

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

Pat McCrory
Governor

Aldona Z. Wos, M.D.
Ambassador (Ret.)
Secretary DHHS

Drexdal Pratt
Division Director

January 16, 2014

Mr. James C. Wrenn, Jr.
Hopper, Hicks & Wrenn, PLLC
111 Gilliam Street
Oxford, NC 27565

No Review

Facility: Right At Home
Project Description: Acquisition of licensed home care agency
County: Orange
FID #: 090492

Dear Mr. Wrenn:

The Certificate of Need Section (CON Section) received your letter of January 13, 2014 regarding the above referenced proposal. Based on the CON law **in effect on the date of this response to your request**, the proposal described in your correspondence is not governed by, and therefore, does not currently require a certificate of need. However, please note that if the CON law is subsequently amended such that the above referenced proposal would require a certificate of need, this determination does not authorize you to proceed to develop the above referenced proposal when the new law becomes effective.

Moreover, you need to contact the Acute and Home Care Licensure and Certification Section, Division of Health Service Regulation, to determine if they have any requirements for development of the proposed project.

It should be noted that this determination is binding only for the facts represented by you. Consequently, if changes are made in the project or in the facts provided in your correspondence referenced above, a new determination as to whether a certificate of need is required would need to be made by the Certificate of Need Section.

Changes in a project include, but are not limited to: (1) increases in the capital cost; (2) acquisition of medical equipment not included in the original cost estimate; (3) modifications in the design of the project; (4) change in location; and (5) any increase in the number of square feet to be constructed.



Certificate of Need Section

www.ncdhhs.gov

Telephone: 919-855-3873 • Fax: 919-733-8139

Location: Edgerton Building • 809 Ruggles Drive • Raleigh, NC 27603

Mailing Address: 2704 Mail Service Center • Raleigh, NC 27699-2704

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James C. Wrenn, Jr.
January 16, 2014
Page 2

Please contact the CON Section if you have any questions. Also, in all future correspondence you should reference the Facility I.D. # (FID) if the facility is licensed.

Sincerely,



F. Gene DePorter, Project Analyst



Martha Frisone, Interim Chief
Certificate of Need Section

cc: Medical Facilities Planning Section, DHSR
Adult Care Licensure Section, DHSR

LAW OFFICES OF
HOPPER, HICKS & WRENN, PLLC

P.O. BOX 247, 111 GILLIAM STREET
OXFORD, NORTH CAROLINA 27565

N. KYLE HICKS
JAMES C. WRENN, JR.
GERALD H. WRENN, III, 2014
William L. Hopper, of Counsel

TELEPHONE: 919-693-8161
FACSIMILE: 919-693-9938
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Mr. Gene Deporter, Project Analyst
Certificate of Need Section, DHSR
Department of Health and Human Services
2704 Mail Service Center
Raleigh, NC 27699-2704

Re: Certificate of Need Request for "No Review" Determination / Notice of Exempt
Acquisition Pursuant to N.C. Gen. Stat. § 131E-184(a)(8) for Right At Home Franchise
#1192

Dear Mr. Deporter:

That you for speaking with me Friday. Our client, KAH Care, LLC ("KAH Care") is planning to acquire a home care agency (as defined by N.C. Gen. Stat. §131E-136(2)) currently known as Right At Home Franchise #1192 (hereafter the "Agency"). The Agency's office is located at 105 West Corbin Street, Suite 203, Hillsborough, North Carolina, 27278.

KAH Care is seeking to purchase the Agency through an asset purchase agreement. The purpose of this letter is to provide prior notice of this acquisition, which we believe is not subject to Certificate of Need ("CON") review, to the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Certificate of Need Section (the "CON Section"). KAH Care seeks confirmation that its acquisition of the Agency is not subject to the CON laws.

As of this date, Marc Reid and Tori W. Reid d/b/a Right At Home Franchise #1192 lease the office from which the Agency is operated. The Agency is a "home care agency" as that term is defined N.C. Gen. Stat. § 131E-136. Right At Home Franchise #1192 is the current licensee. KAH Care will purchase the Agency, and the new licensee will be KAH Care, LLC. The Agency will still be known as Right At Home Franchise #1192. The Agency currently is not certified to receive Medicare or Medicaid and will not be certified to receive Medicare or Medicaid after the acquisition. Therefore, it is our opinion that the Agency is not a "home health agency" as defined at N.C. Gen. Stat. § 131E-136(4) and, as a result, is not subject to Article 9, Chapter 131E of the North Carolina General Statutes.

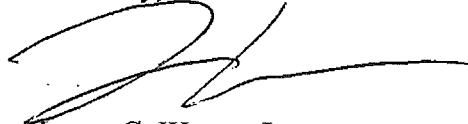
In the alternative, it is our opinion that this acquisition is exempt from CON review pursuant to N.C. Gen. Stat. § 131E-184(a)(8). The transaction will not involve the development of any new health service facility or otherwise qualify as a "new institutional health service"

which would be subject to CON Section review under applicable CON statutes or regulations. N.C. Gen. Stat. §131E-184(a)(8) provides that the acquisition of an existing health service facility is exempt from CON review, upon prior written notice to the Agency. The CON Statute at N.C. Gen. Stat. § 131E-176(9b) defines "health service facility" to include a "home health agency office." Therefore, to the extent the transaction I have described does not qualify for a "no review" determination by the CON Section, it is our opinion that it is exempt from review pursuant to N.C. Gen. Stat§ 131E-184(a)(8) and this correspondence is intended to serve as the notice to the CON Section required by that statutory provision.

Please provide me with written confirmation that this transaction either qualifies for a "no review" determination by the Agency or is exempt from CON review pursuant to N.C. Gen. Stat. § 131 E-184(a)(8). The transaction I have described herein is scheduled to close on February 16, 2014. As a result, we appreciate your attention to this matter at your earliest convenience.

If you require additional information to consider this request, please contact us at (919) 693-8161 as soon as possible. Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read 'James C. Wrenn, Jr.', with a long horizontal flourish extending to the right.

James C. Wrenn, Jr.

Deporter, Gene

From: Amy Erwin [aee@hopperhickswrenn.com]
Sent: Tuesday, January 14, 2014 7:49 AM
To: Deporter, Gene
Subject: FW:

Hi Mr. Deporter-

Our client received the email below concerning his business KAH Care, LLC. We forwarded a letter to you regarding this yesterday. If you have any questions or concerns, please let me know!

THANKS!

Amy E. Erwin
North Carolina State Bar Certified Paralegal
Hopper, Hicks & Wrenn, PLLC
P.O. Box 247
111 Gilliam Street
Oxford, NC 27565
919-693-8161 (phone)
919-693-9938 (fax)

From: Frisone, Martha [mailto:martha.frisone@dhhs.nc.gov]
Sent: Monday, January 13, 2014 4:46 PM
To: Pat Stemmermann
Subject: RE: CON

In North Carolina, a certificate of need is not required to establish a licensed home care agency office so long as that agency will NOT be Medicare-certified. Moreover, if a potential buyer provides the CON Section with prior written notice of its intent, the proposed acquisition of an existing Medicare-certified home health agency does not require a certificate of need.

Martha J. Frisone
N.C. Department of Health and Human Services
Interim Chief, CON Section - Division of Health Service Regulation
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