Comments on Competing Application for Acute Care Beds in the Durham/Caswell/Warren Multicounty Service Area

May 31, 2024

Comments on Competing Applications for 38 Additional Acute Care Beds in Durham/Caswell/Warren Multicounty Service Area

submitted by

University of North Carolina Hospitals at Chapel Hill (UNC Hospitals)

In accordance with N.C. GEN. STAT. § 131E-185(a1)(1), University of North Carolina Hospitals at Chapel Hill ("UNC Hospitals") submits the following comments related to the competing application submitted by Duke University Health System, Inc. ("DUHS", "Duke Health"), to develop 38 acute care beds at Duke University Hospital ("DUH") in Durham County (Project ID # J-012512-24). This proposed project is in response to a need determination identified in the *2024 State Medical Facilities Plan (SMFP)*. UNC Hospitals' comments on DUHS's competing application 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] *See* N.C. GEN. STAT. § 131E-185(a1)(1)(c). To facilitate the Agency's review of these comments, UNC Hospitals has organized its discussion by issue, noting some of the general Certificate of Need (CON) statutory review criteria and specific regulatory criteria creating the non-conformity in the DUHS application.

[1] UNC Hospitals is providing comments consistent with this statute; as such, none of the comments should be interpreted as an amendment to the application filed on April 15, 2024 by UNC Hospitals (Project ID # J-012509-24).

GENERAL COMMENTS

As the Agency is aware, this is the third need determination for acute care beds in Durham County since 2021. Both UNC Hospitals and DUHS were applicants for all three need determinations – a need determination for 40 acute care beds in the Durham/Caswell multicounty service area in the *2021 SMFP*, a need determination for 68 acute care beds in the Durham/Caswell multicounty service area in the *2022 SMFP*, and a need determination for 38 acute care beds in the *2024 SMFP* serving the Durham/Caswell/Warren multicounty service area.[2] As the Agency is also aware, UNC Hospitals' 2021 and 2022 applications were both approved, although both decisions remain under appeal.

The Agency approved UNC Hospitals' 2021 CON application for 40 acute care beds[3] as part of the development of a new hospital in southern Durham County, following an evaluation of comparative factors between UNC Hospitals-RTP and DUHS. UNC Hospitals was deemed more effective for "Geographic Accessibility" and "Competition/Access to a New Provider" while DUHS was deemed more effective for "Scope of Services." All other comparative factors were either not evaluated or found inconclusive.[4]

A year later, UNC Hospitals was approved to develop 34 additional acute care beds at the approved UNC Hospitals-RTP as proposed in its CON application responding to the need in the *2022 SMFP*. Utilizing the same comparative factors as it did for its 2021 acute care bed review, the Agency once again found UNC Hospitals' application more effective for "Geographic Accessibility" and "Competition/Access to a New/Alternate Provider" while DUHS's application was again found more effective for "Scope of Services." Consistent with the 2021 Agency Findings, all other comparative factors were either not evaluated or deemed inconclusive. [5]

A significant difference between the Agency's 2021 Findings and 2022 Findings was that, in 2022, DUHS was found non-conforming with multiple statutory review criteria – specifically, with Criteria 1, 3, 4, 5, 6, and 18a. As such, the DUHS application was not approvable, regardless of the evaluation of comparative factors by the Agency. While DUHS's application was not approvable, it is noteworthy that UNC Hospitals' application was found comparatively superior in the Agency's comparative analysis.

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[2] UNC Hospitals' applications include: Project ID # J-012065-21, an application to develop a new hospital in Durham County, UNC Hospitals-RTP, with 40 licensed acute care beds; Project ID # J-012214-22, a change of scope application to develop an additional 34 acute care beds at UNC Hospitals-RTP; and the current project, Project ID # J-012509-24, a change of scope application to develop an additional 38 acute care beds at UNC Hospitals-RTP. DUHS's applications include: Project ID # J-012069-21, an application to develop 40 acute care beds at Duke University Hospital; Project ID # J-012211-22, an application to develop 68 acute care beds at Duke University Hospital; and the current project, Project ID # J-012512-24, an application to develop 38 acute care beds at Duke University Hospital.

[3] UNC Hospitals' 2021 application also proposed the development of two operating rooms (OR) at UNC Hospitals-RTP, for which UNC Hospitals was approved. As UNC Hospitals' current proposal is only for the addition of acute care beds, this parallel OR need will not be discussed in these competitive comments.

[4] See "Required State Agency Findings – 2021 Durham/Caswell Acute Care Bed and Durham OR Review." September 21, 2021, p. 123. Accessed at https://info.ncdhhs.gov/dhsr/coneed/decisions/2021/sept/findings/2021%20Durham%20Caswell%20Acute%20Care%20Bed%20and%20OR%20Review%20Findings.pdf.

[5] See "Required State Agency Findings – 2022 Durham/Caswell Acute Care Bed Review." September 23, 2022, p. 77. Accessed at https://info.ncdhhs.gov/dhsr/coneed/decisions/2022/sept/findings/2022%20Durham-Caswell%20Acute%20Care%20Bed%20Competitive%20Review.pdf.

DUHS's non-conformity, according to the Agency, was in part due to its unreasonable and unsupported methodology, with which the Agency found numerous flaws and unsupported claims:

- The Agency found that DUHS's projection of discharges at DUH to increase by 1.5 percent each year, as well as its projection of neonatal discharges to increase by 10 percent the first year of its projections then 1.5 percent each subsequent year, was not supported by DUHS's historical utilization data. Specifically, the Agency noted that "*based on the applicant's License Renewal Applications (LRAs), discharges between SFY 2016 and SFY 2021 decreased by a total of -0.2% and by a CAGR of -0.03%. The applicant does not provide a reasonable basis in the application as submitted for applying a 1.5% growth rate to any of the categories of discharges when its historical growth rate for discharges was essentially flat*."[6]

- The Agency also found DUHS's assumptions for its projected average length of stay (ALOS), which was the average of its ALOS for state fiscal years (SFY) 2021 and 2022 annualized, was not reasonable or adequately supported and that DUHS "*does not provide any information in the application as submitted as to adequately support the ALOS it uses*," nor does it "*adequately address why the ALOS has increased in the last two years compared to the historical ALOS or why the use of the more recent ALOS… is reasonable and adequately supported compared with historical utilization.*"[7]

The Agency also raised further issues with DUHS's application and preceding actions regarding the acute care bed need for the Durham/Caswell multicounty service area that contributed to its application's non-conformity:

- In response to DUHS stating that the "*ongoing need for additional acute care bed capacity in Durham County is driven solely by the inpatient utilization at DUH and not by any other hospital,*"[8] the Agency stated that "*anyone may apply to meet the need, not just Duke. Duke has the burden of demonstrating the need for the proposed acute care beds in its application as submitted*."[9]

- The Agency also noted DUHS's 2021 Summer Petition to eliminate or defer the need determination for acute care beds in the Durham/Caswell multicounty service area, among other proposals.[10] The Acute Care Services Committee voted to reject the petition in September 2021,[11] a recommendation with which the SHCC agreed. The Agency notes that:

> *"…less than a year after Duke submitted the petition to the SHCC…and despite its stated need to eliminate or defer the 2022 need determination for acute care beds, Duke filed this application…Duke did not explain in its application as submitted*

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6 Ibid, pp. 15-16.

7 Ibid, p. 16.

8 Project ID # J-012211-22, p. 33.

9 "Required State Agency Findings – 2022 Durham/Caswell Acute Care Bed Review," p. 10.

10 See "Petition for Adjustment to Need Determinations for Additional Acute Care Beds," as submitted by Duke University Health System, Inc. Summer 2021. Accessed at https://info.ncdhhs.gov/DHSR/mfp/pets/2021/August11/A03-PetitionNeedAdjustment2022WakeDurhamCountybeds.pdf.

11 See "Acute Care Committee Agency Report: Adjusted Need Petition for the Wake and Durham/Caswell Acute Care Bed Service Areas in the 2022 State Medical Facilities Plan." September 14, 2021. Accessed at https://info.ncdhhs.gov/dhsr/mfp/pdf/2021/acsc/05_DukeWakeDurhamAgencyReport_v2_final.pdf.

> *what circumstances changed between July 2021, when Duke stated its concern that the need determination of 68 acute care beds in the Durham/Caswell multicounty service area would potentially be an unnecessary duplication, and when Duke submitted the current application."*[12]

While UNC Hospitals recognizes that each application is reviewed on its own, it also understands that the Agency tries to be consistent with its previous decisions, particularly when the subsequent application and the facts of the review are largely similar. As will be explained in detail below, DUHS's current application for 38 additional acute care beds largely utilizes a methodology and assumptions similar to its non-conforming 2022 application. Further, many of the Agency's findings regarding DUHS's explanation of the need for acute care services in the Durham/Caswell/Warren multicounty service area remain unchanged.

Specifically, DUHS's current application repeats the following methodologic assumptions from its non-conforming application from 2022:

- DUHS once again utilizes a 1.5 percent growth rate for all projected discharges, a rate that, as stated above, the Agency found unsupported.[13]
- DUHS applies the ALOS experienced in year-to-date FY 2024 for its projected adult inpatient days of care and pediatric inpatient days of care. These projected lengths of stay are possibly unsubstantiated, given the historical growth trends.[14]
- DUHS again focuses on the argument that the need for additional acute care bed services in the service area "is driven entirely by the utilization of Duke University Hospital,"[15] a statement with which the Agency took issue in the previous review, as noted above.

Additionally, in the Summer of 2023 DUHS opposed a petition filed by UNC Hospitals requesting that the allocation of additional acute care beds in the Durham/Caswell/Warren service area remain in the *2024 SMFP*. Specifically, DUHS filed a letter of opposition against UNC Hospitals' Summer 2023 petition to either increase or maintain the proposed need determination for 38 acute beds in the Durham/Caswell/Warren multicounty service area.[16] While the petition was denied, the need determination for 38 acute care beds in the *2024 SMFP* remained.[17] Specifically, DUHS noted the following in its letter of opposition [boxed sections added]:

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12 "Required State Agency Findings – 2022 Durham/Caswell Acute Care Bed Review," p. 13.

13 DUHS application, p. 88.

14 Ibid, p. 89.

15 Ibid, p. 33.

16 See "Petition Regarding the Need Determination for Acute Care Beds in Durham County in the *2024 State Medical Facilities Plan*," as submitted by UNC Hospitals, Summer 2023. Accessed at https://info.ncdhhs.gov/DHSR/mfp/pets/2023/summer/A02_Durham_UNC_AcuteBeds_petition.pdf.

17 See "Acute Care Committee Agency Report: Adjusted Need Petition for the Durham County Acute Care Bed Service Area in the 2024 State Medical Facilities Plan." September 12, 2023. Accessed at https://info.ncdhhs.gov/dhsr/mfp/pdf/2023/acsc/04_A02_Durham_AcuteBeds_agency-report_final.pdf.

> While there are 108 beds in the service area planning inventory that have not yet been finally allocated, all of them have been applied for. The Agency decision regarding the 2021 need determination for 40 beds is currently under review at the Court of Appeals. Similarly, a final decision at the Office of Administrative Hearings vacating the Agency's decision regarding the 2022 need determination for 68 beds was recently issued, but the time for appeals of that decision has not expired and UNC Hospitals has not indicated whether it intends to appeal. The SMFP's Policy GEN-1 provides the approved mechanism for any reallocation of these need determinations upon resolution of appeals. UNC's proposed adjustment for "more" than 38 beds based on the fact that there are previous need determinations under appeal would require the SHCC to reinvent or supplant this longstanding policy and would potentially duplicate assets already in the planning inventory.

Source: "Comments In Response To Petition Regarding Acute Care Bed Need Determination In Durham/Caswell Counties," accessed at https://info.ncdhhs.gov/dhsr/mfp/pets/2023/summer/A02a_noname_DukeUniversity_LOO.pdf. See Attachment A with the entire opposition letter submitted by DUHS.

DUHS is correct in stating that all 108 beds in the service area have been applied for and have "*not yet been finally allocated*" at the time its comments were submitted. What DUHS did not state, however, is that the delay in allocation is attributable to its continued appeals of UNC Hospitals' approved CONs for acute care beds in 2021 and 2022. In the absence of those appeals, the CONs would have been issued, their development could commence, and the placeholder would stand for UNC Hospitals, not the service area overall. In fact, were it not for DUHS's appeal of the 2022 Durham County Beds Agency decision, there would be 34 additional acute care beds available now in Durham County, representing the remaining acute beds from the *2022 SMFP* Need Determination after UNC Hospitals was awarded 34 beds in its approved CON application, for a total of 72 beds in the *2024 SMFP* instead of 38.

It is also important to consider that in the *Proposed 2025 SMFP*, the acute care bed utilization methodology currently shows a need in the Durham/Caswell/Warren multicounty service area for 82 acute care beds.[18] If this need determination remains unchanged in the final approved version of the *2025 SMFP*, it would represent the highest acute care bed need in the Durham/Caswell or Durham/Caswell/Warren multicounty service areas for any single year since 2019. While this need determination does in fact utilize more recently available data that results in an updated acute care bed need calculation, and while this need is not yet finalized, it nevertheless provides evidence that supports UNC Hospitals' 2023 Summer Petition requesting that the SHCC consider the addition of acute bed assets in the service area.

Further – and as is discussed in detail below – UNC Hospitals also believes that its application should be approved following an evaluation of all comparative factors that it believes are appropriate for the proposed need determination – a list that follows the same factors used by the Agency in its 2022 Durham/Caswell multicounty service area acute care bed review. UNC Hospitals believes that the non-conformity of DUHS's application with multiple statutory review criteria results in its application being

[18] SHCC Acute Care Services Committee analysis, May 7, 2024, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://info.ncdhhs.gov/dhsr/mfp/pdf/2024/acsc/07_Table_5B_2019-2023_final.pdf?ver=1

either less effective or not approvable for many of the comparative factors that the Agency has historically used to evaluate acute care bed applications.

However, even if the Agency does in fact find DUHS's current application conforming with all statutory and regulatory review criteria, it should be noted that UNC Hospitals believes that the application of the same comparative factors used in the Agency's 2022 review of the Durham/Caswell service area would result in the approval of UNC Hospitals' application, as shown in the comparative analysis section below.

In summary, it is clear that UNC Hospitals-RTP remains the only approvable and most effective applicant for the 38 acute care beds as determined by the *2024 SMFP*. As demonstrated below, UNC Health believes that it is the only applicant that has demonstrated conformity with the statutory and regulatory review criteria. The following sections provide detailed comments on DUHS's application as well as a more detailed analysis of the comparative factors.

ISSUE-SPECIFIC COMMENTS

DUHS's application to add 38 acute care beds at DUH should not be approved. The information in the application as submitted is insufficient to make a determination of conformity with the statutory review criteria and specific regulatory criteria and standards. UNC Health has grouped the issues that contribute to DUHS's non-conformity:

1. Failure to adequately identify the population that will be served or the need that population has for the proposed project;
2. Failure to demonstrate the reasonableness of projected utilization;
3. Failure to demonstrate financial feasibility and reasonable financial assumptions;
4. Failure to demonstrate that the proposal will not result in unnecessary duplication of existing or approved health service capabilities or facilities; and
5. Failure to attest to the past or future quality of its proposed services.

Each of the issues listed above is discussed in turn. Please note that relative to each issue, UNC Health has identified the statutory review criteria and specific regulatory criteria and standards creating the non-conformity. It should be noted that these errors and the omission of information needed to demonstrate conformance with review criteria are the same that resulted in DUHS's non-conformity in 2022. UNC believes these omissions still apply for this review.

1. <u>DUHS fails to adequately identify the population it will serve or the need that population has for the proposed project.</u>

   While previous SMFPs defined the acute care bed service area as the Durham/Caswell service area, the *2024 SMFP* defines the multicounty service area for the need determination as Durham, Caswell, and Warren counties. However, despite this important change, DUHS's application fails to acknowledge that the defined service area and the corresponding need determination includes all three counties. While there is no specific requirement that an applicant serve a particular portion of the service area counties, DUHS's application fails to even acknowledge that the need determination includes Warren County or discuss how Warren County was considered in its application. On page 24 of its application, DUHS states that it is responding to the *SMFP* need determination for Durham and Caswell counties (omitting Warren County). It also omits Warren County from the service area description on page 29 of its application in its project scope description, and on pages 33 and 35 in its need discussion. In its discussion of population growth in Durham and surrounding counties on page 36, there is no mention of Warren County and the needs of its residents. DUHS also does not include Warren County patients in its illustration of the growth of its Duke Primary Care physician practice by patient county on page 37. Although patients from Warren County are included in DUHS's patient origin tables in Section C.3, there is no mention anywhere in its application of how the proposed project will serve the needs of Warren County patients or how it will fully address the need determination which includes Warren County.

   As such, the DUHS application does not adequately identify its patient population or demonstrate the need that population has for its proposed project and is non-conforming with Criteria 1, 3, 4, 5, 6, and 18a, and the performance standards for Acute Care Beds (10A NCAC 14C .3803).

2. DUHS fails to demonstrate the reasonableness of its utilization projections.

Discharges and Acute Days of Care

In its "Assumptions for Form C," DUHS states that its projections of discharges, inpatient days, average daily census (ADC) and average length of stay (ALOS) are based upon historical utilization of acute care beds at DUH. It presents that facility's historical volumes for fiscal year (FY) 2021 through FY 2024, which is annualized based on six months of data (July-December). An excerpt of these assumptions is shown below.

Adult inpatient services

DUH anticipates that the additional beds will be used for adult inpatient services, and has identified the service line as adult inpatient services. The following reflects the historical growth in utilization of inpatient acute care services at DUH:

Adult	FY2021	FY2022	FY2023	FY2024 ann.	2-yr CAGR (FY 22-24)	3-yr CAGR (FY 21-24)
Discharges	35,539	35,176	36,217	38,066	4.0%	2.3%
Inpatient Days	257,310	266,026	271,804	277,684	2.2%	2.6%
Average Daily Census	705	729	745	761		
Average Length of Stay	7.24	7.56	7.50	7.29		

DUH has annualized bed utilization for FY 2024 based on the first six month (July-December).[5] DUH conservatively projects that inpatient days of care will continue to increase at an annual rate of 1.5% beginning in FY 2025. This is conservative in light of the historical growth in days of care, and is supported by the factors discussed in Section C. DUH anticipates that acute care utilization will continue subject to the addition of capacity to accommodate the projected volume.

For purposes of projecting discharges, DUH projects that there will be a constant average length of stay with current FY 2024 experience, such that discharges grow at the same 1.5% annual rate as total days; like days of care, this increase is conservative in light of the historical growth rate for discharges, and assumes a conservative average length of stay that remains constant with FY 2024 experience. DUH has made concerted operational efforts to reduce average length of stay consistent with patient clinical needs from the peak during COVID-19, and projects that it will maintain its FY 2024 experience.

Source: DUHS application, p. 88.

In the DUH utilization model, adult discharges increase 1.5 percent annually, in correlation with acute days of care, as the result of DUHS's assumption that the average length of stay in the first six months of FY 2024 will remain the same at 7.29 days for the next four years, through FY 2028. Acute days of care are also assumed to increase 1.5 percent each year from the base year of FY 2024. DUHS states on page 88 that these growth rates are conservative and supported by factors it discusses in Section C of its application. However, DUHS does not provide adequate discussion nor explanation of how the 1.5 percent figure was determined. As shown below, the compound annual growth rates for total inpatient discharges and acute days at DUH fluctuated significantly over the past five years:

Duke University Hospital Historical Discharges and Acute Care Days

DUH Total Inpatient Utilization	*FY18*	*FY19*	*FY20*	*FY21*	*FY22*	*FY23*	*FY24(A)*
Discharges	42,469	43,055	40,715	40,906	40,581	41,710	43,624
Acute Days of Care	292,286	303,409	296,466	311,279	322,535	330,729	341,042
ALOS	6.88	6.98	7.24	7.61	7.95	7.93	7.82

Source: 2021 DUHS application (Project ID # J-12069-21, p. 89; DUHS application pp. 88-90. Note that DUHS splits out adult, pediatric, and neonatal discharges and days in its Form C methodology.

Using these utilization figures, the CAGRs show noticeable variation depending on the period used for the calculation. In the case of inpatient discharges, there was a less than one percent growth rate if one applies the CAGR from FY 2018 or FY 2019 compared to DUHS's annualized total for FY 2024. While DUHS is correct that a 1.5 percent CAGR is lower compared to the annual growth rates from FY 2021 forward, it does not explain why this time period is appropriate and reasonable.

Duke University Hospital Total Inpatient Utilization CAGRs*, FY18 – FY24(A)

DUH Total Inpatient Utilization	*FY18-24*	*FY19-24*	*FY20-24*	*FY21-24*	*FY22-24*	*FY23-24*
Discharges	0.4%	0.3%	1.7%	2.2%	3.7%	4.6%
Acute Days of Care	2.6%	2.4%	3.6%	3.1%	2.8%	3.1%

*Compound Annual Growth Rate

With regard to the annual growth in adult inpatient discharges and patient days of care, there are not publicly available data to complete a similar analysis of annual growth rates for varying time periods. DUHS has provided discharge data separately for adult, neonatal, and pediatric patients in this CON application and in prior Durham County acute bed applications for fiscal years 2020 through 2024 year-to-date.[19] However, with this data the trends closely follow the growth trends for total discharges and patient days, as shown below:

Duke University Hospital Historical Adult Discharges and Acute Care Days

DUH Adult Inpatient Utilization	*FY18*	*FY19*	*FY20*	*FY21*	*FY22*	*FY23*	*FY24(A)*
Discharges	N/A	N/A	35,107	35,539	35,176	36,217	38,066
Acute Days of Care	264,439	275,277	238,726	257,210	266,026	271,804	277,684
ALOS	N/A	N/A	6.80	7.24	7.56	7.50	7.29

Source: LRA data; 2021 DUHS application (Project ID # J-12069-21, p. 89; DUHS application pp. 88-90. Note that DUHS splits out adult, pediatric, and neonatal discharges and days in its Form C methodology.

The compound annual growth rates for adult discharges and days of care exhibit a similar pattern to total inpatient utilization growth rates when neonatal and pediatric discharges are excluded, as shown in the following table.

[19] See DUHS 2021 Durham Beds application, Project ID # J-12069-21, and DUHS 2022 Durham Beds application, Project ID # J-122211-22.

Duke University Hospital Adult Inpatient Utilization CAGRs*, FY18 – FY24(A)

DUH Adult Inpatient Utilization	*FY18-24*	*FY19-24*	*FY20-24*	*FY21-24*	*FY22-24*	*FY23-24*
Discharges	N/A	N/A	1.6%	2.3%	4.0%	5.1%
Acute Days of Care	N/A	N/A	3.1%	2.6%	2.2%	2.2%

*Compound Annual Growth Rate

DUHS has the internal data available to complete this analysis and evaluate the growth rates for earlier periods in addition to the more recent years it included in its Form C. However, DUHS elected not to include this information in its analysis and discussion of the variations in annual growth. Rather, it has adopted the same methodology that it employed in its 2022 application. Once again, DUHS does not provide a reasonable and adequately supported justification for the growth rate it has chosen for inpatient discharges and acute patient days. Moreover, as described below, as in 2022, DUHS fails to demonstrate that its assumptions regarding ALOS are reasonable.

Average Length of Stay

As shown above, the ALOS for adult discharges at DUH was 7.29 in FY 2024, using annualized data. DUHS kept this ALOS constant and applied it through its third proposed project year, FY 2028.

Adult	FY2021	FY2022	FY2023	FY2024 ann.
Discharges	35,539	35,176	36,217	38,066
Inpatient Days	257,310	266,026	271,804	277,684
Average Daily Census	705	729	745	761
Average Length of Stay	7.24	7.56	7.50	7.29

Source: DUHS application, p. 88.

However, DUHS does not provide an adequate explanation for why the ALOS will not continue to decrease. In Form C, DUHS states that "*DUH has made concerted operational efforts to reduce average length of stay consistent with patient clinical needs from the peak during COVID-19…*"[20] but does not explain why ALOS will not continue to decline in future years, approaching its pre-COVID level. In particular, as shown in the table above, DUHS' adult ALOS has decreased from FY 2022, and, since its ALOS was below 7.0 (6.98) in FY 2019, per the Agency Findings in the 2022 Durham Bed Review, page 16, it is not reasonable to assume that the ALOS, which has been declining and has historically been lower, will not continue to decline through the project years. Thus, DUHS also does not provide adequate support for its length of stay assumption. The ALOS assumption is critical to the overall utilization projections because the ALOS multiplied by the projected discharges, calculates the days of care, which are used to calculate occupancy rates, which are used to demonstrate need and meet the performance standards. Just as in its 2022 acute beds application, DUHS has not provided utilization projections that are adequately supported. The Agency specifically noted this issue in the 2022 review, stating:

[20] DUHS application, p. 88.

> In its utilization projections, Duke assumes that adult inpatient ALOS will remain at an average of the ALOS for SFYs 2021 and 2022 annualized (based on July – December 2021 data) and assumes that pediatric inpatient ALOS will remain at the ALOS for SFY 2022. Duke does not provide any information in the application as submitted as to adequately support the ALOS' it uses. The applicant does not adequately address why the ALOS has increased more in the last two years compared to the historical ALOS or why use of the more recent ALOS (or an average ALOS of two recent years) is reasonable and adequately supported compared with historical utilization.

See Agency Findings for Project ID #J-12211-22 at page 16.

Once again, DUHS fails to demonstrate that it is reasonable to assume that its ALOS will remain the same, when it has been decreasing, and, in particular, when the ALOS is used to calculate the days of care that are used to demonstrate conformity with the criteria. While a static ALOS may not be an issue by itself, in light of DUHS' historical ALOS trend, the statement in its application, cited above, that it has made efforts to reduce its ALOS, and the Agency's findings from the 2022 review, UNC Hospitals believes this issue should again result in a finding that the DUHS is not approvable.

As such, the DUHS application is non-conforming with Criteria 1, 3, 4, 5, 6, and 18a, and the performance standards for Acute Care Beds (10A NCAC 14C .3803).

3. DUHS fails to demonstrate the financial feasibility of the proposed project.

System Net Income

Because the proposed adult inpatient beds are projected to have a net loss through the third project year, to demonstrate the financial feasibility of its proposed project, DUHS presents the projected revenue and net income for its hospital system through the first three years of its proposed project in its Form F.2b. As shown in that form, the DUHS system generates positive net income in FY 2025 through FY 2028.

Form F.2b Historical and Interim Revenues and Net Income DUHS ('000s)	Interim/Partial FY From: 07/01/2024 To: 06/30/2025	1st Full FY From: 07/01/2025 To: 06/30/2026	2nd Full FY From: 07/01/2026 To: 06/30/2027	3rd Full FY From: 07/01/2027 To: 06/30/2028
Patient Services Gross Revenue				
Self Pay	$592,227	$650,000	$695,965	$736,567
Insurance *	$6,793,751	$7,327,952	$7,708,509	$8,012,547
Medicare *	$9,081,504	$10,095,978	$10,947,553	$11,731,890
Medicaid *	$2,231,594	$2,449,292	$2,622,493	$2,775,487
Other (Specify)	$821,407	$901,537	$965,289	$1,021,603
Total Patient Services Gross Revenue	$19,520,482	$21,424,759	$22,939,808	$24,278,094
Other Revenue (1)	201,000	205,020	209,120	213,303
Total Gross Revenue (2)	$19,721,482	$21,629,779	$23,148,929	$24,491,397
Adjustments to Revenue				
Charity Care	$867,531	$953,006	$1,020,961	$1,080,957
Bad Debt	$0	$0	$0	$0
Contractual Adjustments	$12,230,951	$13,436,021	$14,394,090	$15,239,951
Total Adjustments to Revenue	$13,098,482	$14,389,027	$15,415,051	$16,320,909
Total Net Revenue (3)	$6,623,000	$7,240,752	$7,733,878	$8,170,488
Total Operating Costs (from Form F.3.b)	$6,566,000	$7,025,752	$7,385,877	$7,691,488
Net Income (4)	$57,000	$215,000	$348,000	$479,000

*** Including any managed care plans**
F: = From
T: = To

Source: Project ID # J-012512-24, p. 107 of application PDF.

However, this profitability at the system level is inconsistent with net income projections that DUHS has supplied in previous CON applications. In its 2023 application for a proposed LINAC at its Duke Radiation Oncology Garner facility in Wake County,[21] DUHS projected the system would lose money in Fiscal Years 2022-2025. In that application, DUHS projected negative net income of -$241.855 million in FY 2025. And in its most recent audited financials for FY 2023, DUHS reported an operating loss of -$152.003 million. While UNC Hospitals is aware that financial projections may change over time, given the issues noted above regarding DUHS' unreasonable utilization projections, the positive changes in DUHS' financial projections are based on unsupported assumptions. Criterion 5 requires that an applicant must demonstrate the immediate and long-term financial feasibility of the proposed project.

Without demonstrating that the Duke University Health System is financially sustainable using reasonable assumptions, the project is non-conforming with Criterion 5.

Additionally, as noted earlier, the utilization volume projections upon which DUHS's financials are based are not reasonable due to DUHS's unsupported assumptions. This renders the financial projections also unreasonable and unsupported.

[21] Project ID # J-12379-23.

4. DUHS fails to demonstrate that its proposal will not result in the unnecessary duplication of existing or approved health service capabilities or facilities.

In Section G.2, DUHS discusses the reasons why its proposed additional acute care beds will not result in unnecessary duplication of acute care services in the proposed service area:

> As described in Section C.4, the need for additional inpatient capacity in the 2024 SMFP was driven by the demand for DUH's highly specialized services. The proposed 38 additional acute care beds are specifically needed at DUH to expand access to the hospital's well-utilized inpatient acute care services which do not duplicate the services provided by any other facility which does not have the same scope of services.

Source: DUHS application, p. 62.

As previously stated in the "General Comments" section above, however, the Agency affirmed in its 2022 findings for the acute care bed need determination for the Durham/Caswell multicounty area that "*anyone may apply to meet the need, not just Duke. Duke has the burden of demonstrating the need for the proposed acute care beds in its application as submitted*."[22] In other words, this reasoning is not sufficient justification as to whether the services as proposed by DUHS will not unnecessarily duplicate existing services in the Durham/Caswell/Warren multicounty service area.

Further, DUHS also states above that its services "*do not duplicate the services provided by any other facility,*" and further discusses this in Section G.2 as follows:

> UNC's approved Durham County hospital project under appeal is for a small community hospital that would not offer the scope of services provided by DUH. DUH routinely accepts transfers from UNC-affiliated hospital of patients needing DUH's specialized services, and its existing high occupancy rates can prevent DUH from accepting transfers from UNC facilities and other hospitals. UNC's prior applications do not propose the specialized services that drive DUH's high utilization and the resulting need determination. The total need for inpatient capacity identified in the SMFP driven by Duke University Hospital's high utilization has already been offset in the need determination by the 108 beds conditionally awarded to UNC, so that there would be no duplication of UNC's capacity even if it is eventually upheld and developed. Finally, UNC's 2022 application projected that FY 2030 would be its first full year of operation. Developing capacity at DUH to meet patient needs beginning in FY 2025 would not unnecessarily duplicate services that will not open for another 5 years.

Source: Duke application, p. 63.

As discussed briefly in the "General Comments" section, above, and as will be discussed further in the "Comparative Analysis" section, below, UNC Hospitals-RTP conducted an analysis of the types of acute care services driving the need for more beds in Durham County and has continued to expand the scope of its services that will be delivered at UNC Hospitals-RTP based on empirical evidence of the needs of the patients of the Durham/Caswell/Warren multicounty service area. As such, the scope of services to be provided at UNC Hospitals-RTP includes the vast majority (82 percent) of acute care services historically utilized by Durham County residents, as shown in its application. Moreover, as also stated in its application, UNC Hospitals-RTP will have a medical staff capable of delivering more services, if

[22] "Required State Agency Findings – 2022 Durham/Caswell Acute Care Bed Review," p. 10.

patient demand warrants. Given this, UNC Hospitals believes that DUHS has misinterpreted the scope of services that could potentially be offered at UNC Hospitals-RTP. DUHS also states in its Form C Assumptions that *"the significant majority of DUH's inpatient bed utilization reflects adult inpatients"* and "*DUH has identified adult beds as the area of greatest need for additional capacity accordingly*."[23] While the majority of DUHS' patients may be adult inpatients, DUHS's application fails to demonstrate that the need for additional beds is driven by high acuity, tertiary or quaternary care that would not be available at UNC Hospitals-RTP or another facility in Durham County.

Despite providing no data to demonstrate it, if DUHS nonetheless believes that all 38 of the proposed beds are necessary for "highly specialized tertiary and quaternary care", then one option would be to relocate beds from Duke Regional Hospital to DUH, since DUHS states that Duke Regional currently has relatively more capacity.[24] Table 5A of the *2024 SMFP* projects a surplus of 14 acute care beds at Duke Regional Hospital.

The information provided by DUHS does not adequately demonstrate that there is not enough capacity within DUHS to meet patient demand for its services. Given the surplus supply of acute care beds at Duke Regional Hospital and the fact that lower acuity services are driving the additional demand for acute care beds in Durham County, DUHS has failed to demonstrate that its project will not result in unnecessary duplication of services in the service area.

Based on the discussion above, DUHS fails to demonstrate that its proposed project will not result in unnecessary duplication. As such, the DUHS application is non-conforming with Criteria 1, 3, and 6.

5. <u>DUHS fails to demonstrate how the proposed project addresses the requirements of Policy GEN-3.</u>

In Section B.20, DUHS replies to Policy GEN-3 as required, stating the following with regards to how the proposed project will (a) promote safety and quality, (b) promote equitable access, (c) maximize healthcare value, and (d) incorporate the concepts of safety, quality, access, and maximum value for resources expended:

[23] Duke application, p. 88.

[24] Ibid, p. 52.

Please see Sections C, E, G, L, and N for a detailed discussion of how the proposed project will promote safety and quality and equitable access and will maximize healthcare value. DUHS identifies the population to be served by the proposed project, the need the population has for the services proposed, and that projected utilization is based on reasonable and adequately supported assumptions. The project is necessary to ensure access to the proposed services, and is designed to maximize value by implementing the beds in existing space and leveraging existing resources needed to provide the services.

DUHS is dedicated to ensuring quality care and patient safety through compliance with all applicable licensure and certification standards established in regard to acute care hospital. DUHS will continue to maintain the highest standards and quality of care, consistent with the high standard that DUHS has sustained throughout its history of providing acute care.

DUHS will also continue to comply with applicable Federal civil rights laws and will not discriminate on the basis of race, color, national origin, age, disability, gender, or sexual orientation. DUHS does not exclude people or treat them differently because of race, color, national origin, age, disability, gender, sexual orientation.

Therefore, the proposed project is consistent with the objectives of SMFP Policy GEN-3.

Source: DUHS application, p. 27.

DUHS's response to Section B.20 is brief and does not address the requirements of Policy GEN-3. While an application can certainly refer to responses in other sections, those referred to by DUHS are insufficient to demonstrate conformity with this policy. For example, while some of the referenced sections refer to DUHS' past quality, they do not address how the proposed project will promote safety and quality.

In addition, DUHS refers to other sections to demonstrate how the proposed project will promote equitable access; however, these sections do not explain how the proposed project will do so. In Section L, for example, one of the sections referred to by DUHS in its response above, DUHS projects that its percentage of Medicaid patients will decrease following development of the proposed project, from 11.5 percent in FY 2023 to 11.2 percent in FY 2028. Considering the recent expansion of Medicaid, this projection is particularly concerning, and does not demonstrate that the proposed project will enhance equitable access for Medicaid patients.

Given these issues, the application does not fulfill the requirements of Policy GEN-3, either in Section B or elsewhere in the application.

Based on the discussion above, DUHS fails to demonstrate conformity with Policy GEN-3. As such, the DUHS application is non-conforming with Criteria 1, 3, 5, 6, and 18a.

COMPARATIVE ANALYSIS

As noted above, UNC Hospitals believes that DUHS's application is non-conforming with multiple statutory and regulatory review criteria and should not be approved. Given that both UNC Hospitals' and DUHS's applications propose to develop 38 additional acute care beds in Durham County in a response to a *2024 SMFP* need determination, only one can be approved.

To determine the comparative factors that are applicable in this review, UNC Hospitals examined the recent Agency findings for competitive acute care bed reviews. In particular, it believes that the "Required State Agency Findings" for the need for 68 acute care beds in Durham County via a need determination in the *2022 SMFP* are the most applicable for both UNC Hospitals' and DUHS's applications, for reasons discussed in the "General Comments" section, above. In the Agency's 2022 findings for this need determination, the following comparative factors were utilized:

- Conformity with Review Criteria
- Scope of Services
- Geographic Accessibility
- Historical Utilization
- Competition/Access to a New/Alternate Provider
- Access by Underserved Groups:
    - Projected Charity Care
    - Projected Medicare
    - Projected Medicaid
- Projected Average Net Revenue per Case
- Projected Average Operating Expense per Case

Based upon its analysis and the facts and circumstances of DUHS's competing application, UNC Hospitals believes that the factors presented above and discussed in turn below should be used by the Project Analyst in reviewing the competing applications.

Conformity with Review Criteria

As noted above, **DUHS's application is non-conforming with at least Criteria 1, 3, 4, 5, 6, 18a, and 20, and the performance standards for Acute Care Beds (10A NCAC 14C .3803)** while UNC Hospitals' application is conforming with all review criteria. As such, UNC Hospitals' application is more effective for this comparative factor.

Scope of Services

In previous reviews involving these applicants, the Agency has determined that DUHS provides a greater scope of services than UNC Hospitals-RTP. However, UNC Hospitals believes there are compelling reasons that the scope of the two applicants should not be considered materially different in this review. First, as noted in its application, UNC Hospitals-RTP is significantly expanding the range of clinical services that will be offered at its hospital through this proposed project compared with earlier iterations. Namely, the proposed project will expand the availability of specialized patient care offerings for both diagnosis and treatment. These additive services include GI Endoscopy procedure rooms, Level II neonatal care beds, an inpatient dialysis unit, and interventional and vascular interventional radiology rooms. The proposed

project will also provide additional resources in UNC Hospitals-RTP's emergency and diagnostic imaging departments. These resources will help ensure that residents of southern Durham County and surrounding communities have even greater access to a wide range of healthcare services that are close to home.

It should also be noted, as was also discussed in UNC Hospitals-RTP's application, that the physicians and medical staff at UNC Hospitals-RTP will be capable of providing the same advanced level of patient care and range of treatments and procedures currently offered at UNC Medical Center in Chapel Hill, at UNC Hospitals-RTP, as needed, and as the growth of the facility warrants. The UNC Hospitals-RTP medical staff will be the same medical staff as UNC Medical Center in Chapel Hill ("UNC-CH"), which is itself a Level I trauma center, a quaternary care center, and an academic medical center teaching hospital. The medical staff at UNC Hospitals-RTP will have the same advanced levels of training and clinical expertise to provide medical and surgical care to patients at UNC Hospitals-RTP that they would receive at UNC-CH. Though UNC Hospitals-RTP initially prioritized lower acuity, community-based acute care services, with the expansion proposed in this project, it will greatly expand the scope of services provided there, which will meet the need that Durham/Caswell/Warren county patients have at this time.[25] As such, while DUH does provide quaternary care, the facilities at UNC Hospitals-RTP in fact have the ability to provide high-acuity care through shared UNC Hospitals resources. As such, UNC Hospitals believes that both applications are equally effective regarding this comparative factor.

Finally, the Agency has previously determined in a competitive Durham County bed review that a hospital with a much smaller scope of services and much fewer beds, North Carolina Specialty Hospital, proposed comparable patient access to a broad range of medical and surgical specialties (a factor that is itself comparable with "scope of services"). In the 2018 Durham County bed review, the Agency found that the two applications were similar in terms of this factor, because North Carolina Specialty Hospital proposed "a broad spectrum of medical and surgical services" (as does UNC Hospitals in this review), and because DUHS proposed to utilize the additional beds for its adult population. In this review, UNC Hospitals-RTP proposes a much broader scope of medical and surgical services than was proposed by North Carolina Specialty Hospital in 2018, and, like its 2018 application, DUHS proposes acute care beds for the general adult population.[26] In fact, in comparing the two proposals, UNC Hospitals actually proposes a broader scope of services for its proposed 38 beds, given that more than one-half (20 of 38) will be developed as ICU beds, while DUHS proposes all of its beds to backfill space used for general beds with no renovation or upfit needed. As such, in comparing the two proposals, UNC Hospitals projects that its proposed additional beds will serve general acute as well as obstetrics and ICU, in addition to developing neonatal beds.

As such, UNC Hospitals believes that both proposals, at a minimum, should be considered to have a comparable scope of services, or more realistically, that UNC Hospitals proposes a greater scope of services in its proposed project.

Geographic Accessibility

There are 1,492 existing and approved acute care beds in Durham County and none in Caswell and Warren counties, allocated between existing and proposed facilities, as shown in the table below.

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[25] See UNC Hospitals-RTP application, p. 68.

[26] See DUHS application Form C Assumptions, p. 88: "DUH anticipates that the additional [38] beds will be used for adult inpatient services, and has identified the service line as adult inpatient services."

	Licensed Acute Care Beds	*CON Adjustments*	*Total Acute Care Beds*
Central Durham County			
Duke University Hospital	981	34	1,096*
Duke Regional Hospital	298	0	298
Duke Health System Total	1,279	34	1,394
North Carolina Specialty Hospital	18	6	24
Central Durham Total	**1,297**	**40**	**1,418***
South Durham County			
UNC Hospitals-RTP	0	74	74

Source: *2024 SMFP*.

*Total includes beds awarded to DUH under Policy AC-3 that are not included in the *SMFP* calculation.

As shown in the table above, the three existing hospitals are all located in central Durham County and are within approximately five miles of one another. DUHS proposes to add 38 acute care beds at its existing facility in Central Durham County. UNC Health proposes to develop 38 acute care beds at its approved hospital in southern Durham County. As was the case with both applicants' 2022 applications for additional acute care beds in the Durham/Caswell multicounty service area, DUHS proposes to develop the 38 additional acute care beds **proposed in its application at Duke University Hospital, which is in the city of Durham, in central Durham** County. UNC Hospitals, however, proposes to develop the 38 additional acute care beds at its approved acute care facility, UNC Hospitals-RTP, which will be located in southern Durham County, where there are no existing acute care providers, as discussed in UNC Hospitals' application.[27] Given this, UNC Hospitals-RTP is a more effective alternative regarding Geographic Accessibility.

Historical Utilization

Generally, the application submitted by the applicant with the highest utilization of its available acute care beds is the more effective alternative with regards to this comparative factor. However, UNC Hospitals is not an existing provider of acute care beds in Durham County. Like both the 2022 and 2021 Agency Findings, UNC Hospitals concludes that since UNC Hospitals is not an existing provider of inpatient services in Durham County, this comparative factor is inconclusive.

[27] See UNC Hospitals-RTP application, p. 65, which notes that southern Durham County only includes 74 approved, but not developed, acute care beds at UNC Hospitals-RTP; while central/western Durham County includes 981 acute care beds across the DUHS system.

Competition/Access to a New/Alternate Provider

Generally, the Agency has taken the position that the introduction of a new provider in the service area is the most effective alternative, or that expansion by an existing provider that controls fewer acute care beds than another provider in the service area is the more effective alternative for this comparative factor.

As noted in the "General Comments" section, above, UNC Hospitals-RTP is currently approved for 74 acute care beds in Durham County, all of which are currently in litigation. DUHS, meanwhile, operates 1,360 acute care beds at its two facilities in Durham County. Following the approval of the proposed project, there would be a total of 1,530 approved or existing licensed acute care beds in the Durham/Caswell/Warren multicounty service area.

If UNC Hospitals-RTP's application were to be approved, it would control 112 of the 1,530 licensed acute care beds in the service area, or 7.3 percent. If DUHS's application were to be approved, it would control 1,434 of the 1,530 licensed acute care beds in the service area, or 93.7 percent.

Given this, and in keeping with both the 2022 and 2021 Agency Findings, UNC Hospitals is the more effective alternative for Competition/Access to a New/Alternate Provider.

Access by Underserved Groups

Projected Charity Care

While UNC Hospitals understands that the Agency typically no longer uses charity care as a comparative factor, the following analysis is based on its historical approach to this factor.

The following table illustrates each applicant's projected charity care revenue for acute care services in the third project year.:

Charity Care as Percentage of Total – Project Year 3

	Charity Care Revenue	***Total Gross Revenue***	***Charity Care % of Gross Revenue***	***Average Charity Care per Discharge***
UNC Hospitals-RTP	$23,754,455	$299,930,182	7.9%	$4,593
Duke University Hospital	$125,741,704	$3,949,527,353	3.2%	$2,724

Source: Form F.2b for UNC Hospitals-RTP Inpatient Services (Including Inpatient Surgery) and Form F.2b for DUHS Adult Inpatient Services; Form C.2b

As shown above, UNC Hospitals-RTP projects to have the highest charity care revenue as a percentage of total gross revenue. UNC Hospitals-RTP also has the highest average charity care per inpatient discharge of the two applicants. Although the two facilities differ in size, as noted above, UNC Hospitals believes the scope of the two proposed projects are similar, although UNC Hospitals proposes a broader scope of patients in its proposed 38 beds. If the Agency uses this comparison, it should find UNC Hospitals-RTP the most effective applicant with respect to charity care.

Projected Medicare

The following table illustrates each applicant's projected Medicare revenue in the third project year for the acute care beds service component:

Medicare as Percentage of Total – Project Year 3

	Medicare Revenue	*Total Gross Revenue*	*Medicare % of Gross Revenue*	*Average Medicare Rev/Discharge*
UNC Hospitals-RTP	$153,411,788	$299,930,182	51.1%	$29,662
Duke University Hospital	$1,972,013,759	$3,949,527,353	49.9%	$42,723

Source: Form F.2b for UNC Hospitals-RTP Inpatient Services (Including Inpatient Surgery) and Form F.2b for DUHS Adult Inpatient Services; Form C.2b

As shown above, UNC Hospitals-RTP projects to have the highest Medicare revenue as a percentage of total gross revenue. DUH has the highest average Medicare revenue per inpatient discharge. This split results in each applicant being equally effective for this comparative factor; however, UNC Health believes the percentage of revenue is the more appropriate method of measuring access in this review, particularly if the Agency uses only a single metric for Medicare access.

Projected Medicaid

The following table shows each applicant's Medicaid revenue for inpatient acute care services:

Medicaid as Percentage of Total – Project Year 3

	Medicaid Revenue	*Total Gross Revenue*	*Medicaid % of Gross Revenue*	*Average Medicaid Rev/Discharge*
UNC Hospitals-RTP	$49,649,314	$299,930,182	16.6%	$9,600
Duke University Hospital	$422,730,454	$3,949,527,353	10.7%	$9,158

Source: Form F.2b for UNC Hospitals-RTP Inpatient Services (Including Inpatient Surgery) and Form F.2b for DUHS Adult Inpatient Services

As shown above, UNC Hospitals-RTP projects the highest Medicaid revenue as a percentage of total gross revenue and has the highest average Medicaid revenue per inpatient discharge. UNC Hospitals is the more effective alternative regarding projected Medicaid access. Of note, UNC Health believes the percentage of revenue is the more appropriate method of measuring access in this review, particularly if the Agency uses only a single metric for Medicaid access.

As demonstrated above, UNC Health compared charity care, Medicare, and Medicaid revenue as a percentage of total gross revenue. UNC Health does not believe it is appropriate to compare the applicants based on total charity care, Medicare, or Medicaid dollar amounts, given the differences in facility size and patient census by the two applicants. Comparing the percentages of gross revenue and average revenue per discharge allows direct comparisons between facilities of differing sizes. Moreover, as noted above, UNC Hospitals believes the two applications are reasonably comparable, particularly with respect to care for the underserved.

Projected Average Net Revenue per Case

The following table illustrates the projected net revenue per acute care patient in project year three for both applicants, based on the information provided in each applicant's pro forma Financial Statements (Form F.2b):

Average Net Revenue per Acute Care Bed Patient – Project Year 3

	Projected Total Patients	*Net Revenue*	*Average Net Revenue per Patient*
UNC Hospitals-RTP	5,172	$110,849,489	$21,432
Duke University Hospital	46,158	$1,329,908,525	$28,812

Source: Forms C.2b and F.2b of respective applications.

As stated in the Agency's 2022 findings for the Durham/Caswell acute care bed review, the application projecting the lowest average net revenue per patient is the more effective alternative with regards to this comparative factor.[28] As shown above, UNC Hospitals projects a lower average net revenue per acute care patient in its third full project year than DUH in its third full project year. As such, the UNC Hospitals-RTP application is the more effective applicant for projected Average Net Revenue per Patient.

Projected Average Operating Expense per Case

The following table illustrates the projected operating expense per acute care patient in the third project year for both applicants, based on the information provided in each applicant's pro forma Financial Statements (Form F.2b):

Average Operating Expense per Acute Care Bed Patient – Project Year 3

	Projected Total Patients	*Total Operating Expenses*	*Average Operating Expense per Patient*
UNC Hospitals-RTP	5,172	$104,333,891	$20,172
Duke University Hospital	46,158	$1,762,581,563	$38,186

Source: Forms C.2b and F.2b of respective applications.

As stated in the Agency's 2022 findings for the Durham/Caswell acute care bed review, the application projecting the lowest average operating expense per patient is the more effective alternative with regards to this comparative factor.[29] As shown above, UNC Hospitals projects a lower average operating expense per acute care patient in its third full project year than DUH in its third full project year. As such, the UNC Hospitals application is more effective for projected Average Operating Expense per Patient.

[28] "Required State Agency Findings – 2022 Durham/Caswell Acute Care Bed Review," p. 75.

[29] "Required State Agency Findings – 2022 Durham/Caswell Acute Care Bed Review," p. 76.

Summary of Comparative Analysis

The following table lists the comparative factors and states which is the more effective alternative for each comparative factor.

Comparative Factor	*UNC Hospitals – RTP*	*Duke University Hospital*
Conformity with Review Criteria	**Yes**	No
Geographic Accessibility	**More Effective**	Less Effective
Historical Utilization	Inconclusive	Inconclusive
Competition	**More Effective**	Less Effective
Access by Underserved Groups:		
Projected Charity Care	**More Effective**	Less Effective
Projected Medicare	Equally Effective	Equally Effective
Projected Medicaid	**More Effective**	Less Effective
Projected Average Net Revenue per Case	**More Effective**	Less Effective
Projected Average Operating Expense per Case	**More Effective**	Less Effective

As shown above, UNC Hospitals-RTP is the more effective alternative for every comparative factor for which a comparison can be made, except for access for Medicare patients, where both applicants are equally effective. Of note, even if the Agency were to utilize and draw conclusions from the same factors it did in 2022, the UNC Hospitals application would be found to be the most effective. As such, the application submitted by UNC Hospitals-RTP is comparatively superior and should be approved.

Attachment A

COMMENTS IN RESPONSE TO PETITION
REGARDING ACUTE CARE BED NEED DETERMINATION
IN DURHAM/CASWELL COUNTIES

Duke University Health System, Inc. ("Duke") hereby submits these comments in response to the petition filed by UNC Hospitals regarding the need determination for acute care beds in the Durham/Caswell service area. Duke University Hospital's utilization, reflecting the demand for its unique quaternary services as an academic medical center, has generated the need determination in the service area. Duke supports the standard methodology and the resulting need determination.

UNC Hospitals "requests that the SHCC consider allocating more than 38 additional acute care beds for the service area in the 2024 SMFP. Further, if data updates later this year would result in a need for fewer beds or none at all, UNC Hospitals requests that the SHCC consider maintaining the current need determination of at least 38 beds." UNC Hospitals does not propose for any specific adjustment, nor provide data to support any different number of beds other than what the standard need methodology generates.

While there are 108 beds in the service area planning inventory that have not yet been finally allocated, all of them have been applied for. The Agency decision regarding the 2021 need determination for 40 beds is currently under review at the Court of Appeals. Similarly, a final decision at the Office of Administrative Hearings vacating the Agency's decision regarding the 2022 need determination for 68 beds was recently issued, but the time for appeals of that decision has not expired and UNC Hospitals has not indicated whether it intends to appeal. The SMFP's Policy GEN-1 provides the approved mechanism for any reallocation of these need determinations upon resolution of appeals. UNC's proposed adjustment for "more" than 38 beds based on the fact that there are previous need determinations under appeal would require the SHCC to reinvent or supplant this longstanding policy and would potentially duplicate assets already in the planning inventory.

Duke accordingly requests that the SHCC deny UNC Hospitals' petition and instead apply the standard need methodology and Policy GEN-1 as appropriate.