



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

Pat McCrory
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Drexal Pratt
Division Director

May 15, 2013

Sonja C. Penley
GreenbergTaurig, Attorneys at Law
101 East College Avenue
Tallahassee, FL 32301

Exempt from Review – Acquisition of Facility

Facility: The Courtyards at Berne Village Memory Care
Acquisition by: NIC 4 North Carolina Owner, LLC (NIC Owner)
County: Craven
FID #: 950090


Dear Ms. Penley:

In response to your letter of April 12, 2013 the above referenced proposal is exempt from certificate of need review in accordance with N.C.G.S 131E-184(a)(8). Therefore, NIC 4 North Carolina Owner, LLC (NIC Owner) may proceed to acquire the above referenced health service facility without first obtaining a certificate of need. However, you need to contact the Adult Care Licensure Section of the Division of Health Service Regulation to obtain instructions for changing ownership of the existing facility. 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,


Jane Rhoe-Jones
Project Analyst


Craig R. Smith, Chief
Certificate of Need Section

cc: Adult Care Licensure Section, DHSR



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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April 12, 2013

Law



Craig Smith, Chief
Certificate of Need Section
Division of Health Service Regulation
809 Ruggles Drive
Raleigh, NC 27603

RE: The Courtyards at Berne Village Memory Care

Mr. Smith:

Our client, NIC 4 North Carolina Owner LLC ("NIC Owner") is planning to acquire an adult care home in New Bern, Craven County, known as The Courtyards at Berne Village Memory Care (hereafter the "Facility"). The Facility is located at 2701 Amhurst Blvd., New Bern, North Carolina. The Facility has 25 adult care home beds (ALZ/Dementia).

NIC is seeking to purchase the Facility through a purchase and sale agreement. The purpose of this letter is to provide prior notice of this acquisition, which is exempt from certificate of need ("CON") review, to the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Certificate of Need Section (the "Agency"). NIC Owner seeks confirmation that it is permitted to acquire the Facility as described herein without CON Review, thus acquiring the Facility's rights to own that existing health service facility (as defined in the CON statute) with 25 adult care home beds.

I. THE PROPOSAL

As of this date, Courtyards of New Bern, LLC owns the property and building comprising the Facility which is an existing "health service facility," as that term is defined in N.C. Gen. Stat. §131E-176(9b). Courtyards of New Bern, LLC is the current licensee. NIC Owner will purchase the Facility and NIC 4 North Carolina Leasing LLC ("NIC Leasing"), an affiliate of NIC Owner, will become the licensee through a lease agreement with NIC Owner. The name of the Facility will not change. NIC Leasing is completing a Change Licensure Application Packet and will submit it to the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Adult Care Licensure Section.

II. EXEMPTION NOTICE

Under North Carolina law, a certificate of need ("CON") is required only prior to offering or developing a "new institutional health service." "New institutional health service" includes a variety of services and activities, including a capital expenditure exceeding \$2 million. N.C. Gen. Stat. § 131E-176(16)(b).

Craig Smith
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The North Carolina General Assembly saw fit to exempt certain types of services or proposals from CON review, pursuant to N.C. Gen. Stat. § 131E-184. One such exempt service or proposal includes the acquisition of an existing health service facility, "including equipment owned by the health service facility at the time of acquisition." N.C. Gen. Stat. § 131E-184(a)(8).

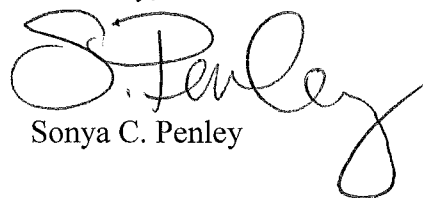
This project involves only the acquisition of an existing adult care home, which falls within the purview of the statutory definition of "health service facility." After acquisition, NIC Leasing will operate the Facility as an adult care home. Furthermore, NIC Owners' acquisition of the Facility does not entail the purchase of any major medical equipment or any *per se* reviewable equipment as defined in N.C. Gen. Stat. §§ 131E-176(14o) and (16)(f). Likewise, the acquisition does not include the offering of any *per se* reviewable services. N.C. Gen. Stat. § 131E-176(16)(f). Thus, given that the transaction involves only the acquisition of an existing health service facility, it is exempt from CON review.

III. CONCLUSION

Based on the foregoing information, we hereby request the Agency's confirmation that the proposal described above is exempt from CON review, pursuant to N.C. Gen. Stat. § 131E-184(a)(8), and thus NIC Owner may acquire the Facility, and may lease the same to NIC Leasing, with all its existing CON rights without a CON.

We respectfully request that this request be considered by April 30, 2013 because the parties wish to proceed with this transaction in late May, 2013. If you require additional information to consider this request, please contact us at the above number as soon as possible. We thank you for your consideration of this request.

Sincerely,



Sonya C. Penley

cc: Trent Johnson

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