



North Carolina Department of Health and Human Services
Division of Health Service Regulation

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Division Director

April 30, 2013

Richard P. Church
430 Davis Drive, Suite 400
Morrisville, NC 27560

Exempt from Review – Acquisition of Facility

Facility: Caldwell Memorial Hospital
Acquisition by: University of North Carolina Health Care System
County: Caldwell
FID #: 933051

Dear Mr. Church:

In response to your letter of April 16, 2013, the above referenced proposal is exempt from certificate of need review in accordance with N.C.G.S 131E-184(a)(8). Therefore, University of North Carolina Health Care System may proceed to acquire the above referenced health service facility without first obtaining a certificate of need. However, you need to contact the Acute and Home Care Licensure and Certification Section of the Division of Health Service Regulation to obtain instructions for changing ownership of the existing facility. Note that pursuant to N.C.G.S. §131E-181(b): *"A recipient of a certificate of need, or any person who may subsequently acquire, in any manner whatsoever permitted by law, the service for which that certificate of need was issued, is required to materially comply with the representations made in its application for that certificate of need."*

It should be noted that this Agency's position is based solely on the facts represented by you and that any change in facts as represented would require further consideration by this Agency and a separate determination. If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,

Julie Halatek
Project Analyst

Craig R. Smith, Chief
Certificate of Need Section

cc: Azzie Conley, Acute and Home Care Licensure and Certification Section, DHHS



Certificate of Need Section

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April 16, 2013

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Via Hand Delivery

Mr. Craig R. Smith
Chief, Certificate of Need Section
Division of Health Service Regulation
North Carolina Department of Health & Human Services
809 Ruggles Drive
Raleigh, NC 27603

Re: Affiliation of University of North Carolina Health Care System and Caldwell Memorial Hospital, Inc.

No Review Letter, Alternative Exemption Notice, and Good Cause Transfer Request

Hospital: License No. H0061; Facility ID No. 933051

Dear Mr. Smith:

The purpose of this letter is to inform you of a proposed transaction involving a change in control of Caldwell Memorial Hospital, Inc. ("Caldwell Memorial"). Caldwell Memorial is the owner and licensed operator of a hospital in Lenoir, North Carolina (the "Hospital").

Effective on or about April 30, 2013, Caldwell Memorial and its affiliates will become an affiliate of the University of North Carolina Health Care System ("UNC HCS"). To accomplish this change in control, on or about April 30, 2013, UNC HCS will become the sole corporate member of Caldwell Memorial with certain reserve powers and the right to appoint a majority of the Caldwell Memorial board.

This member substitution does not change the ownership of Caldwell Memorial's assets or change the operator or licensees of any services offered by Caldwell Memorial. For instance, Caldwell Memorial will remain the owner and licensed operator of the Hospital.

We are requesting that the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Certificate of Need Section (the "Agency") confirm that this overall transaction is either not reviewable as a new institutional health service under the North Carolina Certificate of Need ("CON") law or (in the alternative) exempt from review under the CON law's exemption provisions in N.C. Gen. Stat. § 131E-184.

Additionally, to the extent the Agency deems this a transfer of Caldwell Memorial's approved but not fully developed CONs, we are requesting approval of a good cause transfer of any CON projects under development.

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I. NO REVIEW REQUEST

The foregoing member substitution of Caldwell Memorial is not a CON reviewable event. The proposed change in control is not expressly addressed in N.C. Gen. Stat. § 131E-176(16). Neither a change in the sole member of an existing health care facility nor a change in control of an owner of a health care facility is included in the list of activities that constitute the development of a new institutional health service, requiring a CON. Pursuant to the maxim of statutory construction *expressio unius est exclusio alterius*, those transactions not included in N.C. Gen. Stat. § 131E-176(16) do not require a CON. See, e.g., In re Miller, 357 N.C. 316, 325, 584 S.E.2d 772, 780 (2003) (stating that “[u]nder the doctrine of *expressio unius est exclusio alterius*, when a statute lists the situations to which it applies, it implies the exclusion of situations not contained in the list”); see also Jackson v. A Woman’s Choice, Inc., 130 N.C. App. 590, 594, 503 S.E.2d 422, 425 (1998) (internal citations omitted) (“[W]here a statute is explicit on its face, the courts have no authority to impose restrictions that the statute does not expressly contain.”).

II. EXEMPTION NOTICE

Since this transaction does not involve the acquisition of a health service facility or otherwise involve a transfer of any assets, we do not think that notice under N.C. Gen. Stat. § 131E-184(a)(8) is technically required. However, to the extent that you disagree, please accept this letter as the required notice under N.C. Gen. Stat. § 131E-184(a)(8) for an exemption.

The General Assembly has chosen to exempt certain, otherwise reviewable, events from CON review, including the acquisition of an existing health service facility, including the equipment owned by the health service facility at the time of the acquisition. See N.C. Gen. Stat. § 131E-184(a)(8). Under N.C. Gen. Stat. § 131E-176(9b), a hospital is a “health service facility.”

Assuming that the transaction is deemed by the Agency to be an acquisition under the CON law, UNC HCS will be acquiring an existing “health service facility,” including all equipment owned at the time of acquisition. Specifically, UNC HCS will be acquiring the Hospital, including all equipment owned by the Hospital at the time of the acquisition. After the transaction, Caldwell Memorial will continue to operate the health service facility as a hospital and at its current location.

Furthermore, the proposed transaction does not entail the acquisition of any major medical equipment or any *per se* reviewable equipment as defined in N.C. Gen. Stat. §§ 131E-176(14)(o) and (16)(f1), except in conjunction with the acquisition of the entire existing health service facility. Likewise, the transaction does not include the offering of any *per se* reviewable services except those already offered by the existing health service facility. See N.C. Gen. Stat. § 131E-176(16)(f).

Accordingly, given that the transaction involves only existing health service facilities, even if the Agency deems the transaction an acquisition under the CON law, it is exempt from CON review.

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III. GOOD CAUSE TRANSFER

CON Projects Under Development

It is our understanding that the following CON project is under development by Caldwell Memorial, identified as:

E-8278-09 – Caldwell Memorial Outpatient Center/Acquire 64-slice CT scanner to be located in the hospital and relocate existing CT outpatient imaging equipment to a new medical office building located on the hospital campus/Caldwell County

CON Projects Under Review

E-10096-13 – Caldwell Memorial seeks to acquire 27 Adult Inpatient Behavioral Health Beds to be developed on the fifth floor of the existing Hospital.

This CON Application is currently under review and such review will likely not be completed by the April 30, 2013 closing date for the transaction referenced herein. In anticipation of the approval of the CON Application and the completion of the transaction, UNC HCS seeks a good cause transfer of the resulting CON.

To the extent that this transaction is considered to be a transfer of the facility, the project, or the CON, we are requesting approval for a “good cause” transfer of these CONs under N.C. Gen. Stat. § 131E-189 and 10A N.C.A.C. 14C.0502. We believe that good cause for such transfers exists.

The purpose of this transaction is wholly unrelated to any of the pending CON projects, but is in conjunction with a larger transaction of UNC HCS becoming the sole member of the health care system, Caldwell Memorial. Instead, the purposes of the transaction include:

- To maintain the identity and viability of Caldwell Memorial in its service area;
- To provide quality, cost-efficient and innovative health care services to residents of Caldwell Memorial’s service area while maintaining the accessibility and familiarity of a local health care provider;
- Prepare for future reimbursement models that favor quality, accountability and shared risk; and
- Ensure that patients receive the best medical care in the most appropriate service setting by providing access to a comprehensive health care provider operating through multiple medical facilities within the State of North Carolina.

Moreover, nothing about this transaction will affect the ability of Caldwell Memorial to materially comply with any representations in its CON applications or the conditions placed on the

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projects under development. In all material respects, the operations and development of these projects will be the same as represented in the CON applications and in compliance with the issued CONs. In addition, Caldwell Memorial will remain a going concern, and will remain the holder of these CONs. Specifically, Caldwell Memorial will continue to be the holder of the CON for Project ID No. E-8278-09 and the holder of the CON for the Project ID No. E-10096-13, once it is approved.

IV. CONCLUSION

Based upon the foregoing information, we hereby request the Agency's (1) confirmation that the overall transaction does not require CON review; or (2) alternatively is exempt from CON review under N.C. Gen. Stat. § 131E-184(a)(8). In addition, if the Agency determines the overall transaction constitutes a transfer of Caldwell Memorial's outstanding CON projects under development, we hereby request the Agency's approval of a good cause transfer for the outstanding CON project under development and to allow a good cause transfer for the CON project currently under review.

Caldwell Memorial is represented by Charles Sukurs, Esq. of Hall, Render, Killian, Heath & Lyman, P.C., and they also have authorized the submission of this letter.

Because the effective date of this reorganization is currently anticipated to be April 30, 2013, we respectfully request your expedited review.

Thank you for your assistance in regard to this matter. Please feel free to contact me at the number above if you have any questions of need further information.

Sincerely,



Richard P. Church, Esq.

Cc: Don Esposito, Esq., General Counsel, Rex Healthcare (via email)
Glenn George, Esq., Senior Vice President, Legal Services, UNC Health Care System (via email)
Charles Sukurs, Esq. of Hall, Render, Killian, Heath & Lyman, P.C. (via email)