



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

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March 8, 2013

Richard P. Church, Esq.
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Exempt from Review – Acquisition of Facility

Facility: Taylor Extended Care
Acquisition by: Heritage Healthcare
County: Carteret
FID #: 923448


Dear Mr. Church:

In response to your letter of February 15, 2013, the above referenced proposal is exempt from certificate of need review in accordance with N.C.G.S 131E-184(a)(8). Therefore, Heritage Healthcare may proceed to acquire the above referenced health service facility without first obtaining a certificate of need. However, you need to contact Nursing Home Licensure and Certification Section of the Division of Health Service Regulation (DHSR) 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,


Jane Rhoe-Jones
Project Analyst


Craig R. Smith, Chief
Certificate of Need Section

cc: Medical Facilities Planning, DHSR
Nursing Home Licensure and Certification Section, DHSR



Certificate of Need Section

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RECEIVED
Lorraine NOC Unit
The CON Section
No. 10000000

February 15, 2013

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VIA HAND DELIVERY

Craig R. Smith
Chief, Certificate of Need Section
Division of Health Service Regulation
North Carolina Department of Health & Human
Services
809 Ruggles Drive
Raleigh, NC 27603

RE: Exemption Notice for Taylor Extended Care Facility
(NF License # NH0600 / Medicare Provider # 34-5182 / Facility ID: 923448)

Dear Craig:

The purpose of this letter is to provide notice to the North Carolina Department of Health & Human Services, Division of Health Service Regulation, Certificate of Need Section (the "Agency") of the transfer of a North Carolina nursing facility, which transaction is exempt from certificate of need ("CON") review under N.C. Gen. Stat. § 131E-184(a)(8). We represent Heritage Healthcare at Taylor Place, LLC ("Heritage"). On or about March 19, 2013, it is anticipated that Heritage will become the licensed operator of Taylor Extended Care Facility (NF License # NH0600 / Medicare Provider # 34-5182), as further described below. Please note that the County of Carteret and Carteret County General Hospital Corporation, through their counsel Rob Wheatly, Esq., Wheatly, Wheatly, Weeks & Lupton, P.A. and Thomas Stukes, Esq., Womble Carlyle Sandridge & Rice, LLP, respectively have also authorized the submission of this letter.

A. Factual Background

Currently, the County of Carteret owns the building where in the Nursing Facility is located, and Carteret County General Hospital Corporation is the licensed operator of Taylor Extended Care Facility, a 104-bed nursing facility located at 468 Hwy 70, Sea Level, North Carolina 28577 (the "Nursing Facility"). Heritage will enter into (i) an Asset Purchase Agreement with The County of Carteret and Carteret County General Hospital Corporation to acquire certain tangible and intangible assets used in the operation of the Nursing Facility (the "APA"), and (ii) a Lease Agreement with The County of Carteret to lease the building where the Nursing Facility is located (the "Lease"). In this manner and as set forth in the APA and the Lease, as of the effective date, (A) Heritage will become the licensed operator and lessee of the Nursing Facility, which will be operated at the same location under the d/b/a of Heritage Healthcare at Taylor Place, and (B) The County of Carteret will relinquish all of its rights in and to the certificate of need rights associated with the Nursing Facility. A Nursing Home Licensure CHOW Application reflecting the change in licensed operator will be submitted to the Division of Health Service Regulation, Nursing Home Licensure and Certification Section to effectuate the transfer of the license.

Craig R. Smith
February 15, 2013
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B. 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 a variety of services and activities, including the establishment of a nursing home facility.¹ However, the North Carolina General Assembly has exempted certain types of services or proposals from CON review under N.C. Gen. Stat. § 131E-184, including the acquisition of an existing health service facility, including equipment owned at the time of acquisition.²

This transaction involves the lease and acquisition of substantially all of assets of an existing “health service facility,” including acquisition of all equipment owned at the time of acquisition. After the acquisition, Heritage will continue to operate this health service facility at its current location. Furthermore, the lease and acquisition of the Nursing Facility 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(14)(o) and (16)(f1). Likewise, the acquisition does not include the offering of any *per se* reviewable services.³ Thus, given that the transaction involves only the lease and acquisition of an existing health service facility, it is exempt from CON review.

C. Conclusion

Based on the foregoing information, we hereby request the Agency’s confirmation that the proposal described above 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 as soon as possible.

Thank you for your consideration of this request.

Sincerely,



Richard P. Church

cc: Robert Strang, Esq., General Counsel, UHS-Pruitt Corporation (via email)
Thomas Stukes, Esq., Womble Carlyle Sandridge & Rice, LLP (via email)
Rob Wheatly, Esq., Wheatly, Wheatly, Weeks & Lupton, P.A. (via email)

¹ See N.C. Gen. Stat. § 131E-176 (9b), (16)(a), and (17b).

² See N.C. Gen. Stat. § 131E-184(a)(8).

³ See N.C. Gen. Stat. § 131E-176(16)(f).