



NC DEPARTMENT OF HEALTH AND HUMAN SERVICES

ROY COOPER • Governor
MANDY COHEN, MD, MPH • Secretary
MARK PAYNE • Director, Division of Health Service Regulation

VIA EMAIL ONLY

November 9, 2020

Gary S. Qualls
Gary.Qualls@klgates.com

Exempt from Review – Acquisition of Facility

Record #: 3410

Facility Name: Onslow County Home Health and Hospice
Type of Facility: HC
FID #: 954052
Acquisition by: Lower Cape Fear Hospice, Inc.
Business #: 1152
County: Onslow

Dear Mr. Qualls:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) determined that based on your representations, the above referenced proposal is exempt from certificate of need (CON) review in accordance with N.C. Gen. Stat. §131E-184(a)(8). Therefore, the above referenced business may proceed to acquire the health service facility identified above without first obtaining a CON. The Agency’s determination is limited to the question of whether or not the above referenced business would have to obtain a CON if the current owners of the health service facility do in fact sell it to the business listed above. Note that pursuant to N.C. Gen. Stat. §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.”

If the business listed above does acquire the facility, you should contact the Agency’s Acute and Home Care Licensure and Certification Section to obtain instructions for changing ownership of the existing facility.

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 regarding whether a certificate of need would be required. If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,

[Handwritten signature of Gregory F. Yakaboski]

Gregory F. Yakaboski
Project Analyst

[Handwritten signature of Martha J. Frisone]

Martha J. Frisone
Chief

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

NC DEPARTMENT OF HEALTH AND HUMAN SERVICES • DIVISION OF HEALTH SERVICE REGULATION
HEALTHCARE PLANNING AND CERTIFICATE OF NEED SECTION

LOCATION: 809 Ruggles Drive, Edgerton Building, Raleigh, NC 27603
MAILING ADDRESS: 809 Ruggles Drive, 2704 Mail Service Center, Raleigh, NC 27699-2704
https://info.ncdhhs.gov/dhsr/ • TEL: 919-855-3873

October 29, 2020

VIA EMAIL: martha.waller@dhhs.nc.gov

Ms. Martha Frisone, Chief
Healthcare Planning and Certificate of Need Section
Division of Health Service Regulation
Department of Health and Human Services
809 Ruggles Drive
Raleigh, NC 27603

Re: Exemption Notice for Lower Cape Fear Hospice, Incorporation d/b/a Lower Cape Fear LifeCare

Dear Martha:

Lower Cape Fear Hospice, Incorporated d/b/a Lower Cape Fear LifeCare (“LCFH” or the “Buyer”) is planning to acquire the following two health service facilities from Onslow County (“Onslow”), which currently owns Onslow County Home Health and Hospice.

1. A Medicare-certified home health agency office (the “HHA Office”); and
2. A Medicare-certified hospice agency office (the “Hospice Office”).

The HHA Office and Hospice Office are both located at 4024 Richlands Highway, Jacksonville, NC 28540.

The purpose of this letter is to provide prior notice of this acquisition, which is exempt from certificate of need (“CON”) review, to the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Healthcare Planning and Certificate of Need Section (the “Agency”). LCFH seeks confirmation that it is permitted to acquire the Facilities described herein without CON Review, thus acquiring the rights to own those existing health service facilities (as defined in the CON statute).

Ms. Martha Frisone, Chief
October 29, 2020
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I. EXEMPTION NOTICE

Under North Carolina law, a CON is required only prior to offering or developing a “new institutional health service.” “New institutional health service” includes the establishment of a new health service facility. See N.C. Gen. Stat. § 131E-176(16)(a). However, the North Carolina General Assembly saw fit to exempt certain types of proposals from CON review, pursuant to N.C. Gen. Stat. § 131E-184. One such exempt proposal is the acquisition of an existing health service facility, “including equipment owned by the health service facility at the time of acquisition.” N.C. Gen. Stat. § 131E-184(a)(8).

This project involves only the acquisition of an existing Medicare-certified home health agency office and a Medicare-certified hospice agency office, both of which fall within the purview of the statutory definition of “health service facility.” See N.C. Gen. Stat. § 131E-176(9b). Furthermore, LCFH’s acquisition of these facilities does not entail the purchase of any major medical equipment or any *per se* reviewable equipment as defined in N.C. Gen. Stat. §§ 131E-176(14o) and (16)(f1). Likewise, the acquisitions do not include the offering of any *per se* reviewable services. N.C. Gen. Stat. § 131E-176(16)(f). Thus, given that the transaction involves only the acquisition of two existing health service facilities, it is exempt from CON review.

Currently, Onslow operates the HHA Office and Hospice Office under a single license. After the acquisition, LCFH plans to obtain separate licenses for the HHA Office and Hospice Office. Per our e-mail exchange of August 25 of this year, you confirmed that we will not require a CON for such separate licensing.

II. CONCLUSION

Based on the foregoing information, we hereby request the Agency’s confirmation that the proposal described above is exempt from CON review, pursuant to N.C. Gen. Stat. § 131E-184(a)(8), and thus LCFH may acquire without a CON, Onslow’s HHA Office and Hospice Office, with all of their existing CON rights.

If you require additional information to consider this request, please contact us at the above number as soon as possible. We thank you for your consideration of this request.

Sincerely,

/s/ Gary S. Qualls

Gary S. Qualls

From: [Norwood, Connie](#)
To: [Waller, Martha K](#)
Cc: [Qualls, Gary](#); [Ritter, Courtney P.](#)
Subject: [External] Exemption Request - Lower Cape Fear Hospice acquiring Onslow County Home Health & Hospice
Date: Thursday, October 29, 2020 3:22:38 PM
Attachments: [Lower Cape Fear Hospice acquiring Onslow County Home Health & Hospice.pdf](#)

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Good afternoon Ms. Waller,

At Gary Qualls' request and on behalf of his client, Lower Cape Fear Hospice, Incorporation d/b/a Lower Cape Fear LifeCare, please find attached an Exemption Notice. If you wouldn't mind, at your convenience, acknowledging receipt, I would greatly appreciate it.

If you have any problems accessing this document, please do not hesitate to let me know.

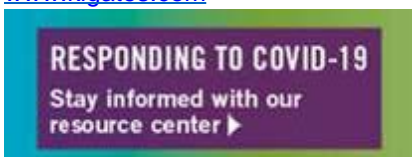
Best regards,

Connie Norwood



Connie J. Norwood
Practice Specialist
and Office Coordinator
K&L Gates LLP
430 Davis Drive, Suite 400
Morrisville, North Carolina 27560

Post Office Box 14210
Research Triangle Park, North Carolina 27709-4210
Phone: 919.466.1244
Fax: 919.516.2134
Connie.norwood@klgates.com
www.klgates.com



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