



NC DEPARTMENT OF
**HEALTH AND
HUMAN SERVICES**

ROY COOPER • Governor

MANDY COHEN, MD, MPH • Secretary

MARK PAYNE • Director, Division of Health Service Regulation

October 5, 2018

Gary S. Qualls
430 Davis Drive, Suite 400
Morrisville, NC 27560

Exempt from Review – Acquisition of Facility

Record #: 2731
Facility Name: Carolinas Medical Center – Mercy Campus
Type of Facility: Hospital
FID #: 923352
Acquisition by: The Charlotte-Mecklenburg Hospital Authority
Business #: 1770
County: Mecklenburg

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.*"

In the event that 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 or not a certificate of need would be required. If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,

Julie M. Faenza
Project Analyst

Martha J. Frisone
Chief, Healthcare Planning and
Certificate of Need Section

cc: Acute and Home Care Licensure and Certification Section, DHSR
Melinda Boyette, Administrative Assistant, Healthcare Planning, 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: 2701 Mail Service Center, Raleigh, NC 27699-2701
www.ncdhhs.gov/dhsr/ • TEL: 919-855-3750 • FAX: 919-733-2757

AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER



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October 2, 2018

Via Hand Delivery

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

Re: Merger of Mercy Hospital, Inc. Into Its Parent, The Charlotte-Mecklenburg Hospital Authority

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

Dear Ms. Frisone:

The purpose of this letter is to inform you of a proposed intra-organizational transaction (the “Mercy Merger”) involving a merger of Mercy Hospital, Inc. (“Mercy”) into its ultimate parent, The Charlotte-Mecklenburg Hospital Authority (“CMHA”).¹ Effective on or about January 1, 2019, Mercy will merge into CMHA, and Mercy will cease to exist.

1. Mercy-Related Facilities

Mercy is the licensed operator and owner of the acute care hospital known as Carolinas HealthCare System (“CHS”) Pineville in Charlotte, Mecklenburg County -- License No. H0042 (“CHS Pineville”).

Mercy also owns the building housing the CMC-Mercy Campus of Carolinas Medical Center in Charlotte (“CMC”) -- License No. H0071. Mercy leases that CMC-Mercy Campus Building to CMHA. CMHA operates the CMC-Mercy Campus as part of CMC.

2. Impact of Mercy Merger

The Mercy Merger will result in Mercy’s ultimate parent, CMHA stepping into the shoes of Mercy in every respect. At the same time, CHS Pineville’s name will change to Atrium Health Pineville.

¹ Mercy Hospital, Inc. is wholly owned by Mercy Health Services, Inc., which is wholly owned by CMHA. Effective January 1, 2019, Mercy Health Services, Inc. will also merge into CMHA.

a. Impact on CHS Pineville

Thus, effective January 1, 2019, CMHA will:

1. Directly own Mercy's current assets pertaining to CHS Pineville;
2. Directly operate Mercy's current assets pertaining to CHS Pineville;
3. Become CHS Pineville's Medicare and Medicaid provider; and
4. Become CHS Pineville's licensee.

b. Impact on CMC-Mercy Campus Building

Also, as to the CMC-Mercy Campus Building:

1. Effective January 1, 2019, CMHA will directly own the building housing the CMC-Mercy Campus of CMC;
2. CMHA already operates the CMC-Mercy Campus as part of CMC;
3. CMHA is already CMC's Medicare and Medicaid provider; and
4. CMHA is already CMC's licensee.

3. Request to Agency

We request that the Department of Health and Human Services, Division of Health Service Regulation, Healthcare Planning and Certificate of Need Section (the "Agency"):

1. confirm that the Mercy Merger is not reviewable as a new institutional health service under the CON law because it is simply a related entity merger; or
2. in the alternative, confirm that the Mercy Merger is 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 any or all of the Mercy Merger to be an exempt transfer – under Section 131E-184(a)(8) – of Mercy's approved, but not fully developed CHS Pineville or CMC-Mercy Campus Building CON Projects (collectively described in Part III as the "Pending Projects"), we request approval of a good cause transfer of those Pending Projects.

I. No Review Request for the Mercy Merger.

CMHA becoming the sole, direct owner of CHS Pineville 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). This type of related-entity transfer – where an indirect parent owner becomes the sole, direct owner of a hospital – is not included in the list of activities that constitute the development of a new institutional health service, requiring a CON.

Moreover, the mere intra-organizational transfer of the building housing the CMC-Mercy Campus of CMC is not a CON triggering event, particularly when CMHA is already the operator and licensee of CMC, the licensed hospital operated in the building space. In other words, with respect to CMC, the health service facility’s ownership is not changing – even intra-organizationally – because the operator of the regulated facility is already the provider, CMHA.

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 Mercy Merger – 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.”).

Based on the foregoing, we request your confirmation that the Mercy Merger is not even subject to CON review. Thus, an exemption is not necessary.

II. Exemption Notice for Mercy Merger (If the Merger is Deemed CON Reviewable).

However, if the Agency treats the Mercy Merger as the acquisition of CHS Pineville (as a health service facility), and thus CON reviewable, this letter serves as an exemption notice for CHS Pineville’s acquisition, pursuant to N.C. Gen. Stat. § 131E-184(a)(8).²

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), CHS Pineville constitutes a “health service facility.”

² The same request would apply in the unlikely event that the Agency treats the intra-organizational transfer of the building housing the CMC-Mercy Campus of CMC as a CON triggering event.

Furthermore, the proposed Mercy Merger 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 existing health service facility, CHS Pineville. Likewise, the transaction does not include the offering of any *per se* reviewable services except those already offered by CHS Pineville. See N.C. Gen. Stat. § 131E-176(16)(f).

Accordingly, given that the transaction involves CHS Pineville, which is an existing health service facility, even if the Agency deems the Mercy Merger to constitute a new institutional health service, the Mercy Merger is nevertheless exempt from CON review.

III. Good Cause Transfer for the Pending Projects (If the Merger is Deemed CON Reviewable Yet Exempt.

Certain CHS Pineville and Mercy Campus Projects – listed in the chart below – are currently under development (the “Pending Projects”).

CHS Pineville and Mercy Campus of CMC - CONs Under Development				
Con Project ID	Facility	Project Description	Status	CON Issue Date
F-11361-17	CHS Pineville	Develop no more than 15 additional acute care beds for a total of no more than 221 acute care beds / Mecklenburg County	CON Issued; Under Development	Jun-18
F-8740-11 F-7709-06	CMC-Providence (licensed as part of CHS Pineville)	Develop a satellite emergency department near the intersection of Providence Rd and I-485 and change site for the imaging equipment approved in Project ID F-7709-06 (CMC Mint Hill Imaging Center)	CON Issued; Under Development	Mar-12
F-11425-17	CHS Pineville	Acquire no more than one new fixed MRI scanner pursuant to the Need Determination in the 2017 SMFP for a total of no more than two fixed MRI scanners	CON Issued; Under Development	May-18
F-11268-16	CMC-Mercy	Renovate existing space on the Mercy campus of CMC related to surgical services and relocate one existing operating room to the CMC campus	CON Issued; Under Development	April-17

Martha J. Frisone, Chief

October 2, 2018

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Thus, if the Mercy Merger is considered to be a transfer of the Pending Projects, we request approval for a "good cause" transfer of those Pending Projects under N.C. Gen. Stat. § 131E-189 and 10A N.C.A.C. 14C.0502. We believe that good cause exists for such transfers.

Good cause exists for transfer of the Pending Projects because the larger purposes of the Mercy Merger are wholly unrelated to the Pending Projects. Rather, the Pending Projects are merely byproducts of the larger Mercy Merger, where CMHA becomes the direct owner of Mercy's assets. The larger purpose of the Mercy Merger centers around administrative efficiencies associated with operating a large hospital system under a single, streamlined organizational structure.

Moreover, nothing about this Mercy Merger will affect the ability of CMHA to materially comply with any representations in the Pending Projects or the CON conditions placed on such Projects. The operations and development of the Pending Projects will be materially the same as represented in the Pending Projects' CON applications and in compliance with the issued CONs.

CONCLUSION

Based upon the foregoing information, we request that the Agency:

1. confirm that the Mercy Merger is not reviewable as a new institutional health service under the CON law because it is simply a related entity merger; or
2. in the alternative, confirm that the Mercy Merger is exempt from review under the CON law's exemption provisions in N.C. Gen. Stat. § 131E-184(a)(8); and
3. approve a good cause transfer for the Pending Projects **if** the Agency determines that any part of the Mercy Merger constitutes an exempt transfer under N.C. Gen. Stat. § 131E-184(a)(8).

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