



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

Pat McCrory
Governor

Aldona Z. Wos, M.D.
Ambassador (Ret.)
Secretary DHHS

Drexdal Pratt
Division Director

January 14, 2014

Mr. Gary S. Qualls
K&L Gates
430 Davis Drive, Suite 400
Morrisville, North Carolina 27560

No Review

Facility or Business: Home Care of the Carolinas
Project Description: The Charlotte-Mecklenburg Hospital Authority will become the sole member of Stanly Health Services, Inc.
County: Stanly
FID #: 030795

Dear Mr. Gary Qualls:

The Certificate of Need Section (CON Section) received your letter of December 20, 2013 regarding the above referenced proposal. Based on the CON law **in effect on the date of this response to your request**, the proposal described in your correspondence is not governed by, and therefore, does not currently require a certificate of need. However, please note that if the CON law is subsequently amended such that the above referenced proposal would require a certificate of need, this determination does not authorize you to proceed to develop the above referenced proposal when the new law becomes effective.

It should be noted that this determination is binding only for the facts represented by you. Consequently, if changes are made in the project or in the facts provided in your correspondence referenced above, a new determination as to whether a certificate of need is required would need to be made by the Certificate of Need Section. Changes in a project include, but are not limited to: (1) increases in the capital cost; (2) acquisition of medical equipment not included in the original cost estimate; (3) modifications in the design of the project; (4) change in location; and (5) any increase in the number of square feet to be constructed.

Certificate of Need Section

www.ncdhhs.gov

Telephone: 919-855-3873 • Fax: 919-733-8139

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

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

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Mr. Gary S. Qualls

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Please contact the CON Section if you have any questions. Also, in all future correspondence you should reference the Facility I.D. # (FID) if the facility is licensed.

Sincerely,



Gloria C. Hale, Project Analyst



Martha J. Frisone, Interim Chief
Certificate of Need Section

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

Alison

Received by
the CON Section
DEC 20 2013

K&L Gates LLP
Post Office Box 14210
Research Triangle Park, NC 27709-4210
430 Davis Drive, Suite 400
Morrisville, NC 27560
T 919.466.1190 www.klgates.com

December 20, 2013

Gary S. Qualls
D 919.466.1182
F 919.516.2072
gary.qualls@klgates.com

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 Charlotte-Mecklenburg Hospital Authority and Stanly Health Services Inc. and its Controlled Affiliates

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

Dear Mr. Smith:

The purpose of this letter is to inform you of a proposed transaction (the "SHS Transaction") involving a change in control of Stanly Health Services, Inc. ("SHS") and its controlled affiliates. Effective on or about January 31, 2014, SHS and its controlled affiliates will become affiliates of The Charlotte-Mecklenburg Hospital Authority ("CMHA"). To accomplish this change in control, on or about January 31, 2014, CMHA will become the sole corporate member of SHS with certain reserve powers and the right to appoint a majority of the SHS board.

SHS and its controlled affiliates are the owners and, where relevant, licensed operators of the following health service facilities regulated under the Certificate of Need ("CON") Law:

1. A hospital licensed to Stanly Regional Medical Center (a controlled affiliate of SHS) and known as Stanly Regional Medical Center in Albemarle, Stanly County, North Carolina (the "Hospital") -- License No. H0008, Facility ID No. 953472 (License attached as Exhibit 1).
2. A Combination Nursing Facility licensed to Stanly Manor, Inc. (a controlled affiliate of SHS), known as Stanly Manor, in Albemarle, Stanly County, North Carolina (the "Nursing Facility") -- License No. NH0464, Facility ID No. 923471 (License attached as Exhibit 2).

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3. A Medicare-Certified Home Health Agency licensed to Stanlex, Inc. (a controlled affiliate of Stanly Regional Medical Center), known as Home Care of the Carolinas, in Albemarle, Stanly County, North Carolina (the "Albemarle HHA") -- License No. HC0308, Facility ID No. 953825 (License attached as Exhibit 3).
4. A Medicare-Certified Home Health Agency licensed to Stanlex, Inc. (a controlled affiliate of Stanly Regional Medical Center), known as Home Care of the Carolinas, in Troy, Montgomery County, North Carolina (the "Troy HHA") - License No. HC2404, Facility ID No. 030795 (License attached as Exhibit 4).
5. 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.

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

This member substitution does not change the ownership of SHS's assets or change the operator, provider, or licensee of any services at any of the SHS Facilities. For instance, Stanly Regional Medical Center will remain the provider and licensed operator of the Hospital. Stanly Manor, Inc. will remain the provider and licensed operator of the Nursing Home. Stanlex, Inc. will remain the provider and licensed operator of the Albemarle HHA and the Troy HHA. West Stanly Imaging, LLC will remain the provider at the West Stanly Imaging Diagnostic 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 the Transaction is either:

- (1) not reviewable as a new institutional health service under the North Carolina Certificate of Need ("CON") law because it is simply a member substitution; 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.

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I. NO REVIEW REQUEST FOR SHS TRANSACTION.

CMHA becoming the sole corporate member of SHS 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). 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) -- 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 that you confirm that the SHS Transaction is not subject to CON review.

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

However, if the Agency treats the 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 such SHS Facilities affected by the SHS Transaction, 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 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

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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 the SHS Facilities, which are existing health service facilities, even if the Agency deems the Transaction to constitute a new institutional health service, the Transaction is nevertheless exempt from CON review.

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

It is our understanding that 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/Stany County (the "ED Project")

(See CON attached hereto as Exhibit 5)

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 SHS Transaction are wholly unrelated to the pending ED Project. Rather, the ED Project transfer is merely a byproduct of the larger SHS Transaction of CMHA becoming the sole member of SHS. The larger purposes of the SHS Transaction include:

- Maintaining the viability of SHS and its affiliates 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

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- 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 SHS Transaction will affect the ability of Stanly Regional Medical Center 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. In addition, Stanly Regional Medical Center will remain a going concern, and will remain the holder of the CON.

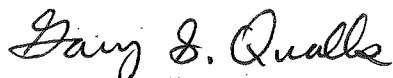
IV. CONCLUSION

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

1. confirmation that the 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 SHS Transaction constitutes an exempt transfer.

Because the effective Transaction date is currently anticipated to be January 31, 2014, 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 or need further information.

Sincerely,


Gary S. Qualls

Mr. Craig R. Smith
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Exhibits

1. Current Hospital License for Stanly Regional Medical Center
2. Current Nursing Home License for Stanly Manor
3. Current HHA License Home Care of the Carolinas, in Albemarle, Stanly County
4. Current HHA License Home Care of the Carolinas, in Troy, Montgomery County
5. CON for Stanly Regional Medical Center Emergency Department



State of North Carolina

Department of Health and Human Services Division of Health Service Regulation

Effective October 01, 2013, this license is issued to

Stanly Regional Medical Center

to operate a hospital known as

Stanly Regional Medical Center

located in Albemarle, North Carolina, Stanly County.

*This license is issued subject to the statutes of the
State of North Carolina, is not transferable and shall remain
in effect until amended by the issuing agency.*

Facility ID: 953472

License Number: H0008

Bed Capacity: 109

General Acute 97, Psych 12,

Dedicated Inpatient Surgical Operating Rooms: 1

Dedicated Ambulatory Surgical Operating Rooms: 0

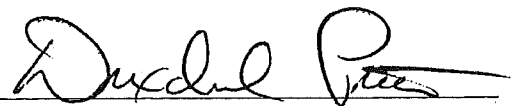
Shared Surgical Operating Rooms: 5

Dedicated Endoscopy Rooms: 2

Authorized by:



Secretary, N.C. Department of Health and
Human Services



Director, Division of Health Service Regulation

State of North Carolina

Department of Health and Human Services
Division of Health Service Regulation

Effective January 01, 2013, this license is issued to

Stanly Manor Inc

to operate a nursing facility known as

Stanly Manor

located in Albemarle, Stanly County

*This license is issued subject to the statutes of the
State of North Carolina, is not transferable and shall expire
midnight December 31, 2013.*

Facility ID: 923471

License Number: NH0464

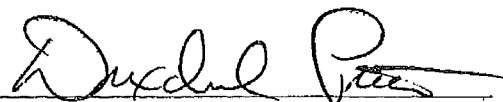
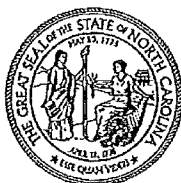
Bed Capacity: 100

Nursing Facility Beds 90 / Adult Care Home Beds 10

Authorized by:



Acting Secretary, N.C. Department of Health and
Human Services



Director, Division of Health Service Regulation

State of North Carolina

Department of Health and Human Services
Division of Health Service Regulation

Effective January 01, 2013, this license is issued to

Stanlex, Inc.

to operate an agency known as

Home Care of the Carolinas

located at 907 North Second Street

City of Albemarle, North Carolina.

*This license is issued subject to the statutes of the
State of North Carolina, is not transferable and shall expire
midnight December 31, 2013.*

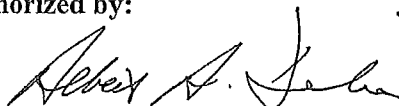
Facility ID: 953825

License Number: HC0308

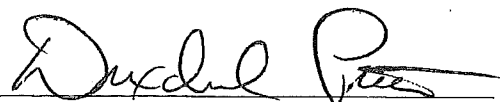
***Home Care Services: Nursing Care, Infusion Nursing, In-home Aide, Medical Social Services, Physical Therapy,
Occupational Therapy, Speech Therapy,***

This agency is authorized to provide Medicare-certified home health services.

Authorized by:



Acting Secretary, N.C. Department of Health and
Human Services



Director, Division of Health Service Regulation

State of North Carolina

Department of Health and Human Services
Division of Health Service Regulation

Effective January 01, 2013, this license is issued to
Stanlex, Inc.

to operate an agency known as
Home Care of the Carolinas

located at 1061 Albenarle Road
City of Troy, North Carolina.

This license is issued subject to the statutes of the
State of North Carolina, is not transferable and shall expire
midnight December 31, 2013.

Facility ID: 030795

License Number: **HC2404**

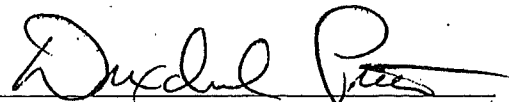
*Home Care Services: Nursing Care , Infusion Nursing , In-home Aide , Medical Social Services, Physical Therapy,
Occupational Therapy, Speech Therapy,*

This agency is authorized to provide Medicare-certified home health services.

Authorized by:



Secretary, N.C. Department of Health and
Human Services



Director, Division of Health Service Regulation

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

Craig R. Smith
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