December 3, 2018

COMMENTS IN OPPOSITION FROM NOVANT HEALTH, INC.

Regarding Atrium Health's
Union West CON Application,
Project I.D. # F-11618-18 for New Satellite Campus in Union County

Atrium proposes to spend $116 million to relocate 40 medical/surgical beds, two shared use operating rooms, one dedicated C-section operating room, one GI endoscopy room, a CT scanner and other assets from Atrium Union County Medical Center in Monroe ("Atrium Monroe") to a site in Stallings located 12.56 miles from Atrium Monroe. Atrium has purchased a 52-acre site for a medical office building and to allow for future expansion.

In an attempt to comply with the Acute Care Performance Standard, Atrium makes the unreasonable assumption that the compound annual growth rate ("CAGR") for patient days at Atrium Monroe will increase from 0.7 percent to 1.75 percent. It also makes the unreasonable assumption that the majority of patients now being treated by physicians who practice at Carolinas Medical Center and Mercy Medical Center in downtown Charlotte, for services the new hospital will offer, will in future use the proposed facility in Stallings. Even with both unreasonable assumptions, Atrium barely reaches the performance standard. With reasonable assumptions it cannot meet the performance standard and the application should be found nonconforming with CON review criteria and denied.

Atrium presents no valid health planning justification for the proposed project. The service area for the project includes seven zip codes: 28174, 28173, 28112, 28110, 28104, 28103, 28079. It provides no material improvement in geographic access to hospital services for residents of the service area. Service area residents already have good access to both Atrium and Novant Health hospitals that provide the same or more services than the proposed project. Atrium's existing hospital is only 12.56 miles and nineteen minutes driving time from the proposed site. The new tollway may decrease the driving time to some service area zip codes. Novant Health Matthews Medical Center ("NHMMC") is only 3.22 miles and five minutes driving time from the proposed site. Novant Health Mint Hill Medical Center ("NHMHMC") is only 10.23 miles and twelve minutes driving time from the proposed site.

The proposed project does not improve services to underserved populations. The designated service area for the proposed project is a relatively affluent part of Union County. Household incomes are above the county average. The percentages of charity care, Medicaid and Medicare patients from these zip codes are lower than the county average.

Atrium identified no deficiencies at Atrium Monroe that would require substantial capital if the application is denied. The $131 million cost of the proposed project is a completely unnecessary duplication of the existing Atrium Monroe.

The proposed project is nonconforming with CON Review Criteria (1), (3), (3a), (4), (5), (6), (12), and (18a) as explained in the remainder of this comment. Novant Health respectfully requests the Agency to deny the application.

Conformity with CON Statutory Review Criteria

Criterion (1)

Criterion (1): NCGS § 131E-183(a)(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 any health service, health service facility, health service facility beds, dialysis stations, or home health offices that may be approved.

The Atrium Application proposing to develop a new hospital in Union County in the Town of Stallings ("Atrium Union County West" or "AUCW") does not comply with Policy GEN-3 and therefore is nonconforming with Criterion (1) because it does not demonstrate how the project will promote safety and quality in the delivery of health care services while promoting equitable access and maximizing health care value for resources expended.

There is no material improvement in geographic access to emergency or scheduled services as discussed below. The table below and the maps in Exhibit B show the service area zip codes have reasonable access to existing hospitals and the location of the proposed hospital does not materially improve access. For several zip codes Atrium Monroe is closer than AUCW. In no case is Atrium Monroe 25 minutes or more from a zip code population centroid. For those zip codes where AUCW is the closest location, the advantage over Matthews is less than five minutes or three miles. Atrium discusses the recent opening of the new tollway in Union County. The tollway can only improve travel time to Monroe by reducing traffic on US 74.

Driving Time and Distance from Service Area Zip Codes

Zip Code	Map #	Driving Time				Driving Distance			
		AUCW	Matthews	Monroe	Mint Hill	AUCW	Matthews	Monroe	Mint Hill
28079	B.1	5.93	10.38	18.57	16.15	3.45	6.47	11.89	11.94
28103	B.2	32.17	36.62	13.87	36.50	21.68	24.69	9.39	27.90
28104	B.3	5.87	9.73	20.80	17.20	2.94	4.92	13.01	14.18
28110	B.5	16.88	21.33	8.18	23.70	10.13	13.15	5.05	16.19
28112	B.7	23.35	27.80	9.22	34.74	4.76	17.75	4.76	25.66
28173	B.8	18.70	19.16	23.93	26.65	14.63	14.00	16.24	23.25
28174	B.9	26.01	30.46	7.71	36.23	17.41	20.42	5.12	23.96

Source: Optimal route travel times and travel distances calculated within ArcGIS using road shapefile from NCDOT. Zip centroid is from an ESRI shapefile.

Atrium makes the unsubstantiated argument that Union County residents want to remain in Union County hospitals. This argument makes no sense when the Stallings location is right on the county line. The county line is irrelevant to patient destination patterns. It does not affect access. Local officials and business people usually want to see new investment in their county, but this is not a consideration in North Carolina CON criteria. The Atrium-controlled Union County EMS has good access to NHMMC and NHMHMC. The table below shows NHMMC and NHMHMC miles and drive time from the county line.

Driving Time and Distance from Union County Line

Facility	Distance (miles)	Drive Time (minutes)
NHMMC	2.56	3.95
NHMHMC	10.12	10.89

Source: Optimal route travel times and travel distances calculated within ArcGIS using road shapefile from NCDOT. Zip centroid is from an ESRI shapefile

NHMMC is only 3.22 miles from the proposed site of AUCW, and NHMHMC is only 10.23 miles from the proposed site of AUCW.[1] These are the closest hospitals to the AUCW service area. Atrium argues that EMS protocols do not allow patients to be transported across county lines when there are limited ambulances in operation.[2] Such a protocol is arbitrary and self-serving. It is not based on quality, access or value. People can and do cross county lines every day for work, shopping, dining, entertainment and health care. There is no rule that requires Union County residents to stay in Union County for their health care. Atrium controls the Union County EMS and controls or heavily influences such protocols. Given the close proximity to the county line, NHHMC and NHMHMC are appropriate destinations for patients being transported to hospitals

[1] Optimal route travel times and travel distances calculated within ArcGIS using road shapefile from NCDOT. Zip centroid is from an ESRI shapefile

[2] Atrium Union West CON Application Project # F-11618-18, Section C, p 70.

by ambulance. It is doubtful (and Atrium provides no proof) that EMS services in Union County routinely operate with limited ambulances, so patients can still be transported to NHMMC and NHMHMC without unnecessary difficulty. Plainly, Atrium's concern is not with EMS and its ambulances; rather, Atrium wants to be certain that EMS takes patients to Atrium hospitals. Atrium's goal may be to make its proposed hospital the closest for ED patients and EMS runs in western Union County. Atrium's business objectives should not be confused with a need for a hospital in Stallings.

The proposed project does not improve access to services for uninsured, Medicare or Medicaid populations. The table below shows the percentages of these populations in the seven zip codes in Atrium's designated service area are below the Union County average. Most of the zip codes have percentages of charity and Medicaid patients below the Union County average.

Payor Mix for Union County and AUCW Service Area Zip Codes

Zip Code or County	Percent Charity	Percent Medicaid	Percent Medicare	Percent Other
Union County	6%	27%	17%	50%
28174	9%	27%	21%	43%
28173	4%	26%	7%	63%
28112	7%	31%	22%	40%
28110	7%	26%	22%	45%
28104	4%	27%	9%	60%
28103	4%	30%	20%	46%
28079	5%	26%	13%	56%

Source: 2017 Q2- 2018 Q1 Truven Discharge Data

The proposed project will only offer services already offered by AUCM, NHMMC and NHMHMC, a new hospital that just opened on October 1, 2018. The table below shows the proposed project makes no improvement to safety or quality for service area residents beyond what is provided by existing Atrium and Novant Health facilities. The table shows services offered by Matthews and Monroe based on Truven data, NHMHMC has just opened. The services shown for NHMHMC are based on the description in the application and current operations.[3] The Mint Hill description matches the description in the AUCW application.[4]

[3] NH Mint Hill, CON Application Project #F-07648-06, p 3
[4] Atrium Union West, CON Application Project #F-11622-18, Section C, p 40

Comparison of Existing and Proposed Services

AUCW Services	NHMMC Services	NHMHMC Services	Atrium Monroe
Acute Care	YES	YES	YES
Primary Care	YES	YES	YES
General Pediatrics	YES	YES	YES
OB/GYN	YES	YES	YES
Hospitalists	YES	YES	YES
Non-Invasive/Surgical Cardiology	YES	YES	YES
Oncology	YES	YES	YES
Pulmonology	YES	YES	YES
Gastroenterology	YES	YES	YES
Non-Surgical Neurology	YES	YES	YES
Infectious Disease	YES	YES	YES
General Surgery	YES	YES	YES
Urology	YES	YES	YES
Ophthalmology	YES	NO	YES
Otolaryngology	YES	NO	YES
Orthopedics	YES	YES	YES
Nephrology	YES	YES	YES
Ambulatory Surgery	YES	YES	YES
Outpatient Care	YES	YES	YES
Imaging and Ancillary Services	YES	YES	YES
Emergency Department	YES	YES	YES

Source of services at proposed hospital: Project I.D. #F-011618-18 Page 66

There is no reason to move assets from Atrium Monroe because of physical deficiencies in that facility. Atrium Monroe is a modern and fully functional hospital only 12.56 miles from the proposed site of AUCW. The Atrium application cites no facility deficiencies with any beds, ORs or ancillary services. All existing licensed beds are available.[5] In the application, Atrium states no plans to use the vacated spaces at Atrium Monroe.

Since 2017, Atrium has made substantial investments in Atrium Monroe that total over $33 million.[6] The table below shows No Review and Exemption requests approved by the Agency from 2012 to 2017. There is no need to spend $116 million to duplicate Atrium Monroe's existing capacity. Atrium should instead use its existing facility investment to their fullest.

[5] Atrium Union West, CON Application Project #F-11622-18, Section O, pp 135-136
[6] NC Division of Health Service Regulation, Healthcare Planning and Certificate of Need Section, 2012 – 2017 No Reviews and Exemptions web page.

Atrium's Investments in Union County

Year	Project Description	Cost
No Reviews and Exemption Requests		
2018	Replace existing MRI	$ 1,432,893
2017	Renovate third and fourth floor	$13,586,000
2017	Renovate Emergency Department	$ 2,987,000
2016	Replace two Emergency Power Generators/Construction of Fire Pump and Fire Pump Room	$ 6,500,000
2013	Replace cardiac catheterization equipment	$1,400,000
2012	Acquire 64 slice CT Scanner	$749,595
CON Applications		
2017	Add third OR to Union West Surgery Center (Project # F-11343-17)	$4,100,000
2013	Replace existing linear accelerator at Edwards Cancer Center/Union County (Project # F-10101-13)	$3,017,025
	Total Cost	$33,772,513

Source: 2012-2017 No Reviews and Exemptions, NC Division of Health Service Regulation website
2012-2018 Decisions and Findings, NC Division of Health Service Regulation website

The proposed project does not improve patient choice of providers. Service area residents have reasonable access to both Atrium and Novant Health hospitals. The tables below show patient destination from the AUCW zip codes for the inpatient medical/surgical and obstetric discharges.

The proposed project fails to maximize healthcare value for resources expensed by spending $116 million in project cost and additional operating costs while providing no new services and not correcting any facility deficiencies at Atrium Monroe. It unnecessarily duplicates existing Atrium and Novant hospitals with no gain to the public.

Inpatient Medical/Surgical Services

Hospital	28079	28103	28104	28110	28112	28173	28174	Subtotal	% Subtotal
Union Regional Medical Center	309	487	125	1671	1329	479	330	4,730	33.9%
Carolinas HealthCare System Carolinas Medical Center	456	212	434	730	459	605	140	3,036	21.8%
Novant Health Matthews Medical Center	800	90	530	639	213	359	55	2,686	19.2%
Novant Health Presbyterian Medical Center	367	67	293	274	145	252	42	1,440	10.3%
CMC - Pineville	125	31	165	163	105	372	22	983	7.0%
Novant Health Charlotte Orthopedic Hospital	64	11	50	64	28	79	11	307	2.2%
Other	123	63	100	196	117	144	30	773	5.5%
Total	**2,244**	**961**	**1,697**	**3,737**	**2,396**	**2,290**	**630**	**13,955**	**100.0%**

Source: Truven, CY 2017, Excludes Normal Newborns and Non-Acute Neonates. Excludes LTACH, Behavioral Health, and Rehab Hospitals.

Inpatient Obstetrical Services

Hospital	28079	28103	28104	28110	28112	28173	28174	Subtotal	% Subtotal
Novant Health Matthews Medical Center	206	33	117	231	96	159	20	862	34.5%
Union Regional Medical Center	56	81	17	365	202	49	75	845	33.8%
Carolinas HealthCare System Carolinas Medical Center	100	14	80	71	37	72	8	382	15.3%
Novant Health Presbyterian Medical Center	55	2	52	40	12	82	1	244	9.8%
CMC - Pineville	23	1	15	18	6	54	0	117	4.7%
Carolinas HealthCare System University Hospital	7	3	3	1	1	0	0	15	0.6%
Other	9	6	4	9	1	5	0	34	1.4%
Total	456	140	288	735	355	421	104	2,499	100.0%

Source: Truven, CY 2017, Excludes Normal Newborns and Non-Acute Neonates. Excludes LTACH, Behavioral Health, and Rehab Hospitals.

For the foregoing reasons, plus any additional reasons the Agency may discern as it reviews the AUCW Application, the AUCW Application is nonconforming with Criterion (1) and should be disapproved.

Criterion (3)

Criterion (3): NCGS 131E-183(a)(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 service area, and, in particular, low income persons, racial and ethnic minorities, women, handicapped persons, the elderly, and other underserved groups likely to have access to the services proposed.

Atrium states its projections assume all patients using the proposed hospital are current Atrium patients. Atrium bases its utilization projections for AUCW on a dramatic increase in the historic growth rate of its existing hospital and on assumed shifts of Union County residents now using CMC/Mercy and Pineville.[7] It has no reasonable basis to assume an increased growth rate. It is more likely than not its growth rate in Union County will decline as discussed below. It has no reasonable basis to assume a substantial percentage of Union County patients who chose to be treated by physicians who practice at Pineville or CMC/Mercy will change to a hospital where their physician of choice does not practice.

[7] Atrium Union West, CON Application Project #F-11622-18, Form C Assumptions & Methodologies

Atrium Growth Rates in Union County

The table below from the AUCW application shows the compound annual growth rate ("CAGR") for patient days at Monroe 2015 to 2018 was 0.7%.[8] Atrium assumes it will jump to 1.75% for 2018 to 2024 because of outpatient facilities Atrium has developed in Union County. The application discusses these facilities[9] and the reader will note they have been in place for several years. During those several years the CAGR at Atrium Monroe has never reached 1.75%. There is no recent Atrium development that could reasonably be expected to more than double the CAGR. There is no reasonable basis to assume an increase in the historic CAGR.

CHS Union Historical Inpatient Utilization

	CY15	CY16	CY17	CY18*	CAGR
Acute Care Days	32,522	33,127	32,680	33,255	**0.7%**

Source: Atrium Health internal data.
*CY 2018 annualized based on January to June data.

Growth rates at AUCW and all Atrium hospitals in Union and Mecklenburg Counties will be lower in future years due to:

1. Reductions in Atrium's ability to abuse its market power in contracts with health plans due to the settlement agreement with the Department of Justice and the State of North Carolina. See Exhibit A for copy of Agreement.

2. Novant Health's increased investments beginning in 2015 in primary care practitioners and facilities to balance Atrium's earlier acquisition of physician practices.

3. Exit of many physicians from Atrium employment agreements to join Novant Health Medical Group or to form independent practices able to admit patients to Novant Health facilities.

4. The opening in October 2018 of Novant Health Mint Hill Medical Center (NHMHMC).

Atrium's growth rates and market share in Mecklenburg and Union Counties will be lower in future years due to these factors. This continues a trend shown in the tables below that began in 2015, but is not reflected in the 2018 SMFP. To the extent the overall Atrium growth rate for Union County residents is higher than the Atrium Monroe CAGR, it indicates Union County residents

[8] Atrium Union West, CON Application Project #F-11622-18, Form C Assumptions & Methodologies
[9] Atrium Union West, CON Application Project #F-11622-18, Form C Assumptions & Methodologies

are choosing to use Atrium hospitals in Mecklenburg County – or they are being taken there by the Atrium-controlled Union County EMS system.

Acute Care Patient Days for County Residents

	Mecklenburg County				Union County			
System	**2015**	**2016**	**2017**	**2018Q1**	**2015**	**2016**	**2017**	**2018Q1**
Atrium	229,965	240,655	248,940	63,492	46,366	46,657	48,086	12,231
Novant	135,486	133,090	132,491	36,559	23,440	24,679	23,744	7,209
Other	11,855	13,266	13,690	3,649	2,069	2,599	2,387	496
Total	377,306	387,011	395,121	103,700	71,875	73,935	74,217	19,936
Atrium Growth Rate		4.6%	3.4%	2.0%		0.6%	3.1%	1.7%
Atrium Market Share	60.9%	62.2%	63.0%	61.2%	64.5%	63.1%	64.8%	61.4%

*Source: Truven CY Discharge Data *Based on Annualized 2018Q1 Data. Excludes Normal Newborns and Non-Acute Neonates. Excludes LTACH, Rehab, and Behavioral Health Hospitals.*

Obstetric Deliveries for County Residents

	Mecklenburg County				Union County			
System	**2015**	**2016**	**2017**	**2018Q1**	**2015**	**2016**	**2017**	**2018Q1**
Atrium	24,444	24,398	25,542	5,584	3,780	3,484	3,420	887
Novant	17,801	17,662	18,789	4,603	2,524	2,805	2,848	739
Other	567	621	465	94	23	31	34	2
Total	42,812	42,681	44,796	10,281	6,327	6,320	6,302	1,628
Atrium Growth Rate		-0.2%	4.7%	-12.6%		-7.8%	-1.8%	3.7%
Atrium Market Share	57.1%	57.2%	57.0%	54.3%	59.7%	55.1%	54.3%	54.5%

*Source: Truven CY Discharge Data *Based on Annualized 2018Q1 Data. Truven*

The trends are a decline in growth rates and a decline in market share for the Atrium hospitals in both counties for calendar years 2016 and 2017. This trend is due in part to the significant investments Novant Health has made in the Charlotte market in recent years to recruit physicians and advanced nurse practitioners shown in the table below. The number of physicians and Advanced Nurse Practitioners (ANPs) Novant Health employs in the Charlotte market has nearly doubled since 2014, with most of the increase after 2016. The impact of these practitioners on

utilization of Novant Health hospitals and surgical facilities will increase in future years. Novant Health plans further increases in the number of employed physicians.

Addition of Providers to Novant Health Medical Staff in the Charlotte Market

Specialty	2014 Baseline	2015 Additions	2016 Additions	2017 Additions	2018 Projected Additions	Total Added 2015-2018
Primary Care	233	28	26	16	23	93
OB/GYN	-	69 (baseline)	20	3	18	41
Pediatrics	62	22	10	15	53	100
Orthopedics	34	0	4	8	8	20
Neurosciences	33	0	0	23	11	34
Cardiology	49	6	9	17	5	37
Oncology	6	1	4	10	24	39
Behavioral Health	21	-2	26	13	9	46
Total	438	55	99	105	151	410

Source: Novant Health Medical Group internal data.

This expansion of the Novant Health employed medical staff has been complemented by development of new clinics and urgent care centers shown in the table below.

New and Expanded Novant Health Outpatient Facilities in the Charlotte Market

Type Facility	Town or Area	Year Opened or Expanded
Pediatrics	Waxhaw	2015
Pediatrics	Arboretum	2015
Urgent Care & Physical Therapy	Midtown/Center City	2016
Primary Care/Midwifery	Langtree	2016
Cancer	Ballantyne	2016
Urgent Care	Quail Corners	2016
Primary Care/Pediatrics	Mint Hill	2016
Orthopedics	Ballantyne	2016
Physical Therapy/EXOS	Huntersville	2016
Neurosurgery	Center City	2016
Pulmonary	Huntersville	2017
Primary Care	Cornelius	2017
Primary Care	South Boulevard	2017
Pediatrics/OB-GYN	South Boulevard	2017
Spine Specialists/Neurology/Pediatrics	Huntersville	2018
Urgent Care & Pulmonary	Harrisburg	2018
Rehab & EXOS	Arboretum	2018
Primary Care	University	2018
Primary Care/HVI	Steele Creek	2018
Primary Care/Urgent Care/OB-GYN/Orthopedics/Physical Therapy	Denver	2018
Psychiatry	Concord	2018
Urgent Care	Huntersville	2018
Pediatrics	Plaza Midwood	2018
Primary Care & Endocrinology	Carmel Road	2018
Primary Care & OB-GYN	Concord	2018
Primary Care/OB-GYN/Pediatrics	Wesley Chapel	2018
Pediatrics	SouthPark	2018
Pediatrics	Highland Creek	2018

Besides outpatient facilities, NHMHMC opened in October 2018. The hospital is in zip code 28215 and the service area consists of four additional zip codes. Besides shifting existing Novant Health patients to the new facility, in its application Novant Health projected gaining fifteen percentage points of market share in zip code 28215 and gaining ten percentage points of market share in the other service area zip codes. Novant Health continues to see these market share gains as

reasonable. The gains will come primarily from Atrium University and Atrium CMC/Mercy. This equals a reduction in Atrium's annual patient days of 3,010 in 2021, NHMHMC's third year of operation.[10]

Two other factors will reduce Atrium's growth rates and market share in Mecklenburg and Union Counties: (1) litigation to reduce Atrium's abuse of its market power; and, (2) dissatisfied physicians leaving Atrium.

The Department of Justice and State of North Carolina Settlement Agreement, Exhibit A to this comment, should reduce Atrium's ability to abuse its market power in contracts with health plans. Atrium used its market power to restrict health insurers from encouraging consumers to choose providers in the Charlotte market that offer better value. The provider offering better value would likely be Novant Health. With this settlement agreement, health insurers can include both Atrium and Novant Health in their networks and can inform their insureds which system provides the better value based on price or outcomes. Novant Health expects allowing health insurers to steer patients to the higher value provider will decrease Atrium's growth rates and market share. Two class action suits are pending against Atrium whose outcomes may increase Novant Health's ability to compete in the Charlotte market.[11] Suffice it to say that Atrium's historical practice of forcing patients to stay within its system (a practice which has obviously helped its utilization) has been seriously threatened. Therefore, the overly-optimistic growth rates in the AUCW Application premised on the challenged conduct are not reasonable.

The Atrium Medical Group has lost many physicians in the last twelve months. Forty-two physicians and two mid-level providers left the Atrium Medical Group to join the Novant Health Medical Group. The table below shows the distribution of thee physicians by specialty

[10] Project I.D. # F-7646- Exhibit 20 Table 67 show the expected impact Atrium hospitals was 4,210 patient days in project year three. NHMHMC opened in October 2018 with 36 beds, therefore we reduced this impact by 28.3%, or 1,191 days to 3,010.

[11] *Benitez v. The Charlotte-Mecklenburg Hospital Authority*, 3:2018cv00095 (WDNC); *DiCesare v. The Charlotte-Mecklenburg Hospital Authority*, 16cvs16404 (Mecklenburg County Superior Court).

Physicians by Specialty Moving from Atrium Medical Group to Novant Health Medical Group in Last Twelve Months

Specialty	Number
Dermatology	2
Hematology	1
Internal Medicine	2
Neurosurgery	2
Oncology	1
Orthopedics	1
Pediatrics	29
Rheumatology	3
OB/GYN	3
Total	44

Source: Novant Health Medical Group internal data.

Charlotte-area Physicians are also leaving the Atrium Medical Group to form independent practice groups. In July 2018, a group of 88 physicians in the Mecklenburg Medical Group left to form Tryon Medical Partners and open eight offices around the county. Atrium acquired the Mecklenburg Medical Group in 1993.[12] Other physicians have also chosen to leave Atrium Medical Group for independent practice.[13] These physicians can now practice at Novant Health facilities and Atrium facilities. While the Novant Health Medical Group has normal physician turnover, it has not experienced similar mass departures.

In summary, actions by Novant Health, actions by the U.S. Department of Justice and the North Carolina Attorney General and actions by 100 – 200 Charlotte physicians formerly with Atrium Medical Group will reduce the growth rate and market share of Atrium hospitals and other surgical facilities in Mecklenburg and Union Counties. Assuming a large increase based on Atrium Monroe's past growth rate is not a reasonable assumption.

Based on these factors and Atrium's declining growth rates and declining market share, Novant Health submits that a growth rate for acute care bed days at AUCW of 0.7% is reasonable. This is the actual CAGR from 2015 – 2018. Even if Atrium's planned initiatives under development result in its projected shift of Atrium patients from Mecklenburg hospitals, the two Atrium hospitals in Union County will not meet the performance standard of 75.2% occupancy in the third project year. See Exhibit C for these calculations.

[12] Atrium will release Mecklenburg Medical Group from contract. Charlotte Business Journal. April 25, 2018. Available at https://www.bizjournals.com/charlotte/news/2018/04/25/atrium-health-will-release-mecklenburg-medical.html

[13] As nearly 100 doctors abandon Atrium, some experts see the start of a trend. The Charlotte Observer. May 25, 2018. Available at https://www.charlotteobserver.com/latest-news/article211322954.html

Shift of Union County Residents from Other Atrium Hospitals

The application assumes by the third year the proposed project will receive 65% of the service area residents who now use Pineville or CMC/Mercy for services the proposed AUCW would provide. There is no reasonable basis for this assumption. Patients who used Atrium hospitals in Mecklenburg County for services offered at Monroe did so because their physician of choice practices at an Atrium Mecklenburg County hospital, not because of service limitations at Monroe. They would only shift to the proposed hospital if their physician of choice practiced there.

The Truven data shows the National Provider Identifier ("NPI") for the admitting and operating physicians for each discharge. We can see which physicians Union County residents used at Atrium Mecklenburg County hospitals. We can also see if they treated any patients at Monroe. The table below shows data for calendar year 2017. Essentially none of the physicians Union County residents saw practice at the hospital in Union County. Atrium gave no evidence any physicians would move their practices. There is no reasonable basis to expect the shifts Atrium assumes.

Union County Residents, Attending Physicians by Service

Service Line	Solely Atrium Union	Solely Atrium Facilities Mecklenburg	Both
Cardiac Care (m)	29	42	-
Cardiac Care (s)	14	31	-
Cancer Care (m)	12	39	-
Cancer Care (s)	2	14	-
Neurological (m)	25	59	-
Neurological (s)	4	44	-
Renal / Urology (m)	27	20	-
Renal / Urology (s)	5	11	-
Women's Health	8	10	-
Orthopedics (m)	19	13	-
Orthopedics (s)	29	53	-
Respiratory	33	67	1
Medicine	43	137	2
General Surgery	33	73	-
Other Surgery	16	42	-
Newborn	4	24	-
Psychiatry	2	28	-
Ophthalmology	1	3	-
Trauma (m)	7	30	-
Trauma (s)	2	22	-
Dental	2	2	-
Substance Abuse	9	10	-
Obstetrics	12	48	-

Source: FY2018Q1-Q2 Truven Inpatient Data, excluding DRGs 792, 794, 795

A further problem with Atrium's assumptions about growth rates and patient shifts is double-counting. The growth rate increase requires they see more Union County residents, but the patient shifts also requires they see more Union County residents. A shift would be a reason for an increase in the growth rate, but assuming an increased growth rate and a shift is double-counting the same Union County residents. The residents Atrium counted as new Atrium patients to increase the growth rate are the same residents it counts as shifted from its Mecklenburg hospitals, otherwise Atrium is projecting an unreasonably high growth rate. The table below reproduces Atrium's projection from Section Q, Assumptions and Methodology. The CAGR from 2018 to 2024 for the total projected patient days at both Atrium campuses in Union County is as high as 10.3 percent. This is clearly too high to be reasonable.

	CY 2018	CY 2019	CY 2020	CY 2021	CY 2022	CY 2023	CY 2024
Atrium's CAGR Assumption		1.75%	1.75%	1.75%	1.75%	1.75%	1.75%
Patient Days Before Shifts	33,255	33,837	34,429	35,032	35,645	36,268	36,903
Plus Shift from Atrium Mecklenburg		1,035	2,106	3,215	6,542	8,876	11,289
Total After Shifts	33,255	34,872	36,535	38,247	42,187	45,144	48,192
Actual CAGR Assumption	1.8%	4.9%	4.8%	4.7%	10.3%	7.0%	6.8%

Source: Project I.D. #F-011618-18 Assumptions and Methodology Page 6, Calculated using Atrium assumptions

For the foregoing reasons, plus any additional reasons the Agency may discern as it reviews the AUCW Application, the AUCW Application is nonconforming with Criterion (3) and should be disapproved.

Criterion (3a)

Criterion (3a) NCGS § 131E-183(a)(3a): In the case of a reduction or elimination of a service, including the relocation of a facility or a service, the applicant shall demonstrate that the needs of the population presently served will be met adequately by the proposed relocation or by alternative arrangements, and the effect of the reduction, elimination or relocation of the service on the ability of low income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups and the elderly to obtain needed health care.

The Atrium Application does not provide facts or analysis to show the application is conforming to Criterion 3(a). For the foregoing reasons, plus any additional reasons the Agency may discern as it reviews the AUCW Application, the AUCW Application is nonconforming with Criterion (3a) and should be disapproved.

Criterion (4)

Criterion (4) NCGS § 131E-183(a)(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.

AUCW is nonconforming with Criterion (4) because the application does not propose the least costly or most effective alternative to meet the healthcare needs of the service area. The least costly or most effective alternative is for Atrium to use its existing assets in Union County, including Atrium Monroe.

For the foregoing reasons, plus any additional reasons the Agency may discern as it reviews the AUCW Application, the AUCW Application is nonconforming with Criterion (4) and should be disapproved.

Criterion (5)

Criterion (5) NCGS § 131E-185(a)(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 explained above, the AUCW Application does not demonstrate the need for its proposal. The assumptions used by Atrium in preparation of the financial pro formas are not reasonable and adequately supported because projected utilization is not reasonable. Since projected revenues and expenses are based at least in part on projected utilization, projected revenues and expenses are unreasonable.

For all of the above-stated reasons, plus any additional reasons the Agency may discern as it reviews the AUCW Application, the AUCW Application is non-conforming with Criterion (5) and should be disapproved.

Criterion (6)

Criterion (6) NCGS § 131E-183(a)(6): The applicant shall demonstrate that the proposed project will not result in unnecessary duplication of existing or approved health service capabilities or facilities.

AUCW is nonconforming with Criterion (6) as an unnecessary duplication of healthcare facilities. Atrium Monroe is a modern and fully functional facility. The residents of the service area have good geographic access to Atrium Monroe. There is no facility reason to move assets from Atrium Monroe. There is no need to spend $116 million to duplicate Atrium Monroe capacity.

Atrium can keep capacity at Atrium Monroe for less than $116 million and avoid additional fixed operating expenses. All licensed beds are available. Atrium states no plans to use the vacated spaces per the application. Atrium has made substantial investments in Atrium Monroe. This is not like moving beds from an older downtown facility where the population is expanding away from the current location. The suburban growth is towards Atrium Monroe. The AUCW application differs from Novant Health's past applications to relocate beds from downtown facilities application in this regard.

AUCW duplicates services and capacity at NHMMC and NHMHMC. Over a five-year period, NHMMC drew an average of 36 % of its inpatients and 16% of its outpatients from the AUCW

zip codes.[14] NHMMC now receives many of these patients by Union County EMS. Almost all those would be diverted to AUCW with no benefit to the patient. NHMHMC has just opened and a new hospital should not be approved until it has several years to achieve stable occupancy.

For the foregoing reasons, plus any additional reasons the Agency may discern as it reviews the AUCW Application, the AUCW Application is nonconforming with Criterion (6) and should be disapproved.

Criterion (12)

Criterion (12) NCGS § 131E-183(a)(12): Applications involving construction shall demonstrate that the cost. design, and means of construction proposed represent the most reasonable alternative, and that the construction project will not unduly increase the costs of providing health services by the person proposing the construction project or the costs and charges to the public of providing health services by other persons, and that applicable energy savings features have been incorporated into the construction plans.

The AUCW Application proposes construction costs of $116 million to unnecessarily relocate assets from Atrium Monroe. As stated under the discussion related to Criterion (4), Atrium could save millions of dollars by using the assets it already has at Atrium Monroe. The AUCW Application fails to demonstrate that its project will not unduly increase the costs of providing health services or the costs and charges to the public of providing health services.

For all of the above-stated reasons, plus any additional reasons the Agency may discern as it reviews the AUCW Application, the AUCW Application is non-conforming with Criterion (12) and should be disapproved.

Criterion (18a)

Criterion (18a) NCGS § 131E-183(a)(18a): The applicant shall demonstrate that the 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 for a services on which competition would not have a favorable impact.

AUCW is nonconforming with Criterion 18(a) because competition already exists to provide services AUCW would provide to service area residents. The Atrium proposal does not positively enhance competition in Union County because Atrium is already the sole provider of acute

[14] Calculated using the North Carolina Hospital Association Database, as provided by Truven. This covers Q4 2012-Q1 2018.

inpatient hospital services in Union County. This project actually hinders competition because one of its main purposes is to reduce the number of patients going to Novant facilities in Mecklenburg County.

The tables below show patient destination from the AUCW zip codes for the inpatient medical/surgical and obstetric discharges. There is already competition between NHMMC, NHMHMC, Atrium Monroe and Atrium Pineville to provide the inpatient and ED services AUCW would provide. The four hospitals and outpatient facilities owned by Atrium, Novant and other providers compete to provide the outpatient services.

Inpatient Medical/Surgical Services **Resident ZIP Code**

Hospital	28079	28104	28110	28173	Subtotal	% Subtotal
Union Regional Medical Center	309	125	1,671	479	2,584	25.3%
Novant Health Matthews Medical Center	800	530	639	359	2,328	22.8%
Carolinas Medical Center	456	434	730	605	2,225	21.8%
Novant Health Presbyterian Medical Center	367	293	274	252	1,186	11.6%
CMC – Pineville	125	165	163	372	825	8.1%
Novant Health Charlotte Orthopedic Hospital	64	50	64	79	257	2.5%
Other	160	126	308	222	816	8.0%
Total	2,281	1,723	3,849	2,368	10,221	100.0%

Source: Truven, CY 2017, Excludes Normal Newborns and Non-Acute Neonates

Inpatient Obstetrical Services **Resident ZIP Code**

Hospital	28079	28104	28110	28173	Subtotal	% Subtotal
Novant Health Matthews Medical Center	206	117	231	159	713	37.5%
Union Regional Medical Center	56	17	365	49	487	25.6%
Carolinas Medical Center	100	80	71	72	323	17.0%
Novant Health Presbyterian Medical Center	55	52	40	82	229	12.0%
CMC - Pineville	23	15	18	54	110	5.8%
CMC - University Hospital	7	3	1	-	11	0.6%
Other	9	4	9	8	30	1.6%
Total	456	288	735	424	1,903	100.0%

Source: Truven, CY 2017

As the sole inpatient hospital provider in Union County, Atrium has a strong market share in Union County and needs no new hospital to improve competitive balance. Atrium makes no argument that the quality of care at AUCW would be better than existing facilities for the services it would provide.

For the foregoing reasons, plus any additional reasons the Agency may discern as it reviews the AUCW Application, the AUCW Application is nonconforming with Criterion (18a) and should be disapproved.

Conclusion

The application for Atrium Union County West is nonconforming with CON review Criteria (1), (3), (3a), (4), (5), (6), (12) and (18a) It is also inconsistent with the Acute Care Beds performance standard. There is no reasonable justification for a $116 million hospital less than thirteen miles from three existing Atrium and Novant Health hospitals. All three hospitals are fully functional hospitals that provide the same services as the proposed hospital.

For the foregoing reasons, plus any additional reasons the Agency may discern as it reviews the AUCW Application, the AUCW Application should be disapproved.

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

UNITED STATES OF AMERICA and STATE OF NORTH CAROLINA, *Plaintiffs,* v. THE CHARLOTTE-MECKLENBURG HOSPITAL AUTHORITY d/b/a CAROLINAS HEALTHCARE SYSTEM, *Defendant*.	Case No. 3:16-cv-00311

JOINT STIPULATION AND ORDER
REGARDING THE PROPOSED FINAL JUDGMENT

Plaintiffs, United States of America and State of North Carolina, and Defendant, The Charlotte-Mecklenburg Hospital Authority d/b/a Atrium Health f/k/a Carolinas HealthCare System (collectively, the "Parties"), by and through their attorneys, hereby stipulate, subject to approval and entry by the Court, as follows:

1. A proposed Final Judgment in the form attached hereto as Exhibit 1 may be filed and entered by the Court, upon the motion of any Party or upon the Court's own action, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, ("APPA") and without further notice to any Party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry

of the proposed Final Judgment by serving notice thereof on the Defendant and by filing the notice with the Court.

2. The Defendant agrees to arrange, at its expense, publication as quickly as possible of the newspaper notices required by the APPA, which shall be drafted by the United States in its sole discretion. The publication shall be arranged no later than three (3) business days after Defendant's receipt from the United States of the text of the notice and the identity of the newspapers within which the publication shall be made. The Defendant shall promptly send to the United States (1) confirmation that publication of the newspaper notices has been arranged, and (2) the certification of the publication prepared by the newspaper within which the notices were published.

3. The Defendant agrees to abide by and comply with the provisions of the proposed Final Judgment, pending the Court's entry of the proposed Final Judgment, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and agrees, from the date of the signing of this Stipulation, to comply with all terms and provisions of the proposed Final Judgment. The United States shall have the full rights and enforcement powers in the proposed Final Judgment as though the same were in full force and effect as a final order of this Court entering the proposed Final Judgment.

4. This Stipulation will apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the Parties and submitted to the Court.

5. If (a) the United States has withdrawn its consent, as provided in Paragraph 1 above, or (b) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed

Final Judgment, then the Parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any Party in this or any other proceeding.

6. The Defendant represents that the actions it is required to perform pursuant to the proposed Final Judgment can and will be performed, and that the Defendant will later raise no claim of mistake, hardship or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

Dated: November 15, 2018

SO ORDERED:

_____
Robert J. Conrad, Jr.
United States District Judge

SO STIPULATED:

FOR PLAINTIFF
UNITED STATES OF AMERICA:

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EXHIBIT 1

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

UNITED STATES OF AMERICA and STATE OF NORTH CAROLINA, *Plaintiffs,* v. THE CHARLOTTE-MECKLENBURG HOSPITAL AUTHORITY d/b/a CAROLINAS HEALTHCARE SYSTEM, *Defendant*.	Case No. 3:16-cv-00311-RJC-DCK

[PROPOSED] FINAL JUDGMENT

WHEREAS, Plaintiffs, the United States of America and the State of North Carolina (collectively "Plaintiffs"), filed their Complaint on June 9, 2016; Plaintiffs and Defendant The Charlotte-Mecklenburg Hospital Authority d/b/a Atrium Health f/k/a Carolinas HealthCare System (collectively the "Parties"), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law;

AND WHEREAS, this Final Judgment does not constitute any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, the Plaintiffs and Defendant agree to be bound by the provisions of this Final Judgment pending its approval by this Court;

AND WHEREAS, the essence of this Final Judgment is to enjoin Defendant from prohibiting, preventing, or penalizing steering as defined in this Final Judgment;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

The Court has jurisdiction over the subject matter of and each of the Parties to this action. The Complaint states a claim upon which relief may be granted against Defendant under Section 1 of the Sherman Act, as amended, 15 U.S.C. § 1.

II. DEFINITIONS

For purposes of this Final Judgment, the following definitions apply:

A. "Benefit Plan" means a specific set of health care benefits and Healthcare Services that is made available to members through a health plan underwritten by an Insurer, a self-funded benefit plan, or Medicare Part C plans. The term "Benefit Plan" does not include workers' compensation programs, Medicare (except Medicare Part C plans), Medicaid, or uninsured discount plans.

B. "Carve-out" means an arrangement by which an Insurer unilaterally removes all or substantially all of a particular Healthcare Service from coverage in a Benefit Plan during the performance of a network-participation agreement.

C. "Center of Excellence" means a feature of a Benefit Plan that designates Providers of certain Healthcare Services based on objective quality or quality-and-price criteria in order to encourage patients to obtain such Healthcare Services from those designated Providers.

D. "Charlotte Area" means Cabarrus, Cleveland, Gaston, Iredell, Lincoln, Mecklenburg, Rowan, Stanly, and Union counties in North Carolina and Chester, Lancaster, and York counties in South Carolina.

E. "Co-Branded Plan" means a Benefit Plan, such as Blue Local with Carolinas HealthCare System, arising from a joint venture, partnership, or a similar formal type of alliance or affiliation beyond that present in broad network agreements involving value-based arrangements between an Insurer and Defendant in any portion of the Charlotte Area whereby both Defendant's and Insurer's brands or logos appear on marketing materials.

F. "Defendant" means The Charlotte-Mecklenburg Hospital Authority d/b/a Atrium Health f/k/a Carolinas HealthCare System, a North Carolina hospital authority with its headquarters in Charlotte, North Carolina; and its directors, commissioners, officers, managers, agents, and employees; its successors and assigns; and any controlled subsidiaries (including Managed Health Resources), divisions, partnerships, and joint ventures, and their directors, commissioners, officers, managers, agents, and employees; and any Person on whose behalf Defendant negotiates contracts with, or consults in the negotiation of contracts with, Insurers. For purposes of this Final Judgment, an entity is controlled by Defendant if Defendant holds 50% or more of the entity's voting securities, has the right to 50% or more of the entity's profits, has the right to 50% or more of the entity's assets on dissolution, or has the contractual power to designate 50% or more of the directors or trustees of the entity. Also for purposes of this Final Judgment, the term "Defendant" excludes MedCost LLC and MedCost Benefits Services LLC, but it does not exclude any Atrium Health director, commissioner, officer, manager, agent, or employee who may also serve as a director, member, officer, manager, agent, or employee of MedCost LLC or MedCost Benefit Services LLC when such director,

commissioner, officer, manager, agent, or employee is acting within the course of his or her duties for Atrium Health. MedCostLLC and MedCost Benefits Services LLC will remain excluded from the definition of "Defendant" as long as Atrium does not acquire any greater ownership interest in these entities than it has at the time that this Final Judgment is lodged with the Court.

G. "Healthcare Provider" or "Provider" means any Person delivering any Healthcare Service.

H. "Healthcare Services" means all inpatient services (*i.e.*, acute-care diagnostic and therapeutic inpatient hospital services), outpatient services (*i.e.*, acute-care diagnostic and therapeutic outpatient services, including but not limited to ambulatory surgery and radiology services), and professional services (*i.e.*, medical services provided by physicians or other licensed medical professionals) to the extent offered by Defendant and within the scope of services covered on an in-network basis pursuant to a contract between Defendant and an Insurer. "Healthcare Services" does not mean management of patient care, such as through population health programs or employee or group wellness programs.

I. "Insurer" means any Person providing commercial health insurance or access to Healthcare Provider networks, including but not limited to managed-care organizations, and rental networks (*i.e.*, entities that lease, rent, or otherwise provide direct or indirect access to a proprietary network of Healthcare Providers), regardless of whether that entity bears any risk or makes any payment relating to the provision of healthcare. The term "Insurer" includes Persons that provide Medicare Part C plans, but does not include Medicare (except Medicare Part C plans), Medicaid, or TRICARE, or entities that otherwise contract on their behalf.

J. "Narrow Network" means a network composed of a significantly limited number of Healthcare Providers that offers a range of Healthcare Services to an Insurer's members for which all Providers that are not included in the network are out of network.

K. "Penalize" or "Penalty" is broader than "prohibit" or "prevent" and is intended to include any contract term or action with the likely effect of significantly restraining steering through Steered Plans or Transparency. In determining whether any contract provision or action "Penalizes" or is a "Penalty," factors that may be considered include: the facts and circumstances relating to the contract provision or action; its economic impact; and the extent to which the contract provision or action has potential or actual procompetitive effects in the Charlotte Area.

L. "Person" means any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office, or other business or legal entity.

M. "Reference-Based Pricing" means a feature of a Benefit Plan by which an Insurer pays up to a uniformly-applied defined contribution, based on an external price selected by the Insurer, toward covering the full price charged for a Healthcare Service, with the member being required to pay the remainder. For avoidance of doubt, a Benefit Plan with Reference-Based Pricing as a feature may permit an Insurer to pay a portion of this remainder.

N. "Steered Plan" means any Narrow Network Benefit Plan, Tiered Network Benefit Plan, or any Benefit Plan with Reference-Based Pricing or a Center of Excellence as a component.

O. "Tiered Network" means a network of Healthcare Providers for which (i) an Insurer divides the in-network Providers into different sub-groups based on objective price,

access, and/or quality criteria; and (ii) members receive different levels of benefits when they utilize Healthcare Services from Providers in different sub-groups.

P. "Transparency" means communication of any price, cost, quality, or patient experience information directly or indirectly by an Insurer to a client, member, or consumer.

III. APPLICABILITY

This Final Judgment applies to Defendant, as defined above, and all other Persons in active concert with, or participation with, Defendant who receive actual notice of this Final Judgment by personal service or otherwise.

IV. PROHIBITED CONDUCT

A. The contract language reproduced in Exhibit A is void, and Defendant shall not enforce or attempt to enforce it. The contract language reproduced in Exhibit B shall not be used to prohibit, prevent, or penalize Steered Plans or Transparency, but could remain enforceable for protection against Carve-outs. For the Network Participation Agreement between Blue Cross and Blue Shield of North Carolina and Defendant's wholly-owned subsidiary Managed Health Resources, effective January 1, 2014, as amended, Defendant shall exclude from the calculation of total cumulative impact pursuant to Section 6.14 of that agreement any impact to Defendant resulting from Blue Cross and Blue Shield of North Carolina disfavoring Defendant through Transparency or through the use of any Steered Plan.

B. For Healthcare Services in the Charlotte Area, Defendant will not seek or obtain any contract provision which would prohibit, prevent, or penalize Steered Plans or Transparency including:

1. express prohibitions on Steered Plans or Transparency;

2. requirements of prior approval for the introduction of new benefit plans (except in the case of Co-Branded Plans); and

3. requirements that Defendant be included in the most-preferred tier of Benefit Plans (except in the case of Co-Branded Plans). However, notwithstanding this Paragraph IV(B)(3), Defendant may enter into a contract with an Insurer that provides Defendant with the right to participate in the most-preferred tier of a Benefit Plan under the same terms and conditions as any other Charlotte Area Provider, provided that if Defendant declines to participate in the most-preferred tier of that Benefit Plan, then Defendant must participate in that Benefit Plan on terms and conditions that are substantially the same as any terms and conditions of any then-existing broad-network Benefit Plan (*e.g.*, PPO plan) in which Defendant participates with that Insurer. Additionally, notwithstanding Paragraph IV(B)(3), nothing in this Final Judgment prohibits Defendant from obtaining any criteria used by the Insurer to (i) assign Charlotte Area Providers to each tier in any Tiered Network; and/or (ii) designate Charlotte Area Providers as a Center of Excellence.

C. Defendant will not take any actions that penalize, or threaten to penalize, an Insurer for (i) providing (or planning to provide) Transparency, or (ii) designing, offering, expanding, or marketing (or planning to design, offer, expand, or market) a Steered Plan.

V. PERMITTED CONDUCT

A. Defendant may exercise any contractual right it has, provided it does not engage in any Prohibited Conduct as set forth above.

B. For any Co-Branded Plan or Narrow Network in which Defendant is the most-prominently featured Provider, Defendant may restrict steerage within that Co-Branded Plan or Narrow Network. For example, Defendant may restrict an Insurer from including at inception or

later adding other Providers to any (i) Narrow Network in which Defendant is the most-prominently featured Provider, or (ii) any Co-Branded Plan.

C. With regard to information communicated as part of any Transparency effort, nothing in this Final Judgment prohibits Defendant from reviewing its information to be disseminated, provided such review does not delay the dissemination of the information. Furthermore, Defendant may challenge inaccurate information or seek appropriate legal remedies relating to inaccurate information disseminated by third parties. Also, for an Insurer's dissemination of price or cost information (other than communication of an individual consumer's or member's actual or estimated out-of-pocket expense), nothing in the Final Judgment will prevent or impair Defendant from enforcing current or future provisions, including but not limited to confidentiality provisions, that (i) prohibit an Insurer from disseminating price or cost information to Defendant's competitors, other Insurers, or the general public; and/or (ii) require an Insurer to obtain a covenant from any third party that receives such price or cost information that such third party will not disclose that information to Defendant's competitors, another Insurer, the general public, or any other third party lacking a reasonable need to obtain such competitively sensitive information. Defendant may seek all appropriate remedies (including injunctive relief) in the event that dissemination of such information occurs.

VI. REQUIRED CONDUCT

Within fifteen (15) business days of entry of this Final Judgment, Defendant, through its designated counsel, must notify in writing Aetna, Blue Cross and Blue Shield of North Carolina, Cigna, MedCost, and UnitedHealthcare, that:

A. This Final Judgment has been entered (enclosing a copy of this Final Judgment) and that it prohibits Defendant from entering into or enforcing any contract term that would

prohibit, prevent, or penalize Steered Plans or Transparency, or taking any other action that violates this Final Judgment; and

B. For the term of this Final Judgment Defendant waives any right to enforce any provision listed in Exhibit A and further waives the right to enforce any provision listed in Exhibit B to prohibit, prevent, or penalize Steered Plans and Transparency.

VII. COMPLIANCE

A. It shall be the responsibility of the Defendant's designated counsel to undertake the following:

1. within fifteen (15) calendar days of entry of this Final Judgment, provide a copy of this Final Judgment to each of Defendant's commissioners and officers, and to each employee whose job responsibilities include negotiating or approving agreements with Insurers for the purchase of Healthcare Services, including personnel within the Managed Health Resources subsidiary (or any successor organization) of Defendant;

2. distribute in a timely manner a copy of this Final Judgment to any person who succeeds to, or subsequently holds, a position of commissioner, officer, or other position for which the job responsibilities include negotiating or approving agreements with Insurers for the purchase of Healthcare Services, including personnel within the Managed Health Resources subsidiary (or any successor organization) of Defendant; and

3. within sixty (60) calendar days of entry of this Final Judgment, develop and implement procedures necessary to ensure Defendant's compliance with this Final Judgment. Such procedures shall ensure that questions from any of Defendant's commissioners, officers, or employees about this Final Judgment can be answered by counsel (which may be outside counsel) as the need arises. Paragraph 21.1 of the Amended Protective Order Regarding

Confidentiality shall not be interpreted to prohibit outside counsel from answering such questions.

B. For the purposes of determining or securing compliance with this Final Judgment, or any related orders, or determining whether the Final Judgment should be modified or vacated, and subject to any legally-recognized privilege, from time to time authorized representatives of the United States or the State of North Carolina, including agents and consultants retained by the United States or the State of North Carolina, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division or the Attorney General for the State of North Carolina, and on reasonable notice to Defendant, be permitted:

1. access during Defendant's office hours to inspect and copy, or at the option of the United States, to require Defendant to provide electronic copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendant, relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, Defendant's officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendant.

C. Within 270 calendar days of entry of this Final Judgment, Defendant must submit to the United States and the State of North Carolina a written report setting forth its actions to comply with this Final Judgment, specifically describing (1) the status of all negotiations between Managed Health Resources (or any successor organization) and an Insurer relating to contracts that cover Healthcare Services rendered in the Charlotte Area since the entry of the

Final Judgment, and (2) the compliance procedures adopted under Paragraph VII(A)(3) of this Final Judgment.

D. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division or the Attorney General for the State of North Carolina, Defendant shall submit written reports or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

E. The United States may share information or documents obtained under Paragraph VII with the State of North Carolina subject to appropriate confidentiality protections. The State of North Carolina shall keep all such information or documents confidential.

F. No information or documents obtained by the means provided in Paragraph VII shall be divulged by the United States or the State of North Carolina to any Person other than an authorized representative of (1) the executive branch of the United States or (2) the Office of the North Carolina Attorney General, except in the course of legal proceedings to which the United States or the State of North Carolina is a party (including grand jury proceedings), for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

G. If at the time that Defendant furnishes information or documents to the United States or the State of North Carolina, Defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," the United States and the State of North Carolina shall give Defendant ten (10)

calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

H. For the duration of this Final Judgment, Defendant must provide to the United States and the State of North Carolina a copy of each contract and each amendment to a contract that covers Healthcare Services in the Charlotte Area that it negotiates with any Insurer within thirty (30) calendar days of execution of such contract or amendment. Defendant must also notify the United States and the State of North Carolina within thirty (30) calendar days of having reason to believe that a Provider which Defendant controls has a contract with any Insurer with a provision that prohibits, prevents, or penalizes any Steered Plans or Transparency.

VIII. RETENTION OF JURISDICTION

The Court retains jurisdiction to enable any Party to this Final Judgment to apply to the Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

IX. ENFORCEMENT OF FINAL JUDGMENT

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including the right to seek an order of contempt from the Court. Defendant agrees that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of this Final Judgment, the United States may establish a violation of the decree and the appropriateness of any remedy therefor by a preponderance of the evidence, and Defendant waives any argument that a different standard of proof should apply.

B. The Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore all competition Plaintiffs alleged was harmed by the challenged conduct. Defendant agrees that it may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either Party as the drafter.

C. In any enforcement proceeding in which the Court finds that Defendant has violated this Final Judgment, the United States may apply to the Court for a one-time extension of this Final Judgment, together with such other relief as may be appropriate. In connection with any successful effort by the United States to enforce this Final Judgment against Defendant, whether litigated or resolved prior to litigation, Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as any other costs including experts' fees, incurred in connection with that enforcement effort, including in the investigation of the potential violation.

X. EXPIRATION OF FINAL JUDGMENT

Unless the Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry, except that after five (5) years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and Defendant that the continuation of the Final Judgment is no longer necessary or in the public interest.

XI. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest. The Parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, any comments thereon, and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and responses to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

[Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16]

_____
Robert J. Conrad, Jr.
United States District Judge

Exhibit A

Aetna

Section 2.8 of the Physician Hospital Organization Agreement between and among Aetna Health of the Carolinas, Inc., Aetna Life Insurance Company, Aetna Health Management, LLC, and Defendant states in part:

> "Company may not . . . steer Members away from Participating PHO Providers other than instances where services are not deemed to be clinically appropriate, subject to the terms of Section 4.1.3 of this Agreement."

In addition, Section 2.11 of the above-referenced agreement states in part:

> "Company reserves the right to introduce in new Plans . . . and products during the term of this Agreement and will provide PHO with ninety (90) days written notice of such new Plans, Specialty Programs and products. . . . For purposes under (c) and (d) above, Company commits that Participating PHO Providers will be in-network Participating Providers in Company Plans and products as listed on the Product Participation Schedule. If Company introduces new products or benefit designs in PHO's market that have the effect of placing Participating PHO Providers in a non-preferred position, PHO will have the option to terminate this Agreement in accordance with Section 6.3. Notwithstanding the foregoing, if Company introduces an Aexcel performance network in PHO Provider's service area, all PHO Providers will be placed in the most preferred benefit level. As long as such Plans or products do not directly or indirectly steer Members away from a Participating PHO Provider to an alternative Participating Provider for the same service in the same level of care or same setting, the termination provision would not apply."

Blue Cross and Blue Shield of North Carolina

The Benefit Plan Exhibit to the Network Participation Agreement between Blue Cross and Blue Shield of North Carolina and Defendant (originally effective January 1, 2014), as replaced by the Fifth Amendment, states in part:

> "After meeting and conferring, if parties cannot reach agreement, then, notwithstanding Section 5.1, this Agreement will be considered to be beyond the initial term, and you may terminate this Agreement upon not less than 90 days' prior Written Notice to us, pursuant to Section 5.2."

Cigna

Section II.G.5 of the Managed Care Alliance Agreement between Cigna HealthCare of North Carolina, Inc. and Defendant states in part:

> "All MHR entities as defined in Schedule 1 will be represented in the most preferred benefit level for any and all CIGNA products for all services provided under this Agreement unless CIGNA obtains prior written consent from MHR to exclude any MHR entities from representation in the most preferred benefit level for any CIGNA product. . . . As a MHR Participating Provider, CIGNA will not steer business away from MHR Participating Providers."

Medcost

Section 3.6 of the Participating Physician Hospital Organization agreement between Medcost, LLC and Defendant states in part:

> "Plans shall not directly or indirectly steer patients away from MHR Participating Providers."

UnitedHealthcare

Section 2 of the Hospital Participation Agreement between UnitedHealthcare of North Carolina, Inc. and Defendant states in part:

> "As a Participating Provider, Plan shall not directly or indirectly steer business away from Hospital."

Exhibit B

Cigna

Section II.G.5 of the Managed Care Alliance Agreement between Cigna HealthCare of North Carolina, Inc. and Defendant states in part:

> "CIGNA may not exclude a MHR Participating Provider as a network provider for any product or Covered Service that MHR Participating Provider has the capability to provide except those carve-out services as outlined in Exhibit E attached hereto, unless CIGNA obtains prior written consent from MHR to exclude MHR Participating Provider as a network provider for such Covered Services."

UnitedHealthcare

Section 2 of the Hospital Participation Agreement between UnitedHealthcare of North Carolina, Inc. and Defendant states in part:

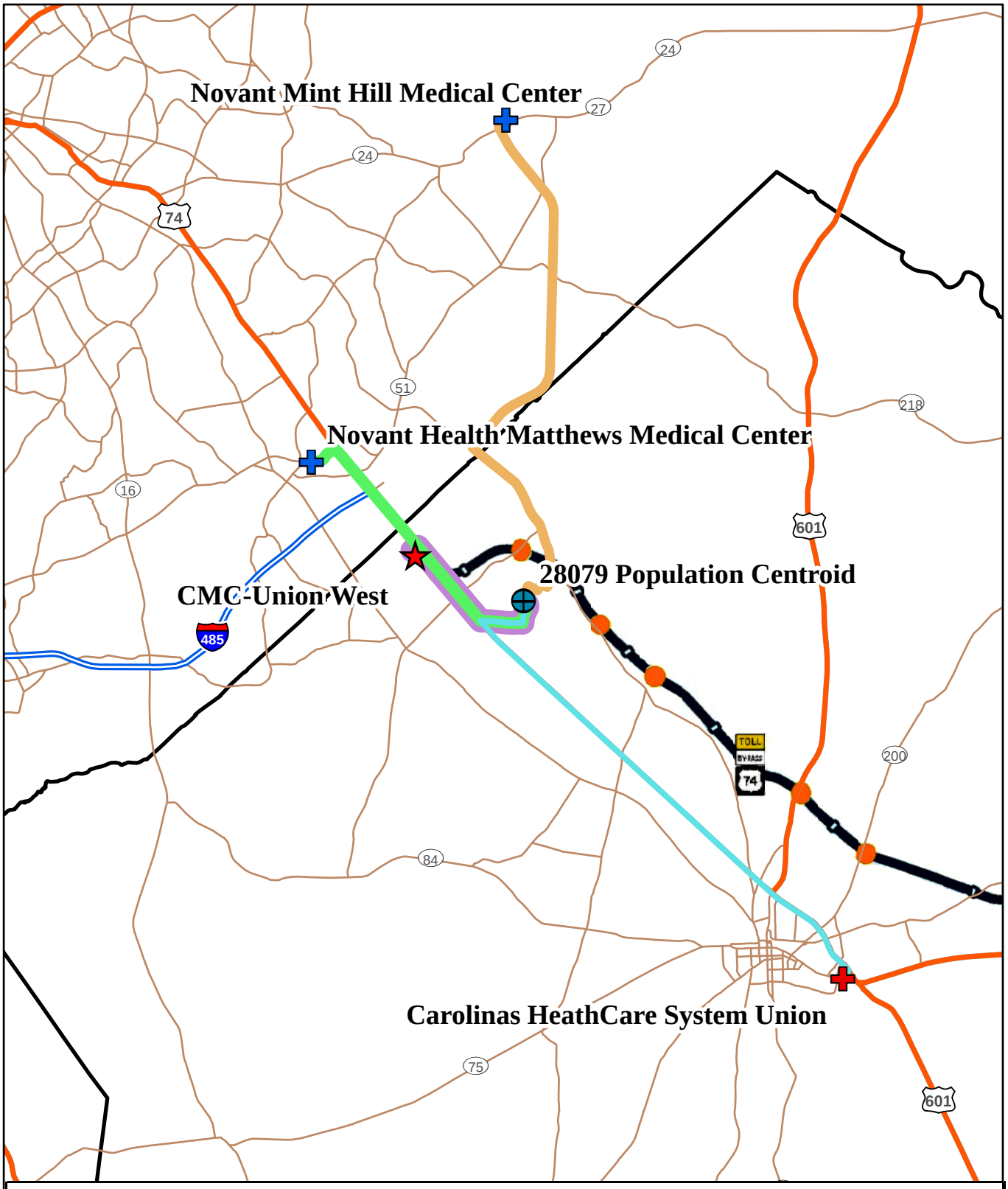
> "Plan may not exclude Hospital as a network provider for any Health Service that Hospital is qualified and has the capability to provide and for which Plan and Hospital have established a fee schedule or fixed rate, as applicable, unless mutually agreed to in writing by Plan and Hospital to exclude Hospital as a network provider for such Health Service."

In addition, Section 3.6 of the above-referenced agreement states in part:

> "During the term of this Agreement, including any renewal terms, if Plan creates new or additional products, which product otherwise is or could be a Product Line as defined in this Agreement, Hospital shall be given the opportunity to participate with respect to such new Product Line."

EXHIBIT B

B.1 Travel Times from 28079 to Area Hospitals

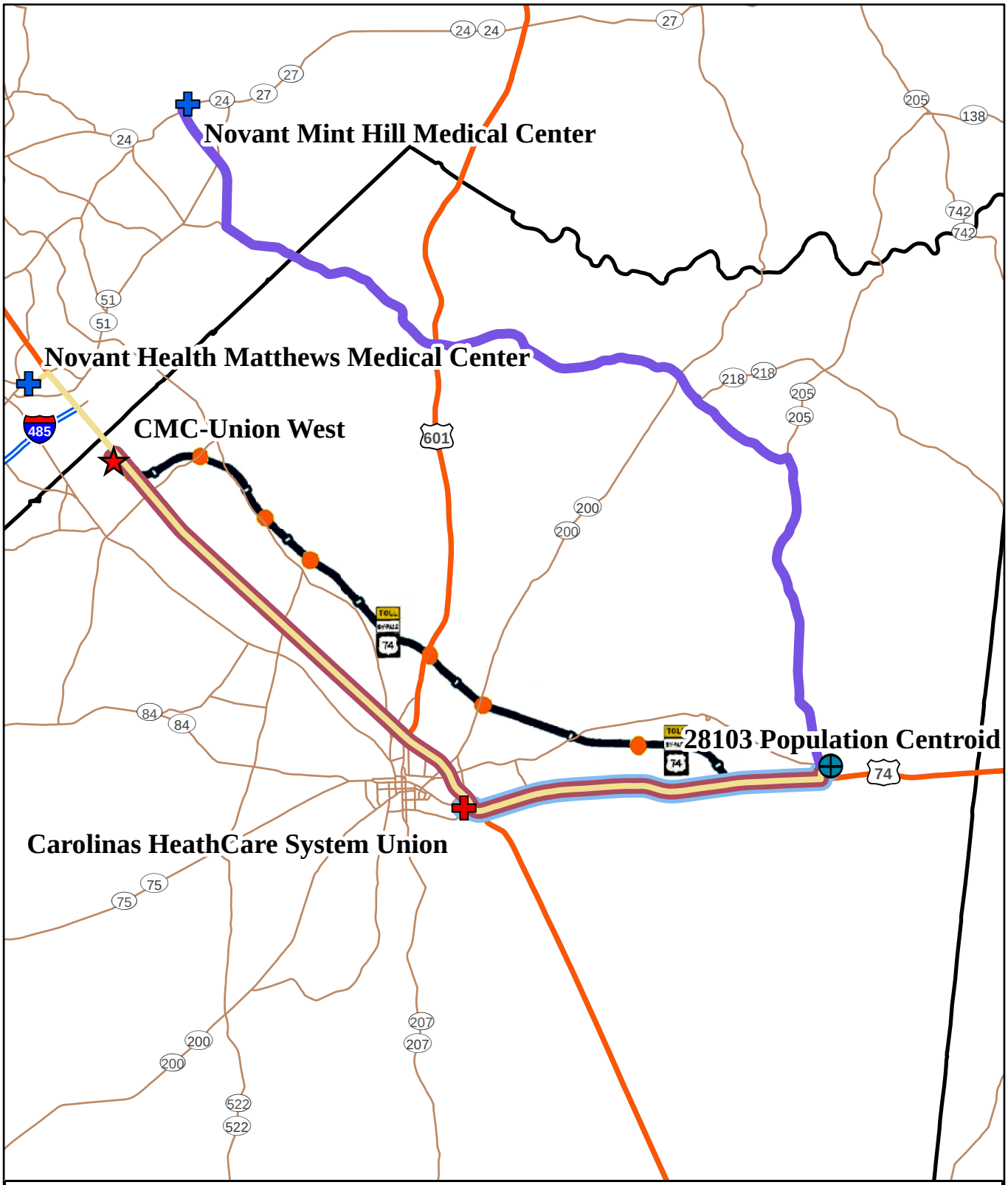


	Driving Time (Minutes)	Driving Distance (Miles)
CMC- Union West	5.93	3.45
Novant Health Matthews Medical Center	10.38	6.47
Novant Mint Hill Medical Center	16.15	11.94
Carolinas HealthCare System Union	18.57	11.89

Optimal route travel times and travel distances calculated within ArcGIS using road shapefile from NCDOT. Zip centroid is from an ESRI shapefile.

Monroe Expressway route added from NCDOT Project Map. Available at https://www.ncdot.gov/projects/monroe-expressway/Pages/project-maps.aspx

B.2 Travel Times from 28103 to Area Hospitals

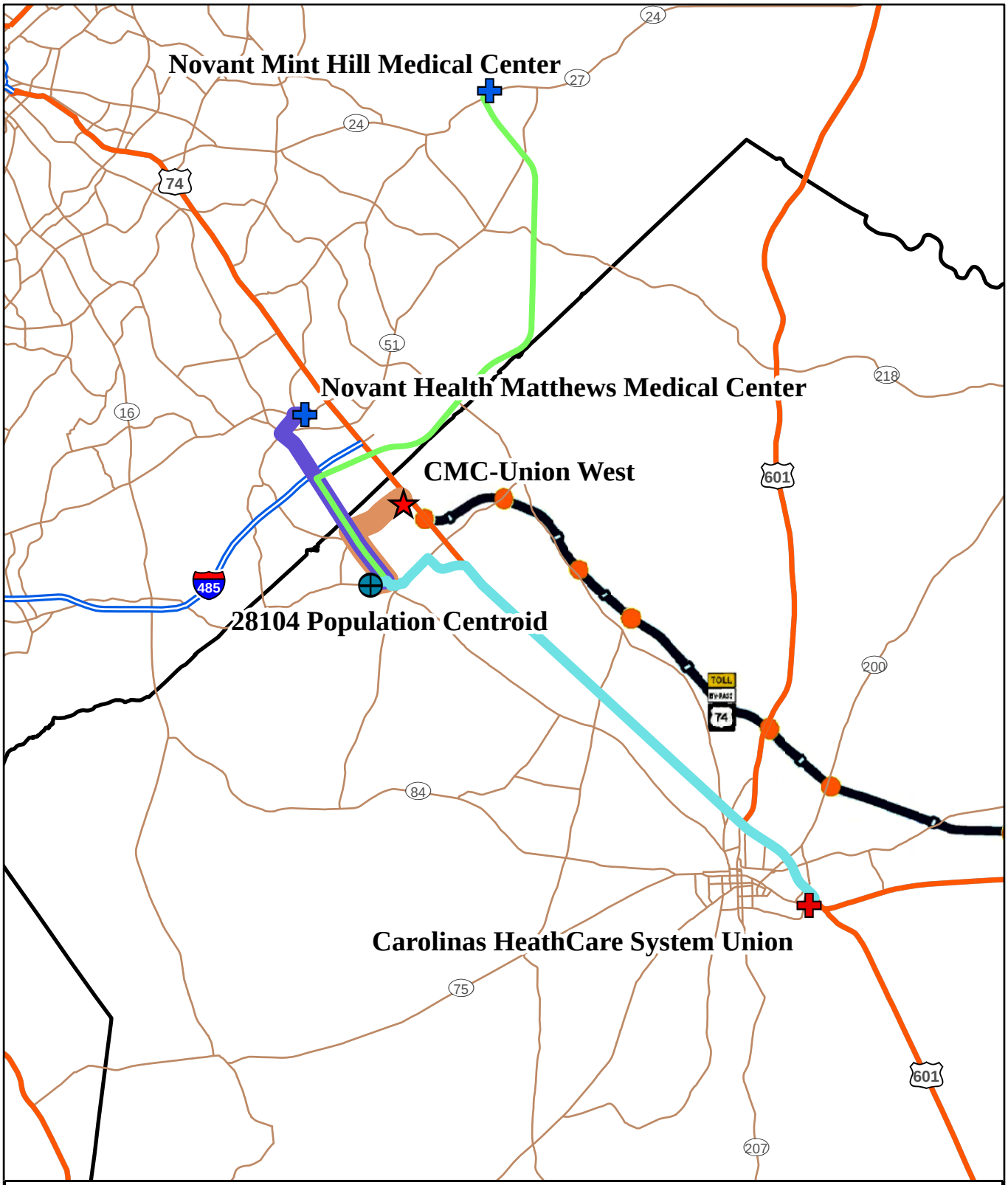


	Driving Time (Minutes)	Driving Distance (Miles)
Carolinas HealthCare System Union	13.87	9.39
CMC- Union West	32.17	21.68
Novant Mint Hill Medical Center	36.50	27.90
Novant Health Matthews Medical Center	36.62	24.69

Optimal route travel times and travel distances calculated within ArcGIS using road shapefile from NCDOT. Zip centroid is from an ESRI shapefile.

Monroe Expressway route added from NCDOT Project Map. Available at https://www.ncdot.gov/projects/monroe-expressway/Pages/project-maps.aspx

B.3 Travel Times from 28104 to Area Hospitals

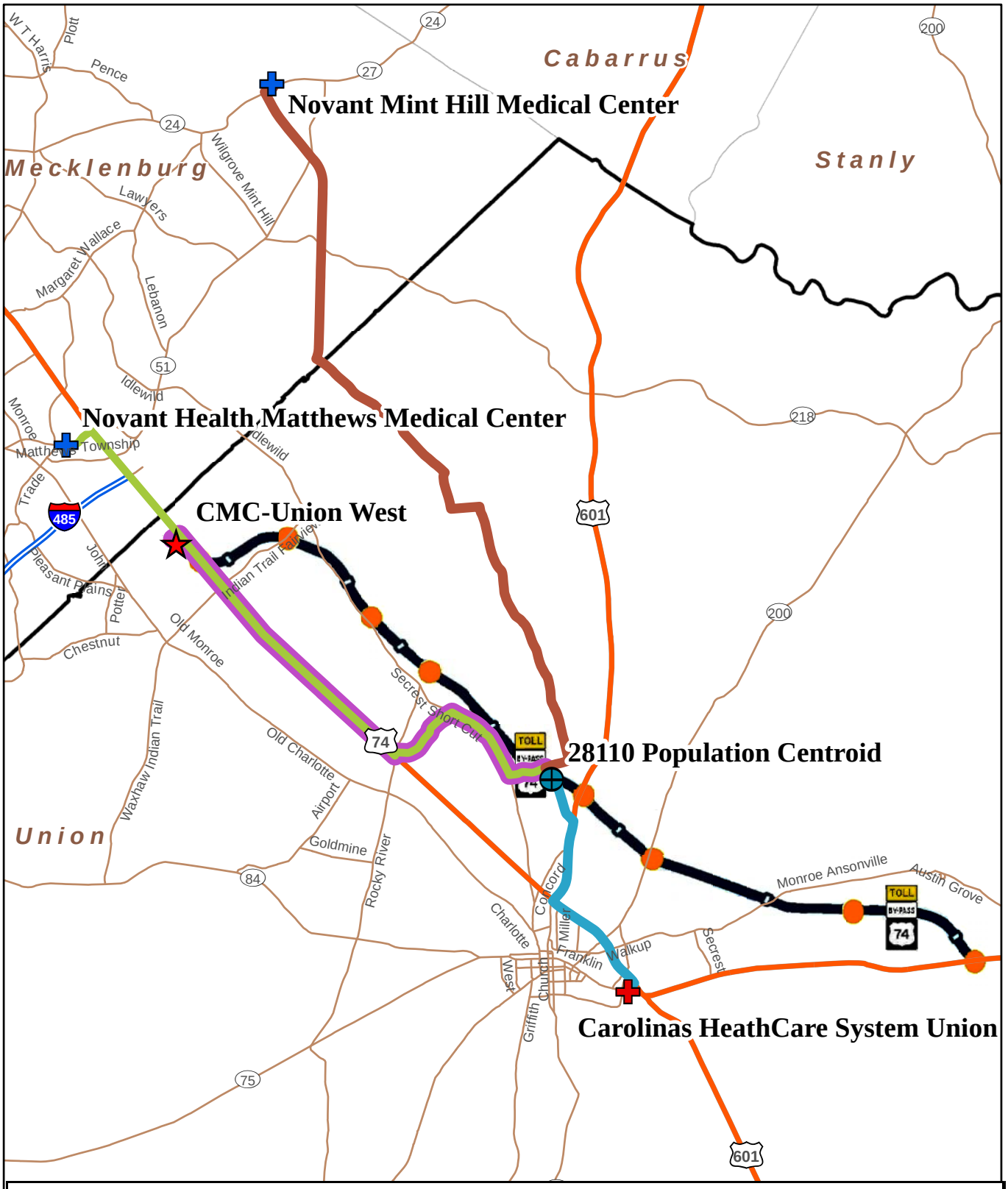


	Driving Time (Minutes)	Driving Distance (Miles)
CMC- Union West	5.87	2.94
Novant Health Matthews Medical Center	9.73	4.92
Novant Mint Hill Medical Center	17.20	14.18
Carolinas HealthCare System Union	20.80	13.01

Optimal route travel times and travel distances calculated within ArcGIS using road shapefile from NCDOT. Zip centroid is from an ESRI shapefile.

Monroe Expressway route added from NCDOT Project Map. Available at https://www.ncdot.gov/projects/monroe-expressway/Pages/project-maps.aspx

B.5 Travel Times from 28110 to Area Hospitals

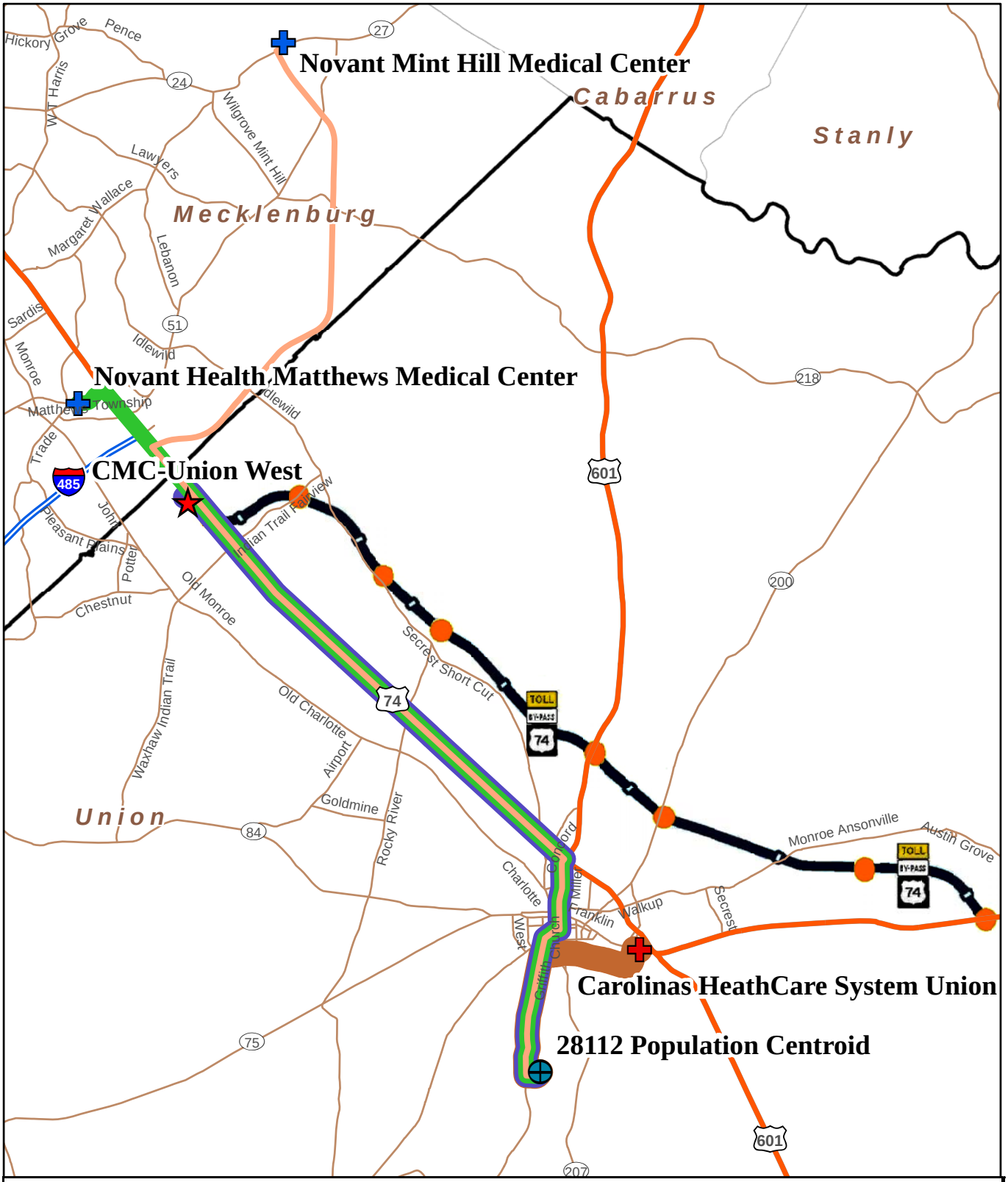


	Driving Time (Minutes)	Driving Distance (Miles)
Carolinas HealthCare System Union	8.18	5.05
CMC- Union West	16.88	10.13
Novant Health Matthews Medical Center	21.33	13.15
Novant Mint Hill Medical Center	23.70	16.19

Optimal route travel times and travel distances calculated within ArcGIS using road shapefile from NCDOT. Zip centroid is from an ESRI shapefile.

Monroe Expressway route added from NCDOT Project Map. Available at https://www.ncdot.gov/projects/monroe-expressway/Pages/project-maps.aspx

B.7 Travel Times from 28112 to Area Hospitals

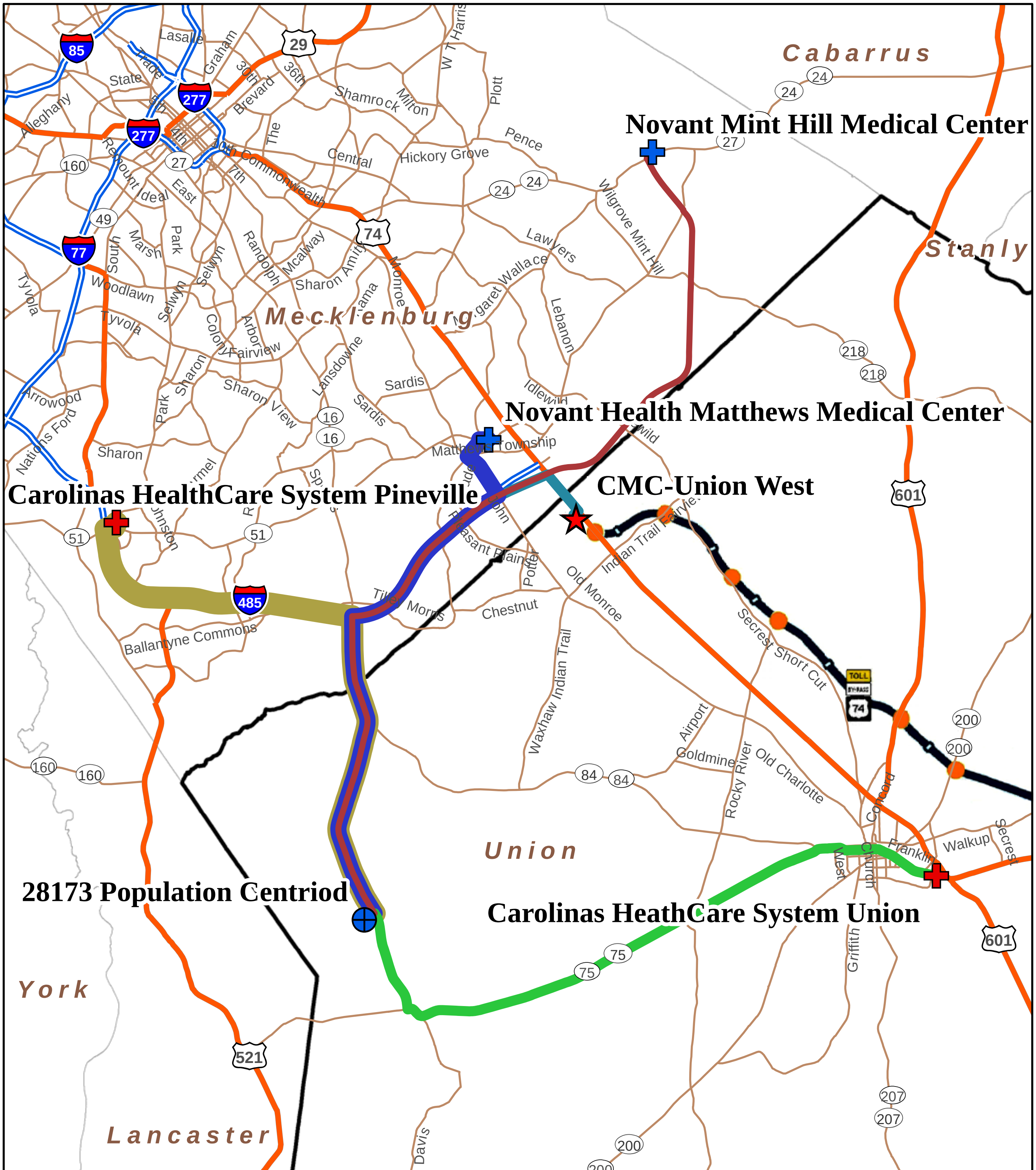


	Driving Time (Minutes)	Driving Distance (Miles)
Carolinas HealthCare System Union	9.22	4.76
CMC- Union West	23.35	14.74
Novant Health Matthews Medical Center	27.80	17.75
Novant Mint Hill Medical Center	34.74	25.66

Optimal route travel times and travel distances calculated within ArcGIS using road shapefile from NCDOT. Zip centroid is from an ESRI shapefile.

Monroe Expressway route added from NCDOT Project Map. Available at https://www.ncdot.gov/projects/monroe-expressway/Pages/project-maps.aspx

B.8 Travel Times from 28173 to Area Hospitals

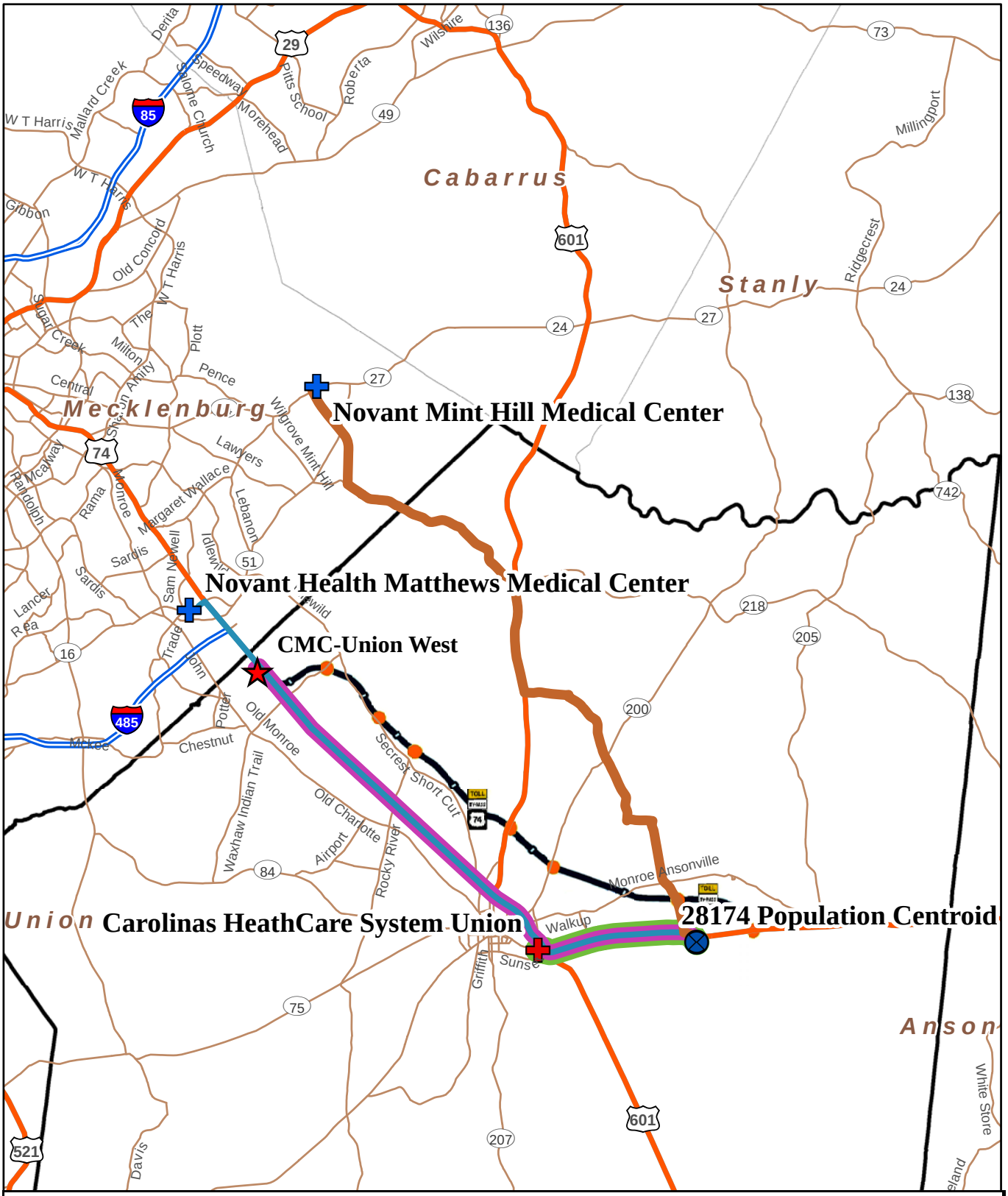


	Driving Time (Minutes)	Driving Distance (Miles)
Carolinas HealthCare System Pineville	18.33	14.75
CMC- Union West	18.70	14.63
Novant Health Matthews Medical Center	19.16	14.00
Carolinas HealthCare System Union	23.93	16.24
Novant Mint Hill Medical Center	26.65	23.25

Optimal route travel times and travel distances calculated within ArcGIS using road shapefile from NCDOT. Zip centroid is from an ESRI shapefile.

Monroe Expressway added from NCDOT Project Map. Available at https://www.ncdot.gov/projects/monroe-expressway/Pages/project-maps.aspx

B.9 Travel Times from 28174 to Area Hospitals



	Driving Time (Minutes)	Driving Distance (Miles)
Carolinas HealthCare System Union	7.71	5.12
CMC- Union West	26.01	17.41
Novant Health Matthews Medical Center	30.46	20.42
Novant Mint Hill Medical Center	36.23	23.96

Optimal route travel times and travel distances calculated within ArcGIS using road shapefile from NCDOT. Zip centroid is from an ESRI shapefile.

Monroe Expressway route added from NCDOT Project Map. Available at https://www.ncdot.gov/projects/monroe-

EXHIBIT C

Exhibit C

Atrium Monroe Historical Acute Care Bed Utilization

	CY15	CY16	CY17	CY18	4 Year CAGR 2015-2018
Patient Days	32,522	33,127	32,680	33,255	
CAGR		1.9%	-1.3%	1.8%	0.7%
ADC	89	91	90	91	
Beds	182	182	182	182	

Source: 2015 - 2018 from Project I.D. #F-011618-18 Assumptions and Methodology Page 5

Atrium Union County Hospitals' Projected Acute Care Patient Days in CON Application

	CY18	CY19	CY20	CY21	CY22	CY23	CY24
Atrium's Baseline CAGR Assumption		1.75%	1.75%	1.75%	1.75%	1.75%	1.75%
Atrium Patient Days Before Shifts	33,255	33,837	34,429	35,032	35,645	36,268	36,903
Plus Shift from Atrium Mecklenburg	-	1,035	2,106	3,215	6,542	8,876	11,289
Total Patient Days After Shifts	33,255	34,872	36,535	38,247	42,187	45,144	48,192

Source: Project I.D. #F-011618-18 Assumptions and Methodology Page 6, Calculated using Atrium assumptions

Actual Atrium CAGR after shifts	1.8%	4.9%	4.8%	4.7%	10.3%	7.0%	6.8%

Atrium Union County Hospitals' Projected Acute Care Occupancy, Recalculated at 0.7% Growth Rate

	CY18	CY19	CY20	CY21	CY22	CY23	CY24
Revised Baseline Acute Care CAGR		0.7%	0.7%	0.7%	0.7%	0.7%	0.7%
Atrium Patient Days Before Shifts	33,255	33,488	33,722	33,958	34,196	34,435	34,676
Plus Shift from Atrium Mecklenburg	-	1,035	2,106	3,215	6,542	8,876	11,289
Total Patient Days After Shifts	33,255	34,523	35,828	37,173	40,738	43,311	45,965
ADC	91	95	98	102	112	119	126
Proposed Beds	182	182	182	182	182	182	182
Occupancy	50.1%	52.0%	53.9%	56.0%	61.3%	65.2%	69.2%

Actual Atrium CAGR after shifts	1.8%	3.81%	3.78%	3.75%	9.59%	6.32%	6.13%

Source: Project I.D. #F-011618-18 Assumptions and Methodology Page 6, Calculated using Atrium assumptions and substituting 0.7% Growth Rate