



NC DEPARTMENT OF HEALTH AND HUMAN SERVICES

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

February 21, 2019

Gary Qualls
430 Davis Drive
Morrisville, NC 27612

No Review

Record #: 2884
Facility Name: Atrium Health Kings Mountain
FID #: 943292
Business Name: The Charlotte Mecklenburg Hospital Authority
Business #: 1770
Project Description: Merge the provider number and license of Atrium Health Kings Mountain into the provider number and license of Atrium Health Cleveland
County: Cleveland

Dear Mr. Qualls:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) received your correspondence 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 that correspondence is not governed by, and therefore, does not currently require a certificate of need. 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.

You may need to contact the Agency's Acute and Home Care Licensure and Certification Section to determine if they have any requirements for development of the proposed project.

This determination is binding only for the facts represented in your correspondence. If changes are made in the project or in the facts provided in the correspondence referenced above, a new determination as to whether a certificate of need is required would need to be made by this office.

Please do not hesitate to contact this office if you have any questions.

Sincerely,

[Signature of Ena Lightbourne]

Ena Lightbourne
Project Analyst

[Signature of Martha J. Frisone]

Martha J. Frisone, Chief
Healthcare Planning and Certificate of Need Section

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

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: 809 Ruggles Drive, 2704 Mail Service Center, Raleigh, NC 27699-2704
www.ncdhhs.gov/dhsr • TEL: 919-855-3873



February 13, 2019

Gary S. Qualls
Gary.qualls@klgates.comT +1 919 466 1182
F +1 919 516 2072**Via Hand Delivery**Martha Frisone
Chief, Certificate of Need
Department of Health and Human Services
Division of Health Service Regulation
Health Planning and Certificate of Need Section
809 Ruggles Drive
Raleigh, North Carolina 27603

Re: No Review Request and, Alternatively, Exemption Notice regarding Merger of Atrium Health Kings Mountain's Provider Number and License into Atrium Health Cleveland's Provider Number and License

Dear Ms. Frisone:

The purpose of this letter is to inform you of a proposed "Consolidation" effective on or about August 1, 2019, which will merge the provider number and license of Atrium Health Kings Mountain ("Kings Mountain") into the provider number and license of Atrium Health Cleveland ("Cleveland"). Kings Mountain and Cleveland are both directly owned by The Charlotte-Mecklenburg Hospital Authority ("CMHA").¹

We ask that the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Healthcare Planning and Certificate of Need Section (the "Agency") determine that this Consolidation is either:

1. non-reviewable because it does not constitute a new institutional health service under N.C. Gen. Stat. § 131E-176(16); or
2. exempt from CON review under N.C. Gen. Stat. § 131E-184(a)(8).

¹ Attached as Exhibits 1 and 2 are prior rulings by this Agency confirming the CON-exempt nature of CMHA's direct acquisition of both hospitals. The Cleveland approval is Exhibit 1 and the Kings Mountain approval is Exhibit 2.

Kings Mountain is a licensed acute care hospital with 47 acute care beds, 14 psychiatric beds, and 6 substance abuse / chemical dependency treatment beds in Kings Mountain, Cleveland County -- License No. H0113, Facility ID No. 943292. Cleveland is a licensed acute care hospital with 241 acute care beds in Shelby, Cleveland County -- License No. H0024 and Facility ID No. 953106. This Consolidation involves two existing health service facilities in the same county owned by the same legal entity, CMHA.

Under North Carolina law, a CON is required only prior to offering or developing a "new institutional health service." "New institutional health service[s]" include a variety of services and activities, including the "construction, development, or establishment of a new health service facility." N.C. Gen. Stat. § 131E-176(16)(a). A hospital is a health service facility. N.C. Gen. Stat. § 131E-176(9b). However, the Consolidation does not constitute a new institutional health service because there is no new health service facility being constructed, developed, or established.

Furthermore, even if any such new institutional health service were triggered, the North Carolina General Assembly has exempted certain types of services or proposals from CON review under N.C. Gen. Stat. § 131E-184, including the acquisition of an existing health service facility, including equipment owned at the time of acquisition.

This Consolidation involves merely the consolidation of licenses and provider numbers between CMHA's two sister hospitals. After the Consolidation, Cleveland and Kings Mountain will operate a single licensed CMHA-owned hospital with two separate campuses rather than being two separately licensed CMHA-owned hospitals. No CON-regulated facilities or assets are being acquired by any entity. Further, the Consolidation does not entail the offering of any new *per se* reviewable services (N.C. Gen. Stat. § 131E-176(16)(f)) or the purchase of any major medical equipment or *per se* reviewable equipment as defined in N.C. Gen. Stat. §§ 131E-176(14)(o) and (16)(f1). Finally, no CON-regulated facilities or assets are being relocated.

Given that the Consolidation involves only the operational consolidation of two existing health service facilities owned by CMHA, please confirm that the Consolidation is not CON reviewable because it does not constitute a new institutional health service. However, if you decide that the Consolidation does constitute a new institutional health service, then please confirm that the Consolidation is nevertheless exempt from CON review under N.C. Gen. Stat. § 131E-184.

Martha Frisone
Chief, Certificate of Need
February 13, 2019
Page | 3

If you require additional information, please contact us at the above number. Thank you in advance for your review of this notice.

Sincerely,



Gary S. Qualls



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

December 12, 2014

Gary S. Qualls
PO Box 14210
Research Triangle Park, NC 27709-4210

Exempt from Review – Acquisition of Facility

Facility: Cleveland Regional Medical Center
Type of Facility: Acute Care Hospital
Acquisition by: The Charlotte-Mecklenburg Hospital Authority
County: Cleveland
FID #: 953106

Dear Mr. Qualls:

In response to your letters of November 5, 2014 and December 11, 2014, the above referenced proposal is exempt from certificate of need review in accordance with G.S 131E-184(a)(8). Therefore, The Charlotte-Mecklenburg Hospital Authority 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 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

Martha J. Frisone, Interim Chief
Certificate of Need Section

cc: Medical Facilities Planning Branch, DHSR
Acute and Home Care Licensure and Certification Section, DHSR



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

An Equal Opportunity/ Affirmative Action Employer



K&L GATES

December 11, 2014

Gary S. Qualls
D 919.466.1182
F 919.516.2072
gary.qualls@klgates.com

Via E-Mail and U.S. Mail

Julie Halateck, Project Analyst
Certificate of Need Section
Division of Health Service Regulation
North Carolina Department of Health & Human
Services
809 Ruggles Drive
Raleigh, NC 27603



Re: Response to Information Request regarding:

Merger of Cleveland County Healthcare System with and into The Charlotte-Mecklenburg Hospital Authority

No Review Letter, or in the Alternative, Exemption Notice

Cleveland Regional Medical Center: Facility ID: 953106; License No. H0024;
Kings Mountain Hospital: Facility ID: 943292; License No. H0113;
Cleveland Pines Nursing Center: Facility ID: 923107; License No. NH0524; and
Cleveland Ambulatory Services, LLC: Facility ID: 955505; License No. AS00062

Dear Julie:

We are in receipt of your letter dated December 8, 2014, requesting additional information regarding the ownership structure of the facilities involved in this merger. Organization charts describing the ownership structure of each of the entities prior to the merger and after the proposed merger, are attached as Exhibit A. As indicated in the chart, the licensee of each of the facilities after the merger is indicated in bold.

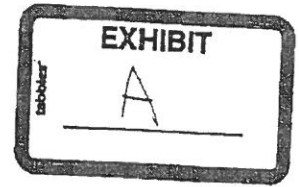
I hope this information addresses your concerns. Please feel free to contact me at the number above if you have any questions of need further information.

Sincerely,

Gary S. Qualls
Gary S. Qualls

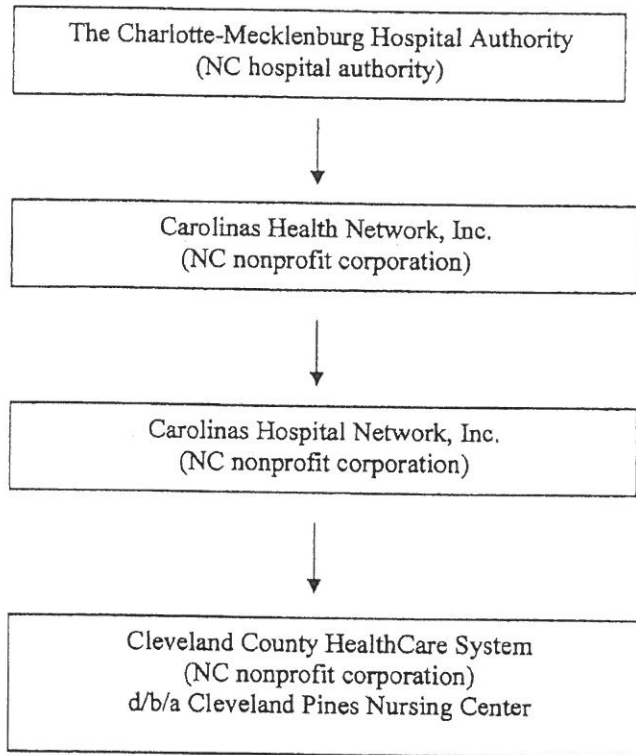
RT-3038351 v1

klgates.com

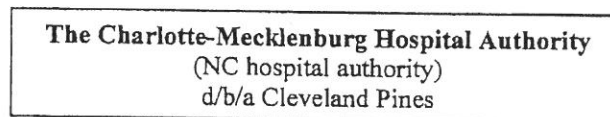


CLEVELAND COUNTY HEALTHCARE SYSTEM
d/b/a Cleveland Pines Nursing Center

Ownership Prior to 1/1/2015:

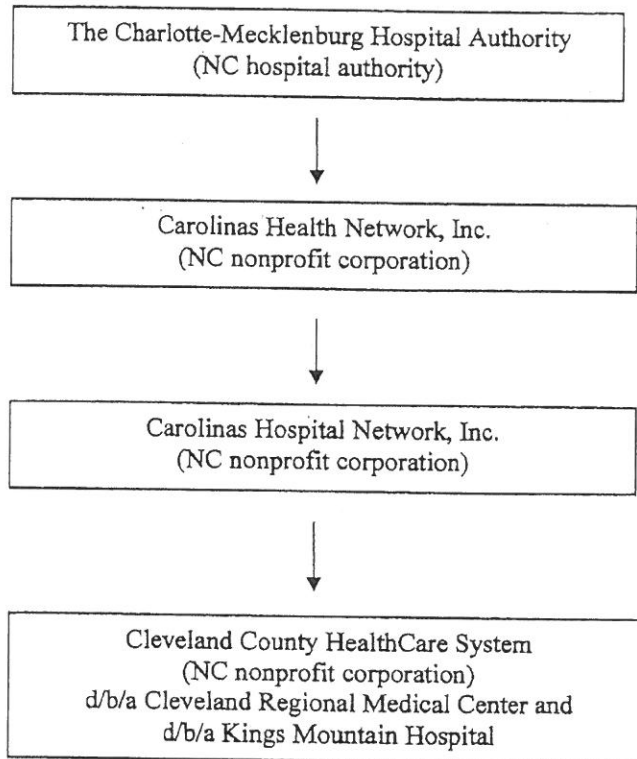


Ownership as of 1/1/2015:

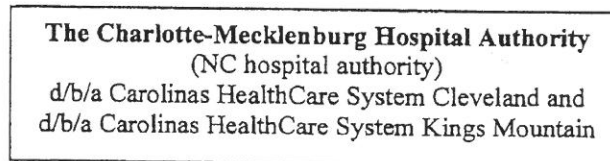


CLEVELAND COUNTY HEALTHCARE SYSTEM
d/b/a Cleveland Regional Medical Center and d/b/a Kings Mountain Hospital

Ownership Prior to 1/1/2015:

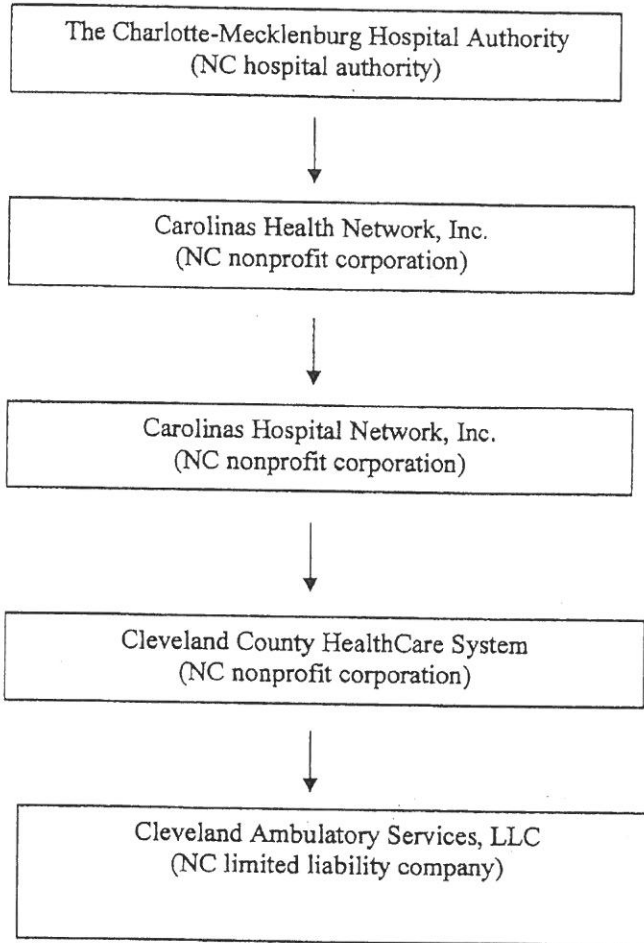


Ownership as of 1/1/2015:

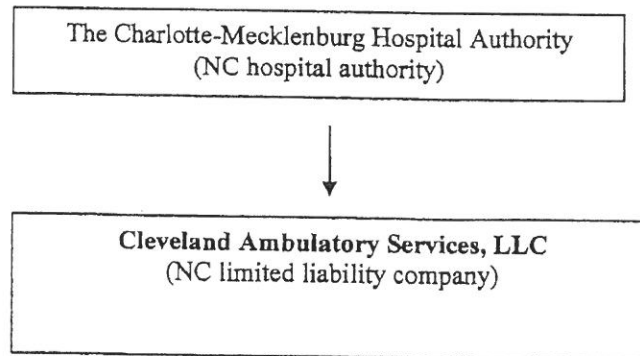


CLEVELAND AMBULATORY SERVICES, LLC

Ownership Prior to 1/1/2015:



Ownership as of 1/1/2015:



Halatek, Julie F

From: Halatek, Julie F
Sent: Thursday, December 11, 2014 12:44 PM
To: 'Hall, Carolyn'
Cc: Qualls, Gary; Crowley, Colleen; Davis, Darlene
Subject: RE: Additional Information Requested regarding Cleveland County Healthcare System

Received – thank you! If the hard copy has not already been mailed out, please don't feel like it's necessary – the scanned copy is fine. I'll add this to the request and review shortly!

Julie Halatek
N.C. Department of Health and Human Services
Project Analyst, CON Section - Division of Health Service Regulation
809 Ruggles Drive
Raleigh, NC 27603
(Office) 919.855.3873

julie.halatek@dhhs.nc.gov
www.ncdhhs.gov/dhsr

Email correspondence to and from this address is subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized State official. Unauthorized disclosure of juvenile, health, legally privileged, or otherwise confidential information, including confidential information relating to an ongoing State procurement effort, is prohibited by law. If you have received this e-mail in error, please notify the sender immediately and delete all records of this e-mail.

From: Hall, Carolyn [mailto:Carolyn.Hall@klgates.com]
Sent: Thursday, December 11, 2014 12:02 PM
To: Halatek, Julie F
Cc: Qualls, Gary; Crowley, Colleen; Davis, Darlene
Subject: Additional Information Requested regarding Cleveland County Healthcare System

Please see the attached letter in response to your letter dated December 8, 2014 regarding Cleveland County Healthcare System's proposed merger. If you have any questions, please let us know. A hard-copy is also being mailed to you.

Thank you.



Carolyn Hall
Senior Paralegal
K&L Gates LLP
430 Davis Drive, Suite 400
Morrisville, NC 27560
Research Triangle Park Office
Telephone: (919)466-1183
Fax: (919)516-2073
E-mail: carolyn.hall@klgates.com
www.klgates.com



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

December 8, 2014

Gary S. Qualls
PO Box 14210
Research Triangle Park, NC 27709-4210

RE: Information Required for Exempt from Review/No Review Determination / Cleveland
County Healthcare System and The Charlotte-Mecklenburg Hospital Authority /
Cleveland County

Dear Mr. Qualls:

The Certificate of Need (CON) Section has received your request for a determination as to whether the above mentioned project is either exempt from review for a certificate of need or is not governed by the CON statutes. In order for the CON Section to make such a determination, please submit the following information to this office:

1. Additional information as to how the ownership structure of the facilities involved will change. Please provide information as to who will be the licensee of the facilities involved after the proposed merger is completed. A chart or diagram depicting the current ownership structure for each facility and the ownership structure following the merger for each facility would be useful to assist in this determination.

Your prompt response will assist the CON Section in making a timely review of your request. If you have any questions regarding this matter, please feel free to contact this office.

Sincerely,

Julie Halatek, Project Analyst
Certificate of Need Section



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

An Equal Opportunity/ Affirmative Action Employer



K&L Gates LLP
Post Office Box 14210
Research Triangle Park, NC 27709-4210

430 Davis Drive, Suite 400
Morrisville, NC 27560

T 919.466.1190 www.klgates.com

November 5, 2014

Gary S. Qualls
D 919.466.1182
F 919.516.2072
gary.qualls@klgates.com

Received by
the CON Section
NOV 5 2014

Via Hand Delivery

Ms. Martha Frisone
Chief, Certificate of Need Section
Division of Health Service Regulation
North Carolina Department of Health & Human
Services
809 Ruggles Drive
Raleigh, NC 27603

Re: Merger of Cleveland County Healthcare System with and into The Charlotte-Mecklenburg Hospital Authority

No Review Letter, or in the Alternative, Exemption Notice

Cleveland Regional Medical Center: Facility ID: 953106; License No. H0024;
Kings Mountain Hospital: Facility ID: 943292; License No. H0113;
Cleveland Pines Nursing Center: Facility ID: 923107; License No. NH0524; and
Cleveland Ambulatory Services, LLC: Facility ID: 955505; License No. AS00062

Dear Martha:

We represent Cleveland County Healthcare System ("CCHS") and The Charlotte-Mecklenburg Hospital Authority ("CMHA"). The purpose of this letter is to inform the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Certificate of Need Section (the "Agency") of an upcoming corporate reorganization in the form of a merger (the "Merger" or "Transaction"), which is anticipated to be effective January 1, 2015, of CCHS, a North Carolina nonprofit charitable corporation, with and into CMHA, a North Carolina hospital authority. Currently, CMHA is the ultimate parent of CCHS.

As further described below, we are requesting that the Agency confirm that this 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.

Martha Frisone
November 5, 2014
Page 2

I. THE PROPOSED MERGER

CCHS's sole member is Carolinas Hospital Network, Inc., whose sole member is CMHA. By virtue of being the ultimate parent of CCHS, CMHA already maintains and exercises control over CCHS. CMHA operates CCHS as a component of CMHA's vertically integrated healthcare delivery system.

Upon consummation of the merger, all of the assets of CCHS will be transferred to CMHA by operation of law. CMHA will continue to utilize the assets and operations of CCHS in a manner consistent with the nonprofit mission of CCHS. CCHS operates several health care facilities described below (the "Facilities").

A. HOSPITALS OWNED BY CCHS

CCHS currently operates two hospitals in Cleveland County:

- 1) Cleveland Regional Medical Center ("CRMC") which includes licensed acute care beds, operating rooms, endoscopy rooms, and an emergency department (License No. H0024, attached hereto as Exhibit 1); and
- 2) Kings Mountain Hospital ("KMG") which includes licensed acute care beds, psychiatric beds, chemical detox beds, operating rooms, endoscopy rooms, and an emergency department (License No. H0113, attached hereto as Exhibit 2).

After the merger, CMHA will become the operator of these two hospitals. The hospitals' doing business names will change to the following: Carolinas HealthCare System Cleveland and Carolinas HealthCare System Kings Mountain.

B. SKILLED NURSING FACILITY OWNED BY CCHS

CCHS is also the licensed operator of a skilled nursing facility known as Cleveland Pines Nursing Center located in Cleveland County. (See License No. NH0524, attached hereto as Exhibit 3). After the merger, this facility's name will be changed to Cleveland Pines.

C. AMBULATORY SURGERY CENTER OWNED BY CCHS

In addition to the general acute care hospitals and skilled nursing facility, each of which is operated by CCHS, CCHS is the sole member of Cleveland Ambulatory Services, LLC ("CAS") which is the owner and operator of Cleveland Ambulatory Services, an

Martha Frisone
November 5, 2014
Page 3

ambulatory surgical facility (See License No. AS0062, attached hereto as Exhibit 4). After the merger, CMHA will become the sole member of CAS.

II. NO REVIEW REQUEST

As to the health service facilities currently operated by CCHS, the merger of a wholly-owned subsidiary into its parent is not a CON reviewable event for the following reasons.

First, the proposed corporate reorganization is not expressly addressed in N.C. Gen. Stat. § 131E-176(16). The merger of a wholly-owned subsidiary into its parent is not 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.”).

Second, to the extent that the holder of the CON for any of these facilities is changing to CMHA, which already is the ultimate parent and/or owner, the identity of the holder is changing solely because of a corporate reorganization. It is not the type of transaction that would trigger CON review. For instance, by analogy, this corporate reorganization Transaction would not constitute the transfer of a CON even if it occurred during the development phase. Rather, in such an instance, it is a reorganization that the CON rules recognize as non-reviewable. The Agency’s rule at 10A N.C. Admin. Code § 14C.0502 states in pertinent part as follows:

10A N.C.A.C. 14C.0502 WITHDRAWAL OF A CERTIFICATE

- (b) Ownership of a certificate of need is transferred when any person acquires a certificate from the holder by purchase, donation, lease, trade, or any comparable arrangement, except that ownership of a certificate of need is not transferred when:
 - (1) the holder of the certificate is a corporation and the identity of the holder changes because of a corporate reorganization;
or

Martha Frisone
November 5, 2014
Page 4

- (2) the holder of the certificate is a partnership and the identity of the holder changes because the same partners reorganize as a new partnership.
- (c) Control of a certificate of need is transferred when any person acquires a majority interest in the facility, project or holder or any parent entity of the facility, project or holder.

In applying the foregoing rule by analogy, the corporate reorganization Transaction does not equate to transfer of ownership of a CON within the meaning of the rule. The merger of a wholly-owned subsidiary into its parent does not change control or ownership outside of the two related entities, but constitutes a corporate reorganization contemplated in Subsection (b)(1).

Further, no capital expenditures are being incurred to accomplish this corporate reorganization Transaction. After the Transaction, CMHA will continue to operate the Facilities in their current locations.

For the reasons described above, pursuant to the maxim of statutory construction *expressio unius est exclusio alterius*, this Transaction is not included in the list of new institutional health service items requiring a CON under N.C. Gen. Stat. § 131E-176(16).

III. EXEMPTION NOTICE

For the reasons described above, 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 and the equipment owned by the health service facility at the time of the acquisition.¹ Under N.C. Gen. Stat. § 131E-176(9b), the hospitals, the nursing home facility, and the ambulatory surgical facility are all “health service facilities.”

Assuming that the Transaction is deemed by the Agency to be an acquisition under the CON law, upon consummation of the merger, CMHA will be acquiring existing “health service facilities,” including all equipment owned at the time of acquisition. Specifically,

¹ See N.C. Gen. Stat. § 131E-184(a)(8).

Martha Frisone
November 5, 2014
Page 5

CMHA will be acquiring the hospitals known as CRMC and KMH, as well as Cleveland Pines Nursing Center, including all equipment owned by the hospitals and the skilled nursing facility at the time of the acquisition. After the Merger, CMHA will continue to operate these health service facilities as hospitals and a skilled nursing facility, respectively, at their current locations.

Similarly, again assuming that the Transaction is deemed by the Agency to be an acquisition under the CON law, CMHA will be acquiring CAS (an ambulatory surgical facility). This acquisition will occur through the change in the underlying ownership of the LLC as described above. After the merger, CMHA, as the sole owner in the LLC owning this health service facility, will continue to operate the health service facility as it exists in its current form (*i.e.*, as an ambulatory surgical facility) at the same location.

Furthermore, the proposed merger 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 facilities. Likewise, the merger does not include the offering of any *per se* reviewable services except those already offered by the existing health service facilities.²

Accordingly, given that the proposed Merger involves only existing health service facilities, it is exempt from CON review.

V. CONCLUSION

Based upon the foregoing information, we hereby request the Agency's confirmation that the proposed Transaction (as described above): (1) is not subject to CON review; or (2) alternatively, is exempt from CON review under N.C. Gen. Stat. § 131E-184(a)(8).

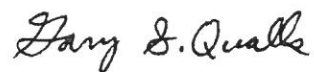
Because the effective date of this Merger is currently anticipated to be January 1, 2015, we respectfully request your expedited review.

² See N.C. Gen. Stat. § 131E-176(16)(f).

Martha Frisone
November 5, 2014
Page 6

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.

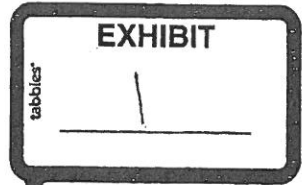
Sincerely,

A handwritten signature in cursive script that reads "Gary S. Qualls".

Gary S. Qualls

State of North Carolina

Department of Health and Human Services
Division of Health Service Regulation



*Effective January 01, 2014, this license is issued to
Cleveland County HealthCare System*

*to operate a hospital known as
Cleveland Regional Medical Center
located in Shelby, North Carolina, Cleveland County.*

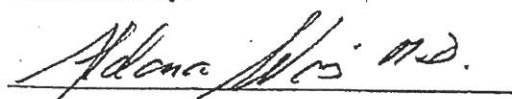
*This license is issued subject to the statutes of the
State of North Carolina, is not transferable and shall remain
in effect until amended by the issuing agency.*

*Facility ID: 953106
License Number: H0024*


Bed Capacity: 241
General Acute 241

Dedicated Inpatient Surgical Operating Rooms: 1
Dedicated Ambulatory Surgical Operating Rooms: 0
Shared Surgical Operating Rooms: 6
Dedicated Endoscopy Rooms: 4

Authorized by:

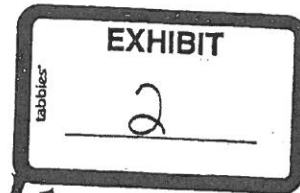

Secretary, N.C. Department of Health and
Human Services




Director, Division of Health Service Regulation

State of North Carolina

Department of Health and Human Services
Division of Health Service Regulation



Effective March 01, 2014, this license is issued to

Cleveland County HealthCare System

to operate a hospital known as

Kings Mountain Hospital

located in Kings Mountain, North Carolina, Cleveland County.

*This license is issued subject to the statutes of the
State of North Carolina, is not transferable and shall remain
in effect until amended by the issuing agency.*

Facility ID: 943292

License Number: H0113

Bed Capacity: 77

General Acute 47, Psych 14, Detox 6,

Nursing: 10

Dedicated Inpatient Surgical Operating Rooms: 0

Dedicated Ambulatory Surgical Operating Rooms: 0

Shared Surgical Operating Rooms: 2

Dedicated Endoscopy Rooms: 1

Authorized by:

A handwritten signature in cursive script, appearing to read "Adana M. H. M.D.", written over a horizontal line.

Secretary, N.C. Department of Health and
Human Services



A handwritten signature in cursive script, appearing to read "Duane P. ...", written over a horizontal line.

Director, Division of Health Service Regulation

EXHIBIT
tabbles
3

State of North Carolina

Department of Health and Human Services
Division of Health Service Regulation

Effective January 01, 2014, this license is issued to

Cleveland County Health Care System

to operate a nursing facility known as

Cleveland Pines Nursing Center

located in Shelby, Cleveland County

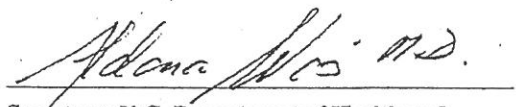
*This license is issued subject to the statutes of the
State of North Carolina, is not transferable and shall expire
midnight December 31, 2014.*

Facility ID: 923107

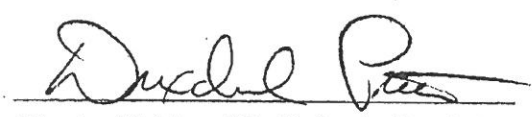
License Number: NH0524

*Bed Capacity: 120
Nursing Facility Beds 120*

Authorized by:



Secretary, N.C. Department of Health and
Human Services



Director, Division of Health Service Regulation

State of North Carolina

Department of Health and Human Services
Division of Health Service Regulation

Effective January 01, 2014, license is issued to

Cleveland Ambulatory Services, LLC

to operate an ambulatory surgical clinic known as

Cleveland Ambulatory Services

located at 1100 N. Lafayette Street

Shelby, Cleveland County, North Carolina

*This license is issued subject to the statutes of the
State of North Carolina, is not transferable and shall expire
midnight December 31, 2014.*

Facility ID: 955505

License Number: AS0062

Surgical Operating Rooms: 4

Endoscopy Rooms: 4

Authorized by:

Adana M. ...
Secretary, N.C. Department of Health and
Human Services



Dwight ...
Director, Division of Health Service Regulation



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

December 12, 2014

Gary S. Qualls
PO Box 14210
Research Triangle Park, NC 27709-4210

Exempt from Review – Acquisition of Facility

Facility: Kings Mountain Hospital
Type of Facility: Acute Care Hospital
Acquisition by: The Charlotte-Mecklenburg Hospital Authority
County: Cleveland
FID #: 943292

Dear Mr. Qualls:

In response to your letters of November 5, 2014 and December 11, 2014, the above referenced proposal is exempt from certificate of need review in accordance with G.S 131E-184(a)(8). Therefore, The Charlotte-Mecklenburg Hospital Authority 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 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

Julie Halatek
Project Analyst

Martha J. Frisone

Martha J. Frisone, Interim Chief
Certificate of Need Section

cc: Medical Facilities Planning Branch, DHSR
Acute and Home Care Licensure and Certification Section, DHSR



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

An Equal Opportunity/ Affirmative Action Employer



K&L GATES

December 11, 2014

Gary S. Qualls
D 919.466.1182
F 919.516.2072
gary.qualls@klgates.com

Via E-Mail and U.S. Mail

Julie Halateck, Project Analyst
Certificate of Need Section
Division of Health Service Regulation
North Carolina Department of Health & Human
Services
809 Ruggles Drive
Raleigh, NC 27603



Re: Response to Information Request regarding:

Merger of Cleveland County Healthcare System with and into The Charlotte-Mecklenburg Hospital Authority

No Review Letter, or in the Alternative, Exemption Notice

Cleveland Regional Medical Center: Facility ID: 953106; License No. H0024;
Kings Mountain Hospital: Facility ID: 943292; License No. H0113;
Cleveland Pines Nursing Center: Facility ID: 923107; License No. NH0524; and
Cleveland Ambulatory Services, LLC: Facility ID: 955505; License No. AS00062

Dear Julie:

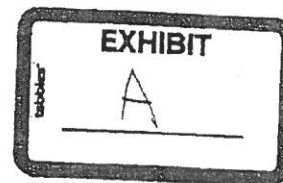
We are in receipt of your letter dated December 8, 2014, requesting additional information regarding the ownership structure of the facilities involved in this merger. Organization charts describing the ownership structure of each of the entities prior to the merger and after the proposed merger, are attached as Exhibit A. As indicated in the chart, the licensee of each of the facilities after the merger is indicated in bold.

I hope this information addresses your concerns. Please feel free to contact me at the number above if you have any questions of need further information.

Sincerely,

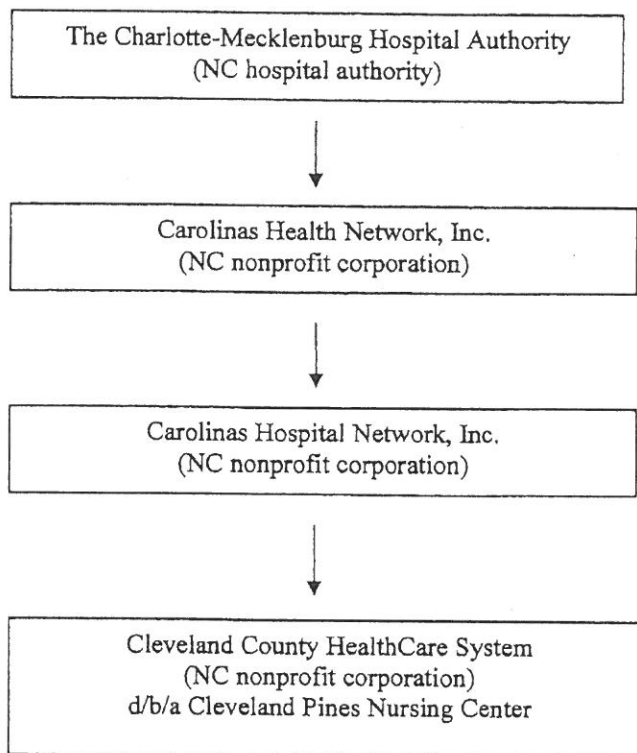
Gary S. Qualls

Gary S. Qualls

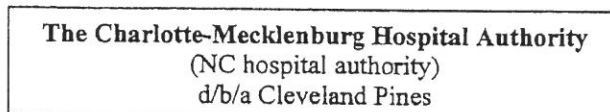


CLEVELAND COUNTY HEALTHCARE SYSTEM
d/b/a Cleveland Pines Nursing Center

Ownership Prior to 1/1/2015:

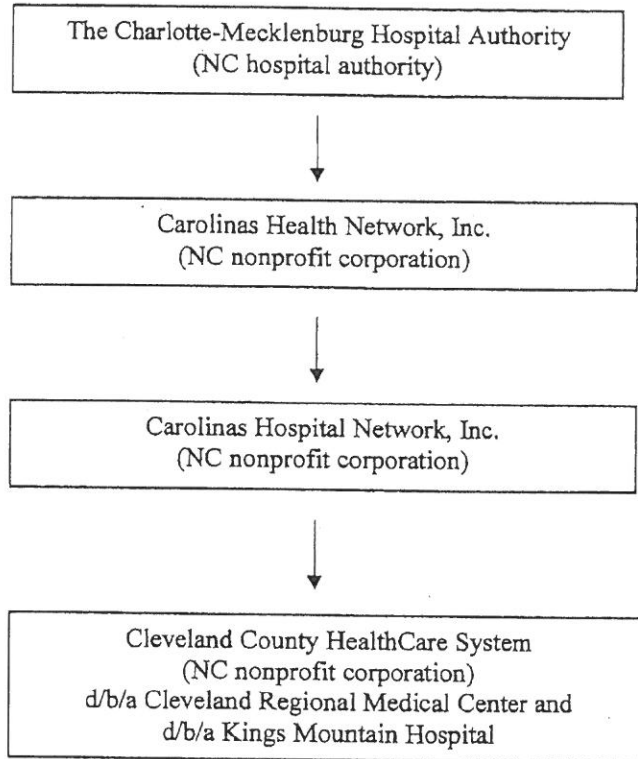


Ownership as of 1/1/2015:

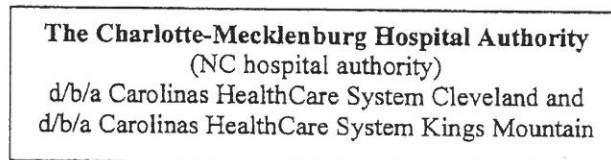


CLEVELAND COUNTY HEALTHCARE SYSTEM
d/b/a Cleveland Regional Medical Center and d/b/a Kings Mountain Hospital

Ownership Prior to 1/1/2015:

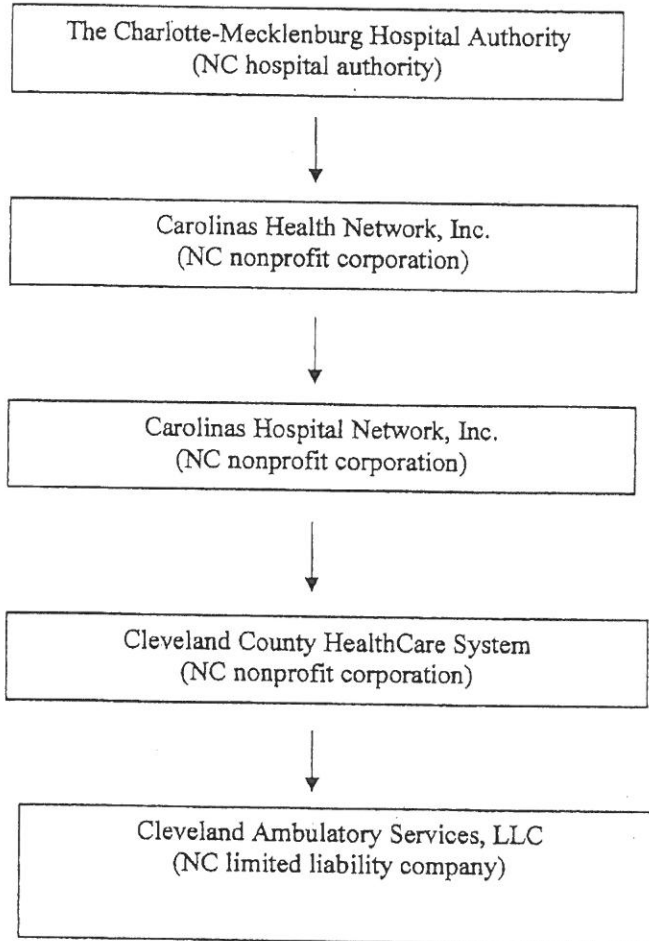


Ownership as of 1/1/2015:

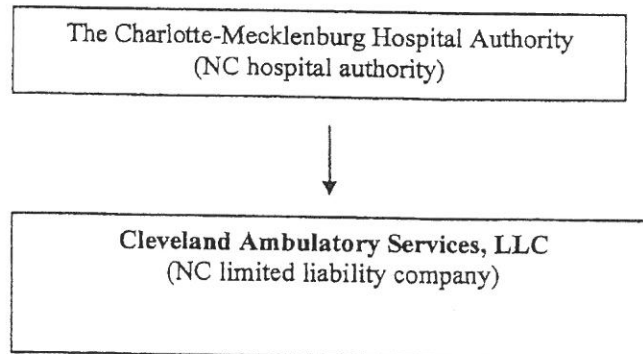


CLEVELAND AMBULATORY SERVICES, LLC

Ownership Prior to 1/1/2015:



Ownership as of 1/1/2015:



Halatek, Julie F

From: Halatek, Julie F
Sent: Thursday, December 11, 2014 12:44 PM
To: 'Hall, Carolyn'
Cc: Qualls, Gary; Crowley, Colleen; Davis, Darlene
Subject: RE: Additional Information Requested regarding Cleveland County Healthcare System

Received – thank you! If the hard copy has not already been mailed out, please don't feel like it's necessary – the scanned copy is fine. I'll add this to the request and review shortly!

Julie Halatek
N.C. Department of Health and Human Services
Project Analyst, CON Section - Division of Health Service Regulation
809 Ruggles Drive
Raleigh, NC 27603
(Office) 919.855.3873

julie.halatek@dhhs.nc.gov
www.ncdhhs.gov/dhsr

Email correspondence to and from this address is subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized State official. Unauthorized disclosure of juvenile, health, legally privileged, or otherwise confidential information, including confidential information relating to an ongoing State procurement effort, is prohibited by law. If you have received this e-mail in error, please notify the sender immediately and delete all records of this e-mail.

From: Hall, Carolyn [mailto:Carolyn.Hall@klgates.com]
Sent: Thursday, December 11, 2014 12:02 PM
To: Halatek, Julie F
Cc: Qualls, Gary; Crowley, Colleen; Davis, Darlene
Subject: Additional Information Requested regarding Cleveland County Healthcare System

Please see the attached letter in response to your letter dated December 8, 2014 regarding Cleveland County Healthcare System's proposed merger. If you have any questions, please let us know. A hard-copy is also being mailed to you.

Thank you.



Carolyn Hall
Senior Paralegal
K&L Gates LLP
430 Davis Drive, Suite 400
Morrisville, NC 27560
Research Triangle Park Office
Telephone: (919)466-1183
Fax: (919)516-2073
E-mail: carolyn.hall@klgates.com
www.klgates.com



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

December 8, 2014

Gary S. Qualls
PO Box 14210
Research Triangle Park, NC 27709-4210

RE: Information Required for Exempt from Review/No Review Determination / Cleveland
County Healthcare System and The Charlotte-Mecklenburg Hospital Authority /
Cleveland County

Dear Mr. Qualls:

The Certificate of Need (CON) Section has received your request for a determination as to whether the above mentioned project is either exempt from review for a certificate of need or is not governed by the CON statutes. In order for the CON Section to make such a determination, please submit the following information to this office:

1. Additional information as to how the ownership structure of the facilities involved will change. Please provide information as to who will be the licensee of the facilities involved after the proposed merger is completed. A chart or diagram depicting the current ownership structure for each facility and the ownership structure following the merger for each facility would be useful to assist in this determination.

Your prompt response will assist the CON Section in making a timely review of your request. If you have any questions regarding this matter, please feel free to contact this office.

Sincerely,

A handwritten signature in cursive script that reads "Julie Halatek".

Julie Halatek, Project Analyst
Certificate of Need Section



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

An Equal Opportunity/ Affirmative Action Employer



K&L Gates LLP
Post Office Box 14210
Research Triangle Park, NC 27709-4210

430 Davis Drive, Suite 400
Morrisville, NC 27560

T 919.466.1190 www.klgates.com

November 5, 2014

Gary S. Qualls
D 919.466.1182
F 919.516.2072
gary.qualls@klgates.com

Received by
the CON Section
NOV 5 2014

Via Hand Delivery

Ms. Martha Frisone
Chief, Certificate of Need Section
Division of Health Service Regulation
North Carolina Department of Health & Human
Services
809 Ruggles Drive
Raleigh, NC 27603

Re: Merger of Cleveland County Healthcare System with and into The Charlotte-Mecklenburg Hospital Authority

No Review Letter, or in the Alternative, Exemption Notice

Cleveland Regional Medical Center: Facility ID: 953106; License No. H0024;
Kings Mountain Hospital: Facility ID: 943292; License No. H0113;
Cleveland Pines Nursing Center: Facility ID: 923107; License No. NH0524; and
Cleveland Ambulatory Services, LLC: Facility ID: 955505; License No. AS00062

Dear Martha:

We represent Cleveland County Healthcare System (“CCHS”) and The Charlotte-Mecklenburg Hospital Authority (“CMHA”). The purpose of this letter is to inform the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Certificate of Need Section (the “Agency”) of an upcoming corporate reorganization in the form of a merger (the “Merger” or “Transaction”), which is anticipated to be effective January 1, 2015, of CCHS, a North Carolina nonprofit charitable corporation, with and into CMHA, a North Carolina hospital authority. Currently, CMHA is the ultimate parent of CCHS.

As further described below, we are requesting that the Agency confirm that this 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.

Martha Frisone
November 5, 2014
Page 2

I. THE PROPOSED MERGER

CCHS's sole member is Carolinas Hospital Network, Inc., whose sole member is CMHA. By virtue of being the ultimate parent of CCHS, CMHA already maintains and exercises control over CCHS. CMHA operates CCHS as a component of CMHA's vertically integrated healthcare delivery system.

Upon consummation of the merger, all of the assets of CCHS will be transferred to CMHA by operation of law. CMHA will continue to utilize the assets and operations of CCHS in a manner consistent with the nonprofit mission of CCHS. CCHS operates several health care facilities described below (the "Facilities").

A. HOSPITALS OWNED BY CCHS

CCHS currently operates two hospitals in Cleveland County:

- 1) Cleveland Regional Medical Center ("CRMC") which includes licensed acute care beds, operating rooms, endoscopy rooms, and an emergency department (License No. H0024, attached hereto as Exhibit 1); and
- 2) Kings Mountain Hospital ("KMG") which includes licensed acute care beds, psychiatric beds, chemical detox beds, operating rooms, endoscopy rooms, and an emergency department (License No. H0113, attached hereto as Exhibit 2).

After the merger, CMHA will become the operator of these two hospitals. The hospitals' doing business names will change to the following: Carolinas HealthCare System Cleveland and Carolinas HealthCare System Kings Mountain.

B. SKILLED NURSING FACILITY OWNED BY CCHS

CCHS is also the licensed operator of a skilled nursing facility known as Cleveland Pines Nursing Center located in Cleveland County. (See License No. NH0524, attached hereto as Exhibit 3). After the merger, this facility's name will be changed to Cleveland Pines.

C. AMBULATORY SURGERY CENTER OWNED BY CCHS

In addition to the general acute care hospitals and skilled nursing facility, each of which is operated by CCHS, CCHS is the sole member of Cleveland Ambulatory Services, LLC ("CAS") which is the owner and operator of Cleveland Ambulatory Services, an

Martha Frisone
November 5, 2014
Page 3

ambulatory surgical facility (See License No. AS0062, attached hereto as Exhibit 4). After the merger, CMHA will become the sole member of CAS.

II. NO REVIEW REQUEST

As to the health service facilities currently operated by CCHS, the merger of a wholly-owned subsidiary into its parent is not a CON reviewable event for the following reasons.

First, the proposed corporate reorganization is not expressly addressed in N.C. Gen. Stat. § 131E-176(16). The merger of a wholly-owned subsidiary into its parent is not 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.”).

Second, to the extent that the holder of the CON for any of these facilities is changing to CMHA, which already is the ultimate parent and/or owner, the identity of the holder is changing solely because of a corporate reorganization. It is not the type of transaction that would trigger CON review. For instance, by analogy, this corporate reorganization Transaction would not constitute the transfer of a CON even if it occurred during the development phase. Rather, in such an instance, it is a reorganization that the CON rules recognize as non-reviewable. The Agency’s rule at 10A N.C. Admin. Code § 14C.0502 states in pertinent part as follows:

10A N.C.A.C. 14C.0502 WITHDRAWAL OF A CERTIFICATE

- (b) Ownership of a certificate of need is transferred when any person acquires a certificate from the holder by purchase, donation, lease, trade, or any comparable arrangement, except that ownership of a certificate of need is not transferred when:
 - (1) the holder of the certificate is a corporation and the identity of the holder changes because of a corporate reorganization;
or

Martha Frisone
November 5, 2014
Page 4

- (2) the holder of the certificate is a partnership and the identity of the holder changes because the same partners reorganize as a new partnership.
- (c) Control of a certificate of need is transferred when any person acquires a majority interest in the facility, project or holder or any parent entity of the facility, project or holder.

In applying the foregoing rule by analogy, the corporate reorganization Transaction does not equate to transfer of ownership of a CON within the meaning of the rule. The merger of a wholly-owned subsidiary into its parent does not change control or ownership outside of the two related entities, but constitutes a corporate reorganization contemplated in Subsection (b)(1).

Further, no capital expenditures are being incurred to accomplish this corporate reorganization Transaction. After the Transaction, CMHA will continue to operate the Facilities in their current locations.

For the reasons described above, pursuant to the maxim of statutory construction *expressio unius est exclusio alterius*, this Transaction is not included in the list of new institutional health service items requiring a CON under N.C. Gen. Stat. § 131E-176(16).

III. EXEMPTION NOTICE

For the reasons described above, 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 and the equipment owned by the health service facility at the time of the acquisition.¹ Under N.C. Gen. Stat. § 131E-176(9b), the hospitals, the nursing home facility, and the ambulatory surgical facility are all “health service facilities.”

Assuming that the Transaction is deemed by the Agency to be an acquisition under the CON law, upon consummation of the merger, CMHA will be acquiring existing “health service facilities,” including all equipment owned at the time of acquisition. Specifically,

¹ See N.C. Gen. Stat. § 131E-184(a)(8).

Martha Frisone
November 5, 2014
Page 5

CMHA will be acquiring the hospitals known as CRMC and KMH, as well as Cleveland Pines Nursing Center, including all equipment owned by the hospitals and the skilled nursing facility at the time of the acquisition. After the Merger, CMHA will continue to operate these health service facilities as hospitals and a skilled nursing facility, respectively, at their current locations.

Similarly, again assuming that the Transaction is deemed by the Agency to be an acquisition under the CON law, CMHA will be acquiring CAS (an ambulatory surgical facility). This acquisition will occur through the change in the underlying ownership of the LLC as described above. After the merger, CMHA, as the sole owner in the LLC owning this health service facility, will continue to operate the health service facility as it exists in its current form (*i.e.*, as an ambulatory surgical facility) at the same location.

Furthermore, the proposed merger 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 facilities. Likewise, the merger does not include the offering of any *per se* reviewable services except those already offered by the existing health service facilities.²

Accordingly, given that the proposed Merger involves only existing health service facilities, it is exempt from CON review.

V. CONCLUSION

Based upon the foregoing information, we hereby request the Agency's confirmation that the proposed Transaction (as described above): (1) is not subject to CON review; or (2) alternatively, is exempt from CON review under N.C. Gen. Stat. § 131E-184(a)(8).

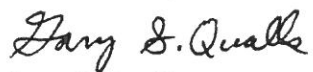
Because the effective date of this Merger is currently anticipated to be January 1, 2015, we respectfully request your expedited review.

² See N.C. Gen. Stat. § 131E-176(16)(f).

Martha Frisone
November 5, 2014
Page 6

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.

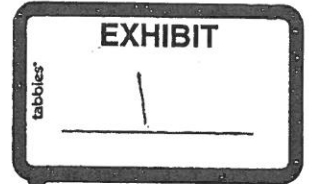
Sincerely,

A handwritten signature in cursive script that reads "Gary S. Qualls".

Gary S. Qualls

State of North Carolina

Department of Health and Human Services
Division of Health Service Regulation



*Effective January 01, 2014, this license is issued to
Cleveland County HealthCare System*

*to operate a hospital known as
Cleveland Regional Medical Center
located in Shelby, North Carolina, Cleveland County.*

*This license is issued subject to the statutes of the
State of North Carolina, is not transferable and shall remain
in effect until amended by the issuing agency.*

Facility ID: 953106

License Number: H0024

Bed Capacity: 241

General Acute 241

Dedicated Inpatient Surgical Operating Rooms: 1
Dedicated Ambulatory Surgical Operating Rooms: 0
Shared Surgical Operating Rooms: 6
Dedicated Endoscopy Rooms: 4

Authorized by:

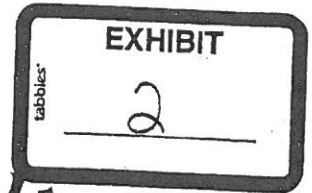
Secretary, N.C. Department of Health and
Human Services



Director, Division of Health Service Regulation

State of North Carolina

Department of Health and Human Services
Division of Health Service Regulation



*Effective March 01, 2014, this license is issued to
Cleveland County HealthCare System*

*to operate a hospital known as
Kings Mountain Hospital
located in Kings Mountain, North Carolina, Cleveland County.*

*This license is issued subject to the statutes of the
State of North Carolina, is not transferable and shall remain
in effect until amended by the issuing agency.*

Facility ID: 943292

License Number: H0113

Bed Capacity: 77

*General Acute 47, Psych 14, Detox 6,
Nursing: 10*

Dedicated Inpatient Surgical Operating Rooms: 0

Dedicated Ambulatory Surgical Operating Rooms: 0

Shared Surgical Operating Rooms: 2

Dedicated Endoscopy Rooms: 1

Authorized by:

A handwritten signature in black ink, appearing to read "Aldona M. ... M.D.", written over a horizontal line.

Secretary, N.C. Department of Health and
Human Services



A handwritten signature in black ink, appearing to read "Ducdel ...", written over a horizontal line.

Director, Division of Health Service Regulation

EXHIBIT
tabbles
3

State of North Carolina

Department of Health and Human Services
Division of Health Service Regulation

Effective January 01, 2014, this license is issued to

Cleveland County Health Care System

to operate a nursing facility known as

Cleveland Pines Nursing Center

located in Shelby, Cleveland County

*This license is issued subject to the statutes of the
State of North Carolina, is not transferable and shall expire
midnight December 31, 2014.*

Facility ID: 923107

License Number: NH0524

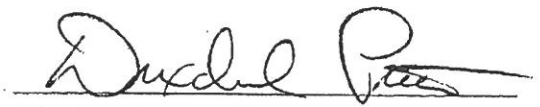
Bed Capacity: 120

Nursing Facility Beds 120

Authorized by:



Secretary, N.C. Department of Health and
Human Services



Director, Division of Health Service Regulation

State of North Carolina

Department of Health and Human Services
Division of Health Service Regulation

Effective January 01, 2014, license is issued to

Cleveland Ambulatory Services, LLC

to operate an ambulatory surgical clinic known as

Cleveland Ambulatory Services

located at 1100 N. Lafayette Street

Shelby, Cleveland County, North Carolina

*This license is issued subject to the statutes of the
State of North Carolina, is not transferable and shall expire
midnight December 31, 2014.*

Facility ID: 955505

License Number: AS0062

Surgical Operating Rooms: 4

Endoscopy Rooms: 4

Authorized by:

Adena Wiles MD
Secretary, N.C. Department of Health and
Human Services



Dwight Potts
Director, Division of Health Service Regulation