COMMENTS Regarding Changes Made to Policy AC-5 in the Proposed 2011 SMFP

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II. Comments

The *Proposed 2011 State Medical Facilities Plan* (*Proposed 2011 SMFP*) includes proposed language in Policy AC-5 Replacement of Acute Care Bed Capacity, which language will allow Federally-designated Critical Access Hospitals ("CAH") to include swing bed days in projecting future acute care bed need. While that proposed revision provides some flexibility for CAHs, Cape Fear Valley-Bladen County Hospital ("BCH") and Cape Fear Valley Health System ("CFV") do not believe the revision goes far enough to ensure that CAHs can be replaced with sufficient resources to meet the needs of the population of the rural Service Areas served.

The Federal government allows CAH to have up to 25 acute care beds. In a rural setting, an acute care bed can be utilized for much more than acute care patient days. A CAH proposing replacement of acute care beds must clearly demonstrate the qualitative need for maintaining at a maximum 25 acute care beds or its current licensed bed capacity. In doing so BCH and CFV believe that acute care bed days of care, swing bed days of care (i.e., nursing facility days of care), observation days, and any other unique usage of acute care beds in a critical access hospital should be considered in determining the need for and utilization of acute care beds.

Proposals for either partial or total replacement of hospitals designated by the Centers of Medicare and Medicaid Services as CAHs should be evaluated against the need for the

proposed services provided by a CAH in a rural community, not the utilization targets found in Policy AC-5.

III. Requested Amendment to Policy AC-5 as Published in the Proposed 2011 SMFP

BCH and CFV support the changes made by the SHCC to Policy AC-5 which are included in the *Proposed 2011 SMFP*. Those changes allow CAH to include swing bed days in projecting future utilization when proposing a replacement of acute care bed capacity. Those changes provide some flexibility for CAHs, but do not go far enough to ensure that CAH can be replaced with sufficient resources to meet the needs of the populations of the rural Service Areas served.

BCH is a CAH located in Elizabethtown, NC in the heart of Bladen County. BCH is a public, not-for-profit facility that includes a 24-hour Emergency Department, a Medical/Surgical Unit, an Intensive Care Unit and an up-to-date Birthing Center. BCH has provided inpatient and outpatient services to the residents of Bladen County since it opened in 1952. The current physical plant has worked well for many years but is now in need of replacement. Policy AC-5 will be applicable in the review of a proposed replacement facility for BCH.

Policy AC-5, even with the changes included in the *Proposed 2011 SMFP*, do not address the special needs of CAH. While Policy AC-5 allows the inclusion of swing bed days to calculate acute care bed need, it ignores other potential uses of acute care beds in CAH, such as observation care, respite care, and even use for extended surgical recovery when necessary, to mention only a few. BCH and CFV propose the following language be included in Policy AC-5, (underlined language added by SHCC for *2011 SMFP*, requested changes are in red):

> Proposals for either partial or total replacement of acute care beds (i.e., construction of new space for existing acute care beds) shall be evaluated against the utilization of the total number of acute care beds in the applicant's hospital in relation to utilization targets found below. <u>For hospitals not designated by the Center of Medicare and Medicaid Services as Critical Access Hospitals</u>, in determining utilization of acute care beds, only acute care bed "days of care" shall be counted. <u>For hospitals designated by the Center of Medicare and Medicaid Services as Critical Access Hospitals, in determining utilization of acute care beds, only acute care bed "days of care" and swing bed days of care (i.e., nursing facility days of care) shall be counted in determining utilization of acute care beds.</u> In addition, in Critical Access Hospitals where observation days, respite care days, and other services are provided in a licensed acute care bed, and the Critical Access Hospital proposes to continue providing these services in the future in acute care beds, those days shall be counted in determining future utilization of acute care beds provided the Critical Access Hospital documents the use of acute care beds for those reasons. Any hospital proposing replacement of acute care beds must clearly demonstrate the need for maintaining the acute care bed capacity proposed within the application. <u>Additionally, if the hospital is a Critical Access Hospital and swing bed days are proposed to be counted in determining utilization of acute care beds, the hospital shall also propose to remain a Critical Access</u>

Hospital and must demonstrate the need for maintaining the swing bed capacity proposed within the application. If the Critical Access Hospital does not propose to remain a Critical Access Hospital, only the acute care bed "days of care" shall be counted in determining utilization of acute care beds and the hospital must clearly demonstrate the need for maintaining the acute care bed capacity proposed within the application.

Facility Average Daily Census	Target Occupancy of Licensed Acute Care Beds
1-99	66.7%
100-100	71.4%
Greater than 200	75.2%

III. Reasons for the Requested Change in Policy AC-5

The State of North Carolina has long supported CAHs. The Office of Rural Health, along with DHHS, provides opportunities and support to CAHs, including specialized rules and licensure requirements for CAHs.

BCH and CFVHS would like to replace the CAH in Bladen County, and are in the process of working with the Office of Rural Health and the Centers for Medicare and Medicaid Services to determine the federal regulatory issues associated with replacement of the BCH facility.

In a concurrently filed Petition, BCH requests an adjusted bed need determination and an exemption from Policy AC-5 in order to maximize the use of inpatient acute care beds in the planning process for the replacement facility of BCH and the Certificate of Need Application that will be filed in 2011. While the requested changes do not guarantee an approval of 25 acute care beds for BCH, the requested changes will allow the CON Section flexibility in reviewing the methodology and assumptions to be included in the CON Application. BCH will be required to justify the number of beds needed to serve the residents of Bladen County using both quantitative and qualitative methods, and assuring continued and expanded access inpatient and outpatient services for the residents of Bladen County.

The requested additional language will allow BCH to better address State requirements and to file a Certificate of Need Application for 25 beds based upon the unique circumstances of a CAH and not the existing acute care hospital methodology and criteria included in the *Proposed 2011 SMFP*.

Policy AC-5, even with the changes included in the *Proposed 2011 SMFP*, does not address the special needs of CAHs. In the past several years many CAHs across the United States have been replaced and the new facilities being designed for CAHs concentrate on maximizing utilization and flexibility of acute care bed space as well as outpatient space in the new facility. In addition, many new CAHs have the local provider clinics and specialty clinics integrated into the facility to maximize utilization of hospital ancillary services. However, in North Carolina, the CON Applications for replacement CAHs have been conditionally approved with fewer acute care beds as a result of the requirements in Policy AC-5. This resulted in the additional expense of an appeal for these CAHs. While these CAHs obtained subsequent

settlement agreements which better addressed the needs of the community, it was at a significant additional expense of both time and dollars.

BCH is requesting the changes in Policy AC-5 to maximize the use of inpatient acute care beds in the planning process for the replacement BCH and the subsequent Certificate of Need to be filed in 2011. The proposed changes do not guarantee the approval of 25 acute care beds for BCH; the proposed changes will allow the CON Section flexibility in reviewing the methodology and assumptions included in the CON by BCH. BCH will be required to justify the number of beds needed need to serve the residents of Bladen County using both quantitative and qualitative methods, assuring continued and expanded access inpatient and outpatient services for the residents of Bladen County.

IV. Statement of the Adverse Effects on the Population

If requested changes to Policy AC-5 are not made, the Bladen County bed need is not adjusted, and Policy AC-5 remains applicable in the review of the CON Application for the replacement facility of BCH, the residents of Bladen County will be denied access to services appropriate for a CAH that a new facility would allow. Under the language of Policy AC-5 and associated CON regulations, it is not clear whether BCH will be able to justify a need for all 25 acute care beds that are operational. With 25 acute care beds in a new facility, BCH will have the potential to recapture some of the market share currently leaving Bladen County for inpatient and outpatient care securing a better financial future.

Currently, over 60% of Bladen County residents must leave the County to seek inpatient hospitalization, as reflected in the market share information included in Attachment B That is not because other providers are closer. The maps included in Attachment C illustrate the distances between other providers, BCH, and the residents of Bladen County. As reflected in those Attachments, nearly all residents of Bladen County live closer to Elizabethtown and BCH than any other hospital facility. Residents leave because services are not available or because they perceive hospital services to be substandard due to the deteriorating facility. The stigma of seeing limited visible change in the hospital over the past several years leaves the impression for the general public that the local hospital has done little to increase available services and update the delivery of care model. Most residents would agree that a hospital is needed in Bladen County. Due to their impression of BCH, many residents choose to leave the County to obtain what they perceive to be better quality service.

The population of Bladen County is not large; 31,872 residents in 2010. That population cannot support a large community hospital with many specialists. The acuity appropriate services provided by BCH as a Critical Access Hospital, however, allow residents, particularly Medicare, Medicaid, poor, and indigent patients to remain in the county. A replacement Critical Access Hospital is needed to continue meeting the needs of current residents of Bladen County, as well as to expand services to meet the needs of current and future County residents.

If the requested changes are not made, the residents of Bladen County could be denied access to critical services, and would have to continue seeking health care in surrounding counties.

IV. Alternative - Proposed Policy AC-7

An alternative to the requested changes to Policy AC-5 would be to address the needs of CAHs in a separate and distinct Policy specific to the replacement of CAHs. Included in Attachment D, please find a draft Policy AC-7 which addresses both the acute care bed needs and operating rooms needs of a CAH, as well as the special needs of CAH, and includes additional opportunity and flexibility for approval of replacement CAHs.

Proposed Policy AC-7 also assures that a CAHs proposing partial or total replacement using this Policy shall remain a CAH, and must demonstrate the need for the CAH in the community served. If the CAH does not propose to remain a CAH, Proposed Policy AC-7 will not be applicable.

V. Conclusion

The State of North Carolina has long supported CAH. When the program first started in the early 1990s, the Office of Rural Health and the North Carolina Hospital Association worked diligently to preserve North Carolina's rural hospitals. The DHHS, then DFS, provided the opportunity for special licensure rules for CAHs and even allowed CAH to maintain their original licensed bed capacity even if they were operating a maximum of 25 acute care beds or less than their licensed capacity. This collaboration continues today.

BCH and CFV propose the following language be included in Policy AC-5, (underlined language added by SHCC for *2011 SMFP*, proposed changes are in red):

> Proposals for either partial or total replacement of acute care beds (i.e., construction of new space for existing acute care beds) shall be evaluated against the utilization of the total number of acute care beds in the applicant's hospital in relation to utilization targets found below. <u>For hospitals not designated by the Center of Medicare and Medicaid Services as Critical Access Hospitals</u>, in determining utilization of acute care beds, only acute care bed "days of care" shall be counted. <u>For hospitals designated by the Center of Medicare and Medicaid Services as Critical Access Hospitals, in determining utilization of acute care beds, only acute care bed "days of care" and swing bed days of care (i.e., nursing facility days of care) shall be counted in determining utilization of acute care beds.</u> In addition, in Critical Access Hospitals where observation days, respite care days, and other services are provided in a licensed acute care bed, and the Critical Access Hospital proposes to continue providing these services in the future in acute care beds, those days shall be counted in determining future utilization of acute care beds provided the Critical Access Hospital documents the use of acute care beds for those reasons. Any hospital proposing replacement of acute care beds must clearly demonstrate the need for maintaining the acute care bed capacity proposed within the application. <u>Additionally, if the hospital is a Critical Access Hospital and swing bed days are proposed to be counted in determining utilization of acute care beds, the hospital shall also propose to remain a Critical Access Hospital and must demonstrate the need for maintaining the swing bed capacity proposed within the application. If the Critical Access Hospital</u>

does not propose to remain a Critical Access Hospital, only the acute care bed "days of care" shall be counted in determining utilization of acute care beds and the hospital must clearly demonstrate the need for maintaining the acute care bed capacity proposed within the application.

Facility Average Daily Census	Target Occupancy of Licensed Acute Care Beds
1-99	66.7%
100-100	71.4%
Greater than 200	75.2%

If the proposed changes are not made, the CON Section will have very specific requirements regarding the determination of acute care beds needed for the residents of Bladen County. Policy AC-5 specifically states that only acute care days and swing bed days can be utilized to determine acute care bed need for a Critical Access Hospital, more flexibility is needed in the review of Critical Access Hospitals to allow creative utilization of acute care space.

If the proposed adjustments are not made, the residents of Bladen County could be denied access to critical services and would have to continue seeking health care in surrounding counties.

Concurrently with this Petition, CFV and BCH are submitting a Petition, specific to the need for acute care beds in Bladen County. Please note that if the changes requested herein are approved and the *2011 SMFP* is amended as set forth above, then the actions requested in the Petition submitted by CFV and BCH are not necessary. If, however, the changes proposed in these Comments are not approved, then the changes requested in the Petition must be approved in order to allow the CON Section flexibility in the review of the BCH CON Application for a replacement CAH, which Application is to be submitted in 2011.

Bladen County Hospital
Cape Fear Valley Health System
Primary and Secondary Market
FY 2007 - FY 2009 - All Service Lines
Source: Thomson *Polaris Suite*

County	FY07	FY08	FY09
Bladen	32.8%	28.4%	26.2%
Columbus	0.4%	0.4%	0.4%
Cumberland	0.1%	0.0%	0.0%
Pender	0.0%	0.0%	0.0%
Robeson	0.1%	0.1%	0.1%
Sampson	1.0%	0.7%	0.9%

Note: Includes Normal Newborns

County	FY07	FY08	FY09
Bladen	31.9%	27.1%	25.5%
Columbus	0.3%	0.3%	0.4%
Cumberland	0.0%	0.0%	0.0%
Pender	0.0%	0.0%	0.0%
Robeson	0.1%	0.1%	0.1%
Sampson	1.0%	0.7%	0.9%

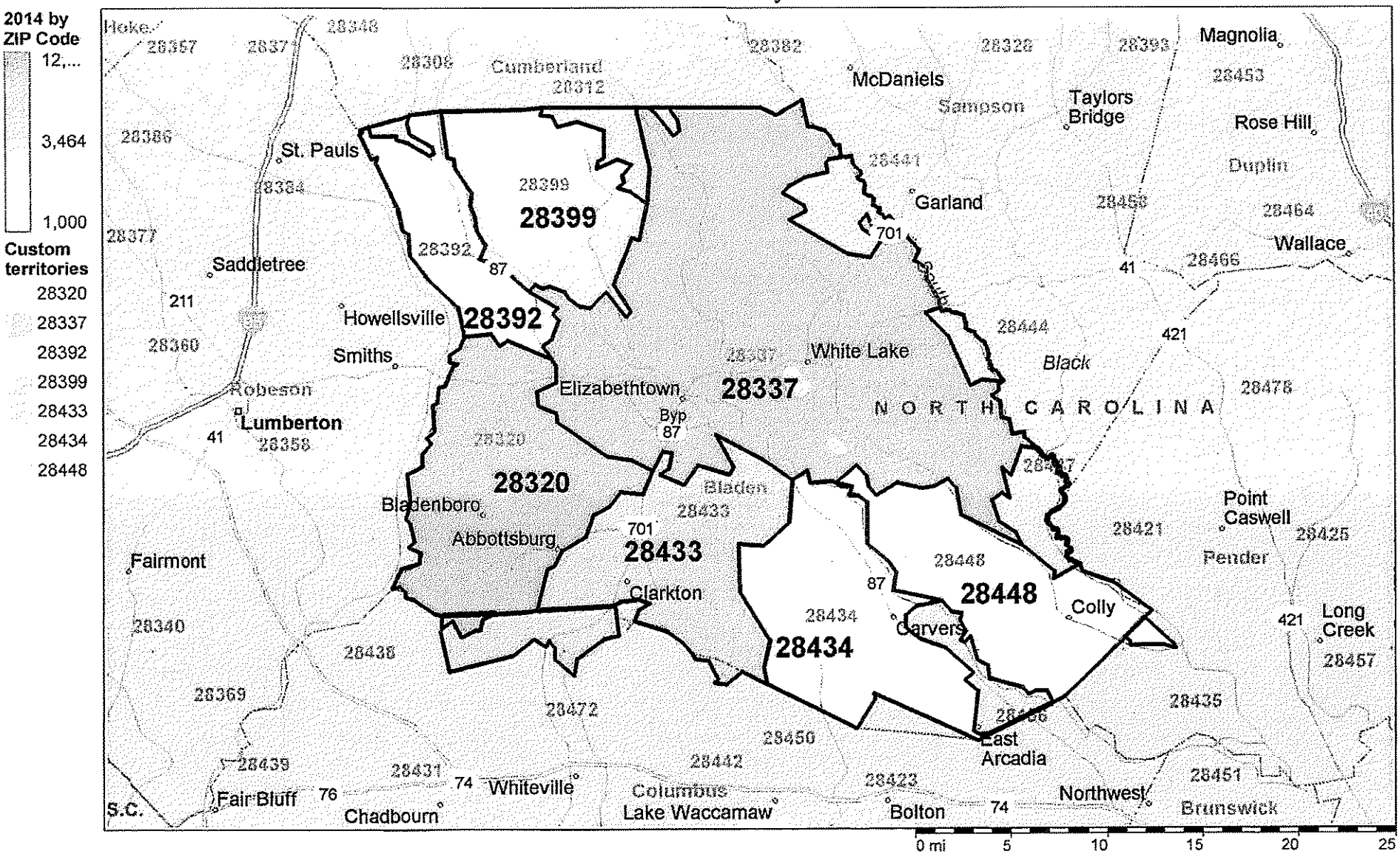
Note: Excludes Normal Newborns

Patient Origin = Bladen County Only

Hospital	FY07		FY08		FY09	
BCH	1,438	32.8%	1,247	28.4%	1,067	26.2%
CFVHS	356	8.1%	447	10.2%	659	16.2%
New Hanover	825	18.8%	819	18.6%	629	15.9%
Southeastern	809	18.4%	877	20.0%	901	22.1%
Columbus	504	11.5%	524	11.9%	372	9.1%
All Other	456	10.4%	478	10.9%	451	10.6%
Total	4,388	100.0%	4,392	100.0%	4,079	100.0%
CFVHS and BCH	1,794	40.9%	1,694	38.6%	1,726	42.3%

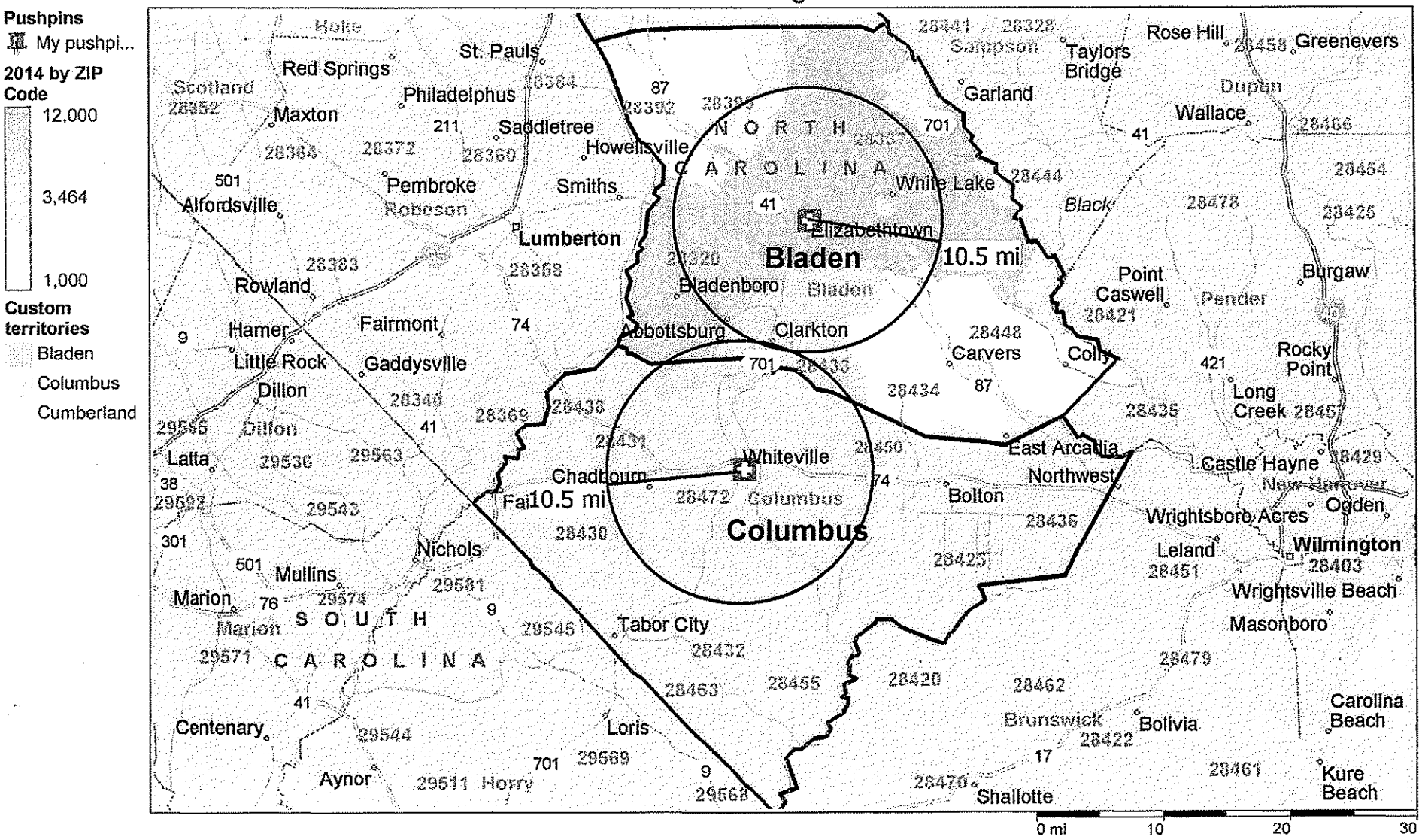
Attachment C

Bladen County



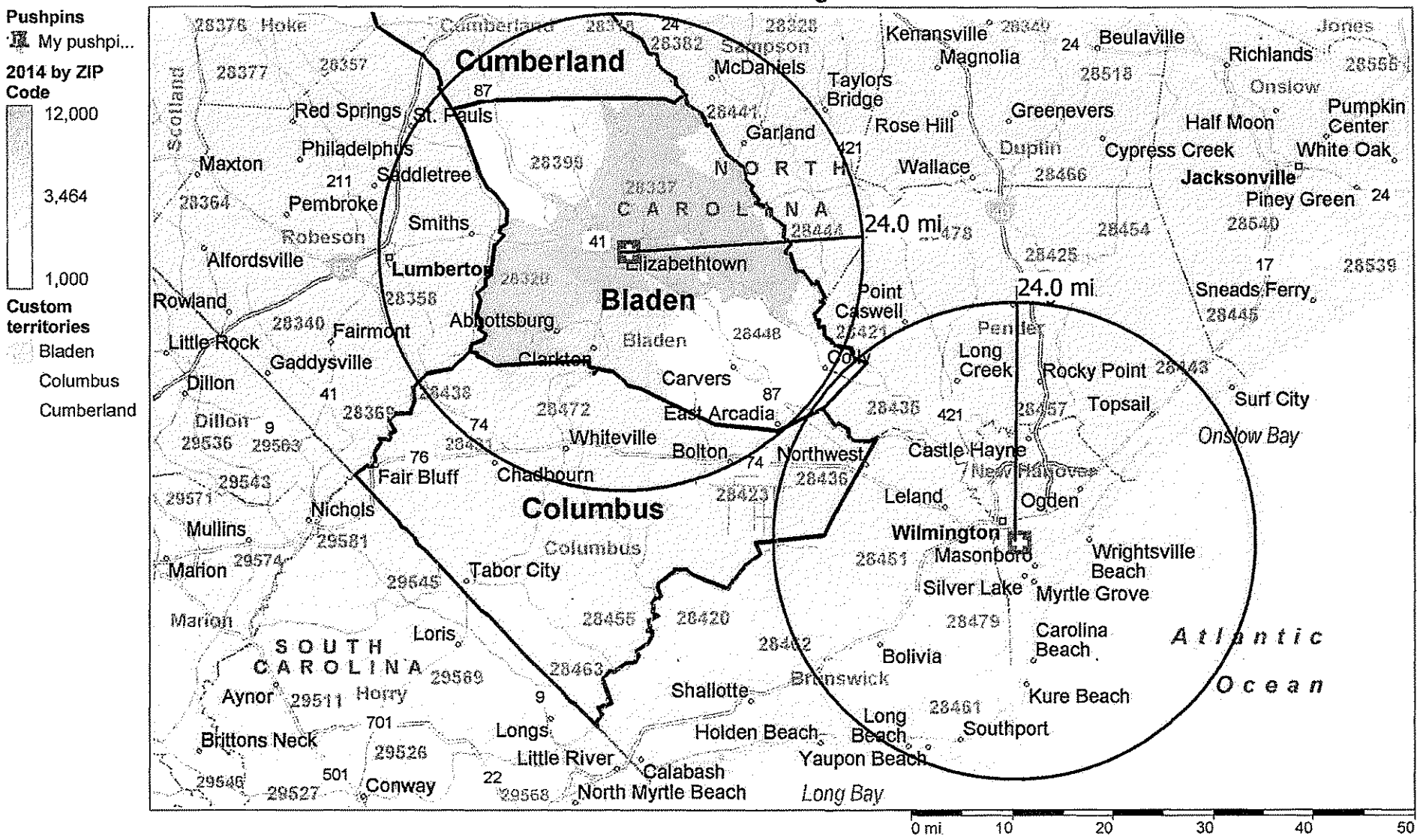
Attachment C

Columbus Mileage



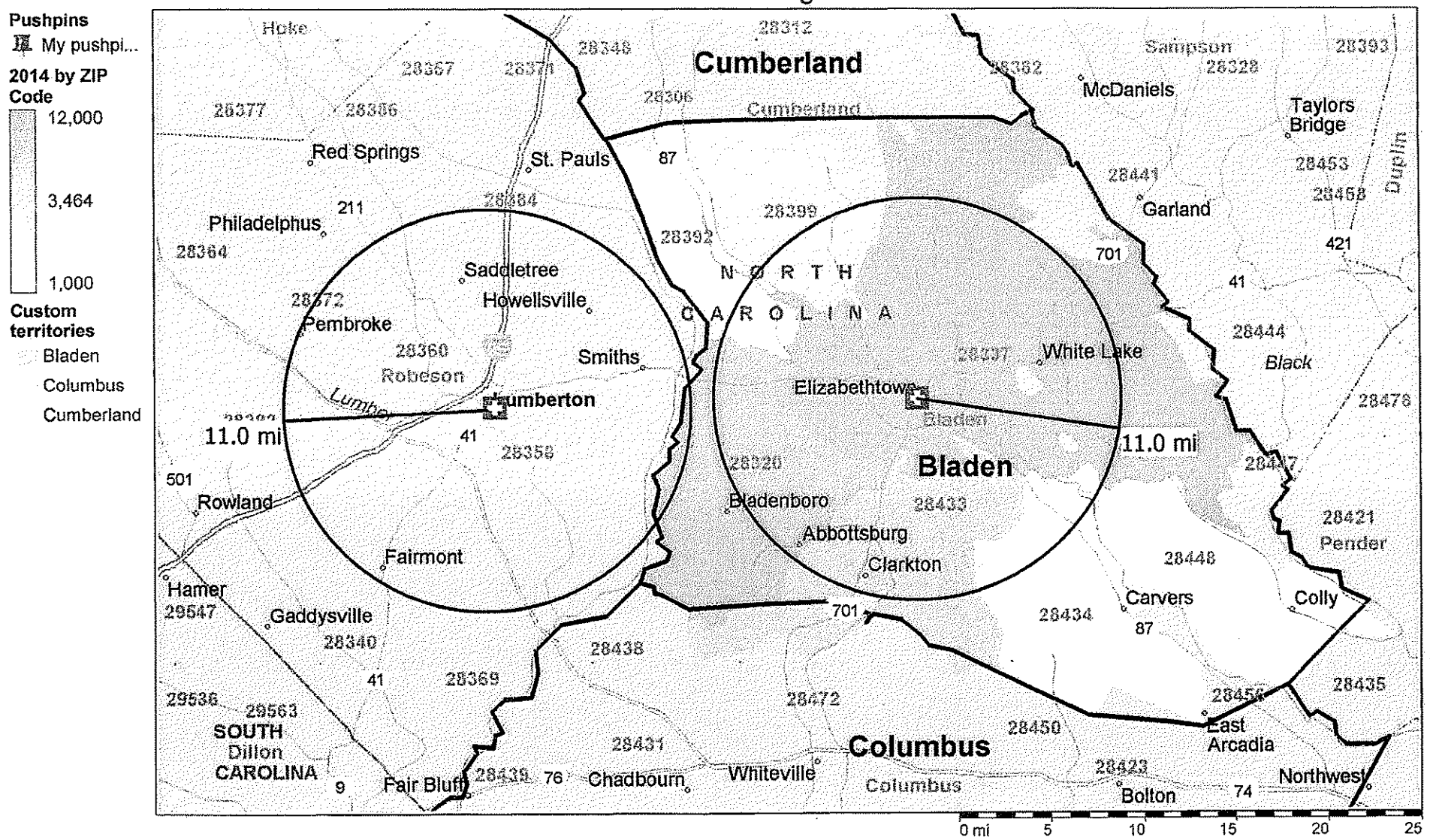
Attachment C

New Hanover Mileage



Attachment C

SoEastern Mileage



ATTACHMENT D

PROPOSED POLICY AC-7: PARTIAL OR TOTAL REPLACEMENT OF A CRITICAL ACCESS HOSPITAL; REPLACEMENT OF ACUTE CARE BEDS; REPLACEMENT OF SURGICAL OPERATING ROOMS

Proposals for either partial or total replacement of a hospital (i.e., construction of new space for existing acute care beds and operating rooms), which hospital is designated by the Center of Medicare and Medicaid Services as a Critical Access Hospital shall be evaluated in the context of the need for the proposed partial or total replacement of a Critical Access Hospital in that hospital's rural community. A Critical Access Hospital proposing a partial or total replacement of its facility using this Policy shall remain a Critical Access Hospital. If the Critical Access Hospital does not propose to remain a Critical Access Hospital, this Policy does not apply to the proposal.

An Applicant proposing a partial or total replacement of a Critical Access Hospital shall document the availability of financial resources to replace all or part, as applicable, of the Critical Access Hospital, and its ability to cover all operating expenses for the Critical Access Hospital in the future.

A Critical Access Hospital proposing to replace acute care beds shall clearly demonstrate the qualitative need for maintaining a maximum 25 acute care beds or its current licensed bed capacity, whichever is lesser. Acute care bed days of care, swing bed days of care (i.e., nursing facility days of care), observation days ,and any other unique usage of acute care beds in a Critical Access Hospital shall be considered in determining the need for and utilization of acute care beds. The number of acute care beds proposed by the Applicant cannot increase the total number of licensed acute care beds which are existing and approved in the applicable Acute Care Bed Service Area.

A Critical Access Hospital proposing to replace surgical operating rooms must clearly demonstrate the qualitative need for maintaining a maximum of two operating rooms or its current licensed number of operating rooms, whichever is lesser. If a Critical Access Hospital is licensed for more than two surgical operating rooms, any proposed surgical operating rooms that exceed two must be justified in accordance the methodology in the applicable annual *SMFP,* such that the projected need for additional surgical operating rooms is greater than 2.5 surgical operating rooms, and will be rounded up in accordance with the rounding rules in the Surgical Operating Room Need Methodology. Surgical cases, GI endoscopy cases, and any other unique usage of surgical space in a Critical Access Hospital shall be considered in determining need for and utilization of surgical operating rooms. The number of surgical operating room proposed by the Applicant cannot increase the total number of licensed operating rooms which are existing and approved in the applicable Operating Room Service Area.

Utilization targets found in Policy AC-5, the CON Criteria and Standards for Acute Care Beds, and the CON Criteria and Standards for Surgical Services and Operating Rooms shall not be applicable in the review of a proposal under this Policy AC-7.