6): The applicant shall demonstrate that the proposed project will not result in unnecessary duplication of existing or approved health service capabilities or facilities.

AH is applying for 123 beds when it already has 136 approved beds that have not been developed.[44] For all three AH applications, projected utilization and occupancy rates for acute care beds are not reasonable and not adequately supported. AH has not demonstrated in the applications as filed that the current or past capacity issues raised in its applications will exist in the future.

The AH Pineville application also fails to consider permanently licensing the 22 bedspaces in use as temporary licensed beds instead of constructing new bed spaces. Since March 2018, AH Pineville has consistently operated an additional 20 to 22 temporarily licensed bed spaces.[45] Building new patient rooms and support space in its CON-exempt bed tower instead of permanently licensing existing patient rooms is an unnecessary duplication of existing health care services.

For these and other reasons the Agency may discern, the Agency should find the CMC, AH Pineville and AH University City applications to be non-conforming with Criterion (6).

Criterion (12)

Criterion (12) NCGS §131E-183(a)(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 the public of providing health services by other persons, and that applicable energy savings features have been incorporated into the construction plans.

[44] While NH also has approved but not yet operational beds, it accounted for these beds in its discussion of need for the proposed beds at NH Presbyterian. AH did not account for its approved beds in the arguments regarding 2020 and 2021 occupancy rates presented in its applications for additional acute care beds.

[45] AH received seven approvals from the Agency to temporarily operate 20 additional acute care beds from March 2018 to June 2019. Due to an increase in total bed count at AH Pineville, AH received approval for 22 additional acute care beds from June 2019 to April 2020.

The AH Pineville application failed to consider permanently licensing the bedspaces in use as temporarily licensed beds. Since April 2018, AH Pineville has consistently operated an additional 20 to 22 bed spaces.[46] Construction and upfitting new patient rooms and support space in the bed tower instead of permanently licensing existing patient rooms will result in greater project costs. AH's commitment of nonessential construction projects at three facilities with approved yet undeveloped projects will require unnecessary costs.

The proposed beds at AH Pineville will not be placed into service until July 2023. This is an unnecessarily protracted timeline if there are immediate bed capacity challenges as the applicant describes. AH can develop observation beds that can be placed into service without CON review and approval on a much shorter completion schedule.

For these and other reasons the Agency may discern, the Agency should find the AH Pineville bed application as non-conforming with Criterion (12).

Criterion (18a)

Criterion (18a) NCGS § 131E-183(a)(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.

Competitive Balance and the Public Interest

The legislative findings on the CON statute note the importance of the program using competition and regulation to improve access and quality and to control costs. The first finding states: "the financing of health care . . . limits the effects of free market competition and government regulation is therefore necessary to control costs, utilization and distribution of new health service facilities and the bed complements of these health service facilities."[47] One purpose of the CON program is to ensure that the distribution of beds in a health care market is optimized for market competition. The Agency should exercise its ability to use CON awards to improve the competitive balance of the acute care bed distribution in Mecklenburg County.

The service area defined by the SMFP is Mecklenburg County. The AH and NH hospitals in Mecklenburg County serve the same populations of Mecklenburg County residents. Both health systems are equally accessible to all residents of the service area and, in particular, low-income persons, racial and ethnic minorities, women, handicapped persons, the elderly, and other underserved groups. NH's charity and

[46] Ibid.
[47] N.C. Gen. Stat. § 131E-175, Findings of Fact.

financial assistance policies for uninsured and low-income residents are more generous than AH's policies.[48] Both health systems have expanded virtual access to care programs through telehealth and remote monitoring programs. NH will maintain the increased virtual access after the U.S. Department of Health and Human Service's COVID-19 Public Health Emergency expires.

In deciding which conforming applications to approve or partially approve, the Agency should consider the public interest in maintaining competitive balance in the largest health care market in North Carolina. There is a public interest in creating, maintaining, and improving competitive balance to keep AH from becoming even more dominant and enabling Atrium to dictate rates to commercial, Medicare, and Medicaid managed care organizations. The only policy tool the Agency has to improve competitive balance in Mecklenburg County is its CON decisions. Absent a compelling public benefit, the Agency should avoid approving AH applications to the detriment of competitors like NH, and to the detriment of health care consumers and payors.

Impact of AH and NH Projects on Competitive Balance

None of the applications for acute care beds in Mecklenburg County are for services by a new provider in Mecklenburg County. AH has a dominant market share and the most inpatient assets in the county. NH is its only inpatient competitor in the county. With its approved beds and with the acute care beds in the CMC, Pineville and University City applications, AH has all the licensed beds it needs to compete. Awarding all beds to AH will increase its market dominance and tilt the competitive balance the wrong way.

The following table shows each system's licensed acute care bed inventory and how the competitive balance will change based on the Agency's decisions on these applications. AH has over 62% of the licensed and approved beds for Mecklenburg County. The competitive balance will still tilt to Atrium if NH Presbyterian's application is approved and AH receives the remaining beds in the 2021 need determination, but this disparity will be less than AH's bed share if NH's application is denied. Improving competitive balance in Mecklenburg County, or not unnecessarily worsening competitive imbalance, will maximize healthcare value by incentivizing high quality care, lowering costs, and expanding patient choice. As NH's improved market share over time shows, competition works to the benefit of patients and payors, who increasingly choose NH physicians and facilities in Mecklenburg County. The most effective alternative is for the Agency to deny AH's applications as nonconforming and approve the NH Presbyterian application.

[48] NH Presbyterian Acute Care Beds Application CON Project I.D. No. F-012144-21, Exhibit L-4.1; AH Pineville Application, Exhibit L-4.1.

			NH Approved and AH Pineville Denied			All AH Approved and NH Denied		
	2021 Licensed and Approved Beds	***Percent of Beds***	***2021 CON Award***	***Total Beds***	***Percent of Beds***	***2021 CON Award***	***Total Beds***	***Percent of Beds***
Atrium Health	1,554	62.7%	87	1,641	63.4%	123	1,677	64.4%
Novant Health	926	37.3%	22	948	36.6%	0	926	35.6%

Source: 2022 SMFP Final Draft.

Impact of AH and NH Projects on Cost Effectiveness

There is a wide variance in the estimated projected costs for the AH and NH applications. The CMC and AH Pineville projects include construction and build out of additional floors of bed towers. The NH and AH University City projects would renovate existing space to expand licensed bed capacity. NH's application offers by far the most cost-effective option, with an average cost per bed over 31 times lower than the cost per bed of CMC's least-expensive proposed project at AH University City.

AH declares in its applications that its hospitals, "as part of the larger CMHA system, (benefit) from the significant cost savings measures through the consolidation of multiple services and large economies of scale."[49] While there may be unit cost savings, the overall combined costs for AH's projects total more than $158 million. AH does not explain how the proposed projects would consolidate services to result in cost savings. The AH applications cannot adequately demonstrate a favorable impact on cost-effectiveness.

Approval of the AH Pineville application would continue the trend of developing acute care resources in the southern region of Mecklenburg County while the central area remains unchanged. The downtown Charlotte hospitals, and in particular, NH Presbyterian, should be awarded additional beds while the previously approved beds in the southern and northern regions of the county are implemented.

For these and other reasons the Agency may discern, the Agency should find the CMC, AH Pineville and AH University City applications as non-conforming with Criterion (18a).

Section .3800 - Criteria and Standards for Acute Care Beds

10A NCAC 14C .3803 (a) Performance Standard: An applicant proposing to develop new acute care beds shall demonstrate that the projected average daily census (ADC) of the total number of licensed acute care beds proposed to be licensed within the service area, under common ownership with the applicant, divided by the total number of those licensed acute care beds is reasonably projected to be at least 66.7 percent when the projected ADC is less than 100 patients, 71.4 percent when the projected ADC is 100 to 200 patients, and 75.2 percent when the projected ADC is greater than 200 patients, in

[49] CMC Application, Section B.20, p. 30; AH Pineville Application, Section B.20, p. 30; AH University City Application, Section B.20, p. 30.

the third operating year following completion of the proposed project or in the year for which the need determination is identified in the State Medical Facilities Plan, whichever is later.

10A NCAC 14C .3803 (b) Performance Standard: An applicant proposing to develop new acute care beds shall provide all assumptions and data used to develop the projection required in this rule and demonstrate that they support the projected inpatient utilization and average daily census.

The Agency should find AH applications non-conforming with this rule because AH does not adequately demonstrate the need for the proposed projects or that its assumptions and methodology support the projected inpatient utilization. Please see the discussion under Criterion (3).

Atrium Health's Assertions of Superior Need

All three AH applications contain nearly identical sections called, "*Atrium Health Demonstrates Superior Need.*"

Page References for Sections Titled, "Atrium Health Demonstrates Superior Need"

Applicant Hospital	Project I.D.	Overview of Unmet Need
CMC	#F-012149-21	Pages 62-65
AH Pineville	#F-012147-21	Pages 60-63
AH University	#F-012146-21	Pages 60-63

AH draws comparisons between its applications and other facilities in asserting its need for bed capacity. In its three applications AH includes a section describing its "superior need" that attempts to differentiate AH's bed need beyond standard review measures. AH alleges that three of NH's five Mecklenburg hospitals violate North Carolina's CON statute as outlined in § 131E-175, Findings of Fact (4) and (6). These Findings conclude that excess capacity results in "the unnecessary use of expensive resources and overutilization of health services"[50], and "places an enormous economic burden on the public who pay for the construction and operation of these facilities."[51] Under the Performance Standards evaluation criteria in 10A-NCAC-14C-.3803, NH does not have to meet capacity thresholds at individual facilities. The rule requires NH to meet or exceed a systemwide occupancy rate of 75.2% for its Mecklenburg facilities, the standard for an average daily census exceeding 200 acute patients. NH has shown that it meets this standard.

AH then reverses direction and contends that the Agency should consider bed need for competing systems. AH argues that "it is the system-based deficits/surpluses that determine whether or not

[50] CMC Application, p. 62.
[51] Ibid.

additional beds are needed."[52] This argument is false. The SMFP calculates aggregate bed need at the county level, and does not distinguish need attributable to providers or systems. To do so would harm competition by preventing new entrants from offering services and reinforcing the accumulation of beds by dominant market providers. Any qualified applicant can apply to meet the need. The beds are not "reserved" for any particular provider or system. NH projects a bed deficit and has identified a rational, cost-effective plan for developing these beds.

AH also dismisses the Agency's previous inclusion of other comparative factors such as Impact on Competition. The Agency consistently used this factor in its acute bed application reviews in 2018, 2019 and 2020, and it should do so in 2021. AH concludes this factor should not be applied in the 2021 review process and is "contrary to the purpose of the CON statute… and should not be applied in this manner."[53] This argument is false. AH seems to believe it is acceptable for a dominant provider to be awarded beds solely because its own facilities generated need. It is already established that any competitor can apply for beds when there is demonstrated need, regardless of which facility or system generated the need. (See previous discussion on page 4 of these comments.)

Comparative Analysis of Conforming Applications

A comparative review is required as part of the Agency findings only when the total beds ("assets") in applications found conforming with CON criteria and performance standards exceed the number the SMFP allows the Agency to approve. The Agency must then comparatively review the applications and select applications that together request assets fewer than or equal to the number the SMFP allows the Agency to approve. To fit its approvals within the SMFP's constraints, the Agency may conditionally approve a conforming application for fewer assets than requested.

The NH Presbyterian Application is conforming with CON Review Criteria and rules, and is approvable. Because they base their need arguments and utilization projections on 2021 annualized data without adjustments for COVID-19, none of the AH applications are conforming with Criterion (3) and are not approvable. For additional reasons the AH Pineville Application is non-conforming with CON Review Criteria and rules, and is not approvable. This section of the comments addresses comparative review factors other than conformity with CON Review Criteria if the Agency finds any of the AH applications are approvable.

NH recognizes the Agency has discretion to select the comparative factors in each review. We draw the Agency's attention to issues with several review factors, should the Agency decide to use them. As there are four applications, NH scores each application from 1 to 4 in order of effectiveness. When applications are equally effective, we assign each hospital an average rank score.[54]

Scope of Services

[52] Ibid.
[53] CMC Application, p. 63.
[54] For example, if the equally effective hospitals would rank 1 and 2, each receives a rank score of 1.5.

Carolinas Medical Center and NH Presbyterian each represent the flagship hospital in Mecklenburg County for their respective health systems. AH University City and AH Pineville are existing acute care hospitals that provide numerous types of medical services, but offer a lesser range of services with lower average acuity levels than patients treated at NH Presbyterian and CMC.

Scope of Services	NH PMC	AH CMC	AH Pineville	AH University
Rank	2	1	3	4

Geographic Accessibility (Distribution of Beds in Mecklenburg County)

The Agency has approved several acute care expansion projects as Mecklenburg County's population has grown and consecutive SMFP need determinations have added to the bed inventory in the county. The most recently approved projects are primarily in communities in the southern part of the county, and secondarily to communities in the northern part.

- In the southern part of Mecklenburg County, the Agency has approved new hospitals in the southern communities of Steele Creek (2), Mint Hill, and Ballantyne. The Agency has approved bed expansions in Pineville and Matthews in south Mecklenburg, and the northern community of Huntersville. Adjacent to southern Mecklenburg County the Agency has approved new hospitals in Union County and in Cabarrus County. The South Carolina CON agency and courts gave final approval to the Fort Mill hospital in York County.

- In the northern part of Mecklenburg County, the Agency approved one new hospital in Cornelius, and bed expansions in Huntersville and University City.

- Both Mecklenburg health systems have pursued a strategy of developing acute care resources outside the central city. In the downtown Charlotte market, only CMC has been approved for a sizable number of additional beds. NH will experience a decrease of licensed beds in the central city due to transferring beds to other hospitals, as summarized in the following table:

Hospital Name	Hospital Location in County	CON Bed Adjustments
AH CMC/Mercy	Central/Downtown Charlotte	87
AH Pineville	Suburban	45
AH University City	Suburban	4
AH Lake Norman	Suburban	30
AH Steele Creek	Suburban	26
NH Ballantyne	Suburban	36
NH Huntersville	Suburban	12
NH Matthews	Suburban	20
NH Mint Hill	Suburban	36
NH Presbyterian	Central/Downtown Charlotte	(22)
NH Steele Creek	Suburban	32

Source: 2022 SMFP Final Draft.

The suburban hospitals will increase accessibility, convenience and improve the patient experience for residents of these communities. However, there is a concurrent need for the growth and development of inpatient capacity at the flagship hospitals in the central city. Much of the growth in specialty services for both the NH and Atrium Health systems has been at their respective flagship campuses, NH Presbyterian and CMC. These hospitals provide highly specialized care that typically is not available at suburban community hospitals. Awarding beds to the downtown hospitals in the 2021 review cycle will improve their ability to grow clinical programs and provide care for a more resource-intensive mix of patients. The Agency has recently awarded a large number of additional beds in the suburban areas of Mecklenburg County. While those projects are implemented, the Agency should focus on meeting the needs of patients accessing the downtown flagship hospitals.

The 2022 SMFP makes 65 new acute care beds available for Mecklenburg County. Additional acute care bed need is likely in subsequent SMFP need determinations. Atrium Health will have future opportunities to request additional beds. There is no need to give AH all 123 beds now to have these beds available in 2024 through building out floors in bed towers.

The AH Pineville bed application will add acute beds in the southern part of Mecklenburg County, which has received a disproportionate amount of new and additional bed approvals in recent years. While this area is experiencing growth, allocating beds for expansion in the central region of the county represents a better alternative for access by a greater share of Mecklenburg residents. In its AH Pineville application, Atrium estimates that nearly 47% of its inpatients will come from South Carolina, with only 41% from Mecklenburg County.[55] This is lower than the other acute care applications, and 28% lower than NH Presbyterian's percentage of inpatients from Mecklenburg County. AH's proposed Pineville expansion is the least effective alternative to enhance the geographic accessibility of services for residents of Mecklenburg County.

Geographic Accessibility	**NH PMC**	**AH CMC**	**AH Pineville**	**AH University**
Rank	1.5	1.5	4	3

Competitive Balance

None of the applicants for acute care beds is a new provider in Mecklenburg County. NH has the lower percentage of existing assets in the county. Approval of the three AH applications will further diminish competition and patient choice. NH has shown that AH Pineville can accommodate its projected patient days without the approval of a CON application. Awarding all SMFP assets to AH will increase its market dominance and harm competitive balance, to the detriment of patients and payors.

The table below shows the distribution of acute care beds and how the competitive balance will change, with or without approval of NH's or the AH Pineville applications. If the AH applications are approved for

[55] AH Pineville Application, p. 38.

123 total beds, the competitive balance will still tilt to AH, but to a lesser extent than if NH Presbyterian is approved and Pineville is denied. Improving competitive balance in Mecklenburg County, or not unnecessarily worsening competitive imbalance, will maximize healthcare value by incentivizing high quality care, lowering costs, and expanding patient choice. The most effective alternative is for the Agency to deny the AH Pineville application as nonconforming and approve the NH Presbyterian application.

			NH Approved and AH Pineville Denied			***All AH Approved and NH Denied***		
	2021 Licensed and Approved Beds	***Percent of Beds***	***2021 CON Award***	***Total Beds***	***Percent of Beds***	***2021 CON Award***	***Total Beds***	***Percent of Beds***
Atrium Health	1,554	62.7%	87	1,641	63.4%	123	1,677	64.4%
Novant Health	926	37.3%	22	948	36.6%	0	926	35.6%

Source: 2022 SMFP Final Draft.

Competitive Balance	**NH PMC**	**AH CMC**	**AH Pineville**	**AH University**
Rank	1	3	3	3

Access by Underserved Groups

The Agency usually compares applicants on the payor mix percentages of Charity Care, Medicaid, and Medicare patients in the service area. The Agency has determined it is not possible to make comparisons of gross revenue by payer type because of "differences in how each applicant categorizes charity care and the differences in presentation of pro forma financial statements."[56] However, these projections for each applicants' projects are based on data provided within the applicants' submissions.

[56] 2020 Mecklenburg Acute Care Bed and OR Review, pp. 187-188.

Access by Underserved Groups - Project Year 3

	NH Presbyterian	AH CMC	AH Pineville	AH Univ City
# Of Total Charity Care Patients[57]	25,330	23,977	8,431	12,772
Charity Care Patients/Bed (Total)[58]	48.8	23.5	29.3	110.1
Charity Care % of Total Patients[59]	7.6%	2.7%	5.6%	10.0%
# Of Medicaid Patients	5,676	15,434	2,131	1,506
Medicaid Patients/Bed	10.9	15.1	7.4	13.0
Medicaid % of Total Patients	17.3%	30.7%	10.9%	18.2%
# Of Medicare Patients	11,548	16,087	10,989	3,369
Medicare Patients/Bed	22.3	15.8	38.2	29.0
Medicare % of Total Patients	35.2%	32.0%	56.2%	40.7%

Source: 2021 Acute Care Beds Applications, Section L and Form C.

NH Presbyterian compares favorably for the care of underserved groups. NH Presbyterian ranks first for total charity care patients served by the project in Year 3. NH Presbyterian ranks second for percentage of total Charity Care patients and average number of Charity Care patients per bed. NH Presbyterian also ranks second for total Medicaid patients in Year 3 of the project, and ranks second for total Medicare patients in project Year 3.

Charity Care	NH PMC	AH CMC	AH Pineville	AH University
Charity Care as % Patients	7.6%	2.7%	5.6%	10.0%
Rank	2	4	3	1

NH Presbyterian ranks third for the average number of Medicaid patients per bed and percentage of Medicaid patients, ahead of AH Pineville.

Medicaid	NH PMC	AH CMC	AH Pineville	AH University
Medicaid as % Patients	17.3%	30.7%	10.9%	18.2%
Rank	3	1	4	2

NH Presbyterian also ranks third in percent of total Medicare patients and the average number of Medicare patients per bed. Usage of particular hospitals by certain groups does not completely show the accessibility of health systems to those groups. Utilization is affected by MEDIC protocols, locations of

[57] Charity Care calculations are based on total Charity Care patients for each hospital, including all inpatient and outpatient utilization. Atrium Health did not submit figures for acute patients only, so this metric is the only directly comparable measure.
[58] Ibid.
[59] Ibid.

clinics, referral patterns of employed physicians, and patient choice. NH and AH are equally accessible by Medicare and Medicaid patients and there are no barriers to enrollees in either program using either health system.

Medicare	NH PMC	AH CMC	AH Pineville	AH University
Medicare as % Patients	35.2%	32.0%	56.2%	40.7%
Rank	3	4	1	2

Net Revenue and Net Operating Expense Comparisons

The Agency does not specify how applicants shall present revenues and costs in CON applications. AH and NH present revenue and expense data differently in their applications. NH presents the total revenue and total expense for patients served, including all direct care revenue codes/cost centers and all allocated cost for non-direct care cost centers. In its acute care bed applications, AH presents only the revenues and costs associated with the nursing unit, and omits any revenues or costs from the other direct care departments that would serve a patient. AH does not distribute the costs of non-direct care cost centers to the direct care cost centers. Because of the differences in presentation, the AH revenues and costs as presented will appear lower than the NH revenues and expenses.

The AH and NH revenues and costs in CON applications are not comparable. Until the Agency adopts standards for reporting revenues and expenses in CON applications, any comparisons must be inconclusive.

The following table summarizes comparable data for the applications and may assist with conclusions about the relative merits for each factor. The Agency has computed Historical Utilization in previous reviews by using acute care days to calculate average daily census and then dividing by only licensed beds (not approved) for the most recent SMFP reporting period. The occupancy rates in the values section below use this methodology and 2022 SMFP data.

Agency Comparative Factor	NH PMC	AH CMC	AH Pineville	AH University
Conformity with Review Criteria	Yes	No	No	No
Scope of Services	More Effective	More Effective	Less Effective	Less Effective
Geographic Accessibility	n/a	n/a	n/a	n/a
Historical Utilization	78.3%	84.4%	85.2%	77.0%
Competitive Balance (% of existing + approved beds by system)	37.3%	63.7%	63.7%	63.7%
Access by Service Area Residents	69.0%	51.3%	40.7%	74.3%
Charity Care % of Total Patients*	7.6%	2.7%	5.6%	10.0%
Medicaid % of Total Patients	17.3%	30.7%	10.9%	18.2%
Medicare % of Total Patients	35.2%	32.0%	56.2%	40.7%
Projected Avg. Net Rev/Patient	$19,774	$10,167	$4,027	$4,317
Projected Avg. Oper. Cost/Patient	$19,607	$7,991	$3,648	$4,306

Additional Comparative Factors

In addition to comparative factors used in previous Agency reviews, we are including these additional elements that may assist with evaluating the applications:

- Project Cost per Bed supports the evaluation of each project's ability to maximize healthcare value, one of the Criterion (4) objectives. NH Presbyterian will expand access to services and ensure high value by completing its proposed project at a lower relative cost than AH's projects.

Maximize Healthcare Value	NH PMC	AH CMC	AH Pineville	AH University
Project Cost per Bed	$13,153	$1,606,321	$904,861	$418,041
Rank	1	4	3	2

- Case Mix Index (CMI) provides complementary data for the Scope of Services factor. A higher CMI score reflects the more complex cases seen by a hospital and ability to treat a wider spectrum of patients with specialized care needs.

  The two downtown Charlotte hospitals serve patients with a much higher acuity level than the suburban community hospitals. AH provides data on the case mix of Medicare patients at Mecklenburg County hospitals in its AH Pineville application.[60]

  The Case Mix Index scores indicate that the two downtown Charlotte hospitals serve a higher overall level of clinically complex patients that require additional care resources. Based on this information, the Agency should approve the NH Presbyterian and CMC applications because of their unique abilities to care for more clinically complex patients.

Case Mix Index	NH PMC	AH CMC	AH Pineville	AH University
CMI[61]	2.14	2.28	1.70	1.49
Rank	2	1	3	4

- The Future Utilization estimates of Project Year 3 occupancy rates account for licensed beds and approved beds that will be operational by CY 2026, while also including shifts of licensed beds to other facilities/campuses. These calculations incorporate Agency-approved changes to bed inventory that will occur. The third project year for the CMC application is CY 2030, so it is not included in this comparison.

Future Utilization	NH PMC	AH CMC	AH Pineville	AH University
With Project Approval	89.0%	n/a	78.3%	93.7%
Rank	2	n/a	3	1

[60] AH Pineville Application, p. 66.
[61] Source: American Hospital Directory.

The following table provides a ranking of the quantitative data included in the comparative analysis factors. NH Presbyterian ranks favorably compared to other applications. It should be noted that it is not possible to directly compare NH Presbyterian's and AH's net revenue and operating expense per case, as there are significant differences in each system's reporting methodology, described in the Form F cost assumptions.[62]

Comparative Analysis Factors – Ranking Summary

Agency Comparative Factor	NH PMC	AH CMC	AH Pineville	AH University
Conformity with Review Criteria	Yes	No	No	No
Scope of Services	2	1	3	4
Geographic Accessibility	1.5	1.5	4	3
Historical Utilization	3	2	1	4
Competitive Balance (% of existing + approved beds by system)	1	3	3	3
Access by Service Area Residents	2	3	4	1
Charity Care % of Total Patients*	2	4	3	1
Medicaid % of Total Patients	3	1	4	2
Medicare % of Total Patients	3	4	1	2
Projected Avg. Net Rev/Patient	n/a	n/a	n/a	n/a
Projected Avg. Oper. Cost/Patient	n/a	n/a	n/a	n/a
Maximize Healthcare Value	1	4	3	2
Case Mix Index	2	1	3	4
Future Utilization – With Approval	2	n/a	3	1
Average Ranking Score	2.14	2.45	3.0	2.55

Conclusion

The NH Presbyterian application conforms with all review criteria. For reasons discussed above, the AH applications do not. As shown in these comments:

- AH's acute care bed application for CMC is non-conforming with CON Review Criteria (1), (3), (5), (6), and (18a), and the performance standards for acute care beds. The Agency should find it non-approvable.

- AH's acute care bed application for AH Pineville is non-conforming with CON Review Criteria (1), (3), (4), (5), (6), (12), and (18a), and the performance standards for acute care beds. The Agency should find it non-approvable.

- AH's acute care bed application for AH University City is non-conforming with CON Review Criteria (1), (3), (5), (6), and (18a), and the performance standards for acute care beds. The Agency should find it non-approvable.

[62] AH Pineville Application, Form F.2 assumptions, p. 19.

If the Agency finds all of AH's applications approvable, it should approve AH for a maximum of 101 beds so it may also approve NH's 22-bed application. Approving the NH Presbyterian application and AH's conforming applications is a more effective alternative than full approval of the AH applications and denial of the NH application.

Full approval of the AH applications or denial of the NH Presbyterian application will unnecessarily increase the competitive imbalance in Mecklenburg County. It will increase AH's already dominant market share in Mecklenburg County while impeding competition and threatening consumer choice. The most effective alternative for the Agency is to deny the AH Pineville application as nonconforming and approve the other AH applications and NH Presbyterian application. Approval of the other AH acute care bed applications will increase the competitive imbalance, but to a lesser degree. Fostering competitive balance in Mecklenburg County, or not unnecessarily worsening competitive imbalance, will maximize healthcare value by incentivizing high quality care, lowering costs, and expanding patient choice.

Attachment 2

"*193. …To summarize some of my opinions on this issue: Atrium has the capacity with its existing and approved beds, including its "temporary" bed expansions to accommodate all patients it projected for the first three years of AHLN's operation*."

See Expert Report of Ronald Luke, JD, PhD, August 21, 2020.

Q. And what does the temporary license bed rule tell you about North Carolina policy on the reasonable operational occupancy percentage for acute care hospitals?

A. Well, my interpretation is, is that they have determined that 90 percent is a sort of operational threshold. If you get to that point that you need a temporary expansion, and that's a policy determination by rule making that the state has made as to where they set the operational capacity threshold.

See Draft Trial Tr. Vol. 9, pp. 1766-1767 (Direct of Ronald Luke).

Q. (BY MR. QUALLS) For example, in the hospitals with which you've dealt, is there an occupancy percentage level that -- that you have seen, that when that hospital reaches that occupancy level, it starts to seriously impede that hospital's ability to serve patients?
MS. HANGER: Objection.
MS. RANDOLPH: Objection. Randolph.
A. I -- I don't think there's a general answer to that.
The State of North Carolina has decided that the -- the level at which they can operate is up to 90 percent because 90 percent is when they will give additional temporary beds. Sometimes it's below 90 percent, and I infer from that rule that they believe that the hospital can operate at that average occupancy.

See Deposition Tr., p. 137 (Ronald Luke).

Q. And Novant's historical utilization in Mecklenburg County has been far below that of the Atrium system, correct?
A. In recent years I would agree with the statement. It's been below as far as [unintelligible].
Q. Okay. So if -- I guess the big picture point is that if you're saying Atrium has capacity when it is operating at a much higher occupancy level than Novant, then

Novant certainly has capacity, correct?
A. Not necessarily. I also testified about the fact that if a system has not built additional bed spaces for use as observation beds that they're reported occupancy may be low because, in fact, they still have the observation patients and have to accommodate them. But they are using licensed beds for those.
And based on my work with Novant, I know that to be true at the present time. I do know that, for instance, in the Matthews application, they are now seeing the need to build -- explicitly to build observation beds in addition to their licensed beds. But historically they have not.

See Draft Trial Tr. Vol. 9, p. 1861 (Cross of Ronald Luke).

Q. And if -- if -- so whether or not, for example, Novant would be in a crunch to serve patients and have any capacity constraints, it would have the normal acute care

capacity levels that it could get up to, and then if it ever got there, it could then avail -- Novant could then avail itself of the temporary bed capacity even beyond that, right?
A. Well, that's a hypothetical. I think right now the chances of getting up to the 90 percent are [unintelligible] because in their facilities they are using licensed beds to have as their observation patients.
Q. Okay. And nothing precludes Novant under the CON law from applying from observation -- observation beds, correct?
A. That's right.

See Draft Trial Tr. Vol. 9, pp. 1864-1865 (Cross of Ronald Luke).

Q. Dr. Luke, do you have an opinion based upon reasons other than what were discussed in the offer of proof whether Atrium can have sufficient licensed beds in its Mecklenburg County hospitals, manage the patient census it projected in its 2019 certificate of need application without the 30 beds at Atrium Health Lake Norman?
A. I do.
Q. And what is that opinion?
A. My opinion is that with the permanently licensed, the improved [approved] beds, the temporary licensed beds, and their observation beds, that they have quite adequate bed capacity to accommodate the 451,689 patient days that are projected for 2025 in their -- in their applications.

See Draft Trial Tr. Vol. 9, p. 1778 (Direct of Ronald Luke).

Q. And what are the bases for your opinion, Dr. Luke?
A. Well, the number that we have here, the 451,689, and then the inventory of licensed improved [approved] beds, the reported observation beds from the license renewal applications, and the temporary licensed beds as evidenced by Exhibit 2 of Joint Exhibit 50.

See Draft Trial Tr. Vol. 9, p. 1779 (Direct of Ronald Luke).