



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 23, 2013

Mr. Marcus C. Hewitt
301 Fayetteville Street
Suite 1700
Raleigh, NC 27601

Exempt from Review – Acquisition of Facility


Facility: Regional Medical Services Surgery Center
Acquisition by: Sentara Healthcare
County: Dare
FID #: 020173


Dear Mr. Hewitt:

In response to your letter of November 21, 2013, the above referenced proposal is exempt from certificate of need review in accordance with N.C.G.S 131E-184(a)(8). Therefore, Sentara Albemarle Regional Medical Center, LLC, a wholly-owned subsidiary of Sentara Healthcare may proceed to acquire Regional Medical Services Surgery Center, which includes a computed tomography (CT) scanner and other medical diagnostic equipment, working capital, intangible property, and other assets used to operate the diagnostic facility without first obtaining a certificate of need. However, you need to contact the Acute and Home Care and Licensure Certification Section of the Division of Health Service Regulation to obtain instructions for changing ownership of the existing facility. Note that pursuant to N.C.G.S. §131E-181(b): *“A recipient of a certificate of need, or any person who may subsequently acquire, in any manner whatsoever permitted by law, the service for which that certificate of need was issued, is required to materially comply with the representations made in its application for that certificate of need.”*

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

Sincerely,


Bernetta Thorne-Williams
Project Analyst


Craig R. Smith, Chief
Certificate of Need Section

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



WILLIAMS MULLEN

Direct Dial: 919.981.4308
mhewitt@williamsmullen.com

November 21, 2013



VIA HAND DELIVERY

Craig R. Smith, Chief
Certificate of Need Section
Division of Facility Services
N.C. Dept. of Health and Human Services
809 Ruggles Drive
Raleigh, NC 27603

Re: Notice of Exempt Transaction – Acquisition of Existing Health Service Facility
RMS Surgery Center, Dare Co.
Project ID Nos R-3530-89 and R-6553-02

Dear Mr. Smith

We are writing on behalf of Sentara Albemarle Regional Medical Center, LLC (“Sentara”) a wholly-owned subsidiary of Sentara Healthcare. Pursuant to N.C. Gen. Stat. § 131E-184(a), we are writing to provide the Agency with prior written notice of Sentara’s planned acquisition by lease of RMS Surgery Center, an existing multispecialty ambulatory surgical facility (license No. AS0053) in Dare County (the “Facility”) which has two operating rooms, and which is currently owned by Pasquotank County. The Facility is subject to two certificates of need for Project ID nos. R-3530-89 (development of ambulatory surgical facility), and R-6553-02 (establishment of diagnostic center). Sentara also plans to acquire certain assets of Regional Medical Services, Inc. (“RMS”), which is the licensed operator of the Facility and currently leases the Facility from Pasquotank County.

The Transaction

Sentara intends to enter into transactions with Pasquotank County and RMS under which Sentara will lease the land, building and improvements from Pasquotank County, and will acquire substantially all of RMS’s assets used or held in connection with the operation of the Facility, including but not limited to:

- Personal property (including computed tomography (“CT”) scanner and other medical diagnostic equipment),
- Working capital (including but not limited to cash, receivables, prepaid expenses, inventories and supplies),
- Intangible property (including but not limited to all transferrable operating rights), and
- Other assets used in the operation of or in conjunction with the provision of health care services at the Facility.

Sentara will obtain a license and provider number(s) for the Facility and will assume operation of the Facility and the multi-specialty ambulatory surgical program that it operates on or about 1 January 2014. The term of the lease shall be for a period of 30 years with optional

23802337_2

WILLIAMS MULLEN

Craig R. Smith
November 21, 2013
Page 2

renewal periods. The current Facility lease between Pasquotank County and RMS will be terminated.

The capital expenditure required under the terms of the lease will be in excess of \$2,000,000.00.

Exemption Notice

Pursuant to N.C. Gen. Stat. § 131E-176(16)b, the obligation by any person of a capital expenditure exceeding two million dollars (\$2,000,000) which relates to the provision of a health service constitutes a new institutional health service. Therefore, the lease of the Facility and the acquisition of its assets would constitute a new institutional health service.

However, the asset acquisition described herein is exempt from certificate of need review pursuant to G.S. 131E-184(a), which states:

Except as provided in subsection (b), the Department shall exempt from certificate of need review a new institutional health service if it receives prior written notice from the entity proposing the new health service, which notice includes an explanation of why the new health service is required, for any of the following . . . (8) To acquire an existing health service facility, including equipment owned by the health service facility at the time of acquisition.

There is no definition of "acquisition" for purposes of the certificate of need statute, but elsewhere in the statute a lease is specifically deemed an "acquisition" (see N.C. Gen. Stat. § 131E-176(16)f1). Further, the lease of the Facility clearly constitutes an acquisition for purposes of N.C. Gen. Stat. § 131E-184(a)(8) in light of the 30-year minimum term of the lease and because Sentara will acquire substantially all of the Facility's assets and will operate the Facility under Sentara's own license.

The Facility is an ambulatory surgical facility as defined in N.C. Gen. Stat. § 131E-176(1b), and is therefore an "existing health service facility" as defined by N.C. Gen. Stat. § 131E-176(9b). In addition, the Facility is a "diagnostic center" as defined by N.C. Gen. Stat. § 131E-176(7a), which is also an "existing health service facility."

Further, all RMS's assets to be acquired by Sentara, including the CT scanner and other diagnostic equipment referenced above, will be utilized for the continued operation of the Facility. Therefore, the capital expenditure and the acquisition of the equipment items listed above are necessary for the acquisition of an existing health service facility and the above-listed equipment constitutes equipment owned by the health service facility at the time of the acquisition. Accordingly, Sentara's proposed lease and asset acquisition is exempt from review pursuant to N.C. Gen. Stat. § 131E-184(a)(8).

WILLIAMS MULLEN

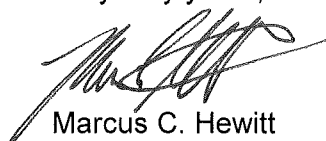
Craig R. Smith
November 21, 2013
Page 3

Conclusion

Pursuant to N.C. Gen. Stat. § 131E-184(a), Sentara hereby provides the Agency prior written notice of the proposed lease and asset acquisition and the basis upon which they are exempt from certificate of need review. Sentara will submit a licensure application proposing to commence operating the Facility facilities on or about 1 January 2014, for which the Acute and Home Care Licensure and Certification Section requires Sentara to provide an approval by the CON Section. Therefore we would greatly appreciate it if the Agency would confirm the exemption for the lease and asset acquisition as described herein as soon as possible.

Thank you for your consideration, and we look forward to the Agency's response.

Very truly yours,



Marcus C. Hewitt

cc: Deb Anderson
Jeff King
Joe Kahn