



Viewmont Surgery Center

Monday, August 31, 2015

VIA HAND DELIVERY

Martha Frisone
Assistant Section Chief
North Carolina Division of Health Service Regulation
Healthcare Planning and Certificate of Need Section
809 Ruggles Drive
Raleigh, North Carolina 27603



Re: Certificate of Need Application Filed by Caldwell Memorial Hospital and SCSV, LLC for Project I.D. No. E-11054-15

Dear Ms. Frisone:

On behalf of the Board of Directors of Viewmont Surgery Center (“Viewmont”), please find enclosed for filing written comments opposing the July 15, 2015 Certificate of Need application filed by Caldwell Memorial Hospital and SCSV, LLC to develop a new ambulatory surgical facility by relocating the three (3) existing operating rooms at the Hancock Surgery Center in Lenoir to Granite Falls where the new ambulatory surgical facility would have three (3) operating rooms and one (1) procedure room, Project I.D. No. E-011054-15.

Thank you for your consideration of these comments.

Sincerely,

Merritt J. Seshul, M.D.
Chairman of the Board, Viewmont
Surgery Center

Viewmont Surgery Center, LLC
Comments in Opposition to the Certificate of Need Application Submitted by Caldwell Memorial Hospital and SCSV, LLC for a New Ambulatory Surgical Facility in Granite Falls, Caldwell County, Project I.D. No. E-011054-15
August 31, 2015

Overview

Viewmont Surgery Center, LLC (“Viewmont”), an existing freestanding ambulatory surgery center (“ASC”) in Catawba County, opposes the July 15, 2015 Certificate of Need (“CON”) application filed by Caldwell Memorial Hospital (“CMH”) and SCSV, LLC (“SCSV”) (collectively, the “Applicants”) to develop a new freestanding ASC in Granite Falls, Caldwell County, North Carolina, Project I.D. No. E-011054-15 (the “Application”). This is the third application that the Applicants have submitted to develop a new ASC in Granite Falls. The first application submitted in March 2014 (Project I.D. No. E-10261-14) was denied by the Certificate of Need Section (the “Agency”) and under appeal when the Applicants submitted a second application on October 2014 to develop virtually the same project proposed in the first application (Project I.D. No. E-010358-14). The Applicants withdrew the second application while the first application was under appeal, and subsequently dismissed that appeal.

On July 15, 2015, the Applicants filed the current Application to develop virtually the same project reflected in the Applicants’ first two applications. Specifically, in this Application, the Applicants propose to develop the new ASC, Caldwell Surgery Center (“CSC”), by relocating three (3) existing operating rooms from CMH’s hospital based surgery center, Hancock Surgery Center (“HSC”), in Lenoir, North Carolina, to CSC in Granite Falls, North Carolina – the southernmost portion of Caldwell County.

As discussed more fully below, this Application is yet another attempt by the Applicants to gain market share at the expense of currently existing providers by providing unnecessarily

duplicative services of those already being provided in the area. As demonstrated by the Application, CSC does not increase the access of Caldwell County residents to services or bring new services to Caldwell County residents that are not already being provided by existing providers. Instead, the Application proposes to close three (3) dedicated underutilized operating rooms at HSC, a freestanding outpatient ASC operated by CMH located only 0.6 miles from Lenoir in the center of Caldwell County, and relocate those operating rooms to CSC in the southernmost portion of Caldwell County only minutes from several existing outpatient surgery providers located in counties contiguous to Caldwell. Like the first two applications, the current Application proposes a project that is a costly and unnecessary duplication of services already being provided by the existing outpatient surgery providers in close proximity to the proposed CSC.

For all of the reasons set forth in these written comments, the Agency should deny the Application.

Criterion (1): Consistency with the State Medical Facilities Plan and Policy GEN-4

This project does not directly conflict with a need determination in the SMFP since it does not propose to add operating rooms to Caldwell County. However, as discussed more fully below, CSC represents an unnecessary duplication of existing services because it will be located only minutes away from five (5) existing ambulatory surgical providers in counties adjacent to Caldwell, several of which are already underutilized. This project fails to meet many of the review criteria and as a result is not conforming with Criterion (1).

Criterion (3): Populations to be Served and Need for the Project

The Application fails to adequately demonstrate the population to be served and the need for the proposed project. On page 41 of the Application, the Applicants claim that the proposed project

is needed to enhance patient access to surgical services in Caldwell County by attracting and retaining surgeons willing to practice in Caldwell County.

Population to be Served

On page 126 of the Application, the Applicants identify Caldwell County as the primary service area and project that 87.48% of patients will originate from Caldwell County. HSC, the current site of the operating rooms proposed to be relocated, is centrally located in Lenoir, approximately 0.6 miles from CMH, making HSC accessible from all parts of Caldwell County. The proposed location of CSC is 13.68 miles away from CMH and 13.65 miles away from HSC. Relocating CSC such a significant distance from CMH and HSC will drastically change the patient draw to CSC.

As demonstrated from pages 122 through 126 of the Application, the Applicants' define the secondary service area as Burke, Catawba, Alexander, Wilkes, Watauga, Avery, Ashe, Lincoln, McDowell, and a few other North Carolina counties. The Application states that 3.23% of patients will originate from Burke County while only 2.78% of patients will originate from Catawba County. The proposed site for CSC in Granite Falls is more accessible to the southern part of Caldwell County and is at the intersection of the Caldwell, Catawba, and Burke County lines. This southern area of Caldwell County has five (5) existing providers of outpatient surgery in bordering Burke and Catawba Counties, including one freestanding ASC, Viewmont, within minutes of the proposed CSC. Given the location of the proposed project, it is far more realistic and reasonable to assume that a greater percentage of patients will come from these adjacent counties instead of the 3.23% and the 2.78% that the Applicants project will come from Burke and Catawba Counties, respectively.

In addition, the physicians that the Applicants state will use the facility include numerous physicians who are currently aligned with hospitals and ASCs in neighboring counties and who have offices in neighboring counties. At least five (5) of the eighteen (18) physicians identified practice in Hickory in Catawba County. Thus, it is more than likely that these physicians will draw patients from outside of Caldwell County.

Furthermore, while the proposed location may increase access for residents in the southern area of Caldwell County and for residents of Burke and Catawba Counties, it decreases access to the underserved central and northern areas of Caldwell County and will remove the option of accessing a freestanding ASC in the central part of Caldwell county.

The Application does not adequately define the service area, patient origin, or population to be served, and as a result its patient origin projections are unreasonable. For these reasons, the Application should be found non-conforming with Criterion (3).

Need for the Project

The Application states on page 70 that “Caldwell County residents have no access to a freestanding ASC in Caldwell County. A significant percentage of County residents leave Caldwell County for ambulatory surgery; some residents delay medical and surgical care. See Exhibit 54.” The aforementioned statement implies that that a significant percentage of Caldwell County residents leave Caldwell County for ambulatory surgery or delay medical and surgical care because they have no access to a freestanding ASC in Caldwell County. This is misleading. Patients in Caldwell County do have access to a freestanding ambulatory surgery center within their home county – HSC in the central portion of the county. Although HSC operates under CMH’s license, it is a freestanding ambulatory surgery center that is not on the hospital campus. In addition, Exhibit 54, a letter from Caldwell Memorial’s Medical Director of Emergency Care

states that patients are delaying care due to costs; the letter does not mention accessibility or location as a factor in the delay of care.

Despite this fact, the Application proposes to remedy the outmigration of Caldwell County ambulatory surgery patients to other counties by opening a new ASC in the southernmost portion of the county close to existing providers of outpatient ambulatory surgery and within five (5) minutes of Viewmont. On page 72 of the Application, the Applicants' state that "[CSC] is expected to reverse the historical trend of high outmigration for ambulatory surgery patients." As shown in the Applicants' tables on page 72 of the application, CMH captured 48.93% of all Caldwell County residents having outpatient surgical procedures performed in hospitals from 2011 through 2014. Of the remaining ambulatory cases performed in hospitals, 8,195, or 76.67%, were performed at the four hospitals in neighboring Burke and Catawba counties just minutes from the proposed site of Caldwell Surgery Center.

According to the tables on page 72 of the Application, of the 7,294 Caldwell County residents who traveled outside of the County for outpatient surgery in an ASC setting in from 2011 through 2014, 5,411 or 74.2% of these patients sought care at an eye surgery center. Because CSC does not plan to offer eye surgery, these patients are not even relevant to the discussion. The only relevant ASC on the Applicants' list that serves a significant portion of Caldwell County ambulatory surgery patients is Viewmont, located only 5.2 miles and 10 minutes from the proposed CSC. It is clear that the intent of this project is not to provide increased access to a freestanding surgery center but rather to gain market share from existing providers in Burke and Catawba Counties.

For the Applicants' utilization projections to be achieved, it will have to take a significant share of patients from Burke and Catawba County providers, including Viewmont. The Applicants

repeatedly state and attempt to demonstrate that they will achieve their projections from redirecting the outmigration of Caldwell County patients seeking outpatient surgery at ASCs and hospitals outside of the County. However, it is also likely that the Applicants will take Burke and Catawba County residents from these same facilities. The Applicants' intention to redirect these patients is evident from the hospital and facility affiliations of the supporting physicians and by the Applicants' own statements. If CSC meets the utilization suggested by its letters of support, it will do so at the expense of existing underutilized providers such as Viewmont. For the foregoing reasons, the Applicants have not demonstrated a need for the project and the Application should be found non-conforming with Criterion (3).

Criterion (3a): The needs of the population will be adequately met by the proposed relocation

The Application did not consider whether the needs of the population to be served would be adequately met by the development of CSC in Granite Falls. The Applicants repeatedly state that the majority (51%) of Caldwell County residents live in the southern portion of Caldwell County. However, the southern portion of Caldwell County already has access to five (5) outpatient surgery providers in Catawba and Burke Counties within close proximity of the proposed CSC. By closing HSC, the only freestanding ASC central to Caldwell County, the Applicants will remove access to a freestanding ASC by the residents of central and northern Caldwell County, and force that half (49%) of Caldwell County residents to travel a significant distance to obtain services at a freestanding ASC that are already being provided by existing providers within minutes of Caldwell County.

In addition, should complications arise during outpatient surgery at CSC that require hospitalization or emergency care, one assumes that patients would be transferred to CMH given the affiliation between the two entities. However, if the project were approved as proposed,

patients at CSC would require an approximate 14 mile transport to CMH for such care rather than a one-half mile transport from HSC. Because the proposed project decreases access to health services for 49% of the residents in the primary service area the project sets out to serve and because the Applicants failed to consider the needs of the community in choosing a location that would allow for efficient transport to CMH, the Applicants should be found non-conforming with Criterion (3a).

Criterion (4): Least Costly or Most Effective Alternative

On page 43 of the Application, the Applicants contend that the proposed location of CSC is the “most effective option to provide balanced and improved access” because 51% of Caldwell County residents live in the southeastern portion of Caldwell County. While 51% of Caldwell County residents live in the southeastern portion of Caldwell County, the other half of Caldwell County residents, 49%, live in the central and northern portions of Caldwell County. Although the Applicants explain why converting the licensure of HSC or developing a smaller project are not feasible options in pages 128-132 of the Application, the Applicants do not address the option of developing a new freestanding, separately licensed ASC in the central or northern part of the county to serve the remaining 49% of the population of Caldwell County that is not currently close to existing providers of outpatient ambulatory surgery in counties contiguous to Caldwell.

If Caldwell County needs a freestanding, non-hospital licensed ASC as the Applicants contend, then it is a more logical and reasonable alternative to locate CSC in a central part of the county away from existing providers of ambulatory surgery instead of relocating Caldwell County’s only freestanding operating rooms to the southernmost portion of the county that already has access to outpatient ambulatory surgery providers. Relocating the operating rooms

to the southern part of the county will not best serve Caldwell County residents since many residents in the central and northern part of the county must travel to obtain services at the proposed ASC. The proposed ASC will also significantly impact the existing providers in the area. CSC does not represent the most effective alternative because the Applicants never explore the option of building a new ASC in Lenoir or central Caldwell County instead of Granite Falls. For these reasons, the Application should be found non-conforming with Criterion (4).

Criterion (6): Unnecessary Duplication

The development of CSC is an unnecessary duplication of existing services at HSC within Caldwell County, and of existing ASCs and hospital-based surgical providers in counties contiguous to Caldwell, including Burke and Catawba Counties. Put simply, the Applicants propose to add outpatient operating rooms to an area of Caldwell County that already has profuse access to existing providers of outpatient surgery.

Rather than discuss unnecessary duplication of existing services in the context of the multiple outpatient ambulatory surgery providers located in close proximity to the proposed CSC, the Applicants focus their attention on Viewmont as “the only multispecialty ambulatory surgical facility located in a county contiguous to Caldwell County” in an attempt to demonstrate that CSC will not be unnecessarily duplicative of services already being provided. On page 71 of the Application, the Applicants contend that Viewmont is not adequate to meet the needs of patients and surgeons. To support this contention, the Applicants criticize Viewmont while comparing it to CSC in the following ways: (1) lack of access to low income persons and indigent patients; (2) lack of physician support; and (3) lack of surgical specialties.

(1) Low income persons/indigent patients

With respect to access for low income persons and indigent patients, the Applicants specifically state that “[Viewmont] has no policies or commitment to enhance access for low income persons and indigent patients.” The Applicants base this assertion on information contained on Viewmont’s website that payment of co-pays and deductibles is due on the day of surgery, and that all fees will be due in advance for patients without insurance coverage. In addition, the Applicants note that no charity care policy is provided on Viewmont’s website. (Application, pp. 71, 109).

The Applicants’ aforementioned contentions concerning Viewmont’s lack of policies or commitment to enhancing access for low income persons and indigent patients are incorrect. While Viewmont’s website does state that payment of co-pays and deductibles is due on the day of surgery, and for patients without insurance coverage, all fees will be due in advance, Viewmont has payment plan policies in place for low income and/or indigent patients, and those payment plans are offered to such patients. In addition, as the Applicants’ could have deduced from Viewmont’s License Renewal Application, a large percentage of Viewmont’s business consists of Medicaid patients (approximately 23% in 2014). Furthermore, while Viewmont does not advertise its charity care policy on its website, it does have a formal, written charity care policy.

(2) Physician Support

The Applicants next contend on page 72 of the Application that Jason Norcross, M.D., an orthopedist who provided a letter of support for the proposed project, states that Viewmont “has not been an attractive option for him to perform orthopaedic cases because he does not have the

opportunity to be a shareholder, the operating schedule is too full to accommodate his case load and the operating rooms are not adequately equipped or large enough.” The letter of support that Dr. Norcross provided is a “form” letter that Dr. Norcross “adapted” to include his historical surgery case volumes, his surgery case projections for CSC, and his historical patient origin data for his ambulatory surgical patients. Notably, each of the letters of support in Exhibit 10 (with the exception of the letter regarding Dr. Hershman at page 180) are form letters that were “adapted” by the respective physicians executing those letters to include historical surgery case volumes, surgery case projections for CSC, and historical patient origin data for their respective ambulatory surgical patients.

In his letter dated May 20, 2015, Dr. Norcross states that in the first quarter of 2015, he performed unicompartmental and total knee arthroplasties (i.e., knee replacements), total hip arthroplasties (i.e., hip replacements), and knee arthroscopies “in a hospital setting [because he] does not have privileges at an ambulatory surgery center in Catawba County.” Dr. Norcross’ letter goes on to say that Viewmont has not been an attractive option for him for the reasons the Applicants stated on page 72 of the Application: (a) he does not have the opportunity to be a shareholder at Viewmont; (b) Viewmont’s operating schedule is too full to accommodate his case load; and (c) Viewmont’s operating rooms are not adequately equipped or large enough

(a) Partnership Status

To date, Dr. Norcross has not had privileges at Viewmont because he has not applied for privileges. Dr. Norcross would first need to have privileges to conduct surgery at Viewmont before he would be considered for partnership. That being said, on August 26, 2015, Dr. Norcross requested an application to obtain privileges at Viewmont. It is anticipated by

Viewmont that Dr. Norcross' application for privileges, once submitted to Viewmont, will be approved since two of Dr. Norcross' partners, Drs. Geidman and Krenzel, are already partners in Viewmont. In addition, there is no reason that Dr. Norcross would be denied an opportunity to become or be precluded from becoming a partner within Viewmont once he has obtained privileges. Should Dr. Norcross obtain privileges with Viewmont and ultimately decide to become a partner with Viewmont, CSC will lose Dr. Norcross' 150 projected cases, 175 projected cases, and 200 projected cases in the first, second, and third years of the proposed project, respectively. The Application proposes CSC to have eighteen (18) physicians with projected surgical cases ranging from 50 cases to 360 cases as documented on page 86 of the Application. Given that Dr. Norcross is one of twelve (12) physicians who has a projected case load of 150 cases in year 1 of the project, it is likely that the loss of Dr. Norcross' projected volumes will have an adverse effect on the Applicants' achieving their projections.

(b) Operating Schedule

Without knowing Dr. Norcross' actual volume of outpatient surgical procedures at the two hospitals at which he currently has privileges, Viewmont cannot definitively state whether or not its operating schedule is too full to accommodate Dr. Norcross' caseload. However, Viewmont's utilization percentages are low so Viewmont likely has the availability and capacity to accommodate Dr. Norcross' caseload.

(c) Viewmont's Operating Rooms

As discussed above, Dr. Norcross performs procedures such as total knee replacements and total hip replacements. These procedures are the identical procedures that Dr. Norcross'

partners, Drs. Geidman and Krenzel, and other physicians on staff at Viewmont, currently perform without any space or equipment constraints in Viewmont's operating rooms.

(3) Surgical Specialties

The Applicants point out that Viewmont's medical staff does not include the following specialties: gastroenterologist, general surgeon, gynecologist, obstetrician, thoracic surgeon, urologist, urologist/cystoscopy, and vascular surgeon. While this may be true, the Applicants ignore the fact that these service lines are currently being offered by existing providers in close proximity to the proposed CSC in counties adjacent to Caldwell, including but not limited to: Catawba Valley Medical Center and Frye Regional Medical Center in Catawba County, Grace Hospital and Valdese General Hospital in Burke County, and Wilkes Regional Medical Center in Wilkes County. In addition, Gastroenterology Associates, P.A. located in Hickory, Catawba County, North Carolina, is the largest gastroenterology group in a five (5) county area that has its own single-specialty ambulatory surgery center.

On page 57 of the Application, the Applicants note that no freestanding ASCs in Catawba County, among other counties in close proximity to Caldwell, currently provide spine surgery. Although Viewmont does not currently provide spine surgery, it has the ability to begin performing spine surgery within a very short period of time and well before the proposed CSC would be developed.

Finally, CSC is an unnecessary duplication of the services being provided by Viewmont. While CMH and HSC are each 18.5 miles from Viewmont, CSC will be located 5.2 miles and 10 minutes from Viewmont. Currently, Dr. Patrick O'Brien, one of the physicians with privileges at Viewmont who is currently providing orthopedic services at Viewmont, is identified by the

Applicants as a physician who intends to support CSC if developed. Dr. O'Brien has not communicated his support of the proposed CSC to Viewmont. In addition, the proposed CSC is unnecessarily duplicative of the physicians who already provide ambulatory surgical services at facilities in Hickory, but who the Applicants have identified as supporting CSC.

For all of the above reasons, the proposed CSC unnecessarily duplicates existing services already being provided, and as a result, the Application should be found non-conforming with Criterion (6).

Criterion (13): Meeting the Needs of the Underserved

The proposed CSC fails to meet the needs of the underserved because it removes access to the only freestanding ASC currently available to the underserved northern and central areas of Caldwell County. By moving HSC's operating rooms to the southern part of Caldwell County which already has access to an ASC and a number of hospital-based or affiliated outpatient surgery options, the Applicants take away access to a freestanding center from those who live in the central and northern part of the County.

In addition, on pages 152-153 of the Application, the Applicants provide the payor percentages for all categories of payors for CMH ambulatory surgery for the complete year ending September 30, 2014. On page 154 of the Application, the Applicants provide the same chart for the CSC projected payor mix in its first three years of operation. The two charts are identical. Therefore, CSC will not increase financial access to outpatient surgery since the Applicants demonstrate that CSC will have the identical payor mix to the hospital for outpatient surgery services. It is unreasonable to assume that the proposed ASC will serve exactly the same mix of patients that is currently served by the hospital – especially when the projected case mix

will be generated from the physicians supporting the project, several of whom currently practice in counties outside of Caldwell County.

Conclusion

For the foregoing reasons, the proposed project does not conform to multiple review criteria and should be denied. Viewmont respectfully requests that a public hearing be held so the Agency has the opportunity to hear additional comments regarding the proposed Caldwell Surgery Center.