



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

March 22, 2013

Ms. Mary Beth Johnston
K&L Gates, LLP
430 Davis Drive, Suite 400
Morrisville, North Carolina 27560

Exempt from Review – Acquisition of Facilities

Facilities: Carolinas Medical Center-Union, Behavioral Healthcenter-First Step, Carolina Endoscopy Center-Monroe, Union West Surgery Center, Union West MRI
Acquisition by: The Charlotte-Mecklenburg Hospital Authority
County: Union
FID #s: 923515, 921845, 070116, 050752, 031149

Dear Ms. Johnston:

In response to your letter of March 8, 2013, the above referenced proposal is exempt from certificate of need review in accordance with N.C.G.S 131E-184(a)(8). Therefore, The Charlotte-Mecklenburg Hospital Authority may proceed to acquire the above referenced health service facilities without first obtaining certificates of need. However, you need to contact the Acute and Home Care Licensure and Certification Section and the Mental Health Licensure and Certification Section of the Division of Health Service Regulation to obtain instructions for changing ownership of the existing facilities. 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 separate determination. If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,

Gloria C. Hale
Project Analyst

Craig R. Smith, Chief
Certificate of Need Section

cc: Acute and Home Care Licensure and Certification Section, DHHS
Mental Health Licensure and Certification Section, DHHS

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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Ms. Mary Beth Johnston
K&L Gates
430 Davis Drive, Suite 400
Morrisville, North Carolina 27560

RE: Transfer For Good Cause/ Project I.D.#F-8623-11/ Carolinas Medical Center - Union / shall offer dialysis services in existing acute care hospital/ Union County

Transfer For Good Cause/ Project I.D.#F-8607-10/ Carolinas Medical Center - Union / shall construct a new bed tower with 25 acute care beds to accommodate the relocation of women's and pediatric services. Renovate vacated space to accommodate 25 new medical/surgical beds and relocate helipad. Carolinas Medical Center-Union shall have a total of 182 acute care beds upon completion of this project/ Union County

Transfer For Good Cause/ Project I.D.#F-7525-06/ Carolinas Medical Center - Union / replace one existing linear accelerator at Carolinas Medical Center and relocate the replacement linear accelerator to Carolinas Medical Center-Union/ Union County

FID#: 923515

Dear Ms. Johnston:

This letter responds to your correspondence of March 8, 2013, in which you requested approval of a transfer of ownership or control of the above referenced projects for good cause. The Agency has determined that good cause exists based on finding the transfer will be done in conjunction with a proposed merger of Union Memorial Regional Medical Center, Inc. with and into its parent, The Charlotte-Mecklenburg Hospital Authority. Consequently, the Agency shall not withdraw the certificates of need as a result of these transfers. However, you should contact the Acute and Home Care Licensure and Certification Section of the Division of Health Service Regulation to determine if they have any special requirements regarding the proposed transfer of ownership or control.

Please be advised that pursuant to G.S. 131E-181(b), any person who subsequently acquires a certificate of need is required to materially comply with the representations made in the



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application that was submitted to the Agency for the project. Further, in accordance with G.S. 131E-190(i), the Agency may bring action in Superior Court for injunctive relief requiring the successor to operate the service in material compliance with those representations.

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

If you have any questions concerning this matter, please do not hesitate to call me. Please refer to the Project I.D.# and Facility I.D.# (FID) in all correspondence.

Sincerely,



Gloria C. Hale, Project Analyst



Craig R. Smith, Chief
Certificate of Need Section

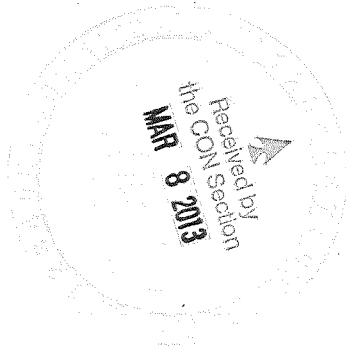
cc: Medical Facilities Planning Section, DHSR
Acute and Home Care Licensure and Certification Section, DHSR

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March 8, 2013

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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: Merger of Union Memorial Regional Medical Center, Inc. with and into its parent The Charlotte-Mecklenburg Hospital Authority

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

Carolinas Medical Center - Union: License No. H0050; Facility ID No. 923515
Behavioral Healthcenter-First Step: License No. MHL-090-024; Facility ID No.
921845

Carolina Endoscopy Center-Monroe: License No. AS0090; Facility ID No. 070116
Union West Surgery Center: License No. AS0132; Facility ID No. 050752
Union West MRI: Facility ID No. 031149

Dear Craig:

We represent Union Memorial Regional Medical Center, Inc. ("UMRMC") and The Charlotte-Mecklenburg Hospital Authority ("CMHA"). The purpose of this letter is to inform the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Certificate of Need Section (the "Agency") of an upcoming corporate reorganization in the form of a merger, to be effective April 1, 2013, of UMRMC, a North Carolina nonprofit charitable corporation, with and into CMHA, a North Carolina hospital authority. Currently, CMHA is the ultimate parent of UMRMC.

As further described below, we are requesting that the Agency confirm that this corporate reorganization is either not reviewable as a new institutional health service under the North Carolina Certificate of Need ("CON") law or (in the alternative) exempt from review under the CON law's exemption provisions in N.C. Gen. Stat. § 131E-184. Additionally, to the extent the Agency deems

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this a transfer of UMRMC's approved but not fully developed CONs, we are requesting approval of a good cause transfer of three CON projects under development.

I. THE PROPOSED MERGER

UMRMC's sole member is Carolinas Union HealthCare, Inc., whose sole member is Carolinas Hospital Network, Inc., whose sole member is Carolinas Health Network, Inc., whose sole member is CMHA. By virtue of being the ultimate parent of UMRMC, CMHA has maintained and exercised control over UMRMC since 1995. CMHA operates UMRMC as a component of CMHA's vertically integrated healthcare delivery system.

Upon consummation of the merger, all of the assets of UMRMC will be transferred to CMHA by operation of law. CMHA will continue to utilize the assets and operations of UMRMC in a manner consistent with the nonprofit mission of UMRMC. UMRMC is the licensed operator of a general acute care hospital (known as Carolinas Medical Center-Union and referred to herein as "CMC-Union"), which includes licensed acute care beds, nursing beds, operating rooms, endoscopy rooms, and an emergency department known as CMC-Waxhaw which is licensed as a part of CMC-Union. UMRMC is also the licensed operator of a chemical dependency treatment facility (known as "Behavioral Healthcenter – First Step"), which includes chemical dependency (substance abuse) beds licensed for residential treatment/rehabilitation under 10A N.C. Admin. Code § 27G.3400.

In addition to the general acute care hospital known as CMC-Union and the chemical dependency treatment facility known as Behavioral Healthcenter – First Step, each of which is operated by UMRMC, UMRMC also has ownership interests in the following three health service facilities in North Carolina: Carolina Endoscopy Center-Monroe (a freestanding ambulatory surgical facility); Union West Surgery Center (a freestanding ambulatory surgical facility); and Union West MRI (a diagnostic center). This merger does not change the ultimate owner and operator of these health service facilities. For instance, after the merger, Endoscopy Center-Monroe, LLC will remain the owner and operator of Carolina Endoscopy Center-Monroe, Union Health Services, LLC will remain the owner and operator of Union West Surgery Center, and Union Medical Services, LLC will remain the owner and operator of Union West MRI. The merger does change the underlying ownership interest in these limited liability companies ("LLCs") as described in the next paragraph.

Specifically, UMRMC currently owns a 60% membership interest in Endoscopy Center-Monroe, LLC, which is the owner and operator of Carolina Endoscopy Center-Monroe. After the merger, CMHA will own this 60% interest. UMRMC is currently the sole member of Union Health Services, LLC which is the owner and operator of Union West Surgery Center. After the merger, CMHA will be the sole member. With regard to Union Medical Services, LLC, which is the owner and operator of Union West MRI, UMRMC currently owns a 50% interest in this LLC and CMHA owns the other 50% interest. After the merger, CMHA will become the sole member of Union Medical Services, LLC.

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II. NO REVIEW REQUEST

As to the health service facilities currently operated by UMRMC, the merger of a wholly-owned subsidiary into its parent is not a CON reviewable event for the following reasons.

First, the proposed corporate reorganization is not expressly addressed in N.C. Gen. Stat. § 131E-176(16). The merger of a wholly-owned subsidiary into its parent is not 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) 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 situations 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.”).

Second, to the extent that the holder of the CONs for CMC-Union and Behavioral Healthcenter – First Step is changing (from UMRMC to its 100% owner CMHA), the identity of the holder is changing solely because of a corporate reorganization. It is not the type of transaction that would trigger CON review. For instance, by analogy, this corporate reorganization would not constitute the transfer of a CON even if it occurred during the development phase. Rather, in such an instance, it is a reorganization that the CON rules recognize as non-reviewable. The Agency’s rule at 10A N.C. Admin. Code § 14C.0502 states in pertinent part as follows:

10A N.C.A.C. 14C.0502 WITHDRAWAL OF A CERTIFICATE

- (b) Ownership of a certificate of need is transferred when any person acquires a certificate from the holder by purchase, donation, lease, trade, or any comparable arrangement, except that ownership of a certificate of need is not transferred when:
 - (1) the holder of the certificate is a corporation and the identity of the holder changes because of a corporate reorganization; or
 - (2) the holder of the certificate is a partnership and the identity of the holder changes because the same partners reorganize as a new partnership.
- (c) Control of a certificate of need is transferred when any person acquires a majority interest in the facility, project or holder or any parent entity of the facility, project or holder.

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In applying the foregoing rule by analogy, the corporate reorganization does not equate to transfer of ownership of a CON within the meaning of the rule. The merger of a wholly-owned subsidiary into its parent does not change control or ownership outside of the two related entities, but constitutes a corporate reorganization contemplated in Subsection (b)(1).

Further, no capital expenditures are being incurred to accomplish this corporate reorganization. After the reorganization, CMHA will continue to operate these health service facilities as a hospital and chemical dependency treatment facility, respectively, at their current locations.

As to the three health service facilities in which UMRMC has ownership interest but does not operate, the member substitution of CMHA is not a CON reviewable event. The proposed change in control is not expressly addressed 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. For the reasons described above, pursuant to the maxim of statutory construction *expressio unius est exclusio alterius*, those transactions not included in N.C. Gen. Stat. § 131E-176(16) do not require a CON.

III. EXEMPTION NOTICE

For the reasons described above, we do not think that notice under N.C. Gen. Stat. § 131E-184(a)(8) is technically required. However, to the extent that you disagree, please accept this letter as the required notice under N.C. Gen. Stat. § 131E-184(a)(8) for an exemption.

The General Assembly has chosen to exempt certain otherwise reviewable events from CON review, including the acquisition of an existing health service facility and the equipment owned by the health service facility at the time of the acquisition.¹ Under N.C. Gen. Stat. § 131E-176(9b), a hospital, chemical dependency treatment facility, ambulatory surgical facility, and diagnostic center are each a “health service facility.”

Assuming that the transaction is deemed by the Agency to be an acquisition under the CON law, upon consummation of the merger, CMHA will be acquiring an existing “health service facility,” including all equipment owned at the time of acquisition. Specifically, CMHA will be acquiring the hospital known as CMC-Union and the chemical dependency treatment facility known as Behavioral Healthcenter – First Step, including all equipment owned by the hospital and chemical dependency treatment facility at the time of the acquisition. After the merger, CMHA will continue to operate these health service facilities as a hospital and chemical dependency treatment facility, respectively, at their current locations.

¹ See N.C. Gen. Stat. § 131E-184(a)(8).

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Similarly, again assuming that the transaction is deemed by the Agency to be an acquisition under the CON law, CMHA will be acquiring the following three health service facilities in North Carolina: Carolina Endoscopy Center-Monroe (an ambulatory surgical facility); Union West Surgery Center (an ambulatory surgical facility); and Union West MRI (a diagnostic center). These acquisitions will occur through the change in the underlying ownership of the LLCs as described above. After the merger, CMHA, as the majority owner in each of the LLCs owning these health service facilities, will continue to operate the health service facilities as they exist in their current form (*i.e.*, two ambulatory surgical facilities and a diagnostic center) and locations.

Furthermore, the proposed 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 entire existing health service facility. Likewise, the merger does not include the offering of any *per se* reviewable services except those already offered by the existing health service facility.²

Accordingly, given that the proposed merger involves only existing health service facilities, it is exempt from CON review.

IV. GOOD CAUSE TRANSFER

It is our understanding that the following CON projects are under development by UMRMC, identified as:

F-8623-11 – CMC-Union shall offer dialysis services in existing acute care hospital/Union County

F-8607-10 – CMC-Union shall construct a new bed tower with 25 acute care beds to accommodate the relocation of women's and pediatric services. Renovate vacated space to accommodate 25 new medical/surgical beds and relocate helipad. CMC-Union shall have a total of 182 acute care beds upon completion of this project/Union County

F-7525-06 – Replace one existing linear accelerator at Carolinas Medical Center ("CMC") and relocate the replacement linear accelerator to CMC-Union/Union County³

To the extent that this transaction is considered to be a transfer of the health service facility, the project, or the CON, we are requesting approval for a "good cause" transfer of these CONs under N.C. Gen. Stat. § 131E-189 and 10A N.C.A.C. 14C.0502. We believe that good cause for such transfers exists.

² See N.C. Gen. Stat. § 131E-176(16)(f).

³ This CON is the subject of a material compliance request filed on June 11, 2012, and which was denied by the CON Section on February 28, 2013, wherein UMRMC and CMHA requested the temporary delay in the relocation of the linear accelerator from CMC to CMC-Union.

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The purpose of this transaction is wholly unrelated to any of the pending CON projects, but is in conjunction with a larger corporate reorganization by merging UMRMC with and into CMHA. Moreover, CMHA will materially comply with the representations in the CON applications under development and the conditions placed on those projects under development. In all material respects, the operations and development of these projects will be the same as represented in the CON applications and in compliance with the issued CONs.⁴

V. CONCLUSION

Based upon the foregoing information, we hereby request the Agency's (1) confirmation that the proposed merger of a wholly-owned subsidiary into its parent (as described above) is not subject to CON review; or (2) alternatively is exempt from CON review under N.C. Gen. Stat. § 131E-184(a)(8). In addition, if the Agency determines this corporate reorganization constitutes a transfer of UMRMC's outstanding CON projects under development, we hereby request the Agency's approval of a good cause transfer for the outstanding CON projects under development.

Because the effective date of this merger is currently anticipated to be April 1, 2013, 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 of need further information.

Sincerely,


Mary Beth Johnston

⁴ CMHA will materially comply with the representations in the CON application and 2007 Settlement Agreement for Project ID No. F-7525-06, unless there is a subsequent change to the project that is ultimately deemed in material compliance.