STATE AGENCY ACTION REPORT

CON APPLICATIONS FOR CERTIFICATE OF NEED

A. PROJECT IDENTIFICATION

1. Applicant/CON Action Number:

Medical Center of Southwest Florida, LLC/CON #10523
P.O. Box 750
Nashville, Tennessee 37202

Authorized Representative: Mr. Timothy Burroughs
(615) 344-9551

Lee Memorial Health System/CON #10524
2776 Cleveland Avenue
Fort Myers, Florida 33901

Authorized Representative: Ms. Lisa M. Sgariata, SNP, MSN, MS, FACHE
Chief Patient Care Officer
(239) 343-2000

2. Service District/Subdistrict

District 8/Subdistrict 8-5 (Lee County)

B. PUBLIC HEARING

A public hearing was not held or requested regarding either of the proposed co-batched projects.

Letters of Support

The reviewer notes that some letters of support for **CON application #10523** correspondingly state opposition to **CON application #10524**. Likewise, some letters of support for **CON application #10524** correspondingly state opposition to **CON application #10523**.

Medical Center of Southwest Florida, LLC (CON application #10523) submitted 101 letters of support for this project and an additional eight letters of support were received by the Agency independently – this totals 109 unduplicated letters of support for this project.

The applicant references (page 44 of the application) support through a petition in "change.org" and indicates the petition can be located at this link: www.change.org/p/ahca-petition-for-certificate-of-need-application-for-hosital-beds-in-lee-county-florida. On April 11, 2018 the reviewer performed an internet search of the link, with the following result: "? We could not find the page you were looking for". According to the applicant, at the time of CON submission, the petition had 204 supporters and a variety of comments indicating the need for more choice in the Lee County market. However, support from the Independent Physicians Association of Lee County (IPALC) indicates the following website from which interested persons may link-in and offer support and comments regarding **CON application #10523**: https://www.change.org/p/ahca-petition-for-certificate-of-need-application-for-hospital-beds-in-lee-county-florida?recruiter=863654428&utm_source=share_petition&utm_medium=copylink&utm_campaign=share_petition.

Of the 109 support letters referenced above, some support letters include multiple signatures. The applicant's submittal of letters of support is in Vol. One, Attachment D of the application. This attachment includes an itemized list of the 101 support letters submitted primarily from physicians in the Fort Myers area and secondarily, Cape Coral. Medical Center of Southwest Florida (MCSWF) maintains that these letters of support represent 138 Lee County physicians who strongly emphasize the need for patient choice for health care providers in Lee County. The applicant quotes extracts from some of its support letters (pages 41-44 of the application). The reviewer notes portions of the letters of support excerpted by the applicant. All quoted references are from District 8, Subdistrict 8-5 (Lee County) providers, unless otherwise indicated:

"Lee County continues to experience a population boom, with a large and growing penetration of elderly residents in need of health care services. Traffic congestion has increased travel times for Lee County residents accessing health care services. This is especially true on a seasonal basis when the snowbirds arrive. HCA's targeted location will increase access for residents who have no mass transit available and for who travel to current facilities to access care is a challenge." *--Nancy Gareau, VP, Network Operations/Business Development, Freedom Health, Inc. and Optimum HealthCare, Inc.* The reviewer notes that this quotation is from a support letter that originated from outside District 8.

"Lee County is experiencing rapid population growth particularly of the older population, age 65 and older, who utilize health services including hospital services at a greater rate than younger populations. As a result, overall demand for health care services in Lee County is expected to increase." Also, "..HCA has proven to have extensive experience in developing new community hospitals from the ground up and the financial resources to develop the proposed hospitals without tax payer burden." *--Chris E. Patterson, CEO, Sunshine Health.* The reviewer notes that this quotation is from a support letter that originated from outside District 8.

"…If MCSWF can enter into the market, the surrounding community will have a tax-paying, for-profit hospital system and a market alternative for patient health care choices. Giving Lee Health a CON will further burden our community with more of the same and an even larger hospital system and less choice." *--Raymond Kordonowy, MD, Joseph Magnaut, MD, Sunil Lalla, MD, Syed Zafar, MD, Edward R. Dupay Jr., DO and Imtiaz Ahmad, MD, Board of Directors, Independent Physicians Associate of Lee County*

"We favor the approval of a competing facility to add incentive to focus on the quality of hospital services in our community." *--Brice Tompkins, MD and Sharon Lee Witt, DO, Internal Medicine Associates of Lee County.* The reviewer notes that four support letters with 27 physician signatures and five other health care practitioners (mid-level providers) signatures (all being practitioners with IMA-Internal Medicine Associates) indicate that they support a competing facility (CON application #10523) to add incentive to focus on the quality of hospital services[1] in the community.

"As a surgeon, I have had the opportunity to operate and work in both an HCA facility and in Lee Health System. I believe these two health systems by competition will enrich the quality and innovation of care for the community of Southwest Florida. Currently with only one system in Lee County this stifles quality and innovation." *--Moses K. Shieh, DO, FACOS, Director and Owner, Surgical Healing Arts Center*

The overwhelming majority of support letters indicate physicians (and some mid-level health care practitioners). Some of the support letters in the applicant's Attachment D are individually composed but many are of a form letter variety. Some recurring themes in many of these support letters include:

[1] For a review of the statutory reasons that the Agency is authorized to consider in denying or approving a general acute hospital proposal, pursuant to Section 408.035, Florida Statutes, see item H of this report.

- There has been a rapid increase in population in Lee County.
- There is no competition for hospital services in Lee County.
- There is a constant lack of beds during the high season in Lee and Collier Counties.[2]
- Traffic congestion has increased travel times for patient care. Due to significant travel times, the proposed service area is underserved with respect to access to acute care hospital services.
- The MCSWF target location is in proximity to the intersection of Corkscrew Road and S. Tamiami Trail in the Village of Estero providing entry from I-75 and will increase access and ease in obtaining health care services for residents of southern Lee County.
- HCA has extensive experience in developing new community hospitals from the ground up.
- HCA provides financially accessible health care services to Florida, including the west coast of Florida without taxpayer burden.
- HCA has the financial resources to develop the proposed hospital without taxpayer burdens.
- HCA will be an effective competitor by offering high quality, efficient services.
- Lee Health's proposed site does not increase geographic accessibility to health care as efficiently as MCSWF. Lee Health's site is further removed from I-75 and would require patients from many areas to drive past MCSWF's targeted location to access hospital services.

Lee Memorial Health System (CON application #10524) submitted 449 letters of support for this project and many additional letters of support were received by the Agency independently – this totals approximately 550 unduplicated letters of support for this project (some support letters are in the form of e-mails or are handwritten). Many of the support letters are unsigned and most indicate an Estero or Bonita Springs address.

The applicant's submittal of letters of support is in Vol. Two, Appendix 14 of the application. This applicant provides an itemized list of the 499 support letters submitted by the applicant, with the supporters' names, in some cases their titles/affiliations and/or who they represent. The itemized list is primarily composed of local residents but also some local area elected officials, physicians, homeowner association representatives and other area representatives.

[2] For a review of the existing acute care hospital bed inventory and the current steps being taken, through the notification process, to add to the licensed acute care bed inventory in Lee County general acute care hospitals, see item E.1.a of this report.

The applicant quotes extracts from some of its support letters (Vol. 1, pages 4-22 through 4-24, 5-5, 5-48 through 5-55, 5-62, 5-64 and 5-67 of the application). The reviewer notes portions of some of the letters of support excerpted by the applicant. All quoted references are from District 8, Subdistrict 8-5 (Lee County) providers/residents.

"The Village of Estero Council[3] fully supports Lee Health's efforts to obtain approval for a Certificate of Need for hospital beds in South Lee County…The Village of Estero has worked with Lee Health for several years to bring needed health services to our community. For many of our residents, their age, coupled with ever increasing traffic make it difficult to travel the distances required to get to a hospital.*.". –Bill Riddle-Vice Mayor/District 1, Howard Levitan/District 2, Jon McLain/District 3, Katy Errington/District 4, Jim Boesch-Mayor/District 5, Nick Batos/District 6 and Jim Wilson/District 7*

"Having practiced medicine-gastroenterology-for 34 years, I do think I have a unique perspective on the benefits of having a nearby hospital. The population in Estero as well as the surrounding areas is mature. More importantly, it is clearly aging. Having a full care facility within 10 or 15 minutes of one's home is extraordinarily important. There is a significant portion of the year when the crowds in Estero and surrounding North Naples as well as Fort Myers makes driving extraordinarily difficult. Driving on Route 41 is completely stop and go." *--Andrew Bregman, MD, Estero resident*

"FGCU (Florida Gulf Coast University) works closely with Lee Health to provide essential hands-on training for our students. A new hospital in Estero would provide additional educational opportunities for our students, located close to campus…" *--Mike Martin, PhD, President, FGCU*

"We need ready access to hospital care. Not only is access needed, but it's hampered by the need to commute long distances to get it. Closer access will save lives". *–James Shields, Member, Estero Economic Outreach Council[4]*

[3] The reviewer notes that according to the website https://estero-fl.gov/council/, the First Village Council took office on March 17, 2015. Seven councilmembers represent seven districts with the boundaries of Estero. Council members serve a term of four years each, staggered so that elections are held every two years.

[4] According to the website http://esterotoday.com/about-eccl/, The Estero Council of Community Leaders (ECCL) is a network of communities working together to serve as the "Voice of the People" to advocate for positive change. Because there is strength in numbers and no Sunshine Law restrictions, the ECCL is able to openly address and affect the outcome of both challenges and opportunities facing the community, some of which are outside of the Village Council's purview.

"I often hear from my patients about long waits for hospital beds in Fort Myers, and difficulties in transportation to get to a hospital. Along with them, I agree that acute care beds in Estero makes sense." *--Anjara Chaudhari, MD, Lee Physician Group*

"A new hospital would help to alleviate overcrowding. The Bonita Springs and Estero communities have a chronic problem of timely access to emergency and acute care services. As our community grows, the traffic gets worse." *--Linda Ouellette, Estero resident*

"A majority of the patients I care for are over the age of 65 and many of them live in the Estero-Bonita Springs area, which is about 20 miles to the nearest hospital in Lee County. That 20-mile drive can often mean upwards to 40 minutes due to heavy, congested traffic." *--Anand Raj Mahadevan, MD*

The reviewer notes that the overwhelming majority of support letters, as well as the letters of support received directly by the Agency, are individually composed, often describing individual circumstances. However, many of these support letters have relatively common or recurring themes about the need for an acute care hospital in the Bonita Springs-Estero area. Some of the topics in many of the support letters include:

- Longtime residency in the area
- Longtime awareness of a need of additional acute care services in the area
- South Lee County is one of the fastest growing areas in the region but it does not have convenient access to acute care services and there is a need for beds in the area
- More than one-third of the population of Bonita Springs/Estero is over the age of 65, a group with more complex health needs and higher rates of surgery and hospitalization than others and also, it is difficult for this age group to drive long distances or in heavy traffic
- A hospital close to home is needed to serve the area's older population
- During the seasonal months, southwest Florida is filled with tourists or seasonal residents and hospitals in the area are near capacity. A new hospital would help alleviate overcrowding
- The Bonita Springs-Estero communities have a chronic problem of timely access to emergency and acute care services and a hospital in the area would shorten travel times for residents of the area which could save lives
- Driving on I-75 is uncomfortable and US Highway 41 has so many busy intersections that it is a burden to drive to the existing nearest hospitals – particularly at night

- Lee Health has had longstanding plans to build a hospital in the Bonita Springs/Estero area and purchased land for this purpose many years ago

The Agency notes that the establishment of a new or the expansion of existing freestanding emergency departments (EDs) or EDs on an existing hospital campus is not subject to CON approval and that further, existing general acute care hospitals may add acute care beds, at any time, in any number, through the notification process, pursuant to ss. 408.036(5)(c), Florida Statutes (for a review of notification activity at existing general acute care hospitals in Lee County, see item E.1.a of this report).

Some support letters are noted from the following:

- Lee County Government
  - Lee County Board of County Commissioners/ Commissioner-District 5
- City of Bonita Springs-Mayor
- City of Fort Myers-Mayor
- Estero Council of Community Leaders (ECCL)-Interim Chairman and Director Emeritus
- United Way of Lee, Hendry, Glades and Okeechobee-President
- Good Wheels-Transportation for the Disability and Disadvantaged (A United Way partner agency)-CEO
- Florida State University College of Medicine-Lee Health (two physicians)
- Lee Health-Lee Physician Group[5] (three physicians and five mid-level practitioners)
- Millennium Physician Group-President (a physician)
- Southwest Florida Emergency Physicians, P.A. – President (a physician) as well as the organization's Medicaid Director (a physician)
- Florida Radiology Consultants[6]-President (a physician)
- Pelican Primary Care (a physician with location in Bonita Springs)
- The Cascades at Estero-Board Vice President

[5] According to the website http://www.leehealth.org/lee-physician-group/index.asp, Lee Physician Group consists of more than 572 primary and specialty care physicians at 77 practice locations throughout southwest Florida.

[6] According to the website http://www.flrad.com/, Florida Radiology Associates consists of 17 board-certified physicians and one board-eligible physician, all sub-specialty trained. The facilities are accredited by the American College of Radiology (ACR) and our technologists are all registered with the American Registry of Radiologic Technologists (ARRT). The website also indicates locations in Fort Myers, but none in Bonita Springs or Estero.

Letters of Opposition

The reviewer notes that some letters of opposition for either co-batched applicant (**CON application #10523 or CON application #10524**) correspondingly states support for the remaining applicant (either **CON application #10523 or CON application #10524**).

Medical Center of Southwest Florida, LLC (CON application #10523): The Agency received two letters of opposition to this project. Each is briefly described below.

One opposition letter to **CON application #10523** is from area resident Dr. Richard K. Check[7]. Dr. Check states that he opposes the HCA Healthcare application because it proposes several problems:

- They were in the immediate area up to 1996, with two facilities that they sold to Lee Health, presumably because they were not profitable to the level that was needed by HCA. They are not committed to service to the area citizens as much as they are to their profits.
- They do not have an existing network of physician providers and have not returned any inquiries to determine whether their operations are closed-panel providers, among other things.
- As a for-profit operation, HCA may choose to dis-allow certain third party payers (medical insurance) and may not participate with indigent care delivery.[8]
- They do not operate with a citizen-elected board of directors who can criticize and suggest changes to their operation.

The reviewer notes a letter of support for co-batched **CON application #10524** from Dr. Richard K. Check (retired physician).

Another opposition letter from an area resident, Larry Halpin, who states being a just retired realtor in the market after some 24 years and that he knows the area well. According to Mr. Halpin, "We do not want, nor do we need a For-Profit organization attempting to jump into the ring to provide medical services".

Lee Memorial Health System (CON application #10524): The Agency received five letters of opposition to this project – they are briefly described below.

[7] As of April 10, 2018 according to the Florida Department of Health (FDOH) Licensure Verification System (FLHealthSource.gov) website at https://appsmqa.doh.state.fl.us/MQASearchServices/HealthCareProviders, Richard K. Check does not appear as a licensed health care practitioner in the FDOH practitioner verification system.

[8] For a review of HCA's most recent participation in Medicaid/Medicaid HMO and charity care at District 8's general acute care hospitals that HCA owns, see item E.1.c of this report.

One opposition letter to **CON application #10524** is from Wesley D. Hrynchuk, stated to be an Estero, Florida concerned citizen and before retiring, a CPA who served in hospital administration as a CFO and also as a CEO[9]. Mr. Hrynchuk states that regarding Lee Health Systems' plan to build additional hospital beds in Estero, Florida[10] his concerns are:

- A group of a few unelected people, who call themselves the ECCL, are bombarding the community with pressure to support the Lee Health application[11]. The template offered by ECCL is to be used to generate an "original" letter. Their motives need to be seriously questioned. They do not represent the citizens of Estero. Elected officials represent Estero.
- The Lee Health System is a monopoly that is terrible in delivering quality health. This failed system should not be allowed to expand.
- It appears that Lee County already has excessive beds with an annual occupancy rate of 67.83 percent and a "high season" rate of 76.99 percent[12]. How can additional inpatient beds be justified when the trend toward outpatient care continues[13]. LOS continues to fall. Construction of new beds and the duplicative services needed to support them will merely add additional cost to an already strained health care system.
- If the Lee System were "for-profit" I don't believe that they would consider building additional beds in Estero.

The reviewer confirms that many of the Estero and Bonita Springs resident support letters, in favor of **CON application #10524**, generally follow the template model guidelines referenced in Mr. Hrynchuk's opposition letter. The reviewer notes that Mr. Hrynchuk's opposition letter for **CON application #10524** does not expressly state support of

[9] The reviewer notes that neither the hospital name nor the dates of employment there are indicated in Mr. Hrynchuk's opposition letter.

[10] The reviewer notes that CON application #10524 is the establishment of a new general acute care hospital, as currently there is no CON-approved hospital or licensed acute care beds in Estero.

[11] In his opposition letter, Mr. Hrynchuk includes an e-mail from the ECCL (news@esterofl.org), dated Tuesday, March 6, 2018 Subject: Important: Show Support for a Lee Health Hospital in Estero. The reviewer notes that this e-mail correspondence begins with "Lee Health needs residents to write unique letters in support of a hospital in Estero" followed by a three-page template that the ECCL encourages area residents to use as a guide in composing a letter to the Agency in support of CON application #10524. The reviewer notes that the five main headings of the template include: 1) Begin the letter by explaining who you are and that the purpose of your letter is in support of the Certificate of Need application, 2) Explain your reasons for supporting the grant request in the body of the letter, 3) Share details-if applicable-of how a hospital would personally benefit you or a loved one, 4) Mention Lee Health's commitment to south Lee County and 5) Close with a statement of support and request the CON be approved. The reviewer notes that each main heading has at least three bulleted sub-template features to support the applicable main heading.

[12] For a review of Lee County's total acute care bed occupancy rates for the 12-month period ending June 30, 2017 and for Lee County's total acute care bed occupancy rate for the highest occupancy quarter (January through March 2018) in this same 12-month period, see item E.1.a of this report.

[13] See item C of this report, CON application #10524, Condition #2 and Condition #3.

CON application #10523 and seems to generally be critical of both co-batched proposals, especially considering that **CON application #10523's** parent (HCA) is a private-for-profit/proprietary hospital system that is, in fact, seeking to add acute care beds to the acute care bed inventory in Lee County by establishing a new general acute care hospital there.

Opposition letters with 27 area physician signatures and five other mid-level health care practitioners (all being practitioners with IMA-Internal Medicine Associates) indicate that about 15 years ago, Lee Health purchased the competing hospitals in Lee County, taking ownership of 95 percent of the community hospital beds. These IMA-Internal Medicine Associates physicians and practitioners state, "That is a monopoly by any standard". The opposition indicates that while this acquisition of competing hospitals in the area has improved Lee Health's financial position, Lee Health has not been focused toward improving Lee Health's inpatient services but rather toward expansion of outpatient services. Additionally, IMA-Internal Medicine Associates indicates that they will continue to support the existing Lee Health facilities, however, these physicians and practitioners request that the Agency consider that Lee Health needs time to improve the quality of existing facilities built, as well as the facilities they purchased 15 years ago, before adding yet another facility. IMA-Internal Medicine Associates indicates that **CON application #10523**, if approved, would still allow Lee Health to maintain significant ownership of the total beds in Lee County.

C. PROJECT SUMMARY

Medical Center of Southwest Florida, LLC (CON application #10523), also referenced as MCSWF or the applicant, a developmental stage entity, affiliated with the private-for-profit/proprietary hospital system Hospital Corporation of America (HCA® or HCA) West Florida Division (WFD), proposes to establish a new 80-bed general acute care hospital in Lee County, Florida, District 8, Subdistrict 8-5.

The applicant states the location of MCSWF will be in south Lee County, in the incorporated Village of Estero and serve other residential areas to the north and south, including the City of Bonita Springs and unincorporated south Lee County/Fort Myers. As required in Section 408.037(2), Florida Statutes, the applicant offers a proposed project location within ZIP Code 33928.

The applicant indicates that upon licensure, MCSWF will file an exemption request with the Agency to convert 10 acute care beds to adult psychiatric beds[14] and will then seek designation as a Baker Act receiving facility[15]. The reviewer notes that this would result in 70 acute care beds and 10 adult psychiatric beds.

MCSWF explains that the proposed project will have programs with a special focus on older individuals who have greater health care needs but who may not always receive needed care because of financial limitations, lack of transportation or lack of a caregiver in the home.

MCSF offers six Zip Codes to account for the total proposed service area, with the following four Zip Codes as the primary service area (PSA) and the remaining two Zip Codes as the secondary service area (SSA), all in Lee County. For convenience, the reviewer provides the corresponding recommended city name for the referenced Zip Codes, as verified by the United States Postal Service (USPS) website at https://tools.usps.com/zipcodelookup/bycitystate:

PSA Zip Codes:
- 33928 (Estero)
- 33967 (Fort Myers)
- 34134 (Bonita Springs)
- 34135 (Bonita Springs)

SSA Zip Codes:
- 33908 (Fort Myers)
- 33913 (Fort Myers)

MCSF maintains that based on projected year one (ending June 2022) non-tertiary discharge volumes, 5.25 percent of forecasted volume will originate from beyond the six Zip Codes proposed as the total service area. MCSF also maintains that based on projected year three (ending June 2024) non-tertiary discharge volumes, 5.00 percent of forecasted volume will originate from beyond the same six Zip Codes proposed as the total service area.

The reviewer notes that co-batched **CON application #10524's** licensed Class 1 general/acute care hospital HealthPark Medical Center is located in ZIP Code 33908 and that no other Class 1 general/acute care hospitals are CON-approved or are licensed in the MCSWF's proposed total service area.

[14] CON application #10523, page 3, page 5 and Schedule C. The Agency notes that exemption procedures are separate and apart from a general acute care project (as proposed) and such procedures are stated in Rule 59C-1.005(6)(i), Florida Administrative Code.
[15] CON application #10523, Schedule C.

HCA operates 48 Class I general/acute care hospitals in Florida, with an aggregate of 12,120 licensed beds. None of HCA's Class 1 general/acute care facilities are located in Subdistrict 8-5 (Lee County), through three are located within District 8.

MCSF proposes the following condition(s) to CON approval on the application's Schedule C:

Percent of a particular subgroup to be served:

- Medical Center of South West Florida, LLC commits to provide a minimum of eight percent of its patient days to patients covered by Medicaid/Medicaid managed care or who meet the criteria for charity care, combined.

Special program:

- Medical Center of South West Florida, LLC commits to convert 10 acute care beds to adult psychiatric beds upon licensure and opening of the proposed hospital.

Special program:

- Medical Center of South West Florida, LLC commits to applying to become a Baker Act receiving facility.

Lee Memorial Health System (CON application #10524), also referenced as LMHS or the applicant, a public, not-for-profit (local government) health system enacted by the Florida Legislature (Chapter 2000-439, Laws of Florida) proposes to establish a new 82-bed general acute care hospital in Lee County, Florida, Subdistrict 8-5. The applicant identifies as a non-tax supported public special health care district.

The applicant states that the name of the proposed facility, Lee Health Coconut Point (LHCP), is phase two of the LHCP development and that when completed, the proposed phase two bed tower will complement the phase one currently under construction which includes a freestanding ED, same-day surgery center, nine-unit cardiac decision unit, Healthy Life Center, outpatient/ancillary services and medical office space. According to LMHS, the LHCP project is being designed to enhance the continuum of care for seniors with a particular emphasis on managing chronic care diseases—holding the greatest potential to begin to bend the curve in the escalation of health care expenditures.

The applicant indicates that the location of the proposed LHPC hospital will be near the southeast corner of US Highway 41 (Tamiami Trail) and Coconut Road, at 23450 Via Coconut Point, Estero, Florida 34135[16]. As required in Section 408.037(2), Florida Statutes, the applicant offers a proposed project location within ZIP Code 34135. LMHS indicates that the site is a 34-acre parcel owned by Lee Health and in close proximity to both US Highway 41 and I-75. LMHS maintains that the proposed new hospital campus layout and design focuses on promoting healthy aging, with no plans to offer obstetrics. The population to be served is stated to be adults (15+) for non-specialty/non-tertiary care.

LMHS offers 12 Zip Codes to account for the total proposed service area, with the following seven Zip Codes as the PSA and the remaining five Zip Codes as the SSA, all in Lee County, unless otherwise indicated. The reviewer notes that the city name for each Zip Code as indicated by the applicant is verified through the USPS website at https://tools.usps.com/zipcodelookup/bycitystate:

PSA Zip Codes:
- 34135 (Bonita Springs)
- 33908 (Fort Myers)
- 33928 (Estero)
- 34134 (Bonita Springs)
- 33913 (Fort Myers)
- 33967 (Fort Myers)
- 33912 (Fort Myers)

SSA Zip Codes:
- 33931 (Fort Myers Beach)
- 34119 (Naples-Collier County/Subdistrict 8-2)
- 34120 (Naples-Collier County/Subdistrict 8-2)
- 33919 (Fort Myers)
- 34110 (Naples-Collier County/Subdistrict 8-2)

LMHS maintains that based on projected 2023 adult, non-tertiary discharge volumes, 10.00 percent of forecasted volume will originate from beyond the 12 Zip Codes proposed as the total service area.

[16] The reviewer notes that according to the USPS website at https://tools.usps.com/zipcodelookup/citybyzipcode, the recommended city name for ZIP Code 34135 is Bonita Springs, Florida and the applicant identifies ZIP Code 34135 as Bonita Springs throughout CON application #10524.

The reviewer notes that **CON application #10524** operates two licensed Class 1 general/acute care hospitals in the proposed PSA - HealthPark Medical Center (Zip Code 33908) and Gulf Coast Medical Center (Zip Code 33912). The reviewer states that licensed Class 1 general/acute care hospital NCH Healthcare System North Naples Hospital Campus is located in Zip Code 34110. The reviewer confirms that there are no other Class 1 general/acute care hospitals that are CON-approved or licensed in the LMHS proposed total service area.

LMHS operates four Class I general/acute care hospitals in Subdistrict 8-5 (Lee County), with an aggregate of 1,557 licensed beds. The licensed beds and services, by facility, are listed below:

- Cape Coral Hospital (totaling 291 licensed beds) – 291 acute care beds, with the following non-CON regulated services:
  - Level I Adult Cardio
  - Primary Stroke Center
- Gulf Coast Medical Center Lee Memorial Health System (totaling 356 licensed beds) – 356 acute care beds. This facility is also licensed to perform adult kidney transplantations and offers the following non-CON regulated services:
  - Level II Adult Cardio
  - Comprehensive Stroke Center
- HealthPark Medical Center (totaling 496 licensed beds) – 384 acute care beds, 56 Level II neonatal intensive care unit (NICU) beds and 56 Level III NICU beds, with the following non-CON regulated services:
  - Level II Adult Cardio
- Lee Memorial Hospital (totaling 414 licensed beds) – 336 acute care beds, 18 skilled nursing unit (SNU) beds and 80 rehabilitation beds. This facility is also a Level II Trauma Center[17] and offers the following non-CON regulated services:
  - Primary Stroke Center

LMHS proposes the following conditions to CON approval on the application's Schedule C:

1. The proposed new hospital will be located near the southeast corner of the intersection of US Highway 41 and Coconut Road. The specific site address is 23450 Via Coconut Point, Estero, Florida 34135.

[17] Per the Florida Department of Health's Office of Trauma website at http://www.floridahealth.gov/licensing-and-regulation/trauma-system/_documents/traumacenterlisting20151.pdf. This source indicates that the other Level II Trauma Center in District 8 is at Sarasota Memorial Hospital (Subdistrict 8-6) and no Level I Trauma Center in all of District 8.

2. A total of 82 acute care beds will be delicensed from the Lee Memorial Health System and transferred to the new facility upon licensure of the new hospital.
3. Lee Health will not request additional acute care beds beyond those currently licensed or for which notification has been submitted to AHCA as of April 11, 2018, for a period of 24 months following the opening of the proposed new facility.
4. The proposed new hospital will provide needed medical care to all patients in need, regardless of ability to pay.
5. The proposed new hospital will provide at least 10 percent of its patient volume to Medicaid, Medicaid managed care, non-payment, self-pay and charity patients.
6. A minimum of $500,000 per year will be provided by Lee Health for the following programs and services –
    a. Chronic Care Program
    b. Healthy Life Center
    c. Aging Life Care Management
    d. Senior and disabled medical transportation systems

The reviewer provides the following table to account for Zip Codes that are overlapping regarding the PSA and/or the SSA between and among the co-batched applicants **CON application #10523** and **CON application #10524**.

ZIP Codes that Overlap Regarding the PSA and/or SSA of Co-Batched CON application #10523 and CON application #10524

CON app. #10523 PSA Zip Codes that Overlap with Co-Batched CON app. #10524 PSA ZIP Codes	CON app. #10523 SSA Zip Codes that Overlap with Co-Batched CON app. #10524 PSA ZIP Codes
33928 (Estero)	33908 (Fort Myers)
33967 (Fort Myers)	33913 (Fort Myers)
34134 (Bonita Springs)	
34135 (Bonita Springs)	

Source: CON application #10523 and CON application #10524

The reviewer notes that the entirety of **CON application #10523's** total service area overlaps with some of **CON application #10524's** PSA. The Agency notes that the **CON application #10523** proposed project location (ZIP Code 33928) is a ZIP Code within the **CON application #10524** PSA.

The Agency notes that the **CON application #10524** proposed project location (ZIP Code 34135) is a ZIP Code within the **CON application #10523** PSA.

D. REVIEW PROCEDURE

The evaluation process is structured by the certificate of need review criteria found in Sections 408.035 and 408.037, Florida Statutes; and applicable rules of the State of Florida, Chapters 59C-1 and 59C-2, Florida Administrative Code. These criteria form the basis for the goals of the review process. The goals represent desirable outcomes to be attained by successful applicants who demonstrate an overall compliance with the criteria. Analysis of an applicant's capability to undertake the proposed project successfully is conducted by evaluating the responses and data provided in the application, and independent information gathered by the reviewer.

Applications are analyzed to identify strengths and weaknesses in each proposal. If more than one application is submitted for the same type of project in the same district (subdistrict), applications are comparatively reviewed to determine which applicant(s) best meets the review criteria.

Rule 59C-1.010(3) (b), Florida Administrative Code, prohibits any amendments once an application has been deemed complete; however, two exceptions exist regarding receipt of information concerning general hospital applications. Pursuant to Section 408.039(3)(c), Florida Statutes, an existing hospital may submit a written statement of opposition within 21 days after the general hospital application is deemed complete and is available to the public. Pursuant to Section 408.039(3)(d), Florida Statutes, in those cases where a written statement of opposition has been timely filed regarding a certificate of need application for a general hospital, the applicant for the general hospital may submit a written response to the Agency within 10 days of the written statement due date. The burden of proof to entitlement of a certificate rests with the applicant. As such, the applicant is responsible for the representations in the application. This is attested to as part of the application in the certification of the applicant.

As part of the fact-finding, the consultant, Steve Love, analyzed the application in its entirety.

E. CONFORMITY OF PROJECT WITH REVIEW CRITERIA

The following indicate the level of conformity of the proposed project with the review criteria and application content requirements found in Sections 408.035, and 408.037, and applicable rules of the State of Florida, Chapters 59C-1 and 59C-2, Florida Administrative Code.

1. Statutory Review Criteria

For a general hospital, the Agency shall consider only the criteria specified in ss. 408.035 (1)(a), (1)(b), except for quality of care, and (1)(e), (g), and (i) Florida Statutes. ss. 408.035(2), Florida Statutes.

a. Is need for the project evidenced by the availability, accessibility and extent of utilization of existing health care facilities and health services in the applicant's service area? ss. 408.035(1)(a) and (b), Florida Statutes.

The existence of unmet need is not determined solely on the absence of a health service, health care facility or beds in the district, subdistrict, region or proposed service area. The reviewer composed the following table to show the utilization (occupancy) of each existing acute care facility in the subdistrict and the corresponding utilization in aggregate for the district and statewide, for the 12 months ending June 30, 2017. See the table below.

Acute Care (Non-Tertiary) Hospital Utilization
Subdistrict 8-5 (Lee County), District 8 and Statewide
12 Months Ending June 30, 2017

Hospital Name	Acute Care Beds	Total Bed Days	Reported Patient Days	Utilization Percent
Cape Coral Hospital	291	106,215	67,291	63.35%
Gulf Coast Regional Medical Center-LMHS	356	129,940	99,179	76.33%
HealthPark Medical Center	384	125,120	89.034	71.16%
Lee Memorial Hospital	336	122,640	74,708	60.92%
Lehigh Regional Medical Center	88	32,120	9,646	29.97%
Subdistrict 8-5 (Lee County) Total	**1,455**	**516,035**	**339,838**	**65.86%**
District 8 Total	**4,184**	**1,512,120**	**816,523**	**54.35%**
Statewide	**51,833**	**18,795,983**	**10,868,728**	**57.82%**

Source: Florida Hospital Bed Need Projections & Service Utilization by District-July 2016 thru June 2017, issued January 19, 2018

Based on the table above, for the 12 months ending June 30, 2017, Subdistrict 8-5 (Lee County) had an aggregate of 1,455 licensed acute care beds, with an overall occupancy rate of 65.86 percent, which was an occupancy rate 11.51 percent greater than District 8 overall (54.35 percent) and an occupancy rate 8.04 percent greater than the state overall (57.82 percent).

Acute care bed utilization in the district/subdistrict over the past three years (ending June 30, 2017) is shown in the chart below.

District 8/Subdistrict 8-1 (Lee County) Acute Care Hospital Utilization
Three Years Ending June 30, 2017

	JUL 2014 thru JUN 2015	JUL 2015 thru JUN 2016	JUL 2016 thru JUN 2017
Number of Acute Care Beds	1,388	1,395	1.455
Percentage Occupancy Rate	71.45%	67.83%	65.86%

Source: Florida Hospital Bed Need Projections & Service Utilization by District, issued January 2016-January 2018

As shown in the chart above, for the three years ending June 30, 2017, while the licensed acute care bed count increased each year (from 1,388 beds for the 12 months ending June 30, 2015 to 1,455 beds from the 12 months ending June 30, 2017), the occupancy or utilization of those same beds decreased each year (from a highest occupancy rate of 71.45 percent for the 12 months ending June 30, 2015 to a lowest occupancy rate of 65.86 percent for the 12 months ending June 30, 2017). For this same three-year period, a net increase of 67 acute care beds yielded or corresponded with a decline in bed occupancy of 5.59 percent.

Below is a chart to account for existing notifications in Agency records concerning the addition or deletion of acute care beds at District 8/ Subdistrict 8-5 general acute care hospitals, pursuant to Section 408.036(5), Florida Statutes. As shown below, notifications, through April 9, 2018 indicate that a net increase of 413 acute care beds are pending licensure in Lee County. See the chart below.

Acute Care Bed Addition or Deletion through Notification at
District 8/Subdistrict 8-5 (Lee County) Licensed General Acute Care Hospitals

				Notification Action	
Notification Number	Notification Date	Facility	City	No. of Beds to Add	No. of Beds to Delete
NF#150025	6/2/2015	Gulf Coast Medical Center-LMHS	Fort Myers	275	
NF#160055	12/14/2016	Gulf Coast Medical Center-LMHS	Fort Myers	75	
NF#170007	2/28/2017	HealthPark Medical Center	Fort Myers	64	
NF#170016	6/13/2017	Lee Memorial Hospital	Fort Myers		3
NF#180003	1/11/2018	Lehigh Regional Medical Center	Lehigh Acres		4
NF#180017	4/9/2018	HealthPark Medical Center	Fort Myers	6	
Total Number of Beds to Add/Delete				**420**	**7**
Net Number of Beds to Add				**413**	

Source: Florida Hospital Bed and Service Utilization by District, published January 19, 2018 and the Agency's Notifications submitted and entered into the Certificate of Need Program website at http://apps.ahca.myflorida.com/certneedweb/Notification.aspx, as of April 9, 2018

In summary, the Agency notes that while for the 12 months ending June 30, 2017, Subdistrict 8-5's acute care bed occupancy rate (65.86 percent) was higher than District 8 overall (54.35 percent) and was higher than the state overall (57.82 percent), for the three-year period ending June 30, 2017 this same subdistrict's licensed acute care bed

count rose each year (1,388 to 1,455) with a corresponding decline in occupancy rates (71.45 percent to 65.86 percent). As of April 9, 2018, this same subdistrict is pending acute care bed licensure at existing facilities totaling 413 beds (in the aggregate). Presuming that all acute care beds pending licensure as shown in the table above (413) are in fact licensed, the acute care bed count would rise from 1,455 beds to 1,868 beds—a 28.38 percent increase in the total number of licensed acute care beds in Subdistrict 8-5.

There are no CON approved general acute care hospital projects pending licensure in District 8, Subdistrict 8-5.

Additionally, the reviewer composed the following table to show the utilization (occupancy) of each existing acute care facility in the subdistrict and the corresponding utilization in aggregate for the district and statewide, for the highest acute care bed demand/highest occupancy quarter (January through March) for the 12 months ending June 30, 2017. See the table below.

Acute Care (Non-Tertiary) Hospital Utilization
Subdistrict 8-5 (Lee County), District 8 and Statewide
January 1 through March 31, 2017

Hospital Name	Acute Care Beds JAN-MAR 2017	Total Bed Days JAN-MAR 2017	Reported Patient Days JAN-MAR 2017	Utilization Percent JAN-MAR 2017
Cape Coral Hospital	291	26,190	19,249	73.50%
Gulf Coast Regional Medical Center-LMHS	356	32,040	27,056	84.44%
HealthPark Medical Center	384	31,296	24,416	78.02%
Lee Memorial Hospital	336	30,240	20,613	68.16%
Lehigh Regional Medical Center	88	7,920	2,856	36.06%
Subdistrict 8-5 (Lee County) Total	**1,455**	**127,686**	**94,189**	**73.77%**
District 8 Total	**4,184**	**373,296**	**235,835**	**63.12%**
Statewide	**51,681**	**4,644,755**	**2,870,490**	**61.80%**

Source: Florida Hospital Bed Need Projections & Service Utilization by District-July 2016 thru June 2017, issued January 19, 2018

Based on the table above, for the highest acute care bed demand/highest occupancy quarter (January through March) for the 12 months ending June 30, 2017, Subdistrict 8-5 (Lee County) had an aggregate of 1,455 licensed acute care beds, with an overall occupancy rate of 73.77 percent, which was an occupancy rate 10.65 percent greater than District 8 overall (63.12 percent) and an occupancy rate 11.97 percent greater than the state overall (61.80 percent).

The reviewer additionally notes that of the five general acute care hospitals in Subdistrict 8-5, the hospital that experienced the highest acute care bed demand/highest occupancy for the highest demand

quarter (January through March 2017) for the 12 months ending June 30, 2017 was Gulf Coast Regional Medical Center-LMHS (GCRMC-LMHS), with an occupancy rate of 84.44 percent.

As previously indicated earlier in item E.1.a of this report, pursuant to ss. 408.036(5), Florida Statutes, GCRMC-LMHS has already provided to the Agency, notification to add 275 acute care beds (Notification #NF150025) and to add 75 acute care beds (Notification #NF160055). In aggregate, these notifications indicate GCRMC-LMHS's intent to add 350 acute care beds to GCRMC-LMHS's existing 356 acute care beds. The reviewer notes that this would almost double the current acute care bed count at GCRMC-LMHS (going from 356 acute care beds to 706 acute care beds).

The reviewer notes the greater number of letters of support regarding **CON application #10524**, particularly from residents of the Village of Estero (and the surrounding area) and secondarily, the City of Bonita Springs (and the surrounding area). According to the US Bureau of Census, American FactFinder website at https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml#, with a data run date of March 27, 2018, the 2012-2016 American Community Survey 5-Year Estimates indicates:

- The Village of Estero
  - Resident Population: 30,470
  - Median Age: 62.0 years
- City of Bonita Springs
  - Resident Population: 43,914
  - Median Age: 56.3 years

Below is a chart to account for the nearest four general acute care hospitals (in driving miles) and a chart to account for the nearest four general acute care hospitals (in driving minutes) to the contact address for the older median age of these two communities: The Village of Estero - 9401 Corkscrew Palms Circle, Estero, Florida 33928 (https://estero-fl.gov/). These charts indicate the hospital distance (in miles and minutes), the traffic density at the time the data was drawn and the following non-CON regulated services: Level II Adult Cardio,

Level I Adult Cardio, Comprehensive Stroke Center and Primary Stroke Center designation at each respective facility. Gulf Coast Medical Center-Lee Memorial Health System is GCMC, HealthPark Medical Center is HPMC, Lee Memorial Hospital is LMH and NCH Healthcare System North Naples Hospital Campus is NCH.

**Driving Distance (Fewest to Most Driving Miles)
from The Village of Estero
9401 Corkscrew Palms Circle, Estero, Florida 33928 to the
Nearest Four General/Acute Care Hospitals (in Driving Miles)
and Corresponding Non-CON Regulated Services**

Facility	Distance in Miles	Time Data Drawn	Traffic Density	Distance In Minutes	Level II Adult Cardio	Level I Adult Cardio	Comp. Stroke Center	Primary Stroke Center
GCMC	9.6	9:52 a.m.	Light	16	Yes	No	Yes	No
HPMC	12.6	9.50 a.m.	Moderate	26	Yes	No	No	No
LMH	15.5	9:41 a.m.	Moderate	30	No	No	No	Yes
NCH	15.8	9:49 a.m.	Light	20	No	Yes	Yes	No

Source: Mapqeust.com on March 27, 2018 between 9:41 a.m. and 9:52 a.m. and the Agency's Hospital Beds and Services List publication, issued 1/19/2018

**Driving Distance (Fewest to Most Driving Minutes)
from The Village of Estero
9401 Corkscrew Palms Circle, Estero, Florida 33928 to the
Nearest Four General/Acute Care Hospitals (in Driving Minutes)
and Corresponding Non-CON Regulated Services**

Facility	Distance In Minutes	Time Data Drawn	Traffic Density	Distance in Miles	Level II Adult Cardio	Level I Adult Cardio	Comp. Stroke Center	Primary Stroke Center
GCMC	16	9:52 a.m.	Light	9.6	Yes	No	Yes	No
NCH	20	9:49 a.m.	Light	15.8	No	Yes	Yes	No
HPMC	26	9.50 a.m.	Moderate	12.6	Yes	No	No	No
LMH	30	9:41 a.m.	Moderate	15.5	No	No	No	Yes

Source: Mapqeust.com on March 27, 2018 between 9:41 a.m. and 9:52 a.m. and the Agency's Hospital Beds and Services List publication, issued 1/19/2018

Using Mapquest.com as a distance and travel time estimator, as indicated in the charts above, Level II Adult Cardiovascular services are available from the Village Estero Council headquarters address at:

- GCMC (9.6 miles/16 minutes with light traffic conditions)
- HPMC (12.6 miles/26 minutes with moderate traffic conditions)

Also, as indicated in the charts above, Comprehensive Stroke Center services are available from the Village of Estero Council headquarters address at:

- GCMC (9.6 miles/16 minutes with light traffic conditions)
- NCH (15.8 miles/20 minutes with light traffic conditions)

The reviewer notes that in Subdistrict 8-5 (Lee County), if approved:

- **CON application #10523** would increase the acute care bed inventory by 80 beds

- **CON application #10524** conditions that Lee Health will not request additional acute care beds beyond those currently licensed or for which notification has been submitted to AHCA as of April 11, 2018, for a period of 24 months following the opening of the proposed new facility

Below is a chart showing population estimates for January 2018 and July 2023.

District 8 Total Population and Population Age 65 and Over Estimates and Percent Change by County January 2018 to July 2023

County/Area	Total January 2018	Total July 2023	Percent Change	Age 65+ January 2018	Age 65+ July 2023	Age 65+ Percent Change
Charlotte	170,926	178,642	4.51%	62,506	68,310	9.29%
Collier	363,945	400,294	9.99%	103,253	118,852	15.11%
DeSoto	34,802	35,293	1.41%	6,784	7,343	8.24%
Glades	13,241	13,826	4.42%	3,234	3,533	9.25%
Hendry	38,693	39,506	2.10%	5,201	5,918	13.79%
Lee	722,432	810,491	12.19%	182,097	215,735	18.47%
Sarasota	407,195	432,083	6.11%	138,125	154,960	12.19%
District 8 Total	**1,751,234**	**1,910,135**	**9.07%**	**501,200**	**574,651**	**14.66%**
State Total	**20,523,262**	**22,006,184**	**7.23%**	**4,013,237**	**4,692,210**	**16.92%**

Source: Agency for Health Care Administration Population Projections, published February 2015

As shown above, Lee County has the largest total population and the largest age 65+ population of any county in District 8. Lee County's total population is projected to increase from 722,432 to 810,491 (12.19 percent) and its age 65+ population from 182,097 to 215,735 (18.47 percent) from January 2018 to July 2023. Also as shown above and for the same period, Lee County's total population growth rate (12.19 percent) is greater than the state overall (7.23 percent) and Lee County's age 65+ population growth rate (18.47 percent) is greater than the state's overall (16.92 percent).

Medical Center of Southwest Florida, LLC (CON application #10523) states in the executive summary (pages three and four of the application) that there is a critical need for enhanced competition in Lee County and states that its application should be approved for the following reasons:

- Lee County is an area that has grown significantly over the past several years and is projected to continue to grow rapidly. More specifically, south Lee County is one of the fastest growing areas of Lee County. Lee County's population has a high percentage of elderly residents with a median age of 60 years old. The elderly component of the population will continue to grow in future years. Older residents experience health care issues, and specifically inpatient admissions, at greater rates than younger individuals which will drive the demand for inpatient hospital care.

- Existing Lee County hospitals are concentrated in north Lee County, leaving south Lee County with no local access to inpatient medical care. With population growth, travel access to inpatient services has become increasingly difficult with traffic congestion creating longer travel time and delays.
- Lee Health System holds a virtual monopoly on inpatient services (as well as many other services) in Lee County with an 85 percent market share of acute hospital discharges. Thus, not only do patients suffer from lack of access to care in their community, but they also have little to no health care provider choice. This type of monopolistic environment within the health care market stifles innovation and breeds a culture that negatively impacts the cost and quality of care.
- MCSWF submitted 61 physician letters of support that include 97 physician signatures. MCSWF has the support of the Independent Physicians Association of Lee County, which represents 58 member physicians. Combined, this support represents 138 Lee County physicians who strongly emphasize the need for patient choice of health care providers in Lee County.[18]
- MCSWF will document that the historical and projected population growth in the service area demonstrates more than sufficient demand to support a new acute care hospital in south Lee County, including a need for hospital-based, adult psychiatric services. The proposed hospital will not adversely impact any existing provider given the tremendous projected growth in demand in the service area.
- Although there is more than one applicant vying to meet the needs of south Lee County in this batching cycle, MCSWF is clearly the superior applicant. The proposed project will result in significant local and state tax revenue and immediate Medicaid cost savings. Most importantly, MCSWF will offer a much needed alternative, high quality provider, giving the residents of the proposed service area a choice of their health care provider.
- MCSWF's affiliation with HCA will ensure that the Lee County community not only enjoys enhanced competition in the area but also benefits from the experience of a provider that is committed to providing high quality, financially accessible patient care. HCA affiliates have a long-standing reputation for developing "de novo" hospitals in Florida, and HCA has the infrastructure and resources to support its affiliates.

[18] For a review of letters of support for CON application #10523, see item B of this report.

- Approving Lee Health System's application would only perpetuate the system's existing monopolistic dominance in Lee County and would not interject much-needed competition into the market. It is not anticipated that Lee Health will address the need for hospital-based, adult psychiatric services given that it has closed its psychiatric unit in recent years.

MCSWF indicates that there is a "geographic gap" in the distribution of acute care providers in south Lee County. The applicant maintains that the focus of the proposed project includes the communities of San Carlos Park, Estero and Bonita Springs (CON application #10523, page 12). MCSWF discusses how its PSA and SSA Zip Codes were reached (CON application #10523, pages 65 to 71) and provides maps of the service area for existing hospitals. The applicant notes the use of Census Tract data from "census.gov" and Claritas/Spotlight in selecting Zip Code 33908 as part of the SSA but choosing to not select Zip Code 33931 as being any part of the total service area.

The applicant indicates that residents of south Lee County have no choice but to navigate through heavy traffic congestion to reach acute care providers outside their communities. MCSWF contends that the congestion can be daunting particularly for older drivers, many of whom live in south Lee County. Stating the use of FL DOT, Lee County Website, MCSWF provides the following exhibit to state traffic counts (and the corresponding percentage increase), 2012 – 2016, at various intersections in south Lee County:

Historical Traffic Counts and Various Intersections in South Lee County

	2012	**2016**	**Percent Increase**
SR/93 and I-75 S of Corkscrew (N)	37,000	50,000	35.1%
SR/93 and I-75 S of Corkscrew (S)	36,000	50,500	40.3%
SR/93 and I-75 S of Alico (N)	37,500	50,000	33.3%
SR/93 and I-75 S of Alico (S)	36,500	50,500	38.4%
	2013	**2017**	**Percent Increase**
Ben Hill Griffin N of Estero	18,800	21,000	11.7%
Ben Hill Griffin N of Corkscrew	15,100	21,200	40.4%
Bonita Beach Road W of I-75	28,800	36,400	26.4%
	2015	**2016**	**Percent Increase**
US-41 N or Bonita Beach Road	42,600	57,100	34.0%

Source: CON application #10523, Vo1. 1, page 21, Exhibit 9

MCSWF provides several travel and traffic articles to support traffic challenges in the area (CON application #10523, Vol. 2, Attachment B):

- FGCU helped make Ben Hill Griffin Parkway a destination, The News-Press, 8/16/2017
- Explosive growth on Corkscrew Rd creating traffic congestion, Fox-4 Now-WFTX Fort Myers/Cape Coral, 2/10/2017

- FDOT working to alleviate congestion along busy Fort Myers interchange, WINK News, 2/2/2018
- Lee County looks to alleviate traffic congestion, NBC-2 / WBBH News for Fort Myers, Cape Coral & Naples, 5/13/2016
- Project to ease Lee County traffic moving into second phase, WINK News, 12/19/2017
- Two new mines east of Estero a possibility, still in application process, Naples News, 1/9/2018

The applicant discusses total Florida population growth and total Lee County population growth (from January 2018 to January 2023), by age cohort and the corresponding estimated percentage change in these populations. MCSWF points out that compared to Florida as a whole, Lee County is experiencing much more rapid population growth and the growth in population in Lee County will drive increasing needs for hospital services. MCSWF utilizes Claritas/Spotlight to indicate the January 2018 to January 2023 total service area population estimates, broken down by age cohorts. From the same source, the applicant notes that the compounded annual growth rate (CAGR), by percentage. The reviewer collapses each discreet Zip Code, by age cohort, in the total service area. See the exhibit below.

January 2018 Service Area Population
Age Groups

Total Service Area ZIP Codes	0-17	18-44	45-64	65+	Total
Total	19,639	45,963	44,343	65,554	175,500

January 2023 Service Area Population
Age Groups

Total Service Area ZIP Codes	0-17	18-44	45-64	65+	Total
Total	21,845	49,544	43,468	78,239	193,097

Service Area Population CAGR 2018-2023
Age Groups

Total Service Area ZIP Codes	0-17	18-44	45-64	65+	Total
Total	2.2%	1.5%	-0.4%	3.6%	1.9%

Source: CON application #10523, Vol. 1, page 23, Exhibit 11

According to the applicant, the January 2018 total service area population (175,500 residents) will increase to 193,097 by January 2023, a total service area population CAGR of 1.9 percent, with the highest CAGR increase among the age groups being those 65+ (an estimated 3.6 percent increase).

MCSWF utilizes the same source for the same time period and same total service area, by PSA and then SSA and the total to indicate the area population percentage change. The reviewer collapses each discreet Zip Code, by PSA and SSA, and by age cohort, in the total service area. See the exhibit below.

January 2018 Service Area Population
Age Groups

Total Service Area ZIP Codes	0-17	18-44	45-64	65+	Total
All PSA ZIP Codes	12.601	28,464	27,508	39,998	108,571
All SSA ZIP Codes	7,038	17,500	16,835	25,556	66,929
Total	**19,639**	**45,963**	**44,343**	**65,554**	**175,500**

January 2023 Service Area Population
Age Groups

Total Service Area ZIP Codes	0-17	18-44	45-64	65+	Total
All PSA ZIP Codes	14,121	30,383	26,727	48,046	119,277
All SSA ZIP Codes	7,724	19,161	16,741	30,194	73,819
Total	**21,845**	**49,544**	**43,468**	**78,239**	**193,097**

Service Area Population Percent Change 2018-2023
Age Groups

Total Service Area ZIP Codes	0-17	18-44	45-64	65+	Total
All PSA ZIP Codes	21.1%	6.7%	-2.8%	20.1%	9.9%
All SSA ZIP Codes	9.7%	9.5%	-0.6%	18.1%	10.3%
Total	**11.2%**	**7.8%**	**-2.0%**	**19.4%**	**10.0%**

Source: CON application #10523, Vol. 1, page 72, Exhibit 38

According to the applicant, there will be a total service area population increase of 10.0 percent from January 2018 to January 2023, with the highest percentage increase among the age groups being those 65+ (an estimated 19.4 percent increase).

MCSWF indicates that a central location in The Village of Estero was used as a point of origin in order to compare travel times and distances to the various existing providers most proximate to the Zip Codes in the total service area. The applicant states the use of the website www.googlemaps.com to indicate the travel time in minutes, from the nearest existing hospitals as well as the proposed hospital, and the travel distance in miles, in the total service area, for each PSA Zip Code and SSA Zip Code.

The reviewer notes that the applicant introduces a new SSA Zip Code (33965) that was not previously stated as being part of the proposed total service area (page 65 of the application). According to MCSWF, Zip Code 33965 only encompasses FGCU and has little to no official population census and that for analysis purposes, the data from Zip Code 33965 has been grouped with nearby Zip Code 33913. The reviewer confirms that according to the FGCU website https://www.fgcu.edu/, FGCU is located in ZIP Code 33965. The reviewer also confirms that according to the US Bureau of Census, American FactFinder website at https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml#, with a data run date of April 13, 2018, the 2012-2016 American Community Survey Five-Year Estimates indicates that ZIP Code 33965 had a census 2010 total population of 1,648, with a median age of 19.4.

This establishes a seven-Zip Code total service area where previously, the total service area was composed of six Zip Codes. The reviewer notes that some of the hospitals identified by the applicant are not Class 1 general/acute care hospitals (Park Royal Hospital and The Willough at Naples). The reviewer notes that these two hospitals would not be general/acute care hospital destinations for area residents. See the exhibit below.

Drive Time from Existing Providers to Service Area (Minutes)

	PSA				SSA		
Facility	**33928 (Estero)***	**34134 (Bonita Springs)**	**34135 (Bonita Springs)**	**33967 (Fort Myers)****	**33965 (Fort Myers)**	**33913 (Fort Myers)**	**33908 (Fort Myers)**
Cape Coral Hospital	41 min	49 min	49 min	32 min	37 min	38 min	40 min
Gulf Coast Medical Center	20 min	32 min	34 min	18 min	22 min	19 min	14min
HealthPark Medical Center	29 min	37 min	42 min	21 min	30 min	26 min	23 min
Lee Memorial Hospital	31 min	42 min	43 min	26 min	33 min	29 min	29 min
Lehigh Regional Medical Center	29 min	45 min	44 min	27 min	31 min	30 min	34 min
Naples Community Hospital	43 min	34 min	35 min	38 min	39 min	39 min	41 min
North Naples Hospital	26 min	19 min	23 min	27 min	28 min	27 min	31 min
Park Royal Hospital	29 min	34 min	40 min	19 min	29 min	26 min	19 min
Physician's Regional-Collier Blvd	54 min	38 min	32 min	36 min	36 min	36 min	36 min
Physician's Regional-Pine Ridge	40 min	16 min	21 min	25 min	25 min	25 min	28 min
The Willough at Naples	52 min	45 min	37 min	40 min	40 min	40 min	45 min
Proposed: MCSWF***	2 min	15 min	21 min	8 min	13 min	15 min	6 min

* Central Village of Estero
** Southern portion of ZIP Code 33967
*** An approximate location within The Village of Estero
Source: CON application #10523, Vol. 1, page 26, Exhibit 13

Drive Time from Existing Providers to Service Area (Miles)

	PSA				SSA		
Facility	**33928 (Estero)***	**34134 (Bonita Springs)**	**34135 (Bonita Springs)**	**33967 (Fort Myers)****	**33965 (Fort Myers)**	**33913 (Fort Myers)**	**33908 (Fort Myers)**
Cape Coral Hospital	20.2 mil	27.3 mil	35.7 mil	18.2 mil	24.4 mil	23.9 mil	17.8 mil
Gulf Coast Medical Center	10.0 mil	16.6 mil	23.3 mil	7.8 mil	12.0 mil	9.5 mil	7.4mil
HealthPark Medical Center	12.4 mil	19.1 mil	22.7 mil	10.0 mil	14.5 mil	12.0 mil	10.1 mil
Lee Memorial Hospital	19.9 mil	22.4 mil	30.1 mil	13.2 mil	18.8 mil	16.4 mil	13.5 mil
Lehigh Regional Medical Center	23.4 mil	31.4 mil	33.7 mil	19.7 mil	18.5 mil	16.1 mil	20.5 mil
Naples Community Hospital	20.5 mil	16.1 mil	21.3 mil	31.2 mil	28.7 mil	30.7 mil	28.9 mil
North Naples Hospital	12.7 mil	8.3 mil	10.1 mil	21.3 mil	18.8 mil	20.9 mil	14.8 mil
Park Royal Hospital	12.1 mil	18.8 mil	22.4 mil	9.7 mil	14.2 mil	11.7 mil	9.5 mil
Physician's Regional-Collier Blvd	27.3 mil	25.2 mil	22.5 mil	32.4 mil	29.9 mil	32.0 mil	30.4 mil
Physician's Regional-Pine Ridge	20.3 mil	11.3 mil	13.0 mil	27.9 mil	20.4 mil	22.5 mil	21.4 mil
The Willough at Naples	26.1 mil	21.6 mil	23.7 mil	33.5 mil	31.1 mil	33.1 mil	31.3 mil
Proposed: MCSWF***	0.8 mil	7.4 mil	11.0 mil	11.0 mil	6.8 mil	6.4 mil	2.9 mil

* Central Village of Estero
** Southern portion of ZIP Code 33967
*** An approximate location within The Village of Estero
Source: CON application #10523, Vol. 1, page 26, Exhibit 14

The reviewer notes that according to the applicant's two exhibits above, the proposed facility would range from a minimum of two minutes to a maximum of 21 minutes from a central location in any Zip Code in the PSA and would range from a minimum of 0.8 miles to a maximum of 11.0 miles from the same central location in the same Zip Codes in the same PSA.

MCSWF goes further to indicate that travel time and distance analyses from central Estero are complicated by the dominant presence of gated communities in the area. The applicant provides a minutes exhibit and a miles exhibit to indicate distances from the proposed project to each of five named Zip Code 33928 communities, when compared to each of the hospitals named in the two above exhibits. The reviewer reproduces only the stated minutes and miles from the proposed MCSWF and the five named communities.

Drive Time from ZIP Code 33928 (Minutes)
ZIP Code 33928 Communities West to East

Hospital	West Bay Club	Stoney Brook Subdivision	The Club at Grandezza	Villages at Country Creek	Bella Terra Subdivision
Proposed MCSWF	7 min	10 min	10 min	3 min	20 min

Drive Time from ZIP Code 33928 (Miles)
ZIP Code 33928 Communities West to East

Hospital	West Bay Club	Stoney Brook Subdivision	The Club at Grandezza	Villages at Country Creek	Bella Terra Subdivision
Proposed MCSWF	2.5 mil	3.4 mil	3.8 mil	1.1 mil	7.7 mil

Source: CON application #10523, Vol. 1., page 28, Exhibit 15

The reviewer notes that according to the applicant's two exhibits above, the proposed MCSWF would range from a minimum of three minutes to a maximum of 20 minutes from any of the five stated communities and would range from a minimum of 1.1 miles to a maximum of 7.7 miles from any of these same communities.

The applicant states the use of the Agency Inpatient Discharge Database for "2014-2017 YE 6/30" and Claritas, Inc., to indicate slight declines in the total service area non-tertiary discharges (13,323 to 13,099) and correspondingly, slight declines in the total service area non-tertiary use rates (82.3 to 76.4), from 2015 to 2017. MCSWF emphasizes that the proposed project does not rely solely on growth in area utilization. MCSWF further emphasizes that the proposed project will address barriers to care that impact service area residents' access to health care services, stating that the current and projected levels of inpatient utilization are sufficient to support the proposed project. See the non-tertiary discharge and non-tertiary use rates exhibits below.

Service Area Non-Tertiary Discharges by Age

Year	Age Groups				Total
	0-17	18-44	45-64	65+	
PSA					
2015 PSA	326	671	1,600	4,892	7,489
2016 PSA	243	690	1,487	4,749	7,169
2017 PSA	210	700	1,523	5,130	7,563
SSA					
2015 SSA	171	441	1,250	3,972	5,834
2016 SSA	145	298	995	3,226	4,664
2017 SSA	140	424	1,080	3,892	5,336
Total Service Area					
2015 Total SA	497	1,112	2,850	8,864	13,323
2016 Total SA	388	988	2,482	7,975	11,833
2017 Total SA	350	1,124	2,603	9,022	13,099

Non-tertiary excludes: DRGs: 1-10, 14-42, 183-185, 215-238, 246-251, 652, 763-795, 849, 876-887, 894-897, 901-914, 927-935, 945-946, 955-965, 998-999

Source: CON application #10523, Vol. 1, page 76, Exhibit 42

Service Area Non-Tertiary Use Rates by Age

Year	Age Groups				Total
	0-17	18-44	45-64	65+	
PSA					
2015 PSA	27.8	24.5	59.3	142.1	74.5
2016 PSA	20.2	24.9	54.6	130.9	69.4
2017 PSA	17.1	24.9	55.4	134.1	71.3
SSA					
2015 SSA	26.3	26.7	77.6	179.5	95.2
2016 SSA	21.7	17.7	60.7	138.6	73.8
2017 SSA	20.4	24.7	64.7	158.9	84.9
Total Service Area					
2015 Total SA	27.3	25.3	66.1	156.7	82.3
2016 Total SA	20.8	22.2	56.9	133.9	71.1
2017 Total SA	18.2	24.8	58.9	143.8	76.4

Non-tertiary excludes DRGs: 1-10, 14-42, 183-185, 215-238, 246-251, 652, 763-795, 849, 876-887, 894-897, 901-914, 927-935, 945-946, 955-965, 998-999

Source: CON application #10523, Vol. 1, page 77, Exhibit 43

The applicant utilizes the same source to estimate a need (at 70 percent occupancy) of 224.27 beds for the proposed project. This calculation considers discharges, average length of stay (ALOS), patient days and average daily census (ADC). The reviewer collapses each discreet Zip Code for the PSA and the SSA and then shows the total estimate. See the exhibit below.

July 2016-July 2017 Non-Tertiary ADC and Acute Care Beds Required

ZIP Code	Discharges	ALOS	Patient Days	ADC
PSA				
All PSA ZIP Codes	7,563	4.4	33,361	91.4
SSA				
All SSA* ZIP Codes	5,536	4.3	23,939	65.6
SA Total	**13,099**	**4.4**	**57,300**	**156.99**
Bed Need at 70% Occupancy				**224.27**

* Includes ZIP Code 33963 (FGCU)
Non-tertiary excludes DRGs: 1-10, 14-42, 183-185, 215-238, 246-251, 652, 763-795, 849, 876-887, 894-897, 901-914, 927-935, 945-946, 955-965, 998-999
Source: CON application #10523, Vol. 1, page 79, Exhibit 46

The applicant stresses that more important considerations in planning for a new hospital are improvement in access, enhancement to competition and improved geographic distribution of services, all of which MCSWF will offer.

Below is the applicant's estimated non-tertiary market share for the first three years of operation (ending June 2024). MCSWF states acknowledgement of an existing Class 1 general/acute hospital in Zip Code 33908, but that reduced market share in this area reflects that MCSWF only anticipates serving patients from the southern area of this Zip Code. The applicant asserts that its market share estimates are conservative and reasonable. The reviewer notes that depending on the Zip Code selected, MCSWF expects, by year three, to have its highest market share (45.0 percent) in Zip Code 33928 and its lowest market share (10.0 percent) in Zip Code 33908, with an overall total market share of 25.9 percent.

Non-Tertiary Projected Market Share

ZIP Code	July 2021-June 2022	July 2022-June 2023	July 2023-June 2024
PSA			
33928	35.0%	40.0%	45.0%
33967	25.0%	30.0%	35.0%
34134	25.0%	30.0%	35.0%
34135	20.0%	25.0%	30.0%
SSA			
33908	5.0%	7.5%	10.0%
33913*	10.0%	15.0%	20.0%
Total	**17.4%**	**21.7%**	**25.9%**

Source: CON application #10523, Vol. 1, page 81, Exhibit 48
The reviewer notes that in the case of the above exhibit, MCSWF does not identify the meaning of the (*) in the chart above.

MCSWF discusses a non-tertiary "weighted average ALOS" in consideration of its existing Class 1 general/acute care hospitals in District 8, indicating a weighted average ALOS at those facilities of 4.35.

The applicant reiterates its non-tertiary ALOS of 4.4. MCSWF discusses the expectation of a small percentage of growth in the projected ALOS in the consideration of the fact that the 65+ population is growing rapidly in the area and that the elderly population has a longer ALOS. Therefore, the applicant states that a final ALOS of 4.6 was applied for each of the first three years of operation. MCSWF indicates that its five percent in-migration is realistic in light of the Fort Myers area's status as a tourist destination with visitors coming from across the state and country. Considering these factors, MCSWF projects non-tertiary discharges resulting in a need for 48 beds in year one, 61 beds in year two and 74 bed in year three at a 70 percent occupancy rate for each year. See the exhibit below.

Projected MCSWF Non-Tertiary Discharges

ZIP Code	July 2021-June 2022	July 2022-June 2023	July 2023-June 2024
PSA			
33928	725	845	463
33967	424	519	618
34134	338	412	491
34135	659	841	1,030
SSA			
33908	225	343	3,915*
33913**	163	252	343
Service Area Discharges	**2,535**	**3,212**	**968***
In-Migration (5%)	**133**	**169**	**206**
Total MCSWF Discharges	**2,668**	**3,381**	**4,121***
Projected ALOS	4.6	4.6	4.6
Projected Days	12,273	15,555	18,957
Projected ADC	34	43	52
Bed Need at 70%	**48**	**61**	**74**

** Includes ZIP Code 33963 (FGCU)
Non-tertiary excludes DRGs: 1-10, 14-42, 183-185, 215-238, 246-251, 652, 763-795, 849, 876-887, 894-897, 901-914, 927-935, 945-946, 955-965, 998-999
Source: CON application #10523, Vol. 1, page 83, Exhibit 50

The reviewer notes that the applicant does not explain the marked arithmetic discrepancies in the year three estimates (July 2023-June 2024) for ZIP Code 33908 in the above exhibit, included by the reviewer as "*".

The reviewer notes that MCSWF uses both non-tertiary and psychiatric discharges to reach 74.9 percent PSA discharges by year three, ending June 2024. The reviewer also notes that based on CON application #10523's page 83, Exhibit 50 (non-tertiary discharges only, excluding psychiatric bed days), the applicant does not reach 75 percent of total discharges from the PSA, by year three. The reviewer calculates the PSA discharge percentage at 63.14 percent (2,602 PSA discharges / 4,121 total service area discharges = 63.14 percent). Although, the reviewer

does note that the applicant claims that the acute care bed complement will decrease with the addition of psychiatric beds and the actual acute care beds at the hospital will be 70. The reviewer notes that the slight increase in service area discharges, in-migration, total discharges, ALOS, patient days, ADC and bed need estimates between the applicant's Exhibit 50 (above) and the applicant's Exhibit 54 (below) is due to a combination of a proposed 70 acute care beds and a proposed 10 psychiatric beds, with the introduction of psychiatric DRGs 876 and 880-887. See the next two exhibits.

Projected MCSWF Total Discharges

ZIP Code	July 2021-June 2022	July 2022-June 2023	July 2023-June 2024
PSA			
33928	753	876	1,003
33967	444	543	645
34134	352	429	508
34135	681	868	1,061
SSA			
33908	237	360	486
33913**	173	265	361
Service Area Discharges	**2,640**	**3,340**	**4,065**
In-Migration (5%)	**152**	**192**	**233**
Total MCSWF Discharges	**2,792**	**3,531**	**4,298**
Projected ALOS	4.83	4.82	4.81
Projected Days	13,475	17,009	20,669
Projected ADC	36.92	46.60	56.63
Bed Need at 70%	**52.74**	**66.57**	**80.90**

** Includes ZIP Code 33963 (FGCU)

Non-tertiary excludes DRGs: 1-10, 14-42, 183-185, 215-238, 246-251, 652, 763-795, 849, 876-887, 894-897, 901-914, 927-935, 945-946, 955-965, 998-999

Psych DRGs: 876, 880-887

Source: CON application #10523, Vol. 1, page 86, Exhibit 54

Projected MCSWF Total Discharges

ZIP Code	July 2021-June 2022	Percent of Total	Cumulative Percent
PSA			
33928	1,003	23.3%	23.3%
33967	645	15.0%	38.3%
34134	508	11.8%	50.2%
34135	1,061	24.7%	74.9%
SSA			
33908	486	11.3%	86.2%
33913**	361	8.4%	94.6%
Service Area Discharges	**4,065**	**94.6%**	
In-Migration (5%)	**233**	**5.4%**	**100.0%**
Total MCSWF Discharges	**4,298**	**100.0%**	

** Includes ZIP Code 33963 (FGCU)
Non-tertiary excludes DRGs: 1-10, 14-42, 183-185, 215-238, 246-251, 652, 763-795, 849, 876-887, 894-897, 901-914, 927-935, 945-946, 955-965, 998-999
Psych DRGs: 876, 880-887
Source: CON application #10523, Vol. 1, page 87, Exhibit 55 and page 110, Exhibit 63

The reviewer notes that the applicant does not reach a bed need of 80 based solely on non-tertiary acute care beds, but must add 10 psychiatric beds to reach a bed need of 80.90 beds.

Regarding anticipated impact on exiting providers as it pertains to non-tertiary discharges, MCSWF indicates that adverse impact was calculated at the Zip Code level based on each existing provider's current market share of patients from each Zip Code. The applicant indicates that for the total service area, there is a projected incremental growth of 2,012 discharges between 2017 and 2024 for non-tertiary patients. MCSWF states that approximately 51 percent of the proposed hospital's non-tertiary patient discharges will be attributable to the incremental growth in service area discharges. The reviewer notes that the applicant does not state its source for its year ending June 30, 2017 for the exhibit below.

Projected Facility Change in Discharges for Service Area Non-Tertiary Patients 6/2017 - 6/2024

Lee County	Non-Tertiary Discharges			Total Discharges	Percent Impact
	YE 6/30/2017	YE 6/30/2024	Change 2017-2024	YE 2017	
HCA					
Medical Center of SW Florida	*0*	*3,915*	*3,915*	*0*	
Lee Health System Facilities					
Gulf Coast Medical Center	3,369	2,868	(501)	16,567	-3.0%
Cape Coral Hospital	133	123	(10)	21,599	0.0%
Lee Memorial Hospital	1,310	1,177	(133)	22,466	-0.6%
HealthPark Medical Center	3,669	3,405	(264)	16,162	-1.6%
Lee Health System	**8,481**	**7,574**	**(907)**	**76,794**	**-1.2%**
Prime Healthcare System					
Lehigh Regional Medical Center	43	39	(6)	2,795	-0.2%
Collier County					
Physicians Regional Healthcare System					
Physicians Regional-Pine Ridge	893	692	(201)	3,323	-6.0%
Physicians Regional-Collier Boulevard	77	58	(19)	6,559	-0.3%
Physicians Healthcare System Total	**970**	**751**	**(219)**	**9,882**	**-2.2%**
NCH Healthcare System					
North Naples Hospital Campus	2,124	1,644	(480)	14,246	-3.4%
Naples Community Hospital	907	706	(201)	13,828	-1.5%
NCH Healthcare System Total	**3,031**	**2,350**	**(681)**	**28,074**	**-2.4%**
Other Facilities					
Other Total	572	483	(89)		
Total Lee County Patients	**13,099**	**15,111**	**2,012**		

Source: CON application #10523, Vol. 1, page 88, Exhibit 56

CON application #10523, page 89, Exhibit 57, provides a similar estimate regarding psychiatric patients pertaining to Lee and Collier Counties. The applicant points out that according to its Exhibit 56 above, the proposed facility will not impact any one existing provider by more than six percent.

MCSWF again discusses availability, quality, efficiency and extent of utilization in support of the proposed project (pages 97 -100 of the application). The reviewer notes that pursuant to the Statutory Review Criteria, stated in item E.1 of this report, efficiency is not an authorized Statutory Rule Criteria that the Agency may consider in determining approval or denial of a general hospital project. Regarding access, particularly financial access, see item E.1.c (CON application #10523) of this report. MCSWF discusses the Health Care Access Criteria (CON application #10523, pages 106 – 108).

Lee Memorial Health System (CON application #10524) states in the executive summary (CON application #10524, pages 4-25 and 4-26) the following reasons for approval of the proposed project:

- Lee Health is a public special service district hospital system that receives no ad valorem or sales tax support and is one of a select group of safety-net hospitals[19] in the state.
- Lee Health provides nearly all Medicaid and charity care to area residents. The LHCP campus will continue to serve all who need its services regardless of ability to pay.
- The proposed project-phase two of the LHCP campus development-consists of an 82-bed patient tower that will be directly attached to the phase one construction currently underway. Anticipating the phase two-bed tower, phase one is being constructed to contemporary hospital building code standards. The proposal represents a savings of nearly 60 percent compared to the capital budget for a single, stand-alone 82-bed hospital.
- The service area for the proposed facility has strong population growth and is home to a large (and growing) senior population.
- Lee Health will offer programs and services targeted directly to the health and well-being of seniors in the service area, those who need access to quality health care the most.
- Seniors have difficulty navigating busy streets/highways and require local health care services. The proposed facility will provide seniors in and around the service area with increased access to health care services.
- Lee Health has initiated bold moves to develop an integrated delivery system. Its "Coordinated Care Model", including chronic care management, has already demonstrated preliminary results.
- The proposed new facility will be developed without adding beds to the district or subdistrict bed inventory. To do this, LMHS will delicense and transfer 82 acute care beds and agree not to request additional acute care beds for a period of 24 months following the opening of the new facility. The co-batched application **(CON application #10523 – MCSWF)** cannot make the same claim as it will add licensed beds to the district and subdistrict inventory and result in substantially greater adverse impact on local providers.

LMHS discusses how its proposed PSA and SSA Zip Codes were reached and provides a map of the total service area (CON application #10524, page 5-13, Map 5-4).

The applicant utilizes the Agency Inpatient Database and Legacy Consulting Group analysis to indicate that for the 12-months ending June 30, 2017, nearly 60 percent (the reviewer notes 57.6 percent per the applicant's table) of proposed service area residents already seek

[19] According to the website http://safetynetsflorida.org/member-hospitals, LMHS is a member of the Safety Net Hospital Alliance of Florida.

inpatient care at a Lee Health facility and that, "a significant number of service area residents choose Lee Health over other providers". The reviewer notes that the discharge volumes are shown in descending order, highest to lowest. See the table below.

Discharge Volume for Residents of LHCP Proposed Service Area
12 Months Ending June 30, 2017

Hospital	All ages, excluding Normal Newborns, CMR, trauma		Adults 15+, non-tertiary, excl. OB, CMR, trauma	
	Volume	**Percent**	**Volume**	**Percent**
HealthPark	7,958	27.6%	5,870	25.0%
Gulf Coast	6,037	21.0%	5,451	23.2%
NCH North	5,447	18.9%	3,930	16.7%
Naples Community	2,871	10.0%	2,462	10.5%
Physicians-Pine Ridge	2,354	8.2%	2,284	9.7%
Lee Memorial	2,074	7.2%	1,965	8.4%
Physicians-Collier Blvd.	323	1.1%	312	1.3%
Cape Coral	293	1.0%	241	1.0%
All Others	1,432	5.0%	956	4.1%
Total	**28,787**	**100.0**	**23,471**	**100.0%**
By System				
Lee Health	16,360	56.8%	13,527	57.6%
NCH	8,318	28.9%	6,392	27.2%
Physicians Regional	2,677	9.3%	2,596	11.1%

Source: CON application #10524, Vol. 1, page 5-4, Table 5-1

LMHS contends that, in part, the proposed project will support the appropriate utilization of Lee Health's existing services and facilities in the community.

The applicant utilizes the Agency's Florida Population Estimates and Projections by AHCA District 2010-2030 publication, issued February 2015, to indicate that from July 1, 2018 to July 1, 2023, each age cohort shown in the table below is expected to grow at a faster rate than District 8 overall and faster than the State of Florida overall, with Lee County expected to realize a 10.9 percent population growth rate, District 8 realizing an 8.2 percent growth rate and Florida realizing a 6.5 percent growth rate. LMHS points out that Lee County's 65+ age cohort is expected to realize a 16.1 percent growth rate for the same timeframe. The reviewer reproduces only the absolute change in population count by age cohort and the absolute percent change by age cohort for the referenced timeframe, not the total 2018 and total 2023 population counts. LMHS also provides a bar graph (to represent these same Lee County percentages and Florida percentages) for each referenced age cohort, for the same timeframe. See the table below.

Population of Lee County, District 8 and Florida
2018 and 2023 (July 1 estimates)

Geographic Area	0-14	15-64	65+	Total
Absolute Change				
Lee County	9,974	39,982	29,966	79,922
District 8	15,115	63,777	65,265	144,157
Florida	161,491	569,050	611,944	1,342,485
Absolute Change				
Lee County	8.7%	9.3%	16.1%	10.9%
District 8	5.9%	6.4%	12.8%	8.2%
Florida	4.6%	4.4%	15.0%	6.5%

Source: CON application #10524, Vol. 1, page 5-8, Table 5-2

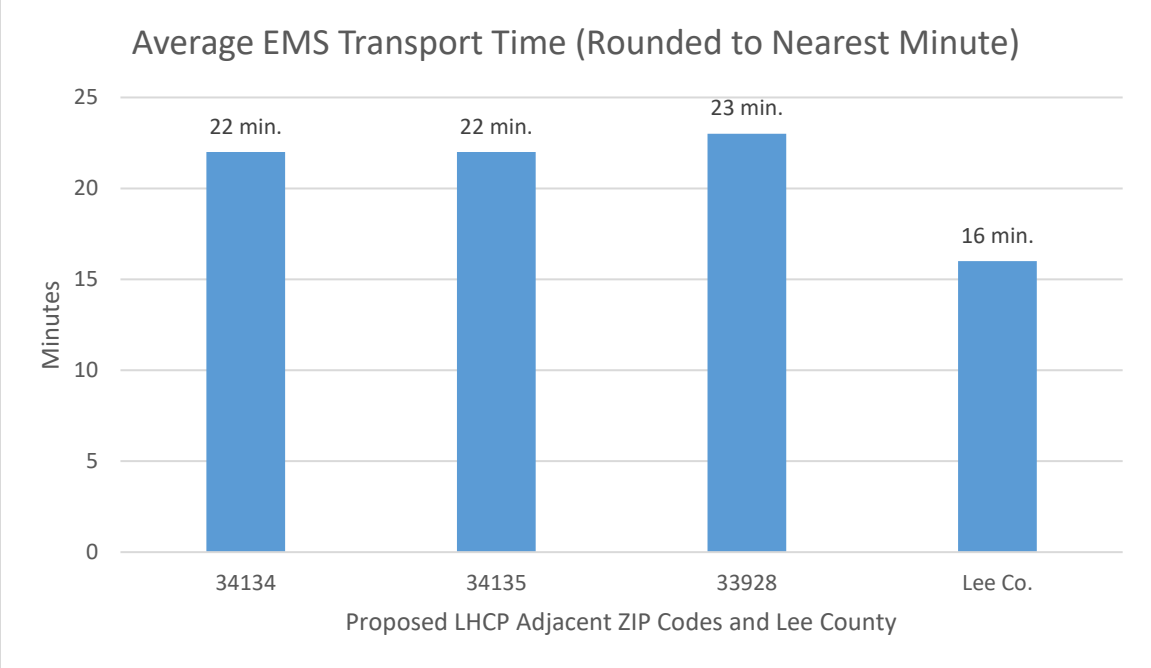
LMHS utilizes the same source to indicate that between 2015 and 2025, in Lee County, the age 65+ population is expected to increase by 64,021 residents (39.83 percent increase). The applicant states that the age 75+ population is expected to increase by 30,005 residents (43.69 percent increase). LMHS contends that the age 75+ population is the most challenged by having to drive "longer distances in heavy traffic congestion", an issue today for elderly drivers in south county seeking care at one of the Lee Health hospitals. The reviewer confirms many of the applicant's support letters describing traffic congestion and driving distance challenges by south Lee County elderly residents when seeking inpatient acute care services or seeking care for a loved one. LMHS notes the development of the Bonita Community Health Center (see item E.1.b of this report) was, in part, a response to such elderly resident challenges and the LMHS commitment to meet such challenges.

The applicant indicates that according to the Agency Inpatient Database for the 12 months ending June 30, 2017, Environics Analytics, the Agency's Florida Population Estimates and Projections by District 2010 to 2030 publication (issued February 2015) and Legacy Consulting Group analysis to indicate that the age 65+ population (in both Lee County and in the proposed service area) is admitted to an acute inpatient hospital over three times more frequently compared to the age 15-64 population group from the same geographic area (CON application #10524, page 5-50, Table 5-24). LMHS contends that this elderly patient population base, already aligned with the Lee Health System, will have increased difficulties accessing health care given the challenges facing elderly drivers.

The applicant asserts that from the proposed service area, there is a 30+ minute drive time during most of the year to either GCMC, HealthPark Medical Center or Lee Memorial Hospital. LMHS contends that traffic volume and congestion in the area will add to the average travel time in future years. The applicant discusses the volume of elderly drivers in Florida, in Lee County and in the proposed services area, along with

senior driving critical considerations (vision, hearing and reaction time) and the corresponding response by senior drivers to these challenges, resulting in a lack of adequate access to acute inpatient care (pages 5-52 through 5-55 of the application).

LMHS utilizes Lee County Dept. of Public Safety – EMS Data - March 2017 to April 2018, to indicate a mean transport time from scene to hospital for three Zip Codes adjacent to the proposed LHCP site (ZIP Codes 34134 – 21.46 min/sec, 34135 – 21.40 min/sec, 33928 – 23.19 min/sec and Lee County overall – 15.53 min/sec). The applicant notes that the average EMS transport time to a hospital from the three Zip Codes immediately adjacent to the proposed LHCP campus is 40 percent longer than the overall EMS transport time in Lee County. The reviewer notes that the applicant provides no Lee County EMS transport logs to verify this contention. The reviewer rounds each min/sec to the nearest minute. See the figure below.



Source: CON application #10524, Vol. 1, page 5-56, Figure 5-5

LH discusses the details and results of a drive time analysis/assessment[20] in terms of service area resident access to existing acute care hospitals. The applicant reproduces from page 12 of the traffic assessment the findings. The reviewer notes portions of these findings:

- The analysis examined two drive-time traffic scenarios:
  - An optimistic "off season" scenario
  - A peak season "pessimistic/congested traffic" scenario
    - Given increasing traffic volume combined with current road conditions, the "pessimistic/congested traffic" scenario becomes the norm for the greater part of the year by 2023
- During critical peak season congested traffic conditions, the current drive time from communities within The Village of Estero and the surrounding areas to the three existing area hospitals generally exceed 30 minutes.
- As traffic congestion increases through year 2023, the area outside the 30-minute drive time expands.
- Much of The Village of Estero and surrounding area will be within a 30-minute drive under the more critical peak season traffic congestion scenario with the establishment of the proposed LHCP.
- Under current conditions, travel times to the existing three hospitals (for those areas of The Village of Estero and surrounding areas that are beyond the 30-minute drive time to these hospitals), travel times are:
  - Six to 13 minutes longer in the AM peak hour
  - Seven to 17 minutes longer in the midday peak hour
  - Eight to 17 minutes longer in the PM peak hour

In addition to the traffic assessment findings stated above, LMHS emphasizes that the elderly driver is profoundly impacted in terms of access to a Lee Health campus for inpatient care. The applicant contends that based on findings of the travel analysis, it is obvious that driving from south county to a Lee Health hospital campus constitutes an elderly driver's worst fear, including:

- High-volume, fast-moving highways with road conditions that can only strike fear to aging drivers

[20] CON application #10524, Vol. 2, Appendix 12. The reviewer notes that this 12-page travel assessment (with 18 additional diagrams), Project #18507, issued April 5, 2018, titled "Lee Health Coconut Point Certificate of Need Application Travel Time Assessment" was prepared by David Plummer & Associates, Inc. According to the website http://www.dplummer.com/about-us/, David Plummer & Associates, founded in 1978, is a progressive civil engineering and transportation planning consulting firm, specializing in transportation engineering, civil engineering and transportation planning, with offices in Coral Gables, Florida and Fort Myers, Florida.

- Travel times in excess of 30 minutes for much of the year causing anxiety, fatigue and stress for both the elderly driver and their passengers
- Necessary to make a dangerous left turn at one or more of the three busiest intersections in Lee County
  - US 41/Tamiami Trail and Gladiolus Drive
  - Gladiolus Drive and Summerlin Road
  - Six Mile Cypress Parkway and Metro Parkway

LMHS utilizes Environics Analytics and Legacy Consulting Group analysis to determine the proposed total service area population estimate by Zip Code and age group for both 2018 and 2023. The reviewer notes that from these 2018 and 2023 estimates, using the same sources, the applicant indicates the absolute change and the percentage change, in population, by Zip Code, for the same age cohorts for the same timeframe. The reviewer collapses each discreet Zip Code, by PSA and SSA, and by age cohort, in the total service area. See the two tables below.

Absolute Change in Service Area Population
By ZIP Code and Age Group, 2018-2023

Total Service Area ZIP Codes	0-14	15-44	45-64	65+	Total
All PSA ZIP Codes	1,301	5,031	-1,453	14,188	19,067
All SSA ZIP Codes	575	3,658	-534	8,130	11,829
Total	**1,876**	**8,689**	**-1,987**	**22,318**	**30,896**

Source: CON application #10524, Vol. 1, page 5-16, Table 5-6

Percent Change in Service Area Population
By ZIP Code and Age Group, 2018-2023

Total Service Area ZIP Codes	0-14	15-44	45-64	65+	Total
All PSA ZIP Codes	5.4%	9.0%	-2.9%	18.7%	9.3%
All SSA ZIP Codes	3.6%	10.2%	-1.5%	17.5%	8.9%
Total	**4.7%**	**9.5%**	**-2.3%**	**18.3%**	**9.1%**

Source: CON application #10524, Vol. 1, page 5-17, Table 5-7

According to the applicant, from 2018 to 2023, the total service area population will increase by 30,896 residents (an increase of 9.1 percent). These totals indicate that the highest population increase among the age cohorts is the 65+ population increasing by 22,318 residents (18.3 percent) for the same timeframe. LMHS emphasizes that growth in the senior market segment is expected to account for nearly three-fourths

(72 percent) of the service area's population growth. The applicant provides a map to reflect the absolute change in the senior population 2018 -2023 (CON application #10524, page 5-18, Map 5-5).

LMHS utilizes the Agency Inpatient Database and Legacy Consulting Group analysis to indicate that for the 12-month period ending June 30, 2017, there were 23,471 adult, non-tertiary discharges from short-term acute care hospitals for residents of the service area a 3.2 percent increase over the corresponding June 2014 volume of 22,754. The reviewer notes that the correct arithmetic percentage is 3.15. The applicant indicates that non-tertiary discharges are defined by two-digit MDCs and by three-digit DRGs and that these are provided (CON application #10524, Vol. 1, Appendix 2). The reviewer collapses each discreet Zip Code, by PSA and SSA, and reproduces only the volumes for the 12 months ending June 2014 and June 2017. See the table below.

Service Area Inpatient Discharge Volume
2014 – 2017
(adult, non-tertiary, excluding OB, CMR and trauma)

ZIP Code	12 Months Ending	
	June 2014	**June 2017**
All PSA ZIP Codes	13,882	14,349
All SSA ZIP Codes	8,872	9,122
Total	**22,754**	**23,471**

Source: CON application #10524, Vol. 1, page 5-19, Table 5-8

LMHS utilizes the Agency Inpatient Database and Legacy Consulting Group analysis to indicate that for the 12-month period ending June 30, 2017, the vast majority of adult discharges (69.7 percent) are for service area residents at least 65 years of age. The applicant contends that given the service area growth rate of this market segment, it is clear that seniors will place heavy demands on health care delivery in this area for the foreseeable future. The reviewer collapses each discreet Zip Code, by PSA and SSA, by age cohort and percentage. See the table below.

Service Area Inpatient Discharge Volume by Age Group
12 Months Ending June 30, 2017
(adult, non-tertiary, excluding OB, CMR and trauma)

ZIP Code	Discharge Volume			Percent of ZIP Code	
	15-64	**65+**	**15+**	**15-64**	**65+**
All PSA ZIP Codes	4,216	10,133	14,349	29.4%	70.6%
All SSA ZIP Codes	2,887	830	9,122	31.6%	68.4%
Total	**7,103**	**16,368**	**23,471**	**30.3%**	**69.7%**

Source: CON application #10524, Vol. 1, page 5-20, Table 5-9

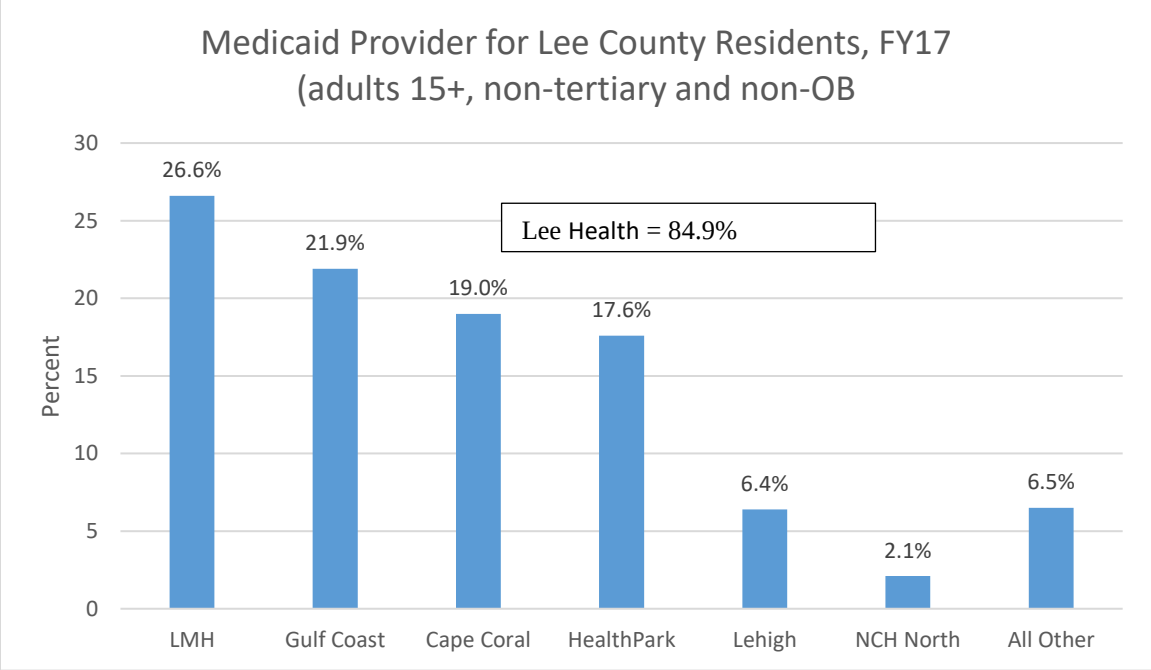
The applicant indicates that Lee Health maintains a service area market share of 58 percent. LH states that six-in-ten service area residents prefer Lee Health and contends that this is a clear indication of its market strength in the service area. The reviewer collapses each discreet Zip Code by PSA and SSA. See the table below.

Inpatient Market Share by Hospital for Residents of the Service Area, FY17 (12 months ending June 30, adults, non-tertiary, excluding OB, CMR and trauma)

ZIP Codes	Cape Coral	Gulf Coast	Health-Park	Lee Memorial	Lee Health	Lehigh Regional	NCH North	All Others	Total
All PSA ZIP Codes	1.1%	31.1%	26.3%	9.2%	67.7%	0.3%	14.0%	18.0%	100.0%
All SSA ZIP Codes	0.9%	10.9%	23.1%	7.0%	41.8%	0.1%	21.1%	37.1%	100.0%
Total	**1.0%**	**23.2%**	**25.0%**	**8.4%**	**57.6%**	**0.2%**	**16.7%**	**25.4%**	**100.0%**

Source: CON application #10524, Vol. 1, page 5-21, Table 5-10

LMHS utilizes the Agency Inpatient Database and Legacy Consulting Group analysis to show that for the 12-month period ending June 30, 2017, 71.3 percent of the proposed LHCP's proposed service area adult, non-tertiary discharges were paid by Medicare and for Lee County overall, Medicare paid 63.8 percent for the total subdistrict discharge population. The applicant emphasizes that Lee Health's overall Medicaid percentage on the above figure is 84.9 percent and provides more Medicaid care to Lee County residents than all other hospitals combined.



Source: CON application #10524, Vol. 1, page 5-23, Figure 5-3

The applicant states the use of the Agency's Florida Hospital Bed Need Projections and Service Utilization by District for FY 2014 through FY 2017 to indicate acute care patient days and occupancy rates. In this same table, the applicant states that the change in patient days, by percentage, for the FY 2014 to the FY 2017 timeframe. The applicant points out that four-in-ten (41.6 percent) of the district's patient days are provided by hospitals in Lee County and 97.2 percent of Lee County's total patient days are provided by the four hospitals operated by Lee Health.

LMHS explains that for the purposes of the application and for development of the proposed LHCP hospital, a five-year planning horizon is appropriate and that further, the proposed project is expected to be operational by late 2022 or early 2023 to support the tourist season. The applicant contends that the PSA, SSA and subsequent demand projections are based on the following five-step model:

1. Identify all Zip Codes within 15 miles of the proposed location in south Lee County.
2. Analyze and project discharge (use) rates for adult, non-tertiary, non-OB discharges for each Zip Code identified in "Step One" to 2023 (the five-year planning horizon).
3. Project demand for each Zip Code for 2023 using projected 2023 use rates from "Step Two" and projected adult population in each identified Zip Code.
4. Estimate volume from each identified Zip Code that might be expected to seek care at the new LHCP facility.
5. Define the PSA as the Zip Codes representing the top 75 percent of discharges and the SSA as the Zip Codes representing the next 15 percent of discharges. The final 10 percent of discharges is reflective of in-migration from those living outside of the PSA and the SSA.

LMHS provides a map to show the Zip Codes within a 15-mile radius of the proposed project (page 5-26, Map 5-6 of the application). The applicant asserts that this 15-mile radius was selected because it was felt that given the location of existing hospitals and transportation corridors, no Zip Code outside of this 15-mile range would be likely to fall within either the PSA or SSA of the proposed new facility.

LMHS described its provision of coordinated care in the area for several years. The applicant states that its coordinated care program is responsible, in part, for the downward trend in use rates (an average -1.4 downward use rate from FY 2014 to FY 2017). LMHS contends that an expectation that this downward use rate will flatten in the foreseeable future. The applicant explains that use rates for each Zip Code within a

15-mile radius of the proposed project for 2023, are projected by using one-half the average year-to-year change in use rates for each of these 15-mile radius Zip Codes from FY 2014 to FY 2017. LMHS points out that its use rate estimates are based on per 1,000 people.

The reviewer notes that beginning with the next two tables and several tables thereafter, LMHS includes the following seven Zip Codes in its estimates not previously stated as either a PSA or an SSA Zip Code, but indicated as a Zip Code within 15 miles of the proposed LHCP hospital:

- 33907 (Fort Myers)
- 33966 (Fort Myers)
- 34103 (Naples)
- 34105 (Naples)
- 34108 (Naples)
- 34109 (Naples)
- 34116 (Naples)

The reviewer verifies that the city name for each of the seven non-PSA and non-SSA ZIP Codes (but within a 15-mile radius of the proposed LHCP hospital) as indicated by the applicant, is confirmed through the USPS website at https://tools.usps.com/zipcodelookup/bycitystate. LMHS states the use of Environics Analytics, the Agency's Inpatient Database and Legacy Consulting Group analysis to reach the estimates shown in the next two tables. The reviewer collapses each discreet Zip Code within 15 miles of the proposed project, as stated by the applicant. See the next two tables.

Adult Population and Discharge Volume for ZIP Codes within 15 Miles of Proposed Location (short-term acute care, non-tertiary, excluding CMR, trauma and OB)

	Adult Population				Discharge Volume			
ZIP Code	**2014**	**2015**	**2016**	**2017**	**FY 14**	**FY 15**	**FY 16**	**FY 17**
All ZIP Codes within 15-Mile Radius of Proposed LHCP Hospital **Total**	**384,831**	**394,059**	**403,287**	**412,516**	**32,201**	**34,249**	**33,605**	**32,776**

Source: CON application #10524, Vol. 1, page 5-27, Table 5-12

Use Rates, Changes in Use Rates and Projected Demand For ZIP Codes within 15 Miles of Proposed Location

ZIP Codes	Use Rate				Year to Year Change		2023		
	FY 14	FY 15	FY 16	FY 17	Avg	½ Avg	Rate	Pop 15+	Demand
All ZIP Codes within 15-Mile Radius of Proposed LHCP Hospital **Total**	**83.7**	**86.9**	**83.3**	**79.5**	**-1.4**	**-0.7**	**75.2**	**460,327**	**34,704**

Source: CON application #10524, Vol. 1, page 5-28, Table 5-13

The reviewer notes that the applicant provides a 2023 projected demand of 34,704 for the 15+ population and a use rate of 75.2. The applicant discusses (pages 5-28 and 5-29 of the application) an alternative approach to assess demand estimates but states that the methodology shown above is both appropriate and conservative.

LMHS asserts that the next step is defining the PSA, SSA and total projected volume of the proposed project is to estimate demand for each hospital in each Zip Code (within a 15-mile radius of the proposed LHCP hospital). LMHS also asserts that to do this, the applicant analyzed each Lee Health facility, as well as Lehigh Regional and NCH North. LMHS utilizes the Agency Inpatient Database and Legacy Consulting Group analysis to determine discharge volume and discharge market share, by hospital and Zip Code, for the 12 months ending June 30, 2017. The reviewer notes that though the applicant states that in addition to Lee Health hospitals, Lehigh Regional and NCH North were considered, data regarding Lehigh Regional is not included in the applicant's next two tables. The reviewer collapses each discreet Zip Code within 15 miles of the proposed project, as stated by the applicant. See the next two tables.

Adult, Non-Tertiary Discharge Volume by Hospital for ZIP Codes within 15 Miles of Proposed Facility 12 Months Ending June 30, 2017 (excluding CMR, trauma and OB)

ZIP Codes	Cape Coral	Gulf Coast	Health-Park	Lee Memorial	Lee Health	NCH North	All Others	Total
All ZIP Codes within 15-Mile Radius of Proposed LHCP Hospital **Total**	**348**	**6,884**	**6,544**	**2,589**	**16,365**	**5,442**	**10,969**	**32,776**

Source: CON application #10524, Vol. 1, page 5-30, Table 5-14

Adult, Non-Tertiary Discharge Market Share by Hospital for ZIP Codes within 15 Miles of Proposed Facility 12 Months Ending June 30, 2017 (excluding CMR, trauma and OB)

ZIP Codes	Cape Coral	Gulf Coast	Health-Park	Lee Memorial	Lee Health	NCH North	All Others	Total
All ZIP Codes within 15-Mile Radius of Proposed LHCP Hospital **Total**	**1.1%**	**21.0%**	**20.0%**	**7.9%**	**49.9%**	**16.6%**	**33.5%**	**100.0%**

Source: CON application #10524, Vol. 1, page 5-31, Table 5-15

LMHS contends that Lee Health is the clear market share leader in Fort Myers Zip Codes, while NCH and other facilities have greater strength in Naples and Bonita Springs. The applicant asserts that based on the Agency Inpatient Database and Legacy Consulting Group analysis (FY 14 – FY 17), market shares within 15 miles of the proposed project location have remained relatively stable over the last few years (page 5-32, Table 5-16 of the application). LMHS asserts that as such, market shares by hospital for the 2023 planning horizon are held constant at current levels. The applicant indicates again the use of the same sources to attain projected estimates for 2023. The reviewer collapses each discreet Zip Code within 15 miles of the proposed project, as stated by the applicant. See the table below.

Projected Adult, Non-Tertiary Discharge Volume by Hospital for ZIP Codes within 15 Miles of the Proposed Facility – 2023 (excluding CMR, trauma and OB)

ZIP Codes	Cape Coral	Gulf Coast	Health-Park	Lee Memorial	Lee Health	NCH North	All Others	Total
All ZIP Codes within 15-Mile Radius of Proposed LHCP Hospital **Total**	**360**	**7,333**	**6,650**	**2,702**	**17,045**	**5,806**	**11,853**	**34,704**

Source: CON application #10524, Vol. 1, page 5-33, Table 5-17

The applicant asserts that to estimate discharge volume that the proposed new facility LMHS estimated what the proposed facility might be able to capture from each existing facility by Zip Code. LMHS states that by applying these capture rates to the projected discharge volumes, an estimated volume for the proposed facility by Zip Code can be obtained. The reviewer reproduces only the lowest anticipated volume percentage and the highest anticipated volume percentage among the 19

Zip Codes within a 15-mile radius of the proposed project while any one or several of the remaining 17 Zip Codes would be within this same lowest-to-highest percentage range. The reviewer notes that any given hospital in the table below could have more than one Zip Code in the lowest range and/or the highest range. See the table below.

Anticipated Volume Shift from Existing Providers to Proposed Facility by ZIP Code – 2023

ZIP Codes	Volume to LHCP from....				
	Cape Coral	**Gulf Coast**	**Health-Park**	**Lee Memorial**	**From** Others
Lowest Percentage ZIP Code(s) within 15-Mile Radius of Proposed LHCP Hospital	10%	5%	5%	5%	0%
Highest Percentage ZIP Code(s) within 15-Mile Radius of Proposed LHCP Hospital	80%	80%	80%	85%	25%

CON application #10524, Vol. 1, page 5-34, Table 5-18

In the next two tables, LMHS projects volume and percent for the proposed project, first for the proposed 19 Zip Code area within 15 miles of the proposed project and then the original 12 Zip Code (PSA and SSA) area (plus the in-migration estimate) by 2023. The reviewer notes that the totals between the two tables differ in volume by 94.

Projected Volume for Proposed Facility by ZIP Code – 2023 (adult, non-tertiary excluding CMR, trauma and OB)

ZIP Code	Volume	Percent	Cum. Percent
34135 (Bonita Springs)	1,200	23.1%	23.1%
33908 (Fort Myers)	695	13.4%	36.5%
33928 (Estero)	658	12.7%	49.2%
34134 (Bonita Springs)	400	7.7%	56.9%
33913 (Fort Myers)	370	7.1%	64.1%
33967 (Fort Myers)	360	6.9%	71.0%
33912 (Fort Myers)	250	4.8%	75.8%
33931 (Fort Myers)	201	3.9%	79.7%
34119 (Naples)	183	3.5%	83.2%
34120 (Naples)	157	3.0%	86.3%
33919 (Fort Myers)	145	2.8%	89.1%
34110 (Naples)	133	2.6%	91.6%
34109 (Naples)	125	2.4%	94.0%
33907 (Fort Myers)	122	2.4%	96.4%
34108 (Naples)	68	1.3%	97.7%
34116 (Naples)	39	0.8%	98.5%
33966 (Fort Myers)	32	0.6%	99.1%
34105 (Naples)	23	0.4%	99.6%
34103 (Naples)	23	0.4%	100.0%
Total	**5,185**	**100.0%**	

Source: CON application #10524, Vol. 1, page 5-35, Table 5-19

LMHS expects to draw 74.5 percent of its patients from the PSA Zip Codes, 15.5 percent from the SSA Zip Codes and a 10 percent in-migration rate (patients from outside the PSA and SSA). The applicant indicates its 2023 (adult, non-tertiary discharge volume) utilization and PSA definition. See the table below.

Lee Health Coconut Point Service Area

ZIP Code	Volume	Percent
PSA		
34135 (Bonita Springs)	1,200	22.7%
33908 (Fort Myers)	695	13.2%
33928 (Estero)	658	12.5%
34134 (Bonita Springs)	400	7.6%
33913 (Fort Myers)	370	7.0%
33967 (Fort Myers)	360	6.8%
33912 (Fort Myers)	250	4.7%
PSA Total	3,932	74.5%
SSA		
33931 (Fort Myers Beach)	201	3.8%
34119 (Naples)	189	3.5%
34120 (Naples)	157	3.0%
33919 (Fort Myers)	145	2.7%
34110 (Naples)	133	2.5%
SSA Total	819	15.5%
In-Migration	528	10.0%
Total Facility Volume	**5,279**	**100.0%**

Source: CON application #10524, Vol. 1, page 5-10, Table 5-3, Vol. 1, page 5-36, Table 5-20 and Vol 1, page 8-14, Table 8-1

The applicant asserts that based on the Agency Inpatient Database and Legacy Consulting Group analysis (FY 14 – FY1 7), there has been no clear trend in ALOS for the proposed service area and also asserts that an ALOS of 4.2 days for the service area is adequate for forecasting purposes. LMHS contends that using a total forecast demand volume of 5,279 discharges, an ALOS of 4.2 days and an assumed optimal occupancy rate of 75 percent, the new facility will have a bed need of 81 beds but the proposal is for an 82 bed facility, with the applicant asserting that given the senior orientation of the service area and its generally longer LOS, a constant 4.2 LOS may be conservative.

LMHS explains that regarding adverse impact as a result of the proposed project, the estimated adverse impact based on an assumption that each Lee Health competitor will share service area volume not captured by Lee Health in direct proportion to its current share of discharges not captured by Lee Health. The applicant explains that a number of factors can impact shifts in hospital market shares including additional bed capacity, development/expansion of clinical services, shifts in medical practice patterns and changes in managed care network panels.

The applicant expects that, by 2023, the proposed LHCP hospital would draw 1,073 admissions (or less) from any one existing non-LMHS hospital with an ADC of 12 (or less) again from any one existing non-LMHS hospital in the area. The reviewer collapses each discreet Zip Code by PSA and by SSA, for the hospitals in the table below.

Estimates Adverse Impact of LHCP on Existing Providers – 2023

Zip Codes	LHCP Volume	LHCP Volume Source				
		Lee Health	NCH	Physicians Regional	Lehigh	Others
All PSA ZIP Codes	3,932	2,787	774	279	6	86
All SSA ZIP Codes	819	506	195	90	0	28
In-Migration	528	366	104	42	1	15
Total	**5,279**	**3,660**	**1,073**	**411**	**7**	**128**
ADC Impact @ ALOS = 4.2 days	**61**	**42**	**12**	**5**	**0**	**1**

Source: CON application #10524, Vol. 1, page 5-40, Table 5-22

b. Will the proposed project foster competition to promote quality and cost-effectiveness? Please discuss the effect of the proposed project on any of the following:

- **applicant facility;**
- **current patient care costs and charges (if an existing facility);**
- **reduction in charges to patients; and**
- **extent to which proposed services will enhance access to health care for the residents of the service district.**

ss. 408.035(1)(e) and (g), Florida Statutes.

Medical Center of Southwest Florida, LLC (CON application #10523) maintains that with the rising cost of health care, competition is vital to improve quality and access to care. MCSWF notes that competition can be developed to create potent incentives that encourage providers to innovate so that they can deliver higher quality care at lower cost. The applicant emphasizes that there is "little to no" competition for health care services in Lee County. MCSWF utilizes the Agency Inpatient Discharge Database for "2016-2017 YE 6/30" to reflect this, with Lee Health System capturing 84.6 percent of patient discharges in Lee County for the 12 months ending June 2017, with no other provider capturing more than 5.4 percent of this same population for the same period. See the exhibit below.

Facility Market Share for Lee County Non-Tertiary Patients (7/2016 – 6/2017)

Facility	Number of Patients	Market Share
Lee County		
Lee Health System Facilities		
Gulf Coast Medical Center	15,300	24.2%
Cape Coral Hospital	12,989	20.5%
Lee Memorial Hospital	12,903	20.4%
HealthPark Medical Center	12,330	19.5%
Lee Health System Total	**53,522**	**84.6%**
Prime Healthcare System		
Lehigh Regional Medical Center	2,160	3.4%
Prime Healthcare System Total	**2,160**	**3.4%**
Collier County		
Physicians Regional Healthcare System		
Physicians Regional Medical Center-Pine Ridge	1,142	1.8%
Physicians Regional Medical Center-Collier Boulevard	252	0.4%
Physicians Healthcare System Total	**1,394**	**2.2%**
NCH Healthcare System		
North Naples Hospital Campus	2,326	3.7%
Naples Community Hospital	1,091	1.7%
NCH Healthcare System Total	**3,417**	**5.4%**
Other Facilities		
Other Total	**2,797**	**4.4%**
Total Lee County Patients	**63,290**	

Non-tertiary excludes DRGs: 1-10, 14-42, 183-185, 215-238, 246-251, 652, 763-795, 849, 876-887, 894-897, 901-914, 927-935, 945-946, 955-965, 998-999

Source: CON application #10523, Vol. 1, page 91, Exhibit 58

According to the applicant, the proposed project, if approved, will foster innovation in health care and will significantly improve quality of care and patient choice, while at the same time reducing system costs. Per MCSWF, lack of competition in Lee County negatively affects the health care system in serval ways:

- Limited choice of hospitals for patients
- Limited choice of medical staff affiliations for physicians practicing in Lee County
- Limited ability of payors (including managed care organizations) to negotiate market driven rates for hospital services
- Limited positive impact of competition on quality

The applicant discusses empirical evidence and various economic studies on competition in health care markets (pages 92 – 96 of the application). According to the applicant, these studies contradict the assertion that dominant providers use their market power to cross-subsidize charity care. MCSWF provides the following articles to support the benefits of beneficial competition in the proposed project (CON application #10523, Vol. Two, Attachment K):

- The Industrial Organization of Health Care Markets

- Competition Policy In Health Care Markets: Navigating the Enforcement and Policy Maze, Health Affairs, June 2014
- Economics at the FTC: Retrospective Merger Analysis with a Focus on Hospitals, Review of Industrial Organization, October 2009
- Wide Variation in Hospital and Physician Payment Rates Evidence of Provider Market Power, Center for Study Health System Change, No. 16, November 2010
- Hospital Competition and Charity Care, Federal Trade Commission, Bureau of Economics, Working Paper No. 285, October 2006
- Hospital Consolidation and Negotiated PPO Prices, MarketWatch, Health Affairs, Vol. 23, Number 2, March/April 2004

MCSWF indicates that these findings are directly relevant to the existing market dominance of Lee Health and the greater level of consolidation that will occur, particularly in south Lee County, if another hospital is approved for Lee Health. The reviewer notes that while CON application #10523 indicates that these listed studies above are directly relevant, the applicant does not state that any one of these studies were specific to or targeted the co-batched Lee Memorial Health System, per se.

The applicant points out that while the Federal Trade Commission (FTC) has for many year analyzed the impact of competition and market consolidation in the health care industry, the FTC has recently taken an unprecedented action of intervening in the support of a CON application in the State of Georgia in an effort to ensure competition in a highly consolidated market. MCSWF provides an exhibit (CON application #10523, page 94, Exhibit 59) to indicate similarities between CON application #10524 and the CON case referenced by the FTC in the State of Georgia (CON application #10523, Vol. 2, Attachment L). The applicant also provides excerpted portions of this same attachment.

Additionally, the applicant discusses an employed physician monopoly currently in Lee County and the following physician competition articles (CON application #10523, Vol. 2, Attachment M):

- Physician Practice Consolidation Drive by Small Acquisitions, so Antitrust Agencies Have Few Tools to Intervene, Health Affairs, Vol. 23, Number 9, September 2017
- Less Physician Practice Competition Is Associated with Higher Price Paid for Common Procedures, Health Affairs, 10/25/2017

MCSWF contends that according to these articles, too little competition not only limits patient choice but also may result in higher prices. The applicant indicates that the article cites that as physician concentrations rise, prices for common procedures rise as well. MCSWF reiterates the

need for competition and choice in the Lee County market. The applicant stresses the positive impact of competition for the proposed project indicating that such positive impact is well documented.

The applicant indicates that the proposed project will foster competition to promote quality assurance and cost-effectiveness in the provision of acute care services. The applicant reiterates that population growth trends and increasing geographic barriers to access for residents of the service area indicate that a hospital is clearly needed while the proposed project will strengthen competition. MCSWF contends that the proposed project will be a natural extension of HCA's existing hospitals in District 8, strengthening HCA's network and relationship and thereby offer additional options to patients and payors[21].

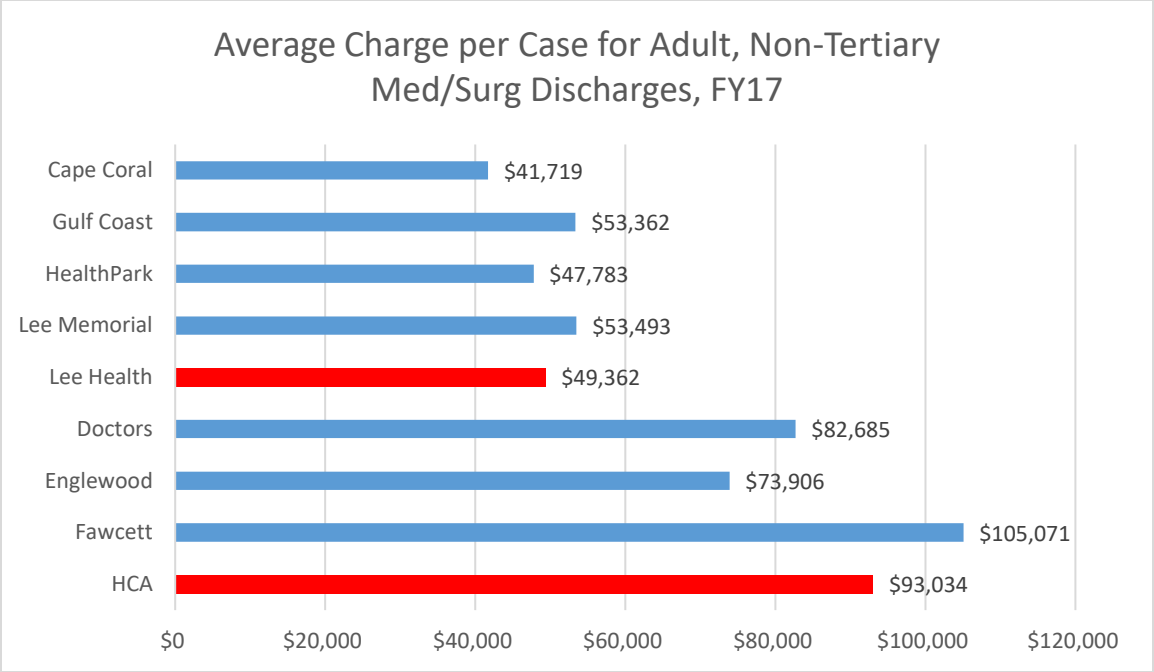
MCSWF contends that HCA's WFD District 8 hospital facilities have better ED outcomes and satisfaction measures than LMHS hospitals, when compared to Florida and national standards, according to "CMS" (CON application #10523, Vol. 1, page 38 – 40, Exhibit 21). The reviewer notes that MCSWF does not provide documentation to confirm the exhibit, nor is a timeframe offered for when the results were determined and for what timeframe they referenced.

According to MCSWF, its exceptional ED outcomes and satisfaction measures are due to several processes, as follows:

- Applying performance engineering components to the ED
- Using managed engineers to analyze ER processes
- Monitoring statistics on a daily basis through an ER Dashboard
- Using HCA's Enterprise ER Playbook to implement best practices, tactics and strategies for addressing bottlenecks at various points through the ED process

Lee Memorial Health System (CON application #10524 states that HCA's (parent of co-batched **CON application #10523**) charges in HCA's District 8 hospitals are considerably higher than for LMHS. The applicant utilizes the Agency Inpatient Database and Legacy Consulting Group analysis to indicate that, in District 8 for "FY17", the average charge per case for adult, non-tertiary cases for Lee Health was $49,362, while these charges averaged $93,034 for HCA facilities. LMHS contends that charges are nearly half those of HCA and that if the Agency approves **CON application #10523**, it will likely result in charges which are twice as high as charges generally seen in the market. See the figure below.

[21] The reviewer notes that CON application #10523, Vol. 2, Attachment I includes 61 listed WFD contract payors.



Source: CON application #10524, Vol. 1, page 4-6, Figure 4-1

Continuing along the lines of average charges between LMHS and HCA, the applicant contends that in 2005, prior to HCA's decision to exit the acute inpatient hospital market in Lee County, HCA's adult, non-OB case average charge was 56 percent higher than the LMHS average charge. LMHS contends that in 2017, using Charlotte and Sarasota County HCA hospitals as a proxy, LMHS indicates that HCA's adult, non-OB case average charges at these hospitals was 77 percent higher than LMHS.

LMHS utilizes the Agency Inpatient Database January – December 2005 and CMS DRG Version 24 (adults 15+, excluding MDC 14, 15, 19, 20 and 462) noting that the LMHS average charge per case for the top 20 adult non-OB med/surg discharges was $25,423 compared to HCA's $39,659 (56 percent higher). The reviewer collapses the stated top 20 discharge DRGs into the single total adult non-OB cases as indicated by the applicant. See the table below.

Lee Health Compared to HCA Facilities in Lee County – 2005
Volume and Average Charge Per Case, Top 20 Adult Non-OB Med/Surg Discharges

DRG	Lee Health		HCA		HCA/Lee Health Higher Avg Chrg
	Volume	Avg Chg	Volume	Avg Chg	
All Top 20 DRGs Adult Non-OB Med/Surg Discharge Cases **Total**	**34,208**	**$25,423**	**15,427**	**$39,659**	**56%**

Source: CON application #10524, Vol. 1, page 6-15, Table 6-1

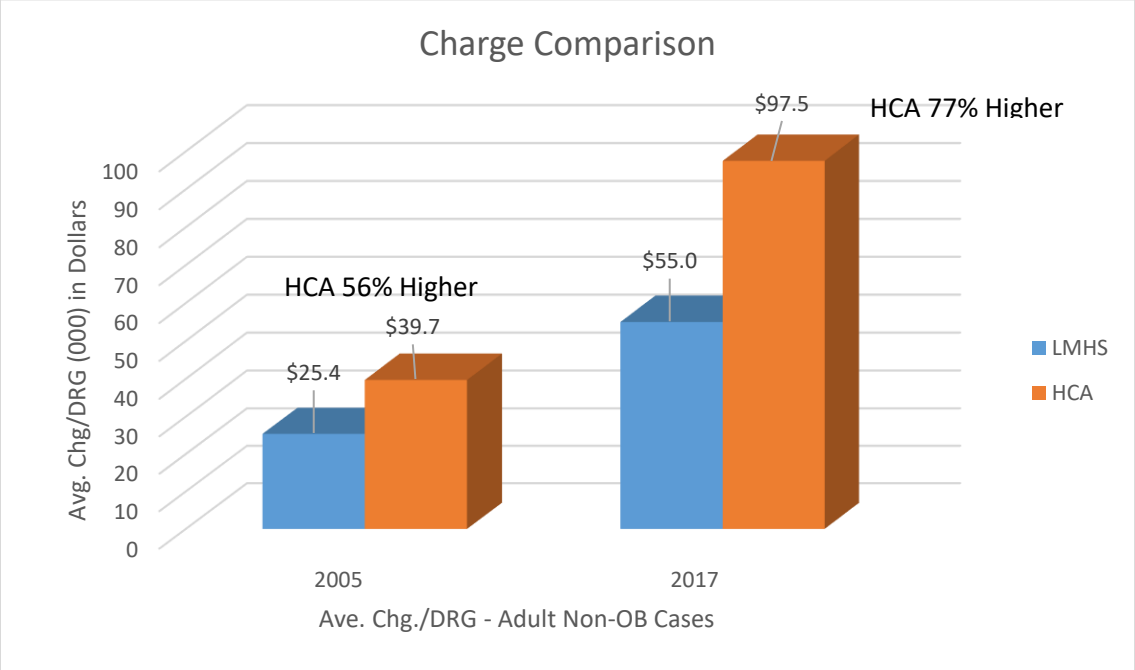
The applicant uses the same source to extrapolate that from July 2016 to June 2017, the LMHS average charge per case for the top 20 adult non-OB med/surg discharges was $54,957 compared to HCA's $97,523, with HCA's average charges (77 percent higher). The reviewer collapses the stated top 20 discharge MS-DRGs into the single total adult non-OB cases as indicated by the applicant. See the table below.

Lee Health Compared to HCA District 8 Hospitals – 2017
Volume and Average Charge Per Case, Top 20 Adult Non-OB Med/Surg Discharges

DRG	Lee Health		HCA		HCA/Lee Health Higher Avg Chrg
	Volume	Avg Chg	Volume	Avg Chg	
All Top 20 MS-DRGs Adult Non-OB Med/Surg Discharge Cases					
Total	**62,635**	**$54,957**	**21,718**	**$97,523**	**77%**

Source: CON application #10524, Vol. 1, page 6-16, Table 6-2

LMHS provides the following depiction to summarize the two tables above. See the figure below.



Source: CON application #10524, Vol. 1, page 6-14, Figure 6-6

The applicant contends that claims that hospital charges are irrelevant is untrue. LMHS discusses that it was reported in September 2016 that U.S. Department of Health and Human Services (HHS) Office of the Inspector General (OIG) determined that while outlier payments at hospitals represented 2.2 percent of total Medicare IPPS reimbursement, there was a select group of hospitals where outlier payments accounted

for nearly 13 percent of their total Medicare IPPS reimbursement. LMHS also discusses "carve-out" clauses in managed care contracts can represent between 20 – 25 percent of outstanding commercial managed care claims. The applicant asserts that to simply state that no one pays charges is a misleading, over-simplification of today's hospital billing and claims adjudication process.

Per LMHS, the abrupt departure of HCA in 2006 left a vacuum that Lee Health has successfully absorbed over the last decade. The applicant notes that while jettisoning its Fort Myers hospitals may have made financial sense to HCA, the marketplace was disrupted. LMHS maintains that out of this disorder, Lee Health has designed both an acute and ambulatory care network that now serves as the foundation for one of the most unique integrated delivery systems in the country. The applicant maintains that the proposed project is a crucial component of this coordinated care model. LMHS also discusses seven activities that the applicant indicates, without taxpayer support, the Lee Health Board has, in the past 15 years, accomplished.

The applicant indicates that the proposed LHCP campus is located immediately adjacent to the Bonita Community Health Center (BCHC)[22]. LMHS notes that BCHC has a partnership with Lee Health and Naples-based NCH Healthcare System in which each party absorbs one-half of operating losses. The applicant expects that the proposed project will enhance the draw of BCHC and that BCHC patients will find specialty and sub-specialty coverage more accessible.

LMHS contends that significant growth in the senior population in the proposed service area is accelerating the demand for multi-specialty care, including chronic care management, rehabilitation services and interventional services. The applicant points out that the Lee Senior Center on Aging and Health (LSCAG) will be available at the proposed LHCP. Services to be included there are:

- Geriatric medicine, including
  - Family medicine
  - House calls
  - Memory disorders/memory care
- Senior Care Choices

[22] According to the website http://www.bonitahealthcenter.com/index.php, BCHC is located at 3501 Health Center Boulevard, Bonita Springs, Florida 34135, with comprehensive services provided there including: urgent care, women's diagnostics, same-day surgery, employee health services, imaging services, pain management and physical therapy. The reviewer notes that among the many specialty physicians available at this location, the website indicates two cardiology physicians and one neurology physician.

  - Hospital-based aging life care management program providing nationally certified Aging Life Care Professionals
  - The only hospital-based aging life care management program in Lee County
  - A program designed for seniors who live alone or whose families are out of the area
- "Senior Friendly" ED
  - including additional screening utilizing the "Identification of Seniors-at-Risk Tool"
  - Follows recommended guidelines by the American College of Emergency Physicians, Emergency Nurses Association and American Geriatrics Society
- Specialty peri-operative medicine services
  - Helping patients avoid complications that can rise from surgery and hip fractures
- Inpatient geriatric rehab support
  - The proposed LHCP hospital will offer rehab services for all patients who have a diagnosis of stroke, neurological disorder, orthopedics, debility and medically complex conditions
- Elder Plus/Program for All-Inclusive Care for the Elderly (PACE)
  - A program that provides the ability for patients and their guests to live in their homes while receiving medical care and quality of life services from Lee Health
  - Coordination with home-based medicine in collaboration with Hope Hospice
- Health information technology
  - The provision of the latest health information technology to improve the delivery and quality of care for older adults and their caregivers to better manage their own care
- Complex Care Center
  - A plan of transitioning the existing health clinic at Coconut Point into a complex care center to provide multidisciplinary transitional care through the entire health care continuum to patients in the community
- Cognitive Health Center
  - Dual diagnosis, dementia and behavioral health in seniors
  - Working with older adults, caregivers and family members to identify, educate and provide resources as part of the LMHS integrative care model

LMHS asserts that, "Little is gained by solely focusing on inpatient services, particularly for seniors with challenging, multiple, chronic conditions". According to the applicant, the proposed project is not just for a new hospital rather it's a potential solution to today's episodic approach to health care delivery. LMHS maintains that the proposal

represents a change as health care's appetite for resources will consume future economic growth as evidenced in Florida's Medicaid budget. The applicant provides an alphabetical list of both inpatient and outpatient services offered by LMHS (page 4-13 of the application).

The applicant notes that Lee Community Healthcare offices are a federally qualified health center (FQHC) "look-alike" offered by LMHS. The reviewer notes that Lee Community Healthcare, Inc. appears in the find-a-health-center link in the Florida Association of Community Health Centers website (http://www.fachc.org/find-a-health-center#/). Additional review of this website also indicates that "Lee Community Healthcare, Inc., is the only FQHC Look-Alike in Lee County". The reviewer also notes that according to the website http://www.wecareforlee.org/, Lee Community Healthcare has locations in Cape Coral, Fort Myers and North Fort Myers. Further review indicates that according to the website https://www.fqhc.org/fqhc-look-alike-info/, an FQHC Look-Alike is an organization that meets all of the eligibility requirements of an organization that receives a Public Health Service Section 330 grant, but does not receive grant funding. This same site also indicates that FQHC Look-Alikes receive many of the same benefits as FQHCs, including:

- Reimbursement under the Prospective Payment System (PPS), in which Medicare payment is made based on a national rate which is adjusted based on the location of where the services are furnished. The rate is increased by 34.16 percent when a patient is new to the FQHC/Look-Alike, or an Initial Preventive Physical Exam or Annual Wellness Visit is furnished.
- Reimbursement under the PPS or other state-approved Alternative Payment Methodology for services provided under Medicaid.
- Eligibility to purchase prescription and non-prescription medications for outpatients at reduced cost through the 340B Drug Pricing Program.
- Automatic designation as a Health Professional Shortage Area (HPSA). The HPSA designation provides eligibility to apply to receive personnel and eligibility to be a site where a J-1 Visa physician can serve.

LMHS notes its Family Medicine Residency program in collaboration with the Florida State University College of Medicine.

The applicant contends that HCA's CON application #10523 "has the very real potential of setting back the gains Lee Health has achieved in shifting momentum to population health and dooming seniors with chronic conditions to the outmoded, episodic care that drives investor-owned hospitals".

The applicant asserts having included a south county location in its long-term strategic plan since 2004, having acquired in 2004/2005 the land upon which the proposed project will be located. LMHS points out that the land acquisition was decided by the publicly-elected Lee Health System Board of Directors. The applicant provides a map and a list of its 29 Lee Health outpatient facilities (CON application #10524, page 5-3, Map 5-1).

According to LMHS, competition in a "perfect market" would consist of a defined product, multiple buyers seeking and sellers offering the same product, free-entry and exit into/out of the marketplace, pricing established by supply/demand and rational buyers making informed decisions based on need, quality and price. The applicant notes that health care is not a perfect market and competition (other than providing choice) does not adhere to the supply/demand curve as greater supply leads to both higher demand and costs with volume-driven payment incentives (per visit, per procedure, per stay). LMHS maintains that proof of its commitment to value-based (as opposed to volume-based) coordinated care is clearly demonstrated by its Employee Health Plan, Clinically Integrated Network, community outreach programs, Next Generation ACO and proposed Provider Service Network (PSN).

The applicant questions if the "want" for another competitor by disgruntled physicians dreaming of a return to the "Golden Age of Medicine" or entrepreneurial investors seeking to "cherry-pick" profitable inpatient services is worth the risk of potentially destroying one of the most promising transitions in health care delivery towards population health. LMHS contends that it is not.

c. Does the applicant have a history of providing health services to Medicaid patients and the medically indigent? Does the applicant propose to provide health services to Medicaid patients and the medically indigent? ss. 408.035(1)(i), Florida Statutes.

The reviewer presents a brief history of the **CON application #10523** parent's (HCA's) and the **CON application #10524** parent's (LMHS's) provision of health services to Medicaid patients and the medically indigent to the Subdistrict 8-5 (Lee County) population or to the District 8 population overall. The reviewer expands beyond Subdistrict 8-5 (Lee County) but remains within District 8 to indicate **each** co-batched and competing applicant's Medicaid and indigent care presence, relative to its single/largest or flagship general/acute care hospital in District 8.

As previously stated in item C of this report, **CON application #10523** (HCA) has no licensed Class 1 general/acute care hospitals in Subdistrict 8-5 (Lee County). However, the reviewer notes that HCA operates three general acute care hospitals within District 8:

- Fawcett Memorial Hospital, totaling 237 licensed beds
  - (Subdistrict 8-1/Charlotte County)
- Doctor's Hospital of Sarasota, totaling 155 licensed beds
  - (Subdistrict 8-6/Sarasota County)
- Englewood Community Hospital, totaling 100 licensed beds
  - (Subdistrict 8-6/Sarasota County)

With Fawcett Memorial Hospital (FMH) being HCA's largest single general acute care hospital in District 8, the reviewer provides a table below illustrating the Medicaid/Medicaid HMO days and percentages as well as charity care percentages provided by the **CON application #10523** parent (HCA's) Fawcett Memorial Hospital and District 8 overall, in state fiscal year (SFY) 2015-2016, with data from the Florida Hospital Uniform Reporting System (FHURS). The SFY 2015-2016 FHURS data is the most currently available, as of this report.

Medicaid, Medicaid HMO and Charity Data
CON application #10523 – HCA's Fawcett Memorial Hospital (Subdistrict 8-1) and District 8
SFY 2015 -2016

Applicant/Area	Medicaid and Medicaid HMO Days	Medicaid and Medicaid HMO Percent	Percent of Charity Care	Percent Combined Medicaid, Medicaid HMO and Charity Care
FMH	4,047	6.40%	0.68%	7.08%
District 8 Total	**125,179**	**12.23%**	**2.59%**	**14.82%**

Source: Agency for Health Care Administration Florida Hospital Uniform Reporting System, SFY 20015-2016

The reviewer notes that further scrutiny of the entire complement of District 8 general acute care hospital providers for SFY 2015-2016 indicates that, compared to any other general acute care hospital in District 8, for the period:

HCA's **(CON application #10523's)** largest general acute care hospital (FMH) in District 8 had the following characteristics:

- The 7th highest number of total Medicaid/Medicaid HMO patient days in the district (4,047)
- The 12th highest percentage of Medicaid/Medicaid HMO patient days (6.40 percent)
- The 13th highest percentage of charity care patient days (0.68 percent)
- The 12th highest percentage of Medicaid, Medicaid HMO and charity care patient days combined (7.08 percent)

The table below illustrates the Medicaid/Medicaid HMO days and percentages as well as charity care percentages provided by the **CON application #10524** (LMHS) flagship hospital – Lee Memorial Hospital (LMH) - and District 8 overall, in SFY 2015-2016, by data from the FHURS.

Medicaid, Medicaid HMO and Charity Data
CON application #10524 – LMHS's Lee Memorial Hospital
(Subdistrict 8-5) and District 8
SFY 2015 -2016

Applicant/Area	Medicaid and Medicaid HMO Days	Medicaid and Medicaid HMO Percent	Percent of Charity Care	Percent Combined Medicaid, Medicaid HMO and Charity Care
LMH	43,213	23.92%	4.51%	28.43%
District 8 Total	**125,179**	**12.23%**	**2.59%**	**14.82%**

Source: Agency for Health Care Administration Florida Hospital Uniform Reporting System, SFY 20015-2016

LMHS's LMH **(CON application #10524)** had the following characteristics:

- The highest number of total Medicaid/Medicaid HMO patient days in the district (43,213), with the second highest number of total Medicaid/Medicaid HMO patient days in the district (22,495) being at Sarasota Memorial Hospital (a non-Subdistrict 8-5 facility)
- The highest percentage of Medicaid/Medicaid HMO patient days (23.92 percent), with the second highest percentage of Medicaid/ Medicaid HMO patient days (14.55 percent) being at Lehigh Regional Medical Center
- The second highest percentage of charity care patient days (4.51 percent), with the highest percentage of charity care patient days (14.88 percent) being at Hendry Regional Medical Center (a non-Subdistrict 8-5 facility)
- The highest percentage of Medicaid, Medicaid HMO and charity care patient days combined (28.43 percent), with the second highest percentage of Medicaid, Medicaid HMO and charity care patient days combined (16.94 percent) being at Sarasota Memorial Hospital (a non-Subdistrict 8-5 facility)

The table below illustrates the **CON application #10523** parent's (HCA's) largest general/acute care hospital in District 8 (FMH) and the **CON application #10524** parent's (LMHS's) flagship general/acute care hospital in District 8/Subdistrict 8-5 (Lee County), Lee Memorial Hospital (LMH), state fiscal year (SFY) 2017-2018 low-income pool (LIP) and disproportionate share hospital (DSH) program participation, as of April 2, 2018 (3:37 PM).

CON application #10523 Parent's (HCA's) Fawcett MH and CON application #10524 Parent's (LMHS's) Lee MH LIP and DSH Program Participation SFY 2017-2018 (3:37 PM)

Program/Provider	Annual Total Allocation	Year-to-Date Total Allocation as of April 2, 2018 (3:37 PM)
LIP/Fawcett MH	$11,429	$0
DSH/Fawcett MH	$0	$0
LIP/Lee MH	$23,369,750	$17,527,313
DSH/Lee MH	$6,787,368	$5,090,526

Source: Agency Division of Medicaid, Office of Program Finance

As shown in the table above, the **CON application #10523** parent's (HCA's) largest District 8 general/acute care hospital (FMH) has a LIP allocation of $11,429 in SFY 2017-2018 but has drawn none of these funds. Further, FMH does not participate in the DSH program. As shown in the table above, the **CON application #10524** parent's (LMHS's) flagship District 8/Subdistrict 8-5 (Lee County) general/acute care hospital (LMH) has a LIP allocation of $23,369,750 and has drawn down $17,527,313 of these funds and further has a DSH allocation of $6,787,368 and has drawn down $5,090,526 of these funds in SFY 2017-2018.

Medical Center of Southwest Florida, LLC (CON application #10523) maintains that HCA's affiliate hospitals within the service area[23] have a strong record of providing care to patients with little or no private insurance and to Medicaid beneficiaries. The applicant indicates that per the 2017 Report to the Community, HCA WFD, the parent's District 8 Class 1 general/acute care hospitals contributed $13,467,991 in charity and uninsured care in 2016. See the exhibit below

2016 Charity and Uninsured Figures for HCA WFD – District 8 Hospitals

Doctor's Hospital of Sarasota	$5,498,566
Englewood Community Hospital	$2,718,270
Fawcett Memorial Hospital	$5,251,155
Total	**$13,467,991**

Source: CON application #10523, page 99, Exhibit 60

According to MCSWF, WFD provided $205,254,002 in charity and uncompensated care in 2016[24] and according to MCSWF, WFD's facilities in District 8 provided $14,928,330 in charity and uncompensated care (page 105 of the application). However, again, as shown in the

[23] The reviewer notes that in this instance, the applicant expands the service area to include HCA hospitals within District 8 but outside of the applicant's proposed total service area.
[24] The reviewer notes that this $205,254,022 cost of charity and uncompensated care was published in the HCA WFD's "2017 Community Report-Above All Else", page 3, "HCA West Florida Community Impact".

applicant's Exhibit 60 above, for the same time period (2016), HCA WFD District 8 hospitals provided a total of $13,467,991 in charity and uncompensated care. The reviewer notes that this would be a difference of $1,460,339.

MCSWF indicates that MCSWF will serve any Medicaid, charity and uninsured patients who require health care services. MCSWF notes that the proposed hospital will utilize the same charity care policies and uninsured discount policies as other HCA-affiliated facilities. MCSWF provides a six-page charity care policy (CON application #10523, Vol. 2, Attachment F):

- Charity Write-Off Policy for Florida Patients/Effective Date 11/1/2017 and Reference Number: PARA.PP.VCM.016

The applicant points out that HCA affiliates consider patients with incomes less than 200 percent of the Federal Poverty Level (FPL) who are having non-elective procedures to be eligible for charity care. The applicant states that HCA affiliates offer discounts to uninsured patients who are not eligible for charity care or Medicaid.

MCSWF states, "HCA's affiliate hospitals in the service area have a history or providing care to Miami-Dade County residents regardless of payer source"[25]. The applicant utilizes the Agency Inpatient Discharge Database for quarter three (Q3) 2016 through quarter four (Q4) 2017, to indicate that HCA's District 8 hospitals served 883 Medicaid patients (3.9 percent of total patients) and 812 self-pay patients (3.5 percent of total patients). See the exhibit below.

[25] The reviewer notes that this is the first time in CON application #10523 that Miami-Dade County is introduced and also notes that Miami-Dade County is part of District 11, not District 8. Additionally, the reviewer notes that MCSWF's proposed total service area is composed of selected Zip Codes in Lee County and not the entirety of District 8.

Payer Mix for WFD - District 8 Hospitals

Payer	All Discharges	Non-Tertiary Discharges	Psychiatric Discharges
Medicare	17,654	16,343	439
Medicaid	883	816	12
Commerical	2,716	2,422	115
Self-Pay/No Pay	792	704	7
Other*	806	762	13
Total	**22,851**	**21,047**	**586**
Payer	**Percent of All Discharges**	**Percent of Non-Tertiary Discharges**	**Percent of Psychiatric Discharges**
Medicare	77.3%	77.7%	74.9%
Medicaid	3.9%	3.9%	2.0%
Commerical	11.9%	11.5%	19.6%
Self-Pay/No Pay	3.5%	3.3%	1.2%
Other*	3.5%	3.6%	2.2%
Total	**100.0%**	**100.0%**	**100.0%**

Includes: Doctors Hospital of Sarasota, Englewood Hospital and Fawcett Memorial Hospitals. None of these hospitals offer obstetrics or NICU services. *Other state/local government, TriCare, VA, Workers' Comp

Source: CON application #10523, Vol. 1, page 104, Exhibit 61

The reviewer notes that according to the applicant's exhibit above, 792 self-pay/no pay patients were served for the period, not 812 patients as indicated in the applicant's narrative. MCSWF points out that while the Medicaid mix (above) appears lower than other markets served by HCA, MCSWF stresses that it is important to be mindful of the aging population for District 8 and its effect on the payer mix.

MCSWF utilizes the Agency Inpatient Discharge Database for "2014-2017 YE 6/30" and Claritas, Inc., to indicate the payor mix for the applicant's projected non-tertiary and psychiatric discharges for patients from MCSWF's defined service area, as of year three of the proposed project. See the exhibit below.

	Medicare	Commercial	Medicaid	Self-Pay/ No Pay	Other*	Total
Year Three Discharges	2,921	812	247	219	98	4,298
Percent	67.97%	18.90%	5.76%	5.09%	2.28%	100.00%

Source: CON application #10523, Vol. 1, page 105, Exhibit 62

MCSWF reiterates that the relatively low percentage of Medicaid and self-pay patients in the service area are as a result of the large number of elderly residents covered by Medicare in the service area. The applicant indicates that the proposed project will have programs with a special focus on older individuals who have greater health care needs but who may not always receive needed care because of financial limitations, lack of transportation or lack of a caregiver in the home.

CON application #10523's Schedule C indicates that MCSWF commits to provide a minimum of eight percent of its patient days to patients covered by Medicaid/Medicaid managed care or who meet the criteria for charity care, combined.

The reviewer notes that this eight percent condition is slightly above the 7.08 percent for the combined Medicaid/Medicaid HMO and charity care as reported for HCA's largest Class 1 general/acute care hospital in District 8 (FMH), per the Agency's FHURS SFY 2015-2016. However, the reviewer also notes that this same eight percent condition is lower (by 46.02 percent) than the 14.82 percent for the average combined Medicaid/Medicaid HMO and charity care for District 8 overall, according to the same source for the same timeframe (14.82 X .4602 = 6.82 and 14.82 – 6.82 = 8.00).

Lee Memorial Health System (CON application #10524) states that as the safety-net provider in Lee County, it provides the lion's share of Medicaid and charity care to area residents. LMHS utilizes the Agency Inpatient Database and Legacy Consulting Group, Inc., noting that for the 12-months ending June 30, 2017, 85.3 percent of Medicaid/Medicaid HMO/KidCare charges were attributable to Lee Health and that for the same time period, when MDCs 14 and 15 (obstetrics, newborns and neonates) are removed from the analysis, Lee Health is responsible for 80 percent of patient days. The applicant states the use of the same source for the same timeframe to indicate that Lee Health provides care to 85 percent of those who either cannot pay or who pay for health care out-of-pocket and that the majority of these patients are treated at Lee Memorial Hospital.

LMHS notes that it is mandated to ensure that all patients, regardless of ability to pay, have access to needed health care services. The applicant contends that decisions made in distant corporate offices based on quarterly earnings reports will not be responsive to the needs of Medicaid and medically indigent patients in the proposed service area.

The applicant indicates that according to the PricewaterhouseCoopers, LLC, Lee Memorial Health System Consolidated Basic Financial Statements, September 30, 2017 and 2016 (CON application #10524, Vol. 1, Appendix 1), LMHS provided over $419 million in total community benefit which included a total of $137,495,000 for charity care to low income patients and unpaid Medicaid services. See the table below.

Lee Memorial Health System Community Benefit
(in thousands of dollars, 12 months ending September 30)

Category, Cost of	Fiscal Year		
	2017	2016	2015
Charity care for low income patients	$62,986	$54,822	$45,387
Community outreach and educational programs	$61,082	$55,437	$53,844
Unpaid Medicaid services	$74,509	$58,427	$$44,149
Unpaid Medicare and other gov't programs	$220,058	$206,642	$153,270
Total Community Benefit	**$419,157**	**$375,328**	**$296,650**

Source: CON application #10524, Vol. 1, page 7-4, Table 7-1

The reviewer notes that the 2016 totals in the above table are consistent with page two of the Lee Health 2016 Community Benefit Report (CON application #10524, Vol. 1, Appendix 3).

CON application #10524's Schedule C conditions that, upon project approval, the proposed new hospital will:

- Provide needed medical care to all patients in need, regardless of ability to pay
- Provide at least 10 percent of its patient volume to Medicaid, Medicaid managed care, non-payment, self-pay and charity patients
- Provide a minimum of $500,000 per year by Lee Health for the following programs and services
  - Chronic Care Program
  - Healthy Life Center
  - Aging Life Care Management
  - Senior and disabled medical transportation systems

The reviewer notes that this 10 percent Medicaid, Medicaid managed care, non-payment, self-pay and charity patient condition is substantially below the 28.43 percent for the combined Medicaid/ Medicaid HMO and charity care, as reported for the LMHS flagship Class 1 general/acute care hospital in District 8/Subdistrict 8-5 (LMH), per the Agency's FHURS SFY 2015-2016. However, the reviewer also notes that this same 10 percent condition is lower (by 32.52 percent) than the 14.82 percent for the average combined Medicaid/Medicaid HMO and charity care for District 8 overall, according to the same source for the same timeframe (14.82 X .3252 = 4.82 and 14.82 – 4.82 = 10.00).

d. Does the applicant include a detailed description of the proposed general hospital project and a statement of its purpose and the need it will meet? The proposed project's location, as well as its primary and secondary service areas, must be identified by zip code. Primary service area is defined as the zip codes from which the applicant projects that it will draw 75 percent of its discharges, with the remaining 25 percent of zip codes being secondary. Projected admissions by zip code are to be provided by each zip code from largest to smallest volumes. Existing hospitals in these zip codes should be clearly identified. ss. 408.037(2), Florida Statutes.

Medical Center of Southwest Florida, LLC (CON application #10523) reiterates its PSA and SSA, with an expectation to draw "at least" 75 percent of its patients from the PSA Zip Codes, 20 percent from the SSA Zip Codes and a five percent in-migration rate (patients from other states and countries) given Lee County's seasonal population. The applicant reiterates its year three utilization and PSA definition exhibit previously indicated in item E.1.a of this report. See the exhibit below.

Projected MCSWF Total Discharges

ZIP Code	July 2021-June 2022	Percent of Total	Cumulative Percent
PSA			
33928	1,003	23.3%	23.3%
33967	645	15.0%	38.3%
34134	508	11.8%	50.2%
34135	1,061	24.7%	74.9%
SSA			
33908	486	11.3%	86.2%
33913**	361	8.4%	94.6%
Service Area Discharges	**4,065**	**94.6%**	
In-Migration (5%)	**233**	**5.4%**	**100.0%**
Total MCSWF Discharges	**4,298**	**100.0%**	

** Includes ZIP Code 33963 (FGCU)
Non-tertiary excludes DRGs: 1-10, 14-42, 183-185, 215-238, 246-251, 652, 763-795, 849, 876-887, 894-897, 901-914, 927-935, 945-946, 955-965, 998-999
Psych DRGs: 876, 880-887
Source: CON application #10523, Vol. 1, page 87, Exhibit 55 and page 110, Exhibit 63

As previously stated in item E.1.a of this report, the reviewer notes that MCSWF uses both non-tertiary and psychiatric discharges to reach 74.9 percent PSA discharges, of the total discharges, by year three, ending June 2024 (CON application #10523, page 87, Exhibit 55 and page 110, Exhibit 63). The reviewer also notes that based on CON application #10523's page 83, Exhibit 50 (non-tertiary discharges only, excluding psychiatric bed days), the applicant does not reach 75 percent of total

discharges being from the PSA, by year three. The reviewer calculates the PSA discharge percentage at 63.14 percent (2,602 PSA discharges/ 4,121 total service area discharges = 63.14 percent). Although, the reviewer also notes that the applicant claims that the acute care bed complement will decrease with the addition of psychiatric beds—it is unclear at this time whether with the subtraction of psychiatric discharges with a bed complement of 70, whether discharges would be 75 percent or not.

Lee Memorial Health System (CON application #10524) reiterates its PSA and SSA with an expectation to draw 74.5 percent of its patients from the PSA Zip Codes, 15.5 percent from the SSA Zip Codes and a 10 percent in-migration rate (patients from outside the PSA and SSA). The applicant reiterates its 2023 (adult, non-tertiary discharge volume) utilization and PSA definition previously indicated in item E.1.a of this report. See the table below.

Lee Health Coconut Point Service Area

ZIP Code	Volume	Percent
PSA		
34135 (Bonita Springs)	1,200	22.7%
33908 (Fort Myers)	695	13.2%
33928 (Estero)	658	12.5%
34134 (Bonita Springs)	400	7.6%
33913 (Fort Myers)	370	7.0%
33967 (Fort Myers)	360	6.8%
33912 (Fort Myers)	250	4.7%
PSA Total	3,932	74.5%
SSA		
33931 (Fort Myers Beach)	201	3.8%
34119 (Naples)	189	3.5%
34120 (Naples)	157	3.0%
33919 (Fort Myers)	145	2.7%
34110 (Naples)	133	2.5%
SSA Total	819	15.5%
In-Migration	528	10.0%
Total Facility Volume	**5,279**	**100.0%**

Source: CON application #10524, Vol. 1, page 5-10, Table 5-3, Vol. 1, page 5-36, Table 5-20 and Vol 1, page 8-14, Table 8-1

F. Written Statement(s) of Opposition

Except for competing applicants, in order to be eligible to challenge the Agency decision on a general hospital application under review pursuant to paragraph (5)(c), existing hospitals must submit a detailed written statement of opposition to the Agency and to the applicant. The detailed written statement must be received by the Agency and the applicant within 21 days after the general hospital application is deemed complete and made available to the public. ss. 408.039(3)(c), Florida Statutes.

The Agency received a total of three detailed written statements of opposition (DWSOs) to **CON application #10523** and a total of three DWSOs to **CON application #10524.**

A separate DWSO regarding **CON application #10523** was submitted by a representative of:

- LMHS (co-batched/competing **CON application #10524** as well as an existing provider)
- Naples Community Hospital (NCH)
- Physicians Regional Healthcare System (PRHS)

A separate DWSO regarding **CON application #10524** was submitted by a representative of:

- HCA® WFD (co-batched/competing **CON application #10523**)
- NHC
- PRHS

Each DWSO is briefly summarized below.

LMHS DWSO on CON application #10523: On May 3, 2018, the Agency received from LMHS, a 40-page DWSO, including five additional attachments, regarding this proposal. This DWSO was from D. Ty Jackson, Attorney, Gray Robinson, Attorneys at Law.

According to LMHS's DWSO, Medical Center of Southwest Florida, LLC/CON application #10523 fails to satisfy the applicable statutory and rule criteria and should be denied. The DWSO contends that, on balance, CON application #10524 better satisfies the applicable statutory and rule criteria and should be approved. LMHS maintains that CON application #10524 presents a stronger case and a better track record in terms of proposed health care services to be offered, service area to be covered, improved access to care for seniors and other traditionally underserved populations and enhancement of Medicaid availability.

LMHS contends that CON application #10523 should be denied outright as MCSWF does not contend there is actually a need for 80 acute care beds in the subdistrict, purporting to show a need for an additional 70 acute care beds and 10 adult psychiatric beds. The applicant indicates that there is no support in Florida law for approving 10 additional acute care beds for the sole purpose of converting them to another bed type. LH also indicates that, stated simply, the Agency is without authority to grant a CON for the sole purpose of approving beds of another, separately reviewable, bed type. According to LMHS, with adding an additional bed type (inpatient adult psychiatric), the MCSWF proposal exceeds the scope of the submitted LOI and must be rejected. The applicant explains that, "This attempted end-run around the CON requirements should not be condoned, and the application should be rejected and/or denied".

Opposition emphasizes that what is needed – and what CON application #10524 offers – is a redistribution of existing licensed beds in the subdistrict to satisfy the demands of a growing market in the Estero/ Bonita Springs service area. LMHS reiterates its condition on not requesting additional acute care beds for 24 months after operating but that CON application #10523's proposal would add at least 70 licensed acute care beds to the district's inventory.

LMHS asserts that HCA failed to demonstrate need through population demographics/dynamics, availability or utilization because it used incorrect population and discharge data while failing to provide background data/methodology for its demand forecasts. Opposition asserts that HCA's need analysis cannot be relied upon and its demand forecast cannot be independently tested, much less verified.

Opposition explains that the Agency has already determined that there is no need for adult psychiatric beds in District 8. The reviewer confirms that pursuant to the Agency's Florida Hospital Bed Need Projections and Service Utilization by District publication, issued January 19, 2018, there is an adjusted net bed need for zero adult inpatient psychiatric beds (at 75 percent occupancy) in District 8, for the July 2023 planning horizon. LMHS points to MCSWF's condition to convert 10 acute care beds to adult psychiatric beds upon licensure and opening of the proposed hospital. Opposition indicates that Subdistrict 8-5's Lehigh Regional Medical Center was recently approved to add 27 adult psychiatric beds by converting 27 acute care beds on January 11, 2018 and amended on March 26, 2018.

LMHS indicates that with MCSWF's use of all age groups, MCSWF will necessarily include a pediatrics program—but that no analysis of this population segment was presented nor was the need for a pediatrics program substantiated. LMHS maintains that a pediatrics program in MCSWF's service area cannot be supported.

Opposition contends that most of MCSWF's letters of support from the medical community practice outside of MCSWF's proposed service area and CON application #10523 submitted no letters of support from local residents expressing a need for MCSWF's proposal.

LMHS states that Lee County has shown declining hospital inpatient use rates, thanks (in large part) to the integrated health care delivery system established by Lee Health and the preventative, coordinated care model it has fostered. Opposition indicates that treatment trends and market conditions in the region do not favor a return to disjointed medical care that MCSWF would offer and neither do the patients themselves.

Opposition maintains that the constricted service area proposed in MCSWF's application is a clear indication that it either will enhance access to a smaller segment of the population or that MCSWF intentionally confined the service area in order to appear to avoid encroachment on Collier County. LMHS asserts that, "These smoke and mirrors are offered to shield MCSWF's proposal from criticism that, among other problems, it requires the addition of 70 to 80 beds to the subdistrict when relocation of existing beds is what the community needs, and the patients who fill these beds necessarily will be taken from other providers." LMHS comments that CON application #10524 will enhance access to a greater extent than the MCSWF proposal and will provide a greater percentage of Medicaid/charity/self-pay than the MCSWF proposal.

LMHS asserts that the proposed services to be offered at MCSWF are poorly defined and not targeted to the needs of the proposed service area as demonstrated by the inclusion of inpatient psychiatric beds and inclusion of CMR, trauma and pediatrics populations in the data underlying its application. According to opposition, the erroneous inclusion of these service lines highlights the contrast between the two applications including LMHS's commitment to offering chronic care, aging life, and other senior-focused services while dedicating resources to senior and disabled medical transportation—a tangible commitment to enhancing access.

Opposition contends that the primary argument for approval for CON application #10523 over CON application #10524 relates to competition. LMHS asserts that competition is but one criterion and the only criterion that may even remotely favor MCSWF's application. LMHS asserts that there is no lack of competition "But even if there were, HCA created that situation when it abandoned the market in 2006 by selling its two Lee County Hospitals to Lee Health". LMHS contends that, "ironically, HCA created the landscape that it now sanctimoniously decries". Opposition provides three briefly stated excerpts from HCA Healthcare, Inc., SEC Form 10-K filings to indicate that "market dominance" is an HCA mantra. LMHS maintains that MCSWF's promises of increased quality with lower costs are not supported by the facts put forth by MCSWF.

LMHS maintains that Lee Health's quality is on par with HCA WFD's hospitals with substantially lower charges. Opposition indicates that roughly one-third of the patient's in Lee Health's proposed service area currently seek inpatient hospital services outside of LMHS—illustrating no correlation between quality and increased competition through HCA's presence in a market. LMHS indicates that a review of HCA's quality at its two Lee County hospitals (prior to abandoning the market in 2006) compared to LMHS's quality during the same time period, shows that Lee Health bettered HCA in many measures[26] and that this demonstrates the "emptiness" of HCA's promises to increase quality through reentry into the market.

Opposition contends that competition from a high-cost for-profit provider like MCSWF is unlikely to have a favorable, competitive impact upon patients in terms of health care costs. LMHS asserts that the MCSWF facility must be constructed beginning with the identification, purchase of land and construction from the ground-up, whereas the LMHS proposal is far less costly in terms of dollars, physicians and medical staffing resources. Opposition maintains the additional costs undoubtedly will be borne by MCSWF's patients not investors.

LMHS indicates HCA WFD's past and proposed provision of health care services to the Medicaid and the medically indigent population compared to LMHS's—noting that CON application #10524 will provide significantly more care to the medically indigent than will MCSWF.

Opposition contends that the result of approving CON application #10523 will be considerable adverse impact to the existing health care ecosystem (primarily to Lee Health and Naples Community Hospital). According to LMHS, "The analytical gymnastics MCSWF exercised in an

[26] The reviewer notes that the LH DWSO does not include documentation or third party verification to corroborate this attestation.

attempt to sidestep this result…..are, in a word, incredible." Opposition points out that the MCSWF proposal would require assembling a full complement of physicians, nurses and other health care professionals and the resulting pressures placed on scarce health care resources contrast starkly with CON application #10524. LMHS expects that MCSWF would have a material adverse impact on Lee Health, resulting in the loss of nearly $26.1 million in contribution margin for the year ending June 2024.

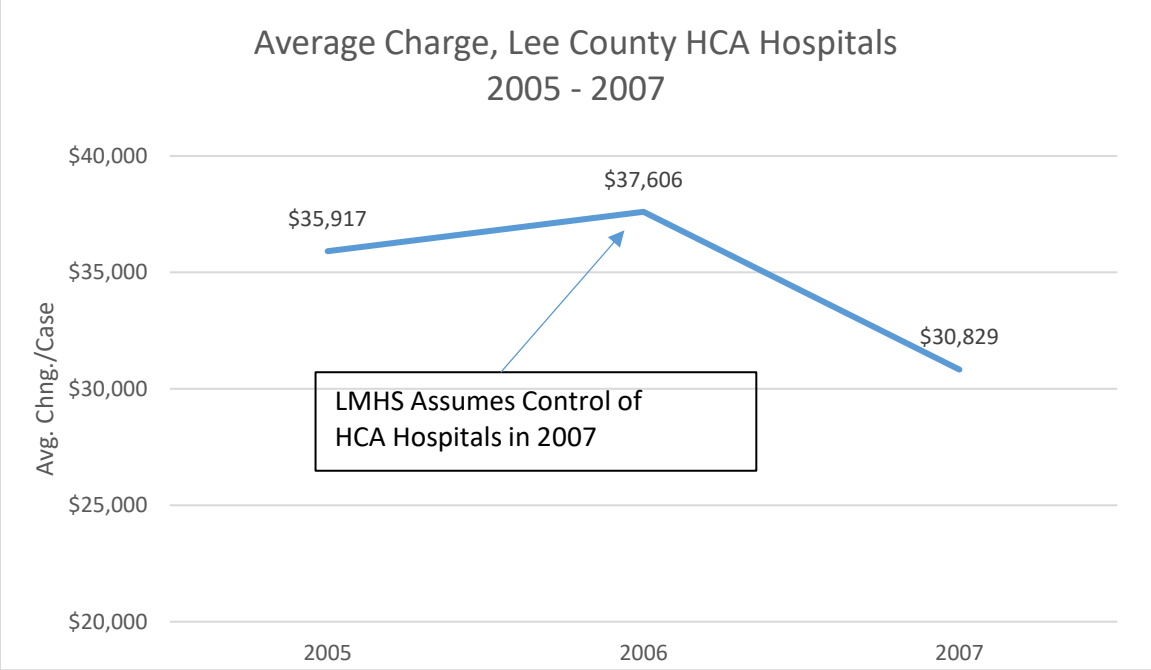
Opposition notes that the MCSWF proposal barely mentions the services that it will provide or how the facility will be designed or built. LMHS indicates that LHCP has been in development for quite some time. LMHS contends that MCSWF does not provide the required "detailed project description" and should be denied based on its failure to meet the statutory review criteria. Opposition reiterates six previously stated reasons why CON application #10524 is superior to CON application #10523.

In regard to the alleged "monopolistic market" in the area, LMHS reiterates that "ownership" of Lee Health is controlled by the publicly-elected Lee Memorial Health System Board of Directors (pursuant to enabling legislation) and concerns over policies or practices are subject to public input at twice-monthly board meetings—in contrast, the Board of Managers for CON #10523 is located in Nashville, Tennessee.

Opposition contends that according to its submitted Consolidated Basic Financial Statements of September 30, 2017, 47 percent of LMHS's total net patient revenue was derived from outpatient/ambulatory programs but emphasizes that this does not mean it has a 47 percent share of the total outpatient market—noting hundreds of competitors within Lee County vying for ambulatory care business.

LMHS asserts that suggesting there would be "enhanced price competition" by approving MCSWF is simply unfounded and misleading. Opposition utilizes the Agency's inpatient data files and Legacy Consulting Group analysis to indicate that when HCA general acute care hospitals were operational in Lee County (2005), average charges per case were $35,917 but that when HCA general acute care hospitals were no longer operational in Lee County (2007), when LMHS had assumed control of HCA's Lee County hospitals, average charges per case were $30,829. Opposition contend that based on the top 20 DRGs at HCA's two Lee County acute care hospitals, the exhibit below tracks the pricing impact of LMHS's acquisition of the two hospitals.

LMHS notes that between 2005 and 2006, HCA increased the average charge by 4.7 percent—average charges for these same 20 DRGs decreased 18 percent with LMHS acquisition. See the exhibit below.



Source: LH DWSO, page 12, Exhibit 1

LMHS acknowledges that quality of care is no longer among the review criteria for a new general hospital although MCSWF makes several statements relative to its quality of care. Opposition asserts that HCA's WFD hospitals are no better than LMHS with respect to quality and that HCA's claims that it can deliver high quality patient care is contradicted by available data. LMHS utilizes CMS Hospital Compare and Legacy Consulting Group analysis to show various average rating measures for HCA WFD hospitals and LMHS hospitals. The reviewer collapses the individual hospitals into the applicable hospital system (HCA WFD and Lee Health). See the table below.

Comparison of HCA WFD Quality to Lee Health Quality

		Patient Experience		
Hospital/ Hospital System	**CMS Overall Star Rating**	**Star Rating**	**Rate Hospital as 9 or 10**	**Would Recommend Hospital**
HCA WFD Average	2.1	2.5	66%	67%
Lee Health Average	2.0	2.7	66%	69%

Source: LH DWSO, page 25, Table 5

According to opposition, these CMS star ratings are the latest available, published April 25, 2018. LMHS asserts that it is committed to improving its quality ratings, overall.

LMHS discusses MCSWF's contentions regarding timely and effective care in EDs at Lee Health facilities and cites current CMS Hospital Compare data regarding ED statistics at Lee Health hospitals. According to opposition, LMHS's EDs have shown considerable improvement over the last reporting period. LH provides two letters of support signed by three Lee Health physicians and one Lee Health senior executive that express support of recent improvement in efforts.

Regarding the impact of competition on quality, LMHS utilizes the CMS Hospital Compare and Legacy Consulting Group analysis to indicate that there is a total lack or correlation between the number of hospital competitors and HCA WFD hospitals' quality ratings. LH contends that it is unlikely that approval of HCA's application will improve the quality of providers in the proposed market, seeing as how competition in HCA's other WFD markets has done nothing to enhance HCA's quality there.

Opposition asserts that CON application #10523 is a fragmented, duplicative costly approach, constituting a one-off surgical hospital with the closest HCA affiliate over 50 miles away. LMHS indicates that approval of CON application #10523, with a location in close proximity to the LHCP would be detrimental to LMHS's existing and planned developments.

LMHS contends that MCSWF has an erroneous patient base, with inflated market volumes and demand projections, largely due to the inclusion of expected CMR cases and trauma alert patients—none of whom would be expected admits at the proposed MCSWF.

Opposition states that MCSWF's Exhibit 11 and Exhibit 38 (MCSWF's proposed total service area population estimates by age cohorts and projection) are incorrect. LMHS provides a table to indicate corrected estimates, based on Environics Analytics 2018 (LMHS DWSO Attachment One). The reviewer collapses each discreet ZIP Code into a total estimate.

Comparison of Incorrect Population Data in CON Application #10523 to Correct Population Data

All Service Area ZIP Codes	From CON app. #10523		Correct		
	2018	2023	2018	2023	AAGR
Total	175,500	193,097	186,507	203,767	1.8%

Source: LH DWSO, page 18, Table 1

Regarding Medicare Managed Care penetration rates, LMHS states that the use of the website www.cms.gov April 2018 data indicates that, Lee County's Medicare penetration rate is at least on par (at 33.4 percent) with other counties in the area and MCSWF's concern is misplaced that Medicare Advantage MCO penetration is low resulting in less overall care management and cost savings in the market. Opposition maintains that MCSWF's contention does nothing to support approval of CON application #10523. LMHS points out that Lee County's Medicare penetration rate is actually higher than the average of other counties in District 8 (28.2 percent). See the table below.

Medicare Managed Care Penetration Rates District 8, April 2018

County	Eligible	Enrolled	Rate
Charlotte	68,968	23,663	34.3%
Collier	99,271	23,282	23.5%
Desoto	7,370	2,158	29.3%
Glades	2,663	890	33.4%
Hendry	5,978	1,681	28.1%
Lee	192,312	64,267	33.4%
Sarasota	142,658	40,578	28.4%
Lee	192,312	64,267	33.4%
Other District 8	326,908	92,252	28.2%

Source: LH DWSO, page 19, Table 2

LMHS maintains that CON application #10523 presents no supporting documentation for its projected increase of 2,012 non-tertiary discharges in its proposed service area from 2017 to 2024. Opposition contends that as a result of MCSWF's incorrect estimates, MCSWF's future demand estimates cannot be verified. LMHS asserts that for MCSWF to be entitled to 100 percent of the future growth in the service area (2,012 cases) is not a reasonable health care planning assumption.

LMHS discusses three problems that indicate that MCSWF's adverse impact analysis is seriously flawed, understated and should be discounted (LH DWSO, page 20). Utilizing Agency inpatient data files, CON application #10523 and Legacy Consulting Group analysis, LMHS indicates that if MCSWF is approved, LMHS would experience an adverse impact volume of 2,668 discharges and an adverse impact of 32.1 ADC

(by year ending June 2024). Opposition indicates that the analysis reflects loss of discharges based on calculated acute non-tertiary cases. The reviewer collapses the individual hospitals into the referenced hospital system. See the table below.

Adverse Impact for Medical Center of Southwest Florida, Year Ending June 2024

Hospital/ Hospital System	Year Ending 6/17		Volume YE YE 6/24		Adverse Impact		Share with MCSWF
	Volume	Share	w/o MCSWF	w/ MCSWF	Volume	ADC*	
Lee Health	8,481	64.7%	9,784	7,116	2,668	32.1	47.1%
NCH System	3,031	23.1%	3,497	2,543	954	11.5	16.8%
Physicians	1,036	7.9%	1,195	869	326	3.9	5.8%
All Other	518	4.0%	598	435	163	2.0	2.9%
MCSWF	0	0.0%	0	4,121	-4,121	-49.5	27.3%
Total	**13,099**	**100.0%**	**15,111**	**15,111**	**0**	**0.0**	**100.0%**

* Based on an ALOS of 4.4 days
Source: LH DWSO, page 21, Table 3

Opposition utilized the table above and the Lee Health Financial Decision Support System by hospital and payer for non-tertiary DRGs, to reach an estimated net revenue and contribution margin adverse impact if the MCSWF project is approved. LMHS projects for the year ending June 2024, a net revenue adverse impact (000's) of $49,347.9 and a contribution margin adverse impact (000's) of $26,072.1. Opposition emphasizes that the loss of nearly $26.1 million in contribution margin for the year ending June 2024 equates to nearly 30 percent of LMHS's total operating income for Fiscal Year 2017. The reviewer collapses the individual hospitals into the Lee Health System. See the table below.

Impact on Lee Health – Year Ending June 2024
Patient Volume and Contribution Margin

				Adverse Impact (000's)	
Hospital/ Hospital System	Adverse Impact on Admissions	Outpatient Adjustment Factor	Adverse Impact on Adjusted Admissions	Net Revenue	Contribution Margin
Lee Health	2,668	1.63	4,349	$49,347.9	$26,072.1

Source: LH DWSO, page 22, Table 4

LMHS contends that there is nothing establishing that HCA has a factual basis to support its claims of anti-competitive conduct in Subdistrict 8-5. Opposition indicates that it is becoming increasingly the norm for medical residents completing their training to be employed by hospitals (41 percent in 2017) having nearly doubled over the last nine years (22 percent in 2008).

LMHS provides a background summary of stated historical events and characteristics of HCA, from 1968 to 2011. Regarding MCSWF's statement that a freestanding ED and outpatient services will not meet the identified needs (in anticipation of building a hospital) and that prior decisions support the need for MCSWF. LMHS provides excerpts from the following DOAH cases to indicate that HCA has taken a different posture in other applications before the Agency noting that whether or not these decisions are sound health care planning "depends upon whether or not HCA is the applicant":

- DOAH Case 05-2754
- DOAH Case 15-0129
- DOAH Case 16-0112
- DOAH Case 17-0554

NCH DWSO on CON application #10523: On May 4, 2018, the Agency received a 41-page DWSO, with one appendix, from NCH. This DWSO was from Michael J. Glazer, Attorney, Ausley McMullen. Though specific to CON application #10523, the DWSO also addresses opposition to Subdistrict 8-2 (Collier County) CON application #10522.

According to NCH's DWSO, MCSWF fails to address any special or not normal circumstances and invites serious criticism when opining that residents experience impediments to access and availability to hospital-based care. Opposition notes that the proposal is for a small urban hospital without the capability to provide higher acuity services or address a myriad of medical conditions. NCH asserts that the applicant offers nothing unique to the service area where multiple hospitals offer greater complexity and more services.

NCH asserts that this group of CON applications (#10522, #10523 and #10524) shares characteristics that overstate the size of the proposed service area and the capabilities that small urban hospitals of 88 beds or less possess to render appropriate care. NCH asserts that the three proposals have the following drawbacks:

- Service areas that overlap with existing hospitals in PSAs
- Redundancy and unnecessary duplication of existing services
- Selection of DRGs that stretch well beyond the capabilities that a small hospital can provide
- Negative impacts on existing hospitals
- Lack of evidence showing geographic barriers or impediments to current hospitals

- Lack of any competitive advantages of location, service availability, demand, market rates, or costs or charges
- Inability to justify any unique or special circumstances that rise to the level of justifying millions of dollars to create a small urban hospital in service areas that already have urban and suburban hospitals with higher case mix indices and established, broad-based medical staffs

In support of its opposition to this proposal, NCH references:
- DOAH Case No. 13-2508CON
- DOAH Case No. 13-2558CON
- DOAH Case No. 16-0112CON

Opposition maintains that CON application #10523 raises issues regarding the best use of resources. NCH indicates that to capture only a small percentage of a proposed service area that overlaps with existing hospitals offering the same services results in market shift rather than market growth and sharing incremental growth within a new system affords no benefit to residents. Opposition states CON application #10523 fragments rather than supports existing relationships offering only a different location for existing lower acuity services.

NCH notes that HCA seeks to reenter a service area that previously the company abandoned which resulted in the ongoing domination of the market by LMHS. NCH contends that the impression is that economic opportunity comes forefront regarding CON application #10523.

Opposition provides an extensive multipage table that NCH self-attests illustrates coverage of the district and the corresponding counties that existing hospitals serve as well as what the co-batched applicants propose for service areas. NCH comments that extensive overlap exists and that none of the proposals serve an area that is not already served. NCH comments that CON application #10523's PSA falls within the PSA of the following hospitals:

Lee County Hospitals	**Collier County Hospitals**
HealthPark Medical Center	Naples Community Hospital
Gulf Coast Medical Center	NCH North
	Physicians Regional-Pine Ridge

NCH provides a series of maps presenting the overlap with the existing hospitals in Collier County along with a brief description of each map. According to opposition, the maps are through MapBusiness Online—a software developer and publisher, Special TEQ, Inc., a division of Software Technologies, the original developer of Esri™ BusinessMap.

NCH indicates that the takeaway of the referenced maps shows that residents of the MCSWF's total service area have reasonable access and availability to hospital services. Opposition maintains that the locations of existing hospitals provide coverage and access to hospital services with no geographic impediments.

Opposition contends that the proposed project site limits service availability by natural barriers while noting that a drive time of 30 minutes "may be too long" for patients to reach hospital services represents anecdotal evidence. NCH states that per the mean travel time to work is 27.3 minutes[27]. NCH indicates that asserting that a travel time of 30 minutes creates an obstacle, impediment or other barrier sounds "hollow". NCH notes that for emergency personnel, 30 minutes travel time appears within the STEMI guidelines from the American Heart Association and is therefore certainly reasonable for basic acute care services. The reviewer notes the follow excerpt from the American Heart Association EMS Strategies to Achieve Ideal, "Local EMS should generally be used if available and 30 minutes transportation time to destination hospital". Opposition maintains that HCA's travel time assessment should not be considered an adequate foundation upon which to base any accessibility issues.

NCH provides an HCA 30-mintue drive time contour map to indicate that five general acute care hospitals are within a 30-minute drive time of the proposed MCSWF and that within this 30-minute drive time, residents have access to a wider array of hospital services than the proposed project would provide. Opposition stresses that HCA used the free, publicly available website www.googlemaps.com which stated longer drive time estimates from this same location to the same facilities. NCH provides two additional maps to indicate that from Estero:

- Gulf Coast Medical Center is 8.8 miles (16 minutes)
- NCH North is 12.7 miles (23 minutes)

Opposition comments that choice exists for residents within a short drive. NCH states that the advantage of a very small additional hospital, such as MCSWF remains obscure. Opposition emphasizes that although HCA claims to provide competition in a county dominated by LMHS, the location of HCA's proposed MCSWF has access to additional systems, including:

- NCH Healthcare System hospitals
- Physician Regional Medical Center-Pine Ridge

[27] The applicant cites the Lee County Profile, Florida Legislature, Office of Economic and Demographic Research as a source for this data.

NCH offers a technical review of the materials provided concerning travel time assessments in CON application #10523. Opposition offers comments regarding selected pages and exhibits:

- Pages 19-28: No provision of an appendix to support the referenced data, not enough information to track the quality of the data cited, insufficient to replicate the findings.
- Assumptions inferring population growth, traffic volumes and travel time data are related but do not have direct linear relationships which require more detailed technical protocols to formulate conclusions.
- There are other routes to travel north and south from Estero other than US 41.
- Phrases like "more heavily traveled" roadways, "endure extreme traffic constraints" and the causal use of technical terms deviate from standardized traffic engineering protocol.
- Page 20: HCA inaccurately associates the growth percentage of traffic linearly with the growth percentage of delay.
  - If a roadway carries 1,000 vehicles/day and is increased 30 percent for a total to 1,300 vehicles/day, that does not correlate to a delay increase of 30 percent when the road is within the capacity limits.
- Exhibit Eight: Other exiting health care providers, closer to the proposed site, should be listed but were omitted.
- Exhibit Nine: No description of how the "various" intersections were selected, with only limited years of data included. The metric of data is not show, such as Average Annual Daily Traffic (AADT), peak season daily volumes, etc.
  - More recent 2017 traffic count was recorded at 52,500 AADT (down from the 2015 56,500 AADT), along the same segment (US 41 north of Bonita Springs).
  - Volumes on I-75 were greater in years 2005-2007 for both north and south of Corkscrew Road than they were in the year 2012.
  - Recent capacity upgrades constructed throughout the area were not reported in HCA's travel analysis, upgrades that result in reduced travel times.
- Exhibit 11: More specific detail is needed to replicate the findings as population increases do not necessarily imply that traffic volumes increase at the same rate.
- Exhibit 13: More details are needed as opposed to free third-party algorithms. A more technical method would have been for HCA to purchase actual travel time data from approved Federal Highway Administration (FHWA) travel time reliability sources (Inrix), in accordance with the National Performance Management Research Data Sets (NPMRDS).
  - Any "approximate" location can greatly influence the travel time, as presented

- Exhibit 14: Conclusions in this exhibit are difficult to determine. Industry protocol typically presents drive-time in terms of minutes since drive-time is dependent upon the travel speed of a roadway.
- Page 27: Regarding the "dominant presence of gated communities" without health care facilities nearby, one may infer that many inhabitants of central Estero choose to live in relative isolation that makes quick access much more challenging.

NCH contends that with two freestanding EDs in the area, one to be operated by LMHS and one by NCH (both set to open in December 2018), CON application #10523 will not add in a meaningful way to the health care services that will already be available for the Estero/Bonita Springs communities. NCH provides an aerial photograph depicting the locations of freestanding EDs proximate to the proposed HCA site.

Opposition states the use of the Agency Inpatient Database for the 12 months ending June 30, 2017 (excluding transplants and MDC 15, 19 and 20) for District 8 overall indicates that District 8 had a use rate (cases per 1,000 adults) of 118, while Lee County had a use rate (cases per 1,000 adults) of 122. NCH maintains that Lee County residents had no problems in accessing hospital care as well as an absence of demand for additional hospitals in the area. Opposition emphasizes that the dispersion of residents indicates choice, availability of providers and services that are not restricted within Lee County.

NCH states that LMHS has a net of 496 additional beds in development for Lee County, through the notification process. The reviewer notes that as of April 9, 2018, Agency records show a net increase of 413 acute care beds in Lee County.

Opposition contends that the proposed project adds no meaningful value to the overall continuum of care and results in the unnecessary duplication of health care services. NCH comments that HCA would experience an inability to develop the project as proposed and contends that for the MCSWF to immediately delicense 10 of its acute care beds to add the services of 10 psychiatric beds is "both naïve and impossible". Opposition maintains that small units lack a critical mass to achieve any mix, noting the following challenges:

- To license beds at an acute care hospital, the hospital must conform to acute care codes with approval of a CON and the proposal cannot build space for a distinct part until before the Agency grants approval of the service
- The hospital cannot construct a space for a psychiatric service that requires exemption

- The exemption for mental health beds requires approval after hospital licensure and the CON holder must become the licensee before seeking the exemption
- The qualifying language in the statutory exemption requires that the hospital provide Medicaid and charity care equivalent to or greater than the district average
- Conforming hospital space to meet psychiatric building codes will require extensive reworking of the newly constructed hospital with the proffer of a Baker Act receiving facility requiring separate and secure patient areas
- Infrastructure renovations necessitate reworking of electrical and mechanical services (including various safety precautions) which are not part of the code in acute care construction

NCH asserts that to build space for a psychiatric unit with the requirements of programmatic spaces before approval of an exemption to creates a formidable problem. Opposition maintains that to receive a license for an acute care hospital of 80 beds, all the beds must meet acute care code and that to assume that the space when authorized for acute care accommodates conforming space for a psychiatric unit before exemption belies knowledge of requirements. NCH indicates that the proposed commitment to acute care becomes dubious and the tag of a small, boutique psychiatric unit utterly fails to enhance the CON application.

Opposition indicates that HCA's LOI was for an acute care hospital of up to 100 beds and a separate LOI would be required for a different bed type. NCH point outs and the reviewer confirms that the Agency did not publish need for psychiatric beds, in District 8, in its most recent hospital need publication.

NCH explains that the ALOS and case mix index proposed for CON application #10523 mirrors that of a large hospital with complex services which lie beyond the reach of the MCSWF proposal. NCH states that Lehigh Regional Medical Center should be utilized as a proxy for the proposal as Lehigh Regional Medical Center is an 88-bed hospital with a case mix index (CMI) of 1.2177. Opposition produces a group of all small urban hospitals noting a CMI of 1.1367, with a standard deviation of 1.1192, a mean bed size of 157 and an ADC of 81.5 patients and additionally—significantly different that that the proxy hospital chosen by NCH.

Opposition stresses that the proposed small hospital of 70 acute care beds proposes to provide services to cover 611 DRGs with an overall CMI of 1.4869, exceeding the case mix of HealthPark in Lee County. NCH notes that when using that list on the cases from Lee County, the result produces an ALOS of 4.6 days, an ALOS well beyond that of a small urban hospital.

NCH provides a table to indicate the top 20 DRGs and corresponding number of cases by ZIP Code and the accompanying CMI for the applicant's total service area. Additionally, Opposition utilizes the Agency inpatient database for the 12 months ending June 30, 2017 to indicate both Lee County and Collier County hospitals discharges by case mix index. With consideration of the complexity and severity of the accompanying CMIs for this population for this timeframe, NCH points out that no small urban hospital could provide this degree and intensity of complex care. Opposition indicates that hospitals are already in the general area that currently meet this degree of complexity/severity of services. NCH comments that CON application #10523 posits a "foot in the door" to establish a much larger facility under notifications to the Agency for additional acute care beds once licensed.

NCH indicates that higher resource consumption is required to treat the residents from the service area which has a CMI of 1.4201, "higher than what a small urban hospital can effectively treat". Opposition asserts again that the closest proxy to HCA's proposal is Lehigh Regional Medical Center, with a CMI of 1.2264. NCH utilizes the Agency inpatient database for the 12 months ending June 30, 2017, to indicate that for Lehigh Regional Medical Center's top 20 DRGs, Lehigh Regional Medical Center had a patient ALOS of 3.1 days and a CMI of 1.0780. Opposition contends that HCA's proposed MCSWF cannot deliver the services within its DRG list nor can it provide complex services to the population at its presumed ALOS. NCH notes that HCA proposes an ALOS of 4.4 days with a CMI of 1.5373. Below is the NCH estimated cases, ALOS and corresponding CMI for residents of HCA's defined total service area, with consideration of HCA's DRG list, for the 12 months ending June 30, 2017.

Cases, Days and Corresponding CMI for Residents in the CON Application #10523 Defined ZIP Codes, Using the Applicant's DRG List July 1, 2016 to June 30, 2017

PSA ZIP Codes	Cases	ALOS	CMI
33928 Estero	1,875	4.5	1.5372
33967 Fort Myers	1,526	4.4	1.4720
34134 Bonita Springs	1,227	4.4	1.6561
34135 Bonita Springs	3,031	4.4	1.5893
Subtotal	**7,659**	**4.4**	**1.5638**
SSA ZIP Codes			
33908 Fort Myers	4,146	4.4	1.4849
33913 Fort Myers	1,380	4.1	1.5480
Subtotal	**5,526**	**4.3**	**1.5006**
TOTAL	**13,185**	**4.4**	**1.5373**

Source: NCH DWSO, page 31, Table 8

Opposition points out that the proposed project offers little to the residents of the PSA who experience medical and surgical needs that exceed the capability of a small hospital. NCH asserts that to contemplate that area residents need a small hospital that is closer to their residences and that can meet their needs conflicts with the facts. Opposition notes that the types of services that the area residents require are complex and require far greater expertise than what would be available at the proposed facility.

NCH provides an estimated case loss, for NCH, NCH North and for Naples Health System overall, for the three years ending FY 2023-2024, using the HCA's assumptions. The reviewer reproduces only the estimate case loss totals, with a constant 7.3 percent estimated NCH market share and a constant 17.0 percent estimated NCH North market share. See the table below.

Analysis of the Impact of the Proposed Hospital's Caseload Forecast

	Forecast Using HCA's DRG List		
	2021-2022	2022-2023	2023-2024
NCH Cases Lost	-93	-122	-154
NCH North Cases Lost	-217	-287	-361
Naples Health System Cases Lost	**-310**	**-409**	**-513***

Source: NCH DWSO, page 33, Table 10 (partially reproduced)
* The reviewer notes that this total is arithmetically 515 cases.

Opposition states that total lost cases increase from 310 to 524 cases over the three-year projection period. However, the reviewer notes that neither the NCH table (partially reproduced above), year three total, nor the reviewer's arithmetic calculation agrees with a loss of 524 cases. If CON application #10523 is approved, NCH estimates that it will lose about $3.1 million dollars in annual contribution margin in 2017 dollars.

NCH contends that the CON application #10523 conditions are unremarkable and offers further comment in this regard.

Opposition notes that CON application #10523's principal argument for approval is the need for competition to LMHS and that its proposal will serve that purpose. NCH contends that there is no reason to expect HCA's proposal will provide a significant constraint on LMHS' prices:

- HCA is a high-price system
- HCA's average price is even higher than LMHS' already high average price
- HCA's average price is also higher than the prices of non-LMHS hospitals located in Lee and Collier Counties, including NCH
- HCA is more expensive than the other Florida hospitals in most of the MSAs where it owns and operates hospital facilities
- HCA's previous two Lee County hospitals (Gulf Coast and Southwest which were sold to LMHS in 2005) did not meaningfully constrain LMHS' prices

NCH utilizes the 2015-2016 Agency inpatient database records and same period Agency prior year reports for an HCA case mix adjusted, net-of-contractual-allowance, average commercial payer inpatient price per discharge ("net price") of $14,376, being six percent higher than LMHS' net price which equals $13,563. Opposition indicates that HCA's average net price exceeds NCH's average net price ($9,237) by 56 percent and the average net price ($11,677) of local hospital competitors other than NCH by 23 percent.

Opposition maintains that with lower-price incumbent competitors to LMHS having been unable to meaningfully constrain LMHS' prices, there is no reason to anticipate that a more expensive entrant such as HCA would be more effective. NCH notes that because the proposed HCA facility is likely to have higher charges, any commercial payer volume it siphons, for reasons unrelated to price, is likely to increase commercial payers' claims costs. Opposition indicates that in 12 of the 15 Florida metropolitan statistical areas (MSAs) where HCA owns and operates hospitals, HCA's net price is 66 percent higher than the average net price ($8,660). NCH provides tables to corroborate these contentions on pages 36-38 of the DWSO. NCH asserts that if HCA's prior-owned Lee County hospitals provided price constraint, LMHS' prices should have risen post-acquisition but in the years following LMHS' acquisition, net prices of LMHS facilities fell slightly, from approximately $11,600 per discharge in 2006 to an average of approximately $11,300 in 2007-2009.

NCH concludes that HCA's attempted return foray into the Lee County health care market, as proposed, raises questions about the need for such a facility and its place within the continuum of care and therefore the proposal cannot be implemented as proposed and clearly warrants denial.

PRHS DWSO on CON application #10523: On May 4, 2018, the Agency received a 66-page DWSO from PRHS regarding this proposal. This DWSO was from Scott Lowe, Market Chief Executive Officer at PRHS. PRHS offers a two and a half page executive summary on behalf of Physicians Regional Medical Center-Pine Ridge (PR-Pine Ridge) and Physician Regional Medical Center-Collier Boulevard (PR-Collier Boulevard). The reviewer notes the following major points which address opposition to CON application #10523:

- Since no site has been identified, there is great variability as to migration patterns, travel times and the like given the near 20-mile wide (east to west) of the ZIP Code area (33928) where HCA proposes to establish MCSWF.
- HCA WFD exited the Lee County market in 2006 by selling the assets to LMHS. LMHS' Gulf Coast Medical Center is situated just outside the boundaries of HCA's proposed service area and LMHS' HealthPark Medical Center is situated within the service area as defined. The very small defined service area should have included ZIP Code 33912 which is proximate to the north of Estero.
- Today, the monopolistic dynamic in Lee County persists due in large part because of HCA's exist from the market in 2006. HCA should not be awarded the ability to re-enter this market as there is no indication HCA will not divest to LMHS again once it recognizes the market is well-served by LMHS and Collier County hospitals.
- It is unclear how distant HCA's proposed MCSWF is from the co-batched LMHS' proposed LHCP hospital, since no site has been procured. Since LMHS is already developing non-CON regulated outpatient services (including a freestanding ED) at 23450 Via Coconut Point, Estero, Florida, even if neither co-batched CON applicants are approved, there will be one new ED in south Lee County with a full complement of outpatient services.
- NCH initiated construction last month on another freestanding ED in Bonita Springs, the ZIP Code areas which HCA forecasts will provide the largest number of admissions to the proposed facility. The availability of this additional non-CON regulated access point was largely discounted in the MCSWF application. Notably, patients treated at this ED will likely be transferred to one of NCH's facilities.

- There is no demand for additional inpatient beds in Lee County or an additional hospital, particularly within the defined MCSWF service area given during the past three years:
  - The declining discharge use rates
  - The declining hospital discharges
  - The declining patient days
- HCA is seeking to re-enter the southwest Florida market to capitalize on the population growth in north Collier County and southernmost Lee County—areas already well-served by existing Lee and Collier County hospitals. Population counts and accessibility to other hospitals do not warrant approval of the proposed hospital.
- HCA failed to meet the CON statutory review criteria as provided in Section 408.035, (Florida Statutes), for new general acute care hospitals. HCA does not demonstrate the need to receive approval of a new hospital in Estero. MCSWF will not enhance access and is not warranted by lack of availability, accessibility, extent of utilization of other area providers as no barriers to access were demonstrated.
- The proposed hospital will not foster competition that promotes cost-effectiveness or quality of care, despite LMHS having a virtual monopoly in Lee County because HCA is one of the highest cost (charge) hospital providers in the State of Florida. HCA is certainly not going to foster competition that promotes cost-effectiveness.
- The identified service area population is growing but medical treatment trends to inpatient services are continuing to decrease at a rate greater than the population increase.
- Approval of another hospital in southwest Florida will further limit available clinical resources. Staffing at the proposed MCSWF will significantly strain limited resources in terms of nurses, technical support staff and physicians required. Physicians will be reluctant to cover an additional hospital while additional physician recruits will further saturate the market, making existing physician practices less financially viable.
- MCSWF has not proposed to offer anything different than what is already available and accessible to residents of the identified service area. MCSWF claims that it will be the only hospital-based adult psychiatric unit in Lee County is not current. In January 2018, Lehigh Regional Medical Center was approved to establish a 27-bed adult psychiatric unit[28]. Lehigh Regional is just north of the MCSWF service area ZIP Code of 33913 and within District 8 (psychiatric need is calculated on a district basis). Any suggestion from MCSWF as to the need for 10 beds in Lee County will be more than satisfied by the 27-bed unit under development.

[28] The reviewer confirms that effective January 11, 2018 Lehigh Regional Medical Center was approved, by way of exemption (#E180001), to add 27 adult psychiatric beds through the conversion of 27 acute care beds (amended 3/27/2018), with a project cost of $3,500,000.

PRHS contends that in summary, CON application #10523 does not meet the intent of the statutory and rule criteria and should therefore be denied.

HCA® WFD's MCSWF DWSO on CON application #10524: On May 4, 2018, the Agency received a 24-page DWSO from CON applicant #10523. This DWSO was delivered by a representative of Rutledge Ecenia, Attorneys and Counselors at Law. According to the MCSWF DWSO, CON application #10524 does not satisfy the relevant statutory criteria for project approval, while in contrast, the MCSWF proposal does and is comparatively superior to CON application #10524.

HCA contends that LMHS offers objection to CON application #10523 by arguing that:

- HCA abandoned Lee County in 2006 when it sold its hospitals to LMHS
- HCA's existing hospitals in surrounding counties have higher charges then LMHS facilities
- The approval of the MCSWF would adversely impact LMHS

HCA maintains that the above allegations are inaccurate and irrelevant to this review. Opposition asserts that the central question in this review is: should LMHS be permitted to further expand its dominant market power in Lee County with the addition of yet another hospital or should a new competitor be permitted to enter the market to meet the needs of southern Lee residents? The reviewer notes that the only criteria that can determine approval of a new hospital are those identified by statute. According to HCA, Lee County residents should have the same degree of choice of inpatient providers available in other Florida counties and that enhanced competition will be beneficial to residents, the medical community and payers of health care services.

Stating the use of the Agency inpatient database from 7/2016 – 6/2017, MCSWF indicates that LMHS facilities control nearly 85 percent of all acute care discharges (excluding psychiatric and substance abuse) by Lee County residents. See the exhibit below.

Facility Market Share for Lee County Acute Care Patients
(Non-Psychiatric/Substance Abuse)
(7/2016 – 6/2017)

Facility	Number of Patients	Market Share
Lee County		
Lee Health System Facilities		
Gulf Coast Medical Center	18,339	23.7%
Cape Coral Hospital	14,927	19.3%
Lee Memorial Hospital	13,475	17.4%
HealthPark Medical Center	18,619	24.1%
Lee Health System Total	**65,360**	**84.6%**
Prime Healthcare System		
Lehigh Regional Medical Center	2,188	2.8%
Prime Healthcare System Total	**2,188**	**2.8%**
Collier County		
Physicians Regional Healthcare System		
Physicians Regional Medical Center-Pine Ridge	1,194	1.5%
Physicians Regional Medical Center-Collier Boulevard	130	0.2%
Physicians Healthcare System Total	**1,324**	**1.7%**
NCH Healthcare System		
North Naples Hospital Campus	2,953	3.8%
Naples Community Hospital	1,289	1.7%
NCH Healthcare System Total	**4,242**	**5.5%**
Other Facilities		
Other Total	**4,166**	**5.4%**
Total Lee County Patients	**77,280**	

Source: HCA DWSO, page 2, Exhibit 1

Opposition contends that the LMHS market control is unmatched in any of the most heavily populated counties in Florida. MCSWF states the use of the Agency inpatient database for Q3-2016 to Q2-2017, non-tertiary discharges and Agency population data to show the percent market share of hospital systems in the 10 largest counties in Florida. The reviewer notes that MCSWF provides percent market share from highest (LMHS at 84.6 percent) to lowest (Baptist Health System in Miami-Dade County at 22.1 percent). See the exhibit below.

Comparison of Non-Tertiary Inpatient Market Share in Florida's Largest Counties

County	Largest Hospital/ System	2018 Population	Total Non-Tertiary Acute Discharges	Largest Provider Discharges	Percent Market Share
Lee	**LMHS**	**722,432**	**63,290**	**53,522**	**84.6%**
Brevard	Holmes Regional	575,533	61,077	38,343	62.8%
Orange	Adventist Health System	1,328,544	102,573	56,458	55.0%
Pinellas	Baycare Health System	9,28,999	103,828	52,371	50.4%
Polk	Lakeland Regional Med Cntr	665,907	28,957	71,368	40.6%
Duval	Baptist Health System	914,598	93,834	30,499	32.5%
Hillsborough	Baycare Health System	1,387,993	118,107	34,720	29.4%
Broward	North Broward Hosp. District	1,831,969	159,734	39,990	25.0%
Palm Beach	HCA East FL Division	1,421,511	133,945	33,439	25.0%
Miami-Dade	Baptist Health System	2,790,753	222,798	49,240	22.1%

Source: HCA DWSO, page 3, Exhibit 2

MCSWF discusses and physician letters of support noting need for patient choice of health care providers in Lee County in order to stimulate improvements in the quality and responsiveness of care. Opposition notes letters of support from change.org, as well as multiproduct insurance providers in Lee County. MCSWF asserts that MCOs seeking to serve Lee County must include LMHS facilities to meet network adequacy standards, giving LMHS very significant leverage in contract negotiations. Opposition contends that it is difficult to envision a situation where the need for competition and consumer choice would be greater than the conditions present in Lee County today.

Regarding HCA's decision to sell its Lee County facilities 12 years ago, HCA indicates that this is irrelevant. HCA states that it was LMHS that approached HCA with an offer to buy its Lee County hospitals at a price that was viewed by HCA to be above market value. Since accepting the offer, HCA notes that it has made significant investments in its facilities in other parts of Florida and nationally. Opposition maintains that HCA did not abandon the Lee County market – pointing to the Consult-a-Nurse (CAN) contact center that was established in 1989 to provide nurse advice and health information, physician referral services and registration for classes and events for health care consumers in Florida. MCSWF indicates a CAN location in ZIP Code 33919 in Fort Myers, Florida and 95 FTEs at the National Contact Center Management (NCCM) in Fort Myers.

MCSWF states that HCA has acquired the Riverwalk Ambulatory Surgery Center (no address provided), which has performed nearly 3,000 cases last year and has 23 employees. Opposition indicates that the development of an acute care hospital is the next step in expanding the choice of health care providers in the community. The reviewer notes that according to the Agency's FloridaHealthFinder.gov website, as of May 7, 2018, Riverwalk Ambulatory Surgery Center, LLC is the owner/licensee and the facility is located in Manatee County at 200 Third Avenue W., Suite 170, Bradenton, Florida. Riverwalk Surgery Center is located in Lee County at 8350 Riverwalk Park Blvd, Suite Four, Fort Myers, Florida. Riverwalk Surgery Center shows that HCA Holdings, Inc. has 51 percent controlling interest in the management company for Riverwalk Surgery Center, Surgicare of Riverwalk, LLC. Surgicare of Riverwalk, LLC has a 51 percent controlling interest in the ownership for Riverwalk Surgery Center.

Opposition maintains that a hospital's gross charges have little to do with what patients or payers ultimately pay for health care services and it is common practice for hospitals to set suggested list prices as a

starting point for negotiations with various commercial insurers. MCSWF indicates that there is no clear/direct relationship between hospitals' charge and the actual cost to the patient and/or payer. The reviewer notes that the Agency has calculated cost to charge ratio (the ratio of cost to provide services to the charges for that services) which can vary widely by hospital. The reviewer indicates that the charge of a service does not represent either cost or what the hospital actually receives—costs and receipts are on average between 20 and 30 percent of charges. For reporting year 2016, the ratio was approximately 29.27 percent for government-owned hospitals, 23.30 percent for not-for-profit hospitals and 13.73 percent for for-profit hospitals. It is unclear from the data whether the difference between the three is indicative of lower (overhead) costs for a hospital to provide services or higher prices to consumers at for-profit hospitals versus government-owned hospitals. Cost to charge ratios for HCA's WFD hospitals range from a low of 8.43 for Fawcett Memorial Hospital to a high of 12.19 for Blake Medical Center while cost to charge ratios for LMHS ranges from a low of 17.77 at Cape Coral Hospital to a high of 19.04 at Lee Memorial for reporting year 2016.

MCSWF points out that Medicare is the largest single payer of hospital services in Lee County. Opposition utilizes www.cms.gov, MA Penetration 3-2018, to indicate that of the 10 largest Medicare eligible population counties in Florida, Lee County is the sixth largest with the lowest (33.48 percent) Medicare Advantage MCO penetration rate of the top 10 counties—noting that Lee County is ranked 31st in Medicare Advantage MCO penetration among Florida counties. See the exhibit below.

Comparison of Managed Medicare Penetration Rates

County	Medicare Eligibles	MA Enrolled	Penetration Rate	Penetration Rank
Miami-Dade	464,276	307,853	66.31%	1
Broward	324,225	174,561	53.84%	3
Palm Beach	319,654	121,168	37.91%	22
Pinellas	246,480	116,331	47.20%	11
Hillsborough	231,546	112,428	48.56%	9
Lee	191,151	64,006	33.48%	31
Orange	188,250	88,473	47.00%	13
Dual	161,279	59,605	36.96%	23
Polk	154,737	78,067	50.45%	7
Brevard	154,274	59,366	38.48%	21

Source: HCA DWSO, page 5, Exhibit 3

Opposition maintains that the ability of Medicare Advantage MCOs to negotiate favorable rates is severely limited in Lee County when LMHS controls such a large share of the market—therefore Medicare Advantage MCO penetration is low, resulting in less overall care managed and cost savings in the market. MCSWF anticipates that approval of CON

application #10523 would also result in an immediate savings to Medicaid patients served in Lee County. Opposition asserts that LMHS can extract prices above what would be possible in a competitive market until MCSWF could serve as an alternative to LMHS. MCSWF maintains that health care consumers benefit from lower prices and higher quality when health care provider markets are more competitive with a reduction in hospital competition leading to higher prices for hospital care. The reviewer notes that no statistical evidence was submitted to evidence this correlation.

Regarding an employed physician monopoly in Lee County, MCSWF concedes that while the current trend in health care may be towards employed physicians, the issue faced in Lee County is that the majority of physicians are employed by a single hospital system that operates four of the five acute care hospitals in the county.

MCSWF contends that the LMHS claim about adverse impact is unfounded the contention that approval of MCSWF will impair LMHS' ability to pursue its coordinated care initiatives is without merit. Opposition asserts that with approval of CON application #10523, LMHS will still have an overwhelming share of health care services in Lee County. MCSWF maintains that coordinated care initiatives are being implemented across Florida without the need for the monopolistic control LMHS enjoys. Opposition asserts that the degree of vertical integration that LMHS proposes in CON application #10524 should be of concern to the Agency in order to ensure that consumers and their insurers have a level playing field on which to negotiate for services and to allow physicians freedom of movement in order to provide the best care for their patients.

Opposition discusses HCA's coordinated care efforts, with HCA having an advantage of its presence in markets with varying demographics and competitive dynamics in such a way to test capabilities and pilot projects. MCSWF provides a graphic to address HCA's forward-thinking initiatives across the United States related to population health management and value-based care. Per the opposition, this approach allows the sharing of learned experiences across HCA markets and affords HCA's local management teams access to the resources and experiences needed to adjust and adapt to changes in their local markets. MCSWF states that one of the greatest advantages that HCA brings to this effort is its scale and scope of operations in over 50 U.S. markets. HCA indicates that it is able to selectively and strategically

determine "where", "when", "why" and "how" to enter alternative care delivery and payment vehicle arenas while assembling the right resources to assure the most favorable outcomes possible. Opposition provided a graph to show seven different locations across the country, illustrating larger value-based programs that HCA has in place today.

Regarding LMHS' "safety net" provider designation, MCSWF points out that the term "safety net" has been self-designated by LMHS and that there is no state definition of a "safety net" provider. Opposition contends that many hospitals around the state offer significantly higher levels of care to underserved populations than Lee Memorial does and that there is simply no logic to the argument that allowing a small measure of competition will impede Lee Memorial's ability to provide care to underserved patients. MCSWF states the use of Agency prior year reports for 2016, to indicate that LMHS does not provide as high a level of charity care as a percent of net revenue in comparison to what MCSWF references as, "Florida's real safety net hospitals". See the exhibit below.

Comparison of Net Charity Care as Percent of Net Patient Revenue
Florida Safety Net Providers: 2016

	Net Patient Revenue	Net Charity Care Write Off	Percent Charity Care
UF Health Jacksonville	$1,601,318,973	$323,296,720	20.2%
Tampa General Hospital	$3,078,198,678	$393,000,968	12.8%
Jackson Memorial Hospital	$3,783,494,657	$342,068,704	9.0%
Lee Memorial Hospital	$2,386,092,939	$143,260,672	6.0%

Source: HCA DWSO, page 12, Exhibit 6

MCSWF lists 15 HCA WFD hospitals and indicates that many of these HCA affiliate hospitals provide charity care levels at or above the level at Lee Memorial. The reviewer notes that six of the 15 referenced hospitals in the stated exhibit reported charity care at a level greater than 6.0 percent. Opposition maintains that the proposed hospital will be a financially accessible hospital and will serve patients without regard to ability to pay

According to MCSWF, the LMHS 2017 audit indicates that it provided total community benefits of $419 million, including:

- Two hundred and ninety-five million of this total are for "unpaid" Medicaid and Medicare services.
- Community outreach, education and "one-of-a-kind" medical services represented $61 million.
- The cost of charity care provided system-wide was approximately $63 million (3.83 percent of operating expenses). In terms of charges, charity care represented $286 million of $7.4 billion in gross patient revenue (3.85 percent).

Addressing LMHS' financial strength, MCSWF contends that according to its 2017 Audited Financial Statement, LMHS is a financially sound health system which will not be materially impacted by approval of CON application #10523. MCSWF points out that:

- LMHS has $971 million in cash and short-term investments
- LMHS is relatively unleveraged with a debt-to-asset ratio of 0.41
- LMHS reported a positive net income of $169,274,000
- LMHS has an operating margin of 5.2 percent and a total margin of 9.8 percent
- Lee Health's 2017 performance outpaced the Moody's median profitability ratios for all A-rated hospitals

MCSWF indicates that CON application #10523 will be an important first step in bringing a more competitive balance to Lee County with no meaningful impact on LMHS. Opposition maintains that HCA is the only organization with the resources to compete effectively and make a successful entry into Lee County. MCSWF comments that approval of CON application #10524 will adversely impact the health care system in Lee County because it will perpetuate the monopolistic control the LMHS currently wields. MCSWF asserts that absent the introduction of new competition:

- Residents will continue to have limited choices of inpatient providers
- Doctors will have few options to admit patients
- Payers will have limited ability to negotiate competitive prices for policyholders

Opposition notes details of the denial of CON application #10185 in 2013 and makes comparisons to flaws in CON application #10524 that were also flaws in CON application #10185. MCSWF presents challenges to each of the conditions predicated upon award of CON application #10524, stating that LMHS' conditions do not support approval.

- Regarding Condition #1
  - The proposed LHCP is in the same ZIP Code as the location proposed for MCSWF
- Regarding Conditions #2 and #3
  - This has no lasting effect and will only serve to expand LMHS' dominant position
- Regarding Conditions #4 and #5
  - The Estero area has a relatively small population of Medicaid and uninsured patients, so financial access is not a significant concern
- Regarding Condition #5
  - These are programs that LMHS already provides and $500,000 is not a significant commitment

Opposition maintains that LMHS has failed to demonstrate need for the proposed LMCP hospital. MCSWF reiterates a comparison of ED services with corresponding patient outcomes and patient satisfaction. MCSWF points out that if approved, CON application #10523 would bring greater economic benefit to Lee County, particularly the Estero area, in the form of property and other local taxes, indigent care taxes and state/federal taxes. Opposition contends that in 2015, HCA WFD affiliates provided more than $125 million in tax support. MCSWF discusses other benefits that the proposal would bring, such as on-site benefit education and enrollment assistance for programs including Medicaid. Opposition provides a comparison of five competing characteristics that CON application #10523 is stated to provide as the superior applicant to serve the Estero area. See the exhibit below.

Comparison of Competing Applicant

	CON app. #10523 Medical Center of Southwest Florida	**CON app. #10524 Lee Health Coconut Point**
Address a Need in Southern Lee County	✓	✓
Enhance Competition for Hospital Services	✓	
Enable Payers to Negotiate Fair Market Prices	✓	
Bring Innovation to Improve Quality and Efficiency	✓	
Meet the Needs of Community Physicians	✓	

Source: HCA DWSO, page 24

NCH DWSO on CON application #10524: On May 4, 2018, the Agency received a 43-page DWSO from NCH submitted by Michael J. Glazer, Attorney, Ausley McMullen. Though specific to CON application #10524, this DWSO also addresses opposition to District 8/Subdistrict 8-2 (Collier County), CON application #10522.

According to NCH's DWSO, Lee Memorial Health System fails to address any special or not normal circumstances and invites serious criticism when opining that residents experience impediments to access and availability to hospital-based care. Opposition notes that the proposal is for a small urban hospital without the capability to provide higher acuity services or address a myriad of medical conditions. NCH asserts that the applicant offers nothing unique to the service area where multiple hospitals offer greater complexity and more services.

NCH asserts that this group of CON applications (#10522, #10523 and #10524) shares characteristics that over-reach as well as overstate the size of the proposed service area and the capabilities that small urban hospitals of 88 beds or less possess to render appropriate care. NCH asserts that the three proposals have the following drawbacks:

- Service areas that overlap with existing hospitals in PSAs
- Redundancy and unnecessary duplication of existing services

- Selection of DRGs that stretch well beyond the capabilities that a small hospital can provide
- Negative impacts on existing hospitals
- Lack of evidence showing geographic barriers or impediments to current hospitals
- Lack of any competitive advantages of location, service availability, demand, market rates, or costs or charges
- Inability to justify any unique or special circumstances that rise to the level of justifying millions of dollars to create a small urban hospital in service areas that already have urban and suburban hospitals with higher case mix indices and established, broad-based medical staffs

In support of its opposition to this proposal, NCH references:
- DOAH Case No. 13-2508CON
- DOAH Case No. 13-2558CON
- DOAH Case No. 16-0112CON

Opposition maintains that CON application #10524 raises issues regarding the best use of resources. NCH indicates to capture only a small percentage of a proposed service area that overlaps with existing hospitals offering the same services results in market shift rather than market growth and sharing incremental growth within a new system affords no benefit to residents. Opposition states CON application #10524 fragments rather than supports existing relationships offering only a different location for existing lower acuity services.

NCH notes that the proposed LHCP hospital location is at the same site as "the previous application" and within the PSA of:
- NCH
- NCH North
- PRMC-Pine Ridge

Opposition comments that the proposal touches the border of the PSA of both HealthPark Medical Center and Gulf Coast Medical Center. NCH notes that differences in total service area ZIP Codes between CON application #10524 and #10523 raise questions as to how much broad differences could occur when both project propose a small urban hospital in essentially the same general location. Opposition indicates that two points arise with the applications submitted: (1) cannibalization occurs within the existing health care system's facilities and (2) duplication occurs with additional small urban hospitals unable to provide the wider range of services that residents require.

Opposition provides an extensive multipage table that NCH self-attests illustrates coverage of the district and the corresponding counties that existing hospitals serve as well as what the co-batched applicants propose for service areas. NCH comments that extensive overlap exists and that none of the proposals serve an area that is not already served. NCH notes that CON application #10524's service area falls within the PSAs of existing hospitals.

NCH points out that conclusions from the 2017 Community Health Needs Assessment Report, Professional Research Consultants, Inc., for Lee Health and the Florida Department of Health in Lee County make no mention of need for additional hospitals nor inpatient beds. Opposition indicates that the report does not identify any access issues to hospital-based care within the county nor issues accessing hospital care in Lee County.

Opposition contends that shifting existing market shares away from hospitals within the same health system to move into a growing area belies the intent to serve more residents--fragmenting the provision of services. NCH contends that CON application #10524 shifts cases and that those cases are unlikely to find that a small, urban hospital offers the expanse of services that already exist within the service area. NCH asserts that the suggestion that "closer to home" equates with improved care has no validity when the proposed hospital lacks the services available at much larger established hospitals in Lee and Collier Counties.

NCH provides a series of maps to address CON application #10524's service area indicating no gain in market share outside of Lee County with the development of the proposed LHCP hospital. Opposition presents a LHCP 30-minute contour map generated through Special TEQ/Esri™. Opposition contend that the map illustrates reasonable access and availability exists with no appreciable improvement with approval of CON application #10524. NCH notes that within the circumference of 30 minutes of the proposed LHCP hospital, there are the following hospitals:

- NCH North
- PRMC-Pine Ridge
- HealthPark Medical Center
- Gulf Coast Medical Center
- Touching on NCH and Lee Memorial Hospital

NCH contends that as the drive time map illustrates, reasonable access and availability exists within the proposed service area, and no appreciable improvement occurs. NCH emphasizes that the proposed LHCP creates duplication and redundancy while fostering an oversupply of acute care facilities.

Continuing with drive time, opposition maintains that CON application #10524's drive-time contentions lack wide support and standards. According to NCH, the use of a contour indicates that CON application #10524 fails as the proposed site clearly represents a location that departs from current locations of hospitals, moving south and east. Opposition maintains that LMHS' narrative and maps regarding traffic drive-time are a self-serving assessment. NCH indicates that this approach ignores residents and other hospitals whose locations proximate to southern Lee County better meet travel time for residents residing in the PSA.

NCH offers a technical review of the materials provided concerning the travel time assessment report in CON application #10524. Opposition offers comments regarding selected pages and exhibits:

- There is no appendix to support the referenced data, so there is not enough information to track the quality of the data cited, insufficient to replicate the findings.
- More details are needed as opposed to free third-party algorithms. A more technical method would be to purchase actual travel time data from approved FHWA travel time reliability sources (Inrix), in accordance with the NPMRDS.
- Page Two: Lack of defined terms such as "good traffic conditions" and "bad traffic conditions".
  - Specific locations from where the FDOT historical traffic volume count data is being referenced is lacking.
  - How many years of traffic counts were referenced and the calculations to determine the growth rates are lacking.
- Page Three: The travel demand District One Regional Planning Model (D1RPM) model input files and the model output files were omitted and the "reasonableness" claim cannot be verified.
- Page Four: "High" traffic volumes are automatically associated with significant congestion without providing reference and assertion by the applicant that the project site is "conveniently accessible" as compared to other facilities .
- Page Five: A copy of the data source to verify the volumes reported is not provided while a separate review of the data source identified some different/conflicting information.

- Page Six: The data logs from the "actual drive-time runs" conducted by the author should have been provided along with how many drive-time runs completed for each path to determine an appropriate data set.
- Exhibit 6b/Figure 5b/Exhibit 6c/Exhibit 5c: Google algorithm (not previously defined) potentially overly conservative to use as an accurate representation of travel time.
- Map 6-b and Map 6-e: NCH North should not be omitted from maps/exhibits, even if located outside of Lee County.
- Pages 9, 10 and 11: Lack of detail, specificity and/or verifiability

NCH points out that significant volume on a roadway and at intersections does not automatically equate to a material delay. Opposition provides other discussions in challenging CON application #10524's contentions about drive-time issues in support of the proposed LMCP hospital. NCH concludes that LMHS' travel time assessment should not be considered an adequate foundation upon which to base any findings of fact.

NCH contends that with two freestanding EDs in the area, one to be operated by LMHS and one by NCH (both set to open in December 2018), CON application #10524 will not add in a meaningful way to the health care services that will already be available for the community. NCH provides an aerial photograph depicting the locations of freestanding EDs proximate to the proposed LHCP hospital site.

Opposition states the use of the Agency Inpatient Database for the 12 months ending June 30, 2017 (excluding transplants and MDC 15, 19 and 20) for District 8 overall indicates that District 8 had a use rate (cases per 1,000 adults) of 118, while Lee County had a use rate (cases per 1,000 adults) of 122. NCH maintains that Lee County residents had no problems in accessing hospital care as well as an absence of demand for additional hospitals in the area. Opposition emphasizes that the dispersion of residents indicates choice, availability of providers and services that are not restricted within Lee County.

NCH states that LMHS has a net of 496 additional beds in development for Lee County, through the notification process. The reviewer notes that as of April 9, 2018, Agency records show a net increase of 413 acute care beds in Lee County.

Opposition contends that the proposed "outpost" hospital, with limited beds, services and medical staffs in a suburban setting, adds little value to the overall continuum of care.

NCH stresses that CON application #10524 mentions limited physician availability and that undercuts the ability of the proposed LHCP hospital to meet the forecasted high occupancy of 74 percent in the year 2023 or to provide the wide range of services proposed from the description of non-tertiary DRGs. NCH explains that CON application #10524's description of proposed non-tertiary services and associated CMIs and ALOS, lie far beyond a small, urban hospital's capability. Opposition tested the reasonableness of LMHS' DRG list with the DRGs associated with three proxy hospitals. Below are the three hospitals, their county, bed counts and CMIs.

1. Lehigh Regional (Lee Co.) – 88 beds – CMI of 1.2177
2. St. Cloud Hospital (Osceola Co.) – 84 beds – CMI of 1.1161
3. Viera Hospital (Brevard Co.) – 84 beds – CMI of 1.2319

NCH maintains that the total group of all small urban hospitals have a CMI of 1.1367, with a standard deviation of 1.1192, a mean bed size of 157 and an ADC of 81.5 patients and additionally, the standard deviation on average patients is 39.4 patients. Opposition notes that the combined list of the three proxy hospitals produce an unduplicated count of 474 DRGs with an ALOS of 3.7 days and an overall CMI of 1.2772.

Opposition stresses that the proposed small hospital of 82 acute care beds proposed to provide services to cover 633 DRGs with an "unrealistic" CMI of 1.8375, exceeding the case mix of HealthPark in Lee County. NCH asserts that therefore, the proposed LHCP hospital's purported capabilities and breadth of services exceed that of HealthPark. Opposition maintains that the proposal is unreasonable and unrealistic in its proposed services and the proposal contains "much hype without a reasonable basis". NCH emphasizes that what the LHCP hospital proposal offers is a trade-off between a physical plant that accommodates a complex range of services for which some inconvenience is expected or a closer hospital that lacks the advanced capabilities to treat the types of conditions that arise among the persons within the PSA. NCH points out that the proposed project offers little to the residents of the PSA who experience medical and surgical needs that exceed the capability of a small hospital. NCH asserts that to opine that area residents need a small hospital that is closer to their residences and that can meet their needs conflicts with the facts.

NCH provides a table to indicate the top 20 DRGs and corresponding number of cases by ZIP Code and the accompanying CMI for the applicant's total service area. The reviewer notes that the listed ZIP Codes in the table are consistent with CON application #10524's PSA ZIP Codes but does not include any of the SSA ZIP Codes. Opposition states

that the complexity of the top 20 DRGs, arising from LMHS' proposed PSA, have an overall CMI of 1.3719 – higher than what a small, urban hospital can effectively treat. NCH further states that of the total 576 DRGs that arise from LMHS' PSA (stated to be much lower than CON application #10524's DRG list of 633), the CMI for the 16,017 total number of patients is 1.4890, establishing a patient population whose needs are acute and beyond the capability of the proposed project. NCH asserts that the closest proxy to LMHS' proposal is Lehigh Regional Medical Center, with a CMI of 1.2264 for the designated 20 DRGs.

Opposition comments that LMHS' impact analysis begins with a distortion of the cases and estimated caseload pool (34,704). Opposition indicates that a critical examination of the total service area ZIP Codes produces a condition in which the applicant understates impact and overstates the proposed hospital's ability to capture cases beyond the defined ZIP Codes. NCH maintains that LMHS estimates includes discharges that may lie 15 miles. NCH comments that of the 5,279 cases, 4,751 come from the service area and 548 come from outside it—representing a 10 percent increase. NCH states that if the LMHS methodology is restricted to the service area as defined by the project at present, the result is markedly different, with 25,203 instead of 34,704 future cases.

NCH provides an estimated case loss, for both the Naples Health System and hospitals within the Naples Health System and LMHS for 2023, using the LMHS DRG list and the NCH estimated service area total case count of 25,203 and proposed hospital cases of 5,279. The reviewer reproduces only the estimate case loss totals by 2023, by the applicable health system. See the table below.

Result of Assuming Proposed LHCP Hospital's Assumption of Utilization Produces Negative Outcomes for Existing Hospitals

Hospital System	Year 2023
Naples Health System Loss	-1,293
LMHS Loss	-3,544

Source: NCH DWSO, page 36, Table 5 (partially reproduced)

Opposition asserts that if CON application #10524 is approved, market domination of LMHS worsens. NCH maintains that compared to surrounding hospitals, LMHS is higher priced and that this price disparity is likely to increase with the addition of the proposed project.

Opposition utilizes Agency prior year reports and patient-level discharge data to calculate individual hospital and hospital system case mix adjusted, commercial payer, net-of-contractual-allowance prices per individual discharge "net price" to show LMHS' net price was 47 percent

higher than NCH ($13,563 vs. $9,237), 16 percent greater than the average price of LMHS' Lee County-based hospital competitors ($13,563 vs. $11,677). Per NCH, the reason for LMHS' higher prices is the health system's market dominance. Opposition contends that if CON application #10524 is approved, there is no compelling reason to expect commercial payers to benefit from a reduction in their claims costs or in the negotiated rates paid to LMHS. NCH maintains that because LMHS is more expensive, the volume that the proposed project siphons competitors will increase insurers' claims costs. If CON application #10524 is approved, NCH expects for commercial payers' claims expenditures to increase by $810,000 in 2016 dollars.

NCH anticipates the if CON application #10524 is approved, the LMHS total inpatient discharge share will increase 1.5 "share points", from 83.7 percent to 85.2 percent. Opposition expects that this increase is likely to give LMHS even more bargaining leverage over health plans. NCH points out that this expected increase in share dominance is due to the fact that the proposed project is in south Lee County where LMHS faces relatively more hospital competition. NCH indicates that affected payers are likely to include payers that sell commercial and/or managed Medicare and Medicaid products for which price and other contractual terms are negotiated with hospitals. NCH states that the anticipated increase in share leverage could be expected for health plan payments to LMHS to increase by $6.1 million per year.

NCH explains that LMHS projects that nearly 70 percent of the proposed project volume will come at the expense of its existing hospitals—by 2023 cannibalizing nearly 3,660 discharges. NCH contends that Florida Statutes (no reference given) requires the applicant to address the effect of the proposed project on the costs at existing facilities, including those already owned by the applicant. NCH comments that unless LMHS adopts the implausible position that 100 percent of its existing hospitals' annual costs are variable, the decline in volume at its existing hospitals is likely to increase those facilities' per-discharge unit costs and correspondingly any cost increases are likely to result in additional price increases at LMHS facilities.

Opposition estimates that if CON application #10524 is approved, NCH will lose a minimum of about $4.8 million dollars in annual contribution margin in 2017 dollars. NCH contends that the CON application #10524 conditions are unremarkable and that nothing new results from the proposed project. Opposition concludes by noting that need for CON application #10524 is highly questionable.

PRHS DWSO on CON application #10524: On May 4, 2018, the Agency received from a 74-page DWSO from Scott Lowe, Market Chief Executive Officer, PRHS.

PRHS offers a two and a half page executive summary on behalf of PRHS' two hospitals: PR-Pine Ridge and PR-Collier Boulevard. The reviewer notes the major points addressing opposition to CON application #10524:

- This is LMHS' second attempt at applying for approval to establish a hospital on this site.
- The most significant difference between the previous application (CON application #10185) and the current application (CON application #10524) is the modification of the service area definition—deleting two service area ZIP Codes north of the proposed hospital and replacing those with two new ZIP Codes within Collier County. Both of these new ZIP Codes are in the PR-Pine Ridge and PR-Collier Boulevard service area definitions.
  - LMHS is already developing non-CON regulated outpatient services (including a freestanding ED) on the LHCP campus. Development of outpatient services does not mean there is a need for inpatient services.
  - NCH initiated construction last month on another freestanding ED in Bonita Springs, the ZIP code areas which LMHS forecasts will provide the proposed hospital with the largest number of admissions. The availability of this additional non-CON regulated access point was not considered in the LMHS application. Notably, patients treated at this ED will likely be transferred to one of NCH's facilities not the proposed LHCP hospital.
  - LMHS conditions that the 82 beds will be transferred from an existing hospital but does not indicate where the 82 beds would be derived, i.e. which of its hospitals, demonstrating the effect on utilization and services, and its ability to transfer beds without causing an access issue at another facility. PRHS comments that the 70 beds being added to Lee Health account for the majority of the 82 beds being shifted to LHCP. Adding beds to transfer beds is not justification to support the approval of an additional hospital in the service area.
  - LMHS proffers five reasons to support the need for its proposed LHCP hospital but the rationales, individually and collectively, do not support the approval of the proposed LHCP hospital. Furthermore three of the five reasons (continuity of care, volume to value and safety-net) are:
    - Institution specific
    - Do not require the approval of CON application #10524 to further the Lee mission relative to these factors
    - Are not part of the statutory review criteria

- Implementing what the proposed LHCP claims is a cost-effective alternative is furthering the Lee Health monopoly and in reality provides no alternative.
  The only metric being considered by LHCP with regard to a component within the statutory and rule criteria is population. However:
  - Population in the remainder of Lee County is increasing at a greater rate than the service area
  - Service area utilization of inpatient services is declining and expected to continue to decline
  - LMHS does not demonstrate any access barriers as the population is well served by a variety of hospitals and hospital sponsors
- LMHS failed to meet the CON statutory review criteria as provided in Section 408.035 (Florida Statutes), for new general acute care hospitals. LMHS does not demonstrate the need to receive approval of a new hospital in Estero. The proposed LHCP hospital will not enhance access and further the proposal is not warranted by lack of availability, accessibility, extent of utilization of other area providers as no barriers to access were demonstrated.
- The proposed hospital will not foster competition that promotes cost-effectiveness or quality of care, rather, because it is virtually the only health system in Lee County, the monopolistic environment will perpetuate.
- Approval of another hospital in southwest Florida will further limit available clinical resources. Staffing at the proposed LHCP hospital will significantly strain limited resources in terms of nurses, technical support staff and physicians required. Physicians will be reluctant to cover an additional hospital and bringing in additional physician recruits will further saturate the market making existing physician practices less financially viable.
- LMHS has not proposed to offer anything different than what it already offers in this market nor has it proposed to offer anything different than what is already available from Collier County hospital providers or LMHS' other hospitals that serve the proposed service area.

PRHS contends that in summary, CON application #10524 does not meet the intent of the statutory and rule criteria and should therefore be denied.

G. Applicant Response to Written Statement(s) of Opposition

In those cases where a written statement of opposition has been timely filed regarding a certificate of need application for a general hospital, the applicant for the general hospital may submit a written response to the Agency. Such response must be received by the Agency within 10 days of the written statement due date. ss. 408.039(3)(d), Florida Statutes.

The Agency received one response to detailed written statements of opposition (RDWSOs) from co-batched **CON application #10523** and one RDWSOs from co-batched **CON application #10524.**

An RDWSO by **CON application #10523** was submitted regarding opposition by the following:

- LMHS (co-batched/competing **CON application #10524**)
- NCH
- PRHS

An RDWSO by **CON application #10524** was submitted regarding opposition by the following:

- HCA® WFD (co-batched/competing **CON application #10523**)
- NCH
- PRHS

Each RDWSO is briefly summarized below.

Medical Center of Southwest Florida, LLC (CON application #10523): On May 14, 2018, the Agency received an RDWSO from MCSWF regarding opposition submitted by LMHS, NCH and PRHS. This RDWSO consists of a 23 ½-page narrative. The RDWSO was submitted by Craig D. Miller, Associate, Rutledge Ecenia, Attorneys and Counselors at Law.

According to the RDWSO, while the opponents raise a variety of questions and issues, none of them are material to the main issues addressed by MCWSF:

- There is need for greater access to hospital, inpatient services for residents of south Lee County
- There is a need for a greater level of hospital competition in Lee County

Per HCA, the MCSWF application will meet both of the identified needs while the competing LMHS application will only serve to reduce competition in Lee County, which is already disturbingly low.

HCA maintains that MCSWF is not in violation of any Florida statutes in its proposal to convert 10 acute care beds to inpatient psychiatric beds and reiterates that it clearly establishes a need for such services. HCA contends that converting acute care beds to psychiatric beds is a common practice and is in no way a violation of state CON law.

Regarding that the MCSWF LOI is defective, HCA contends that the LOI is not defective, that there is no requirement that the LOI include information about changes subsequent to the implementation of the CON. HCA references the East Florida Healthcare, LLC CON application #10202 as a similar example. HCA points out that CON application #10202 was deemed complete by the Agency and that though CON application #10202 was denied by the Agency, the basis of denial had nothing to do with this aspect of the project (what was included or not included in the LOI)[29].

HCA indicates that the proposal in no way violates any statute or rule in that CON application #10523 utilization could support an acute care hospital of 70 or 80 beds – because there is no target occupancy rate that a new acute care hospital must achieve. HCA explains that it is MCSWF's long-term intention to operate only 70 beds.

HCA asserts that while LMHS and PRHS both indicate that there is no need for psychiatric services (as proposed by MCSWF), the MCSWF need analysis shows such need in the proposed MCSWF service area and points out that acute care hospitals may convert acute care beds to mental health services beds without having to show a need and are not required to file a CON to do so. The reviewer notes that need for psychiatric services area calculated on a district basis, not based on a proposed service are of ZIP Codes identified by an applicant. In regards to the statement of CON requirement for a new psychiatric unit or beds, the reviewer notes the provision of 408.036 (3)(o) Florida Statutes.

The RDWSO states that the LMHS and PRHS contention that the MCSWF proposal is not specific in its project description has no merit whatsoever and that the proposal meets the specific description requirement. HCA maintains that LMHS' contentions about MCSWF's

[29] The reviewer confirms that CON application #10202 proposed a complement of 100 acute care beds and was deemed complete by the Agency. The reviewer further confirms that the CON application #10202 state agency action report (SAAR), item-C (Project Summary) reads, in part, "The psychiatric and substance abuse unit will have 15 beds that will be converted upon licensure of the hospital. East Florida Healthcare would have to have approved exemptions to establish inpatient psychiatric and substance abuse units." The reviewer verifies that CON application #10202 was initially denied on December 6, 2013, was not challenged and that the initial decision became the Agency Final Order.

lack of specificity is an attempt to divert attention from the current competition-free environment that negatively impacts patients, payers and the health care system as a whole.

The applicant asserts that HCA has not abandoned the Lee Country market noting the operation of the Riverwalk Ambulatory Surgery Center and the CAN contact center.

According to HCA, the LMHS "coordinated care" programs will have the effect of further consolidating LMHS's market power in Lee County and negatively impact consumers, physicians and payers. According to HCA, MCSWF will not prevent LMHS's attempt to build an integrated health network as it will still maintain a significant market share in Lee County. The RDWSO asserts the MCSWF proposal will inject needed competition not only for inpatient acute care beds but by offering innovative programs designed to focus on population health and accountable care.

HCA comments that opponents suggest that, "minor data discrepancies or disagreements with assumptions made by MCSWF undermine the need for the proposed project". The RDWSO emphasizes that none of the identified issues are meaningful in the broader context of need. HCA states that generally, these criticisms are without merit because:

- LMHS clearly believes there is a need for a new general acute care hospital in south Lee County and to suggest that there is not a need with respect to MCSWF is disingenuous and inconsistent.
- MCSWF has clearly documented the need for greater competition in Lee County generally and in the service area specifically—NCH and PRHS confirm a need for more competition.
- There is no dispute that the population in Lee County generally and the service area specifically is growing rapidly, including a large and growing elderly population.
- Suggested "excess" acute care bed capacity in Lee County is fictional and irrelevant. None of the opponents recognize the significant seasonal demand for inpatient services in Lee County. Moreover, there is no longer a need methodology that controls the number of acute care beds in Florida, and existing providers are free to add and delete beds without CON review. When the number of beds is fluid, attempts to apply bed need methodologies are meaningless.

The applicant indicates that the opponents' arguments regarding MCSWF's service area were strategically developed to avoid the appearance of encroachment on other providers. MCSWF asserts that the identified service area is reasonable in light of the locations of existing hospitals, road access and geographic barriers. HCA comments that a larger service area would assume that patients would bypass

larger established hospitals to reach MCSWF. HCA contends that LMHS' proposed service area is too large because it does assume that patients will drive by existing hospitals.

HCA maintains that there is no regulatory requirement regarding the size of a service area, either geographically or demographically, to justify a new general acute care hospital. The applicant asserts that virtually every new hospital project approved in Florida has had a service area that overlapped with those of existing providers and that this fact does not mean that access would not be enhanced for residents of areas without hospitals. HCA indicates that MCSWF is not required to show need in other areas outside of the defined service area ZIP Codes. The RDWSO maintains that CON regulation is focused on the appropriate distribution of acute care services, not the overall number of beds in a county or service area.

HCA offers discussion regarding the addition/transfer of acute care beds within the LMHS. HCA asserts that there are extraneous factors beyond need in Lee County that are driving down occupancy rates, potentially masking the true need for acute care services in south Lee County.

The RDWSO asserts that services within a 30-minute travel time is not relevant as the Agency has not applied such a standard in reviewing other new hospital applications and access to hospitals is generally far shorter than 30 minutes in urban markets.

HCA explains that neither the NCH freestanding ED in Bonita Springs nor the Lee Health's pending freestanding ED at Coconut Point will address the need for inpatient services. The applicant indicates that without an acute care hospital in south Lee County, higher acuity emergency patients needing inpatient admission, will have to travel or be transported for care. HCA indicates that MCSWF will expand the continuity of care available to residents of the area.

The RDWSO maintains that there is no limitation on general acute care hospitals that would prevent the provision of pediatric services and while the MCSWF proposal expected pediatric population is small, the Agency has approved multiple new general acute care hospitals based on the need for services to all age groups. HCA contends that while MCSWF may not provide each and every service captured in the DRGs included in CON application #10523 utilization projections, the proposed project can serve a broad range of diagnoses and there is no limitation on the provision of any included services. The RDWSO stresses that MCSWF reasonably excluded inpatient rehabilitation patients from its analysis but even if MCSWF did not fully eliminate all inpatient rehabilitation

discharges, the maximum number of service area need that could be overstated is 2.4 percent and that the variance is meaningless to the MCSWF projection analysis.

HCA points out that regarding projected population variances between LMHS and MCSWF, the variances are meaningless and do not impact MCSWF's analysis. Concerning PRHS' contention that MCSWF's use rates are inconsistent and overstated, HCA points out that PRHS does not provide any backup information to demonstrate that PRHS' data is any more accurate or credible than MCSWF's. The RDWSO cannot confirm or validate any of PRHS' use rate data by age group or ZIP Code. HCA states that regarding the LMHS disputes about MCSWF's 2016 projected discharge estimates, MCSWF's data clearly document utilization for the third year of operation with the proposed PSA representing 75 percent of total hospital discharges.

The RDWSO indicates MCSWF's reasonableness about its analysis of need for adult psychiatric services and points out other characteristics that make the proposed hospital's psychiatric unit feature favorable for project approval[30].

HCA notes strong support for both a new hospital and preference for a non-Lee Health hospital such as the change.org (online) petition. The applicant indicates physician support and points out that physicians are community members too. HCA states it gathered 138 physician signatures despite legitimate fears of retaliation from LMHS. The applicant notes in particular support by Raymond Kordonowy, MD, President, Independent Physicians Associates of Lee County. HCA contends that 138 Lee County area physicians support the MCSWF proposal. HCA reiterates support from:

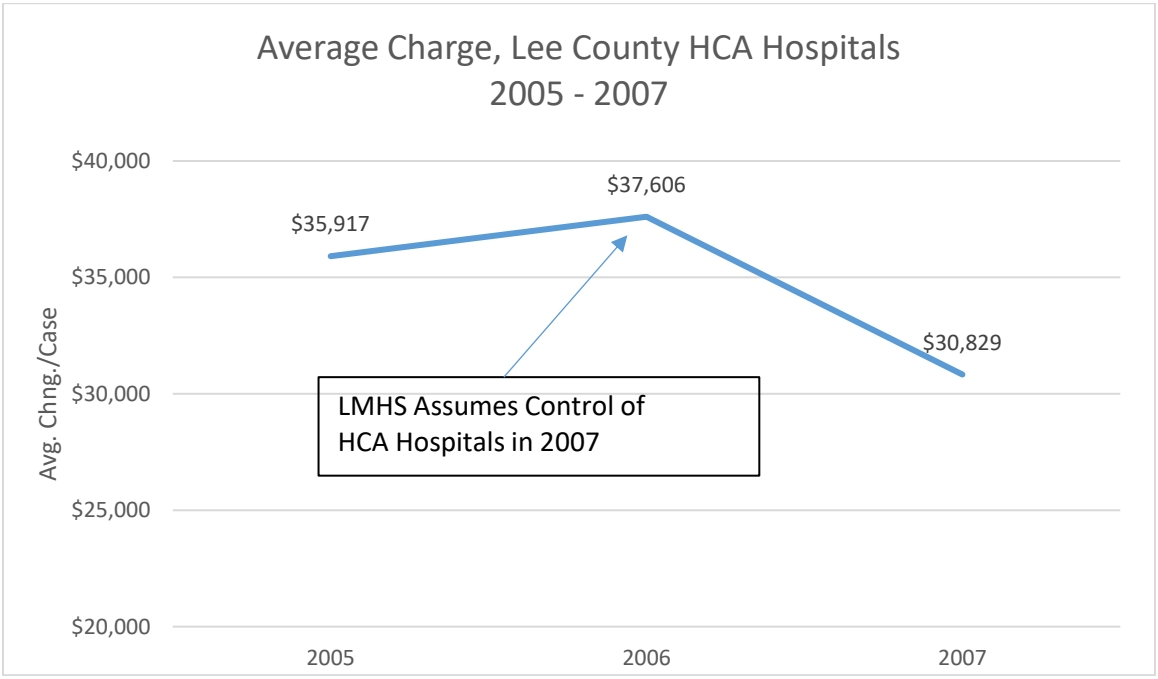
- Nancy Gareau, VP, Network Operations/Business Development, Freedom Health, Inc. and Optimum HealthCare, Inc. (Freedom)
- Chris E. Patterson, CEO, Sunshine Health (Sunshine)

The RDWSO contends that Freedom is active in Lee County, with 3,700 members (making this support relevant per MCSWF) and that Sunshine is also relevant in the Lee County area, having professional knowledge of the Lee County market, awareness of the benefits of competition and HCA's experience with building new community hospitals and working with, not against, managed care organizations.

[30] The reviewer notes that CON application #10523 is being reviewed for a new 80-bed general acute care hospital project, with a proposed 80 acute care beds, upon licensure (if approved).

Per HCA, LMHS makes an effort to "explain away" the low Medicare Managed Care penetration rate in Lee County by stating that the penetration rate in Lee County (33.4 percent) is on par with other District 8 counties. The applicant indicates that LMHS fails to disclose that the majority of the penetration in Lee County is PPO plans—a product line that has higher co-insurances and deductibles than HMOs. According to HCA, Lee County has six active MA HMO plans with 24,000 enrollees and that although Lee County saw an increase of over six percent in eligible persons in 2018, the county saw less than a one percent increase in MA membership. The applicant states that due to lack of competition in Lee County, it is much harder for health plans to develop attractive and cost-effective HMO benefit designs.

The RDWSO maintains that comparative charges are not a meaningful indicator of cost or access to care. HCA contends that, "Even more importantly, comparative charges are not a factor that AHCA evaluates in the review of applications for new general acute care hospitals". The RDWSO points to a graph that LMHS presented to address charges between HCA facilities and LMHS, in Lee County, from 2005 to 2007. According to HCA, the graph above is statistically misleading, noting that the Y axis does not start at zero and that in statistics, this is called a truncated graph. The applicant maintains that truncated graphs can create the impression of important change where there is little change and misleading graphs are a common tactic to intentionally hinder the "proper interpretation of data". For convenience, the reviewer reproduces this same exhibit below.



Source: LMHS DWSO, page 12, Exhibit 1

HCA comments that NCH points out LMHS' high charges in the NCH DWSO, with NCH stating that compared to surrounding hospitals, LMHS is higher priced and that additionally, this price disparity is likely to increase if CON application #10524 is approved—magnifying LMHS's hypocrisy as LMHS emphasizes HCA's charges when LMHS' charges are clearly higher than any other provider in the area. The applicant asserts that the issue for this project is the influence of charges in a market with little to no competition. The RDWSO maintains that LMHS' claim that it offers a lower cost alternative is erroneous and irrelevant.

The applicant offers discussion that the Doral Final Order (ACHA 18-235-FOF-CON "Doral Fin) is irrelevant to the proposed projects, since the Doral case had completely different fact circumstances than are present in co-batched CON applications #10523 and #10524.

HCA states that of course, if approved, MCSWF will have some impact on LMHS but the benefits of new competition far outweigh any potential impact and any financial impact on LMHS is not material. MCSWF states that it stands by its original analysis that the proposed facility will not have a material negative impact on any provider in the area. HCA contends that opponents do not present a compelling analysis of adverse impact and assumptions made by the opponents are unreasonable and fail to consider several facts:

- While loss of future growth can be considered, it is not guaranteed in any way. The loss of admissions will certainly be mitigated by overall growth in the service area.
- It is well established that both Lee County as a whole and Collier County are rapidly growing with large and growing elderly populations. This growth will generate additional demand for hospital services and offset any minor loss of patient volume/market share that any opponent may experience upon approval of CON application #10523.
- Outpatient services are not directly affected by the proposed project.
- Comparison of the way adverse impact is measured in other cases is not relevant because in most cases the competitive imbalance in a market is not such that the adverse impact must be weighed against the benefits of bringing more competition to the market.

The reviewer notes that HCA proceeds to individually address the MCSWF potential financial impact on co-batched/competing CON application #10524, as well as NCH and PRHS.

MCSWF Impact on LMHS

The RDWSO utilizes LMHS' DWSO pages 21 – 22 to indicate that LMHS expects to realize an assumed financial benefit of growth totaling $7,811,439. See the table below.

Service Area Growth Assumed by Lee Health

2016 Actual Service Area Discharges	8,481
2024 Lee Health Projected Discharges	9,784
Growth Assumed by Lee Health	1,303
Contribution Market per Discharge	$5,995
Assumed Financial Benefit of Growth	$7,811,430

Source: MCSWF RDWSO, page 16

The applicant then utilizes LMHS' contribution margin per case and MCSWF's "reasonableness of adverse impact", to indicate that MCSWF will only have a 3.2 percent impact on the net income of Lee Health in the third year of operation and that, even after impact, Lee Health will net well over $160 million per year. See the table below.

MCSWF Adverse Impact to Lee Health

	MCSWF Analysis
Range of Lost Discharges	907
Contribution Margin per Case	$5,995
Lost Contribution Margin	$5,437,433
FY 2017 Net Income	$169,274,000
Percent Adverse Impact	3.2%

Source: MCSWF RDWSO, page 17

MCSWF Impact on NCH

HCA notes NCH's approximation of a $3.1 million lost contribution margin if CON application #10523 is approved and utilizes NCH's DWSO, page 40, table 4, to indicate an estimated 6.0 percent adverse impact for NCH. The reviewer confirms that the MCSWF calculated lost admissions (non-tertiary of 681) and the MCSWF calculated lost admissions (psychiatric of four), and variable profit per IP admission (non-tertiary of $4,521) and the variable profit per IP admission (psychiatric of $819) are consistent with the NCH DSWO, page 40, Table 4. See the table below.

Calculation of Adverse Impact on NCH

	Non-Tertiary	Psych	Total
MCSWF Calculated Lost Admissions	681	4	685
Variable Profit per IP Admission*	$4,521	$819	
Lost Contribution Margin^	$3,078,801	$3,276	$3,082,077
Reported Net Income*			$51,388,448
Percent Adverse Impact**			6.0%

* Naples DWSO to MCSWF, p. 40
^ FY 2016 data from AHCA Prior Year Financial Reports
** Without offsetting gains based on growth in Collier County Population
Source: MCSWF RDWSO, page 17

According to HCA, this adverse impact is not a material impact on NCH given the relative financial health of the NCH system. The RDWSO maintains that the potential for minimal impact to existing providers must be weighed against the importance of bringing competition and improving geographic access to south Lee County.

MCSWF Impact on PRHS

The applicant indicates that PRHS self-identifies two of its (PRHS) hospitals in MCSWF's proposed service area that realize 10.9 percent of their (PRHS') non-tertiary cases. HCA contends that this indicates that MCSWF would not adversely impact PRHS' two hospitals (PR-Pine Ridge and PR-Collier Boulevard). MCSWF expects that approval of CON application #10523 would result in a lost contribution margin of approximately $1.1 million and a 6.6 percent average adverse impact on PRHS' two hospitals. See the table below.

Calculation of Adverse Impact on PRHS Hospitals

	PR-Pine Ridge	PR-Collier Boulevard	Total
MCSWF Calculated Lost Cases	201	19	220
Contribution Margin*	$4,736	$5,390	
Lost Contribution Margin	$951,936	$102,410	$1,054,346
Reported Net Income			$16,036,392
Percent Adverse Impact**			6.6%

* Based on PRHS' DWSO to MCSWF, page 59
** Without offsetting gains based on growth in Collier County Population
Source: MCSWF RDWSO, page 19

The reviewer confirms that the contribution margin per admission for PR-Pine Ridge of $4,736 and the contribution margin per admission for PR-Collier Boulevard of $5,390 are consistent with the PRHS DWSO, page 59. However, the reviewer also notes that the same DWSO estimates PR Pine Ridge will lose 372 cases and PR-Collier Boulevard loses 59, as opposed to those shown in HCA's table above.

MCSWF Will Not Impact Staffing for Existing Hospitals

HCA maintains that as the largest health care provider in the nation, it has a plethora of resources to pull into the Lee County market, with HCA WFD having 21 GME programs training physicians, many of whom will remain in the area to establish their practices.

The RDWSO particularly points out while PRHS goes into detail concerning specific vacancies that exist within PRHS, the PR-Pine Ridge and PR-Collier Boulevard hospital websites are not advertising for many of these positions. HCA states that it is therefore puzzling why these vacancies are not on the respective websites. The applicant maintains that MCSWF does not expect to take significant staffing resources from existing providers.

MCSWF Has the Resources to Interject Meaningful Competition in Lee County

HCA makes reference to competition to promote quality and cost-effectiveness. MCSWF maintains that being an affiliate of HCA, MCSWF has the resources and capital to interject competition and all of the benefits to payers and patients that come along with it. The RDSWO, Attachment C, MCSWF provides quality measures at HCA WFD District 8 hospitals, as well as those at LMHS hospitals, per CMS and Leapfrog sources. MCSWF points out that according to Leapfrog, HCA's lowest performing hospital in District 8 is on par with Lee Health's best performing hospital. MCSWF's RDWSO page 21 includes a table to describe and list HCA's clinical excellence initiatives.

HCA asserts that the bottom line is: Lee County's health care market desperately needs meaningful competition and CON application #10523 can and will provide that. According to the applicant, approval of MCSWF is the first step in ensuring that:

- Lee County patients are able to conveniently access care and exercise their right to choose their providers
- Local physicians are able to freely provide care for patients without fear of retribution
- Managed care providers have ability to negotiate fair prices for health care

MCSWF contends that opponents to CON application #10523 posit many arguments to support the denial of MCSWF's project—all are flawed and irrelevant. The RDWSO maintains that CON application #10523 has the capital and resources to interject meaningful, necessary competition while meeting the acute care needs of south Lee County and should be approved.

Lee Memorial Health System (CON application #10524): On May 14, 2018, the Agency received an RDWSO from the co-batched applicant, LMHS, regarding opposition submitted by HCA WFD's MCSWF, NCH and PRHS. This RDWSO consists of a narrative of 28 ¼ pages. The RDWSO was submitted by D. Ty Jackson, Attorney, Gray Robinson, Attorneys at Law. LMHS responds separately to each DWSO, briefly described below.

LMHS RDWSO to MCSWF

LMHS notes that MCSWF acknowledges need for a new hospital in the southern Lee County area. However, LMHS reiterates that the need is for a new hospital location and not new beds (as proposed by MCSWF).

The RDWSO maintains that if MCSWF is approved, LMHS expects a substantial adverse impact—loss of 2,666 inpatient admissions, representing a lost contribution margin of $26 million (30 percent) of LMHS's total operating income. The reviewer notes, that based on FHURS data submitted for fiscal year end September 30, 2017, the Lee Memorial Hospital License reported total revenue of $867,397,787 million dollars with a total margin of $258,968,000, a loss of $26 million represents a loss of 10 percent of the licensee's total margin for reporting year 2017.

LMHS contends that HCA's mantra that "charges are meaningless" falls on deaf ears to those that are knowledgeable of outlier payments, workers' compensation, out-of-network billing and managed care "carve-out" clauses based on discounted charges. The RDWSO asserts that if "charges are meaningless", HCA would have long ago adjusted its charge master to reduce charges and eliminate criticism of patient charges that are 77 percent higher than LMHS for the same medical conditions. LMHS states that MCSWF's claim that it will bring "price competition" to Lee County is false and misleading. The applicant maintains that if approved, MCSWF's hospital charges will be the highest in Lee County.

The RDWSO points out that Lee Memorial Hospital and LMHS are not the same and yet MCSWF uses them interchangeably, noting that only Lee Memorial Hospital qualifies for Medicaid supplemental payment and that this supplemental payment is not guaranteed.

LMHS maintains that letters of support for CON application #10523 from Nancy Gareau (Freedom) and from Chris Patterson (Sunshine) make no mention of any difficulties negotiating favorable terms with LMHS and do not support HCA's claim of "LMHS dictating prices". According to LMHS, these two MCSWF support letters are red herrings. LMHS lists 29 managed care plans and an additional two ACO payer arrangement plans, stating its commitment to working with third party insurance carriers to maximize access to health care services.

The RDWSO asserts that competition seems to have had no impact on the quality of care delivered by HCA WFD's hospitals and notes no correlation between the number of competitors and HCA's quality scores.

Regarding the MCSWF contention that Lee Health has market dominance in the area, controlling 95 percent of the beds in Lee County, LMHS maintains that proposal to transfer 82 beds for LHCP will have no impact on this figure.

LMHS indicates an HCA press release in which HCA stated that its decision to sell its Lee County hospitals was the best option for its employees, physicians, the residents of Lee County and HCA. The RDWSO contends that HCA's current attempt to re-enter Lee County is the antithesis of HCA's proclaimed position in 2005 and is not irrelevant to the Agency's review.

The RDWSO indicates that MCSWF included no letters of support from the general public that a new HCA hospital is needed/wanted but that LMHS provided 450 letters of support from the community.

LH offers a definition for "safety net" hospitals, according to the Institute of Medicine and another definition from the "HCA LIP Council", through the National Association of Public Hospitals and Health Systems (now known as America's Essential Hospitals or AEH). LMHS asserts that there is no question that Lee Memorial Hospital qualifies as a "safety net" provider under the definition used by HCA itself. LMHS states membership in the Safety Net Hospital Alliance of Florida and notes that no HCA hospital is a member of this alliance.

Regarding the MCSWF contention that Lee Memorial Hospital does not provide services to a high level of underserved patients, LH points out MCSWF compares Lee Memorial Hospital to the following three hospitals in making this contention:

- UF Health Jacksonville
- Tampa General Hospital
- Jackson Memorial Hospital

LMHS explains that the three hospitals above receive significant local taxing support that is unavailable to Lee Memorial Hospital, indicating that Lee Memorial Hospital receives no special county appropriations, ad valorem or sales tax support—and accordingly, MCSWF's comparison is without merit.

The applicant asserts that the MCSWF DWSO, pages 12 and 13, Exhibits six and seven, include incorrect "Net Patient Revenue" data. LMHS contends that using the correct data, there is no comparison between LMHS and HCA with respect to "Percent of Charity Care" provided in 2016. The reviewer collapses the referenced LMHS hospitals and collapses the three HCA WFD District 8 hospitals into the HCA WFD District 8 total. The reviewer also excludes the "HCA DWSO Exh. 6 & 7" column. See the table below.

Comparison of Net Charity Care as a Percent of Net Patient Revenue
LMHS and HCA WFD – District 8
2016

Reporting Hospital	Net Patient Revenue Worksheet C-3a Line 19	Net Charity Care Write Off	Percent Charity Care
LMHS Total	$1,365,758,230	$246,692,018	18.1%
HCA WFD-District 8 Total	$351,599,053	$30,276,610	8.6%

Source: LMHS RDWSO, page 6, Table 1

LMHS emphasizes that not only did MCSWF carelessly compile incorrect "Net Patient Revenue" data in its MCSWF DWSO but misrepresented LMHS's fiscal year 2017 increase in net position or increase in net assets being $169.3 million as "net income". LMHS maintains that per CON application #10524, Appendix 1, page 11, there is clearly a "net operating income" in fiscal year 2017 of $90.2 million, not $169.3 million. The reviewer notes that based on FHURs data for the fiscal year end September 30, 2017—the Lee Memorial Hospital license reported an operating margin of $129.9 million and non-operating revenue of $129 million for a total margin of $258,968,000.

LMHS maintains that the entirety of net operating income and increases in net assets are reinvested locally into facilities and programs for the community and to provide uncompensated care to those who need it.

The applicant notes that in contrast, the net income of HCA WFD's District 8 hospitals is forwarded to Nashville corporate accounts to increase earnings per share, pay stockholder dividends and executive bonuses and to be used to further corporate initiatives by executives in Nashville, even to the point of sweeping local cash accounts on a daily basis. The applicant asserts that HCA's claim that MCSWF will bring greater economic benefit to Lee County is false.

The RDWSO explains that any Lee Health program or facility that is unrelated to the LMHS tax-exempt purpose has the same tax obligation as HCA. LMHS notes that it pays the same Public Medical Assistance Trust Fund Assessment as HCA.

LMHS states that the citizens of Lee County elect the LMHS board to manage financial policies, not a corporate board distant from Lee County focused on earnings per share and quarterly results. The applicant maintains that Tenet, Community Health Systems (CHS), NCH, BayCare and Adventist Health System would take exception to the boast that HCA is the only organization with the resources to compete effectively in Lee County.

The RDWSO indicates that the three affiliate HCA WFD District 8 hospitals are greater than 50 miles away from the proposed MCSWF. LMHS asserts that hospitals located over 50 miles away, offering a similar scope of services, cannot reasonably be expected to enhance the coordination and continuum of care delivery compared to the LMHS proposal within close proximity to its four "sister" hospitals.

LMHS reiterates that Lee County's Medicare managed care penetration rate is clearly in line with other counties in District 8 and is in fact 5.2 percent above the average of the remaining counties in District 8.

The RDWSO indicates not having included adult psychiatric beds in CON application #10524 because that would have required a separate LOI and because the Agency had determined that such beds are not needed. LMHS notes that current CON laws forbid applying for two separate bed types in a single LOI and that CON application #10523 should be rejected for this reason.

LMHS RDWSO to NCH

LMHS points out that in concert with resources of its existing inpatient and ambulatory capabilities, CON application #10524 is posed to be a model of excellence in the coordination of senior care services. The applicant indicates that the Agency has supported special needs access for the fast-growing senior population in selected areas of the state, identifying specifically DOAH Case No. 05-2352.

The RDWSO comments on NCH's attempts to characterize the 2017 Lee Health Community Health Needs Assessment Report as an analysis of bed need. LMHS states that the purpose of the assessment report is to determine the health status, behaviors and needs of residents of Lee County. The applicant maintains that the results of the assessment support need for enhanced physician and provider capacity, consistent with the intent of the proposed LHCP hospital.

LMHS states in brief the drive time study pursuant to the proposed LMCP hospital. The applicant notes that the NCH DWSO 30-mintue drive time contour map lacks any supporting data or underlying assumptions. LMHS contends that if NCH had carefully compared the NCH 30-minute drive time contour map with LMHS' drive time study, NCH would have noted Map 4c. The RDWSO asserts that anyone familiar with traffic conditions in southwest Lee County would acknowledge the absurdity of NCH's "off-season" 30-mintue drive time contour map as a basis for determining access to an acute care hospital today, not to mention increasing traffic congestion by 2023.

The RDWSO indicates that it is difficult to imagine the senior population in south Lee and northern Collier Counties would consider driving distance, physical locations and needs of a caregiver as simply "convenience" items in terms of access to acute inpatient services. LMHS points out that NCH does not dispute the fast-growing senior population in the service area, nor does NCH challenge the higher inpatient use rates for this elderly patient population.

LMHS discusses NCH's presentation of the top 20 DRG average CMI of 1.3719 for the LHCP proposed PSA, compared to Lehigh Regional Medical Center average CMI of 1.2264. LMHS states that the NCH analysis is apparently based on all DRGs for adults age 15+, rather than on non-tertiary, non-OB DRGs, as is the case for CON application #10524.

LMHS reiterates that the NCH analysis indicates 16,017 volume for the proposed PSA but that the correct total (non-tertiary, non-OB discharges, excluding CMR and trauma) is 14,349. LMHS contends that NCH's comparison of the top 20 DRGs is flawed and should be excluded from review.

The applicant contends that it did not, as stated by NCH, grow the baseline cases by the population growth rate, or use the population estimates for future years and grow cases by the use rate. LMHS states having used a five-step model to project future demand and that the following two of these five steps clearly refute NCH's claim:

- Analyze and project discharge (use) rate for adult, non-tertiary, non-OB discharges for each ZIP Code to 2023
- Project total demand for each ZIP Code for 2023 using projected 2023 use rates and projected adult population

LMHS indicates that the NCH comments about a case mix adjusted, net-of-contractual-allowance, average commercial payer inpatient price per discharge ("net price") between Lee Health facilities and NCH facilities referenced an Appendix 1 for a methodology used to calculate "net price" for each hospital and system, as well as the individual facility and system net prices. The applicant comments and the reviewer confirms that the referenced Appendix 1 was not included in the NCH DWSO received by the Agency on May 4, 2018. The reviewer notes that LMHS offers comment and discussion on a methodology that the Agency did not have access to consider in the review process. The Agency concludes that the NCH DWSO case mix adjusted, net-of-contractual-allowance, average commercial payer inpatient price per discharge ("net price") estimates were submitted without substantiation or corroboration, since the stated Appendix 1 was not received by the Agency by the required due date.

Regarding the NCH contention that the LMHS proposed service area is artificial and unrealistic, the RDWSO asserts that CON application #10524 went into significant detail to explain the objective methodology for determining the proposed service area.

LMHS explains that there are undoubtedly many PSAs throughout Florida that are home to more than one hospital. LMHS provides a table to show that NCH's PSA is shared with three other hospitals – NCH North, PR-Pine Ridge and PR-Collier Boulevard.

The RDWSO questions the validity of the NCH DSWO identified PSA and SSA ZIP Codes of some of the referenced hospitals, stating confusion as to how NCH determined these stated service areas, since no percentage

breaks are presented. The reviewer notes that the referenced table lacks a source to validate/corroborate the stated results. According to LMHS, this NCH service area analysis is flawed and should be ignored. LMHS asserts that CON application #10524's proposed service area overlap with other hospitals in the LMHS system has no relevance to the reasonableness of the proposed service area. The RDWSO explains that service areas of system hospitals in urban areas nearly always overlap, enhancing continuity and coordination of care delivery. LMHS provides a table to show overlapping ZIP Codes in the NCH primary ZIP Codes and those of NCH North. The reviewer notes that according to this table, NCH North and NCH share eight ZIP Codes in their respective service areas.

Concerning the NCH contention that a group of small urban hospitals have an average CMI of 1.1367 and a standard deviation of 1.1192 but that the CON application #10524 has an average CMI of 1.8375, LMHS contends that NCH calculated the "unweighted" average CMI of the Lee Health DRG set and that by doing so, DRGs with a high case mix weight are treated the same as those with low case mix weights. The RDWSO asserts that the result is that, "NCH is comparing apples and bowling balls, which is misleading". Per LMHS, NCH's analysis is flawed and should be rejected.

LMHS utilizes the Agency Inpatient Database and Legacy Consulting Group analysis to show that for the 12-months ending June 30, 2017, three small community area hospitals (PR-Pine Ridge, PR-Collier Boulevard and Lehigh Regional) had a range of 96.9 percent to 97.0 percent non-tertiary case volume and a 3.1 percent to 2.7 percent tertiary case volume. See the table below.

Non-Tertiary and Tertiary Volume at Selected Small Community Hospitals
12 Months Ending June 30, 2017
(based on case type definitions used in CON application #10524)

	Volume			Percent	
Hospital	**Total**	**Non-Tertiary**	**Tertiary**	**Non-Tertiary**	**Tertiary**
PR-Pine Ridge	6,556	6,354	202	96.9%	3.1%
PR-Collier Boulevard	3,317	3,218	99	97.0%	3.0%
Lehigh Regional	2,785	2,709	76	97.3%	2.7%

Source: LMHS RDSWO, page 17, Table 5

LMHS restates its expected adverse impact for NCH of an expected loss of 1,073 discharges in 2023, LMHS anticipates that this represents an occupancy loss of less than two percent. The applicant asserts that without supporting data, LMHS cannot comment on NCH's claims of financial loss.

LMHS RDWSO to PRHS

LMHS notes that PRHS is owned and operated by CHS. LMHS comments that according to this opposition, the only difference between CON application #10185 in 2013 and the current CON application #10524, submitted five years later, is modification of the service area. In this regard, LMHS notes that regarding CON application #10185, CHS-PRHS:

- Did not participate in the April 23, 2013 public hearing
- Did not file a DWSO
- Was not a party to DOAH Case No. 13-2508

The RDWSO notes that yet, today, CHS indicates that both PRHS hospitals will be substantially and adversely impacted by the current CON application #10524.

LMHS stresses that the opposition's allegation that LMHS recently added beds to transfer beds would be stridently disagreed with by founders and community supporters of HealthPark and Lee County EMS personnel. The RDWSO asserts that, as CHS well knows, all Lee Health board meetings and documents are subject to open meeting and public records requirements. LMHS maintains that any "slight-of-hand" utilized by LMHS as proposed by CHS would have included a transcript document in the PRHS WDSO. The applicant contends that CHS' "unsupported conspiracy theory should be flatly rejected".

The RDWSO emphasizes that the May 8, 2018 both testimony and the recommended order in DOAH Case No. 17-0510 supporting the same issues brought out in CON application #10524, such as:

- Rapid population growth particularly among the elderly
- Access issues that challenge the elderly driver
- Transfer of general acute care beds without adding to the bed inventory
- Existing base of patients in the immediate service area having to travel to one of the system's facilities to ensure continuity and coordination of care
- Projected patient volumes that would transfer from an existing system hospital and minimize any adverse impact on competing providers
- Documented travel times in excess of 30 minutes to reach a system hospital
- Seasonality of inpatient demand causes severe capacity issues

LMHS emphasizes that it is confusing that opposition states that LMHS is virtually a monopolistic health system while also stating that the proposed service area is served by three health care systems – LH, NCH

and PRHS. LMHS notes PRHS' contention that greater than 75 percent of hospital discharges in Bonita Springs area utilize hospitals other than LMHS—according to LMHS, this is, "not exactly monopolistic".

The RDWSO maintains that the proposed ZIP Code for LHCP is 34135.

LMHS asserts that anyone familiar with traffic conditions in southwest Lee County/north and north-central Collier County would acknowledge the PRHS' DSWO travel time estimates are unrealistic, not to mention additional driving time due to increasing traffic congestion by 2023. The RDWSO asserts driving times in excess of 30 minutes even under "perfect ideal conditions". According to LMHS, any adverse impact alleged by the PRHS DWSO about PR-Collier Boulevard should be ignored, based on the opposition's own data and comments.

Regarding contentions by PRHS that LMHS did not demonstrate any access barriers as the population is well served by a variety of hospitals and hospital systems, LMHS notes the drive time study prepared by David Plummer and Associates, Inc., as well as letters of support to contend that access issues exist warranting project approval.

LMHS indicates the expected strong population growth in the proposed service area, with an expected additional 22,300 seniors (65+) by 2023 along with the programs that the proposed project is designed to provide.

The RDWSO concedes that the opposition is correct that service area utilization trends have declined over the last few years but that CON application #10524 acknowledged this trend and adopted declining use rates in its demand projection methodology. However, LMHS maintains that expected population growth in the identified service area results in an expected slight increase in non-tertiary demand over the next few years.

LMHS asserts that opposition presented an "inordinate amount of data and analysis regarding the nuances of service area ZIP Codes and defining a primary and secondary service area". The applicant indicates that PRHS admits that service areas are, in part, a subjective determination. LMHS maintains that its proposed service area is based on reasonable and realistic actual patient draw patterns of residents from southwest Lee County and northern Collier County. LMHS explains that recent utilization growth at PR-Pine Ridge, from Lee County ZIP Codes, is due in part to EMS diversions due to capacity constraints at Gulf Coast Medical Center and NCH-North.

The RDWSO notes that with approval of CON application #10524, PR-Pine Ridge can expect to lose 411 discharges in 2023, with a loss in ADC of 4.7—a two percent occupancy loss. LMHS maintains that this loss is minimal and not significant. LMHS disputes that PRHS' two hospitals combined, could expect to lose service area non-tertiary admissions of 604 with a contribution margin loss of $2,991,909, in 2023, if CON application #10524 is approved. LMHS comments that the PRHS' "contribution margin per admission" of $4,953 must be taken at face value since the metric is institution-specific with no detail provided to validate it.

LMHS states that the two different contribution margin approaches (that chosen by PRHS and that chosen by LMHS) result in an approximate difference of two million dollars ($6,057,000 for PRHS and $4,059,000 for the proposed LMCP hospital) considering inpatient and outpatient impact, by 2023. See the table below.

PRHS DWSO vs. CON application #10524
Inpatient and Outpatient Impact on an Annual Basis
2023 Cases in 2017 Dollars

	PRHS DWSO	CON app. #10524
Inpatient	$2,992,000	$2,036,000
Outpatient	$3,065,000	$2,023,000
Total Admission Impact	**$6,057,000**	**$4,059,000**

Source: LMHS RDWSO, page 26, Table 7

According to the RDWSO, PRHS would have two to three years to implement strategic initiatives that would mitigate the potential impact of the proposed LMCP hospital.

Regarding occupancy rates of existing providers, LMHS asserts that the proposed project will assist in off-loading demand from both HealthPark and Gulf Coast Medical Center while improving access for residents, particularly seniors, in southwest Lee County.

LMHS asserts that PRHS' bed need analysis is moot with respect to CON application #10524 but that it is relevant with respect to CON application #10523, since the latter proposal is requesting that 80 new beds be added to District 8.

The RDWSO offers a brief explanation of its ZIP Codes-within-15-miles methodology as it relates to the proposed service area definition, stating that PRHS seems to be looking at the methodology in reverse. LMHS points out that the 15-mile ZIP Code radius was only the first step in a step-by-step process to develop the proposed service area.

LMHS stresses that PRHS reaches a false conclusion that the purpose of CON application #10524 is to capture the north Collier and south Lee County market share that the four Collier County hospitals heavily rely upon and serve well. The applicant maintains that the proposed project's primary purpose is to provide a more accessible inpatient health care option to residents of its proposed service area, especially seniors, without adding new beds to the inventory within economies of scale.

H. SUMMARY

Each co-batched/competing applicant proposes to establish a new general acute care hospital within Lee County, Florida, District 8, Subdistrict 8-5.

Medical Center of Southwest Florida, LLC (CON application #10523), a developmental stage entity, affiliated with the private-for-profit/proprietary hospital system HCA®/HCA WFD, proposes to establish a new 80-bed general acute care hospital, in The Villages of Estero area, and serve other residential areas to the north and south, including the City of Bonita Springs and unincorporated south Lee County/Fort Myers, in Lee County (Subdistrict 8-5). As required in Section 408.037(2), Florida Statutes, the applicant offers a proposed project location within Zip Code 33928.

The applicant indicates that upon licensure, MCSWF will file an exemption request with the Agency to convert 10 acute care beds to adult psychiatric beds and will then seek designation as a Baker Act receiving facility. The reviewer notes that this would result in 70 acute care beds and the 10 adult psychiatric beds would require additional review by the Certificate of Need Unit.

MCSWF explains that the proposed project will have programs with a special focus on older individuals who have greater health care needs but who may not always receive needed care because of financial limitations, lack of transportation or lack of a caregiver in the home.

The applicant states that the proposed hospital's PSA Zip Codes are: 33928, 33967, 34134 and 34135. The SSA is stated to be Zip Codes: 33908 and 33913. The PSA and SSA are all contained within Lee County, Subdistrict 8-5. MCSF expects that in year one (ending June 2022) 5.25 percent of non-tertiary discharges will originate from beyond the six Zip Codes proposed as the total service area and in year three (ending June 2024) 5.00 percent of non-tertiary discharges will originate from beyond these same six Zip Codes.

The reviewer notes that the entirety of **CON application #10523's** total service area overlaps with some of **CON application #10524's** PSA.

The applicant's Schedule C of the application commits to three conditions, contingent upon project approval.

Lee Memorial Health System (CON application #10524), a public, not for profit (local government) health system enacted by the Florida Legislature, Chapter 2000-439, Laws of Florida, proposes to establish a new 82-bed general acute hospital, to be located near the southeast corner of US Highway 41 (Tamiami Trail) and Coconut Road, at 23450 Via Coconut Point, Estero, Florida 34135, Lee County, Florida, District 8, Subdistrict 8-5. As indicated in the stated address and required in Section 408.037(2), Florida Statutes, the applicant offers a proposed project location within ZIP Code 34135.

The applicant identifies itself as a non-tax supported public special health care district.

LMHS maintains that the proposed new hospital campus layout and design focuses on promoting healthy aging, with no plans to offer obstetrics. LHMS indicates that the proposed facility, Lee Health Coconut Point (LHCP) is being designed to enhance the continuum of care for seniors with a particular emphasis on managing chronic care diseases-holding the greatest potential to begin to bend the curve in the escalation of health care expenditures.

The applicant states that the proposed PSA ZIP Codes are: 33135, 33908, 33928, 34134, 33913, 33967 and 33912 (all within Lee County). The SSA ZIP Codes are: 33931 and 33919 (Lee County) and 34119, 34120 and 34110 (Collier County-Subdistrict 8-2).

The reviewer notes that **CON application #10524's** only PSA ZIP Code that does not overlap with a ZIP Code in **CON application #10523's** total service area is ZIP Code 33912. Additionally, the reviewer notes that none of **CON application #10524's** SSA ZIP Codes overlap with any of the ZIP Codes in **CON application #10523's** entire service area.

The applicant expects that based on projected 2023 adult non-tertiary discharge volumes, 10.00 percent of discharges will originate from beyond the 12 ZIP Codes proposed as the total service area.

The applicant's Schedule C of the application commits to six conditions, contingent upon project approval.

Need:

According to the Agency's Florida Hospital Bed Need Projections & Service Utilization by District (published on January 19, 2018) District 8, Subdistrict 8-5 (Lee County) had a total of 1,455 licensed acute care beds with an occupancy rate of 65.86 percent for the July 1, 2016 through June 30, 2017 reporting period.

As of March 7, 2018, Agency records indicate that five notifications submitted by existing Subdistrict 8-5 general acute care hospitals confirm that a net increase of 407 acute care beds in Lee County are pending licensure.

There are no CON approved general acute care hospital projects pending licensure in District 8, Subdistrict 8-5.

The reviewer notes that in Subdistrict 8-5 (Lee County), if approved:

- Co-batched **CON application #10523** would increase the acute care bed inventory by 80 beds (beyond those already pending licensure through the notification process)
- Co-batched **CON application #10524** conditions that Lee Health will not request additional acute care beds beyond those currently licensed or for which notification has been submitted to AHCA as of April 11, 2018, for a period of 24 months following the opening of the proposed new facility

The reviewer notes that pursuant to Section 408.035, F.S., the Agency shall consider only the following criteria for each co-batched applicant for a general acute care hospital proposal:

- The need for the health care facilities and health services being proposed
- The availability, accessibility and extent of utilization of existing health care facilities and health services in the service district
- The extent to which the proposed services will enhance access to health care for residents of the service district
- The extent to which the proposal will foster competition that promotes quality and cost-effectiveness
- The applicant's past and proposed provision of health care services to Medicaid patients and the medically indigent

Medical Center of Southwest Florida, LLC (CON application #10523) justifies project approval based on the following:

- Lee County is an area that has grown significantly over the past several years and is projected to continue to grow rapidly. More specifically, south Lee County is one of the fastest growing areas of Lee County. Lee County's population has a high percentage of elderly residents with a median age of 60 years old. The elderly component of the population will continue to grow in future years. Older residents experience health care issues, and specifically inpatient admissions, at greater rates than younger individuals, which will drive the demand for inpatient hospital care.
- Existing Lee County hospitals are concentrated in north Lee County, leaving south Lee County with no local access to inpatient medical care. With population growth, travel access to inpatient services has become increasingly difficult with traffic congestion creating longer travel time and delays.
- LMHS holds a virtual monopoly on inpatient services – as well as many other services – in Lee County with an 85 percent market share of acute hospital discharges. Residents suffer from lack of access to care in their community and have little to no health care provider choice. This type of monopolistic environment within the health care market stifles innovation and breeds a culture that negatively impacts the cost and quality of care.
- MCSWF is submitting 61 physician letters of support which include 97 physician signatures. MCSWF has the support of the Independent Physicians Association of Lee County, which represents 58 member physicians. Combined, this support represents 138 Lee County physicians who strongly emphasize the need for patient choice of health care providers in Lee County.
- Historical and projected population growth in the service area demonstrates more than sufficient demand to support a new acute care hospital in south Lee County, including a need for hospital-based, adult psychiatric services. The proposed hospital will not adversely impact any existing providers given the tremendous projected growth in demand in the service area.
- Although there is more than one applicant vying to meet the needs of south Lee County in this batching cycle, MCSWF is clearly the superior applicant. The proposed project will result in significant local and state tax revenue and immediate Medicaid cost savings. MCSWF will offer a much needed alternative, giving the residents of the proposed service area a choice of high quality health care providers.

- MCSWF's affiliation with HCA will ensure that the Lee County community not only enjoys enhanced competition in the area but also benefits from the experience of a provider that is committed to providing high quality and financially accessible patient care. HCA affiliates have a long-standing reputation for developing "de novo" hospitals in Florida with the infrastructure and resources from corporate HCA to support its affiliates
- Approving Lee Health System's application would only perpetuate the system's existing monopolistic dominance in Lee County and would not interject much-needed competition into the market. It is not anticipated that LMHS will address the need for hospital-based, adult psychiatric services given that it closed its psychiatric unit in recent years.
- MCSWF indicates that there is a "geographic gap" or a "visible gap" in the distribution of acute care providers in south Lee County.

The proposed MCSWF expects 4,298 discharges from the total service area and its in-migration patient population, for the 12-month period ending June 30, 2022 (the first year of planned operations).

The reviewer notes that the applicant meets the criteria for an identifiable portion, pursuant to 59C-1.008 (5), Florida Administrative Code, in that the applicant demonstrates need for 70 acute care beds while the other 10 beds were designated as adult psychiatric beds and therefore would be subject to an additional review—either through batched review or by exemption pursuant to 408.036(3)(o), Florida Statutes.

Three detailed written statements of opposition were received by the Agency regarding this proposal and each is briefly stated below:

- **LMHS** (co-batched CON application #10524)
  - The Agency lacks authority to grant a CON for the sole purpose of approving beds of a separately reviewable bed type.
  - The Agency similarly lacks authority to grant a CON for acute care beds when that need is purportedly established based upon a need for a separately reviewable bed type that was not identified in the applicant's LOI.
  - A CON should not be granted for 10 acute care beds that will never operate as acute care beds and will instead be used for a separate, unneeded bed type - with its own bed need methodology, application requirement and review procedure.

- Additional acute care beds are not needed, what is needed is a redistribution of existing licensed beds in the subdistrict to satisfy the demands of a growing market in the Estero/Bonita Springs service area.
- HCA failed to demonstrate need through population demographics and dynamics, availability, or utilization information because it used incorrect population and discharge data and failed to provide background data or methodology for its demand forecasts. HCA's need analysis cannot be relied upon and its demand forecast cannot be independently tested or verified.
- Services to be offered are poorly defined and not targeted to the needs of the Estero/Bonita Springs area.
- HCA's primary argument for approval is to promote competition. Competition is but one criterion and it is the only criterion that may even remotely favor MCSWF's proposal.
- There is no correlation between quality and increased competition through HCA's presence in a market.
- Competition from a high-cost for-profit provider like MCSWF is unlikely to have a favorable, competitive impact upon patients in terms of health care costs.
- The proposal is a fragmented, duplicative costly approach, constituting a one-off surgical hospital with the closest HCA affiliate being over 50 miles away.
- The proposal would have serious adverse impact on LMHS.
- Competition in HCA's other WFD markets has done nothing to enhance HCA's quality there.
- The suggestion that there would be "enhanced price competition" by approving MCSWF is simply unfounded and misleading.
- That LMHS controls a "monopolistic market" in the area is invalid since "ownership" of Lee Health is controlled by the publicly-elected Lee Memorial Health System Board of Directors and any concerns over Lee Health policies or practices are subject to public input at twice-monthly board meetings. In contract, the Board of Managers for the proposed MCSWF is located at HCA's headquarters in Nashville, Tennessee
- Roughly one-third of the patients in Lee Health's proposed service area currently seek inpatient hospital services outside of LMHS.
- If the proposal is approved, LMHS expects for the year ending 2024:
  - Adverse impact on admissions of 2,668
  - Net Revenue adverse impact (000) of $49,347.9
  - Contribution margin adverse impact (000) of $26,072.1

- **Naples Community Hospital**
  - HCA's proposal offers nothing unique to the service area where multiple hospitals in the identified area offer greater complexity and more services than are planned for MCSWF.
  - The proposed service area overlaps with existing hospitals in their respective PSAs.
  - The proposal presents redundancy and unnecessary duplication of existing services.
  - Selection of applicant's presented DRGs stretches well beyond the capabilities that a small hospital can provide.
  - Negative impacts on existing hospitals.
  - Lack of evidence demonstrating geographic barriers or impediments to existing hospitals.
  - Lack of any competitive advantages of location, service availability, demand, market rates, costs or charges.
  - Inability to justify any unique or special circumstances that rise to the level of justifying millions of dollars to create a small urban hospital in service areas that already have urban and suburban hospitals with higher case mix indices and established, broad-based medical staffs.
  - The lack of inpatient acute care services (in the immediate Bonita Springs/Estero area) does not imply the need for an additional facility.
  - The Agency did not publish need for psychiatric beds, in District 8, in its most recent hospital need publication.
  - To opine that area residents need a small hospital that is closer to their residences and that can meet their needs conflicts with the facts.
  - The types of services that the area residents require are complex and require far greater expertise than what would be available in the proposal.
  - For several reasons, there is no reason to expect that the proposal will provide a significant contribution to price competition in constraining LMHS' prices because:
    - HCA is a high-price system.
    - HCA's average price is even higher than LMHS' already high average price.
    - HCA's average price is also higher than the prices of non-LMHS hospitals located in Lee and Collier Counties, including NCH.
    - HCA is more expensive than the other Florida hospitals in most of the MSAs where it owns and operates hospital facilities.
    - HCA's previous two Lee County hospitals (Gulf Coast and Southwest which were sold to LMHS in 2005) did not meaningfully constrain LMHS' prices.

- With lower-price incumbent competitors to LMHS having been unable to meaningfully constrain its prices, there is no reason to anticipate that a more expensive entrant such as HCA would be more effective.
- Concerning competition and choice, the proposed service area has access to LMHS hospitals and:
  - NCH Healthcare System hospitals
  - PRMS-Pine Ridge
- Concerning overlap, competition and choice, the proposal's PSA falls within the PSA of five existing hospitals.
- The time travel assessment should not be considered as an adequate foundation considering the unreliable sources used and the questionable data generated.
- The proposal would be impossible to develop as proposed.
- The proposal adds no meaningful value to the overall continuum of care and results in the unnecessary duplication of health care services.
- The applicant's Schedule C conditions are unremarkable.
- If the proposal is approved, NCH expects to lose 310 cases (year 2021-2022), 409 cases (2022-2023) and 513 cases (2023-2024), with about $3.1 million annual contribution margin loss (in 2017 dollars).

Physicians Regional Healthcare System

- No project site was identified, resulting in great variability in migration patterns/travel times and it is unclear how distant the proposal is from co-batched CON application #10524.
- The very small defined service area should have included ZIP Code area 33912 which is proximate to the north of Estero.
- Today, the monopolistic dynamic in Lee County persists due in large part because of HCA's exit from this market in 2006.
  - HCA should not be awarded the ability to re-enter this market as there is no indication HCA will not divest to LMHS again once HCA recognizes this market is already well served by existing hospitals.
  - Another divested hospital sold to LMHS would only perpetuate LMHS as a monopolistic health system which is exempt from anti-trust implications because of its government status.
- LMHS is already developing non-CON regulated outpatient services (including a freestanding ED), at 23450 Via Coconut Point, Estero, Florida.
- NCH initiated construction last month on another freestanding ED in Bonita Springs. The availability of this additional non-CON regulated access point was largely discounted in CON application #10523.

- There is no demand for additional inpatient beds for Lee County or an additional hospital, particularly within the defined MCSWF service area given the declining discharge use rates, hospital discharges and patient days in Lee County during the past three years.
- HCA is seeking to re-enter the southwest Florida market to capitalize on the population growth--population counts and accessibility to other hospitals do not warrant approval of a new hospital in southern Lee County.
- HCA failed to meet the CON statutory review criteria as provided in Section 408.035, Florida Statutes, for new general acute care hospitals.
- The proposal will not foster competition that promotes cost-effectiveness or quality of care, despite the existing LMHS having a virtual monopoly in Lee County because HCA is one of the highest cost (charge) hospital providers in the State of Florida.
- Approval of another hospital in southwest Florida will limit available clinical resources and saturate the physician market—making existing physician practices less financially viable.
- The proposal does not propose to offer anything different than what is already available and accessible to residents of the proposed service area.
- HCA's claim that it will be the only hospital-based adult psychiatric unit when it converts 10 acute care beds to that use, is not current.

Lee Memorial Health System (CON application #10524) justifies project approval based on the following:

- LMHS a public special service district hospital system that receives no ad valorem or sales tax support and is one of a select group of safety-net hospitals in the state.
- LMHS provides nearly all Medicaid and charity care to area residents. The LMCP campus will continue to serve all who need its services regardless of ability to pay.
- The proposed project (phase two) consists of an 82-bed patient tower that will be directly attached to the phase one construction currently underway. Phase one is being constructed to contemporary hospital building code standards—representing a savings of nearly 60 percent compared to the capital budget for a stand-alone 82-bed hospital.
- The service area for the proposed facility has strong population growth and is home to a large, and growing, senior population supporting the need for 82 beds.
- LMHS will offer programs and services targeted directly to the health and well-being of seniors in the service area.

- Seniors have difficulty navigating busy streets and highways and require local health care services. The proposed facility will provide seniors in and around the service area with increased access to health care services.
- LMHS has initiated bold moves to develop an integrated delivery system. Its coordinated care model includes chronic care management and has already demonstrated preliminary results as documented representing actual progress in moving from "Volume to Value".
- The proposed new facility will be developed without adding beds to the district or subdistrict bed inventory. To do this, LMHS will delicense and transfer 82 acute care beds and agree not to request additional acute care beds for a period of 24 months following the opening of the new facility. The co-batched application (**CON application #10523 – MCSWF**) cannot make the same claim as the proposal adds licensed beds to the district and subdistrict inventory and results in substantially greater adverse impact on local providers.

The proposed LMCP expects 5,278 discharges from the total service area and its in-migration patient population, for the year ending 2023 (with late 2022 or early 2023 being the start of the first year of planned operations).

Three detailed written statements of opposition were received by the Agency regarding this proposal and each is briefly stated below:

- **MCSWF**(co-batched CON application #10523):
  - The central question in this review is—should LMHS be permitted to further expand its dominant market power in Lee County or should a new competitor be permitted to enter the market?
    - Lee County residents should have the same degree of choice of inpatient providers as is available in other Florida counties.
  - LMHS facilities control nearly 85 percent of all acute care discharges (excluding psychiatric and substance abuse) by Lee County residents.
  - Area physicians support CON application #10523 to promote patient choice of health care providers in Lee County.
  - MCOs seeking to serve Lee County must include LMHS facilities to meet network adequacy standards – giving LMHS very significant leverage in contract negotiations.
  - It is difficult to envision a situation where the need for competition and consumer choice would be greater than the conditions present in Lee County today.
  - The fact that HCA sold its Lee County facilities 12 years ago is irrelevant.

- By no means has HCA abandoned the Lee County market operating a CAN contact center in Fort Myers and recently acquiring Riverwalk Ambulatory Surgery Center in the area.
- A hospital's gross charges have little to do with what patients or payers ultimately pay for health care services and it is common practice for hospitals to set suggested list prices as starting points for ensuring negotiations with various commercial insurers.
  - There is no clear/direct relationship between hospitals' charges and the actual cost to the patient and/or payer.
- Medicare is the largest single payer of hospital charges in Lee County but:
  - Of the 10 largest Medicare eligible population counties in Florida, Lee County is the sixth largest, but has the lowest (33.48 percent) Medicare Advantage MCO penetration rate of the top 10 counties.
  - Lee County is ranked 31st in Medicare Advantage MCO penetration among Florida counties.
  - The ability of Medicare Advantage MCOs to negotiate favorable rates is severely limited in Lee County as LMHS controls such a large share of the market.
- Approval of CON application #10523 would result in an immediate savings to Medicaid patients served in Lee County.
- Health care consumers benefit from lower prices and higher quality when health care provider markets are more competitive as a reduction in hospital competition leads to higher prices for hospital care.
- LMHS' claim about adverse impact is unfounded.
- LMHS fails to address why MCSWF's proposal is "duplicative" while the LMHS proposal in the same part of Lee County is not.
- LMHS contentions that approval of CON application #10523 will impair LMHS' ability to pursue its coordinated care initiatives is without merit.
- Even if CON application #10523 is approved, LMHS will still have an overwhelming share of health care service in Lee County.
  - Same or similar coordinated care initiatives are being implemented across Florida without the need for the monopolistic control that LMHS enjoys.
- Consumers and insurers should have a level playing field on which to negotiate for services and physicians should have freedom of movement in order to provide the best care for their patients.
- The term "safety net" has been self-designated by Lee Memorial – there is no state definition of a "safety net" provider and many hospitals around the state offer significantly higher levels of care to underserved populations than LMHS does.

- There is basis to assume that allowing a small measure of competition will impede LMHS's ability to provide care to underserved patients as LMHS is a financially sound health system that will not be materially impacted if MCSWF is approved.
- The MCSWF proposal would bring some competitive balance to the Lee County area and the approval of CON application #10524 would simply perpetuate the monopolistic control that LMHS currently wields absent the introduction of competition.
  - Residents will continue to have limited choices of inpatient providers
  - Doctors will have few options to admit patients
  - Payers will have limited ability to negotiate competitive prices for policyholders
- HCA is the only organization with the resources to compete effectively and make a successful entry into Lee County.
- The applicant's Schedule C conditions are unremarkable.
- Approval of MCSWF would bring greater economic benefit to the area and particularly to Estero.
- Approval of CON application #10524 would not bring an alternative inpatient provider to the area.

Naples Community Hospital

- Conclusions from the 2017 Community Health Needs Assessment Report, Professional Research Consultants, Inc., for Lee Health and the Florida Department of Health in Lee County make no mention of need for additional hospitals nor inpatient beds nor does it identify any access issues to hospital-based care.
- The proposal exhibits the same factors that underscored the previous denial (CON application #10185).
- Cannibalization will occur within LMHS' existing facilities.
- The ZIP Codes selected for the service area appear artificial and unrealistic.
- The proposal fragments care.
- Service areas overlap with existing hospitals in PSAs.
- Redundancy and unnecessary duplication of existing services.
- The proposal would create an oversupply of acute care facilities in the general area—Lee County's adult inpatient use rate (122 per 1,000 residents) is greater than the District 8 adult inpatient use rate (118 per 1,000 residence), indicating that there are no problems in accessing hospital care.
- Selection of DRGs that stretch well beyond the capabilities that a small hospital can provide.
- Negative impacts on existing hospitals.
- Lack of evidence showing geographic barriers or impediments to current hospitals.

- Lack of any competitive advantages of location, service availability, demand, market rates, costs or charges.
- Inability to justify any unique or special circumstances that rise to the level of justifying millions of dollars to create a small urban hospital in service areas that already have urban and suburban hospitals with higher case mix indices and established, broad-based medical staffs.
- The time travel assessment should not be considered an adequate foundation upon which to base any accessibility issues, considering the unreliable sources used and the questionable data generated.
- With two freestanding EDs in the area, one to be operated by LMHS and one by NCH (both set to open in December 2018) CON application #10524 will not add in a meaningful way to health care services.
- The proposal for an "outpost" hospital—limited beds, services and medical staffs in a suburban setting—adds little value to the overall continuum of care.
- The proposal's purported capabilities and breadth of services exceed that of HealthPark Medical Center and represents overstatements of the expected CMI, making the project unreasonable and unrealistic.
- The proposal's myriad of assumptions destroys the local service area and makes light of the its overbroad service area.
- The proposal's assumptions result in losses of 1,293 cases for NCH's system and losses of 3,544 cases for LMHS.
- If the proposal is approved, market domination of LMHS worsen, and an expectation that the price disparity is likely to increase (LMHS' higher prices when compared to non-LMHS facilities), including increases to insurers' claims costs.
- Unless LMHS adopts the implausible position that 100 percent of its existing hospitals' annual costs are variable, the decline in volume at its existing hospitals (due to the opening of the proposed project) is likely to increase those facilities' per-discharge unit costs likely to result in additional price increases.
- The proposal's Schedule C conditions are unremarkable.
- If the proposal is approved, Naples Health System expects about a $4.8 million annual contribution margin loss (in 2017 dollars).

Physicians Regional Healthcare System

- This is LMHS' second attempt for approval to establish a general acute care hospital on essentially the same site (previously CON application #10185).
- Two of the ZIP Codes in the applicant's service area are in the PR-Pine Ridge and PR-Collier Boulevard service areas.

- LMHS is already developing on this same campus, non-CON regulated outpatient services (including a freestanding ED) but the development of outpatient services does not mean there is a need for inpatient services.
- NCH initiated construction last month on another freestanding ED in Bonita Springs. The availability of this additional non-CON regulated access point was not considered in CON application #10524.
  - Notably, patients treated at this ED will likely be transferred to one of NCH's facilities, not Lee Health or its proposed LHCP hospital
- Adding beds through notification to transfer beds, pursuant to the proposal, is not justification to support the project as presented.
- Lee Health proffers five reasons to support the need for the proposal none of which, individually or collectively, support the approval of the proposal. Furthermore, three of the five reasons (continuity of care, volume to value and safety-net) are:
  - Institution specific.
  - Do not require the approval of CON application #10524.
  - Are not part of the statutory review criteria.
- The proposal furthers the Lee Health monopoly.
- The only metric being considered by the applicant within the statutory and rule criterion is population. However:
  - Service area utilization of inpatient services is declining and expected to continue to decline.
  - LMHS does not demonstrate any access barriers as the population is well served by existing facilities.
- LMHS failed to meet the CON statutory review criteria as provided in Section 408.035, Florida Statutes.
- The proposal will not enhance access and is not warranted by lack of availability, accessibility, extent of utilization of other area providers as no barriers to access were demonstrated.
- The proposal will not foster competition that promotes cost-effectiveness or quality of care.
- Approval of another hospital in southwest Florida will limit available clinical resources and the proposal would saturate the physician market and make existing physician practices less financially viable.
- The proposal does not propose to offer anything different than what is already available from existing providers.

The Agency finds that both applicants provided evidence demonstrating need for the identifiable portion of 70 acute care beds requested by CON application #10523 and the 82 acute care beds (achieved by reapportioning already existing beds within the subdistrict) requested by CON #10524—the requests resulting in two new access points of care but only 70 new acute care beds to the subdistrict. The Agency has determined that in weighing and balancing the statutory criteria of 408.035 (2), F.S., as well as all other applicable criteria, and demonstration of statistical data by all opposition and applicants, approval of both applications are merited with both applicants meeting the criteria. The Agency particularly notes the significant outpouring of support within the community for CON application #10524, along with demonstrated data, illustrating need for accessible and available inpatient services from a health system within their existing health care network of physicians to enhance health care to residents of the Estero/Bonita Springs community. The Agency also indicates that significant evidence from CON #10523 demonstrating the need for an additional health system within the identified service area to foster competition and enhance access to health care was also established. The Agency finds that approval of both applicants, collectively, will increase accessibility and availability of inpatient services while enhancing health care and fostering competition to promote quality and cost effectiveness to residents of the subdistrict.

Competition:

Medical Center of Southwest Florida, LLC (CON application #10523) discusses the proposed project's positive impact on competition to promote quality and cost-effectiveness in the context of:

- Competition is vital to improve quality and access to care.
- Competition can be designed and developed to create potent incentives that encourage providers to innovate so that they can deliver higher quality care at lower cost.
- There is little to no competition for health care services in Lee County.
- LMHS had an 84.6 percent market share for Lee County non-tertiary patients and each remaining area provider had a 5.4 percent market share, or less, from July 2016 through June 2017.
- The proposed project will increase patient choice.

- Empirical evidence and various economic studies indicate that competition in health care markets improves quality and reduces costs and contradicts that dominant providers use their market power to cross-subsidize charity care.
- Approval of co-batched **CON application #10524** would only serve to more consolidate the already dominant market share that LMHS has in Lee County.
- The proposed project will be a natural extension of HCA's existing hospitals in District 8.
- The proposed project will strengthen HCA's network and relationship and thereby offer additional options to patients and payors.

According to the applicant, a lack of competition in Lee County negatively affects the health care system in several ways:

- Limited choice of hospitals for patients
- Limited choice of medical staff affiliations for physicians
- Limited ability of payors to negotiate market driven rates for hospital services
- Limited positive impact of competition on quality
- May result in higher prices

Lee Memorial Health System (CON application #10524) discusses the proposed project's positive impact on competition to promote quality and cost-effectiveness in the context of:

- In District 8 for FY 17, the average charge per case for adult, non-tertiary cases for Lee Health was $49,362, while these charges averaged $93,034 for HCA facilities.
- In 2005, the top 20 most common inpatient hospital services at HCA hospitals operational in Lee County at that time resulted in 56 percent higher charges, on an average per case basis, when compared to LMHS hospitals over the same timeframe.
- In the 12 months ending June 30, 2017, the top 20 most common inpatient hospital services at HCA's Charlotte and Sarasota County hospitals resulted in 77 percent higher charges, on an average per case basis, when compared to LMHS hospitals over the same timeframe.
- Claims that hospital charges are irrelevant are untrue.
- Claims that no one pays charges is a misleading, over-simplification of today's hospital billing and claims adjudication process.
- Lee Health is designed as both an acute and ambulatory care network which serves as the foundation of one of the most unique delivery systems in the country and is a critical component of the coordinated care model.

- The Lee Health Board of Directors, without taxpayer support, has accomplished multiple initiatives over the past 15 years.
- The proposed project is adjacent to the Bonita Community Health Center (a partnership between Lee Health and Naples-based NCH Healthcare System). Each party absorbs one-half of operating losses.
- Chronic care management, rehabilitation services and interventional services, including the Lee Senior Center on Aging and Health, will be an integral coordinated and multidisciplinary component to work in conjunction with the proposed project.
- Little is gained by solely focusing on inpatient services, particularly for seniors with challenging, multiple, chronic conditions.
- LMHS operates Lee Community Healthcare, an FQHC Look-Alike as an overall part of the LMHS.
- MCSWF, if approved, has the potential of setting back gains LMHS has achieved in shifting momentum to population health and dooming seniors with chronic conditions to outmoded episodic care.
- The inclusion of a south county location has been in the Lee Health long-term strategic plan since 2004, having acquired in 2004/2005 the land upon which the proposed project will be located.
- In the health care market, competition, other than providing choice, does not adhere to the supply/demand curve as greater supply leads to both higher demand and costs with volume-driven payment incentives – per visit, per procedure, per stay.

Medicaid/charity care:

The table below illustrates the HCA's largest general/acute care hospital in District 8 (Fawcett MH) and LMHS's) flagship general/acute care hospital in Lee County, Lee MH, state fiscal year (SFY) 2017-2018 low-income pool (LIP) and disproportionate share hospital (DSH) program participation, as of April 2, 2018 (3:37 PM).

CON application #10523 Parent's (HCA's) Fawcett MH and CON application #10524 Parent's (LMHS's) Lee MH LIP and DSH Program Participation SFY 2017-2018 (3:37 PM)

Program/Provider	Annual Total Allocation	Year-to-Date Total Allocation as of April 2, 2018 (3:37 PM)
LIP/Fawcett MH	$11,429	$0
DSH/Fawcett MH	$0	$0
LIP/Lee MH	$23,369,750	$17,527,313
DSH/Lee MH	$6,787,368	$5,090,526

Source: Agency Division of Medicaid, Office of Program Finance

Medical Center of Southwest Florida, LLC (CON application #10523): The applicant conditions a minimum of eight percent of its patient days to patients covered by Medicaid/Medicaid managed care or who meet the criteria for charity care, combined. The reviewer notes that the eight percent condition is lower than the average combined provision of Medicaid/Medicaid HMO and charity care for District 8 overall (14.82 percent)

With HCA's FMH being HCA's largest single general acute care hospital in District 8, below is this hospital's Medicaid/Medicaid HMO days and percentages as well as charity care percentages and District 8 overall, in SFY 2015-2016, by data from the FHURS. The SFY 2015-2016 FHURS data is the most currently available, as of this report.

Medicaid, Medicaid HMO and Charity Data
CON application #10523 – HCA's Fawcett Memorial Hospital (Subdistrict 8-1) and District 8
SFY 2015 -2016

Applicant/Area	Medicaid and Medicaid HMO Days	Medicaid and Medicaid HMO Percent	Percent of Charity Care	Percent Combined Medicaid, Medicaid HMO and Charity Care
FMH	4,047	6.40%	0.68%	7.08%
District 8 Total	**125,179**	**12.23%**	**2.59%**	**14.82%**

Source: Agency for Health Care Administration Florida Hospital Uniform Reporting System, SFY 20015-2016

The most recent FHURS reporting period indicates that FMH, operated by HCA in Subdistrict 8-1, provided 7.08 percent Medicaid and charity care.

Lee Memorial Health System (CON application #10524): The applicant conditions that the proposed new hospital will:

- Provide needed medical care to all patients in need, regardless of ability to pay.
- Provide at least 10 percent of its patient volume to Medicaid, Medicaid managed care, non-payment, self-pay and charity patients.
- Provide a minimum of $500,000 per year by Lee Health for the following programs and services:
  - Chronic care program
  - Healthy life center
  - Aging life care management
  - Senior and disability medical transportation systems

The reviewer notes that the 10 percent condition is lower than the average combined provision of Medicaid/Medicaid HMO and charity care for District 8 overall (14.82 percent).

With Lee MH being the LMHS flagship hospital, below is this hospital's Medicaid/Medicaid HMO days and percentages as well as charity care percentages, as well as District 8 overall, in SFY 2015-2016, by data from the FHURS. The SFY 2015-2016 FHURS data is the most currently available, as of this report.

Medicaid, Medicaid HMO and Charity Data
CON application #10524 – LMHS-Lee Memorial Hospital (Subdistrict 8-5) and District 8
SFY 2015 -2016

Applicant/Area	Medicaid and Medicaid HMO Days	Medicaid and Medicaid HMO Percent	Percent of Charity Care	Percent Combined Medicaid, Medicaid HMO and Charity Care
LMH	43,213	23.92%	4.51%	28.43%
District 8 Total	**125,179**	**12.23%**	**2.59%**	**14.82%**

Source: Agency for Health Care Administration Florida Hospital Uniform Reporting System, SFY 20015-2016

I. RECOMMENDATION:

Approve CON #10523 to establish a new 70-bed acute care hospital in Lee County, Florida, District 8, Subdistrict 8-5.

CONDITIONS:

Percent of a particular subgroup to be served:

- Medical Center of South West Florida, LLC commits to provide a minimum of eight percent of its patient days to patients covered by Medicaid/Medicaid managed care or who meet the criteria for charity care, combined.

Special program:

- Medical Center of South West Florida, LLC commits to applying to become a Baker Act receiving facility.

Approve CON #10524 to establish a new 82-bed acute care hospital in Lee County, Florida, Subdistrict 8-5.

CONDITIONS:

1. The proposed new hospital will be located near the southeast corner of the intersection of US Highway 41 and Coconut Road. The specific site address is 23450 Via Coconut Point, Estero, Florida 34135.
2. A total of 82 acute care beds will be delicensed from the Lee Memorial Health System and transferred to the new facility upon licensure of the new hospital.
3. Lee Health will not request additional acute care beds beyond those currently licensed or for which notification has been submitted to AHCA as of April 11, 2018, for a period of 24 months following the opening of the proposed new facility.
4. The proposed new hospital will provide needed medical care to all patients in need, regardless of ability to pay.
5. The proposed new hospital will provide at least 10 percent of its patient volume to Medicaid, Medicaid managed care, non-payment, self-pay and charity patients.
6. A minimum of $500,000 per year will be provided by Lee Health for the following programs and services –
    a. Chronic Care Program
    b. Healthy Life Center
    c. Aging Life Care Management
    d. Senior and disabled medical transportation systems

AUTHORIZATION FOR AGENCY ACTION

Authorized representatives of the Agency for Health Care Administration adopted the recommendation contained herein and released the State Agency Action Report.

DATE: _____

_____
Marisol Fitch
Health Administration Services Manager
Certificate of Need