

Exhibit 1

PETITION

North Carolina State Health Coordinating Council

Submitted to

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Technology and Equipment Committee
c/o Medical Facilities Planning Section
Division of Facility Services
2714 Mail Service Center
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Submitted by

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Change to Current Need Methodology for Radiation Oncology – Linear Accelerators

Onslow Memorial Hospital is a 162-bed acute care facility that has served the residents of Onslow County for nearly 60 years. As the only non-military acute care hospital in the county, OMH provides a wide-range of inpatient and outpatient services, supported by more than 1,000 health care professionals. As a health care facility that has provided care since 1945, OMH has an extensive history delivering acute care services. Currently, OMH does not offer radiation oncology services, and the 2005 *SMFP* does not report any linear accelerators in operation within Onslow County.

Requested Change

Onslow Memorial Hospital (“OMH”) requests a change to the current need methodology for radiation oncology and linear accelerators. Specifically, OMH requests the following change for counties with a population of 120,000 or more:

1. If the county already has at least one linear accelerator (allocated or operational), no change would be made.
2. If the county does not have at least one linear accelerator, the county would be separated into its own radiation oncology service area.
3. Any radiation oncology service area without at least one linear accelerator would have a need for one linear accelerator.

Reason for Request

The current methodology for radiation oncology services and linear accelerators examines three criteria to determine need for additional radiation oncology programs and linear accelerators.

1. Existing linear accelerators in the radiation oncology service area must be performing an average of 6,750 ESTV's¹ per unit.
2. The service area population must be at least 120,000 per linear accelerator.
3. More than 45 percent of patients must originate outside the service area.

Currently, the state is divided into 22 radiation oncology service areas, each of which has a population greater than 120,000. Most of these service areas have one county with the majority of the population and a number of smaller counties with significantly smaller populations. According to the 2005 SMFP, there are only six service areas in the state with more than one county with a population of 120,000 or more:

- Service Area 7 (Mecklenburg, Union)
- Service Area 8 (Iredell, Rowan)
- Service Area 10 (Forsyth, Davidson)
- Service Area 11 (Guilford, Randolph)
- Service Area 15 (Cumberland, Robeson)
- Service Area 17 (Wake, Johnston)

Of these counties in these six service areas, only three counties do not currently have linear accelerators: Davidson, Randolph, and Johnston.

Please note that Onslow County is not included in the list above. Onslow County, in Service Area 19, is the only county in its service area with a population above 120,000. *In fact, Onslow County is the only county in the state without a linear accelerator that is also the only county in its service area with a population over 120,000!* Within Service Area 19, two other facilities operate a total of three linear accelerators. While one of these facilities is

¹ ESTV = Equivalent Simple Treatment Visit, as used in the 2005 SMFP.

approaching the minimum number of ESTV's, the other facility has much lower volume. Moreover, the service area does not (and likely will not in the near future) have sufficient population to generate a need determination for a fourth linear accelerator. However, as the only county in the service area with a population over 120,000², Onslow is also the only county without radiation oncology services.

OMH is aware that some providers in the state have been able to acquire a linear accelerator without a certificate of need. However, OMH believes this option is not a possibility, for the following reasons:

1. Several existing health care facilities in the state have acquired linear accelerators, including the vault and the construction/renovation of the necessary space for under \$750,000, thereby avoiding the certificate of need process and need determinations for linear accelerators. While OMH has studied this possibility, it has determined that it cannot construct the necessary space at a low enough cost, primarily because the instability of the soil near the hospital would require additional costs to reinforce. Additionally, the hospital would like the option of purchasing a new, high-quality linear accelerator with multiple collimators, rather than an older, refurbished model, particularly given the latest advances in radiation therapy, such as IMRT and IGRT.
2. OMH is aware that the Division of Facility Services has proposed several changes to the certificate of need statute, including the delineation of linear accelerators as "per se reviewable" equipment. If that proposed change takes place, an applicant will have to obtain a certificate of need before acquiring a linear accelerator, regardless of the cost. Thus, even if OMH were, at a future date, able to acquire a linear accelerator and construct a vault for less than \$750,000, the proposed statutory changes may prevent that from being an alternative.

² According to the Office of State Budget and Management, the projected total 2005 population for Onslow County is 162,219. The state demographer's office was unable to provide OMH with total civilian population projections; however, according to the 2005 SMFP, the projected Onslow County civilian population for 2008 is 130,630. More importantly, the Naval Hospital at Camp Lejeune does not offer radiation oncology services; therefore, there are currently no linear accelerators available for the entire population of Onslow County, both military and civilian.

Impact of Request

Based on data from the 2005 SMFP, the implementation of the petition would result in the following counties being placed in separate service areas and need determinations for linear accelerators in:

Davidson County
Randolph County
Johnston County
Onslow County

Without approval of the proposed petition, these four counties would be unlikely to obtain a certificate of need for linear accelerators, for three primary reasons. First, the number of existing linear accelerators in these service areas and their relatively low average utilization make it unlikely that additional linear accelerators will be allocated in the foreseeable future. Second, the nature of radiation therapy, specifically multiple weekly treatments for several consecutive weeks, prevents many patients from having radiation therapy, even when it is the preferred treatment method for their cancer site. Single mothers, breadwinners, elderly, and those without caregivers often are unable to travel out of town for daily treatment for several weeks, even if it means they must be treated using a less-effective method. As a result, use rates are generally lower in counties where patients who should have radiation therapy cannot and seek other methods of treatment. As an example, the residents of Onslow County who require radiation therapy must currently drive one and a half to two hours per day for many weeks in order to receive the care they need. Even assuming that transportation is available, the lost wages for most of these patients is just one more burden the citizens of one of the poorest counties in the state must bear at a time when they are literally fighting for their lives. Finally, the patients in these counties that are able to travel for radiation therapy only add to the volume of existing providers in other counties, helping them to demonstrate a greater need at their facility if additional linear accelerators are allocated, not at facilities local to many of their patients.

Summary

In summary, Onslow County is unique as the only county in its radiation oncology service area with a population greater than 120,000 but without a linear accelerator. There are only four counties in the state that have populations greater than 120,000 that do not have linear accelerators. Like Onslow, these counties are unable to generate a need for a linear accelerator due to the constraints of the methodology, even though their populations could likely

support one. The proposed petition to modify the current need methodology would result in need determinations for only four counties in the state.

Onslow Memorial Hospital appreciates your careful consideration of this petition. Please let us know if we can assist the Council, its committees, and the staff during the process.

Thank you very much.

Exhibit 2

Please note this list is not comprehensive but is used to demonstrate the similarity of SeH's petition to other SHCC actions.

- The SHCC approved a 2016 petition by Rex Healthcare for an adjusted need determination for one additional unit of fixed cardiac catheterization equipment in the *2017 State Medical Facilities Plan*, despite the standard methodology showing a surplus of cardiac catheterization machines in Wake County. The SHCC acted specifically to alleviate Rex Healthcare's lack of cardiac catheterization capacity despite the absence of an overall need in the service area and in spite of the underutilization of multiple providers. Rex demonstrated unique utilization trends when compared to other institutions in the same service area and reported greater than 80% utilization – the utilization threshold for determining a need.
- The SHCC approved a 2015 petition by Raleigh Radiology for an adjusted need determination for one additional fixed MRI unit in Wake County, despite the standard methodology showing a small surplus of capacity. The SHCC created the opportunity for Raleigh Radiology to develop fixed MRI capacity so that it could end a business relationship with Alliance for the lease of its existing unit.
- The SHCC approved a 2015 petition by J. Arthur Doshier Memorial Hospital (Doshier) for an adjusted need determination for one additional MRI unit in Brunswick County in the *2016 SMFP*, despite the standard methodology showing a surplus of capacity. The SHCC created the opportunity for Doshier to develop fixed MRI capacity because its existing business relationship with Alliance for the lease of an MRI was not optimal for providing excellent patient care at a low cost.
- **The SHCC approved a 2013 petition by Duke Raleigh Hospital for an adjusted need determination for one additional linear accelerator in Service Area 20 (Wake and Franklin counties) in the 2014 SMFP. The SHCC acted specifically to alleviate Duke Raleigh's lack of linear accelerator capacity despite the absence of an overall need in the service area (the service area included nine existing or approved linear accelerators at the time) and in spite of the underutilization of multiple providers and approved but not yet developed capacity. Duke Raleigh's growth was due to significant investment in the recruitment of cancer physicians to Wake County.**
- The SHCC approved a 2010 petition by Brookdale Senior Living for an adjusted need determination for 240 nursing care beds in Wake County. The SHCC created additional capacity despite the existence of underutilized capacity in the service area which prevented need from being generated under the standard methodology.
- The SHCC approved a 2010 petition by Graystone Eye Surgery Center for an adjusted need determination for one additional operating room in Catawba County. The SHCC created additional capacity despite the existence of underutilized capacity in the service area which prevented a need from being generated under the standard methodology.

- In 2010, the SHCC approved a revised acute care bed methodology which changed the growth rate factors to use a county-specific growth rate instead of a statewide average growth rate. This change, combined with the existing calculation of need by facility rather than for a service area in total, allows the creation of need determinations as a result of the need expressed by a single facility or group of hospitals under common ownership without regard for other potentially underutilized capacity in the service area.
- The SHCC approved a 2008 petition by Hospice of Wake County for an adjusted need determination for ten inpatient hospice beds in Wake County in the *2009 SMFP*. The SHCC acted to create additional capacity despite the existence of underutilized capacity in the county which prevented need from being generated under the standard methodology. The demand for hospice services was related, in part, due to an affiliation between Hospice of Wake County and Rex Hospital.
- In 2007, the SHCC approved a revised operating room methodology that excluded chronically underutilized licensed facilities, defined as facilities operating at less than 40 percent utilization for the past two fiscal years, from the planning inventory so that they would not suppress the need for additional capacity. As such, the SHCC revised a methodology to allow for the creation of additional need determinations, through whatever cause including physician affiliation, without regard for other underutilized capacity in the service area.