



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

Pat McCrory
Governor

Richard O. Brajer
Secretary DHHS

Mark Payne
Assistant Secretary for Audit and
Health Service Regulation

February 29, 2016

Gary S. Qualls
K&L Gates LLP
430 Davis Drive
Suite 400
Morrisville, NC 27650

Exempt from Review – Acquisition of Facility

Record #: 1878
Facility Name: Stanley Regional Medical Center
Type of Facility: Hospital
FID #: 953472
Acquisition by: The Charlotte-Mecklenburg Hospital Authority
Business #: 461
County: Stanly

Dear Mr. Qualls:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) determined that based on your letter of January 13, 2016 the above referenced proposal is exempt from certificate of need review in accordance with G.S 131E-184(a)(8). Therefore, The Charlotte-Mecklenburg Hospital Authority may proceed to acquire the above referenced health service facility without first obtaining a certificate of need. However, you need to contact the Agency's Acute and Home Care Licensure and Certification Section 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



Healthcare Planning and Certificate of Need Section

www.ncdhhs.gov

Telephone: 919-855-3873 • Fax: 919-715-4413

Location: Edgerton Building • 809 Ruggles Drive • Raleigh, NC 27603

Mailing Address: 2704 Mail Service Center • Raleigh, NC 27699-2704


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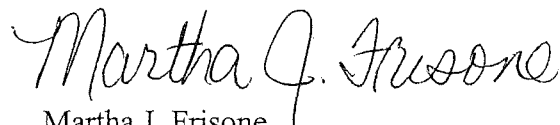


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separate determination. If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,


Gregory F. Yakaboski
Project Analyst


Martha J. Frisone,
Assistant Chief, Certificate of Need

cc: Construction Section, DHSR
Acute and Home Care Licensure and Certification Section, DHSR
Kelli Fisk, Program Assistant, Healthcare Planning, DHSR

January 13, 2016



VIA HAND DELIVERY

Martha Frisone
Assistant Chief, Certificate of Need
Department of Health and Human Services
Division of Health Service Regulation
Healthcare Planning and Certificate of Need Section
809 Ruggles Drive
Raleigh, North Carolina 27603

Re: Merger of Stanly Health Services, Inc. and Stanly Regional Medical Center into The Charlotte-Mecklenburg Hospital Authority

No Review Letter, Alternative Exemption Notice, and Good Cause Transfer Request

Dear Ms. Frisone:

The purpose of this letter is to inform you of a proposed transaction (the “2016 SHS Transaction”) wherein Stanly Health Services, Inc. (“SHS”) and its controlled affiliate Stanly Regional Medical Center (“SRMC”) will merge into The Charlotte-Mecklenburg Hospital Authority (“CMHA”). Effective on or about March 1, 2016, SHS and SRMC will merge into, and become part of, CMHA. As you will recall, in 2014, CMHA became the sole corporate member of SHS with certain reserve powers and the right to appoint a majority of the SHS board.

SHS and SRMC are currently the partial or exclusive owners (directly or indirectly) of the following health service facilities regulated under the Certificate of Need (“CON”) Law:

1. A hospital licensed to SRMC and known as Stanly Regional Medical Center in Albemarle, Stanly County (the “Hospital”) -- License No. H0008, Facility ID No. 953472.
2. A Diagnostic Center owned by West Stanly Imaging, LLC, and known as West Stanly Imaging, in Albemarle, Stanly County, which is 51% owned by Stanly Regional Medical Center and 49% owned by CMHA.

3. A rehabilitation hospital operated by CMHA d/b/a Carolinas Rehabilitation and known as Carolinas Rehabilitation-NorthEast, located in Concord, Cabarrus County (the "Rehab Hospital") -- License No. H0286, Facility ID No. 080512. The CON recipients and holders for the Rehab Hospital are: (a) CMHA; (b) SRMC; and (c) Carolinas Rehabilitation-NorthEast, LLC ("CR-NorthEast, LLC"). In turn, CR-NorthEast, LLC is owned 93.5% by CMHA and 6.5% by SRMC.

(Collectively the foregoing health service facilities will be called the "SHS Facilities").

Thus, after the 2016 SHS Transaction, the following ownership structure will exist:

1. The Hospital will be owned and operated by CMHA without any separate subsidiaries involved and will be known as Carolinas HealthCare System Stanly.
2. The West Stanly Imaging Diagnostic Center will continue to be 100% owned and operated by West Stanly Imaging, LLC, and that LLC will be 100% owned by CMHA, as its sole member.
3. The CON rights to the Rehab Hospital known as Carolinas Rehabilitation-NorthEast will now be owned exclusively and directly by CMHA. Because of the 2016 SHS Transaction, CR-NorthEast, LLC will be dissolved. As you will recall, CR-NorthEast, LLC was the joint venture mechanism by which CMHA and SRMC shared interests in the Rehab Hospital CON rights. CR-NorthEast, LLC currently owns the building housing the Rehab Hospital (the "Rehab Hospital Building").¹ CMHA already owned 93.5% of CR-NorthEast, LLC. After the 2016 SHS Transaction, CMHA will directly own 100% of the Rehab Hospital Building. Without SRMC as a separate legal entity, CMHA can now own and operate the Rehab Hospital without the need for the LLC. Moreover, there will be no change to the licensed operator of the Rehab Hospital, which will continue to be CMHA.

¹ CR-NorthEast, LLC ground leases the Rehab Hospital Building from CMHA. CR-NorthEast, LLC then leases the Rehab Hospital Building back to CMHA to operate the Rehab Hospital.

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We are requesting that the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Healthcare Planning and Certificate of Need Section (the "Agency") confirm that the 2016 SHS Transaction is either:

- (1) not reviewable under the North Carolina Certificate of Need ("CON") law because the Transaction is simply an intra-corporate reorganization; or
- (2) in the alternative, exempt from review under the CON law's exemption provisions in N.C. Gen. Stat. § 131E-184(a)(8).

Additionally, to the extent the Agency deems this a transfer of Stanly Regional Medical Center's approved, but not fully developed emergency department CON (described in Part III below), we are requesting approval of a good cause transfer of that CON project under development.

I. NO REVIEW REQUEST FOR SHS TRANSACTION.

The merger of SHS (and its controlled affiliate, SRMC) into CMHA is not a CON reviewable event because such an event is not expressly addressed in any of the new institutional health service "CON triggers" in N.C. Gen. Stat. § 131E-176(16). The merger of a subsidiary into a parent (as here) 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) -- such as this SHS Transaction -- 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 situation 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.").

Therefore, we request your confirmation that the 2016 SHS Transaction is not subject to CON review.

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II. EXEMPTION NOTICE FOR SHS TRANSACTION (IF DEEMED CON REVIEWABLE).

However, if the Agency treats the 2016 SHS Transaction as the acquisition of the SHS Facilities (as health service facilities), and thus CON reviewable, this letter serves as an exemption notice for the SHS Facilities, pursuant to N.C. Gen. Stat. § 131E-184(a)(8).

The General Assembly has chosen to exempt certain, otherwise reviewable, events from CON review, including the acquisition of an existing health service facility, including the equipment owned by the health service facility at the time of the acquisition. See N.C. Gen. Stat. § 184(a)(8). Under N.C. Gen. Stat. § 131E-176(9b), each of the SHS Facilities constitutes a "health service facility."

Furthermore, the proposed 2016 SHS Transaction does not entail the acquisition of any major medical equipment or any *per se* reviewable equipment as defined in N.C. Gen. Stat. § 131E-176(14)(o) and (16)(f1), except in conjunction with the acquisition of the entire existing health service facilities. Likewise, the transaction does not include the offering of any *per se* reviewable services except those already offered by the existing health service facilities. See N.C. Gen. Stat. § 131E-176(16)(f).

Accordingly, given that the 2016 SHS Transaction involves only the SHS Facilities, which are existing health service facilities, even if the Agency deems the Transaction to trigger the new institutional health service definition, the Transaction is nevertheless exempt from CON review.

III. GOOD CAUSE TRANSFER FOR THE UNDEVELOPED STANLY REGIONAL EMERGENCY DEPARTMENT PROJECT CON.

A CON project at the Hospital is currently under development by Stanly Regional Medical Center, identified as:

F-10072-13 - Stanly Regional Medical Center shall renovate and expand Emergency Department/Stanly County (the "ED Project")

(See CON attached hereto as Exhibit 1).

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To the extent that the Transaction is considered to be a transfer of the ED Project CON, we are requesting approval for a “good cause” transfer of this CON under N.C. Gen. Stat. § 131E-189 and 10A N.C.A.C. 14C.0502. We believe that good cause exists for such a transfer.

Good cause exists for the ED Project transfer because the larger purposes of the 2016 SHS Transaction are wholly unrelated to the pending ED Project. Rather, the ED Project transfer is merely a byproduct of the larger 2016 SHS Transaction. The larger purposes of the SHS Transaction include:

- Maintaining the viability of the SHS Facilities as robust providers in their respective service areas (the “SHS Service Areas”);
- Continuing to provide quality, cost-efficient and innovative health care service to residents of the SHS Service Areas, while maintaining the accessibility and familiarity of local health care providers;
- Preparing for future reimbursement models that favor shared risk; and
- Ensuring that patients receive the best medical care in the most appropriate service setting by providing access to a comprehensive health care provider operating through multiple medical facilities within the State of North Carolina.

Moreover, nothing about this 2016 SHS Transaction will affect the ability of Stanly Regional Medical Center (as an even more integrated part of CMHA) to materially comply with any representations in its ED Project CON application or the CON conditions placed on the ED Project. In all material respects, the operations and development of this ED Project will be the same as represented in the ED Project CON application and in compliance with the issued CON.

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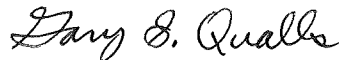
IV. CONCLUSION

Based upon the foregoing information, we hereby request the Agency's:

1. confirmation that the 2016 SHS Transaction: (1) does not require CON review; or alternatively, (2) is exempt from CON review under N.C. Gen. Stat § 131E-184(a)(8); and
2. approval of a good cause transfer for the outstanding Stanly Regional Medical Center ED Project CON if the Agency determines that the 2016 SHS Transaction constitutes an exempt transfer.

The effective Transaction date is currently anticipated to be March 1, 2016. Thank you for your assistance in regard to this matter. Please feel free to contact me at the number above if you have any questions or need further information.

Sincerely,



Gary S. Qualls

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Exhibit

1. CON for Stanly Regional Medical Center Emergency Department

STATE OF NORTH CAROLINA

Department of Health and Human Services
Division of Health Service Regulation

CERTIFICATE OF NEED

for

Project Identification Number #F-10072-13

FID #953472

ISSUED TO: Stanly Regional Medical Center
301 Yadkin Street
Albemarle, NC 28001

Pursuant to N.C. Gen. Stat. § 131E-175, et. seq., the North Carolina Department of Health and Human Services hereby authorizes the person or persons named above (the "certificate holder") to develop the certificate of need project identified above. The certificate holder shall develop the project in a manner consistent with the representations in the project application and with the conditions contained herein and shall make good faith efforts to meet the timetable contained herein. The certificate holder shall not exceed the maximum capital expenditure amount specified herein during the development of this project, except as provided by N.C. Gen. Stat. § 131E-176(16)e. The certificate holder shall not transfer or assign this certificate to any other person except as provided in N.C. Gen. Stat. § 131E-189(c). This certificate is valid only for the scope, physical location, and person(s) described herein. The Department may withdraw this certificate pursuant to N.C. Gen. Stat. § 131E-189 for any of the reasons provided in that law.

SCOPE: Stanly Regional Medical Center shall renovate and expand Emergency Department/ Stanly County

CONDITIONS: See Reverse Side


PHYSICAL LOCATION: Stanly Regional Medical Center
301 Yadkin Street
Albemarle, NC 28001

MAXIMUM CAPITAL EXPENDITURE: \$8,757,247

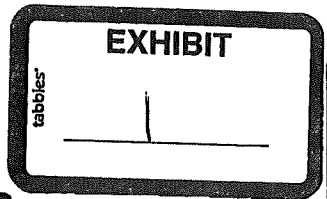
TIMETABLE: See Reverse Side

FIRST PROGRESS REPORT DUE: September 30, 2013

This certificate is effective as of the 11th day of May, 2013



Chief, Certificate of Need Section
Division of Health Service Regulation



CONDITIONS:

1. Stanly Regional Medical Center shall materially comply with all representations made in the certificate of need application.
2. Stanly Regional Medical Center shall not acquire, as part of this project, any equipment that is not included in the project's proposed capital expenditure in Section VIII of the application and that would otherwise require a certificate of need.
3. Stanly Regional Medical Center shall develop and implement an Energy Efficiency and Sustainability Plan for the project that conforms to or exceeds energy efficiency and water conservation standards incorporated in the latest editions of the North Carolina State Building Codes. The plan must be consistent with the applicant's representations in the written statement as described in paragraph one of Policy GEN-4.
4. Stanly Regional Medical Center shall acknowledge acceptance of and agree to comply with all conditions stated herein to the Certificate of Need Section in writing prior to issuance of the certificate of need.

A letter acknowledging acceptance of and agreeing to comply with all conditions stated in the conditional approval letter was received by the Certificate of Need Section on April 15, 2013.

TIMETABLE:

Contract Award	_____	September 15, 2013
50% Completion of Construction	_____	April 1, 2014
Completion of Construction	_____	September 15, 2014
Occupancy/Offering of Services	_____	October 1, 2014