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**Comments in Opposition from Cumberland County Hospital System, Inc.
Regarding FirstHealth of the Carolinas, Inc.
and Surgery Center of Hoke, LLC
Certificate of Need Application (Project I.D. # N- 8494-10)
Submitted April 15, 2010 for May 1, 2010 Review Cycle**

I. Introduction

In accordance with N.C.G.S. Section 131E-185(a1)(1), Cape Fear Valley Health System, Inc., submits the following comments regarding the April 15, 2010 Certificate of Need Application Project I.D. # N-8494-10 submitted for the May 1, 2010 review cycle by FirstHealth of the Carolinas, Inc. and Surgery Center of Hoke, LLC.

The following three CON Applications were submitted under Certificate of Need Review Category J for “any new institutional health service, as defined in N.C.G.S. 131E-176(16), that is proposed to be developed or offered in Hoke County, with the exception of proposal in Category D or I”:

- N-8499-10: Hoke Healthcare, LLC to develop Hoke Community Medical Center consisting of 41 licensed acute care beds, 7 medical surgical observation beds, 2 obstetrical observation beds, an emergency department, 2 shared surgical operating rooms, all necessary inpatient and outpatient ancillary programs, and customary support services; total project cost is \$92,269,192 (Hoke Community Medical Center Application)
- N-8497-10: FirstHealth of the Carolinas, Inc. (FirstHealth) to develop an acute care hospital, FirstHealth Community Hospital (FirstHealth-Hoke), with 8 licensed acute care beds and one operating room relocated from FirstHealth Moore Regional Hospital (FirstHealth-Moore), 4 observation beds, 8 emergency treatment rooms; total project cost is \$34,838,503 (2010 FirstHealth-Hoke Application)¹
- N-8494-10: FirstHealth of the Carolinas, Inc. and Surgery Center of Hoke, LLC (FirstHealth) to develop an ambulatory surgery center with two ambulatory surgery operating rooms relocated from the Surgery Center of Pinehurst in Moore County; total project cost is \$4,879,695 (2010 FirstHealth-SCOH Application)

II. Chronology of Important Events

The following is a summary of important events that occurred before, during, and after the submission of the two CON Applications under Certificate of Need Review Category J for “any new institutional health service, as defined in N.C.G.S. 131E-176(16), that is proposed to be developed or offered in Hoke County, with the exception of proposal in Category D or I”:

¹ The proposed FirstHealth-Hoke also includes a new CT scanner, new x-ray equipment, and other ancillary inpatient and outpatient services required in a community hospital.

June 15, 2009

The following two CON Applications were submitted to the CON Section:

- M-8353-09: Cape Fear Valley West, a satellite hospital in Cumberland County at a site on the Cumberland-Hoke border, with 41 acute care beds relocated from Cape Fear Valley Medical Center, two operating rooms, one relocated from CFVMC and the other from Highsmith-Rainey Hospital, and 9 observation beds (Cape Fear Valley West Application)
- N-8354-09: FirstHealth Hoke County Hospital, an acute care hospital with 8 acute care beds, one operating room, and one MRI scanner, all relocated from FirstHealth Moore Regional Hospital (2009 FirstHealth Hoke Application)

The CON Section deemed to be competitive the Cape Fear Valley West Application and the 2009 FirstHealth Hoke Application.

July 6, 2009

Cape Fear Valley Health System (CFVHS) submitted a Petition to the Medical Facilities Planning Section requesting the following specific adjustments be made to the *Proposed 2010 SMFP*:

- Designating Hoke and Cumberland Counties as one multi-county service area for acute care beds, operating rooms, and MRI, as a result of updated data used to define service areas in accordance with Step 1 of the Acute Care Bed and operating Room Need Methodologies
- Designating Moore County as a single county service area for acute care beds, operating rooms, and MRI, as a result of updated data.

August 17, 2009

FirstHealth Carolinas, Inc. and Surgery Center of Hoke, LLC submitted for review CON Application N-8393-09, Surgery Center of Hoke, LLC, an ambulatory surgery center with two ambulatory surgery operating rooms relocated from Surgery Center of Pinehurst in Moore County (2009 FirstHealth-Surgery Center of Hoke Application).

October 9, 2009

The State Health Coordinating Council (SHCC) denied CFVHS's Petition, and instead adopted the following for inclusion in the *2010 SMFP*:

- Hoke County was assigned to Moore and Cumberland Counties, respectively. This change results in eight two-county service areas:
 - Cumberland-Hoke Multi-county Acute Care Bed Service Area
 - Cumberland-Hoke Multi-county Operating Room Service Area

- Moore-Hoke Multi-county Acute Care Bed Service Area
 - Moore-Hoke Multi-county Operating Room Service Area
 - Cumberland-Hoke Multi-county Cardiac Catheterization Service Area
 - Cumberland-Hoke Multi-county MRI Service Area
 - Moore-Hoke Multi-county Cardiac Catheterization Service Area
 - Moore-Hoke Multi-county MRI Service Area
- When determining need for operating rooms, Hoke County's population growth was assigned as follows²:
 - Cumberland County was assigned the proportion of Hoke County's population growth equal to the proportion of Hoke County residents receiving surgical services in Cumberland County in 2008. In 2008, of all Hoke County residents receiving surgical services, 45.72 percent received surgical services in Cumberland County.
 - Moore County was assigned the proportion of Hoke County's population growth equal to the proportion of Hoke County residents receiving surgical services in Moore County in 2008. In 2008, of all Hoke County residents receiving surgical services, 40.48 percent received surgical services in Moore County.

The SHCC also established a "35% decision rule" under which patient origin, at or above a threshold of 35% will determine composition of a Multi-county Service Area containing Hoke County.

November 25, 2009

The CON Section conditionally approved Project I.D. #M-8353-09 Cape Fear Valley West and Project I.D. #N-8354-09 FirstHealth Hoke County Hospital. The CON Section's decisions on the two Applications were appealed.

January 28, 2010

The CON Section denied Project I.D. # N-8393-09, the 2009 FirstHealth-Surgery Center of Hoke Application. There was no appeal filed.

In the Agency Findings on Project I.D. #N-8393-09, dated February 4, 2010, the CON Section stated, "FirstHealth of the Carolinas, Inc. ("FirstHealth") is the parent company and 100% owner of Surgery Center of Pinehurst, LLC ("Surgery Center of Pinehurst")." It further stated, "FirstHealth is the parent company and 100% owner of Surgery Center of Pinehurst, which is the sole member of Surgery Center of Hoke. FirstHealth has recently been approved to construct a satellite hospital in Raeford, Hoke County, with 8 acute care beds and one operating room (Project Number N-8354-09)."

² Surgical patient origin data for 2008 from the 2009 License Renewal Applications was used to determine the proportion of Hoke County residents receiving services in Cumberland and Moore Counties.

April 14, 2010

The Acute Care Services Committee approved a Recommendation for an amendment to Policy GEN-2 to define that the point at which a county in a Multi-county Service Area becomes Single County Acute Care Service Area or a Single County Operating Room Service Area is licensure of a facility (acute care hospital or ambulatory surgery center) in that county.

April 15, 2010

The following three Applications were submitted to CON:

- N-8494-10: Surgery Center of Hoke, LLC and FirstHealth of the Carolinas, Inc. to develop an ambulatory surgery center with two ambulatory surgery operating rooms relocated from the Surgery Center of Pinehurst in Moore County.
- N-8497-10: FirstHealth of the Carolinas, Inc. (FirstHealth) to develop an acute care hospital, FirstHealth Community Hospital (FirstHealth-Hoke), with 8 licensed acute care beds and one operating room relocated from FirstHealth Moore Regional Hospital (FirstHealth-Moore), 4 observation beds, 8 emergency treatment rooms.
- N-8499-10: Hoke Healthcare, LLC to develop Hoke Community Medical Center consisting of 41 licensed acute care beds, 7 medical surgical observation beds, 2 obstetrical observation beds, an emergency department, 2 shared surgical operating rooms, all necessary inpatient and outpatient ancillary programs, and customary support services.

III. CON Review Criteria

The following comments are submitted based upon the CON Review Criteria found at G.S.131E-183. While some issues impact multiple Criteria, they are discussed under the most relevant review Criteria and referenced in others to which they apply.

G.S. 131E-183 (1)

The proposed project shall be consistent with applicable policies and need determinations in the State Medical Facilities Plan, the need determination of which constitutes a determinative limitation on the provision of any health service, health service facility, health service facility beds, dialysis stations, operating rooms, or home health offices that may be approved.

As discussed below in detail, the proposed project is non-conforming to Policy Gen-3: Basic Principles and Basic Assumptions included in the Operating Room Need Methodology.

A. Policy Gen-3 – Basic Principles

FirstHealth failed to adequately demonstrate the need for the project, and therefore failed to document how its projected volumes incorporate the Basic Principles identified in the 2010

SMFP. Consequently, the 2010 FirstHealth-SCOH Application is not conforming to Policy Gen-3 and does not conform to Criterion (1). Please see also a discussion in the context of Criterion (3).

B. Operating Room Need Methodology – Results in Surplus of Operating Rooms

Surgical volume is significantly overstated in the 2010 FirstHealth-SCOH Application. As a result, the projected utilization fails to justify total operating rooms in the Moore-Hoke Multi-county Operating Room Service Area. There is a surplus of operating rooms based upon the Operating Room Need Methodology in the *2010 SMFP*, and based upon the methodology utilized to project volume at FirstHealth-Moore, FirstHealth-Hoke, SCOP, and SCOH. Therefore, the 2010 FirstHealth-SCOH Application is non-conforming to Criterion (1). Please see also a discussion in the context of Criterion (3).

G.S. 131E-183 (3)

The applicant shall identify the population to be served by the proposed project, and shall demonstrate the need that this population has for the services proposed, and the extent to which all residents of the area, and, in particular, low income persons, racial and ethnic minorities, women, handicapped persons, the elderly, and other underserved groups are likely to have access to the services proposed.

The proposed project is non-conforming to Criterion (3) because it overstates the need that residents of Hoke County have for ambulatory surgery services by assuming significant in-migration to the ambulatory surgical facility from residents of Cumberland, Robeson, and Scotland Counties.

FirstHealth fails to justify the need for three operating rooms in Hoke County, two of which are proposed in the 2010 FirstHealth-SCOH Application and one of which is included in 2010 FirstHealth-Hoke Application. Furthermore, FirstHealth cannot justify its total of 24³ existing and approved surgical operating rooms, which includes two open heart surgical rooms, at FirstHealth-Moore and SCOP. For the remainder of these comments the two open heart operating rooms will not be included in any discussion of total existing and approved operating rooms for FirstHealth-Moore and SCOP which will reflect total existing and approved operating rooms as 22 operating rooms at the two locations. Three of the 22 existing and approved surgical operating rooms are to be relocated from Moore County to Hoke County.

³ FirstHealth-Moore has 14 shared operating rooms, two dedicated open-heart operating rooms, and two CON approved operating rooms under development. The open heart operation rooms are not included in the 22 existing and approved surgical operating room inventory discussed in the remainder of these Comments. Those two dedicated open-heart operating rooms are underutilized. Surgical Center of Pinehurst has six operating rooms.

A. FirstHealth does not Consistently Identify the Population to be Served by the Proposed SCOH

Criterion (3) requires each applicant to identify the population to be served by the proposed project.

1. 2010 SMFP: Moore-Hoke Multi-County Operating Room Service Area

The 2010 SMFP assigns Hoke County to Moore and Cumberland Counties, respectively, resulting in the following two two-county Operating Room Service Areas:

- Cumberland-Hoke Multi-county Operating Room Service Area
- Moore-Hoke Multi-county Operating Room Service Area

The Moore-Hoke Multi-county Operating Room Service Area is the relevant service area for purposes of the 2010 FirstHealth-SCOH Application.

2. Physician Letters – "proposed ambulatory surgery center's service area: Hoke, Cumberland, Scotland, and Robeson counties"

On page 60, FirstHealth provides a table entitled "Letters of Support and Surgical Case Commitments" that is prefaced with the statement "[t]he following table identifies each physician or medical practice and their specialty and each physician's committed annual surgical cases from the service area."

A note highlighted with an asterisk (*) at the bottom of the table states "[t]his volume represents the committed outpatient surgical cases as identified in the physician referral letters included as Exhibit 7."

There is no text in any of the 50 physician letters in Exhibit 7 that suggests a service area for SCOH – other than or in addition to Hoke, Cumberland, Scotland, and Robeson Counties. Additionally, there is no text in any of the 50 physician letters in Exhibit 7 "committing" to perform surgical cases at SCOH on any patient who resides in a county other than Hoke, Cumberland, Scotland, and Robeson Counties.

3. Four County Service Area: Hoke, Cumberland, Robeson, and Scotland Counties

In Section III.5, page 73, FirstHealth identifies the SCOH service area to include Hoke, Cumberland, Robeson, and Scotland Counties. In Section III.6, page 74, FirstHealth projects the patient origin by county of residence for the proposed project for the first two years of operation following completion of the project, as shown below.

**Surgery Center of Hoke
Projected Patient Origin by County of Residence
October 2012 – September 2014**

COUNTY	FY2013	FY2014
Cumberland	43.1%	49.2%
Hoke	23.0%	22.3%
Robeson	20.3%	17.7%
Scotland	13.4%	10.8%
Total	100.0%	100.0%

There are no other patient origin projections included in the 2010 FirstHealth-SCOH Application.

4. FirstHealth’s 22 Step Need Methodology Parts 1 and 2 – Four Different Service Areas

FirstHealth’s Two Part, 22-Step need methodology presented in Section IV. involve five different service areas:

Part 1, Steps 1 -12

Each of those Steps reference a 4-County Service Area consisting of Cumberland, Hoke, Robeson, and Scotland Counties.

Part 1, Step 13

For the first time, on page 95, in Step 13, FirstHealth states that it projects outpatient cases that “currently originate from outside the 4-county service area, which includes Montgomery, Moore, Richmond, and Randolph counties, and currently seek treatment at Surgery Center of Pinehurst, [...]”

Part 1, Step 14

On page 96, in Step 14, FirstHealth refers for the first time to “the 8-county service area,” and “Outside 8-County Service Area.” FirstHealth projects surgery volume from “Outside 8-County Service Area.”

FirstHealth does not define the counties it includes in the “Outside 8-County Service Area.”

Part 1, Step 15

On page 97, in Step 15, FirstHealth defines an “8-County Pain Management Service Area, consisting of Cumberland, Hoke, Montgomery, Moore, Richmond, Randolph, Robeson, and Scotland Counties.

The magnitude of a conflict in FirstHealth's identification of the population to be served by SCOH undermines the entirety of the 2010 FirstHealth-SCOH Application. It appears that SCOH is proposing to be a regional ambulatory surgery center which will impact utilization of all existing surgical providers in eight counties at a minimum.

B. FirstHealth Overstates Surgical Operating Rooms Needed at Surgery Center of Hoke, Surgery Center of Pinehurst, FirstHealth-Moore, and FirstHealth-Hoke

1. Surgery Center of Pinehurst has Two Surplus Ambulatory Surgical Operating Rooms

FirstHealth states clearly throughout the 2010 FirstHealth-SCOH Application that there is a surplus of 2.1 operating rooms at SCOP. That surplus is, however, not limited to the most current twelve months.

There has been a surplus of ambulatory surgical operating rooms at SCOP since it became operational with six ambulatory surgical operating rooms, as shown in the following table.

**Surgery Center of Pinehurst
Utilization: October 2006 – February 2010**

Surgery Center of Pinehurst	2009 SMFP (10/06-9/07)	2010 SMFP (10/07-9/08)	2010 LRA (10/08-9/09)	March 2009 – February 2010*
Ambulatory Cases	2,326	4,425	4,803	4,821
% Change		90.2%	8.5%	0.4%
Hours at 1.5 Hours/Case	3,489	6,638	7,205	7,232
Total ORs Needed at 1,872 Hours/Year	1.9	3.5	3.8	3.9
OR Inventory	6	6	6	6
Surplus (+)/Deficit (-)	+4.1	+2.5	+2.2	+2.1

Source: SMFPs; LRA; 2010 FirstHealth-SCOH Application at page 38

As shown in the previous table, ambulatory surgical volume at Surgery Center of Pinehurst grew 18 cases, which is a lackluster 0.4% since the last fiscal year (2009).

2. FirstHealth-Moore Has 3.5 Surplus Shared Surgical Operating Rooms

The following table shows shared surgical operating room cases support 12.5 of the 16 existing and CON approved shared surgical operating rooms at FirstHealth-Moore.

**FirstHealth-Moore Surgical Utilization
October 2008 – September 2009**

	2010 LRA (10/08-9/09)
Inpatient Cases*	5,634
Ambulatory Cases	4,270
Total	9,904
Total Weighted Surgical Hours	23,307
Licensed and CON Approved Operating Rooms	16
Operating Rooms Needed at 1,872 Hrs/Year	12.5
Surplus (+)	+3.5

** Inpatient Cases do not include open heart surgeries performed in the two dedicated open heart operating rooms.*

Source: 2010 LRA

FirstHealth failed to self-report its most current twelve months utilization of FirstHealth-Moore's existing shared surgical operating rooms, which would have allowed for a calculation of whether its surplus increased (or decreased) since September 2009.

3. FirstHealth-Moore and Surgery Center of Pinehurst have a Combined Surplus of 5.7 Surgical Operating Rooms

Please note that on page 69 of the 2010 FirstHealth Application, FirstHealth states that FirstHealth-Moore "provided 10,327 surgical cases in 16 operating rooms." FirstHealth includes all surgical operating rooms and open heart surgeries performed in its two dedicated open heart operating rooms. Had all 16 operating rooms and all surgeries been included in the following table, the operating room surplus would have been higher.

**FirstHealth-Moore & Surgery Center of Pinehurst Operating Room Need
October 2008 – September 2009**

	2010 LRA (10/08 -9/09)
Inpatient Cases (No Dedicated OH Cases)	5,634
Hours at 3 Hours/ Case	16,902
Ambulatory Cases	9,073
Hours at 1.5 Hours/ Case	13,610
Total Cases	14,707
Total Estimated Hours	30,512
Total ORs Needed at 1,872 Hours/Year	16.3
OR Inventory - Existing and CON Approved	22
Surplus (+)	+5.7

Source: 2010 LRA

FirstHealth self-reported its most current twelve months utilization of SCOP's existing six ambulatory surgical operating rooms, but failed to do so for FirstHealth-Moore's existing shared surgical operating rooms. That would have allowed for a calculation of whether its total surplus of existing operating rooms increased (or decreased) since September 2009.

C. SCOH Surgical Specialties are not Aligned with SCOP Surgical Specialties

On page 60, FirstHealth provides a table that "identifies each physician or medical practice and their specialty and each physician's committed annual surgical cases from the service area." That table is entitled "Letters of Support and Surgical Case Commitments," and contains the names and "annual surgical cases" for 33 physicians. A note highlighted with an asterisk (*) at the bottom of the table states "[t]his volume represents the committed outpatient surgical cases as identified in the physician referral letters included as Exhibit 7."

Please note that there is no time period(s) to define "Annual Surgical Cases." It therefore cannot be determined whether those Surgical Cases are historical or projected. If projected, it cannot be determine whether they are Surgical Cases that each and every physician will perform in one or more of the three Project Years.

Letters of Support and Surgical Case Commitments

Physician	Specialty	SCOP Physician	Annual Surgical Cases
Griffin, Neil	Ophthalmology		494
Oakley, Ward	Orthopedics	X	174
Brenner, Mark	Orthopedics	X	125
Grace, Colleen	Ophthalmology		120
Caldwell, Philip	Oral Surgery		120
McAlister-Stokes, Yvette	Oral Surgery		75
Szabo, Stephen	OB/GYN	X	30
Fedder, David	Orthopedics	X	30
Terry, William	OB/GYN	X	25
Conti, Neil	Orthopedics	X	20
Chu, Willy	General Surgery	X	20
Bartiss, Michael	Ped Ophthalmology	X	20
Fasolak, Walter	OB/GYN	X	15
Haro, Anthony	Podiatry	X	15
Casey, David	Orthopedics	X	11
Buchele, Barry	OB/GYN	X	10
Cox, Stanley	ENT	X	10
Berk, Carl	ENT	X	10
McGuirt, Wyman	ENT	X	8
Grantham, David	General Surgery	X	7
Kilpatrick, Jefferson	ENT	X	7
Subin, Glenn	Orthopedics	X	6
Guevara, Jason	Orthopedics	X	6
Fessenden, John	General Surgery	X	6
DiMichele, Andres	OB/GYN	X	5
Washington, Raymond	General Surgery	X	5
Rice, James	Orthopedics	X	5
Zoellner, Steven	Plastics	X	4
Atkinson, Clinton	Vascular	X	1
Powers, Christina	Dental	X	1
Dunlap, Glenn	Podiatry	X	1
Williamson, Cile	OB/GYN	X	1
Albrecht, Robert	Vascular	X	1
		Total	1,388*

Source: Page 60 and Exhibit 7 of 2010 FirstHealth-SCOH Application

*Total on page 60 is 1,393 cases

“Committed Annual Surgical Cases” in the “Letters of Support and Surgical Case Commitments” table on page 60 were totaled by specialty, and are shown in the following table.

**Letters of Support and Surgical Case Commitments
Cases by Specialty**

Surgical Specialty	Annual Surgical Cases	% of Total
General	38	2.8%
Gynecology	86	6.4%
Neurosurgery	0	0.0%
Ophthalmology	634	46.9%
Orthopedics	377	27.9%
Otolaryngology	0	0.0%
Plastic Surgery	4	0.3%
Podiatry	16	1.2%
Urology	0	0.0%
Vascular Surgery	2	0.1%
Oral Surgery	196	14.5%
Total	1,353	100.0%

Ophthalmology and oral surgery will be two of the most performed surgeries at SCOH; otolaryngology will be one of the least performed surgeries, as shown in the previous table.

For comparison purposes, the surgical specialties historically performed at SCOP are shown in the following table.

**Surgery Center of Pinehurst Surgical
Cases by Specialty
FY2006 – FY2009**

Surgical Specialty	FY2006 (2007 LRA)	% of Total	FY2007 (2008 LRA)	% of Total	FY2008 (2009 LRA)	% of Total	FY2009 (2010 LRA)	% of Total
General	189	8.12%	416	9.40%	563	11.84%	576	12.0%
Gynecology	410	17.62%	632	14.28%	618	12.99%	710	14.8%
Neurosurgery	7	0.30%	20	0.45%	4	0.08%	0	0
Ophthalmology	175	7.52%	231	5.22%	244	5.13%	262	5.5%
Orthopedics	918	39.46%	1,809	40.88%	1,801	37.86%	1,533	31.9%
Otolaryngology	431	18.52%	965	21.81%	1,125	23.65%	1,248	26.0%
Plastic Surgery	6	0.26%	23	0.52%	25	0.53%	14	0.3%
Podiatry	128	5.50%	210	4.75%	209*	4.39%	222	4.6%
Urology	61	2.62%	104	2.35%	149	3.13%	180	3.7%
Vascular Surgery	1	0.04%	15	0.34%	19	0.40%	0	0
Oral Surgery	0	0	0	0	0	0	58	1.2%
Total	2,326	100%	4,425	100%	4,548	100%	4,803	100%

The data shows that the majority of surgeries historically performed at SCOP are orthopedics and otolaryngology. The data further shows that ophthalmology and oral surgery are two of the least performed surgeries.

FirstHealth does not disclose that there is any difference between the historical surgical specialties at SCOP and the projected surgical specialties at SCOH.

D. 19 of 50 Physicians have not Made "Surgical Case Commitments" to SCOH

Exhibit 7 contains 50 letters from physicians. The following is an analysis of 19 of the 50 physician letters included in Exhibit 7.

1. Commitment to Accept New Patients Referred to Medical Practice from SCOH

Exhibit 7 contains 50 physician letters: 9 of those letters are not commitments to perform ambulatory surgery at SCOH; they are letters **committing to accept new patients to their medical practices:**

- [name illegible], MD, MSCA, Rockingham/Richmond
- Kathy Settle, MSN, RN, CS, FNP, FirstHealth Family Care Center, Raeford
- Gary Garison, [practice illegible], 1090 E. Central Ave, [no city]
- Charles T. Inman, OD, Raeford Eye Clinic, Raeford
- Robert [last name illegible], [practice illegible], Raeford
- John Brooke, MD, Lumber River Cardiology, Laurinburg, NC 28352, Scotland County
- Jorge [middle initial and last name illegible], The Jordan Clinic, Raeford
- Leverne Locklear, PA, Carolina Foot & Medical, Raeford
- Vickie Farmer, PA-C, Raeford Family Care, Raeford

None of these letters should be considered when calculating projected surgical volume at SCOH.

2. Pain Management Procedures are not Surgical Cases

Exhibit 7 contains 50 physician letters: 4 of those letters are on Surgery Center of Pinehurst letterhead purport to be commitments to perform ambulatory surgery **at SCOH:**

- Brian Thwaites, MD committing to perform 20 outpatient surgical cases on residents of Cumberland, Hoke, Robeson, and Sampson Counties
- James Winkley, MD committing to perform 20 outpatient surgical cases on residents of Cumberland, Hoke, Robeson, and Sampson Counties
- Jasland ReVile, MD committing to perform 10 outpatient surgical cases on residents of Cumberland, Hoke, Robeson, and Sampson Counties
- Robert Oldroyd, MD, committing to perform 10 outpatient surgical cases on residents of Cumberland, Hoke, Robeson, and Sampson Counties

The following language appears in all 4 letters

[a]s a result of the proposed ambulatory surgical center, I will experience a shift in my referral pattern to the Surgery Center of Hoke and plan to perform [60 = 20 +20 + 10+ 10] outpatient cases at Surgery Center of Hoke.

Pain management procedures are not surgical cases for purposes of determining need for the existing six and the proposed two ambulatory surgery operating rooms and utilization of those operating rooms.

Further, FirstHealth does not intend to perform pain management cases at SCOH. There is no pain management volume projected for SCOH. All pain management volume is projected for SCOP. Please see projections in a table on page 84 in response to Section IV.1.(a) through (d).

Consequently, none of the “60 cases” in the four letters should be considered when calculating projected outpatient surgical volume at SCOH and/or SCOP, and used to support need for existing and proposed ambulatory surgical operating rooms at SCOH and/or SCOP.

3. Drs. Griffin, Grace, McAlister-Stokes, and Caldwell did not make “Surgical Case Commitments” for 809 cases to SCOH

The following is an analysis of the letters in Exhibit 7 from the Drs. Griffin, Grace, McAlister-Stokes, and Caldwell.

Two letters from Carolina Eye Associates, PA

FirstHealth identifies ophthalmology as a specialty to be provided at SCOH in response to 10A NCAC 14C .2102. Three ophthalmologist provided letters of support. Two submitted a letter on Carolina Eye Associates, PA letterhead. The third, a pediatric ophthalmologist, submitted a letter on SCOP letterhead.

Neil Griffin, MD and Colleen Grace, MD, in practice with Carolina Eye Associates, with two locations one in Moore County and one in Scotland County, are listed in a table on page 60 entitled “Letters of Support and Surgical Case Commitments.” That table identifies “each physician or medical practice and their specialty and each physician’s committed annual surgical cases from the service area.”

Exhibit 7 includes a letter from Dr. Griffin in which he states “[a]nnually, I have provided outpatient surgical services to approximately 494 residents from Hoke, Cumberland, Scotland, and Robeson counties.”

Exhibit 7 also includes a letter from Dr. Grace in which she states “[a]nnually, I have provided outpatient surgical services to approximately 120 residents from Hoke, Cumberland, Scotland, and Robeson counties.”

Missing from each letter is the number of surgeries that each performed in procedure rooms, or which could have been performed in a procedure room – not requiring an ambulatory operating room.

Also missing from each letter is a firm statement of the annual number of ambulatory surgery cases Drs. Griffin and Grace each commit to perform in each of the three project years at SCOH on residents from Hoke, Cumberland, Scotland, and Robeson Counties.

There is **no commitment** from Drs. Griffin and Grace in their letters to perform 614 (494 + 120) outpatient surgeries at SCOH on residents from Hoke, Cumberland, Scotland, and Robeson Counties in any of the three Project Years. Those 614 cases cannot be included in the volume projections for SCOH.

To the extent that FirstHealth included Drs. Griffin and Grace volume in outpatient surgeries at SCOH to be performed on residents from Montgomery, Moore, Richmond, and Randolph Counties (the “Non-4-County Service Area”) and the “Outside 8-County Service Area,” there are no commitments from either physician to do so, and none of their cases can be included in volume projections for those Service Areas.

Two Letters from Highland Pediatric Dentistry

Yvette McAlister-Stokes, MD and Philip Caldwell, MD, in practice with Highland Pediatric Dentistry, with an office in Fayetteville, are listed in a table on page 60 entitled “Letters of Support and Surgical Case Commitments.” That table identifies “each physician or medical practice and their specialty and each physician’s committed annual surgical cases from the service area.”

Exhibit 7 includes a letter from Dr. McAlister-Stokes in which she states “[a]nnually, I have provided outpatient surgical services to approximately 75 residents from Hoke, Cumberland, Scotland, and Robeson counties.”

Exhibit 7 also includes a letter from Dr. Caldwell in which he states “[a]nnually, I have provided outpatient surgical services to approximately 120 residents from Hoke, Cumberland, Scotland, and Robeson counties.”

Neither of the Highland Pediatric Dentistry letters specifies the time period that comprises “Annually,” nor sets forth the annual number of ambulatory surgery cases each physician commits to perform in each of the three project years at SCOH to patients from Hoke, Cumberland, Scotland, and Robeson counties.

Neither letter discloses at what facility(ies) in Fayetteville each physician provided “outpatient surgical services.”⁴ It is reasonable to question whether the facilities in Fayetteville at which

⁴ 2010 FirstHealth-SCOH Application, page 59, “ {...} Drs. Caldwell and McAlister-Stokes, are dentists who perform surgical cases in Fayetteville. The surgical case volumes that these physicians will bring to SCOH from Fayetteville will result in a 195 case decrease in Fayetteville outpatient surgical cases.”

Drs. McAlister-Stokes and Caldwell performed those “outpatient surgical services” will be adversely affected.

Also missing from each letter is a firm statement of the annual number of ambulatory surgery cases Drs. McAlister-Stokes and Caldwell each commit to perform in each of the three project years at SCOH on residents from Hoke, Cumberland, Scotland, and Robeson Counties.

There is **no commitment** from Drs. McAlister-Stokes and Caldwell in their letters to perform 195 (75 + 120) outpatient surgeries at SCOH on residents from Hoke, Cumberland, Scotland, and Robeson Counties in any of the three Project Years. Those 195 cases cannot be included in the volume projections for SCOH.

To the extent that FirstHealth included Drs. McAlister-Stokes and Caldwell volume in outpatient surgeries at SCOH to be performed on residents from Montgomery, Moore, Richmond, and Randolph Counties (the “Non-4-County Service Area”) and the “Outside 8-County Service Area,” there are no commitments from either physician to do so, and none of their cases can be included in volume projections for those Service Areas.

Impact on Step 6 in Part 2 of the FirstHealth Methodology

On page 102, FirstHealth represents that Drs. Griffin, Grace, McAlister-Stokes, and Caldwell (non-SCOP physicians) have committed to the performance of over 800 outpatient surgical cases at Surgery Center of Hoke.” The following table was created to illustrate the analysis above of the letters from Drs. Griffin, Grace, McAlister-Stokes, and Caldwell.

Letters in Exhibit 7

Physician	Specialty	SCOP Physician	Historical Outpatient Surgical Cases Provided to Residents of Cumberland, Hoke, Robeson, and Scotland Counties	Outpatient Surgical Cases Committed to be Provided to Residents of Cumberland, Hoke, Robeson, and Scotland Counties at SCOH	Difference
Griffin, Neil	Ophthalmology		494	0	-494
Grace, Colleen	Ophthalmology		120	0	-120
Caldwell, Philip	Oral Surgery		120	0	-120
McAlister-Stokes, Yvette	Oral Surgery		75	0	-75
		Total	809	0	-809

Source: Exhibit 7 of 2010 FirstHealth-SCOH Application

Based on the letters, none of the 809 historical outpatient surgical cases shown in the previous table should be considered when calculating projected surgical volume at SCOH. Consequently, 809 cases should be deducted from the annual projected volume for SCOH, as shown in the following table.

**Surgery Center of Hoke
Ambulatory Surgery Operating Room Need**

	Project Year 1 10/12-9/13	Project Year 2 10/13-9/14	Project Year 3 10/14-9/15
Total Projected Outpatient Surgery Cases	1,190	1,818	2,457
Uncommitted Outpatient Surgical Cases of Drs. Griffin, Grace, McAlister- Stokes, and Caldwell	809	809	809
Remaining Total Projected Outpatient Surgery Cases	381	1,009	1,648
Total Weighted Hours at 1.5 Hrs/Outpatient Surgical Case	572	1,514	2,472
Total ORs needed at 1,872 Hrs/Year	.3	.8	1.3

Source: 2010 FirstHealth-SCOH Application, page 84

The previous table shows that FirstHealth cannot justify a need for two ambulatory surgical operating rooms without explicitly committed volume from Drs. Griffin, Grace, McAlister-Stokes, and Caldwell.

E. There is no “Surgical Case Commitment” from a Neurologist

FirstHealth identifies neurosurgery⁵ as a specialty to be provided at SCOH in response to 10A NCAC 14C .2102(a). There are, however, no neurosurgeons listed in the “Letters of Support and Surgical Case Commitments” table on page 60.

Exhibit 7 includes letters from the **two** neurosurgeons:

- Letter signed by Larry V. Carson, MD, FACS who identifies his practice as Neurosurgery & Plastic and Reconstructive Surgery in Pinehurst (Moore County).
- Letter signed by [Carol] Wadon, MD who does not identify her practice.

Larry V. Carson, MD and Carol Wadon, MD are neurosurgeons in practice with Carolina Neurosurgical Service, PA with office locations in Fayetteville and Pinehurst. Each surgeon is a faculty member on the UNC Department of Surgery, Division of Neurosurgery, and on the medical staff of FirstHealth-Moore.⁶

⁵ 2010 LRA list zero neurosurgery cases were performed at SCOP in FY 2009. In FY 2008, there were 4 neurosurgery cases listed as having been performed at SCOP.

⁶ <http://www.med.unc.edu/neurosurgery/faculty/CarsonLV?searchterm=larry+carson>;
<http://www.med.unc.edu/neurosurgery/faculty/WadonC?searchterm=Carol+Wadon>

Drs. Carson and Wadon’s letters **leave blank** the annual number of outpatient surgical services each:

- Provided to residents from Hoke, Cumberland, Scotland, and Robeson Counties
- Commits to provide at SCOH to residents from the Four County Service Area
- Commits to provide at SCOH to residents from the “Non-4-County Service Area.”
- Commits to provide at SCOH to residents from the “Outside 8-County Service Area.”

As such, there is **no commitment by any neurosurgeon to perform outpatient surgical cases at SCOH.**

F. There is no “Surgical Case Commitment” from a Urologist

FirstHealth identifies urology as a specialty to be provided at SCOH in response to 10A NCAC 14C .2102(a). There are, however, no urologists listed in the “Letters of Support and Surgical Case Commitments” table on page 60. There are **no** urologists letters included in Exhibit 7.

G. FirstHealth Relies on Unreasonable Assumptions and Overstated Projections

1. Historical Performance of SCOP

On page 73, FirstHealth represents that patients residing in the 4-county service area currently represent 21.7% of SCOP patients. FirstHealth, however, fails to mention that its percentage of that 4-county service area has declined since FY 2007, as shown in the following table.

Surgery Center of Pinehurst
 Historical Patient Origin and Utilization
 October 2006 – September 2009

County	FY 2007	FY 2008	% Change	FY 2009	% Change
Hoke	550	492	-11%	400	-19%
Cumberland	600	562	-6%	352	-37%
Robeson	747	702	-6%	435	-38%
Scotland	200	140	-30%	325	132%
Subtotal	2,097	1,896	-10%	1,512	-20%
Total Surgical Cases	4,425	4,757	7.5%	4,803	1%
Pain Management	2,788	2,333	-16%	2,183	-6%
Total Surgery and Pain Management Cases	7,213	7,090	-2%	6,986	-1%

Source: Surgery Center of Pinehurst’s 2008, 2009, and 2010 Ambulatory Surgical Facility License Renewal Applications

The previous table shows that SCOP experienced a mere 1% increase in surgical cases in FY 2009; pain management cases declined 6%. In FY 2007, the total number of patients from the proposed 4-county service area was 29.1%. That percent decreased to 21.7% in FY 2009.

On page 86, FirstHealth notes that SCOP combined its surgical and non-surgical cases (assumed to be pain management) together in the Patient Origin table in its 2010 LRA. A comparison of FY 2009 surgical case patient origin on page 86 and patient origin reported in the 2010 LRA is shown in the following table.

Please note that FirstHealth did not provide surgical case patient origin for any of the other counties served by SCOP.

**Surgery Center of Pinehurst
Surgical Patient Origin
October 2008 – September 2009**

County	FY 2009 Page 86 – Surgical Cases	FY 2009 2010 LRA – Surgical and Pain Management Cases	Difference = Pain Management Cases
Hoke	275	400	125
Cumberland	242	352	110
Robeson	299	435	136
Scotland	223	325	102
Subtotal	1,039	1,512	473
Pain Management	2,183	2,183	
Surgery Cases	4,803	4,803	
Total	6,986	6,986	

Source: 2010 FirstHealth-SCOH Application, page 86; Surgery Center of Pinehurst's 2010 Ambulatory Surgical Facility License Renewal Application

FirstHealth also did not disclose whether SCOP also combined surgical and pain management cases in Patient Origin tables in its 2008 and 2009 LRAs. That makes it difficult to determine whether and to what extent there has been any change in SCOP's surgical patient origin from Hoke, Cumberland, Robeson, and Scotland Counties.

Assuming that 1 surgical patient = 1 surgical case, FirstHealth projects to serve 2,457 patients (cases) at SCOH in the third year of operation, which is 51.1% of all surgical patients served by SCOP in FY 2009 (2,457 surgery patients projected / 4,803 surgery patients served in FY2009). It is unreasonable to project that SCOH, with a 4-county service area, will serve 51% of all the patients historically served at SCOP, which includes patients from Moore County.

The following table shows FirstHealth's projections for SCOP and SCOH and the percentage annual increase.

**Surgery Center of Pinehurst and Surgery Center of Hoke
Historical and Projected Surgical and Pain Management Volume**

FY	2008	2009	2010	2011	2012	2013	2014	2015
SCOP								
Outpatient Surgery	4,757	4,803	4,860	4,916	4,971	4,367	4,397	4,427
% Change		1.0%	1.2%	1.2%	1.1%	-12.2%	0.7%	0.7%
Pain Management	2,333	2,183	2,209	2,235	2,259	2,282	2,305	2,328
% Change		-6.4%	1.2%	1.2%	1.1%	1.0%	1.0%	1.0%
SCOH								
Outpatient Surgery						1,190	1,818	2,457
% Change							52.8%	35.1%
SCOP + SCOH								
Outpatient Surgery	4,757	4,803	4,860	4,916	4,971	5,557	6,215	6,884
% Change		1.0%	1.2%	1.2%	1.1%	11.8%	11.8%	10.8%
% Change 2009 to						115.7%	129.4%	143.3%

Source: 2010 FirstHealth-SCOH Application, page 84

In FY 2009, SCOP performed 4,803 surgical cases. If the proposed project is developed in the first year of operation, FY 2013, FirstHealth projects an 15.7% ($5,557 / 4,803 = 1.157$) increase in surgical cases over the utilization achieved in FY 2009, as shown in the previous table. In the third year of operation, FY 2015, FirstHealth projects a 43.3% ($6,884 / 4,803 = 1.433$) increase in surgical cases over the utilization achieved in FY 2009, as shown in the previous table.

H. FirstHealth Projects Unreasonable Ambulatory Surgical Market Share Increases

1. SCOP Actual Market Share of 4-County Service Area of SCOH

SCOP's actual market share of the 4-county service area of SCOH in FY 2009 is shown in the following table.

**Surgery Center of Pinehurst
4-County Service Area
Market Share - October 2008 – September 2009**

	Cumberland	Hoke	Robeson	Scotland	Total
SCOP Surgical Patients*	242	275	299	223	1,039
Total Outpt	17,551	1,519	8,387	2,659	30,116
SCOP Market Share	1.4%	18.1%	3.6%	8.4%	3.4%

Source: SCOP 2010 LRA

*Includes changes to Eye Surgery Center of Carolinas and SCOP surgical patient origin as per 2010 FirstHealth-SCOH Application, page 86

2. Projected Market Share Growth of SCOP in the 4-County Service Area of SCOH

In Step 8 in Part 1 of FirstHealth’s methodology on page 90, entitled “Projected Market Share Growth,” FirstHealth projects market share for SCOP for the 4-county service area of SCOH, as shown in the following table.

Surgery Center of Pinehurst 4-County Service Area Projected Market Share - 2010 through 2015

FY	Cumberland	Hoke	Robeson	Scotland	Total
2010	1.7%	19.5%	4.1%	10.0%	35.3%
2011	1.7%	19.5%	4.1%	10.0%	35.3%
2012	1.7%	19.5%	4.1%	10.0%	35.3%
2013	1.7%	12.4%	4.1%	10.0%	28.2%
2014	1.7%	12.4%	4.1%	10.0%	28.2%
2015	1.7%	12.4%	4.1%	10.0%	28.2%

Source: 2010 FirstHealth-SCOH Application, page 90

SCOH “did decrease its market share in Hoke County in 2013-2015 from 19.5 percent to 12.4 percent to account for the increase in the outpatient utilization rate proposed in Step 3.”

3. Projected Additional Market Share in the 4-County Service Area

In Step 7 in Part 2 of FirstHealth’s methodology on pages 104, entitled “Projected Additional Market Share,” FirstHealth projects

additional market share for the 4-county service area, associated with the addition of physicians to Surgery Center of Hoke Medical staff who are not on the Surgery Center of Pinehurst medical staff, as well as the projected market share increase of outpatient surgical cases due to the presence of Surgery Center of Hoke physicians operating in Hoke County.

Projected additional market share is shown in the following table.

Surgery Center of Hoke 4-County Service Area Projected Additional Market Share - 2010 through 2015

FY	Cumberland	Hoke	Robeson	Scotland	Total
2010	0.0%	0.0%	0.0%	0.0%	0.0%
2011	0.0%	0.0%	0.0%	0.0%	0.0%
2012	0.0%	0.0%	0.0%	0.0%	0.0%
2013	2.5%	5.0%	1.0%	1.5%	10.0%
2014	5.0%	10.0%	2.0%	3.0%	20.0%
2015	7.5%	15.0%	3.0%	4.5%	30.0%

Source: 2010 FirstHealth-SCOH Application, page 104

FirstHealth does not identify the “additional physicians,” each “additional physician’s” surgical specialty, and there are no letters or recruiting plans included with the 2010 FirstHealth-SCOH Application. The additional market share projections are not supported by any data. Consequently, any projections based upon these market share assumptions are unsupported and invalid.

4. Combined Projected Market Share Growth of SCOP in the 4-County Service Area and Projected Additional Market Share in the 4-County Service Area

The following table combines SCOP market share projected in Step 8 in Part 1 of FirstHealth’s methodology on page 90 and SCOH market share projected in Step 7 in Part 2 of FirstHealth’s methodology on pages 104.

**Surgery Center of Pinehurst and Surgery Center of Hoke
4-County Service Area
Projected Additional Market Share - 2010 through 2015**

FY	Cumberland	Hoke	Robeson	Scotland	Total
2010	1.7%	19.5%	4.1%	10.0%	35.3%
2011	1.7%	19.5%	4.1%	10.0%	35.3%
2012	1.7%	19.5%	4.1%	10.0%	35.3%
2013	4.2%	17.4%	5.1%	11.5%	38.2%
2014	6.7%	22.4%	6.1%	13.0%	48.2%
2015	9.2%	27.4%	7.1%	14.5%	58.2%

Source: 2010 FirstHealth-SCOH Application, pages 90 and 104

The following calculates the growth from SCOP’s FY 2009 market share to SCOP and SCOH’s FY 2015 market share of the 4-county service area.

**Surgery Center of Pinehurst and Surgery Center of Hoke
4-County Service Area
Market Share - 2009 and 2015**

Market Share	Cumberland	Hoke	Robeson	Scotland
2009 SCOP	1.4%	18.1%	3.6%	8.4%
2015 SCOP & SCOH	9.2%	27.4%	7.1%	14.5%
% Change	667.2%	151.3%	199.2%	172.9%

Source: SCOP 2010 LRA

*Includes changes to Eye Surgery Center of Carolinas and SCOP surgical patient origin as per 2010 FirstHealth-SCOH Application, page 86

In FY 2009, SCOP had a 1.4% market share of Cumberland County. If the proposed project is developed in the third year of operation, FY 2015, FirstHealth projects that SCOP and SCOH

will have a combined 9.2% market share of Cumberland County, a 667.2% (9.2%/ 1.4%) increase in market share.

The previous table illustrates the extent to which market share assumptions are unreasonable. Projections resulting from the stated market share assumptions are invalid.

I. Number of Patients at the Surgery Center of Pinehurst has Declined

On page 73, FirstHealth states that patients residing in Hoke, Cumberland, Robeson, and Scotland Counties represent 21.7% of SCOP’s patients in FY 2009. FirstHealth does not disclose that residents of those four counties accounted for 26.7% of SCOP’s patients in FY 2008; only Scotland County increased over the last fiscal year, as shown in the following table.

**Surgery Center of Pinehurst
Patient Origin: October 2007 - September 2009**

County of Patient Origin	October 2007 – September 2008		October 2008 – September 2009		Difference
	Number of Patients	Percent of Total	Number of Patients	Percent of Total	
Moore	4,076	57.5%	3,046	43.6%	-13.9%
Randolph	70	1.0%	60	0.9%	-0.1%
Robeson	702	9.9%	435	6.2%	-3.7%
Richmond	562	7.9%	715	10.2%	2.3%
Cumberland	562	7.9%	352	5.0%	-2.9%
Hoke	492	6.9%	400	5.7%	-1.2%
Montgomery	421	5.9%	398	5.7%	-0.2%
Scotland	140	2.0%	325	4.7%	2.7%
All Other	65	0.9%	1,255	18.0%	17.0%
Total	7,090	100.0%	6,986	100.0%	

Source: 2010 and 2009 Surgery Center of Pinehurst Ambulatory Surgery Center LRAs

Nevertheless, SCOH projects increasing volumes based upon a use rate methodology with increasing population growth in these counties and increasing market share in Cumberland, Hoke, Robeson, and Scotland Counties.

The previous table shows that the total outpatient surgical volume at SCOP has decreased in the last fiscal year. It also is noteworthy that over the last reporting year, the number of patients from Moore County decreased substantially, as shown in the previous table. Surgery Center of Pinehurst draws a plurality of its patients from Moore County.

J. Projected Patients from Cumberland, Scotland, and Robeson Counties are Uncertain and Unsubstantiated

In Section III.5, page 73, FirstHealth identifies the SCOH service area to include Hoke, Cumberland, Robeson, and Scotland Counties. FirstHealth states that patients residing in these

counties currently represent 21.7% of SCOP patients. Further, on page 74, FirstHealth states "...residents from these counties must travel through Hoke County to reach Surgery Center of Pinehurst in Moore County."

In Section III.6, page 74, FirstHealth projects the patient origin by county of residence for the proposed project for the first two years of operation following completion of the project, as shown below.

COUNTY	FY2013	FY2014
Cumberland	43.1%	49.2%
Hoke	23.0%	22.3%
Robeson	20.3%	17.7%
Scotland	13.4%	10.8%
Total	100.0%	100.0%

Without additional volume from Cumberland, Scotland, and Robeson Counties, FirstHealth could not sustain the proposed relocated ambulatory surgical operating rooms. FirstHealth provides no evidence or documentation that patients currently traveling to SCOP from Scotland or Robeson Counties would be willing to seek care in Hoke County, nor that the volume shifted to SCOH would be appropriate for the ambulatory surgery services offered at SCOH. A review of a map of these counties and the health care facilities in those areas explains in part why such projections are not substantiated. It is unlikely that patients, who choose referral to physicians practicing at the SCOP, and physicians with existing referral patterns to SCOP, will change existing patterns. Those patients have already chosen to leave both Robeson and Scotland Counties where surgical services are available, to receive surgical care from specific Moore County physicians.

K. SCOH Has Not Considered the Impact of the Approved CFV-West

The population of Hoke County needs more than one operating room proposed by the FirstHealth Hoke CON Application which was submitted concurrently with the SCOH Application. HCMC reviewed historical surgical services utilization for residents of Hoke County using the Annual Hospital Licensure Renewal Applications. Based upon historical inpatient and outpatient surgical utilization for 2007 through 2009 HCMC calculated inpatient and outpatient surgical use rates for Hoke County residents⁷. Using the three year average inpatient and outpatient for surgical use rates Hoke County inpatient and outpatient surgical volumes were projected as reflected in the following table.

However, all inpatient and outpatient surgeries are not clinically appropriate for care in a community hospital setting. For example, HCMC will not provide cardiac surgery or other tertiary level services currently provided at CFVMC. Therefore, HCMC adjusted the total

⁷ A comparison of inpatient and outpatient surgical use rates calculated using the LRA data and using the Thomson inpatient and outpatient databases shows that the rates calculated using the LRA data results in more conservative surgical use rates.

inpatient and outpatient surgical volume to reflect only clinically appropriate cases for a community hospital setting. In addition, c-section volume was subtracted from the total inpatient surgical volume based upon historical Hoke County surgical utilization. Total projected shared operating room need for the residents of Hoke County, adjusted for clinical appropriateness in a community hospital, is 2.5 shared operating rooms in 2016 as reflected in the following table.

Hoke County Operating Room Need Analysis

Hoke County	2009	2010	2011	2012	2013	2014	2015	2016
Inpatient - Excluding C-Section								
Population	45,591	46,751	47,912	49,071	50,232	51,391	52,551	53,712
Inpatient Use Rate - Hoke County Three Yr Average	19.32	19.32	19.32	19.32	19.32	19.32	19.32	19.32
Projected Inpatient Cases	881	903	926	948	970	993	1,015	1,038
Percent C-Section	30%	30%	30%	30%	30%	30%	30%	30%
Total Projected Inpatient Surgery (Less C-Section)	614	630	645	661	677	692	708	723
Acuity Adjusted (Appropriate for Community Hospital)	65%	65%	65%	65%	65%	65%	65%	65%
Projected Inpt Surgery	399	409	419	430	440	450	460	470
Outpatient								
Population	45,591	46,751	47,912	49,071	50,232	51,391	52,551	53,712
Outpatient Use Rate - Hoke County Three Yr Average	45.96	45.96	45.96	45.96	45.96	45.96	45.96	45.96
Projected Outpatient Cases	2,095	2,149	2,202	2,255	2,309	2,362	2,415	2,469
Acuity Adjusted (Appropriate for Community Hospital)	90%	90%	90%	90%	90%	90%	90%	90%
Projected Outpt Surgery	1,886	1,934	1,982	2,030	2,078	2,126	2,174	2,222
Total Weighted Surgical Hours	4,026	4,129	4,231	4,333	4,436	4,538	4,641	4,743
OR Need at 1,872 Hours per Room	2.2	2.2	2.3	2.3	2.4	2.4	2.5	2.5

Source: HCMC CON Application Exhibit 30, Table 80

As shown in the previous table, the population of Hoke County is projected to increase to nearly 54,000 by 2016. It should be noted that the population data utilized in this analysis is from the NC Office of State Budget and Management and does not include any adjustment in the projections for the impact of BRAC. Based upon historical utilization statistics the Hoke County

population will be sufficient to support 2.5 shared operating rooms in a community hospital setting in 2016. In November, 2009 the Agency approved the FirstHealth-Hoke CON Application for one operating room in Hoke County, CFV West, Project I.D.# M-8353-09 with two operating rooms approved to serve the residents of Hoke and southwest Cumberland Counties. At a minimum, two operating rooms are already approved for residents of Hoke County. SCOP and FirstHealth failed to acknowledge these existing resources for Hoke County residents. Therefore, there is no additional need for two more operating rooms in Hoke County.

G.S. 131E-183 (4)

Where alternative methods of meeting the needs for the proposed project exist, the applicant shall demonstrate that the least costly or most effective alternative has been proposed.

As discussed in detail in the context of Criterion (3), FirstHealth has not demonstrated the need for the proposed SCOH. The 2010 FirstHealth-SCOH Application is non-conforming to Criterion (4).

G.S. 131E-183 (5)

Financial and operational projections for the project shall demonstrate the availability of funds for capital and operating needs as well as the immediate and long-term financial feasibility of the proposal, based upon reasonable projections of the costs of and charges for providing health services by the person proposing the service.

As discussed in detail in the context of Criterion (3), FirstHealth has not demonstrated the need for the proposed SCOH. The 2010 FirstHealth-SCOH Application is non-conforming to Criterion (5).

G.S. 131E-183 (6)

The applicant shall demonstrate that the proposed project will not result in unnecessary duplication of existing or approved health service capabilities or facilities.

A. Duplication of Operating Rooms in the Moore-Hoke Multi-county Operating Room Service

On pages 39 and 40 of the FirstHealth Application, in response to 10A NCAC 14C.2102(c)(4), FirstHealth projects surgical volume for Surgery Center of Hoke and its three related entities, Surgery Center of Pinehurst, FirstHealth-Moore, and FirstHealth-Hoke, in Project Year 3, as shown in the following table.

**Surgery Center of Pinehurst, Surgery Center of Hoke,
First Health-Moore, and FirstHealth-Hoke
Projected Utilization: October 2014 – September 2015**

FY 2015	Surgery Center of Pinehurst	Surgery Center of Hoke	FirstHealth-Moore	FirstHealth-Hoke	FirstHealth Total
Inpatient Cases*	0	0	5,689	69	5,798
Hours at 3 Hours/Case			17,067	207	17,394
Ambulatory Cases	4,427	2,457	4,228	550	11,662
Hours at 1.5 Hours/Case	6,641	3,686	6,342	825	17,493
Total ORs Needed at 1,872 Hours/Year	3.5	2.0	12.5	0.6	18.6
OR Inventory Existing and CON Approved	4	2	15	1	22
Surplus (+)	0	0	+2.5	0	+3.4

2010 FirstHealth-Surgery Center of Hoke Application at pages 39 and 40

**Does not include open-heart cases performed in FirstHealth-Moore's two dedicated open-heart ORs*

***Applied rounding rules for Service Areas with 10 or more surgical operating rooms.*

The previous table shows a **surplus of 2.5** operating rooms at FirstHealth-Moore, and **surplus of 3.4** operating rooms in the FirstHealth system. FirstHealth does not acknowledge that surplus.

FirstHealth does not propose to de-license the surplus operating room. As such, the proposed project represents an unnecessary duplication of existing surgical operating rooms at FirstHealth-Moore, and results in a duplication of surgical services between the proposed and existing SCOP, FirstHealth-Moore, FirstHealth-Hoke, and SCOH facilities. FirstHealth is non-conforming to Criterion (6).

B. Impact on Cape Fear Valley Medical Center

Cape Fear Valley Medical Center is less than 15 miles from the proposed location of SCOH; FirstHealth-Moore is 29 miles.

Among the 50 physician letters included in Exhibit 7, 6 physicians have offices in Fayetteville, Cumberland County:

- Carolina Eye Associates - letters from two ophthalmologists at this practice
- Highland Pediatric Dental – letters from two dentists at this practice
- Carolina Neurosurgical Service, PA – letters from two neurosurgeons at this practice

FirstHealth has not addressed the impact of the proposed SCOH on Fayetteville Surgery Center or Cape Fear Valley Medical Center.

G.S. 131E-183 (9)

An applicant proposing to provide a substantial portion of the project's services to individuals not residing in the health service area in which the project is located, or in adjacent health service areas, shall document the special needs and circumstances that warrant service to these individuals.

The 2010 SMFP assigns Hoke County to Moore and Cumberland Counties, respectively, resulting in the following two two-county Operating Room Service Areas:

- Cumberland-Hoke Multi-county Operating Room Service Area
- Moore-Hoke Multi-county Operating Room Service Area

The Moore-Hoke Multi-county Operating Room Service Area is the relevant service area for purposes of the 2010 FirstHealth-SCOH Application.

In Section III.5, page 73, FirstHealth identifies the SCOH service area to include Hoke, Cumberland, Robeson, and Scotland Counties. In Section III.6, page 74, FirstHealth projects the patient origin by county of residence for the proposed project for the first two years of operation following completion of the project, as shown below.

**Surgery Center of Hoke
Projected Patient Origin by County of Residence
October 2012 – September 2014**

COUNTY	FY2013	FY2014
Cumberland	43.1%	49.2%
Hoke	23.0%	22.3%
Robeson	20.3%	17.7%
Scotland	13.4%	10.8%
Total	100.0%	100.0%

As shown in the previous table, FirstHealth proposes to provide 77% of the project's services (ambulatory surgical services) to individuals not residing in the Moore-Hoke Multi-county Operating Room Service Area in Project Year 1, and 77.7% in Project Year 2.

Then, for the first time, on page 95, in Step 13 of its need methodology, FirstHealth states that it projects outpatient cases that "currently originate from outside the 4-county service area, which includes Montgomery, Moore, Richmond, and Randolph counties, and currently seek treatment at Surgery Center of Pinehurst, [...]."

On page 96, in Step 14 of its need methodology, FirstHealth refers for the first time to "the 8-county service area," and "Outside 8-County Service Area." FirstHealth projects surgery volume

from “Outside 8-County Service Area.” FirstHealth does not define the counties it includes in the “Outside 8-County Service Area.

In addition to the Service Area defined by the 2010 SMFP (Moore-Hoke Counties), FirstHealth identifies three different populations to be served by SCOH:

- Cumberland, Hoke, Robeson, and Scotland Counties (4-County Service Area)
- Cumberland, Hoke, Robeson, Scotland, Montgomery, Moore, Richmond, and Randolph Counties (8-County Service Area)
- Cumberland, Hoke, Robeson, Scotland, Montgomery, Moore, Richmond, and Randolph Counties + Unidentified “Outside 8-County Service Area.”

An applicant proposing to provide a substantial portion of the project's services to individuals not residing in the health service area in which the project is located, or in adjacent health service areas, shall document the special needs and circumstances that warrant service to these individuals. No documentation is included. In the absence of such documentation, the 2010 FirstHealth-SCOH Application does not conform to Criterion (9).

G.S. 131E-183 (18a)

The applicant shall demonstrate the expected effects of the proposed services on competition in the proposed service area, including how any enhanced competition will have a positive impact upon the cost effectiveness, quality, and access to the services proposed; and in the case of applications for services where competition between providers will not have a favorable impact on cost-effectiveness, quality, and access to the services proposed, the applicant shall demonstrate that its application is for a service on which competition will not have a favorable impact.

FirstHealth did not adequately demonstrate that the proposal for an ambulatory surgery facility with two operating rooms in Hoke County would have a positive impact upon the cost effectiveness of the proposed services. Please see discussion in the context of Criteria (3), (3a), (4), (5), (7) and (8). Therefore, the 2010 FirstHealth-SCOH Application is not conforming to Criterion (18a).

IV. CON Criteria and Standards for Surgical Services and Operating Rooms – 10A NCAC 14C .2100

The proposed project is non-conforming to the Criteria and Standards for Surgical Services Operating Rooms as follows:

10A NCAC 14C .2102(a) Information Required of Applicant

FirstHealth identifies urology and neurosurgery as specialties to be provided at SCOH in response to this Criterion. There are, however, no urologists and neurosurgeons listed in the “Letters of Support and Surgical Case Commitments” table on page 60.

There are no urologists letters included in Exhibit 7.

Exhibit 7 includes letters from the two neurosurgeons:

- Letter signed by Larry V. Carson, MD, FACS who identifies his practice as Neurosurgery & Plastic and Reconstructive Surgery in Pinehurst (Moore County).
- Letter signed by [Carol] Wadon, MD who does not identify her practice.

Larry V. Carson, MD and Carol Wadon, MD are neurosurgeons in practice with Carolina Neurosurgical Service, PA with office locations in Fayetteville and Pinehurst. Each surgeon is a faculty member on the UNC Department of Surgery, Division of Neurosurgery, and on the medical staff of FirstHealth-Moore.⁸

Drs. Carson and Wadon’s letters leave blank the annual number of outpatient surgical services he/she provided to residents from Hoke, Cumberland, Scotland, and Robeson Counties, and the number of surgical cases he/she commit to provide at SCOH to residents from Hoke, Cumberland, Scotland, and Robeson Counties. As such, there is no commitment by any urologist and neurosurgeon to perform outpatient surgical cases at SCOH.

10A NCAC 14C .2102(c)(3) Information Required of Applicant

On page 38, in response to 10A NCAC 14C.2102(c)(3), FirstHealth provides surgical volume for the Surgery Center of Pinehurst during the period March 2009 – February 2010, but does not provide data for FirstHealth-Moore during that same period. Instead, FirstHealth provides FY 2009 operating room cases for FirstHealth-Moore. FirstHealth also failed to provide surgical volume for FirstHealth-Moore in the 2010 FirstHealth-Hoke Application, which was filed concurrently on April 15, 2010.

10A NCAC 14C .2102(c)(4) Information Required of Applicant

On pages 39 and 40 of the FirstHealth Application, in response to 10A NCAC 14C.2102(c)(4), FirstHealth projects surgical volume for Surgery Center of Hoke and its three related entities, Surgery Center of Pinehurst, FirstHealth-Moore, and FirstHealth-Hoke, in Project Year 3, as shown in the following table.

⁸ <http://www.med.unc.edu/neurosurgery/faculty/CarsonLV?searchterm=larry+carson;>
<http://www.med.unc.edu/neurosurgery/faculty/WadonC?searchterm=Carol+Wadon>

**Surgery Center of Pinehurst, Surgery Center of Hoke,
First Health-Moore, and FirstHealth-Hoke
Projected Utilization: October 2014 – September 2015**

FY 2015	Surgery Center of Pinehurst	Surgery Center of Hoke	FirstHealth-Moore	FirstHealth-Hoke	FirstHealth Total
Inpatient Cases*	0	0	5,689	69	5,798
Hours at 3 Hours/Case			17,067	207	17,394
Ambulatory Cases	4,427	2,457	4,228	550	11,662
Hours at 1.5 Hours/Case	6,641	3,686	6,342	825	17,493
Total ORs Needed at 1,872 Hours/Year	3.5	1.9	12.5	0.6	18.6
OR Inventory Existing and CON Approved	4	2	15	1	22
Surplus (+)	0	0	+2.5	0	+3.4

2010 FirstHealth-Surgery Center of Hoke Application at pages 39 and 40

**Does not include open-heart cases performed in FirstHealth-Moore's two dedicated open-heart ORs*

***Applied rounding rules for Service Areas with 10 or more surgical operating rooms.*

The previous table shows a **surplus of 3.4** operating rooms at FirstHealth-Moore. FirstHealth does not acknowledge that surplus.

10A NCAC 14C .2102(c)(5) Information Required of Applicant

On page 40, FirstHealth referenced Section IV.1 for the methodology and assumptions utilized to project ambulatory surgical volume for SCOP and SCOH. The deficiencies and issues with the methodology and assumptions are documented in the context of Criterion (3).

10A NCAC 14C .2103(b) Performance Standards

On page 49, FirstHealth projects a need for two ambulatory surgery operating rooms at SCOH.

For the reasons described in detail in the context of 10A NCAC 14C .2102 above and Criterion (3), the assumptions utilized to project surgical volume for SCOH is unreasonable.

10A NCAC 14C .2103(g) Performance Standards

On page 51, FirstHealth referenced "Section IV for the assumptions used in projecting outpatient surgical volume."

The deficiencies and issues with the methodology and assumptions are documented in the context of Criterion (3).

10A NCAC 14C .2105(b) Staffing and Staff Training

On page 54 of the FirstHealth Application, FirstHealth represents that “at least 33 physicians are expected to perform procedures when Surgery Center of Hoke becomes operational.”

FirstHealth references “physician referral letters indicating the surgical volume they commit to treat at the Surgery Center of Hoke.”

As discussed in detail in the context of Criterion (3), there are 50 physician letters in Exhibit 7. Deficiencies and issues in those 50 physician letters are documented in the context of Criterion (3).

V. Conclusion

The CON Application submitted by Surgical Center of Hoke fails to conform to key Criterion reflected in G.S. 131E-183. The project fails to document the need for the proposed operating rooms at SCOH plus all existing operating rooms at FirstHealth-Moore and SCOP. Therefore the proposed project should be denied.

In conclusion, CFVHS believes that this FH application, like its other application submitted in April, is non-conforming to CON criteria and should be denied.

For all of the above reasons, the Application is non-conforming to the Review Criteria for a New Institutional Health Service, and the Application must be denied.