



North Carolina Department of Health and Human Services
Division of Health Service Regulation
Certificate of Need Section

2704 Mail Service Center • Raleigh, North Carolina 27699-2704
<http://www.ncdhhs.gov/dhsr/>

Drexdal Pratt, Director

Beverly Eaves Perdue, Governor
Albert A. Delia, Acting Secretary

Craig R. Smith, Section Chief
Phone: (919) 855-3873
Fax: (919) 733-8139

December 14, 2012

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

No Review

Facility or Business: East Carolina Health-Beaufort, Inc. d/b/a Vidant Beaufort Hospital and Eastpointe Health, LLC
Project Description: Corporate reorganization merging Eastpointe into Vidant Beaufort Hospital (ECH-Beaufort).
County: Beaufort
FID #: 990140

Dear Mr. Church:

The Certificate of Need Section (CON Section) received your letter of December 3, 2012 regarding the above referenced proposal to merge Eastpointe into Vidant Beaufort Hospital (ECH-Beaufort). ECH-Beaufort will own the MRI scanner currently owned by Eastpointe Health. Based on the CON law **in effect on the date of this response to your request**, the proposal described in your correspondence is not governed by, and therefore, does not currently require a certificate of need. However, please note that if the CON law is subsequently amended such that the above referenced proposal would require a certificate of need, this determination does not authorize you to proceed to develop the above referenced proposal when the new law becomes effective.

Moreover, you need to contact the Acute and Home Care Licensure and Certification Section of the Division of Health Service Regulation to determine if the Section has any requirements for the proposed corporate reorganization.

It should be noted that this determination is binding only for the facts represented by you. Consequently, if changes are made in the project or in the facts provided in your correspondence



Richard P. Church
December 14, 2012
Page 2

referenced above, a new determination as to whether a certificate of need is required would need to be made by the Certificate of Need Section.

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

Sincerely,



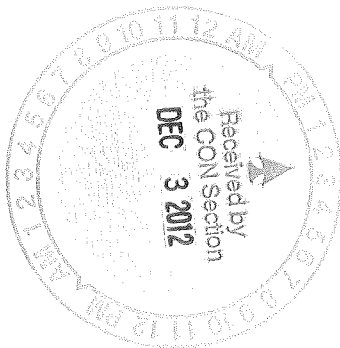
Jane Rhoe-Jones, Project Analyst



Craig R. Smith, Chief
Certificate of Need Section

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

June



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

December 3, 2012

Richard P. Church
D 919.466.1187
F 919.516.2077
richard.church@klgates.com

Via Hand Delivery

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

Re: East Carolina Health-Beaufort, Inc. d/b/a Vidant Beaufort Hospital and Eastpointe Health, LLC

Dear Mr. Smith:

We are writing on behalf of our clients, East Carolina Health-Beaufort, Inc. d/b/a Vidant Beaufort Hospital (“ECH-Beaufort”) and Eastpointe Health, LLC (“Eastpointe”). The purpose of this letter is to provide notice to the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Certificate of Need Section (the “Agency”) of the corporate reorganization described herein, and to request the Agency to confirm that this proposed corporate reorganization is not reviewable as a new institutional health service under the North Carolina Certificate of Need (“CON”) law, or otherwise trigger CON review. The proposed date of the corporate reorganization is January 1, 2013.

A. Factual Background

A brief description of the entities involved in this corporate reorganization is as follows. Eastpointe is a North Carolina limited liability company. ECH-Beaufort is the sole member of Eastpointe, holding a 100% ownership interest. ECH-Beaufort became the sole member of Eastpointe effective September 1, 2011, through the acquisition of 100% of the ownership interests of Pitt County Memorial Hospital, Incorporated and Beaufort County Hospital Association, Inc., which acquisition was approved by the Agency pursuant to its letter dated August, 15, 2011.

In April 2000, a CON was issued to Eastpointe to acquire a magnetic resonance imaging scanner (“MRI Scanner”), which was identified as Project I.D. No. Q-5992-99. Since its acquisition, the MRI Scanner has been continuously located at Vidant Beaufort Hospital (which was previously known as Beaufort County Hospital and Beaufort County Medical Center). The MRI Scanner is the only unit and type of CON-regulated equipment or service that has been issued to Eastpointe.

Mr. Craig R. Smith
December 3, 2012
Page 2

ECH-Beaufort and Eastpointe now seek to simplify their organizational structure by merging Eastpointe into its 100% owner, ECH-Beaufort. Because Eastpointe is wholly owned by ECH-Beaufort, the ultimate effect of this merger would be to merge the wholly-owned subsidiary into its parent, which does not change the underlying ownership. Control of the MRI Scanner will remain in ECH-Beaufort, which is consistent with previous approvals of the Agency relating to ECH-Beaufort's acquisition of Eastpointe and Beaufort Medical Center.

B. The Merger of a Wholly-Owned Subsidiary into Its Parent is Not a Reviewable CON Event.

The foregoing 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 is changing (from Eastpointe to its 100% owner ECH-Beaufort), 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 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.A.C. 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

Mr. Craig R. Smith
December 3, 2012
Page 3

- (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 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).

No capital expenditures are being incurred to accomplish this corporate reorganization. The MRI Scanner already exists and its operation and location will not be effected by the corporate reorganization.

C. Conclusion

Based upon the foregoing information, we hereby respectfully request that the Agency confirm that the proposed merger of a wholly-owned subsidiary into its parent (as described above) is not subject to CON review. In our view, the proposed reorganization is neither subject to CON review nor does it require an exemption from CON review under N.C. Gen. Stat. § 131E-184. Nonetheless, in the alternative, this letter is intended to constitute notice under N.C. Gen. Stat. § 131E-184(a)(8) of an exempt transaction. If you require additional information to consider this request, please contact us at the above number as soon as possible.

Thank you for your consideration of this request.

Sincerely,



Richard P. Church