



NC DEPARTMENT OF
**HEALTH AND
HUMAN SERVICES**

ROY COOPER • Governor
MANDY COHEN, MD, MPH • Secretary
MARK PAYNE • Director, Division of Health Service Regulation

November 1, 2018

Gary Qualls
430 Davis Drive
Suite 400
Morrisville, NC 27560

No Review

Record #: 2760
Facility Name: Atrium Health Anson
FID #: 120335
Business Name: The Charlotte-Mecklenburg Hospital Authority
Business #: 1770
Project Description: Carolinas Anson Healthcare, Inc. to merge with parent company, The Charlotte-Mecklenburg Hospital Authority and change the name of the facility to Atrium Health Anson
County: Anson

Dear Mr. Qualls:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) received your correspondence 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 that correspondence is not governed by, and therefore, does not currently require a certificate of need. 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.

You may 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.

This determination is binding only for the facts represented in your correspondence. If changes are made in the project or in the facts provided in the correspondence referenced above, a new determination as to whether a certificate of need is required would need to be made by this office.

NC DEPARTMENT OF HEALTH AND HUMAN SERVICES • DIVISION OF HEALTH SERVICE REGULATION

HEALTHCARE PLANNING AND CERTIFICATE OF NEED SECTION

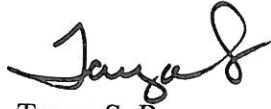
LOCATION: 809 Ruggles Drive, Edgerton Building, Raleigh, NC 27603
MAILING ADDRESS: 2701 Mail Service Center, Raleigh, NC 27699-2701
www.ncdhs.gov/dhsr/ • TEL: 919-855-3750 • FAX: 919-733-2757

AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER

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Please do not hesitate to contact this office if you have any questions.

Sincerely,



Tanya S. Rupp
Project Analyst



Martha J. Frisone, Chief
Healthcare Planning and Certificate of Need Section

cc: Acute and Home Care Licensure and Certification Section, DHSR
Melinda Boyette, Administrative Assistant, Healthcare Planning, DHSR



Gary S. Qualls
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October 25, 2018

Via Hand Delivery

Martha J. Frisone, Chief
Healthcare Planning and Certificate of Need Section
Division of Health Service Regulation
N.C. Department of Health and Human Services
809 Ruggles Drive
Raleigh, NC 27603

Re: Merger of Carolinas-Anson Healthcare, Inc. Into Its Ultimate Parent, The Charlotte-Mecklenburg Hospital Authority

No Review Letter or (in the alternative) Exemption Notice

Dear Ms. Frisone:

The purpose of this letter is to inform you of a proposed intra-organizational transaction (the “Carolinas-Anson Merger”) involving a merger of Carolinas-Anson Healthcare, Inc. (“Carolinas-Anson”) into its ultimate parent, The Charlotte-Mecklenburg Hospital Authority (“CMHA”).¹ Effective on or about January 1, 2019, Carolinas-Anson will merge into CMHA, and Carolinas-Anson will cease to exist.

1. Facility Impacted

Carolinas-Anson is the licensed operator and owner of the acute care hospital known as Carolinas HealthCare System (“CHS”) Anson in Wadesboro, Anson County -- License No. H0082 (“CHS Anson”).

2. Impact of Carolinas-Anson Merger

The Carolinas-Anson Merger will result in Carolinas-Anson’s ultimate parent, CMHA stepping into the shoes of Carolinas-Anson in every respect. At the same time, CHS Anson’s name will change to Atrium Health Anson.

¹ Carolinas-Anson is wholly owned by Carolinas Hospital Network, Inc., which is wholly owned by Carolinas Health Network, Inc., which is wholly owned by CMHA. Thus, Carolinas-Anson is currently wholly owned by CMHA, two-steps removed.

Thus, effective January 1, 2019, CMHA will:

1. Directly own Carolinas-Anson's current assets pertaining to CHS Anson;
2. Directly operate Carolinas-Anson's current assets pertaining to CHS Anson;
3. Become CHS Anson's Medicare and Medicaid provider; and
4. Become CHS Anson's licensee.

3. Request to Agency

We request that the Department of Health and Human Services, Division of Health Service Regulation, Healthcare Planning and Certificate of Need Section (the "Agency"):

1. confirm that the Carolinas-Anson Merger is not reviewable as a new institutional health service under the CON law because it is simply a related entity merger; or
2. in the alternative, confirm that the Carolinas-Anson Merger is exempt from review under the CON law's exemption provisions in N.C. Gen. Stat. § 131E-184(a)(8).

CHS Anson has no outstanding, undeveloped CON projects ("Pending Projects"). Thus, to the extent the Agency deems the Carolinas-Anson Merger to be an exempt transfer under Section 131E-184(a)(8) – as opposed to a no review determination – no good cause transfer approval is necessary because there are no Pending Projects.

I. No Review Request for the Anson Merger.

CMHA becoming the sole, direct owner of CHS Anson is not a CON reviewable event because such an event is not expressly addressed in any of the new institutional health service "CON triggers" in N.C. Gen. Stat. § 131E-176(16). This type of related-entity transfer – where an indirect parent owner becomes the sole, direct owner of a hospital – 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) -- such as this Carolinas-Anson Merger – 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 situation 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.").

Based on the foregoing, we request your confirmation that the Carolinas-Anson Merger is not even subject to CON review. Thus, an exemption is not necessary.

II. **Exemption Notice for Carolinas-Anson Merger (If the Merger is Deemed CON Reviewable).**

However, if the Agency treats the Carolinas-Anson Merger as the acquisition of CHS Anson (as a health service facility), and thus CON reviewable, this letter serves as an exemption notice for CHS Anson's acquisition, pursuant to N.C. Gen. Stat. § 131E-184(a)(8).

The General Assembly has chosen to exempt certain, otherwise reviewable, events from CON review, including the acquisition of an existing health service facility, including the equipment owned by the health service facility at the time of the acquisition. See N.C. Gen. Stat. § 184(a)(8). Under N.C. Gen. Stat. § 131E-176(9b), CHS Anson constitutes a "health service facility."

Furthermore, the proposed Carolinas-Anson 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 existing health service facility, CHS Anson. Likewise, the transaction does not include the offering of any *per se* reviewable services except those already offered by CHS Anson. See N.C. Gen. Stat. § 131E-176(16)(f).

Accordingly, given that the transaction involves CHS Anson, which is an existing health service facility, even if the Agency deems the Carolinas-Anson Merger to constitute a new institutional health service, the Carolinas-Anson Merger is nevertheless exempt from CON review.

CONCLUSION

Based upon the foregoing information, we request that the Agency:

1. confirm that the Carolinas-Anson Merger is not reviewable as a new institutional health service under the CON law because it is simply a related entity merger; or
2. in the alternative, confirm that the Carolinas-Anson Merger is exempt from review under the CON law's exemption provisions in N.C. Gen. Stat. § 131E-184(a)(8).

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 or need further information.

Sincerely,



Gary S. Qualls