



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

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Secretary DHHS

Drexdal Pratt
Division Director

November 15, 2013

Mr. Marcus C. Hewitt
Williams Mullen
301 Fayetteville Street
Suite 1700
Raleigh, NC 27601

Exempt from Review – Acquisition of Facility

Facility: Albemarle Health
Acquisition by: Sentara
County: Pasquotank
FID #s: 952933

Dear Mr. Hewitt:

In response to your letter of October 23, 2013, the above referenced proposal is exempt from certificate of need review in accordance with N.C.G.S 131E-184(a)(8). Therefore, Sentara may proceed to acquire Albemarle Health, which is owned and operated by Albemarle Hospital Authority, Incorporated and includes Albemarle Hospital, a 182-bed acute care hospital in Elizabeth City, License Number H0054, and all its assets (including, but not limited to land, buildings, medical equipment, and fixtures) for a 30 year lease period 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



Certificate of Need Section

www.ncdhhs.gov

Telephone 919-855-3873

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

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

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

Sincerely,



Bernetta Thorne-Williams
Project Analyst



Craig R. Smith, Chief
Certificate of Need Section

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

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Direct Dial: 919.981.4308
mhewitt@williamsmullen.com

Burwell



October 23, 2013

VIA HAND DELIVERY

Craig R. Smith, Chief
Certificate of Need Section
Division of Facility Services
N.C. Dept. of Health and Human Services
809 Ruggles Drive
Raleigh, NC 27603

Re: Notice of Exempt Transaction – Acquisition of Assets of Albemarle Health

Dear Mr. Smith

We are writing on behalf of Sentara Albemarle Regional Medical Center, LLC (“Sentara”) a wholly-owned subsidiary of Sentara Healthcare. Pursuant to N.C. Gen. Stat. § 131E-184(a), we are writing to provide the Agency with prior written notice of Sentara’s planned acquisition by lease of substantially all of the assets of the health care system based in Elizabeth City, Pasquotank County, known as “Albemarle Health” (“Albemarle Health”). Albemarle Health consists of Albemarle Hospital, a 182-bed acute care hospital in Elizabeth City (License No H0054), which is owned and operated by Albemarle Hospital Authority, Incorporated (“Authority”).

The Transaction

Sentara intends to enter into a long-term lease with Albemarle Health pursuant to which Sentara will acquire substantially all of Albemarle Health’s assets used in connection with the operation of Albemarle Health, including but not limited to:

- Land
- Buildings
- Improvements
- Fixtures
- Personal property (including but not limited to medical equipment)
- Working capital (including but not limited to cash, receivables, prepaid expenses, inventories and supplies)
- Other assets used in the operation of or in conjunction with the provision of health care services
- Intangible property (including but not limited to all transferrable operating rights)

Sentara will obtain a license for Albemarle Hospital and will assume operation of the hospital on or about 1 January 2014. The term of the lease shall be for a period of 30 years

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with optional renewal periods. The capital expenditure required under the terms of the lease will be in excess of \$2,000,000.00.

Exemption Notice

Pursuant to N.C. Gen. Stat. § 131E-176(16)b, the obligation by any person of a capital expenditure exceeding two million dollars (\$2,000,000) which relates to the provision of a health service constitutes a new institutional health service. Also, pursuant to § 131E-176(16)f1, the acquisition by lease of certain types of equipment constitutes a new institutional health service, regardless of expense. Among the assets to be leased are a magnetic resonance imaging (MRI) scanner, positron emission tomography (PET) scanner, linear accelerator, cardiac catheterization equipment, and simulator. Therefore, the lease would constitute a new institutional health service.

However, the asset acquisition described herein is exempt from certificate of need review pursuant to G.S. 131E-184(a), which states:

Except as provided in subsection (b), the Department shall exempt from certificate of need review a new institutional health service if it receives prior written notice from the entity proposing the new health service, which notice includes an explanation of why the new health service is required, for any of the following . . . (8) To acquire an existing health service facility, including equipment owned by the health service facility at the time of acquisition.

There is no definition of "acquisition" for purposes of the certificate of need statute, but elsewhere in the statute a lease is specifically deemed an "acquisition" (see N.C. Gen. Stat. § 131E-176(16)f1). Further, the lease by Sentara of Albemarle Health's assets clearly constitutes an acquisition for purposes of N.C. Gen. Stat. § 131E-184(a)(8) in light of the 30-year minimum length of the lease and because Sentara will lease substantially all of Albemarle Health's assets and will operate the health system in its place.

Albemarle Hospital is a hospital and is therefore an "existing health service facility" as defined by N.C. Gen. Stat. § 131E-176(9b). In addition, the total cost of medical diagnostic equipment utilized at Albemarle Hospital which cost ten thousand dollars (\$10,000) or more exceeds five hundred thousand dollars (\$500,000). Therefore, Albemarle Hospital also constitutes a "diagnostic center" as defined by N.C. Gen. Stat. § 131E-176(7a), which is also an "existing health service facility."

Further, all the assets subject to the lease, including the specific items of equipment listed above, will be utilized for the continued operation of Albemarle Hospital. Therefore, the capital expenditure and the acquisition of the equipment items listed above are necessary for the acquisition of an existing health service facility and the above-listed equipment constitutes equipment owned by the health service facility at the time of the acquisition. Accordingly,

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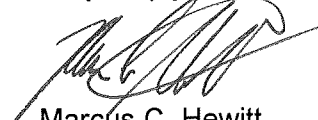
Sentara's lease of Albemarle Health's assets is exempt from review pursuant to N.C. Gen. Stat. § 131E-184(a)(8).

Conclusion

Pursuant to N.C. Gen. Stat. § 131E-184(a), Sentara hereby provides the Agency prior written notice of the proposed lease and the basis upon which it is exempt from certificate of need review. Sentara is to commence operating Albemarle Health and its facilities on or about 1 January 2014, and the Acute and Home Care Licensure and Certification Section requires Sentara to provide an approval by the CON Section in connection with its application for a hospital license; therefore we would greatly appreciate it if the Agency would confirm the exemption for the acquisition as described herein by 30 October 2013.

Thank you for your consideration, and we look forward to the Agency's response.

Very truly yours,



Marcus C. Hewitt

cc: Deb Anderson
Jeff King