



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

RESPONSE REQUIRED

February 13, 2015

Catharine Cumber
3100 Tower Boulevard, Suite 1300
Durham, NC 27707

Conditional Approval

Project ID #: J-10362-14
Facility: Duke Cancer Center Cary Radiation Oncology
Project Description: Replace existing linear accelerator located at Duke Cancer Center Cary Radiation Oncology
County: Wake
FID #: 960894

Dear Ms. Cumber:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) has conditionally approved the above referenced certificate of need application. This decision was made after a review of the applications submitted for this cycle and after consideration of the Certificate of Need Law, G.S. 131E-175 et. seq. and regulations promulgated there under, the State Medical Facilities Plan, and other applicable information. Attached to this letter are the required findings made with respect to your application. The applicant shall not proceed with the construction, offering or development of this project until the certificate of need is issued. Further, the Agency shall not issue the certificate of need until all applicable conditions of approval have been met pursuant to G.S. 131E-187(a). The conditions are as follows:

1. Duke University Health System d/b/a Duke Raleigh Hospital shall materially comply with all representations made in the certificate of need application.
2. Duke University Health System d/b/a Duke Raleigh Hospital shall acquire no more than one linear accelerator to replace the linear accelerator located at Duke Cancer Center Cary Radiation Oncology for a total of no more than one linear accelerator at Duke Cancer Center Cary Radiation Oncology. Upon project completion, Duke Raleigh Hospital shall

Healthcare Planning and Certificate of Need Section

www.ncdhhs.gov

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

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

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own and operate no more than a total of four linear accelerators, including Project ID #J-7941-07.

3. Duke University Health System d/b/a Duke Raleigh Hospital shall dispose of the existing Cary Radiation Oncology linear accelerator by removing it from North Carolina.
4. Duke University Health System d/b/a Duke Raleigh Hospital 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 that would otherwise require a certificate of need.
5. Duke University Health System d/b/a Duke Raleigh Hospital 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.
6. Duke University Health System d/b/a Duke Raleigh Hospital shall acknowledge acceptance of and agree to comply with all conditions stated herein to the Agency in writing prior to issuance of the certificate of need.

Response to the above conditions should be submitted to the Agency no later than 35 days from the date of the decision. Failure to respond within this time period may result in the Agency making a determination not to issue a certificate of need for the project referenced above.

The conditional approval is valid only for a capital expenditure of \$5,400,000. If a cost overrun occurs that exceeds the approved capital expenditure amount, a new certificate of need may be required as determined by G.S. 131E-176(16)(e).

The applicant should be aware that according to the Certificate of Need law any affected person shall have thirty (30) days after the date of decision to file a petition for a contested case on this approval. Further, if you are aggrieved by the conditions of the decision you may file a petition for a contested case hearing in accordance with G.S. 150B, Article 3, as amended. This petition must be filed with the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, North Carolina 27699-6714 within thirty (30) days of the date of this decision. [Note: Effective October 1, 2009, OAH requires a filing fee with submittal of petitions for contested cases. Please direct all questions regarding this fee to OAH Clerk's Office (919-431-3000).]

G.S. 150B-23 provides that a party filing a petition must also serve a copy of the petition on all parties to the petition. Therefore, if you file a petition for a contested case hearing, you must serve a copy of the petition on the Department of Health and Human Services by mailing a copy of your petition to:

Emery Milliken
Department of Health and Human Services,
Office of Legal Affairs,
Adams Building – Room 154
2001 Mail Service Center
Raleigh, North Carolina, 27699-2001

It is requested that a copy of the petition also be served on the Agency.

The certificate of need will not be issued before the completion of this 30 day period ending March 16, 2015. If a contested case request is received within the thirty (30) day period, the certificate will not be issued until the appeal is resolved (10A NCAC 14C .0208).

The timetable for completion of the project is the timetable outlined in the certificate of need application, unless an adjustment has been made by the Agency because the review period was extended. The timetable for this project is as follows:

Approval of Final Drawings by the Construction Section, DHSR _____	March 16, 2016
25% Completion of Construction _____	May 8, 2016
50% Completion of Construction _____	June 14, 2016
75% Completion of Construction _____	July 21, 2016
Completion of Construction _____	August 3, 2016
Occupancy/Offering of Service /Operation of Equipment _____	November 16, 2016

If the decision is appealed, the timetable set forth in this letter will be adjusted accordingly before the Certificate of Need is issued. Please contact this office if any clarification of this decision is required.

Please refer to the Project ID # and Facility ID # (FID) in all correspondence.

Sincerely,

Celia C. Inman
Project Analyst

Lisa Pittman
Team Leader, Certificate of Need

Attachment

cc: Acute & Home Care Licensure & Certification Section, DHSR
Construction Section, DHSR
Assistant Chief, Healthcare Planning

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing notice of **conditional approval** on the following person by placing a copy in an official depository of the United States Postal Service in a postage-paid, first class envelope addressed as follows:

Catharine Cummer
3100 Tower Boulevard, Suite 1300
Durham, NC 27707

Project ID #: J-10362-14
FID #: 960894

This the 13th day of February, 2015.

Celia C. Inman
Project Analyst, Certificate of Need