



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

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Division Director

December 4, 2013

Laetitia L. Cheltenham, Associate  
Nexsen Pruet  
4141 Parklake Ave, Suite 200  
Raleigh NC 27612

**Exempt from Review – Acquisition of Facility**

Facility: Johnston Memorial Hospital Authority  
Acquisition by: Johnston Health Services Corporation  
County: Johnston  
FID #: Johnston Memorial Hospital, FID # 943290; Clayton Medical Center, FID # 061348  
Johnston Memorial Home Care and Hospice, FID # 943950; Johnston Memorial  
Hospital Laboratory, FID # 051251; JMH Cardiopulmonary Rehabilitation Program,  
FID # 980809

Dear Ms. Cheltenham:

In response to your letter of November 18, 2013, the above referenced proposal is exempt from certificate of need review in accordance with N.C.G.S 131E-184(a)(8). Therefore, Johnston Health Services Corporation 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 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,

Michael J. McKillip  
Project Analyst

Craig R. Smith, Chief  
Certificate of Need Section

cc: Acute and Home Care Licensure and Certification Section, DHSR



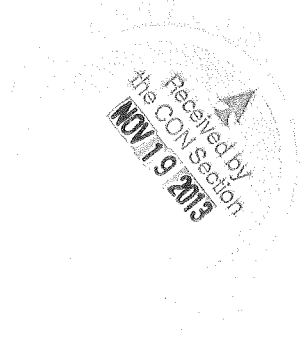
**Certificate of Need Section**  
www.ncdhhs.gov  
Telephone: 919-855-3873 • Fax: 919-733-8139  
Location: Edgerton Building • 809 Ruggles Drive • Raleigh, NC 27603  
Mailing Address: 2704 Mail Service Center • Raleigh, NC 27699-2704  
An Equal Opportunity/ Affirmative Action Employer



*Mute*

**Laetitia L. Cheltenham**  
Associate

November 18, 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 Assets of Johnston Memorial Hospital Authority**

Dear Mr. Smith:

- Charleston
- Charlotte
- Columbia
- Greensboro
- Greenville
- Hilton Head
- Myrtle Beach
- Raleigh**

We are writing on behalf of Johnston Health Services Corporation (“JHSC”), a non-profit corporation. Pursuant to N.C. Gen. Stat. §131E-184(a), JHSC hereby provides notice of its planned acquisition of substantially all of the assets of the health system operated by Johnston Memorial Hospital Authority (“JMHA”) in Johnston County and known as “Johnston Health.” Johnston Health operates an acute care hospital with one hundred seventy-nine (179) total acute care beds and twenty (20) psychiatry beds. In addition, Johnston Health also currently operates other health care services and facilities, including but not limited to, emergency, outpatient, diagnostic, home care, and hospice care.

As further described below, we are requesting that the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Certificate of Need Section (the “Agency”) confirm that this planned acquisition is exempt from review under the North Carolina Certificate of Need (“CON”) law’s exemption provisions outlined in N.C. Gen. Stat. §131E-184 and that a “good cause” transfer is warranted under N.C. Gen. Stat. §131E-184 and 10A N.C.A.C. 14C.0502 for any projects under development for which a CON has been issued.

## **I. The Proposed Transaction**

Pursuant to a Master Agreement between JHSC, JMHA, and the University of North Carolina Health Care System ("UNC HCS"), JHSC intends to acquire through transfer and/or lease substantially all of JMHA's assets used in connection with the operation of Johnston Health, including but not limited to: (a) land; (b) buildings; (c) improvements; (d) fixtures; (e) personal property (including but not limited to medical equipment); (f) working capital; (g) intangible property (including projects under development for which a CON has been issued); and (i) other assets used in the operation of, or in conjunction with, Johnston Health's provision of health care services. As of the closing date of the proposed transaction, JMHA shall retain a sixty-four and 75/100 percent (64.75%) membership interest in JHSC and UNC HCS shall be admitted as a member of JHSC with a thirty-five and 25/100 percent (35.25%) membership interest.

JHSC will obtain licenses for Johnston Health's facilities (the "Facilities") and will assume operation of the Facilities under the Master Agreement on or about January 1, 2014. The capital expenditure required under the terms of the Master Agreement will be in excess of two million dollars (\$2,000,000.00).

## **II. Exemption Notice**

Pursuant to N.C. Gen. Stat. §131E-178(b), "no person shall make an acquisition by donation, lease, transfer, or comparable arrangement without first obtaining a certificate of need from the [Agency], if the acquisition would have been a new institutional health service if it had been made by purchase." N.C. Gen. Stat. §131E-176(16)b provides that the obligation by any person of a capital expenditure in excess of two million dollars (\$2,000,000.00) to develop a health service or a health facility constitutes a new institutional health service. Also, the offering of cardiac catheterization services under N.C. Gen. Stat. §131E-176(16)f.2a and the acquisition of certain types of equipment under N.C. Gen. Stat. §131E-176(16)fl constitute new institutional health services.

Johnston Health currently provides diagnostic cardiac catheterization services and is expected to continue to provide such services following the acquisition by JHSC. Furthermore, cardiac catheterization equipment and two (2) magnetic resonance imaging (MRI) scanners are among the assets that will be transferred to JHSC pursuant to the Master Agreement. Therefore, the proposed transaction would constitute a new institutional health service.

However, pursuant to N.C. Gen. Stat. §131E-184(a), a new institutional health service is exempt from CON review if the Agency “receives prior written notice from the entity proposing the new health service, which notice includes an explanation of why the new institutional 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.”

Johnston Health operates a hospital, a home care and hospice agency, and an inpatient hospice facility, all of which are “existing health service facilities” as defined by §131E-176(9b). In addition, the total cost of the medical diagnostic equipment utilized at Johnston Health which cost ten thousand dollars (\$10,000.00) or more exceeds five hundred thousand dollars (\$500,000.00). Therefore, Johnston Health also constitutes a “diagnostic center” as defined by §131E-176(7a), which is also considered an “existing health service facility” under CON law. Furthermore, all the assets subject to the transfer and/or lease, including the specific items of equipment specified above, constitute equipment owned by the health service facilities at the time of acquisition and will be utilized for the continued operation of Johnston Health. Therefore, the capital expenditure and the transfer of the aforementioned equipment are necessary for the acquisition of existing health service facilities. Accordingly, JHSC’s acquisition of JMHA’s assets is exempt from review pursuant to N.C. Gen. Stat. §131E-184(a)(8).

### **III. Good Cause Transfer**

To the extent that this transaction is considered to be a transfer of health service facilities prior to the completion of projects or operation of a facility for which CONs have been issued, we are also requesting approval for a transfer for “good cause” pursuant to N.C. Gen. Stat §131E-189 and 10A N.C.A.C. 14C.0502 of the two CON projects under development: 1) Project I.D. J-8105-08- relocation of acute care beds to Clayton Medical Center and 2) Project I.D. J-8360-09- development of an additional shared Operating Room. We believe that good cause for such transfer exists.

The purpose of this transaction is wholly unrelated to any pending CON projects, but is in conjunction with a larger transaction of the health care system. Moreover, nothing about this transaction will affect the ability of Johnston Health to materially comply with any representation in its CON applications or the conditions placed on the projects under development. In all material respects, the operations and development of these projects will be the same as represented in the CON applications and in compliance with the issued CONs.

Craig R. Smith, Chief  
November 15, 2013  
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**IV. Conclusion**

Based on the foregoing information, this letter constitutes JHSC's prior written notice of its acquisition of existing health service facilities. We hereby request the Agency's confirmation that the proposed acquisition as set forth herein is exempt from CON review under N.C. Gen. Stat. §131E-184(a)(8) and that a "good cause" transfer is warranted under N.C. Gen. Stat. §131E-189 and 10A N.C.A.C. 14C.0502 for any projects under development for which a CON has been issued. JHSC is to commence operating Johnston Health on or about January 1, 2014. We, therefore, respectfully request this confirmation at your earliest convenience.

Thank you for your consideration in this matter. Please feel free to contact me with any questions or concerns.

Sincerely,



Laetitia L. Cheltenham

cc: Charles W. Elliott, Jr., CEO, Johnston Health Services Corporation