



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

Pat McCrory
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Secretary DHHS

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Division Director

September 18, 2014

Jimmie B. Hicks, Jr.
SumrellSugg Attorneys at Law
P.O. Drawer 889
New Bern, North Carolina 28563

No Review

Facility or Business: Craven County Health Department
Project Description: Obtain Separate License for Hospice Home Care Services
County: Craven
FID #: 943850

Dear Mr. Hicks:

The Certificate of Need Section (CON Section) received your letter of August 29, 2014 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. Therefore, Craven County Health Department may proceed to obtain a separate license for its hospice home care services. 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.

Moreover, you need to contact the Acute and Home Care Licensure and Certification Section, of the Division of Health Service Regulation (DHSR) to determine if the Section has any requirements for development of the proposed project.

It should be noted that this determination is binding only for the facts represented by you. 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 the Certificate of Need Section. 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



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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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.

Please contact the CON Section if you have any questions. Also, in all future correspondence you should reference the Facility I.D. # (FID) if the facility is licensed.

Sincerely,


Jane Rhoe-Jones, Project Analyst


Martha J. Frisone, Interim Chief
Certificate of Need Section

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

August 29, 2014

Received by
the CON Section
SEP 2 2014

Ms. Martha Frisone, Interim Chief
Certificate of Need Section - DHSR
N.C. Department of Health & Human Services
809 Ruggles Drive
Raleigh, NC 27603

By email also to Martha.Frisone@dhhs.nc.gov

Re: Request for Expedited No Review Determination
Craven County Health Department
Our File No. 11300.62

Dear Ms. Frisone:

We are writing as counsel for Craven County and its Health Department (herein "Craven County") to request the Certificate of Need Section to issue an expedited determination that Craven County may be issued a new license for the continued operation of its *hospice office* without certificate of need ("CON") review being required. This "no review determination" would permit Craven County to continue to operate its *hospice office*, pursuant to the grandfather rights which it secured by commencing operations before a CON was required to establish a hospice office in North Carolina.

As background, Craven County is presently in negotiations with PruittHealth Home Health, Inc., a Georgia company authorized to do business in North Carolina ("PruittHealth"), for PruittHealth to acquire the Craven County's *home health agency office*, which is operated, along with the county's *hospice office*, at 2818 Neuse Boulevard in New Bern. Craven County presently operates both its *home health agency office* and its *hospice office* at the same physical facility, and also under the same license. The proposed acquisition of the *home health agency office* by PruittHealth does not, however, include an acquisition of the *hospice office*. Craven County will continue to own and operate its *hospice office* following the proposed transfer. If the two health service facilities are to be operated separately by different owners, however, it is necessary for their physical premises to be separated, and also for Craven County to obtain a separate license for the existing *hospice office*.

Craven County's *home health agency office* and its *hospice office* were each in operation before a CON was required to establish such a health service facility in North Carolina. The home health agency was started in 1970, and the hospice agency was started in the early 1980s. Each are therefore grandfathered facilities for which no CON has ever been issued. Both are presently licensed under one state Home Care license (No. HC0493), a copy of which is enclosed for your convenience. The parties' intent is that should you approve this request and the Acute and Home Care Licensure and Certification Section then divide the existing license (as we are concurrently requesting of them; see enclosed), PruittHealth would thereafter notify the CON Section of its intent to acquire Craven County's *home health agency office*, prior to the acquisition and pursuant to the exemption from CON review at N.C. Gen. Stat. § 131E-184(a)(8), along with the several other notifications and filings that will need to be made. Following PruittHealth's exempt acquisition of Craven County's *home health agency office*, Craven County would thereafter continue to operate its existing *hospice office* under its own separate license.

Even though Craven County's *home health agency office* and its *hospice office* have been operating under the same license, they are clearly two separate health service facilities under North Carolina law.

"Health service facility" means a hospital; long-term care hospital; psychiatric facility; rehabilitation facility; nursing home facility; adult care home; kidney disease treatment center, including freestanding hemodialysis units; intermediate care facility for the mentally retarded; home health agency office; chemical dependency treatment facility; diagnostic center; hospice office, hospice inpatient facility, hospice residential care facility; and ambulatory surgical facility.

N.C. Gen. Stat. § 131E-176(9b) (emphasis added).

Just as the law provides for the operation of a stand-alone *hospice office*, or a stand-alone *home health agency office*, or both (which may occur under either separate or combined licenses), a buyer may acquire the county's *home health agency office* as a separate health service facility, and leave the separate *hospice office* health service facility with the county. The proposed acquisition should have no effect on Craven County's ability to continue operating its *hospice office*, an existing health service facility, so long as it physically separates the premises of the *hospice office* from those of the *home health agency office*, and acquires a separate license for the *hospice office*. Just as we are in communication with the Acute and Home Care section regarding the license issue, the parties are also making arrangements for the physical separation of the facilities, to occur if the acquisition goes forward.

We understand that this requested determination is consistent with prior Agency rulings. As examples, we understand that Rowan Regional Medical Center was permitted to

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continue to operate its *hospice office* after selling its *home health agency office* to Advanced Home Care in 2008. Likewise, Hospice & Palliative Care Charlotte Region was permitted to continue to operate its *hospice office* after selling its *home health agency office* to Innovative Senior Care Home Health of Carolina, LLC in 2011.

To avoid any interruption of Craven County's long established *hospice office*, and the hardship that such interruption would have on its patients, we respectfully request that the CON Section issue the written determination requested in this letter, that Craven County may be issued a new license for the continued operation of its *hospice office* without CON review being required. Please contact me if you have any questions or are in need of additional information. Given that the parties would like to close this transaction on September 30, 2014, we would greatly appreciate receiving a determination next week if at all possible, so that we can make the additional notifications and filings that will then be required for the transaction to proceed.

Thank you in advance for your assistance and attention to this request.

With kindest personal regards, I am

Yours very truly,



Jimmie B. Hicks, Jr.

Enclosures

cc: Ms. Nancy Joyce
Mr. Scott Templeton
Mr. Ross Sallade
Mr. Scott Harrelson
Mr. Thomas Smith

State of North Carolina

Department of Health and Human Services
Division of Health Service Regulation

Effective January 01, 2014, this license is issued to

Craven County Health Department

to operate an agency known as

Craven County Health Dept. Home Health-Hospice Agency

located at 2818 Neuse Boulevard

City of New Bern, North Carolina.

*This license is issued subject to the statutes of the
State of North Carolina, is not transferable and shall expire
midnight December 31, 2014.*

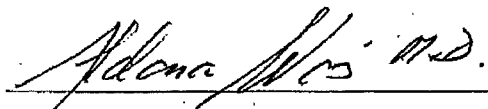
Facility ID: 943850

License Number: HC0493

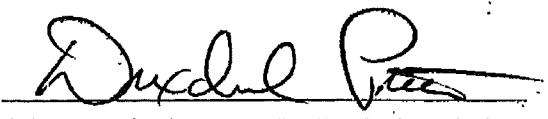
*Home Care Services: Nursing Care, Infusion Nursing, In-home Aide, Medical Social Services, Physical Therapy,
Occupational Therapy, Speech Therapy, Hospice Services, Companion, Sitter, Respite*

This agency is authorized to provide Medicare-certified home health services.

Authorized by:



Secretary, N.C. Department of Health and
Human Services



Director, Division of Health Service Regulation

August 29, 2014

Ms. Nancy Joyce, Administrative Officer
Acute and Home Care Licensure and Certification Section
DHHS Division of Health Service Regulation
1205 Umstead Drive
Raleigh, NC 27603



By email also to Nancy.Joyce@dhhs.nc.gov

Re: Request to Separate Hospice License from Home Health License, and Notification of a Prospective Change of Ownership of the Home Health Agency Owned and Operated by Craven County Health Department
(Facility ID 943850, License Number HC0493 (copy enclosed)
Our File No. 11300.62

Dear Ms. Joyce:

On behalf of our client Craven County (including the Craven County Health Department), I write in relation to our recent email and telephone communications regarding two matters: (1) a request by Craven County to issue a new Hospice license for its hospice services and thereby separate those services from the Home Care and Medicare-certified home health services currently included on its existing Home Care license, and (2) notification of a prospective change of ownership of the county's Home Care and Medicare-certified home health services business to PruittHealth Home Health, Inc., a Georgia company authorized to do business in North Carolina ("PruittHealth").

Craven County currently has a license to provide Home Care Services, which specifically includes nursing care, infusion nursing, in-home aide, medical social services, physical therapy, occupational therapy, speech therapy, *hospice services*, companion, sitter, and respite services, and Medicare-certified home health services. All of these services are listed on a single license, a copy of which is enclosed for your convenience.

Craven County is in negotiations with PruittHealth regarding the sale of the county's Home Care Services and Medicare-certified home health services business described above,

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with the exception of its hospice services business. To emphasize, these sale discussions **do not include** the sale of Craven County's hospice services business to PruittHealth. Craven County will continue to own and operate its hospice services business following the proposed sale.

In order to further pursue this transaction with PruittHealth, and to ensure that Craven County is able to continue to provide hospice services under a valid license following the transaction, Craven County is asking the Acute and Home Care Licensure and Certification Section to have its current Home Care license (No. HC0493) divided into two separate licenses -- one for its licensed hospice services business, and the other for all of the remaining Home Care Services and Medicare-certified home health services.

At your Section's request, we are concurrently submitting a request for a no review determination to the CON Section (attached), requesting their determination that this division of the hospice services from the Home Care and Medicare-certified home health services and issuance of two separate licenses by the Acute and Home Care Licensure and Certification Section is not considered a CON event. Upon receipt of that no review determination, we will promptly forward a copy to you.

Once separate licenses are issued, PruittHealth will follow up with a request to the Acute and Home Care Licensure and Certification Section to transfer the newly issued license as part of a change of ownership of Craven County's Home Care and Medicare-certified home health business. At that time PruittHealth will also request that the CON Section issue a letter of no review confirming that the transaction is not considered a CON event. The parties will also be preparing and submitting, at an appropriate time, the requisite CMS 855A Forms to the Centers for Medicare and Medicaid Services ("CMS") and Medicaid forms to the North Carolina Division of Medical Assistance.

Given that the parties would like to close this transaction on September 30, 2014, we ask that the division of Craven County's current Home Care license be handled as soon as is reasonably possible. As we understand it, the sale of the Craven County Home Care and Medicare-certified home health business is being structured as a change of ownership for Medicare purposes, and PruittHealth will be requesting a transfer of the existing Medicare home health provider agreement and provider number from CMS.

* * *

Under current North Carolina law (10A NCAC § 13J .0903(f)), an entity that is designated as a "home health agency," as defined in N.C. Gen. Stat. § 131E-136(4), must submit written notice to the Division of Health Services Regulation ("DHSR") notifying DHSR of an anticipated change of ownership. Similarly, under 42 CFR § 489.18(b), and the Medicare State Operations Manual § 3210.1B, a Medicare-certified Home Health Agency is

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required to notify either the Medicare State Survey Agency, the Medicare Administrative Contractor or the CMS Regional Office of the anticipated change of ownership. Our understanding is that DHSR continues to act as the Medicare State Survey Agency in North Carolina, and that this notification will be sufficient to place both DHSR and CMS on notice of the impending change of ownership of Craven County's Home Care and Medicare-certified home health services business for both state licensure and Medicare certification purposes.

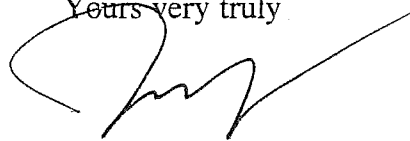
Upon closure of the transaction, Craven County will store its historic service records for patients who are no longer under Craven County's care at **Professional Systems, USA, Inc., 2355 Hanford Road, Burlington, NC 27215**, for the retention period required by law at 10A NCAC § 13J .1401(f).

* * *

If you have any questions regarding this request and the nature of the proposed transaction with PruittHealth or contents of this correspondence, please do not hesitate to contact me. Otherwise, we appreciate your consideration and prompt attention.

With kindest personal regards, I am

Yours very truly



Jimmie B. Hicks, Jr.

Enclosures

cc: Ms. Martha Frisone
Mr. Scott Templeton
Mr. Ross Sallade
Mr. Scott Harrelson
Mr. Thomas Smith

State of North Carolina

Department of Health and Human Services
Division of Health Service Regulation

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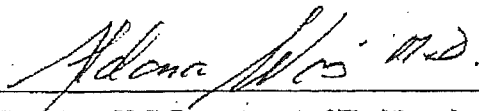
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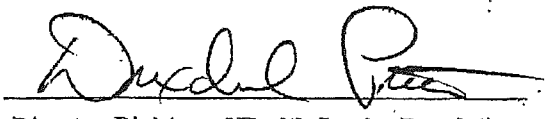
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