

**MEMO**

TO: Members, North Carolina State Health Coordinating Council

CC: Nadine Pfeiffer, Manager, Medical Facilities Planning Branch

FROM: W. Stan Taylor, Vice President, Corporate Planning

DATE: March 20, 2013

SUBJECT: Comments on the Petition submitted by MedCapital Advisors

---

WakeMed endorses the comments on this petition submitted by NCHA. We believe there are several reasons both substantive and procedural why this petition should be denied and offer the following comments in support of our position:

- 1.) The Petition states that its requested change is “that CON and licensure exceptions be applied equally to all ambulatory surgical facilities regardless of medical/surgical specialty.” It goes on to assert that some specialties are not subject to CON and licensure requirements. The assertion is simply not true. None of the existing ambulatory surgery centers that are licensed by the state and certified by the federal government for participation in the Medicare and Medicaid programs have avoided CON and licensure regulatory requirements. The list of facilities provided as an addendum to the Petition, consisting mostly of plastic surgery treatment and oral maxillofacial dental offices are not licensed or certified and generally are not paid a facility fee by any standard health insurance providers.
- 2.) The Petition asserts that the facilities on the list are ambulatory surgery facilities because anesthesia is used in procedures performed there. The statutory definition of an ambulatory surgical facility is somewhat ambiguous, but it does not rest solely on whether anesthesia is used as the Petition suggests. The determination is whether the procedures performed there are “incidental, limited ambulatory surgical procedures which do not constitute an ambulatory surgical program.” While it may be that some of these facilities do not comply with that definition, it does not mean that they are exempt from either CON or licensure requirements.
- 3.) The Petition also asserts that single specialty surgery facilities may be safer than multi-specialty hospital based operating rooms. There is no documentation for this

- statement other than a vague reference to “medical literature.” Such an assertion does not constitute a reason for a change in health planning policy.
- 4.) The petition then argues that many people do not have access to elective surgery because hospital affiliated ambulatory surgery facilities generally charge higher prices. However, as the NCHA comments point out, North Carolina uninsured and Medicaid patients receive surgical procedures and colonoscopies more than twice as often in hospital affiliated ambulatory surgery centers as in those not affiliated with a hospital even though there are about equal numbers of both types of ambulatory surgery centers. That finding certainly undermines the assertion, and the Petition again provides no evidence to support its claim.
  - 5.) While not contained in the Petition itself, the dialogue between SHCC members and Mr. Blake, the presenter of the Petition, present additional reasons for denying the Petition. Mr. Blake admitted that small and medium sized hospital may be financially threatened by new ambulatory surgery centers, and also acknowledged that more surgical centers could lead to more unnecessary surgeries being performed. He said he did not have a solution to these concerns to propose, but that the SHCC should perhaps try to address them.
  - 6.) Finally, the SHCC does not have the ability to provide the changes requested by the Petition. The SHCC does not determine what is subject to the CON statute, nor does it approve the legislation or make the rules governing licensure requirements in North Carolina. The SHCC could possibly change the methodology for projecting the need for operating rooms, but the Petition does not request that, nor does it provide any suggestions as to what these changes ought to be.

In short, the Petition does not identify and document a problem for which the SHCC has the authority to address, or suggest a way for the SHCC to address the alleged problem even if it did have such authority. Without more information and a more specific requested change, the SHCC lacks a basis for giving serious consideration to this Petition.