



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, 2<sup>nd</sup> 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**

[www.ncdhhs.gov](http://www.ncdhhs.gov)

Telephone: 919-855-3873 • Fax: 919-715-4413

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

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

An Equal Opportunity/ Affirmative Action Employer



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

# Nelson Mullins

## Nelson Mullins Riley & Scarborough LLP

Attorneys and Counselors at Law  
4140 Parklake Avenue / GlenLake One / Second Floor / Raleigh, NC 27612  
Tel: 919.877.3800 Fax: 919.877.3821  
www.nelsonmullins.com

Noah H. Huffstetler III  
Tel: 919.877.3801  
Fax: 919.877.3821  
noah.huffstetler@nelsonmullins.com

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  
January 6, 2016  
Page 3

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 E. Pycior-Wright (via electronic mail)  
Donna Marchant-Roof (via electronic mail)