

NC DEPARTMENT OF
**HEALTH AND
HUMAN SERVICES**

ROY COOPER • Governor
MANDY COHEN, MD, MPH • Secretary
MARK PAYNE • Director, Division of Health Service Regulation

VIA EMAIL ONLY

May 13, 2021

Candace S. Friel
Candace.friel@nelsonmullins.com

No Review

Record #: 3550
Date of Request: April 30, 2021
Business Name: Comfort Care Home Health and Hospice
Business #: 2335
Project Description: Provision of home health and hospice services to North Carolina residents by Comfort Care Home Health and Hospice in Chesapeake, Virginia

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) received your correspondence regarding the project described above. Based on the CON law **in effect on the date of this response to your request**, the project as described is not governed by, and therefore, does not currently require a certificate of need. 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.

This determination is binding only for the facts represented in your correspondence. If changes are made in the project or in the facts provided in the correspondence referenced above, a new determination as to whether a certificate of need is required would need to be made by this office.

Please do not hesitate to contact this office if you have any questions.

Sincerely,



Gregory F. Yakaboski
Project Analyst



Lisa Pittman
Acting Chief, Certificate of Need

cc: Acute and Home Care Licensure and Certification Section, 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
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April 30, 2021

Via E-mail

Lisa Pittman, Assistant Chief
North Carolina Department of Health and Human Services
Division of Health Service Regulation
Healthcare Planning and Certificate of Need Section
2704 Mail Service Center
Raleigh, NC 27699-2704
Email: lisa.pittman@dhhs.nc.gov

Email: martha.waller@dhhs.nc.gov

RE: Chesapeake Hospital Authority d/b/a Chesapeake Regional Healthcare
Request for No Review Determination

Dear Ms. Pittman:

We are writing on behalf of our client, Chesapeake Hospital Authority d/b/a Chesapeake Regional Healthcare ("Chesapeake") to respectfully request that the Healthcare Planning and Certificate of Need Section (the "Agency") issue a determination that a Certificate of Need ("CON") is not required for the proposal detailed herein.

Chesapeake, a Virginia-based healthcare system, provides acute and long-term care services to patients in Virginia and the northeastern part of North Carolina. Chesapeake owns and operates Chesapeake Regional Medical Center in Chesapeake, Virginia and owns a 40% interest in The Outer Banks Hospital, located at 4800 S. Croatan Highway in Nags Head, North Carolina. It also employs a number of physicians with offices in northeastern North Carolina.

As part of its comprehensive complement of services, Chesapeake provides home care and hospice services through its facility Comfort Care Home Health and Hospice ("Comfort Care"), located at 667 Kingsborough Square, Suite 201, Chesapeake, Virginia 23320. Comfort Care is a Medicare certified home health and hospice agency and its Centers for Medicare and Medicaid Services' provider number is 49-7279. Comfort Care is exempt from Virginia licensure requirements under sections 32.1-1622(2) and 32.1-

162.8(3)(a) of the Code of Virginia, however, it is subject to inspection by the Commonwealth of Virginia, Department of Health, Office of Licensure and Certification, under sections 32.1-162.4 and 32.1-162.10 of the Code of Virginia.

On January 6, 2016, we wrote to the Agency and requested a no review determination on behalf of Chesapeake which, at the time, wanted to offer home health services to patients residing in northeastern North Carolina who were being served at any of its existing facilities. See Exhibit A attached hereto. On January 13, 2016, the Agency responded and determined that Chesapeake's provision of home health services to North Carolina resident by Comfort Care in Chesapeake is not governed by and does not require a certificate of need. See Exhibit B attached hereto.

At this time, Chesapeake would like to confirm that its provision of home health and hospice services through Comfort Care to residents of North Carolina, including those residents who are currently receiving services at Chesapeake facilities as well as other members of the public who may not be current Chesapeake patients, is not governed by and does not require a CON. In offering these services, Chesapeake would not hold itself out to be a North Carolina home health and hospice agency, but rather only make its home health and hospice services available to North Carolina residents who may then choose to receive those services from Comfort Care.

Chesapeake does not propose, at this time, to establish or open a home health agency or hospice agency office in North Carolina. As such, we do not believe that Chesapeake's offering of these services to North Carolina requires the issuance of a CON. N.C. Gen. Stat. § 131E-176(16)a. provides that a CON shall be required for the "construction, development, or other establishment of a new health service facility." A health service facility includes a home health agency *office* and a hospice *office*. N.C. Gen. Stat. § 131E-176(9b). New institutional health services include the "opening of an additional office *by an existing home health agency*. . ." N.C. Gen. Stat. § 131E-176(16)n. Similarly, the "*construction, development or other establishment* of a hospice, hospice inpatient facility or hospice residential care facility" is considered to be a new institutional health service under N.C. Gen. Stat. § 131E-176(16)n (emphasis added). So long as Chesapeake, which is not an existing North Carolina provider of home health or hospice services, does not construct or open a home health or hospice office in North Carolina, it is our contention that these provisions do not require Chesapeake to obtain a CON in order to serve North Carolina residents as described herein. We are aware of no other provision of the CON law that would change this analysis.

We understand that any such requested determination is based upon the facts as they are represented here and would not be effective should Chesapeake offer services that materially differ from the facts as set forth in this letter. We further acknowledge Chesapeake's obligations to comply with any applicable federal laws or regulations as may be required to provide services to Medicare and Medicaid patients. We have also

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reached out to the Licensure and Certification Section to ensure no licensure requirements apply to this proposal.

Thank you for your attention to this matter. Please do not hesitate to reach out should you have any questions or require additional information in your consideration of this proposal.

Very truly yours,



Candace S. Friel

CSF:nd
Enclosures

Nelson Mullins

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January 6, 2016

VIA HAND DELIVERY

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

RE: Request for No Review Determination
Chesapeake Hospital Authority d/b/a Chesapeake Regional Healthcare

Dear Ms. Frisone:

On behalf of our client, Chesapeake Hospital Authority d/b/a Chesapeake Regional Healthcare ("Chesapeake"), we are writing to respectfully request that the Healthcare Planning and Certificate of Need Section ("Agency") issue a determination that a Certificate of Need ("CON") is not required for the proposed activities described in this letter.

Chesapeake owns and operates Chesapeake Regional Medical Center, located at 736 North Battlefield Boulevard, Chesapeake, Virginia 23320. Chesapeake Regional Medical Center serves numerous patients who reside in northeastern North Carolina. Additionally, Chesapeake owns a 40% interest in The Outer Banks Hospital, located at 4800 S. Croatan Highway, Nags Head, North Carolina 27959, and Chesapeake employs a number of physicians who have offices and practice in northeastern North Carolina.

Chesapeake also owns and operates Comfortcare Home Health and Hospice, located at 667 Kingsborough Square, Suite 201, Chesapeake, Virginia 23320, which holds provider number 49-7279 from the federal Centers for Medicaid and Medicare services. As a Medicare certified home health agency, Comfortcare qualifies for exemption from licensure under section 32.1-162.8(3)(a) of the Code of Virginia, but is subject to inspection by the Commonwealth of Virginia, Department of Health, Office of Licensure and Certification,

Ms. Martha J. Frisone
January 6, 2016
Page 2

under the provisions of section 32.1-162.10 of the Code of Virginia. Comfortcare provides home health services to, among other recipients, patients who have received in-patient or out-patient treatment at Chesapeake Regional Medical Center.

Chesapeake does not operate, and has no present plans to develop, a home health agency office in North Carolina. However, Chesapeake would like to provide home health services to residents of northeastern North Carolina by means of personnel operating out of Comfortcare's home health agency office in Virginia.

If Chesapeake is permitted to offer this service without first obtaining a CON, it will not advertise these services to the general public in North Carolina or hold itself to be a North Carolina home health agency. However, Chesapeake would make patients served at any of its existing facilities, including the Outer Banks Hospital and medical practices located in North Carolina, aware that they may use Comfortcare's home health agency, as well as any other providers who may be available in their area.

Under the foregoing facts, we believe that no CON is required for Comfortcare's personnel to provide these services. N.C. Gen. Stat. § 131E-176(16a) provides that a CON is required for the "construction, development, or other establishment of a new health service facility." In turn, N.C. Gen. Stat. § 131E-176(9b) defines the term "health service facility" to include a "home health agency *office*" (emphasis added). So long as Chesapeake does not open a home health agency office in North Carolina, it is our contention that these provisions do not require Chesapeake to obtain a CON in order to serve the above-referenced patients. Further, we find no other provision of the North Carolina CON Law which would change this analysis.

Based on the foregoing facts and statutory provisions, we respectfully request the Agency to issue the determination that Chesapeake, through Comfortcare's office in Chesapeake, Virginia, may provide home health agency services to residents of North Carolina. We understand that such a determination would not be effective should Chesapeake offer services in any way which materially differs from the facts set forth in this letter. We also understand that Chesapeake must comply with any provisions of federal law or regulation in order to be paid for services provided to Medicare and Medicaid patients.

Ms. Martha J. Frisone
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Please contact us if you need any further information to consider this request. We appreciate your prompt attention to this matter. With best wishes, we are

Very truly yours,

NELSON MULLINS RILEY &
SCARBOROUGH LLP


Noah H. Huffstetler III

NHH/jkb

cc: Azzie Conley (via electronic mail)
Lori B. Pycior-Wright (via electronic mail)
Donna Marchant-Roof (via electronic mail)



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

Pat McCrory
Governor

Richard O. Brajer
Secretary DHHS

Mark Payne
Assistant Secretary for Audit and
Health Service Regulation

January 13, 2016

Noah Huffstetler
4140 Parklake Avenue, 2nd Floor
Raleigh, NC 27612

No Review

Record #: 1825
Business Name: Comfortcare Home Health and Hospice
Business #: 2335
Project Description: Provision of home health services to North Carolina residents by Comfortcare Home Health and Hospice in Chesapeake Virginia

Dear Mr. Huffstetler:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) received your letter of January 6, 2016 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.

However, you need to contact the Agency's Acute and Home Care Licensure and Certification Section to determine if they have any requirements for development of the proposed project.

It should be noted that this determination is binding only for the facts represented in your correspondence. 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 this office. 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.



Healthcare Planning and Certificate of Need Section

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

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Noah Huffstetler
January 13, 2016
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Please contact this office if you have any questions. Also, in all future correspondence you should reference the Facility ID # (FID) if the facility is licensed.

Sincerely,



Jane Rhoe-Jones
Project Analyst



Martha J. Frisone
Assistant Chief, Certificate of Need

cc: Acute and Home Care Licensure and Certification Section, DHSR
Kelli Fisk, Program Assistant, Healthcare Planning, DHSR