



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

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Governor

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Division Director

March 13, 2013

Richard P. Church
K&L Gates LLP
P.O. Box 14210
Research Triangle Park, NC 27709-4210

Exempt from Review – Acquisition of Facility

Facility: High Point Regional Health System
Acquisition by: University of North Carolina Health Care System
County: Guilford
FID #: 943251

Dear Mr. Church:

In response to your letter of March 1, 2013, the above referenced proposal is exempt from certificate of need review in accordance with N.C.G.S 131E-184(a)(8). Therefore, the University of North Carolina Health Care System (UNCHCS) 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 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 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,

Celia C. Inman
Project Analyst

Craig R. Smith, Chief
Certificate of Need Section

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



Certificate of Need Section

www.ncdhhs.gov

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Celia

March 1, 2013



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Via Hand Delivery

Mr. 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: Affiliation of University of North Carolina Health Care System and High Point Regional Health System

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

Hospital: License No. H0052; Facility ID No. 943251
Premier Imaging: Facility ID No. 070761
High Point Surgery Center: License No. AS0047; Facility ID No. 923252

Dear Mr. Smith:

The purpose of this letter is to inform you of a proposed transaction involving a change in control of High Point Regional Health System (“HPRHS”). HPRHS is the owner and licensed operator of a hospital also known as High Point Regional Health System in High Point, North Carolina (the “Hospital”).

In addition to the Hospital, HPRHS also has an ownership interest in the following two health service facilities in North Carolina: Premier Imaging (a diagnostic center) and High Point Surgery Center (an ambulatory surgical center). Premier Imaging, LLC is (a) the owner of the diagnostic center known as Premier Imaging and (b) a wholly owned affiliate of HPRHS. High Point Surgery Center is (a) the owner of the ambulatory surgical facility known as High Point Surgery Center and (b) 50% owned by HPRHS.

Effective on or about April 1, 2013, HPRHS and all HPRHS affiliates will become affiliates of the University of North Carolina Health Care System (“UNC HCS”). To accomplish this change in control, on or about April 1, 2013, UNC HCS will become the sole corporate member of HPRHS with certain reserve powers and the right to appoint a majority of the HPRHS board.

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This member substitution does not change the ownership of HPRHS's assets or change the operator or licensees of any services offered by HPRHS. For instance, HPRHS will remain the owner and licensed operator of the Hospital. Premier Imaging, LLC will remain the owner and licensed operator of the diagnostic imaging center. High Point Surgery Center will remain the owner and licensed operator of High Point Surgery Center.

We are requesting that the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Certificate of Need Section (the "Agency") confirm that this overall transaction is either not reviewable as a new institutional health service under the North Carolina Certificate of Need ("CON") law or (in the alternative) exempt from review under the CON law's exemption provisions in N.C. Gen. Stat. § 131E-184.

Additionally, to the extent the Agency deems this a transfer of HPRHS's approved but not fully developed CONs, we are requesting approval of a good cause transfer of five CON projects under development, as well as to any CON issued to HPRHS in Project ID No. G-8735-11 arising from the pending contested case challenging one condition imposed in that CON approval.

I. NO REVIEW REQUEST

The foregoing member substitution of HPRHS is not a CON reviewable event. The proposed change in control is not expressly addressed in N.C. Gen. Stat. § 131E-176(16). Neither a change in the sole member of an existing health care facility nor a change in control of an indirect owner of a health care facility is 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) 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 situations 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.").

II. EXEMPTION NOTICE

Since this transaction does not involve the acquisition of a health service facility or otherwise involve a transfer of any assets, we do not think that notice under N.C. Gen. Stat. § 131E-184(a)(8) is technically required. However, to the extent that you disagree, please accept this letter as the required notice under N.C. Gen. Stat. § 131E-184(a)(8) for an exemption.

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. § 131E-184(a)(8). Under N.C. Gen. Stat. § 131E-176(9b), a hospital and diagnostic center are each a "health service facility."

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As to the Hospital and Premier Imaging, assuming that the transaction is deemed by the Agency to be an acquisition under the CON law, UNC HCS will be acquiring an existing "health service facility," including all equipment owned at the time of acquisition. Specifically, UNC HCS will be acquiring the Hospital, including all equipment owned by the Hospital at the time of the acquisition. UNC HCS also will be acquiring the diagnostic center known as Premier Imaging, including all equipment owned by the diagnostic center at the time of the acquisition. After the transaction, HPRHS will continue to operate the health service facilities as a hospital and a diagnostic center at their current locations.

Furthermore, the proposed 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 transaction involves only existing health service facilities, even if the Agency deems the transaction an acquisition under the CON law, it is exempt from CON review.

III. GOOD CAUSE TRANSFER

A. CON Projects Under Development

It is our understanding that the following CON projects are under development by HPRHS, identified as:

G-7411-05 – HPRHS shall convert no more than one gastrointestinal endoscopy room to a shared operating room for a total of no more than ten shared operating rooms, three dedicated inpatient operating rooms and two gastrointestinal endoscopy rooms upon completion of the project/Guilford County

G-8163-08 – Develop Premier Surgery Center, an ambulatory surgical facility, by relocating two existing operating rooms from High Point Regional Health System and constructing two procedure rooms/Guilford County

G-8734-11 – HPRHS shall renovate and reconfigure emergency department at High Point Regional Hospital to develop a behavioral health holding area, a results waiting area, and six additional treatment rooms/Guilford County

G-10034-12 – HPRHS shall renovate the existing 6 South Inpatient Unit at High Point Regional Hospital/Guilford County

G-8682-11 – HPRHS shall renovate and expand the existing hospital, including the surgical and cardiology departments/Guilford County

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To the extent that this transaction is considered to be a transfer of the facility, the project, or the CON, we are requesting approval for a "good cause" transfer of these CONs under N.C. Gen. Stat. § 131E-189 and 10A N.C.A.C. 14C.0502. We believe that good cause for such transfers exists.

The purpose of this transaction is wholly unrelated to any of the pending CON projects, but is in conjunction with a larger transaction of UNC HCS becoming the sole member of the health care system, HPRHS. Instead, the purposes of the transaction include:

- To maintain the identity and viability of HPRHS in its service area;
- To provide quality, cost-efficient and innovative health care services to residents of HPRHS's service area while maintaining the accessibility and familiarity of a local health care provider;
- Prepare for future reimbursement models that favor quality, accountability and shared risk; and
- Ensure 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 transaction will affect the ability of HPRHS to materially comply with any representations in its CON applications or the conditions placed on the projects under development. In all material respects, the operations and development of these projects will be the same as represented in the CON applications and in compliance with the issued CONs. In addition, HPRHS will remain a going concern, and will remain the holder of these CONs. Specifically, HPRHS will continue to be the holder of the CONs for Project ID Nos. G-7411-05, G-8734-11, G-10034-12 and G-8682-11. HPRHS and Premier Surgical Services, LLC will continue to be the holders of the CON for Project ID No. G-8163-08.

B. CON Project Under Appeal

In addition to the foregoing CON projects under development, HPRHS has one outstanding CON approval that is currently under appeal at the Office of Administrative Hearings. In Project ID No. G-8735-11, HPRHS was conditionally approved to renovate the Women's Center Inpatient Unit including the development of a dedicated entrance. On or about October 4, 2012, HPRHS appealed one of the conditions in the Agency's decision letter and Agency Findings.

Assuming that a CON is issued to HPRHS in Project ID No. G-8735-11 arising from that contested case, whether through settlement or otherwise, we believe that good cause exists for a transfer, based upon the same reasons discussed above regarding CON projects under development.

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IV. CONCLUSION

Based upon the foregoing information, we hereby request the Agency's (1) confirmation that the overall transaction does not require CON review; or (2) alternatively is exempt from CON review under N.C. Gen. Stat. § 131E-184(a)(8). In addition, if the Agency determines the overall transaction constitutes a transfer of HPRHS's outstanding CON projects under development, we hereby request the Agency's approval of a good cause transfer for the outstanding CON projects under development, as well as to any CON issued for Project ID No. G-8735-11.

HPRHS and its affiliates are represented by Steve Pottle, Esq. and Michelle Williams, Esq., both of Alston & Bird LLP, and they also have authorized the submission of this letter.

Because the effective date of this reorganization is currently anticipated to be April 1, 2013, we respectfully request your expedited review.

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 of need further information.

Sincerely,



Richard P. Church, Esq.

cc: Don Esposito, Esq., General Counsel, Rex Healthcare
Glenn George, Esq., Senior Vice President, Legal Services, UNC Health Care System
Steve Pottle, Esq., Alston & Bird LLP
Michelle Williams Esq., Alston & Bird LLP