



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

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January 10, 2013

Erin Roberts
Smith Moore Leatherwood LLP
2800 Two Hannover Square
Raleigh, NC 27601

Exempt from Review – Acquisition of Facility

Facility: Caldwell County Home Health Agency
Acquisition by: Advanced Home Care, Inc.
County: Caldwell
FID #: 943645

Dear Ms. Roberts:

In response to your letter of December 19, 2012, the above referenced proposal is exempt from certificate of need review in accordance with N.C.G.S 131E-184(a)(8). Therefore, Advanced Home Care, Inc., 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 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,

Julie Halatek
Project Analyst

Craig R. Smith, Chief
Certificate of Need Section

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





SMITH MOORE
LEATHERWOOD

Julie

December 19, 2012

VIA HAND DELIVERY

Mr. Craig Smith
Chief, Certificate of Need Section
Division of Health Service Regulation
North Carolina Department of Health and Human Services
2704 Mail Service Center
Raleigh, North Carolina 27699-2704



Re: Caldwell County Home Health Agency- Exemption Notice
Home Health Agency: License No. HCO487

Dear Mr. Smith:

This letter constitutes prior written notice that Advanced Home Care, Inc., a North Carolina nonprofit corporation (“Advanced Home Care”), will be purchasing substantially all of the tangible and intangible assets of Caldwell County, a North Carolina political subdivision (the “County”) used in connection with the operation of Caldwell County Home Health Agency, a licensed and certified home health agency (License No. HCO487) (the “Agency”), which transaction is exempt from certificate of need (“CON”) review pursuant to N.C. Gen. Stat. § 131E-184(a)(8).

The Proposal

Effective on or about February 1, 2013, Advanced Home Care will be acquiring substantially all of the assets of the County with respect to the Agency. The real property associated with the Agency will be leased to Advanced Home Care effective as of the closing of the transaction pursuant to a separate lease agreement. Advanced Home Care will also be submitting a change of ownership application to the North Carolina Department of Health and Human Services, Division of Health Service Regulation (“DHSR”) to effectuate the transfer of the Agency’s license.

Analysis

Under North Carolina law, a CON must be obtained before offering or developing a new institutional health service. N.C. Gen. Stat. § 131E-178(a). A “new institutional health service” is expressly defined in N.C. Gen. Stat. § 131E-176(16)l to include:

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December 19, 2012

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the purchase, lease, or acquisition of any health service facility, or portion thereof, or controlling interest in the health service facility or portion thereof, if the health service facility was developed under a certificate of need pursuant to G.S. 131E-180.

“Health service facility” includes home health agency office. N.C. Gen. Stat. § 131E-176(9b).

The CON Act enumerates certain situations, however, in which an applicant is exempt from CON review. Advanced Home Care’s acquisition of the Agency fits squarely within N.C. Gen. Stat. § 131E-184(a)(8)’s exemption for the acquisition of “an existing health service facility, including equipment owned by the health service facility at the time of acquisition.” Pursuant to the terms of the agreement between the County and Advanced Home Care, Advanced Home Care will purchase the County’s assets used exclusively in the operation of the Agency, and will thereby assume ownership and operation of the Agency. Thus, given that the transaction involves the sale of an existing health service facility, it is exempt from CON review.

Conclusion

Based on the foregoing information, we hereby request the CON Section’s confirmation that the transaction described herein is exempt from CON review, under N.C. Gen. Stat. §131E-184(a)(8).

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

With kindest personal regards, I am

Very truly yours,

SMITH MOORE LEATHERWOOD LLP



Erin Jochum Roberts