



NC DEPARTMENT OF
**HEALTH AND
HUMAN SERVICES**

ROY COOPER • Governor
MANDY COHEN, MD, MPH • Secretary
MARK PAYNE • Director, Division of Health Service Regulation

RESPONSE REQUIRED

September 27, 2018

Catharine Cummer
3100 Tower Boulevard, Suite 1300
Durham, NC 27707

Conditional Approval

Project ID #: J-11508-18
Facility: Arrington Ambulatory Surgical Center
Project Description: Develop a new ASC by relocating 4 operating rooms from James E. Davis
ASC
County: Durham
FID #: 180213

Dear Ms. Cummer:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) has conditionally approved the above referenced certificate of need application. This decision was made after a review of the applications submitted for this cycle and after consideration of the Certificate of Need Law, N.C. Gen. Stat. §131E-175 et. seq. and regulations promulgated there under, the State Medical Facilities Plan, and other applicable information. Attached to this letter are the required findings made with respect to your application. The applicant shall not proceed with the construction, offering or development of this project until the certificate of need is issued. Further, the Agency shall not issue the certificate of need until all applicable conditions of approval have been met pursuant to N.C. Gen. Stat. §131E-187(a). The conditions are as follows:

1. **Associated Health Services, Inc. and Duke University Health System, Inc. shall materially comply with all representations made in the certificate of need application.**
2. **Associated Health Services, Inc. and Duke University Health System, Inc. shall develop a new multispecialty ambulatory surgical facility in Durham County by relocating four existing operating rooms from James E. Davis Ambulatory Surgery Center.**

NC DEPARTMENT OF HEALTH AND HUMAN SERVICES • DIVISION OF HEALTH SERVICE REGULATION

HEALTHCARE PLANNING AND CERTIFICATE OF NEED SECTION

LOCATION: 809 Ruggles Drive, Edgerton Building, Raleigh, NC 27603
MAILING ADDRESS: 2701 Mail Service Center, Raleigh, NC 27699-2701
www.ncdhhs.gov/dhsr/ • TEL: 919-855-3750 • FAX: 919-733-2757

- 3. Upon completion of this project, Arrington Ambulatory Surgical Center shall be licensed for no more than four operating rooms and four procedure rooms.**
- 4. Upon completion of this project, Associated Health Services, Inc. and Duke University Health System, Inc. shall take the necessary steps to delicense four operating rooms at James E. Davis Ambulatory Surgery Center. Upon project completion, James E. Davis Ambulatory Surgery Center will have four operating rooms and four procedure rooms.**
- 5. Associated Health Services, Inc. and Duke University Health System, Inc. as part of this project, shall not acquire any equipment that is not included in the project's proposed capital expenditures in Section F and Exhibit F.1 of the application or that would otherwise require a certificate of need.**
- 6. Associated Health Services, Inc. and Duke University Health System, Inc. shall receive accreditation from the Joint Commission for the Accreditation of Healthcare Organizations, the Accreditation Association for Ambulatory Health Care or a comparable accreditation authority within two years following licensure of the facility.**
- 7. For the first three years of operation following completion of the project, Arrington Ambulatory Surgical Center shall not increase charges more than 5% of the charges projected in Section Q of the application without first obtaining a determination from the Healthcare Planning and Certificate of Need Section that the proposed increase is in material compliance with the representations in the certificate of need application.**
- 8. The procedure room shall not be used for procedures that should be performed only in an operating room based on current standards of practice.**
- 9. Procedures performed in the procedure room shall not be reported for billing purposes as having been performed in an operating room and shall not be reported on the facility's license renewal application as procedures performed in an operating room.**
- 10. Associated Health Services, Inc. and Duke University Health System, Inc. shall develop and implement an Energy Efficiency and Sustainability Plan for the project that conforms to or exceeds energy efficiency and water conservation standards incorporated in the latest editions of the North Carolina State Building Codes.**
- 11. No later than three months after the last day of each of the first three full years of operation following initiation of the services authorized by this certificate of need, Associated Health Services, Inc. and Duke University Health System, Inc. shall submit, on the form provided by the Healthcare Planning and Certificate of Need Section, an annual report containing the:**

- a. **Payor mix for the services authorized in this certificate of need.**
- b. **Utilization of the services authorized in this certificate of need.**
- c. **Revenues and operating costs for the services authorized in this certificate of need.**
- d. **Average gross revenue per unit of service.**
- e. **Average net revenue per unit of service.**
- f. **Average operating cost per unit of service.**

12. Associated Health Services, Inc. and Duke University Health System, Inc. shall acknowledge acceptance of and agree to comply with all conditions stated herein to the Agency in writing prior to issuance of the certificate of need.

Response to the above conditions should be submitted to the Agency no later than 35 days from the date of the decision. Failure to respond within this time period may result in the Agency making a determination not to issue a certificate of need for the project referenced above.

The conditional approval is valid only for a capital expenditure of **\$34,286,000**. If a cost overrun occurs that exceeds the approved capital expenditure amount, a new certificate of need may be required as determined by N.C. Gen. Stat. §131E-176(16)(e).

The applicant should be aware that according to the Certificate of Need law any affected person shall have thirty (30) days after the date of decision to file a petition for a contested case on this approval. Further, if you are aggrieved by the conditions of the decision you may file a petition for a contested case hearing in accordance with N.C. Gen. Stat. §150B, Article 3, as amended. This petition must be filed with the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, North Carolina 27699-6714 within thirty (30) days of the date of this decision. [Note: Effective October 1, 2009, OAH requires a filing fee with submittal of petitions for contested cases. Please direct all questions regarding this fee to OAH Clerk's Office (919-431-3000).]

N.C. Gen. Stat. §150B-23 provides that a party filing a petition must also serve a copy of the petition on all parties to the petition. Therefore, if you file a petition for a contested case hearing, you must serve a copy of the petition on the Department of Health and Human Services by mailing a copy of your petition to:

Lisa G. Corbett
Department of Health and Human Services,
Office of Legal Affairs,
Adams Building – Room 154
2001 Mail Service Center
Raleigh, North Carolina, 27699-2001

It is requested that a copy of the petition also be served on the Agency.

The certificate of need will not be issued before the completion of this 30 day period ending **October 29, 2018**. If a contested case request is received within the thirty (30) day period, the certificate will not be issued until the appeal is resolved (10A NCAC 14C .0208).

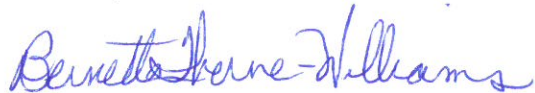
The timetable for completion of the project is the timetable outlined in the certificate of need application, unless an adjustment has been made by the Agency because the review period was extended. The timetable for this project is as follows:

1. Financing Obtained _____ November 1, 2018
2. Drawings Completed _____ February 1, 2019
3. Construction/Renovation Contract(s) Executed _____ April 15, 2019
4. 25% of Construction/Renovation Completed _____
(25% of the cost is in place) _____ August 1, 2019
5. 50% of Construction/Renovation Completed _____ November 1, 2019
6. 75% of Construction/Renovation Completed _____ February 1, 2020
7. Construction/Renovation Completed _____ May 1, 2020
8. Equipment Ordered _____ December 1, 2019
9. Equipment Installed _____ June 1, 2020
10. Equipment Operational _____ June 15, 2020
11. Building/Space Occupied _____ May 1, 2020
12. Licensure Obtained _____ June 15, 2020
13. Services Offered _____ July 1, 2020
14. Medicare and/or Medicaid Certification Obtained _____ July 1, 2020
15. Facility or Service Accredited _____ July 1, 2021
16. Final Annual Report Due _____ October 1, 2023

If the decision is appealed, the timetable set forth in this letter will be adjusted accordingly before the Certificate of Need is issued. Please contact this office if any clarification of this decision is required.

Please refer to the Project ID # and Facility ID # (FID) in all correspondence.

Sincerely,



Bernetta Thorne-Williams
Project Analyst



Fatimah Wilson
Team Leader

Attachment

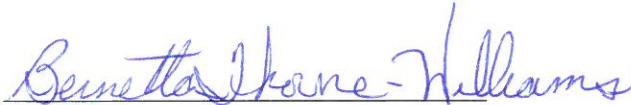
cc: Construction Section, DHSR
Acute & Home Care Licensure & Certification Section, DHSR
Melinda Boyette, Administrative Assistant, Healthcare Planning, DHSR

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing notice of **conditional approval** on the following person by placing a copy in an official depository of the United States Postal Service in a postage-paid, first class envelope addressed as follows:

Catharine Cummer
3100 Tower Boulevard, Suite 1300
Durham, NC 27707

This the 27th day of September, 2018.



Bernetta Thorne-Williams
Project Analyst, Certificate of Need