



August 7, 2024

**VIA ELECTRONIC MAIL ([DHSR.SMFP.Petitions-Comments@dhhs.nc.gov](mailto:DHSR.SMFP.Petitions-Comments@dhhs.nc.gov))**

State Health Coordinating Council  
2704 Mail Service Center  
Raleigh, North Carolina 27699-2704

**Re: Heart’N Soul Hospice of the Carolinas’ Summer Petition for the  
2025 State Medical Facilities Plan (“SMFP”)**

Dear State Health Coordinating Council Members and State Health Planning Staff:

Thank you for the opportunity to provide these comments in opposition to the 2024 Petition submitted by Heart’N Soul Hospice of the Carolinas (“Heart’N Soul”), which appears to be either requesting an additional hospice home care office in Mecklenburg County or a methodology change (“the 2024 Petition”). The Association for Home & Hospice Care of North Carolina (“AHHC”) and North Carolina Healthcare Association (“NCHA”) jointly present these comments.

AHHC is a nonprofit trade association representing providers of home health, hospice, palliative care, personal care, private duty nursing, and companion/sitter services; providers of behavioral healthcare services that care for and support individuals with intellectual and developmental disabilities; and Program for All-Inclusive Care for the Elderly (“PACE”) provider members, in addition to other healthcare affiliates. AHHC represents 98% of all hospices in North Carolina and welcomes new hospices into its membership.

On behalf of its hospice provider members and the patients they serve, NCHA and AHHC support the existing Hospice Home Care Offices methodology and therefore opposes the Petition for the following reasons.

NCHA unites hospitals, health systems and care providers for healthier communities. NCHA represents North Carolina’s individual and multi-hospital health systems — teaching, rural, small community, suburban, specialty, and continuing care facilities — providing acute care, rehabilitative, behavioral, psychiatric and veterans’ services. Our members provide a broad range of services — not just within their walls, but across the continuum and throughout their communities. We are committed to supporting and serving our members as they work

to improve care for their patients and their communities.

**1. Petitioner has failed to address any of the articulated bases for the State Health Coordinating Council (“SHCC”) denying its 2023 Petition.**

In 2023, this same Petitioner submitted a substantively similar petition seeking a hospice home care office in Mecklenburg County (“2023 Petition”). Alongside other stakeholders, AHHC opposed that petition. The Division of Health Service Regulation (“DHSR”) staff recommended denying the petition, stating the following: “[H]ospice facility data shows that existing hospice facilities in Mecklenburg County serve a greater percentage of minority individuals than the percentage served statewide.” 2023 Agency Report, at 3. The SHCC’s Long Term and Behavioral Health Committee accepted this recommendation, and the full SHCC denied the 2023 Petition. Undeterred, the Petitioner lobbied the Governor’s office to include a need determination for a hospice home care office in Mecklenburg County—contrary to the methodology and contrary to the SHCC’s thoughtful consideration of the 2023 Petition. Fortunately, the Governor did not agree to Petitioner’s requests.

In its 2024 Petition, the Petitioner has added new charts but has failed to address any of the concerns raised by stakeholders, DHSR’s staff, and the SHCC in denying the 2023 Petition. In fact, if anything, the 2024 Petition is internally inconsistent and less persuasive than the 2023 Petition that was denied. The Petitioner repeats many of the same unsupported claims and also makes arguments inconsistent with its 2023 Petition and statements made at the public hearings. Contrary to statements made in the 2024 Petition and its North Carolina Secretary of State website, Heart’N Soul does not provide any hospice in North Carolina and is not licensed to do so. Heart’N Soul has not demonstrated any change in demographics between 2023 and 2024 warranting a different outcome or justifying the need for an additional hospice agency in Mecklenburg County. Since Heart’N Soul failed to document a need for an additional hospice agency in Mecklenburg County in 2023, and provides no new or different data to support changing the outcome in 2024, AHHC and NCHA respectfully request that Heart’N Soul’s 2024 Petition similarly be denied.

**2. Health equity will not be improved by granting the Petition.** The Petition correctly identifies very real, complex, and national problems, the underutilization of hospice in general, and the additional struggles of lower hospice utilization in culturally diverse, underserved, or high-poverty communities. Unfortunately, throughout the Petition, Heart’N Soul conflates utilization with access.

The underutilization challenges are in no way unique to Charlotte, Mecklenburg County, or even North Carolina – these are national issues. Heart’N Soul claims to have some type of special insight into how to improve hospice utilization and references its experiences in other parts of the country. Despite its

experience in other states (all of which also have Certificate of Need requirements for hospice), Heart’N Soul provides no data to show that its presence in a community actually increases hospice utilization among minority groups. In fact, one of Heart’N Soul’s principals owned another hospice in Michigan before selling it to a private equity firm. See Jim Parker, *St. Croix Enters Michigan Market with CNS Hospice Deal*, Hospice News (July 1, 2021).

The Petition provides no explanation for how an additional hospice office in Mecklenburg County would indeed increase utilization among any patient population or how its model would be sustained in the event the Petition is granted and the Petitioner actually is awarded the CON.

To be clear, AHHC and NCHA unequivocally support continued efforts to improve health equity for all North Carolinians, including hospice patients. Since 2017, North Carolina licensed hospices have continued to engage in initiatives to increase hospice utilization, to think outside the box for patient comforts, to develop collaborative relationships with hospitals and providers, and to use creative staffing solutions to ensure culturally competent care among historically underserved populations, including African Americans. These initiatives are required as part of all hospice accreditations and Medicare certifications. See, e.g., 42 C.F.R. § 418.54(c)(7); ACHC Accreditation Standard CBPC2-7B; National Hospice & Palliative Care Organization, *Hospice Values Competency* (2013). These efforts have successfully reduced racial disparities in North Carolina and in Mecklenburg County specifically. The Petition ignores this reality.

**3. The 2024 Petition’s broader concerns about health equity are best addressed by implementation of the Governor’s recommended general policy, not abandonment of the hospice need determination methodology in a particular county.** As referenced above, when the Petitioner approached the Governor and requested that he overturn the SHCC’s reasoned determination in 2023, the Governor instead directed the SHCC to “develop, for inclusion in the 2025 State Medical Facilities Plan, a general policy to address how certificate of need (“CON”) applicants will provide culturally competent healthcare that integrates principles to increase health equity and reduce health disparities in underserved communities.”

Importantly, this new policy would not change the methodology for need determinations. It would require all CON applicants to address how to increase health equity and reduce health disparities in underserved communities for all services in the state. The policy that the Governor has directed is currently being considered by the SHCC in the form of GEN-5. The Petitioner makes no effort to explain why the Governor’s requested policy is not adequate or how its request would improve health equity or reduce health disparities. The development of this policy makes the 2024 Petition even less compelling than it was in 2023. The SHCC should promote the Governor’s direction and address health equity across the state and

across all services through the CON application process, not by granting exceptions to the standard methodology for a single provider.

**4. The 2024 Petition, if granted, would spell the end of the healthcare planning process in North Carolina.** Countless hours have gone into ensuring healthcare resources are appropriately utilized in North Carolina. This petition seeks an exception from the standard methodology but provides no explanation for why the methodology for hospice in Mecklenburg County is inconsistent with the health planning process's goals. In fact, the logic behind the 2024 Petition could just as easily be used in the 99 counties in North Carolina other than Mecklenburg County—most of which have more compelling data than Mecklenburg County. The 2024 Petition also makes no attempt to explain why its same logic could not be used to justify adjusted needs outside of hospice. The same disparities that the petition describes in hospice may also be present in other chapters of the SMFP. It is critical that the SHCC understands that granting this Petition would have cascading effects that extend well beyond Mecklenburg County and hospice.

**5. The 2024 Petition fails to articulate why the methodology should be abandoned and a hospice home care office added to Mecklenburg County.** The proposed 2025 SMFP clearly reflects a surplus of 1,322 patients in Mecklenburg County for 2026—the highest surplus of patients in any county in North Carolina and a 60% higher surplus than in Wake County—the largest county by population, confirming Mecklenburg County does not need an additional hospice home care office. Mecklenburg County currently has nine licensed hospice agencies, which are included in the patient origin link in the SMFP on page 264, showing a total of 25 hospice agencies currently serving the entire Mecklenburg community. 2025 Proposed SMFP, at 261, 274–75.

Heart'N Soul's 2024 Petition requests an additional need determination in Mecklenburg County without demonstrating that the methodology is flawed, that the existing methodology fails to provide sufficient access to hospice or addressing the existing surplus in Mecklenburg County. Specifically, the 2024 Petition does not explain how an additional hospice home care agency would fix the underutilization of hospice by the population of Mecklenburg County.

**6. The 2024 Petition lacks any hospice related information or data supporting the need for an additional hospice agency.** The 2024 Petition makes several claims that are unsupported and not linked to any hospice data or increasing hospice usage. Attached to the Petition was a copy of the five-year Mecklenburg County Community Violence Strategic Plan, which identified a high crime area of Mecklenburg referred to as the Crescent and the Wedge. The Crescent and Wedge is an area around center city Charlotte with a concentration of disadvantaged Black and Brown communities with high poverty levels and decreased educational attainment.

The Strategic Plan compares Charlotte, NC and this identified area to many American cities with violence divided by income and social class. The 2024 Petition, however, provides no connection between the neighborhood violence discussed in the Strategic Plan and the utilization of hospice. Further, the 2024 Petition provides no reasons why this high crime area in Charlotte, which the Strategic Plan acknowledges is like inner city areas throughout the country, gives rise to a need for another hospice office outside the standard methodology.

**7. The data presented shows hospice utilization in Mecklenburg County, in Charlotte, and in the Crescent and Wedge in particular.** Mecklenburg County is currently serviced by at least 25 licensed hospice home care agencies, all of which serve African Americans and have specific initiatives to increase access to hospice and promote health equity. Mecklenburg County is primarily served by VIA Health Partners (formerly known as Hospice & Palliative Care Charlotte Region) and Novant Health Hospice & Palliative Care. Mecklenburg County is also served by Gentiva, Carolina Caring, Liberty Home Care and Hospice, Hospice of Iredell County and Atrium Health Hospice and Palliative Care and others, who are providers in contiguous counties.

Most other large counties in North Carolina operate similarly to Mecklenburg County, where multiple hospice providers serve the county, but two or three hospice providers provide the bulk of the care. This arrangement supports patient choice and does not promote one provider over another, since the hospice methodology includes patient deaths in North Carolina rather than number of patients served by each provider.

Without any support, in its 2024 Petition on page 4, Heart’N Soul indicates that no agencies in Mecklenburg County are focused on this area in Charlotte. In contrast, the VIA data shows that 55% of its Mecklenburg County admissions are from the Crescent and that VIA’s African American admissions are increasing. Additionally, the hospice data shows that hospice penetration in Mecklenburg County in general and among racial and ethnic subgroups is at or above the state rate.

**8. The 2024 Petition seems to be requesting a CON, not an additional need determination.** The 2024 Petition does not appear to argue for an additional need determination in Mecklenburg County, but rather argues that it should be allowed to open a hospice agency in Mecklenburg County. Heart’N Soul seems to ignore that it must document and demonstrate a need for an additional office in Mecklenburg County if that is what it is asking for, rather than criticizing the current providers, the system, the statutes, and promoting itself as the only provider (though it provides no such services in North Carolina) that can provide culturally competent services in Mecklenburg County.

Even if a need determination were added to Mecklenburg County, any hospice agency could submit a Certificate of Need (“CON”) application and that CON review

would likely be competitive. One of the existing providers currently operating in North Carolina could be the winning applicant. Every applicant in a CON review must follow the same process.

If the SHCC were to ignore the need methodology, ignore the very large surplus of patients in Mecklenburg County, ignore the impact an unneeded agency would have on the financial health of the existing hospice providers and approve a need determination for an additional hospice agency in Mecklenburg County, there are no assurances that an existing North Carolina provider, rather than Petitioner would receive the CON anyway. In a competitive review, the CON Section will approve the best application submitted, based on a myriad of review criteria and comparative review factors, and cultural competency is just a part of that application review process. There is no review criteria or comparative factor that specifically compares company ownership.

**9. Petitioner's reliance on its minority ownership is unsupported and, ultimately, impractical.** The 2024 Petition claims that having minority ownership improves minority utilization, which is, again, just a claim unsupported by data showing increases in hospice utilization and would be prejudicial to nonprofits and any minority not represented in such a CON application. According to Health Pivots data, the 2023 death service ratio for Black residents in Mecklenburg County is at a seven-year high and is higher at 45.8% than that of residents of all race/ethnicity in 12 states. Comparatively, the North Carolina death service ratio is 41.1%. In Davidson County, TN, one of the states covered by Petitioner, the death service ratio for Black residents is 40.8%, below North Carolina's and Mecklenburg County's current percentage, again demonstrating that the hospice providers in Mecklenburg County are effectively impacting hospice utilization. Tellingly, the Petitioner provided no data to support its claim that its version of culturally competent care increased utilization of services. In fact, since the Petitioner has entered the Davidson County, Tennessee market, hospice utilization among Black patients has actually decreased in percentage terms, rather than increased.

In any event, the 2024 Petition does not and cannot show that an additional hospice home care office would lead to a minority-owned hospice. If the 2024 Petition were granted, anyone would be able to apply for the CON. In addition to Petitioner, for-profit companies (regardless of their ownership makeup) and nonprofit organizations (which have no owners) would be able to apply. DHSR lacks the legal authority to select or prefer an applicant based on its ownership. Even if DHSR could do so and selected Petitioner on this basis, it would have no way of ensuring that Petitioner continued to be owned by the current owners or anyone else. In fact, the experience in Michigan shows that Petitioner may sell to another company after obtaining a CON and establishing the hospice home care office.

**10. To the extent the 2024 Petition is seeking changes to the statewide methodology, it is untimely.** An additional reason to deny the Heart'N Soul

petition is that it is untimely and procedurally deficient. The Heart’N Soul 2024 Petition did not meet the March 6, 2024 petition deadline requirements listed in the 2024 SMFP, which permit petitioners to “submit a written petition requesting an adjustment to the need determination in the Proposed SMFP if they believe that special attributes of a service area or institution give rise to resource requirements that differ from those provided by the standard methodologies and policies.” 2024 SMFP, at 8.

The 2024 Petition cites changes needed to the methodology and to the CON approval process for adding new offices to existing providers. *See, e.g.*, Petition, at 3 (“2025 State Facilities Medical Plan (SMFP), step 4 presents statistical concerns for all providers.”); *id.* (“The requested change to the methodology is an attempt to align with the actual need being determined by the providers, patients and performance in Mecklenburg County.”) Heart’N Soul missed the deadline for requesting methodology changes since these requests were to be submitted by the March 6, 2024 deadline.

In any event, the standard need methodology ensures a sufficient number of hospices in all 100 North Carolina counties and supports hospices providing quality, cost-effective care for all patients.

**11. The Petition also appears to seek statutory changes that are beyond the SHCC’s purview.** The CON process for adding additional hospice offices within or outside the service area is a new institutional health service and requires a CON, just like applying for new need determination. N.C.G.S. § 131E-176 (16)o. The process for adding a hospice office is controlled by statute and essentially the same for new and existing providers. A request to change the CON statute would need to be presented to the legislature. Additionally, Petitioner’s comments at the public hearing did not appear to align with its written comments, since the comments at the public hearing seemed to suggest support for the existing methodology. The existing methodology for hospice providers is related to the number of deaths in North Carolina and is not based on the agency providing the service. Therefore, the needs of patients appropriately drive the hospice methodology.

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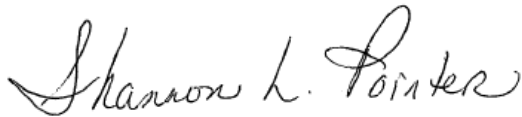
AHHC and NCHA support the current hospice methodology, including its application in Mecklenburg County. This methodology, as shown in the draft 2025 SMFP, demonstrates that all patients in Mecklenburg County have access to needed hospice services and, in fact, there exists a surplus of hospice providers.

AHHC and NCHA also support the 2024 Petition’s laudable goals of increasing health equity and decreasing health disparities. These are complex challenges that North Carolina hospices continue to work on through providing culturally competent care. AHHC and NCHA further supports the Governor’s directive to the SHCC to develop a statewide policy that addresses how CON applicants will “provide culturally competent healthcare that integrates principles to increase health equity

and reduce health disparities in underserved communities.”

For the reasons stated above, an additional hospice home care agency need determination in Mecklenburg County is not needed. On behalf of its members, and the patients and communities they serve, AHHC and NCHA respectfully request that this 2024 Petition be denied in the same way that a similar petition was denied in 2023. Thank you for your consideration.

Sincerely,



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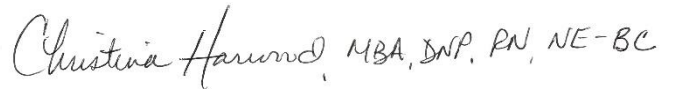


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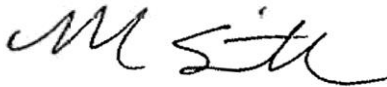
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