



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

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Division Director

March 21, 2014

Kenneth L. Burgess, Partner
Poyner Spruill
301 Fayetteville Street, Suite 1900
Raleigh NC 27601

Exempt from Review – Acquisition of Facility

Facility: Kindred Transitional Care and Rehabilitation-Sunnybrook
Acquisition by: HSP Carolina, LLC and Sunnybrook Rehabilitation Center, LLC
County: Wake
FID #: 923270

Dear Mr. Burgess:

In response to your letter of March 17, 2014, the above referenced proposal is exempt from certificate of need review in accordance with G.S 131E-184(a)(8). Therefore, HSP Carolina, LLC and Sunnybrook Rehabilitation Center, LLC may proceed to acquire the above referenced health service facility without first obtaining a certificate of need. However, you need to contact the Nursing Home 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 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

Martha J. Frisone, Interim Chief
Certificate of Need Section

cc: Nursing Home 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

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Received by
the CON Section
MAR 17 2014

March 17, 2014

Kenneth L. Burgess
Partner
D: 919-783-2917
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kburgess@poynerspruill.com

VIA HAND-DELIVERY

Martha Frisone, Chief
Certificate of Need Section
N.C. Department of Health and Human Services
Division of Health Service Regulation
809 Ruggles Drive
Raleigh, North Carolina 27603

RE: *Notice of Exempt Acquisition by Lease of North Carolina Skilled Nursing Facility Pursuant to N.C. Gen. Stat. §§ 131E-184(a)(1) and (8)*

Dear Martha:

I am writing on behalf of our clients, HSP Carolina, LLC ("HSP") and Sunnybrook Rehabilitation Center, LLC ("Sunnybrook"), pursuant to N.C. Gen. Stat. §§ 131E-184(a)(1) and (8), to provide notice to the N.C. Department of Health and Human Services, Division of Health Service Regulation, Certificate of Need Section ("the Agency") of our clients' intent to acquire via a lease arrangement the skilled nursing facility currently known as Kindred Transitional Care and Rehabilitation-Sunnybrook, located at 25 Sunnybrook Road, Raleigh, North Carolina 27610 ("the Facility"), which is currently licensed to Kindred Nursing Centers East, LLC (License number NH0146; Facility I.D. No. 923270). The Facility is licensed for ninety-five (95) nursing facility beds. Pursuant to N.C. Gen. Stat. § 131E-176(9b), the Facility is a "health service facility."

Our client HSP is a North Carolina limited liability company. HSP intends to lease the Facility from Ventas Realty, Limited Partnership ("Ventas"). Our client Sunnybrook is also a North Carolina limited liability company. Sunnybrook will sublease the Facility from HSP. Ventas, HSP and Sunnybrook have executed the relevant leases with an anticipated effective date of May 1, 2014.

N.C. Gen. Stat. § 131E-176(16)(l) provides that the purchase, lease, or acquisition of any health service facility, or portion thereof, which was developed pursuant to a certificate of need qualifies as a "new institutional health service." N.C. Gen. Stat. § 131E-178(b) provides that "[n]o person shall make an acquisition by donation, lease, transfer or comparable arrangement without first obtaining a certificate of need from the Department, if the acquisition would have been a new institutional health service if it had been made by purchase." N.C. Gen. Stat. §§ 131E-184(a)(1) and (8) provide that the acquisition of an existing health service facility, including equipment owned by the health service facility at the time of acquisition, is exempt from CON review upon prior written notice to the Agency of the proposed acquisition.

The acquisition of the Facility via the lease arrangements I have described herein will not involve the development of any new health service facility or otherwise qualify as a "new institutional health service" which would be subject to Agency review under applicable Certificate of Need statutes or regulations. Rather, the transaction I have described herein qualifies as an "exempt transaction" within

Martha Frisone, Chief
March 17, 2014
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the meaning of N.C. Gen. Stat. § 131E-184(a)(8). This correspondence is intended to serve as the prior written notice to the Agency required by N.C. Gen. Stat. §§ 131E-184(a)(1) and (8).

Please provide me with written confirmation that this transaction is exempt from CON review pursuant to N.C. Gen. Stat. §§ 131E-184(a)(1) and (8). We would be very appreciative if this reply could be expedited since our client will need to apply for a new license for the Facility and we anticipate including the Agency's response to this correspondence as part of that application.

I appreciate your attention to this matter. Please let me know if there are any questions regarding this notice or if the Agency needs further information.

Sincerely,



Kenneth L. Burgess
Partner

cc: Dina A. Kasper, Esq.
Betsy Kuntz, Esq.