

NC DEPARTMENT OF
**HEALTH AND
HUMAN SERVICES**

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

January 31, 2019

Catherine Fleming, Member
FMRH, L.L.C.
PO Box 612
Wrightsville Beach, NC 28480

Exempt from Review – Acquisition of a Legacy Medical Care Facility

Record #: 2853
Facility Name: Sentara Kitty Hawk Ambulatory Surgery Center
FID #: 923420
License #: AS0053
Business Name: FRMH, L.L.C.
Proposal: Notice of intent to acquire a legacy medical care facility
County: Dare

Dear Ms. Fleming:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency), received your emails of June 25, 2018, September 17, 2018 and December 27, 2018, stating that it is your opinion that Sentara Kitty Hawk Ambulatory Surgery Center is a legacy medical care facility and that the acquisition of the ambulatory surgical facility would therefore be exempt from certificate of need review pursuant to G.S. 131E-184(h). The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency), determined that the above referenced proposal is exempt from certificate of need review in accordance with N.C. Gen. Stat. §131E-184(h).

Therefore, the above referenced business may proceed to acquire the health service facility identified above without first obtaining a CON. The Agency's determination is limited to the question of whether or not the above referenced business would have to obtain a CON if the current owners of the health service facility do in fact sell it to the business listed above. Note that pursuant to N.C. Gen. Stat. §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.*"

However, the Agency has received correspondence from Sentara Albemarle Regional Medical Center, LLC (SARMC) and the attorney representing SARMC that indicates that FRMH, L.L.C. is not engaged in negotiations with SARMC to acquire Sentara Kitty Hawk Ambulatory Surgery Center. (See Attachments A and B) The Agency does not knowingly issue exempt from review determinations for hypothetical proposals to acquire an existing health service facility.

In the event that the business listed above does acquire the facility, the facility must be reopened within 36 months of June 25, 2018 which would be no later than June 24, 2021. Moreover, you should contact the Agency's Construction and Acute and Home Care Licensure and Certification Sections to obtain instructions for reopening the facility and changing ownership of the facility.

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

AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER

It should be noted that this determination is binding only for the facts represented by you. Consequently, if changes are made 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 Agency.

If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,

A handwritten signature in cursive script that reads "Martha J. Frisone". The signature is written in black ink and is positioned above the typed name.

Martha J. Frisone, Chief

cc: Marc Hewitt, Fox Rothschild, LLP
June Ferrell, Special Deputy Attorney General, DOJ
Construction Section, DHSR
Acute and Home Care Licensure and Certification Section, DHSR
Melinda Boyette, Administrative Assistant, Healthcare Planning, DHSR

From: Marc Hewitt <Marc.Hewitt@smithmoorelaw.com>
Sent: Friday, August 03, 2018 1:29 PM
To: Frisone, Martha
Cc: Sam Hawley - Sentara Healthcare (Sjhawley@sentara.com)
Subject: [External]
Attachments: 2018 Dare Sentara Kitty Hawk Ambulatory Surgery Center.pdf

CAUTION: External email. Do not click links or open attachments unless verified. Send all suspicious email as an attachment to [Report Spam](#).

Ms. Frisone,

Our firm represents Sentara Albemarle Regional Medical Center ("Sentara"), which is the licensed operator of Sentara Kitty Hawk Ambulatory Surgery Center (the "ASC").

It recently came to Sentara's attention that FMSH, LLC has requested an exemption from NC DHHS, Division of Health Service Regulation, Healthcare Planning and Certificate of Need Section, to reopen the ASC (see attached correspondence). Sentara is not involved with any effort by FMSH, LLC to reopen the ASC, and requests to be copied on any further correspondence or decision regarding FMSH, LLC's request.

Sentara may also submit comments on FMSH, LLC's request next week. Accordingly, we respectfully request that the Agency not act on the request until Sentara has had the opportunity to do so. Thank you for your consideration.

Marcus C. Hewitt
Smith Moore Leatherwood LLP
434 Fayetteville Street, Suite 2800
Raleigh, NC 27601
Direct: 919.755.8776 | vCard
www.smithmoorelaw.com

**SMITH MOORE
LEATHERWOOD**
ATTORNEYS AT LAW

From: BETSY REILLY <EHREILLY@sentara.com>
Sent: Wednesday, August 29, 2018 3:53 PM
To: Frisone, Martha
Cc: BETSY REILLY
Subject: [External] Sentara Kitty Hawk

CAUTION: External email. Do not click links or open attachments unless verified. Send all suspicious email as an attachment to [Report Spam](#).

Hi Ms. Frisone,

Thank you for taking my call this afternoon regarding the Sentara Kitty Hawk facility. With this email, I wanted to state that the Sentara Kitty Hawk Ambulatory Surgery Center (ASC) was licensed to Sentara, which leases the building from the County. Sentara currently has other businesses in that building today. Sentara has not agreed to any sale or other transfer of the ASC to FMSH or any other entity.

Please let me know if you have any questions or need any additional information.

Thanks again for your time.

Betsy Reilly, FACHE, MBA
Director, Corporate Strategy and Planning
Sentara Healthcare
6015 Poplar Hall Drive, Suite 102
Norfolk, VA 23502
Office: 757-455-7138

SENTARA

Disclaimer:

This electronic message and its contents and attachments contain information from Sentara Healthcare and is confidential or otherwise protected from disclosure. The information is intended to be for the addressee only. If you are not the addressee, any disclosure, copy, distribution or use of the contents of this message is prohibited. If you have received this electronic message in error, please notify us immediately and destroy the original message and all copies.

FMSH, L.L.C.

12/27/2018

Ms. Martha Frisone, Assistant Section Chief
 c/o Lisa Corbett, General Counsel, DHHS (fax 919-715-4645)
 and
 c/o Mark Payne, Health Service Regulation (fax 919-733-2757)
 North Carolina Department of Health and Human Services
 Division of Health Services Regulation
 Certificate of Need Section
 2704 Mail Service Center
 Raleigh, NC 27699



Via E-mail, Facsimile, and US Mail *Certified*

Re: Notice of Exemption Pursuant to NCGS § 131E-184(h) – Legacy Medical Care Facility

Dear Ms. Frisone:

I am writing on behalf of FMSH, L.L.C. regarding a notice of an exempt transaction pursuant to NCGS § 131E-184(h), originally submitted on 06/25/2018 regarding Sentara Kitty Hawk Ambulatory Surgery Center. You had previously responded by email that Sentara Kitty Hawk Ambulatory Surgery Center does not meet the statutory definition of a “legacy medical care facility.” Specifically, you stated,

The facility in Dare County was not licensed pursuant to G.S. 131E-77, which is the licensure law for hospitals. Instead, the facility in Dare County was licensed as an ambulatory surgical facility.

Session Law 2018-81, Section 3. (a) redefined “Legacy Medical Care Facility” in N.C. Gen. Stat. 131E-176 (14f) as,

(14f) "Legacy Medical Care Facility" means a facility that meets all of the following requirements:

- a. Is not presently operating.
- b. Has not continuously operated for at least the past six months.
- c. Within the last 24 months:
 1. Was operated by a person holding a license under G.S. 131E-77; and
 2. Was primarily engaged in providing to inpatients or outpatients, by or under supervision of physicians, (i) diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons or (ii) rehabilitation services for the rehabilitation of injured, disabled, or sick persons."

Sentara Kitty Hawk Ambulatory Surgery Center meets all of the criteria in the above definition and qualifies it as a legacy medical care facility. The law does not state that the facility must be a hospital;

FMSH, L.L.C.

Page 2

rather, it states that the facility must be operated by a person holding a license under NCGS §131E-77. Sentara Regional Medical Center operated Sentara Kitty Hawk Ambulatory Surgery Center. Sentara Regional Medical center holds a license under NCGS §131E-77.

On 12/27/2018, the governor's veto of SB 469 was overridden, which provided technical amendments to NCGS §131-E184(h) to further clarify the law.

Based on the above, we reassert and resubmit our notice of an exempt transaction under NCGS § 131E-184(h). We respectfully request that the Department provide confirmation of this exemption within 10 business days. Should the Department require additional time, we request that it notify us in writing of when to reasonably expect notice. If it is the Department's position that Sentara Kitty Hawk Ambulatory Surgery Center does not qualify for an exemption as a "Legacy Medical Care Facility," we request that the Department provide a written response, citing the applicable laws, rules or conditions that prevent it from qualifying as such and the process to appeal such a finding.

Thank you for your assistance with this matter.

Sincerely yours,



Catherine L. Fleming
Member
FMSH, L.L.C.

FMSH, L.L.C.

12/27/2018

Ms. Martha Frisone, Assistant Section Chief
c/o Lisa Corbett, General Counsel, DHHS (fax 919-715-4645)
and
c/o Mark Payne, Health Service Regulation (fax 919-733-2757)
North Carolina Department of Health and Human Services
Division of Health Services Regulation
Certificate of Need Section
2704 Mail Service Center
Raleigh, NC 27699

Via E-mail, Facsimile, and US Mail

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Sentara Kitty Hawk Ambulatory Surgery Center meets all of the criteria in the above definition and qualifies it as a legacy medical care facility. The law does not state that the facility must be a hospital;

PO BOX 612
WRIGHTSVILLE BEACH, NC 28480
FAX 833-558-1414

FMSH, L.L.C.

Page 2

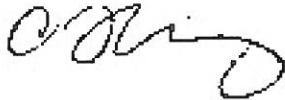
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Thank you for your assistance with this matter.

Sincerely yours,



Catherine L. Fleming
Member
FMSH, L.L.C.

Frisone, Martha

From: BETSY REILLY <EHREILLY@sentara.com>
Sent: Wednesday, August 29, 2018 3:53 PM
To: Frisone, Martha
Cc: BETSY REILLY
Subject: [External] Sentara Kitty Hawk

CAUTION: External email. Do not click links or open attachments unless verified. Send all suspicious email as an attachment to [Report Spam](#).

Hi Ms. Frisone,

Thank you for taking my call this afternoon regarding the Sentara Kitty Hawk facility. With this email, I wanted to state that the Sentara Kitty Hawk Ambulatory Surgery Center (ASC) was licensed to Sentara, which leases the building from the County. Sentara currently has other businesses in that building today. Sentara has not agreed to any sale or other transfer of the ASC to FMSH or any other entity.

Please let me know if you have any questions or need any additional information.

Thanks again for your time.

Betsy Reilly, FACHE, MBA
Director, Corporate Strategy and Planning
Sentara Healthcare
6015 Poplar Hall Drive, Suite 102
Norfolk, VA 23502
Office: 757-455-7138



Disclaimer:

This electronic message and its contents and attachments contain information from Sentara Healthcare and is confidential or otherwise protected from disclosure. The information is intended to be for the addressee only. If you are not the addressee, any disclosure, copy, distribution or use of the contents of this message is prohibited. If you have received this electronic message in error, please notify us immediately and destroy the original message and all copies.

Frisone, Martha

From: Marc Hewitt <Marc.Hewitt@smithmoorelaw.com>
Sent: Friday, August 03, 2018 1:29 PM
To: Frisone, Martha
Cc: Sam Hawley - Sentara Healthcare (Sjhawley@sentara.com)
Subject: [External]
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It recently came to Sentara's attention that FMSH, LLC has requested an exemption from NC DHHS, Division of Health Service Regulation, Healthcare Planning and Certificate of Need Section, to reopen the ASC (see attached correspondence). Sentara is not involved with any effort by FMSH, LLC to reopen the ASC, and requests to be copied on any further correspondence or decision regarding FMSH, LLC's request.

Sentara may also submit comments on FMSH, LLC's request next week. Accordingly, we respectfully request that the Agency not act on the request until Sentara has had the opportunity to do so. Thank you for your consideration.

Marcus C. Hewitt
Smith Moore Leatherwood LLP
434 Fayetteville Street, Suite 2800
Raleigh, NC 27601
Direct: 919.755.8776 | vCard
www.smithmoorelaw.com

**SMITH MOORE
LEATHERWOOD**
ATTORNEYS AT LAW

FMSH, L.L.C.

07/17/2018



Ms. Martha Frisone, Assistant Section Chief
North Carolina Department of Health and Human Services
Division of Health Services Regulation
Certificate of Need Section
2704 Mail Service Center
Raleigh, NC 27699

Via E-mail and Facsimile

Re: Sentara Kitty Hawk Ambulatory Surgery Center

Dear Ms. Frisone:

I am writing on behalf of FMSH, L.L.C. in response to your email sent on this date from the North Carolina Department of Health and Human Services, Division of Health Services Regulation, Certificate of Need Section (the "Department") regarding notice of an exempt transaction pursuant to N.C. Gen. Stat. 131E-184(h). Your email stated that Sentara Kitty Hawk Ambulatory Surgery Center does not meet the statutory definition of a "legacy medical care facility." Specifically, you state,

The facility in Dare County was not licensed pursuant to G.S. 131E-77, which is the licensure law for hospitals. Instead, the facility in Dare County was licensed as an ambulatory surgical facility.

Session Law 2018-81, Section 3. (a) redefined "Legacy Medical Care Facility" in N.C. Gen. Stat. 131E-176 (14f) as,

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As you can see from the definition, the law in no way states that the facility must be licensed as a hospital under G.S. 131E-77. It states that a Legacy Medical Care Facility is defined as a **facility that was operated by a person holding a license under 131E-77**. Sentara Kitty Hawk Ambulatory Surgery

FMSH, L.L.C.

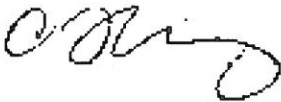
Page 2

Center was operated by Sentara Regional Medical Center, which is a "person holding a license under 131E-77." Sentara Kitty Hawk Ambulatory Surgery Center also meets the other requirements identified in the above definition of a Legacy Medical Care Facility.

Based on the above, we reassert our rights pursuant to our previously submitted notice of an exempt transaction under N.C. Gen. Stat. 131E-184(h). We respectfully request that the Department provide confirmation of this exemption within ten business days. If it is the Department's contention that Sentara Kitty Hawk Ambulatory Surgery Center does not qualify for an exemption as a "Legacy Medical Care Facility," we request that the Department provide a written response, citing the applicable laws, rules or conditions that prevent it from qualifying as such, as well as the legal process the Department asserts must be followed should we disagree with your opinion.

Thank you for your assistance with this matter.

Sincerely yours,

A handwritten signature in black ink, appearing to read "C. Fleming", with a stylized flourish at the end.

Catherine L. Fleming
Member
FMSH, L.L.C.

----- Forwarded Message -----

From: Catherine L. Fleming <flemic@yahoo.com>
To: "martha.frisone@dhhs.nc.gov" <martha.frisone@dhhs.nc.gov>
Sent: Wednesday, June 27, 2018 11:30 AM
Subject: Re: [External] Confirmation of Receipt of Notices of Exemption

Good morning, Ms. Frisone,

Thank you for your reply to my email. When I had not heard back from you I assumed you were likely away from the office. I called the main telephone number listed on the CON website first thing yesterday to follow up on my email and fax transmissions of the notices. I explained the issue with the fax number to Crystal and asked if the CON section had an fax number to which I could transmit our Notices of Exemption. Crystal provided 919-733-2757 as the designated fax line for these notices. I had faxed each notice to that fax number previously on 06/25/2018 and received fax confirmation receipts. We delivered by hand yesterday, 06/26/2018 as well. The original notices were sent to your email address on 06/25/2018.

Thank you so much for your assistance.

Sincerely,
Catherine L Fleming

We also had the originals taken over the CON Section office yesterday; they were each stamped with the time of the original fax transmission

On Wed, Jun 27, 2018 at 9:23 AM, Frisone, Martha wrote:

I was being deposed yesterday and unable to check emails. I am not in the office today either. I apologise about the fax as we should have updated the web site when we no longer had a fax machine.

On Jun 26, 2018 7:56 AM, Catherine Fleming wrote:

CAUTION: External email. Do not click links or open attachments unless verified. Send all suspicious email as an attachment to Report Spam. <<mailto:report.spam@nc.gov>>

Good morning, Ms. Frisone,

I transmitted two separate notices by email to your office yesterday for FMRH, L.L.C. and FMSH, L.L.C. and attempted to transmit them to the fax number listed on the NC DHHS CON website simultaneously. The faxes would not transmit as the listed fax number, 919-715-4413, states it is disconnected. To ensure receipt, I sent additional copies by email and other fax contacts listed for the CON section. These faxes transmitted successfully.

I wanted to confirm that the transmissions were received and to apologize for any inconvenience any duplicate copies may have caused. If, at your earliest convenience you would confirm successful receipt of these notices I would be most appreciative.

Sincerely yours,

Catherine L Fleming

FMSH, L.L.C.

07/17/2018

Ms. Martha Frisone, Assistant Section Chief
North Carolina Department of Health and Human Services
Division of Health Services Regulation
Certificate of Need Section
2704 Mail Service Center
Raleigh, NC 27699

Via E-mail and Facsimile

Re: Sentara Kitty Hawk Ambulatory Surgery Center

Dear Ms. Frisone:

I am writing on behalf of FMSH, L.L.C. in response to your email sent on this date from the North Carolina Department of Health and Human Services, Division of Health Services Regulation, Certificate of Need Section (the "Department") regarding notice of an exempt transaction pursuant to N.C. Gen. Stat. 131E-184(h). Your email stated that Sentara Kitty Hawk Ambulatory Surgery Center does not meet the statutory definition of a "legacy medical care facility." Specifically, you state,

The facility in Dare County was not licensed pursuant to G.S. 131E-77, which is the licensure law for hospitals. Instead, the facility in Dare County was licensed as an ambulatory surgical facility.

Session Law 2018-81, Section 3. (a) redefined "Legacy Medical Care Facility" in N.C. Gen. Stat. 131E-176 (14f) as,

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FMSH, L.L.C.

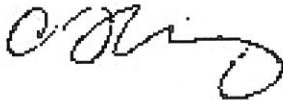
Page 2

Center was operated by Sentara Regional Medical Center, which is a "person holding a license under 131E-77." Sentara Kitty Hawk Ambulatory Surgery Center also meets the other requirements identified in the above definition of a Legacy Medical Care Facility.

Based on the above, we reassert our rights pursuant to our previously submitted notice of an exempt transaction under N.C. Gen. Stat. 131E-184(h). We respectfully request that the Department provide confirmation of this exemption within ten business days. If it is the Department's contention that Sentara Kitty Hawk Ambulatory Surgery Center does not qualify for an exemption as a "Legacy Medical Care Facility," we request that the Department provide a written response, citing the applicable laws, rules or conditions that prevent it from qualifying as such, as well as the legal process the Department asserts must be followed should we disagree with your opinion.

Thank you for your assistance with this matter.

Sincerely yours,

A handwritten signature in black ink, appearing to read "C Fleming", written in a cursive style.

Catherine L. Fleming
Member
FMSH, L.L.C.

Frisone, Martha

Sentara Kitty Hawk

From: Frisone, Martha
Sent: Tuesday, July 17, 2018 9:47 AM
To: 'Catherine L. Fleming'
Cc: 'Ferrell, June'; Payne, Mark; Pittman, Lisa; Hale, Gloria; Wilson, Fatimah; Inman, Celia C; rhoe-jones, jane e; Craddock, Amy D; Emanuel, Andrea N
Subject: RE: [External] Confirmation of Receipt of Notices of Exemption

Thank you for your patience in waiting for a reply. The two facilities that you reference in your faxes/emails do not meet the statutory definition of a "legacy medical care facility."

The hospital in Davie County has been in continuous operation since it first opened many years ago. Pursuant to the certificate of need issued for Project ID #G-8078-08, the hospital was relocated from Mocksville to Bermuda Run.

The facility in Dare County was not licensed pursuant to G.S. 131E-77, which is the licensure law for hospitals. Instead, the facility in Dare County was licensed as an ambulatory surgical facility.

Martha J. Frisone

Chief

Division of Health Service Regulation, Healthcare Planning and Certificate of Need
NC Department of Health and Human Services

Office: 919-855-3879
martha.frisone@dhhs.nc.gov

809 Ruggles, Edgerton
2704 Mail Service Center
Raleigh, NC 27699-2704

[Twitter](#) | [Facebook](#) | [YouTube](#) | [LinkedIn](#)

From: Catherine L. Fleming [mailto:flemic@yahoo.com]
Sent: Thursday, July 05, 2018 11:29 AM
To: Frisone, Martha
Subject: Fw: [External] Confirmation of Receipt of Notices of Exemption

CAUTION: External email. Do not click links or open attachments unless verified. Send all suspicious email as an attachment to [Report Spam](#).

Good morning, Ms. Frisone,
I received your voicemail of earlier today. I am in an area with poor cell phone reception and have difficulty obtaining & maintaining a signal for phone calls. I have been able to receive emails. If you would, please email any questions or concerns you have about the two Notices of Exemption submitted on 06/25/2018. I realized I neglected to provide the session law reference for the changes made to § 131E-184 Exemptions from review. It is SESSION LAW 2018-81. Thank you for your assistance.
Sincerely yours,

Catherine Fleming

FAX

Date: 06.26.2018 00:19

Remaining pages: 2

Sentara Kitty Hawk

From:	Catherine Fleming
Company:	FMSH, L.L.C.
Location:	PO Box 612, Wrightsville Beach, NC 28480
Phone number:	9104092613
Fax number:	844 292-2339

To:	Martha Frisone, Section Chief
Company:	NC DHHS Certificate of Need Section
Location:	809 Ruggles Drive, Raleigh, NC 27603
Phone number:	919-855-3873
Fax number:	919 733-8139
Regarding:	FMSH, LLC Notice of Exempt Transaction - Legacy Medical Care
Comments:	<p>**** Separate Communication ****</p> <p>Dear Ms. Frisone,</p> <p>Please find attached to this email a Notice of Exempt Transaction for a Legacy Medical Care Facility. If you have any questions or concerns regarding this document, please feel free to contact me via email at this email address, by fax at 833-558-1414 or by mail at the address listed on the notice. Thank you for your assistance with this matter.</p> <p>I attempted to fax this notice to the fax number listed on the DHHS CON website, 919-715-4413, but received an error message that the number had been disconnected. This number was listed for the Certificate of Need Section in the public notice page. Thank you for your assistance.</p> <p>Sincerely yours, Catherine Fleming 910-409-2613</p>

FMSH, L.L.C.

06/25/2018

Ms. Martha Frisone, Assistant Section Chief
North Carolina Department of Health and Human Services
Division of Health Services Regulation
Certificate of Need Section
2704 Mail Service Center
Raleigh, NC 27699

Re: Notice of Exempt Transaction – Legacy Medical Care Facility
Sentara Kitty Hawk

Dear Ms. Frisone:

I am writing on behalf of FMSH, L.L.C. to provide the North Carolina Department of Health and Human Services, Division of Health Services Regulation, Certificate of Need Section (the "Department") with notice of an **exempt transaction** pursuant to N.C. Gen. Stat. 131E-184(h). N.C. Gen. Stat. 131E-184(h) states,

"(h) The Department shall exempt from certificate of need review the acquisition or reopening of a Legacy Medical Care Facility. The person seeking to operate a Legacy Medical Care Facility shall give the Department written notice of all of the following:

- (1) Its intention to acquire or reopen a Legacy Medical Care Facility within the same county and the same service area as the facility that ceased continuous operations. If the Legacy Medical Facility will become operational in a new location within the same county and the same service area as the facility that ceased continuous operations, then the person responsible for giving the written notice required by this section shall notify the Department, as soon as reasonably practicable and prior to becoming operational, of the new location of the Legacy Medical Care Facility. For purposes of this subdivision, "service area" means the service area identified in the North Carolina State Medical Facilities Plan in effect at the time the written notice required by this section is given to the Department.
- (2) That the facility will be operational within 36 months of the notice.

The Department shall extend the time by which a facility must be operational in order to be exempt from certificate of need review under this subsection by one additional 36-month period if the person seeking to reopen or acquire the Legacy Medical Care Facility gives the Department written notice of extension within 36 months of the original notice of intent to acquire or reopen the Legacy Medical Care Facility. The written notice of extension must notify the Department (i) that the person has undertaken all reasonable efforts to make the facility operational within 36 months of the notice of intent, (ii) that,

FMSH, L.L.C.

Page 2

despite these reasonable efforts, the person does not anticipate the facility will be operational within that time, and (iii) of its intention that the facility will be operational within 36 months of the notice of extension.”

A “Legacy Medical Care Facility” is defined in N.C. Gen. Stat. 131E-176 (14f) as,

(14f) “Legacy Medical Care Facility” means a facility that meets all of the following requirements:

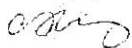
- a. Is not presently operating.
- b. Has not continuously operated for at least the past six months.
- c. Within the last 24 months:
 1. Was operated by a person holding a license under G.S. 131E-77; and
 2. Was primarily engaged in providing to inpatients or outpatients, by or under supervision of physicians, (i) diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons or (ii) rehabilitation services for the rehabilitation of injured, disabled, or sick persons.”

“Sentara Kitty Hawk,” formerly known as Regional Medical Services Surgery Center, was located at 5200 North Croatan Hwy, Kitty Hawk, NC 27949 in Dare County. This facility was operated by Sentara Albemarle Regional Medical Center, LLC. The acquisition of this facility by Sentara Albemarle Regional Medical Center, LLC was deemed exempt from review on December 23, 2013 by the Certificate of Need Section (FID#: 020173). Sentara Albemarle Regional Medical Center, LLC holds a license under G.S. 131E-77. Sentara Kitty Hawk was closed beginning December 15, 2017. Sentara Kitty Hawk was primarily engaged in providing to outpatients, by or under supervision of physicians, (i) diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons or (ii) rehabilitation services for the rehabilitation of injured, disabled, or sick persons. As such, “Sentara Kitty Hawk,” formerly known as Regional Medical Service Surgery Center, qualifies as a Legacy Medical Care Facility.

It is our intention to reopen this facility in the same county and service area in which it existed. We understand that if this Legacy Medical Care Facility is to be reopened in a new location within Dare County, that we will provide the Department with the new location as soon as practicable and prior to becoming operational.

Based on the above, please allow this letter to serve as notice of an **exempt transaction under N.C. Gen. Stat. 131E-184(h)**. We respectfully request that the Department provide confirmation of this exemption at its earliest convenience.

Sincerely yours,



Catherine L. Fleming
Member
FMSH, L.L.C.

rhoe-jones, jane e

From: Catherine L. Fleming <flemic@yahoo.com>
Sent: Monday, June 25, 2018 10:59 PM
To: rhoe-jones, jane e; Moore, Veronica M
Subject: [External] Fw: 20180625 FMSH, L.L.C. - Notice of Exempt Transaction - Legacy Medical Care Facility
Attachments: 20180625_LetterOfIntent_KittyHawk.pdf

Sentara Kitty Hawk

CAUTION: External email. Do not click links or open attachments unless verified. Send all suspicious email as an attachment to [Report Spam](#).

Copy of Notice of Exempt Transaction attached.

----- Forwarded Message -----

From: Catherine L. Fleming <flemic@yahoo.com>
To: "martha.frisone@dhhs.nc.gov" <martha.frisone@dhhs.nc.gov>
Sent: Monday, June 25, 2018 10:17 PM
Subject: 20180625 FMSH, L.L.C. - Notice of Exempt Transaction - Legacy Medical Care Facility

Dear Ms. Frisone,
Please find attached to this email a Notice of Exempt Transaction for a Legacy Medical Care Facility. If you have any questions or concerns regarding this document, please feel free to contact me via email at this email address, by fax at 833-558-1414 or by mail at the address listed on the notice. Thank you for your assistance with this matter.
Sincerely yours,
Catherine Fleming

FMSH, L.L.C.

06/25/2018



Ms. Martha Frisone, Assistant Section Chief
North Carolina Department of Health and Human Services
Division of Health Services Regulation
Certificate of Need Section
2704 Mail Service Center
Raleigh, NC 27699

Re: Notice of Exempt Transaction – Legacy Medical Care Facility
Sentara Kitty Hawk

Dear Ms. Frisone:

I am writing on behalf of FMSH, L.L.C. to provide the North Carolina Department of Health and Human Services, Division of Health Services Regulation, Certificate of Need Section (the "Department") with notice of an exempt transaction pursuant to N.C. Gen. Stat. 131E-184(h). N.C. Gen. Stat. 131E-184(h) states,

"(h) The Department shall exempt from certificate of need review the acquisition or reopening of a Legacy Medical Care Facility. The person seeking to operate a Legacy Medical Care Facility shall give the Department written notice of all of the following:

- (1) Its intention to acquire or reopen a Legacy Medical Care Facility within the same county and the same service area as the facility that ceased continuous operations. If the Legacy Medical Facility will become operational in a new location within the same county and the same service area as the facility that ceased continuous operations, then the person responsible for giving the written notice required by this section shall notify the Department, as soon as reasonably practicable and prior to becoming operational, of the new location of the Legacy Medical Care Facility. For purposes of this subdivision, "service area" means the service area identified in the North Carolina State Medical Facilities Plan in effect at the time the written notice required by this section is given to the Department.
- (2) That the facility will be operational within 36 months of the notice.

The Department shall extend the time by which a facility must be operational in order to be exempt from certificate of need review under this subsection by one additional 36-month period if the person seeking to reopen or acquire the Legacy Medical Care Facility gives the Department written notice of extension within 36 months of the original notice of intent to acquire or reopen the Legacy Medical Care Facility. The written notice of extension must notify the Department (i) that the person has undertaken all reasonable efforts to make the facility operational within 36 months of the notice of intent, (ii) that,

despite these reasonable efforts, the person does not anticipate the facility will be operational within that time, and (iii) of its intention that the facility will be operational within 36 months of the notice of extension.”

A “Legacy Medical Care Facility” is defined in N.C. Gen. Stat. 131E-176 (14f) as,

(14f) “Legacy Medical Care Facility” means a facility that meets all of the following requirements:

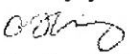
- a. Is not presently operating.
- b. Has not continuously operated for at least the past six months.
- c. Within the last 24 months:
 1. Was operated by a person holding a license under G.S. 131E-77; and
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It is our intention to reopen this facility in the same county and service area in which it existed. We understand that if this Legacy Medical Care Facility is to be reopened in a new location within Dare County, that we will provide the Department with the new location as soon as practicable and prior to becoming operational.

Based on the above, please allow this letter to serve as notice of an **exempt transaction under N.C. Gen. Stat. 131E-184(h)**. We respectfully request that the Department provide confirmation of this exemption at its earliest convenience.

Sincerely yours,


Catherine L. Fleming
Member
FMSH, L.L.C.

Received 6/25/18

FAX

Date: 06.25.2018 23:48

Remaining pages: 2

Sentara Kitty Hawk

From:	Catherine Fleming
Company:	FMSH, L.L.C.
Location:	PO Box 612, Wrightsville Beach, NC 28480
Phone number:	9104092613
Fax number:	844 292-2339

To:	Martha Frisone
Company:	NC DHHS Certificate of Need Section
Location:	809 Ruggles Drive, Raleigh, NC 27603
Phone number:	919-855-3873
Fax number:	919 733-2757

Regarding: FMSH, LLC Notice of Exempt Transaction - Legacy Medical Care

Comments:

Dear Ms. Frisone,
Please find attached to this email a Notice of Exempt Transaction for a Legacy Medical Care Facility. If you have any questions or concerns regarding this document, please feel free to contact me via email at this email address, by fax at 833-558-1414 or by mail at the address listed on the notice. Thank you for your assistance with this matter.
I attempted to fax this notice to the fax number listed on the DHHS CON website, 919-715-4413, but received an error message that the number had been disconnected. This number was listed for the Certificate of Need Section in the public notice page.
Thank you for your assistance.
Sincerely yours,
Catherine Fleming
910-409-2613

FMSH, L.L.C.

06/25/2018

Ms. Martha Frisone, Assistant Section Chief
North Carolina Department of Health and Human Services
Division of Health Services Regulation
Certificate of Need Section
2704 Mail Service Center
Raleigh, NC 27699

Re: Notice of Exempt Transaction – Legacy Medical Care Facility
Sentara Kitty Hawk

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FMSH, L.L.C.

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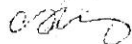
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Sincerely yours,



Catherine L. Fleming
Member
FMSH, L.L.C.

State of North Carolina

Department of Health and Human Services
Division of Health Service Regulation

*Effective January 01, 2017, license is issued to
Sentara Albemarle Regional Medical Center, LLC*

*to operate an ambulatory surgical clinic known as
Sentara Kitty Hawk Ambulatory Surgery Center*

*located at 5200 North Croatan Hwy
Kitty Hawk, Dare 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, 2017.*

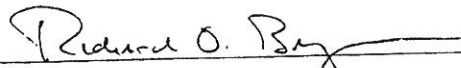
Facility ID: 923420

License Number: AS0053

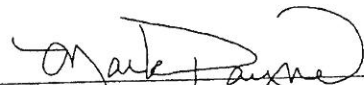
Surgical Operating Rooms: 2

Endoscopy Rooms: 0

Authorized by:



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



Director, Division of Health Service Regulation