



MARYLAND HEALTH CARE COMMISSION

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MEMORANDUM

TO: Commissioners

FROM: Kevin R. McDonald
Chief, Certificate of Need

A handwritten signature in black ink, appearing to read "Kevin R. McDonald", written over the printed name and title.

DATE: October 15, 2020

SUBJECT: University of Maryland Midtown SurgiCenter Construction, Docket No. 20-24-2442

Enclosed is the staff report and recommendation regarding a Certificate of Need (CON) application filed by the University of Maryland Midtown SurgiCenter, LLC (UMMSC). UMMSC will own and operate the proposed ambulatory surgical facility (ASF). UMMSC is owned by the University of Maryland Midtown Health, Inc. (UM Midtown Health), which holds a 95% ownership interest, and the University of Maryland Faculty Physicians, Inc. (FPI), which owns the remaining five percent.

UMMSC seeks to establish an ambulatory surgical facility with three operating rooms and two procedure rooms, created by fitting out approximately 13,268 SF of shell space on the first floor of the Midtown Ambulatory Care Building (MACB) that is currently under construction across from the University of Maryland Medical Center Midtown Campus on Linden Avenue. This is part of a long range plan to shift outpatient surgical cases to a lower cost setting and advance the clinical integration of the University of Maryland downtown and midtown hospitals.

The total estimated project cost is approximately \$9.3 million, which includes about \$4.7 million for construction, renovations, and permits and fees, \$4.1 million for movable equipment, and contingency allowance, \$360,000 for an inflation allowance, and \$100,000 for consulting and legal fees. The applicant will finance the cost of this project with cash (from both UMMS and FPI) in the year of construction, which will be fiscal year 2022.

Staff recommends that the Commission **APPROVE** the project based on staff's conclusion that the proposed project complies with the applicable standards in COMAR 10.24.11, the General Surgical Services chapter of the State Health Plan (SHP), and with the

Certificate of Need review criteria at COMAR 10.24.01.08G(3)(a)-(f). Our recommendation includes the following conditions:

1. The University of Maryland Midtown SurgiCenter shall provide to the public, upon inquiry or as required by applicable regulations or law, information concerning charges for the full range of surgical services provided.
2. The University of Maryland Midtown SurgiCenter shall provide, at a minimum, an amount of charity care with a value equivalent to 0.35% of its operating expenses.

**IN THE MATTER OF
UNIVERSITY OF MARYLAND
MIDTOWN SURGICENTER, LLC**

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**BEFORE THE
MARYLAND HEALTH
CARE COMMISSION**

Docket No. 20-24-2442

Staff Report and Recommendation

October 15, 2020

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I. INTRODUCTION

THE APPLICANT

The applicant is a newly-formed, not-for-profit limited liability company, University of Maryland Midtown SurgiCenter, LLC (UMMSC). (DI #2, pp. 1, 5). UMMSC, which will own and operate the proposed facility is owned by the University of Maryland Midtown Health, Inc. (UM Midtown Health),¹ which holds a 95% ownership interest, and the University of Maryland Faculty Physicians, Inc. (FPI),² which owns the remaining five percent. (DI #2, Exh. 3).

THE PROJECT AND ITS BACKGROUND

The proposed project is the establishment of an ambulatory surgical facility (ASF) with three operating rooms (ORs) and two procedure rooms, created by fitting out approximately 13,268 square feet (SF) of shell space on the first floor of the Midtown Ambulatory Care Building (MACB). MACB is a ten-story building currently under construction on the campus of the University of Maryland Medical Center Midtown, a general hospital, on Linden Avenue in Baltimore City, across the street from the main hospital building. (DI #2, Exh. 4).

MACB is designed to include a five-floor parking garage (Levels Two through Six), located between shell space on the first floor and the three upper floors (Levels Seven through Nine), which are dedicated to outpatient primary and specialty care centers.³ The top floor, the tenth floor, is also planned as shell space. (DI #2, Exh. 5).

In February 2017, the Maryland Health Care Commission (Commission) issued⁴ a determination of coverage that the capital expenditure to construct MACB, at an estimated cost of \$56,500,000, did not require a Certificate of Need (CON), pursuant to COMAR 10.24.01.03J. This regulation allows a hospital to obligate a capital expenditure that exceeds the review threshold for capital expenditures for physical plant construction without obtaining a CON if the capital expenditure does not require, over the entire period or schedule of debt service associated with the project or plant, a total cumulative increase in patient charges or hospital rates of more than \$1,500,000 for the capital costs associated with the project and the project does not otherwise require a CON. The hospital provided the required information.

Because the hospital's "pledge" involved a project with shell space, it was required to agree that a health care facility project requiring CON review and approval would not be implemented

¹ UM Midtown Health is a wholly-owned subsidiary of the University of Maryland Medical System Corporation (UMMS).

² University of Maryland Faculty Physicians, Inc., coordinates and supports the clinical activities of the University of Maryland School of Medicine (UM SOM), employing more than 1,200 non-physician staff who support the clinical practices of the UM SOM faculty. FPI staff provides administrative support functions such as business development, finance, human resources, information technology, compliance, legal affairs, practice operations support, and reimbursement management. UM SOM has more than 900 clinically active faculty members involved in teaching, research, and clinical practice. (DI #2, p. 6).

³ Includes space dedicated to diagnosis and treatment of infectious diseases, a Center for Diabetes and Endocrinology, a Pulmonary Clinic, and a Cardiology Clinic.

⁴ After consultation with the Health Services Cost Review Commission (HSCRC).

through the finishing of shell space included in the project. (DI #2, Exh. 4, pp. 2-3). Subsequently, in January 2020, the Executive Director agreed to accept for review a CON application from UMMC Midtown to establish a market-priced ASF on the first floor of MACB subject to a determination by HSCRC that such a project was consistent with its policies concerning the development of non-rate regulated facilities within a hospital. The HSCRC issued such a determination. (DI #3, included as Appendix 5).

The applicant states that the primary goal in establishing this ASF is to provide access to a lower-charge alternative for outpatient surgery in a location convenient for patients and providers. A secondary goal of the proposed project is to aid the clinical integration efforts of two University of Maryland Medical System general hospitals in Baltimore City, the University of Maryland Medical Center (UMMC) and UM Midtown, by reducing the high utilization of the existing hospital ORs, and providing “the right care in the right place” within the UMMC care continuum (DI #2, pg. 5).

The estimated total capital cost for UMMSC to construct and equip the ASF is approximately \$9.3 million, which it will fund with cash from both University of Maryland Midtown Health and FPI operations in the year of construction, which will be fiscal year 2022. (DI #10, pp. 3-4). In addition to the ASF, the first floor of the MACB will include a main lobby and elevators to the parking levels and upper floors, a fire command center and security office, a materials management receiving office, information technology and electrical closets, two restrooms and stairwell space (DI #10, p. 1). The applicant anticipates completing the construction and initiating operations within the MACB by September 2021 (DI #10, p. 2). It expects the ASF to open for service within 13 months of obligating the required capital expenditure and reach full capacity within one month after first use, around June 2022. (DI#2, pp. 7, 11).

STAFF RECOMMENDATION

Staff recommends that the Commission issue a CON for the proposed ambulatory surgical facility based on staff’s conclusion that the proposed project complies with the applicable standards in COMAR 10.24.11, the General Surgical Services chapter of the State Health Plan, and with the other Certificate of Need review criteria at COMAR 10.24.01.08G(3)(a)-(f).

Staff recommends the following conditions:

1. The University of Maryland Midtown SurgiCenter shall provide to the public, upon inquiry or as required by applicable regulations or law, information concerning charges for the full range of surgical services provided; and
2. The University of Maryland Midtown SurgiCenter shall provide, at a minimum, charity care with a value equivalent to 0.35% of its operating expenses.

II. PROCEDURAL HISTORY

A. Record of the Review

Please see Appendix 1, Record of the Review.

B. Interested Parties

There are no interested parties in this review.

C. Local Government Review and Comment

No comments were received from a local governmental body.

D. Community Support

UM Midtown SurgiCenter submitted twelve letters of support for the proposed ASF. Four came from from elected officials: State Senator Antonio Hayes; Baltimore City Mayor Jack Young; and Baltimore City Councilors Erick Costello and Leon F. Pinkett III. Four came from University of Maryland staff members: Bruce Jarrell, M.D., Interim President of the University of Maryland, Baltimore; E. Albert Reece, M.D., Ph.D., Executive Vice President for Medical Affairs, UM Baltimore; Christine L. Lau, M.D., Professor and Chair of the Department of Surgery, University of Maryland School of Medicine; and Stephen N. Davis, M.B.B.S., Chair, Department of Medicine, at the University of Maryland. Four additional letters of support were received from: Kristin Speaker, Executive Director, Charles Street Development Corporation; Wanda G. Best, Executive Director, Upton Planning Committee; J.L. Carter, President of the Ministers Conference of Baltimore and Vicinity; and the Reverend Brenda D. White, Allen A.M.E. Church. (DI #2, Exh. 19).

III. STAFF REVIEW AND ANALYSIS

The Commission reviews CON applications under six criteria found at COMAR 10.24.01.08G(3). The first of these criteria is the relevant State Health Plan standards, policies, and criteria.

A. The State Health Plan

An application for a Certificate of Need shall be evaluated according to all relevant State Health Plan standards, policies, and criteria.

The relevant State Health Plan for Facilities and Services chapter in this review is the General Surgical Services chapter, COMAR 10.24.11 (“Surgical Services Chapter”).

.05 STANDARDS

A. GENERAL STANDARDS. *The following general standards encompass Commission expectations for the delivery of surgical services by all health care facilities in Maryland, as defined in Health General §19-114(d). Each applicant that seeks a Certificate of Need for a project or an exemption from Certificate of Need review for a project covered by this Chapter shall address and document its compliance with each of the following general standards as part of its application*

(1) Information Regarding Charges.

Information regarding charges for surgical services shall be available to the public.

(a) A physician outpatient surgery center, ambulatory surgical facility, or a general hospital shall provide to the public, upon inquiry or as required by applicable regulations or law, information concerning charges for the full range of surgical services provided.

UMMSC states that it “will provide information to the public upon inquiry, or as required by applicable regulations or law, information regarding charges for the full range of surgical services provided.” (DI #2, p. 19). This pledge includes posting these charges on the proposed ASF’s website. (DI #10, p. 4). The applicant also states that the ASF’s administrative staff will help patients determine their charges and copays.

Based on the applicant’s commitment, staff concludes that it satisfies Paragraph (a) of the standard.

(b) The Commission shall consider complaints to the Consumer Protection Division in the Office of the Attorney General of Maryland or to the Maryland Insurance Administration when evaluating an applicant’s compliance with this standard in addition to evaluating other sources of information.

Since UM Midtown SurgiCenter does not currently exist as an ASF and does not have any complaints at present, this standard is not applicable.

(c) Making this information available shall be a condition of any CON issued by the Commission.

The applicant states that it “acknowledges and agrees that making this information available is a condition of any CON issued by the Commission.” (DI #2, p. 19).

Staff concludes that UMMSC satisfies Paragraph (c) of this standard. In accordance with the requirements of that paragraph, staff recommends that any approval of this project be issued with the following condition:

The University of Maryland Midtown Surgery Center shall provide to the public, upon inquiry or as required by applicable regulations or law, information concerning charges for the full range of surgical services provided.

(2) Information Regarding Procedure Volume.

A hospital, physician outpatient surgery center, or ASF shall provide to the public upon inquiry information concerning the volume of specific surgical procedures performed at the location where an individual has inquired. A hospital, POSC, or ASF shall provide the requested information on surgical procedure volume for the most recent 12 months available, updated at least annually.

UMMSC states that it will respond to any inquiry with information regarding the volume of specific surgical procedures at the facility for the most recent 12 months, and that it will update the surgical procedure volume for the most recent 12 months at least annually. (DI #2, p. 20).

Based on UMMSC's commitment, staff concludes that the application meets this standard.

(3) Charity Care Policy.

(a) Each hospital and ambulatory surgical facility shall have a written policy for the provision of charity care that ensures access to services regardless of an individual's ability to pay and shall provide ambulatory surgical services on a charitable basis to qualified indigent persons consistent with this policy. The policy shall have the following provisions:

(i) Determination of Eligibility for Charity Care. Within two business days following a patient's request for charity care services, application for medical assistance, or both, the facility shall make a determination of probable eligibility.

UMMSC states that it intends to provide care to indigent patients and will adopt the UMMS' Financial Assistance Policy. (DI #2, p. 20). A copy of this policy was submitted with the application. (DI #2, Exh. 8). The policy indicates that a patient need only provide information about family size and income in order to receive a determination of probable eligibility within two business days following a request for charity care services, medical assistance, or both. A final determination of eligibility requires completion of a Financial Assistance Application. (DI #2, Exh. 8, p. 8).

Staff concludes that UMMSC satisfies Subparagraph (a)(i) of the standard.

(ii) Notice of Charity Care Policy. Public notice and information regarding the facility's charity care policy shall be disseminated, on an annual basis, through methods designed to best reach the facility's service area population and in a format understandable by the service area population, and in a format understandable by the service area population. Notices regarding the facility's charity care policy shall be posted in the registration area and business office of the facility. Prior to a patient's arrival for surgery, the facility shall address any financial concerns of the patient, and individual notice regarding the facility's charity care policy shall be provided.

UMMSC states that it plans to publish notice of its charity care policy annually either in the *Baltimore Sun* or another local newspaper, and in UMMS' quarterly publication *Maryland's Health Matters*. (DI #2, p. 21). The applicant provided a copy of the proposed notice with its application. (DI #10, Exh. 26). The proposed facility will also post notice of this policy in the patient waiting area and reception area, registration area, and in the administrative office of the ASF.

UMMSC states that a copy of the notice of availability of financial assistance will be provided to the patients in advance of their surgical procedure and that it will be made available during consults via phone or in person to patients who make inquiries regarding financial assistance. (DI #2, p. 21). The applicant states that it will make a Patient Billing and Financial Assistance Information Sheet available in the reception area of the ASF, and it will be provided to patients upon checkout from the facility and by mail upon request. In addition, this notice will also be included with patient bills. A copy of this information sheet was included with the CON application. (DI #2, Exh. 11).

Staff concludes that UMMSC's plans for giving notice and information regarding the availability of charity care complies with Subparagraph (ii) of the standard.

(iii) Criteria for Eligibility. A hospital shall comply with applicable State statutes and Health Services Cost Review Commission ("HSCRC") regulations regarding financial assistance policies and charity care eligibility. An ASF, at a minimum, shall include the following eligibility criteria in charity care policies. Persons with family income below 100 percent of the current federal poverty guideline who have no health insurance coverage and are not eligible for any public program providing coverage for medical expenses shall be eligible for services free of charge. At a minimum, persons with family income above 100 percent of the federal poverty guideline but below 200 percent of the federal poverty guideline shall be eligible for services at a discounted charge, based on a sliding scale of discounts for family income bands. A health maintenance organization, acting as both the insurer and provider of health care services for members, shall have a financial assistance policy for members, shall have a financial assistance policy for its members that is consistent with the minimum eligibility criteria for charity care required of ASFs described in these regulations.

Under its eligibility criteria for financial assistance, UMMSC states that a person with a household income of up to 200% of the Maryland Medicaid Income Eligibility threshold is eligible for free care at the proposed ASF. Persons with household incomes between 200% and 300% of that threshold will be eligible for discounts on a sliding scale with fee discounts decreasing with income. The applicant provides a copy of this sliding fee scale in its application. (DI #2, p. 22).

Staff concludes that UMMSC satisfies Subparagraph (a)(iii) of the standard.

(b) A hospital with a level of charity care defined as the percentage of total operating expenses that falls within the bottom quartile of all hospitals, as reported in the most

recent HSCRC Community Benefit Report, shall demonstrate that its level of charity care is appropriate to the needs of its service area population.

This standard is not applicable to this review. It addresses hospitals seeking to add OR capacity, while this application proposes the establishment of an ambulatory surgical facility.

(c) A proposal to establish or expand an ASF for which third party reimbursement is available, shall commit to provide charitable surgical services to indigent patients that are equivalent to at least the average amount of charity care provided by ASFs in the most recent year reported, measured as a percentage of total operating expenses. The applicant shall demonstrate that:

(i) Its track record in the provision of charitable health care facility services supports the credibility of its commitment; and

UMMSC has made a commitment “to provid[e] a level of charitable surgical services that [either] meets or exceeds the average amount of charity care provided by ASFs in Maryland.” The average amount of charity care provided by ASFs for the most recent year is 0.35%.⁵ The applicant’s projected charity care exceeds that benchmark, as shown in Table III-1 below. (DI #10, p. 22).

**Table III-1: UM Midtown SurgiCenter
Projected Charity Care**

	FY 2023	FY 2024	FY 2025
Value of Charity Care Projected	\$49,369	\$50,657	\$51,979
Projected Total Operating Expense	\$9,100,571	\$9,266,144	\$9,436,858
Ratio-Charity Care/Total Operating Expenses	0.54%	0.55%	0.55%

Source: DI #10, Table 2 (revised), p. 5.

With regard to its track record, the applicant states that both UMMC hospitals in Baltimore “have a strong track record for provision of charity care.” (DI #2, pp. 23-24). The HSCRC’s Community Benefit Report Charity Care Rankings by Hospitals for FY 2018 indicate that UMMC-Midtown’s level of charity care (about 1.78% of total operating expenses) fell within the second quartile and UMMC’s level of charity care fell within the third quartile (about 1.45% of total operating expenses) for all hospitals. (DI #2, Table 3, p. 24).

In response to staff inquiries, the applicant also provided information regarding the charity care performance of an ambulatory surgical center (University of Maryland Medicine ASC, LLC) located on Waterloo Road in Columbia. This facility was established as a 50/50 joint venture between FPI and University of Maryland Medical System Corporation, but effective in March 2020 it is entirely owned by FPI. The applicant stated that

[t]he Waterloo [Road] ambulatory surgery center is a relatively new facility which has not received any requests to date for charity care cases, but does serve a

⁵ Preliminary unaudited data from MHCC’s Freestanding Ambulatory Surgery Center Survey indicates that in CY 2017 ambulatory surgery centers provided charity care totaling 0.35% as a percentage of total operating expenses.

significant number of Medicaid patients. As shown in the 2018 report to MHCC, Medicaid patients accounted for approximately 22% of Waterloo's revenue in 2018. The Waterloo ASC is located in Howard County and the payer mix in this community is different than the anticipated payer mix at the new UM Midtown SurgiCenter located in downtown Baltimore. In particular, Waterloo tends to serve a larger proportion of Medicare, commercial Insurance and self-pay patients than are typically seen in downtown Baltimore. (DI#15).

Staff concludes that, based on its commitment, UMMSC has met the requirements of Subparagraph (c)(i) of the Charity Care standard but recommends that, based on its status as a newly created entity and the track record of the Ambulatory Surgery Center in Columbia, any approval of this project be issued with the following condition:

The University of Maryland Midtown SurgiCenter shall provide, at a minimum, charity care with a value equivalent to 0.35% of its operating expenses.

(ii) It has a specific plan for achieving the level of charitable care provision to which it is committed.

The applicant's plan for achieving the level of charitable care includes making the public aware of the availability of financial assistance for patients by such means as publishing notice in the *Baltimore Sun* or another local newspaper and circulating the notice in UMMS' publication *Maryland's Health Matters*, and posting the information of financial assistance on the ASF's website. As mentioned previously, UMMSC will provide a copy of the notice of financial assistance to patients in advance of their surgical procedure, and include a copy with patient bills. The facility will also provide a Patient Billing and Financial Assistance Information Sheet to patients upon discharge.

Staff concludes that UMMSC satisfies Subparagraph (c)(ii) of the standard.

(iii) If an existing ASF has not met the expected level of charity care for the two most recent years reported to MHCC, the applicant shall demonstrate that the historic level of charity care was appropriate to the needs of the service area population.

This subparagraph does not apply since the proposed project is not an existing ASF.

Standards .05A(4) Quality of Care; .05A(5) Transfer Agreements; .05B(4) Design Requirements; and .05B(5), Support Services

Among the remaining applicable standards are several that prescribe policies, facility features, and staffing and/or service requirements that an applicant must meet, or agree to meet prior to first use. Staff reviewed the CON application and confirmed that the applicant provided information and affirmations that demonstrate full compliance with these standards:

- .05A(4) Quality of Care
- .05A(5) Transfer and Referral Agreements

.05B(4) Design Requirements, and
.05B(5) Support Services.

In responding to these standards, the applicant:

- Stated it will meet or exceed “the minimum requirements for licensure by the Office of Health Care Quality and certification by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services,” and that it will obtain accreditation from one of the Accreditation bodies identified in subparagraph (d)(ii). (DI #2, p. 27);
- Stated that it will establish written transfer and referral agreements with both UMMC and the Midtown hospital and “will have written procedures for emergency transfer of patients to a hospital that meet or exceed the minimum requirements set forth at COMAR 10.05.05.09.” (DI #2, p. 28);
- Submitted a letter from its principal architect confirming that the architectural design of the proposed ASF complies with Section 3.7 and other applicable provisions of the FGI Guidelines for the Design and Construction of Hospitals and Outpatient Facilities. (DI #2, Exh. 15); and
- Stated that the proposed ASF will obtain all necessary laboratory, radiology, and pathology services, including point of care testing, as needed for the ASF either directly or through contractual agreements with UMMC-Midtown. (DI #2, p. 40).

The text of these standards and location of the documentation of compliance are attached as Appendix 2.

B. PROJECT REVIEW STANDARDS. The standards in this regulation govern reviews of Certificate of Need applications and requests for exemption from Certificate of Need review involving surgical facilities and services. An applicant for a Certificate of Need or an exemption from Certificate of Need shall demonstrate consistency with all applicable review standards, unless an applicant is eligible for an exemption covered in Regulation .06 of this chapter.

(1) Service Area.

An applicant proposing to establish a new hospital providing surgical services or a new ambulatory surgical facility shall identify its projected service area. An applicant proposing to expand the number of operating rooms at an existing hospital or ambulatory surgical facility shall document its existing service area, based on the origin of patients served.

The primary service area for the proposed UM Midtown SurgiCenter includes zip code areas located in Baltimore City and Baltimore, Anne Arundel, Howard, Washington, Talbot, Harford, Carroll, and Frederick Counties. (DI #10, Q. #3 and Exh. 25).

The applicant has identified its projected service area. Staff concludes that the applicant meets this standard.

(2) Need – Minimum Utilization for Establishment of a New or Replacement Facility.

An applicant proposing to establish or replace a hospital or ambulatory surgical facility shall:

(a) Demonstrate the need for the number of operating rooms proposed for the facility, consistent with the operating room capacity assumptions and other guidance included in Regulation .07 of this chapter.

(b) Provide a needs assessment demonstrating that each proposed operating room is likely to be utilized at optimal capacity or higher levels within three years of the initiation of surgical services at the proposed facility, consistent with Regulation .07 of this chapter.

(c) An applicant proposing the establishment or replacement of a hospital...

Paragraphs (a), (b), and (c) of this standard relate to the establishment or replacement of a hospital are not applicable to this project.

(d) An applicant proposing the establishment of a new ambulatory surgical facility shall submit a needs assessment that includes the following:

(i) Historic trends in the use of surgical facilities for outpatient surgical procedures by the proposed facility's likely service area population;

(ii) The operating room time required for surgical cases projected at the proposed facility by surgical specialty or, if approved by the Commission staff, another set of categories; and

(iii) Documentation of the current surgical caseload of each physician likely to perform surgery at the proposed facility.

This standard requires an applicant to demonstrate the need for the number of operating rooms it is requesting and that the proposed ORs are likely to be utilized at optimal capacity⁶ within three years of the initiation of surgical services at the proposed facility. The applicant's analysis must take into account the historic utilization trends in the service area population, the operating room time required for the surgical cases projected at the proposed ASF, and document the current surgical caseload of each physician likely to perform surgery at the ASF.

⁶ COMAR 10.24.11.07A(1)(b) defines optimal capacity for a general purpose outpatient OR as 1,632 hours per year. That calculation assumes that each room is used for a minimum of 255 days per year, 8 hours per day, yielding full annual capacity of 2,040 hours (includes the time during which surgical procedures are being performed and room turnaround time between surgical cases). "Optimal use" is considered to be 80% of full capacity, or 1,632 hours.

The applicant states that UMMC and UMMC-Midtown will shift appropriate outpatient surgical cases from these two hospitals to the proposed UMMSC. By shifting surgical cases to UMMSC, the two hospitals will alleviate what the applicant identifies as overutilization of OR capacity currently experienced. (DI #2, pp. 30-31). The applicant describes its strategy as assigning the “right case [to] the right place” within the UMMC care continuum by transitioning lower acuity, outpatient elective cases from UMMC to both UMMC-Midtown and the lower charge alternative, UMMSC.

The applicant explains that the two hospitals will shift otorhinolaryngology (ear, nose, and throat or ENT), general surgery, ophthalmology, and orthopaedics cases⁷ to the proposed ASF. In its planning process UMMSC reviewed historical outpatient surgical cases at UMMC and UMMC-Midtown by surgeons in those specialties for FY 2017 through FY 2019. Table III-2, below, shows the number of outpatient surgical cases performed at the two hospitals that could have been performed in the proposed ASF between 2017 and 2019.

Table III-2: Surgical Cases by Specialty at UMMC and UMMC-Midtown That Could be Performed at an Ambulatory Surgical Facility, FY2017-2019

Cases and OR minutes by specialty at UMMC	2017	2018	2019
General surgery	335	350	360
Ophthalmology	10	1	2
Orthopedic	30	21	33
Otorhinolaryngology (ENT)	538	514	558
Total cases	913	886	953
Total OR minutes (includes 25-minute average room turnaround time)	143,420	142,531	155,871
Cases and OR minutes by specialty at UMMC-Midtown			
General surgery	547	482	623
Ophthalmology	712	665	728
Orthopedic	672	620	660
Otorhinolaryngology (ENT)	53	172	220
Total Cases	1,984	1,939	2,231
Total OR minutes (includes 25-minute average room turnaround time)	207,147	208,471	249,444
Cases and OR minutes by specialty – two hospitals combined			
General surgery	882	832	983
Ophthalmology	722	666	730
Orthopedic	702	641	693
Otorhinolaryngology (ENT)	591	686	778
Total cases	2,897	2,825	3,184
Total OR minutes (includes 25-minute average room turnaround time)	350,567	351,002	340,172

Source: HSCRC Abstract Data from EPIC EHR; Annual Population Growth of 0.61% obtained from Claritas. (DI #2, Table 8, p. 37).

The following Table III-3 carries this analysis further, projecting the number of “transferable” cases and OR minutes in the period of FY 2020 through FY 2025. The applicant states that these projections were based on the historical surgical case volumes reported at the two hospitals as shown in Table III-2, an annual growth rate assumption of 0.61% based on projected population growth in the defined UMMSC’s service area population (DI #2, Table 7, p. 36), and

⁷ The Chiefs of Surgery for each of these four specialties submitted letters that listed the surgeons and the historical total number of cases and total surgical OR minutes (that includes an average operating room turnaround time of 25 minutes per case) that would move surgical volumes to UMMSC. (DI #2, Exh. 13).

the number of physician hires and departures at UMMC and UMMC-Midtown in the period of FY 2016 through FY 2019. (DI #2, Table 6, pp. 35-36).

The table also calculates the number of ORs needed to accommodate the projected case volumes at optimal capacity, suggesting that the ASF would immediately need 3.56 ORs, i.e., it is forecasted to be operating above optimal capacity upon opening in FY 2023.⁸ In fact, at a projected 348,538 minutes the facility would need to operate at about 95% of full capacity to service the number of projected cases.

Table III-3: Historic (2019) and Projected (2020-2025) Surgical Cases Shifting to the Proposed ASF from UMMC and UMMC-Midtown

Cases and OR minutes by specialty	Actual Cases UMMC and UMMC-Midtown	Projected Cases at UMMC and UMMC-Midtown			Projected Cases at Proposed ASF		
	FY2019	FY2020	FY2021	FY2022	FY2023	FY2024	FY2025
General surgery	983	989	995	1,001	1,007	1,013	1,020
Ophthalmology	730	734	739	743	748	753	757
Orthopedic	693	697	701	706	710	714	719
Otorhinolaryngology (ENT)	778	783	788	792	797	802	807
Total cases	3,184	3,203	3,223	3,243	3,262	3,282	3,302
Total OR minutes (including turnaround time)	340,172	342,236	344,336	346,445	348,538	350,667	352,806
ORs needed at optimal capacity (1,632 hours per room per year)	3.5	3.5	3.5	3.5	3.6	3.6	3.6

Source: HSCRC Abstract Data from EPIC E.H.R.; Annual Population Growth of 0.61% obtained from Claritas. (DI #2, Table 8, p. 37).

In staff’s view, the applicant has demonstrated the need for the proposed project based on the stated intent of UMMS and staff physicians to shift outpatient surgery cases from two UMMS hospitals to the proposed ASF. The goals of this case shift are the reduction of charges for surgery and decompression of the high use of UMMC ORs. This anticipated shift in case volume is expected to result in the use of UMMC’s OR capacity at efficient levels. Staff concludes that the applicant meets this standard.

(3) Need – Minimum Utilization for Expansion of An Existing Facility.

This standard is not applicable. The proposed project involves establishment of a new ambulatory surgical facility.

(6) Patient Safety.

⁸ UM Midtown SurgiCenter is expected to open in June 2022.

The design of surgical facilities or changes to existing surgical facilities shall include features that enhance and improve patient safety. An applicant shall:

(a) Document the manner in which the planning of the project took patient safety into account; and

(b) Provide an analysis of patient safety features included in the design of proposed new, replacement, or renovated surgical facilities.

The applicant states that it worked closely with CRGA Design, a licensed architect who has experience in designing health care facilities and ASFs, a consultant with experience in ASF planning and strategy, and clinical leadership and infection prevention personnel from both the UMMC and UMMC-Midtown campuses so as to ensure the incorporation of factors to enhance patient safety in the design of the proposed ASF. (DI #2, p. 40).

CRGA Design affirms that the architectural design of UM Midtown SurgiCenter will comply with Section 3.7 and other applicable provisions of the FGI Guidelines for the Design and Construction of Hospitals and Outpatient Facilities. (DI #2, Exh. 15). The applicant states that the design will “maximize adaptability, efficiency, and patient safety and convenience” by incorporating the following features (DI #2, p. 41):

- Appropriately sized ORs that can accommodate a wide range of surgical cases, providing necessary space for instrumentation, equipment, and maintaining the integrity of sterile fields;
- Adequately sized equipment storage areas located to provide quick access to ORs, eliminate cluttering of hallways, and keep the corridors clear for emergency egress;
- Adequately sized clinical staff areas to maintain easy patient visibility while ensuring privacy;
- A design that will optimize infection prevention based on the planned flow of clean and dirty materials and instruments, air flow, and patient flow;
- Finishes selected by infection prevention personnel to maximize the ability to clean, disinfect, and maintain the space;
- Mechanical and electrical systems meeting all current guidelines and designed to maintain appropriate pressure relationships, temperature and humidity control and monitoring, appropriate lighting and a dedicated emergency power back-up;
- Restricted corridors for sensitive spaces;
- Properly zoned facilities to maintain the proper storage and flow of dirty to clean to sterile movement for staff, instruments, and supplies;
- A nurse call system;
- Direct line of sight from nursing work areas into all prep/recovery rooms;
- Same-handed OR configuration instead of “mirrored” layout for uniformity of equipment placement and use;
- Prep/recovery bays larger than the minimum FGI required size to better accommodate patients, staff, and family and reduce the chance of slip and falls;
- Direct visual access of the waiting room and main building entrance from the reception desk, which may be helpful the event of any potential active shooter situations; and

- Panic buttons in several key areas to provide for immediate access to Security in the event of a disruptive incident.

A copy of the project floor plan drawing is included in Appendix 3. (DI #2, Exh. 2).

Staff concludes that the applicant considered patient safety in its design of the proposed UM Midtown SurgiCenter, and meets this standard.

(7) Construction Costs.

The cost of constructing surgical facilities shall be reasonable and consistent with current industry cost experience.

(a) Hospital projects.

Paragraph (a) does not apply because this is not a hospital project.

(b) Ambulatory Surgical Facilities.

(i) The projected cost per square foot of new construction shall be compared to the benchmark cost of good quality Class A construction given in the Marshall Valuation Service® guide, updated using Marshall Valuation Service® update multipliers, and adjusted as shown in the Marshall Valuation Service® guide as necessary for site terrain, number of building levels, geographic locality, and other listed factors. This standard does not apply to the costs of renovation or the fitting out of shell space.

(ii) If the projected cost per square foot exceeds the Marshall Valuation Service® benchmark cost by 15% or more, then the applicant's project shall not be approved unless the applicant demonstrates the reasonableness of the construction costs. Additional independent construction cost estimates or information on the actual cost of recently constructed surgical facilities similar to the proposed facility may be provided to support an applicant's analysis of the reasonableness of the construction costs.

Since the proposed ASF seeks to fit out shell space on the first floor of the proposed Midtown Ambulatory Care Building, this standard is not applicable.

(8) Financial Feasibility.

A surgical facility project shall be financially feasible. Financial projections filed as part of an application that includes the establishment or expansion of surgical facilities and services shall be accompanied by a statement containing each assumption used to develop the projections.

(a) An applicant shall document that:

(i) Utilization projections are consistent with observed historic trends in use of each applicable service(s) by the likely service area population of the facility;

(ii) Revenue estimates are consistent with utilization projections and are based on current charge levels, rates of reimbursement, contractual adjustments and discounts, bad debt, and charity care provision, as experienced by the applicant facility or, if a new facility, the recent experience of similar facilities;

(iii) Staffing and overall expense projections are consistent with utilization projections and are based on current expenditure levels and reasonably anticipated future staffing levels as experienced by the applicant facility, or, if a new facility, the recent experience of similar facilities; and

UMMSC states that:

- The financial projections for the proposed ASF are based on the historic experience of the existing outpatient surgery operations of UMMC and UMMC-Midtown that are projected to shift to the proposed ASF. (DI #2, p. 43). The applicant assumes “a conservative growth rate in case volumes based on population growth of 0.61% for the ASF’s projected service area;”
- Its estimates of revenue are “based on the utilization projections by procedure code in combination with a fee schedule preliminarily set at 250% of Medicare’s reimbursement rate,” which the applicant states is consistent with other ASFs in the area. (DI #2, p. 43). The applicant indicates its charge structure uses an inflated rate that is common in the ASF industry, stating:

Either through their third party payer’s contractually adjusted rate or as a self-pay patient, patients would generally not pay the full charge, but rather would pay a reduced amount. Since Medicare is expected to be the dominant payer at UM Midtown SurgiCenter, reimbursement at the ASF is based on the same distribution of surgical cases by procedure code in combination with the Medicare fee schedule. The Medicare fee schedule was compared to the fee schedules of the next two highest volume payers, Blue Cross Blue Shield and Medicaid. These fee schedules were proportionately higher and lower than the Medicare fee schedule, and therefore the Medicare fee schedule was determined to be a reasonable and conservative basis for calculation of ASF reimbursements. Based on this described methodology for determining reimbursement, contractual allowances and discounts make up the primary variance between gross and net revenue at the ASF[;]
(DI #2, pp. 43-44).

- The bad debt and charity care levels are based on the current mix of cases experienced at UMMC and UMMC-Midtown; and
- The ASF staffing plan has been developed to accommodate the utilization levels projected upon opening and modeled to accommodate the additional projected growth. Salaries are based on estimates for this geographic area and for each

specific position. Fringe benefits are included at 25% of salary to include both standard benefits as well as payroll taxes. (DI #2, p. 44).

Staff concludes that UMMSC's utilization, revenue, and expense projections are consistent with the experience of the proposal's sponsors, and comply with Subparagraphs 8(a)(i),(ii), and (iii) of this standard.

(iv) The facility will generate excess revenues over total expenses (including debt service expenses and plant and equipment depreciation), if utilization forecasts are achieved for the specific services affected by the project within five years of initiating operations.

UMMSC projects the ASF will turn a profit by the first year of operation in FY 2023, and continue to make a profit in the next two fiscal years.⁹ Staff concludes that the applicant's projection of revenues over expenses is reasonable and that UMMSC complies with this subparagraph of the standard.

(b) A project that does not generate excess revenues over total expenses even if utilization forecasts are achieved for the services affected by the project may be approved upon demonstration that overall facility financial performance will be positive and that the services will benefit the facility's primary service area population.

Since staff has concluded that UMMSC is likely to achieve excess revenues for the proposed ASF's first three years of operation, this standard is not applicable.

(9) Impact.

(a) An application to establish a new ambulatory surgical facility shall present the following data as part of its impact assessment, in addition to addressing COMAR 10.24.01.08G(3)(f):

(i) The number of surgical cases projected for the facility and for each physician and practitioner;

(ii) A minimum of two years of historic surgical case volume data for each physician or practitioner, identifying each facility at which cases were performed and the average operating room time per case. Calendar year or fiscal year data may be provided as long as the time period is identified and is consistent for all physicians; and

The applicant submitted letters from the Chiefs of Otorhinolaryngologic, General, Ophthalmic, and Orthopaedic Surgery that listed the historical and projected case volumes for each physician and the total surgical case minutes by surgical specialty that are expected to shift from

⁹ See the discussion at the *Viability* criterion, *infra*, pp. 22-23.

UMMC and UMMC-Midtown to the proposed ASF. (DI #2, Exh. 13). The data submission included three years of historical surgical case volume data and average operating room time per case performed at both UMMC and UMMC-Midtown for the period of FY 2017 through FY 2019. (DI #2, Table 4, p. 31 and Table 5, p. 33).

Staff concludes that the applicant satisfies Subparagraphs (a)(i) and (ii) of the standard.

(iii) The proportion of case volume expected to shift from each existing facility to the proposed facility.

UMMC and UMMC-Midtown are the only health care facilities projected to experience an impact as a result of the development of UMMSC. These general hospitals intend to shift of case volume to the ASF. UMMC also intends to shift outpatient surgery cases to UMMC-Midtown as part of its clinical integration strategy and to relieve the strain on its ORs, which the applicant states operate in excess of full capacity, as defined in the Surgical Services Chapter of the State Health Plan.

The applicant projects that UMMC will shift 5.2% of its surgical volume (defined in OR minutes) to the proposed ASF and another 13.9% to UMMC-Midtown (for a total transfer of 19.1%).¹⁰ Meanwhile, UMMC-Midtown is expected to shift 47.2% of its OR minutes to the proposed ASF. That outmigration of volume is expected to be replaced by the shift of over 2,200 cases and 465,000 OR minutes from UMMC to UMMC-Midtown.

Staff concludes that UMMSC meets this subparagraph of the standard.

(b) An application shall assess the impact of the proposed project on surgical case volume at general hospitals:

(i) If the applicant's needs assessment includes surgical cases performed by one or more physicians who currently perform cases at a hospital within the defined service area of the proposed ambulatory surgical facility that, in the aggregate, account for 18 percent or more of the operating room time in use at a hospital, then the applicant shall include, as part of its impact assessment, a projection of the levels of use at the affected hospital for at least three years following the anticipated opening of the proposed ambulatory surgical facility.

Paragraph (b) of this standard requires that an applicant for an ASF provide an assessment of the impact that a new ASF would have on a hospital that would expect to lose as much as 18% of its operating room time due to a volume shift from that hospital to the new ASF. The impact

¹⁰ UMMC's analysis and response to this standard were limited to its 23 mixed-use general purpose operating rooms. The applicant states that the cases performed in the twelve special purpose ORs were not included in this analysis, since the surgical procedures performed in these special purpose ORs would remain at UMMC and not move to UMMSC. The applicant states that the twelve mixed-use special purpose ORs are used primarily for trauma, hybrid, and pediatric cases, and for cardiac surgery procedures. (DI #2, p. 46).

assessment must include a projected level of use at the affected hospital for at least three years following the opening of the proposed ASF.

As described above, the projected volume shift from both UMMC and UMMC-Midtown would exceed that 18% threshold (although the shift from UMMC due to ASF alone is just 5.2%). This shift, however, is intentional and strategic, intended to move surgical volume to a lower cost setting; reduce overutilization of the UMMC ORs; and advance UMMS’s clinical integration of UMMC and Midtown hospitals. (DI #2, p. 51).

Tables III-4 and III-5 that follow show the existing and post-project capacities of the UMMC and UMMC-Midtown hospitals. The tables also show the facilities’ utilization in the last year of complete data available to the applicant and the projected utilization of the facilities after the proposed ASF is opened and the intentional case-shifting from UMMC to UMMC Midtown is activated.

Table III-4: UMMC OR Capacity and Utilization

		Actual	Projected (Post Project)		
		FY 2019	FY 2023	FY 2024	FY 2025
Capacity	Number of Mixed-Use, General Purpose ORs	23	23	23	23
	Optimal OR Capacity Time (114,000 minutes/OR/year)	2,622,000	2,622,000	2,622,000	2,622,000
Utilization	Total Minutes (including turnaround time)	3,330,345	2,757,822	2,774,645	2,791,570
	ORs Needed @ Optimal Capacity	29.2	24.2	24.3	24.5
	% of Optimal OR Use	127%	105%	106%	106%

Source: DI#2, pp. 45-51.

Table III-5: UMMC-Midtown OR Capacity and Utilization

		Actual	Projected, Post-Project		
		FY 2019	FY 2023	FY 2024	FY 2025
Capacity	Number of Mixed-Use, General Purpose ORs	10	8*	8	8
	Optimal OR Capacity Time (114,000 minutes/OR/year)	1,140,000	912,000	912,000	912,000
Utilization	Total Minutes (including turnaround time)	589,388	795,465	800,317	805,199
	ORs Needed @ Optimal Capacity	5.2	7.0	7.0	7.1
	% of Optimal OR Use	52%	87%	88%	88.0%

* As part of the capacity reorganization enabled by this project UMMC-Midtown plans to close two of its ten ORs, converting them to for four Post Anesthesia Care Unit (PACU) beds.

Source: DI #2, pp. 45-51.

This information suggests that the proposed project, and changes in the existing OR inventory of UMMC-Midtown, will have a positive impact on the two UMMS hospitals, including:

- Utilization at UMMC’s mixed-use general purpose ORs will be reduced to levels more in line with comfortable capacity, as defined in the Surgical Services Chapter;
- Capacity use of the mixed-use general purpose ORs at UMMC-Midtown, which is low, will improve because of a reduction in the OR inventory; and
- Shifting outpatient cases from UMMC to UM Midtown SurgiCenter and UMMC-Midtown will, according to the applicant, allow UMMC to accommodate additional cases that it has turned away in recent years due to insufficient OR capacity.¹¹ The applicant documented 268 lost surgical admissions that it estimated would consume over 94,000 minutes of OR time in 2019.

Staff concludes that the applicant provided a thorough analysis and description of the impact on the affected hospitals, consistent with the standard.

(ii) The operating room capacity assumptions in Regulation .07A of this chapter and the operating room inventory rules in Regulation .07C of this chapter shall be used in the impact assessment.

The applicant’s calculations and responses incorporate the capacity and inventory assumptions in COMAR 10.24.11.07A and .07C.

Staff concludes that the impact on the hospitals affected by this project is a positive one and that the applicant complies with the Impact standard.

(10) Preference in Comparative Reviews.

This is not a comparative review, so this standard is not applicable.

B. Need

COMAR 10.24.01.08G (3)(b). The Commission shall consider the applicable need analysis in the State Health Plan. If no State Health Plan need analysis is applicable, the Commission shall consider whether the applicant has demonstrated unmet needs of the population to be served, and established that the proposed project meets those needs.

This criterion directs the Commission to consider the “applicable need analysis in the State Health Plan,” which, in this instance, is found in the Surgical Services Chapter at COMAR 10.24.11.05B(2).¹² As previously discussed the proposed ASF satisfies the Chapter’s need standard. Staff concludes that UMMC has addressed the need for three ORs within the context

¹¹ In FY 2019 UMMC was unable to accommodate 268 surgical admissions from Maryland ExpressCare due to lack of capacity in its ORs. The Maryland ExpressCare service includes a Transfer and Communications Central Access Center that provides 24/7 access to physician consults and transportation coordination services, and has access to bed utilization information on UMMS facilities along with other Maryland hospitals and coordinates patient transfers on behalf of UMMC and other UMMS and Maryland hospitals. (DI #2, p. 52).

¹² See discussion of the Need standard, *supra*, pp. 10-13.

of its objectives for reconfiguring use of UMMC and UMMC-Midtown for outpatient surgery, using the institutional capacity use assumptions of the Surgical Services Chapter.

C. Availability of More Cost-Effective Alternatives

COMAR 10.24.01.08G(3)(c). The Commission shall compare the cost effectiveness of the proposed project with the cost effectiveness of providing the service through alternative existing facilities which have submitted a competitive application as part of a comparative review.

UMMSC states that the proposed project addresses the following objectives:

- It creates a cost-effective ambulatory surgical facility for patients obtaining outpatient surgery at UMMC and UMMC-Midtown and their surgical practitioners. This will accommodate the efforts by insurance carriers to reduce charges for surgical services by allowing performance of a higher proportion of outpatient surgery in the more cost effective ASF setting rather than the hospital. (DI #2, p. 59); and
- It helps in alleviating the overutilization of the operating rooms at UMMC, identified by the applicant as recently operating in excess of full capacity, as defined by the Surgical Services Chapter. This situation is described as sometimes resulting in outpatient cases being cancelled or rescheduled in order to accommodate emergent and higher acuity surgical cases. (DI #2, p. 59).

The applicant states that UMMC began exploring potential ambulatory surgery capacity to address these objectives several years ago. The primary consideration in selecting a site was to find one within two miles of the UMMC-Midtown campus in a convenient location with adequate parking. Given that the facility's volume would originate from surgical cases currently performed at UMMC and UMMC-Midtown by UM School of Medicine (SOM) faculty physicians who are "fully engaged in the tri-part mission of clinical care, education, and research [with]...demanding schedules," a location close to these two hospitals was a non-negotiable feature. (DI #2, p. 60).

The applicant conducted a search of available properties and spaces and the applicant's planning team "evaluated more than two dozen locations over a five-year period." (DI #2, p. 60). The applicant states that a majority of sites were eliminated due to either "a lack of adequate parking, inadequate infrastructure that would require exorbitant renovation costs, or the lack of sufficient space for the requisite support space."

UMMC considered four alternatives for adding ambulatory surgery capacity. Besides the UMMSC location, the applicant considered the following three alternatives:

- **Purchase an existing multi-OR ASF** – The applicant reviewed the Ambulatory Surgery Public Use Database on the MHCC website¹³ to identify and purchase an existing multi-OR ASF in Baltimore City. Since the database did not identify an existing ASF that adequately addressed the factors for the project in this jurisdiction, UMMSC "abandoned this option." (DI #2, p. 60).

¹³ Located at: https://mhcc.maryland.gov/mhcc/pages/hcfs/hcfs_amsurg/hcfs_amsurg.aspx.

- **Outpatient Radiology Center** – The applicant identifies a site previously used as an outpatient radiology center located at the corner of Charles and Chase Streets. While the site would be large enough to house the ORs, procedure rooms, and required support services, the applicant would need to gut and rebuild the facility, improve the mechanical infrastructure, and replace the air handling system. This site was rejected due to the \$4.3 million cost to modify the space and infrastructure coupled with the less convenient location and limited parking. (DI #2, p. 60).
- **Former Physician Practice Site** – This site located in the 900 block of St. Paul Street had previously served as a physician practice. The applicant states that while the space could be modified to house ORs, procedure rooms, and required support services, it would not accommodate the number of ORs and procedure rooms planned for the proposed project. In addition, it would need to be gutted and rebuilt to provide the correct room sizes and required adjacent spaces, and the mechanical infrastructure would need to be replaced. (DI #2, p. 61). The estimated cost to gut and rebuild the space, upgrade the structure, and install a new mechanical system would be approximately \$4.8 million. The site also had limited parking.
- **Midtown Ambulatory Care Building** –The applicant states that this selected option “incorporates industry best practices in patient safety and infection prevention,” and provides sufficient space for three ORs and two procedure rooms. The MACB’s design supports the necessary mechanical infrastructure for the ASF, and the site is easily accessible with parking located within the building. The cost of fitting out the shell space is approximately \$3.6 million, which is less than the cost for either renovating the outpatient radiology center or the physician practice. Therefore, UMMSC selected this alternative as the most cost effective choice.

The applicant concludes that the development of the ASF on the UMMC-Midtown campus best meets its objectives, allowing UMMS providers to provide surgical services to patients in a more cost effective manner, while alleviating the overutilization of the operating rooms at UMMC. (DI #2, p. 59)

Staff recommends that the Commission find that the proposed project at the MACB is the most cost-effective alternative.

D. Viability of the Proposal

COMAR 10.24.01.08G(3)(d). The Commission shall consider the availability of financial and nonfinancial resources, including community support, necessary to implement the project within the time frames set forth in the Commission's performance requirements, as well as the availability of resources necessary to sustain the project.

Availability of Resources to Implement the Proposed Project

The applicant states that the project, with an estimated cost of \$9,300,000,¹⁴ will be funded with cash from operations. (DI #10, p. 2). UMMSC provided the University of Maryland Medical System’s audited consolidated financial statements, which includes information on its subsidiaries, including UM Midtown Health. The financial statements document the availability of sufficient cash resources to fund the project. (DI #2, Exh. 17, pp. 66-67). FPI provided its audited financial statements which show sufficient cash resources to provide the funding for its 5% of the project cost. This amounts to approximately \$465,000 (DI #2, Exh. 18).

The applicant states that there is strong support within the local medical community for the project, as shown by letters included in the application. (DI #2, Exh. 13, 19). The physician directors or administrators of four departments¹⁵ that will transfer or expand surgical services to UMMSC each submitted correspondence regarding the ability to shift hospital-based surgical cases from both general hospitals to the proposed ASF. Local support was received from the Mayor of Baltimore, Baltimore City council members, state legislature, community development organizations, and local religious institutions.

The proposed ASF is projected to require 38.5 full-time equivalent (FTE) employees, including one director and one manager, 13.8 registered nurses, 16.5 technicians, and 8.2 support staff). (DI #10, Exhibit 23, Table L.).

Availability of Resources to Sustain the Proposed Project

UMMSC’s Revenue and Expense Statement is summarized in Table III-6, below. The table shows that UMMSC projects profitable operation of the ASF at initiation of operations. (DI #2, p. 67, Table 4).

Table III-6: UMMSC Projected Volumes, Revenues, and Expenses

By Fiscal Year	Projected Years (Ending with first full year at full utilization)		
	2023	2024	2025
Cases	3,262	3,282	3,302
Total Net Operating Revenue	\$9,725,647	\$9,979,486	\$10,239,951
Total Operating Expenses	\$9,100,571	\$9,266,144	\$9,436,858
Net Income from Operation	\$625,075	\$713,342	\$803,093

Source: DI #2, Table 8-UM Midtown SurgiCenter –Volume , p. 37 and Table 4-Revenue and Expense Statement, p. 67-68.

Staff recommends that the Commission find that the proposed project is financially viable.

E. Compliance with Conditions of Previous Certificates of Need

¹⁴ The UMMSC project budget estimate is in Appendix 4.

¹⁵ Includes the surgical departments of ENT, general surgery, ophthalmology, and orthopedic surgery.

COMAR 10.24.01.08G(3)(e). An applicant shall demonstrate compliance with all terms and conditions of each previous Certificate of Need granted to the applicant, and with all commitments made that earned preferences in obtaining each previous Certificate of Need, or provide the Commission with a written notice and explanation as to why the conditions or commitments were not met.

The UM Midtown SurgiCenter is a newly formed entity and this proposed project is the first time it has applied for a CON. (DI #2, p. 69). The Commission approved and issued a CON (Docket No. 07-24-2190) on July 19, 2007 to Maryland General Hospital, Inc., the forerunner to the UMMC-Midtown, “to construct a seven-story building addition to allow replacement of its surgical department, intensive care unit, laboratory, and pharmacy department, and undertake renovations secondary to the new construction.” (DI #2, Exh. 20, p. 31). The CON was approved at a cost of \$57,615,543 with five conditions. The applicant states the project was completed in compliance with all applicable terms and conditions. (DI #2, p. 69).

Staff reviewed the progress of Maryland General Hospital in completing this project and did not find any issues with the applicant receiving its first use approval. Therefore, staff concludes that this 2007 project was implemented in compliance with all terms and conditions of its CON and complies with this standard.

Staff concludes that the applicant has met this criterion.

F. Impact

COMAR 10.24.01.08G(3)(f) Impact on Existing Providers and the Health Care Delivery System. An applicant shall provide information and analysis with respect to the impact of the proposed project on existing health care providers in the health planning region, including the impact on geographic and demographic access to services, on occupancy, on costs and charges of other providers, and on costs to the health care delivery system.

Impact on Other Providers

As discussed regarding the Impact standard earlier in this report, *supra*, pp. 16-19, the primary impact of the project is on the two hospitals affiliated with the applicant, UMMC and UMMC-Midtown, and will give UMMS an ability to meet payors’ demands to provide surgery in a lower cost outpatient setting and also provide a resource to help mitigate the pressure on hospital ORs that are currently operating at a level above optimal capacity. Staff believes it is unlikely to have a substantive impact on other existing providers of outpatient surgery services in central Maryland. (DI #2, Exh. 14).

Impact on the payer mix

UMMSC expects the proposed ASC will not change, in the aggregate, the payor mix of outpatient surgery cases currently performed within the UMMS Baltimore hospitals. The projection of the cases that will shift from its two affiliated hospitals was based on the practices of existing individual physicians. The payor mix of their practices is not expected to change.

Table III-7 UMMSC Projected Payor Mix

Percent of Total Revenue by Payor	FY 2023	FY 2024	FY 2025
Medicare	35%	35%	35%
Medicaid	19%	19%	19%
Blue Cross	27%	27%	27%
Commercial Insurance	13%	13%	13%
Self-Pay	1%	1%	1%
Other	6%	6%	6%
TOTAL	100%	100%	100%

Source: DI #2, Table 4-Revenue and Expense Statement, p. 68.

Impact on access to health care services and on costs to the health care delivery system

The applicant states that UMMSC will be a lower charge setting for outpatient surgery than UMMC or UMMC-Midtown. It projects that shifting surgical cases (with 3,262 cases estimated to shift in its first year of operation) that are medically appropriate for performance in an ASF from the UMMS hospitals will lower health care delivery system costs. (DI #2, pg 58, Table 2). Charges for patients and payors will be significantly lower at the proposed UMMSC than at either UMMC or UMMC-Midtown, which will mitigate financial barriers and improve financial accessibility for the service area population. Presently, the only ambulatory surgery center in Baltimore City with more than 1 OR is a cosmetic surgery facility, so the proposed project will be a boon to access.¹⁶

Staff concludes that this project proposed by UMMSC will not have a negative impact on other existing providers of outpatient surgery and will enhance the geographic access to ambulatory surgery. It is also likely to have some positive impact on financial access to services and to have a positive impact of reducing the cost of care in the service area. Thus, staff recommends that the Commission find that the project's impact will be positive.

IV. SUMMARY AND STAFF RECOMMENDATION

Based on its review of the proposed project's consistency with the Certificate of Need review criteria, at COMAR 10.24.01.08G(3)(a)-(f), and with the applicable standards in the General Surgical Services Chapter of the State Health Plan, at COMAR 10.24.11.05, Commission staff recommends that the Commission authorize a Certificate of Need for the project. The project complies with the applicable State Health Plan standards, is needed, is a cost-effective approach to meeting the project objectives, is viable, will have a positive impact on the applicant's ability to provide outpatient surgery without adversely affecting costs and charges or other providers of surgical care, and will benefit service area residents who seek ambulatory surgery services.

¹⁶ From MHCC's 2017 Maryland Freestanding Ambulatory Surgery Facility Survey

Accordingly, Staff recommends that the Commission **APPROVE** the University of Maryland Midtown SurgiCenter's application for a Certificate of Need authorizing the fitting out of shell space on the first floor addition of the Midtown Ambulatory Care Building in Baltimore City with the following conditions:

1. The University of Maryland Midtown SurgiCenter shall provide to the public, upon inquiry or as required by applicable regulations or law, information concerning charges for the full range of surgical services provided.
2. The University of Maryland Midtown SurgiCenter shall provide, at a minimum, charity care with a value equivalent to 0.35% of its operating expenses.

**IN THE MATTER OF
UNIVERSITY OF MARYLAND
MIDTOWN SURGICENTER, LLC**

* BEFORE THE
*
* MARYLAND HEALTH
*
* CARE COMMISSION

Docket No. 20-24-2442

FINAL ORDER

Based on the analysis and conclusions contained in the Staff Report and Recommendation, it is this 15th day of October, 2020, by a majority of the Maryland Health Care Commission, **ORDERED:**

That the application by the University of Maryland Midtown SurgiCenter for a Certificate of Need to establish a three-operating room ambulatory surgical facility at 800 Linden Avenue in Baltimore City, at an estimated cost of \$9,326,107, is hereby **APPROVED**, subject to the following conditions:

1. The University of Maryland Midtown SurgiCenter shall provide to the public, upon inquiry or as required by applicable regulations or law, information concerning charges for the full range of surgical services provided.
2. The University of Maryland Midtown SurgiCenter shall provide, at a minimum, charity care with a value equivalent to 0.35% of its operating expenses.

MARYLAND HEALTH CARE COMMISSION

APPENDIX 1

Record of the Review

MARYLAND HEALTH CARE COMMISSION

APPENDIX 1: Record of the Review

Docket Item #	Description	Date
1	Commission staff acknowledged receipt of University of Maryland Midtown SurgiCenter's letter of intent to file Certificate of Need.	4/8/2020
2	Thomas C. Dame, Esq., and Mallory M. Regenbogen, Esq., Gallagher Evelius & Jones, submitted a Certificate of Need application on behalf of University of Maryland Midtown SurgiCenter, LLC, proposing the development of a 3 operating room and 2 procedure room ASF (Matter No. 20-24-2442) located in Baltimore City, Maryland.	6/5/2020
3	Thomas C. Dame, Esq., and Mallory M. Regenbogen, Esq., submitted supplemental information for the CON application.	6/19/2020
4	Commission staff acknowledged receipt of CON application.	6/24/2020
5	Following completeness review, Commission staff found the application incomplete, and requested additional information.	6/26/2020
6	Mallory M. Regenbogen, Esq., requests via e-mail an extension to file responses to completeness questions.	7/9/2020
7	Commission staff requested publication of notification of receipt of the University of Maryland Midtown SurgiCenter's proposal in the <i>Baltimore Sun</i> .	7/10/2020
8	Commission staff requested publication of notification of receipt of the University of Maryland Midtown SurgiCenter's proposal in the <i>Maryland Register</i> .	7/10/2020
9	Commission received a copy of the notice of the receipt of application as published in <i>Baltimore Sun</i> .	7/11/2020
10	Commission staff received responses to the request for additional information.	7/27/2020
11	Commission staff notified the University of Maryland Midtown SurgiCenter that its application is docketed for formal review on August 28, 2020.	8/7/2020
12	Commission staff requested publication of notice of formal start of review for the University of Maryland Midtown SurgiCenter proposal in the <i>Baltimore Sun</i> .	8/7/2020
13	Commission staff requested publication of the notice of formal start of review in the <i>Maryland Register</i> .	8/7/2020
14	Commission received a copy of the notice of formal start of review as published in <i>Baltimore Sun</i>	8/10/2020
15	Mallory M. Regenbogen, Esq., submits via e-mail the level of charity care provided by Ambulatory Surgery Center in Howard County.	10/8/2020

APPENDIX 2

**Excerpted CON Standards for General Surgical Services from
COMAR 10.24.11, the Surgical Services Chapter of the State Health Plan**

Excerpted CON Standards for General Surgical Services

From State Health Plan Chapter 10.24.11

Each of these standards prescribes policies, services, staffing, or facility features necessary for CON approval that MHCC staff have determined the applicant has met. Also included are references to where in the application or completeness correspondence the documentation can be found.

<u>STANDARD</u>	<u>APPLICATION REFERENCE (Docket Item #)</u>
<p><u>.05A(4) Quality of Care</u> A facility providing surgical services shall provide high quality care.</p> <p>(a) An existing hospital or ambulatory surgical facility shall document that it is licensed, in good standing, by the Maryland Department of Health.</p> <p>(c) An existing ambulatory surgical facility or POSC shall document that it is:</p> <p>(i) In compliance with the conditions of participation of the Medicare and Medicaid programs;</p> <p>(ii) Accredited by the Joint Commission, the Accreditation Association for Ambulatory Health Care, the American Association for Accreditation of Ambulatory Surgery Facilities, or another accreditation agency recognized by the Centers for Medicare and Medicaid as acceptable for obtaining Medicare certification; and</p> <p>(iii) A provider of quality services, as demonstrated by its performance on publicly reported performance measures, including quality measures adopted by the Centers for Medicare and Medicaid Services. The applicant shall explain how its ambulatory surgical facility or each POSC, as applicable, compares on these quality measures to other facilities that provide the same type of specialized services in Maryland.</p> <p>(d) A person proposing the development of an ambulatory surgical facility shall demonstrate that the proposed facility will:</p> <p>(i) Meet or exceed the minimum requirements for licensure in Maryland in the areas of administration, personnel, surgical services provision, anesthesia services provision, emergency services, hospitalization, pharmaceutical services, laboratory and radiologic services, medical records, and physical environment. and</p> <p>(ii) Obtain accreditation by the Joint Commission, the Accreditation Association for Ambulatory Health Care, or the American Association for Accreditation of Ambulatory Surgery Facilities within two years of initiating service at the facility or voluntarily suspend operation of the facility.</p>	<p align="center">DI #2, pp. 26-27</p>

<p><u>.05A(5) Transfer Agreements.</u></p> <p>(a) Each ASF shall have written transfer and referral agreements with hospitals capable of managing cases that exceed the capabilities of the ASF.</p> <p>(b) Written transfer agreements between hospitals shall comply with Department of Health regulations implementing the requirements of Health-General Article, 19-308.2.</p> <p>(c) Each ASF shall have procedures for emergency transfer to a hospital that meet or exceed the minimum requirements in COMAR 10.05.05.09.</p>	<p>DI #2, pp. 27-28</p>
<p><u>.05B(4) Design Requirements.</u></p> <p>Floor plans submitted by an applicant must be consistent with the current Facility Guidelines Institute’s Guidelines for Design and Construction of Health Care Facilities (FGI Guidelines):</p> <p>(a) A hospital shall meet the requirements in current Section 2.2 of the FGI Guidelines.</p> <p>(b) An ASF shall meet the requirements in current Section 3.7 of the FGI Guidelines.</p> <p>(c) Design features of a hospital or ASF that are at variance with the current FGI Guidelines shall be justified. The Commission may consider the opinion of staff at the Facility Guidelines Institute, which publishes the FGI Guidelines, to help determine whether the proposed variance is acceptable.</p>	<p>DI #2, Exh. 15</p>
<p><u>.05B(5) Support Services.</u></p> <p>Each applicant shall agree to provide laboratory, radiology, and pathology services as needed, either directly or through contractual agreements.</p>	<p>DI #2, p. 40</p>

APPENDIX 3:

Project Floor Plans

Floor Plan – UM Midtown SurgiCenter



- The 1st floor of the Midtown Outpatient Tower is planned for an unregulated ambulatory surgery center
- Projected cases/procedure currently performed at Midtown and Downtown Campuses.
- The current floorplan includes:
 - 3 Operating Rooms
 - 335, 362, and 378 sqft
 - 2 Procedural Rooms
 - 273 and 277 sqft
 - 13 Prep/Recovery Bays
- Dedicated support services such as sterile processing, scope cleaning, and etc.



Our Values

Respect and Integrity | Teamwork and Collaboration | Excellence and Innovation | Diversity and Inclusion

APPENDIX 4:

University of Maryland Midtown SurgiCenter

Project Budget

**Appendix 4:
UM Midtown SurgiCenter Project Budget**

Use of Funds	Total
Renovations	
Building	\$3,562,000
Fixed equipment	\$750,000
Architect/engineering fees	\$377,675
Permits (building, utilities, etc.)	\$25,000
Subtotal Current Capital Costs	\$4,714,675
Other Capital Costs	
Movable equipment	\$3,750,000
Contingency allowance	\$150,000
IT (Cabling, telecom, PCs, etc.)	\$250,000
Subtotal	\$4,150,000
Inflation allowance	\$358,488
Total Capital Costs	\$9,223,163
Legal Fees	\$75,000
Non-Legal Consultant Fees	\$27,944
Subtotal –Financing Cost and Other Cash Requirements	\$102,944
Total Uses of Funds	\$9,326,107
Sources of Funds	
Cash	\$9,326,107

Source: DI #10, Exh. 23, Table E.

APPENDIX 5:

**Health Services Cost Review Commission Letter Ruling
Re: Rate Regulation**

State of Maryland
Department of Health

Adam Kane
Chairman

Joseph Antos, PhD
Vice-Chairman

Victoria W. Bayless

Stacia Cohen

John M. Colmers

James N. Elliott, M.D.

Sam Malhotra



Katie Wunderlich
Executive Director

Allan Pack, Director
Population Based
Methodologies

Chris Peterson, Director
Payment Reform &
Provider Alignment

Gerard J. Schmith, Director
Revenue & Regulation
Compliance

William Henderson, Director
Medical Economics &
Data Analytics

Health Services Cost Review Commission

4160 Patterson Avenue, Baltimore, Maryland 21215

Phone: 410-764-2605 · Fax: 410-358-6217

Toll Free: 1-888-287-3229

hsrc.maryland.gov

June 4, 2020

Ms. Alison G. Brown
Interim President
UMMC- Midtown Campus
827 Linden Avenue
Baltimore, Maryland 21201

RE: Determination Request - UMMC-Midtown Outpatient Tower

Dear Ms. Brown:

This letter is written on behalf of the staff of the Health Services Cost Review Commission ("HSCRC") and responds to UMMC-Midtown Campus' (Midtown) recent written request for a determination as to whether the Health Services Cost Review Commission will assert rate setting jurisdiction over the services to be provided in the future UMMC Midtown Outpatient Tower (MOT) to be located at 827 Linden Avenue, Baltimore, Maryland. This 10-story building will include physician offices, regulated clinics, a Community Health Resource Center, a Conference Center, an unregulated Ambulatory Surgery Center (ASC), and additional parking. It is anticipated that the MOT will open in the fall of 2021.

According to Midtown, the new building allows for expansion and replacement of obsolete structures and is part of a longer-term campus master plan. It will serve as a visible commitment by Midtown to West Baltimore, the City, and the region as an anchor institution. The modern facility will enhance and build loyalty among patients, providers, employees, and the community.

The site of the future MOT is located on the Midtown's campus, however, there is no physical connection between the MOT and Midtown's principal hospital buildings. The first floor of the MOT will contain the main lobby and the unregulated ASC. The parking garage will be on Floors 2 through 6. The regulated Infectious Disease Clinic will be located on floor 7 and the regulated Diabetes & Endocrinology Clinic will be located on floor 8. Private physician practices providing Cardiology, Pulmonary, and GI services will be located on floor 9. Floor 10 is empty shell space.

Access to the building will be through the main lobby or through the parking garage. Appropriate signage will be placed in the main lobby and at the patient check-in area identifying the ASC as an unregulated provider. The signage for the ASC will not have the UMMC-Midtown branding or logo. Signage at the elevators and on floors 7 and 8 housing the regulated clinics will have UMMC-Midtown's branding and logo to identify the services as regulated.

Midtown has also agreed that there will be no duplication of the services provided in the ASC in the Hospital, i.e., once the ASC opens, Midtown will no longer provide as scheduled non-emergent services the services provided in the ASC.

Hospital representatives have pledged to notify third party payers and existing patients of the status of the ASC. All ASC services will be billed on CMS 1500 with a nonhospital site of service. Additionally, a charity policy consistent with that of UMMC will be extended to ACS patients.

Based on consideration of the criteria of COMAR 10.37.10.07-1, as well as your representations, staff has concluded that from a rate setting perspective, the proposed ASC would not be subject to HSCRC rate setting jurisdiction. This determination is conditioned on your pledge to notify staff in writing, that if you contemplate changing the configuration of the outpatient services in the MOT which may affect staff's determination, you will notify staff at least 60 days before initiation of any such change. Failure to obtain prior staff approval, or a violation of this determination, may subject Midtown to fines for inaccurate reporting under COMAR 10.37.01.03R and paybacks for inappropriate charges. Additionally, at least 60 days prior to operationalizing these outpatient services, Midtown will notify staff of the intended name of the MOT and the ASC and of the proposed signage. Lastly, a request for determination does not satisfy the separate requirement for the Hospital under its Global Budget Agreement to notify the HSCRC of any changes in ownership and control and related service relocations.

If you have any further questions, I would be pleased to discuss them with you.

Sincerely,



Dennis N. Phelps
Deputy Director,
Audit & Compliance