



**Department  
of Health**

# **Ambulatory Surgery Centers (ASC) :**

**Revised Department Policies**

**Based on PHHPC Meeting Input: May 15 and June 6, 2019**

**Impact on Community Hospitals in CON Review**

PHHPC Planning Committee

Date: July 18, 2019

# Problem Statement

- The Department's current public need regulation and policy leans toward approval of new ASCs as they offer consumers choice of a safe, lower cost, and more convenient setting for same day surgeries. However it does not provide flexibility to differentiate factors present in different geographies across NYS.
- In densely populated areas of the State, characterized by large and multiple health systems in a planning area, the growth of ASCs tends not to threaten the broader delivery of essential community health care services.
- In rural areas of the State characterized by the presence of a Sole Community Hospital or a Critical Access Hospital, the financial impact of a new ASC can impact the continued availability of essential community health care services.



# Current ASC Review Criteria

## Public Need Regulation -NYCRR 10 Section 709.5

- Documentation that proposed facility/service will be sufficiently used to make it financially feasible.
- Documentation that proposed facility/service will increase access, including to the underserved.
- Documentation that proposed facility/service will increase availability of services, including a written policy to provide charity care.
- Documentation that proposed facility is willing and able to safely serve patients in accordance with NYCRR 10 Part 755.

# Current ASC CON Review Criteria

## Policy

- Soliciting feedback from surrounding hospitals as to the impact the proposed FASC would have on their operations/financial viability.
- Burden of proof is on the surrounding hospital not the applicant (with the Department verification) that the financial impact of the FASC would result in the closure of the hospital in order to recommend disapproval of the proposed FASC.
- Limited Life of five years on all newly established FASCs where there is no hospital direct owner.
- 2% Charity Care and an appropriate percentage Medicaid.



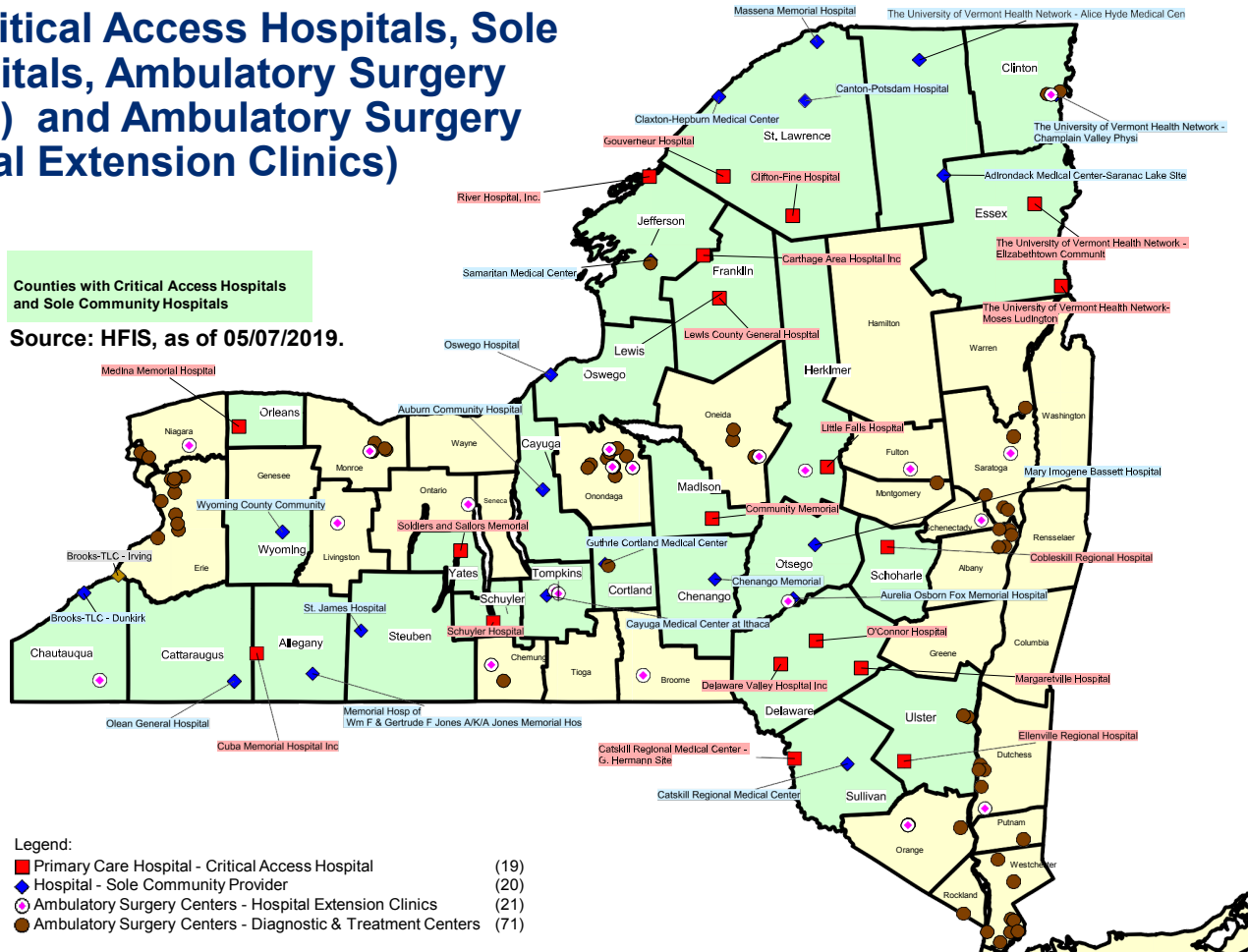
# PHHPC Meetings - Key Take-aways

- Consensus to consider not only the financial feasibility of the proposed FASC but other factors that may threaten continued access to essential health care community services when a proposed FASC wishes to enter a community.
- Consider broader application of the public need criteria that requires the FASC to document increased access to health care services, particularly for certain rural areas of the State where there are Critical Access Hospitals, and/or Sole Community Hospital Providers, and the FASC has a negative impact on the hospital operations.
- Policy should continue to encourage good faith efforts at collaboration between community hospitals and proposed FASC providers for the benefit of the public (to retain surgical specialists in an area, avoid duplicative capital investment, take advantage of new technology, lower cost setting).

# Distribution of Critical Access Hospitals, Sole Community Hospitals, Ambulatory Surgery Centers - (DT&Cs) and Ambulatory Surgery Centers - (Hospital Extension Clinics) in Upstate New York Counties.

Counties with Critical Access Hospitals and Sole Community Hospitals

Source: HFIS, as of 05/07/2019.



Legend:

- Primary Care Hospital - Critical Access Hospital (19)
- ◆ Hospital - Sole Community Provider (20)
- Ambulatory Surgery Centers - Hospital Extension Clinics (21)
- Ambulatory Surgery Centers - Diagnostic & Treatment Centers (71)

# Revised ASC Policies

- If proposed FASC has negative financial impact (verified by the Department ) on a Critical Access Hospital or Sole Community Hospital, the Department will recommend Disapproval.
- Other factors may be considered including good faith efforts to effect collaboration between proposed operator and impacted hospital, surgical service specialty type and future reimbursement trends
- Apply limited life to non-hospital owned FASC, not only to initial establishment but also where there is a change of ownership of 50% or greater members.

# Questions and Discussion