

**Division of Health Planning and
Resource Development
February 2002**

CON Review: ASC-NIS-1201-088

North Mississippi Ambulatory Surgery Center, LLC,

Establishment of a Freestanding Ambulatory Surgery Facility/Services

Capital Expenditure: \$2,954,917

Location: Horn Lake, Mississippi

STAFF ANALYSIS

I. PROJECT SUMMARY

A. Applicant Information

North Mississippi Ambulatory Surgery Center, LLC ("NMASC") is a closely held, member managed, limited liability company having two members at the time of application: Millennium of Mississippi, LLC and Nicholas Economides, M.D. There is presently no governing board. Dr. Economides will be the Manager of the LLC. If awarded the requested CON, a number of physicians who have executed affidavits supporting this Application will also be members of NMASC. NMASC presently holds no accreditations, however, it will participate in the Medicaid and Medicare programs if CON is granted.

B. Project Description

North Mississippi Ambulatory Surgery Center proposes to own and operate an ambulatory surgery facility containing two (2) operating rooms and one (1) procedure room, and will use the proceeds of such operations, net of expenses and capital expenditures, to make distributions to its members. The Surgery Center will be operated as a Medicare approved, state licensed, accredited, freestanding ambulatory surgery center, and will occupy approximately 8,000 square feet. The Surgery Center will lease space in a professional office building to be constructed on property located in Horn Lake, Mississippi.

The Surgery Center will be a multi-specialty surgery center and will provide at a minimum, orthopedic surgery, urological surgery, oncological surgery, otolaryngological surgery, podiatric surgery, cardiology, general surgery, plastic surgery, neurological surgery, gynecological surgery, pain management and ophthalmological services.

NMASC has a transfer agreement with Delta Medical Center, Memphis, Tennessee for services not covered by NMASC.

The facility will occupy a 3.75 acre tract of property located in Horn Lake, Mississippi, particularly described as being bounded on the south by Interstate Boulevard, on the west by Horn Lake Creek and on the east by Windchase Drive. The subject property

is approximately 312 feet wide at the north boundary and the approximate length of the west line is 460 feet.

The project will require 14 FTE personnel at an estimated annual cost of \$790,619.

The total proposed capital expenditure is \$2,954,917 and of that amount, approximately 50 percent is associated with fixed equipment; 32 percent with capital improvements, and the remaining 18 percent is associated with fees, contingency reserve, and other costs such as start-up inventory, facilities expense, insurance, office expenses, salaries, and marketing expenses.

The Division of Health Facilities Licensure and Certification has approved the site for construction of the ambulatory surgery facility. The applicant anticipates that the capital expenditure will be obligated as soon as possible after CON approval and that the facility will begin providing services as early as January, 2003.

II. TYPE OF REVIEW REQUIRED

This project, which proposes the establishment of ambulatory surgery services, is reviewed in accordance with Section 41-7-191, subparagraphs (1)(a), and (d)(xi), Mississippi Code of 1972 Annotated, as amended, and duly adopted rules, procedures, plans, criteria and standards of the Mississippi State Department of Health.

In accordance with Section 41-7-197 (2) of the Mississippi Code 1972 Annotated, as amended, any person may request a public hearing on this project within 20 days of publication of the staff analysis. The opportunity to request a hearing expires on March 7, 2002.

III. CONFORMANCE WITH THE STATE HEALTH PLAN AND OTHER ADOPTED CRITERIA AND STANDARDS

A. *State Health Plan (SHP)*

The *FY 2002 State Health Plan* addresses policy statements, criteria and standards which an applicant is required to meet before receiving CON authority to establish an ambulatory surgery facility. The application submitted by North Mississippi Ambulatory Surgery Center, LLC, for the establishment of a freestanding ambulatory surgery facility and the offering of ambulatory surgery services is not in substantial compliance with said criteria and standards.

SHP Criterion 1 - Need

The applicant submits that there is no other freestanding ambulatory surgery facility in Horn Lake, Mississippi, DeSoto County, or anywhere else in Ambulatory Surgery Planning Area (ASPA) 2. As a result, patients in North Mississippi requiring outpatient surgery services must either travel away from home or seek those services in a hospital environment. NMACS has projected the necessary minimum usage by acquiring certification from area physicians concerning the number of procedures to be referred to/performed in the facility by those physicians. Each referring physician has executed a sworn affidavit stating that he/she will refer/perform some number of procedures at NMACS, should this application be granted. Each referring physician bases his or her projection on the number of actual Ambulatory Surgical procedures he or she has performed in recent months. The total number of procedures committed by these physicians is 2,348 in year one (1,174 per room) and 2,828 in years two and three (1,414 per room).

Note: In order to show Need, an applicant shall demonstrate that the proposed ambulatory surgery facility shall perform a minimum average of 800 surgeries per operating room. Two of the physicians referring to North Mississippi Ambulatory Surgery Center also propose to make similar or a greater number of referrals to Desoto Ambulatory Surgery Center, currently pending before the Department. In addition, one of the physicians referring patients to North Mississippi Ambulatory Surgery Center rely upon the same data used by another physician to project the number of patients he will refer to Desoto Ambulatory Surgery Center. The applicant also relies upon procedures referred by Dr. Phillip Green, anesthesiologist, (which by applicants' own admission do not qualify as surgical procedures), and procedures referred by podiatrists to project the number of surgeries the facility will perform. According to the FY 2002 State Health Plan, "ambulatory surgery shall be performed only by physicians or dentists licensed to practice in the State of Mississippi." Also, according to the Board of Medical Licensure, a podiatrist is not considered a licensed physician in the State of Mississippi and are not permitted to perform surgeries in an ambulatory surgical facility. Therefore, in discounting the referrals made by podiatrists, and the anesthesiologists, as well as referrals by physicians already committed to another applicant, staff estimates that the applicant could possibly perform 976 surgeries the first year, resulting in an average of 488 surgeries per suite. Therefore, the applicant is not in substantial compliance with this criterion.

SHP Criterion 2 - Population Base

The proposed ambulatory surgery facility will be located in Horn Lake, DeSoto County, Mississippi. The applicant submits that DeSoto County is nationally recognized as one of the fastest growing counties in the country. The projected population of DeSoto County for year 2005 is 116,788. In addition, the proposed center is within 30 miles of the greater Memphis metropolitan area. The applicant submits that the population immediately surrounding the proposed center's location is well in excess of 60,000.

SHP Criterion 3 - Utilization of Existing Facilities

The applicant submits that ASPA 2 had 43 operating rooms in which 28,925 surgeries were performed in the most recent year for which the Department has data. Thus, there were an average of 672 surgeries performed per operating room.

According to the FY 2001 State Health Plan, in 1999 ASPA 2 had a total of 44 operating rooms/suites and performed a total of 28,471 procedures, resulting in approximately 647 procedures per operating room/suite for ASPA 2 in FY 1999 (See Table below).

	Total Surgeries	Total ORs	Average Number of Surgeries/OR
2000	28,925	43	672
1999	28,471	44	647
1998	27,442	43	638

Note: ASPA 2 has two outstanding CON's for the establishment of a Freestanding Ambulatory Surgery Facility. Delta Regional Outpatient Center, LLC, Washington County, Greenville, has a CON to establish a freestanding ASF by relocating two of seven operating suites from the hospital and adding a third suite at the freestanding facility, for a total of one additional suite. Also Baptist Memorial Hospital-DeSoto received CON approval on October 25, 2001, to establish a Freestanding ASF on its campus, utilizing two additional operating suites. Outstanding CON's bring the total of existing and proposed surgical suites in ASPA 2 to 46 suites. Each applicant for outstanding CON's documented that it will perform a minimum of 800 procedures in the proposed suites, as required by the need criterion. Therefore, assuming that the applicants will perform 800 procedures in each of the three outstanding suites, or 2,400 procedures, staff estimates that the total number of procedures that can be performed in the existing and outstanding surgical suites is 680 procedures per suite (28,925 + 2,400 divided by 46 surgical suites). In addition, Desoto Ambulatory Surgery Center, Southaven, currently has an application pending before the department for the establishment of a freestanding ambulatory surgery facility in DeSoto County.

SHP Criterion 4 - Range of Services

The applicant affirms that the NMASC will provide a full range of surgical services in general surgery. It will also provide surgical services in the following specialty areas, among others: Orthopedic surgery, urological surgery, oncological surgery, otolaryngological surgery, pediatric surgery, cardiology, general surgery, plastic surgery, neurological surgery, pain management and ophthalmological services.

SHP Criterion 5 - Economic Viability

The applicant projects net income of \$24,165 in year one, \$147,415 in year two, and \$169,204 in year three. The application contained a feasibility study which indicated that the project will be economically viable.

Note: The applicant relied on referrals of 2,348 the first year, and 2,828 the second and third years. However, as stated in SHP Criterion 1 above, many of the referrals are by non-physicians, and/or are considered non-surgical procedures. Staff estimates that the applicant cannot meet the need criterion of 800 procedures per operating suite, per year. Therefore, the economic viability of this project is questionable.

SHP Criterion 6 - Physician Support

The application contains 17 affidavits from physicians in the area in support of the project.

SHP Criterion 7 - Staff Residency

The applicant affirms that the medical staff of the proposed facility will reside within a 25-mile radius of the facility.

SHP Criterion 8 - Hospital-Support Agreement

The applicant states that NMASC will enter into a formal transfer agreement with a nearby hospital for the provision of all necessary and required services beyond the scope of its program. In addition, the applicant will formalize a procedure for providing its patients with all necessary follow-up services. The application contains a letter from Delta Medical Center, Memphis, Tennessee, indicating an intent to form a transfer agreement with the applicant.

B. General Review (GR) Criteria

Chapter 8 of the Mississippi Certificate of Need Review Manual, revised 2000, addresses general criteria by which all CON applications are reviewed.

GR Criterion 3 - Less Costly/More Effective Alternative

Applicant submits that it considered locating the proposed facility in other areas of DeSoto County. It also considered single specialty facilities as opposed to a multi-specialty facility. NMASC also considered building its own building instead of leasing space. All of these options were rejected by the applicant because NMASC concluded that locating in Horn Lake was best, and that patients in that area need and should have available to them a multi-specialty surgery center. The applicant believes that leasing of space for the facility would be more economical, and would simplify matters in the future with regard to ownership of the facility. Furthermore, applicant submits that the Professional Office Building in which NMASC intends to lease space will also house numerous physicians' offices and will thus create a full service medical mall which will enhance the provision of convenient service to citizens of the Horn Lake area.

GR Criterion 4 - Economic Viability

The applicant relied on referrals of 2,348 the first year, and 2,828 the second and third years to project that the project is economically feasible. However, as stated in SHP Criterion 1 above, many of the referrals are by non-physicians, and/or are considered non-surgical procedures. Staff contends that the applicant cannot meet the need criterion of 800 procedures per operating suite, per year. Therefore, the economic viability of this project is questionable.

GR Criterion 5 - Need for Project

NMASC submits that it will serve all residents of the area, including low income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups.

The applicant submits that the five surgery rooms at Baptist-Desoto, the only facility in DeSoto County, performed 4,800 surgeries in year 2000, more than 960 surgeries per room. According to the *State Health Plan* the optimum utilization of a single surgery room is 600 procedures per year.

NMASC states that the final objective for this project is to provide the citizens of Horn Lake, Desoto County, and neighboring communities with timely and convenient ambulatory surgery services. Applicant submits that failure to grant NMASC a Certificate of Need to establish the proposed ambulatory surgery facility in Horn Lake

will result in continued delays and continued travel out of the State for North Mississippi residents in need of those services.

As stated earlier, ASPA 2 has two outstanding CON's for the establishment of a freestanding ambulatory surgery center, utilizing three additional suites. One of the proposed facilities will be located in DeSoto County where the applicant proposes to locate. Baptist DeSoto, the only facility in DeSoto County offering ambulatory surgery services, experienced a decline in the number of surgeries performed during the period from 2000 to 2001, from 4,812 to 4,758. The facility performed an average of 679 surgeries per suite in 2001 compared to 960 per suite in 2000. Staff contends that the need for ambulatory surgery in DeSoto County is already being met, or can be met by the already CON approved provider. The instant project will thus create an unnecessary duplication of services in the area.

GR Criterion 6 - Accessibility

The applicant states that all residents of the patient service area, including Medicaid recipients, charity/medically indigent patients, racial and ethnic minorities, women, handicapped persons, and the elderly will have access to the services of the proposed Ambulatory Surgery Center. The applicant indicates that approximately one percent of its patients will be medically indigent.

GR Criterion 7 - Information Requirement

NMASC affirms in its application that it will record and maintain the required information and will make it available to the Mississippi State Department of Health within 15 business days of request.

GR Criterion 8 - Relationship to Existing Health Care System

ASPA 2 currently has 46 operating or CON approved surgery suites located at 11 hospitals in the service area. Baptist Memorial Hospital-DeSoto is the only facility located within DeSoto County, and for Fiscal Year 2000, Baptist-DeSoto performed 4,812 procedures in its five operating suites, for a total of 962 procedures per suite. Updated projections indicate that Baptist-DeSoto performed 4,758 surgeries in 2001 utilizing 7 suites, for a total of 679.7 surgeries per operating suite.

The service area also has two outstanding CON's for the establishment of freestanding ambulatory surgery facilities - Delta Regional Outpatient Surgery Center, LLC, Greenville, (1 additional suite), and Baptist Memorial Hospital-DeSoto, Southaven (2 additional suites). In consideration of the outstanding CON's, and based on the required projection of 800 procedures for each proposed suite, staff estimates the present utilization of existing and proposed suites to be 681 procedures per suite (28,925 + 2,400/46 suites). In addition, an application is currently pending before the Department for one additional freestanding ambulatory surgery facility in

DeSoto County (Desoto Ambulatory Surgery Center). Some of the physicians referring to the instant application also propose to refer similar procedures to the Desoto Ambulatory Surgery Center.

Note: Baptist Memorial Hospital-Desoto submitted a letter of opposition to the project, addressing concerns with various projections by the applicant, particularly with the applicant's ability to meet the minimum 800 procedures per operating room per year. Baptist also included an affidavit of Eugenia O. Miler, RN, which states that many procedures performed by podiatrists are typically performed in an office setting.

GR Criterion 9 - Availability of Resource

Applicant submits that NMASC will prefer residents of the Horn Lake and DeSoto County area. NMASC will enter into a management contract with Dr. Nicholas Economides for management of the facility. Dr. Economides is experienced in providing management services specifically to Ambulatory Surgery facilities.

GR Criterion 16 - Quality of Care

The applicant is not a current provider of services in Mississippi.

IV. FINANCIAL FEASIBILITY

A. Capital Expenditure Summary

Capital Improvements	\$ 960,000
Total Fixed Equipment	1,490,400
Fees (Architectural, Consultant, etc.)	263,583
Contingency Reserve	34,267
Other: (Pre-opening, supplies, salaries, equipment deposit & other misc.)	<u>206,667</u>
Total Capital Expenditure	\$2,954,917

The applicant proposes to lease approximately 8,000 square feet of space from North Mississippi POB, LLC to house the freestanding ambulatory surgery facility.

B. Method of Financing

The project will be financed from Equity contributions of \$696,517, and a bank loan (for capital improvements and equipment) of \$2,258,400. The application contained a letter from BancorpSouth concerning its willingness to finance the project for 180 months at a rate based upon BXS Prime and agreed upon by both parties.

C. Effect on Operating Cost

The applicant projects the following expenses, utilization, and results from operation for the first three years following completion of the proposed project:

<u>Expenses</u>	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
Personnel Costs	\$ 825,279	\$ 989,248	\$1,067,522
Clinical Expenses	547,352	647,914	694,638
Facilities Costs	296,000	298,880	301,846
Administrative Expenses	227,373	255,536	267,338
Other Expenses	<u>410,371</u>	<u>401,768</u>	<u>391,986</u>
Total Expenses	<u>\$2,306,376</u>	<u>\$2,593,345</u>	<u>\$2,723,331</u>
Gross Patient Revenue	\$4,481,810	\$5,296,155	\$5,616,572
Deductions (-)	<u>2,151,269</u>	<u>2,555,395</u>	<u>2,724,038</u>
Net Patient Revenue	\$2,330,541	\$2,740,760	\$2,892,535
Net Income	\$ 24,165	\$ 147,415	\$ 169,204
Avg. No of Procedures	2,132	2,494	2,619
Cost/Per Procedure	\$ 1,082	\$ 1,099	\$ 1,104
Charge/Per Procedure	\$ 2,102	\$ 2,123	\$ 2,144

D. Cost to Medicaid/Medicare

The impact of the project on third party payors is as follows:

Payor Mix	Utilization Percentage	First Year Cost
Medicaid	10.0	\$ 230,638
Medicare	40.0	922,550
Other	50.0	1,153,188
Total	100.0	\$2,306,376

The applicant projects 3 percent care to bad debt patients, 1 percent to medically indigent patients and 1 percent to charity care patients.

V. **RECOMMENDATIONS OF OTHER AFFECTED AGENCIES**

The Division of Medicaid was provided a copy of this application for comments. No written comments had been received as of this writing.

VI. **CONCLUSION AND RECOMMENDATION**

This project is not in substantial compliance with the criteria and standards for the establishment of ambulatory surgery services as contained in the FY-2002 State Health Plan, Chapter 8 of the Certificate of Need Review Manual, 2000 Revision, and all adopted rules, procedures, and plans of the Mississippi State Department of Health, specifically, SHP Criterion 1 - Need; SHP Criterion 5 and GR Criterion 4 - Economic Viability; and GR Criterion 5 - Need for the Project.

SHP Criterion 1. The applicant relied upon referrals by podiatrists, anesthesiologist, and physicians already committed to another applicant to project the minimum 800 surgeries per operating room, per year. Staff found that podiatrists are not considered physicians by the Board of Medical Licensure and, by statute, are not permitted to perform surgeries in an ambulatory surgical facility. Also, procedures performed by anesthesiologists are non-surgical procedures. Therefore, staff contends that the facility may perform only 976 surgeries, or 488 surgeries per suite, per year.

SHP Criterion 5 and GR Criterion 4. Because it is projected that the applicant cannot meet the minimum 800 procedures per operating suite, per year, the economic viability of the project is questionable.

GR Criterion 5. Staff contends that the need for ambulatory surgery services in DeSoto County is already being met, or can be met by the already CON approved providers. The instant project will thus create an unnecessary duplication of services in the area.

Consequently, the Division of Health Planning and Resource Development recommends disapproval of this application submitted by North Mississippi Ambulatory Surgery Center, LLC.