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STATE HEALTH PLANNING
AND DEVELOPMENT AGENCY

**Project Modification
AL 98061 – 2004-LTACH EXT MOD**

I. Overview

Noland Health Services, Inc. f/k/a Lloyd Noland Foundation, Inc. (“Noland”) is requesting that the Certificate of Need Review Board (“CON Review Board”) of the State Health Planning and Development Agency (“SHPDA”) grant Noland’s request for a project modification for AL 98061-2004-LTACH EXT MOD (the “Project”). Noland considers this request to be urgent for the reasons explained herein.

Noland was issued a CON on June 28, 2002 for the reclassification of 55 acute care beds located on the campus of HealthSouth Metro West f/k/a Lloyd Noland Hospital (“HSMW”) to long term acute care beds (the “Project CON”), pursuant to which Noland was authorized to establish and operate a 55-bed long term acute care hospital (“LTACH”) at HSMW. A copy of the Project CON is attached hereto as Exhibit A. However, the Project CON, both before and after its issuance, has been the subject of lengthy and complex litigation, during the pendency of which HSMW closed, making it necessary for Noland to identify an alternative location for the approved 55-bed LTACH. The referenced litigation was finally resolved in May 2009.

Noland is requesting a project modification pursuant to Rule 410-1-10-.03 of the Alabama Certificate of Need Rules and Regulations (the “CON Rules”), to relocate the 55-bed LTACH to the campus of Shelby Baptist Medical Center (“Shelby Baptist”), which is located in Shelby County. For LTACH health planning purposes, the 2004-2007 State Health Plan (“SHP”) includes both Jefferson County and Shelby County, together with Bibb, Blount, Cullman, Marion, St. Clair, Talladega, Walker and Winston Counties, in Region III of the State. A map outlining Region III is attached hereto as Exhibit B.

As required by CON Rule 410-1-10-.03(1)(B), Noland hereby certifies that a copy of this request for project modification has been served on all parties of record in the underlying administrative proceeding and on all persons who filed letters in opposition thereto. The only person initially opposing Noland’s Project was Baptist Health Systems, Inc. d/b/a Baptist Medical Center Montclair (“Baptist”), which also intervened in the Project and requested a contested case hearing therein. It is noted that Baptist is the owner of Shelby Baptist, and Baptist is in complete support of the requested project modification.

Failure to approve this project modification will result in a denial of services to the citizens and healthcare providers of Region III.

II. Need for Project Modification

A. Unmet LTACH Bed Need

The SHP describes a need for 127 LTACH beds in Region III, and only 83 beds are in operation. Clearly, there is a need for LTACH beds in Region III.¹ This need will continue to go unmet indefinitely unless the requested modification of the Project is approved. If the unmet need is allowed to continue, it will cause disruption in the healthcare planning process for Region III.

B. Moratorium on LTACH Beds

In May 2008, subsequent to the enactment of the Medicare, Medicaid, and SCHIP Extension Act (“MMSEA”), 121 Stat 2492, the Center for Medicare and Medicare Services (“CMS”), pursuant to the moratorium mandates contained in MMSEA, finalized rules regarding the establishment of new LTACHs after December 29, 2007. The practical effect of these rules is that organizations that do not hold a CON for LTACH services issued prior to December 29, 2007, will not be allowed to establish a LTACH. The moratorium is imposed for a period of three years, but it is anticipated that the moratorium will be extended for at least two additional years, if not longer.

The CMS moratorium relative to the establishment of new LTACHs is outlined in 42 CFR 412.23(e)(6). The exceptions to the moratorium are cited at 42 CFR 412.23(e)(6)(ii) and read in pertinent part as follows:

Exception. The moratorium specified in paragraph (e)(6)(i) of this section is not applicable to the establishment and classification of a long-term care hospital ..., if the long-term care hospital met one of the following criteria on or before December 29, 2007 ...:

(C) Had obtained an approved certificate of need from the State, when required by State law.

The Project CON was issued by SHPDA on June 28, 2002, and modified on May 28, 2004, and thus qualifies for exemption (C) to the moratorium. The CMS moratorium has disrupted the health planning for LTACH services in Region III, making it impossible for any provider, other than Noland, to meet the unmet LTACH needs in Region III.

¹ On September 15, 1998, when Noland filed its CON application with respect to the Project, and on June 28, 2002, when the Project CON was issued, health planning under the 1996-1999 SHP was done on a county-by-county basis, and the service area was established as the county in which the LTACH was to be located and the contiguous counties. Thus, the LTACH was expected to serve as a regional provider and meet the LTACH needs of the entire service area. The Project’s service area included Jefferson County, as well as its contiguous counties of Bibb, Blount, Shelby, St. Clair, Tuscaloosa and Walker. The 1996-1999 SHP identified a need in Jefferson County at that time for 160+ LTACH beds. Accordingly, the Project CON and this requested project modification are consistent with the applicable SHP.

C. Expiration of Project CON

Noland has been prevented from establishing the 55-bed LTACH authorized by the Project CON, through no fault of its own, by the acts of third parties and the multi-faceted litigation involving the Project. The initial litigation challenging the Project was commenced in 2000, before the Project CON was even issued. All remaining litigation, some filed before the issuance of the Project CON and some filed after its issuance, was finally resolved in May 2009. Accordingly, Noland is finally in a position to implement the Project CON before its expiration.

D. Financial Impact on Short Term Acute Care Hospitals in Region III

The development of the Project CON will have a positive financial impact on the short term acute care hospitals in Region III. LTACHs provide a relief mechanism for short term acute care hospitals because they offer an appropriate and cost effective alternative level of care for patients with multiple complex medical conditions. By allowing patients to be placed in the right level of care at the right time in their episode of illness, healthcare providers can better utilize their healthcare dollars by placing appropriate patients in the LTACHs. Given the present financial uncertainties, it is imperative that healthcare providers are in the best position possible to use healthcare resources prudently.

E. Critical Care Units Are Operating At Capacity

Short term acute care hospitals in Region III experience delays in admissions and/or must go on diversion because critical care beds are at capacity, many of which are occupied by patients that will require an extended hospital stay. When hospitals go on diversion, it causes disruption to providers, patients and families. The implementation of an additional LTACH in Region III is a necessary step to help alleviate the problems and inefficiencies associated with overcrowded critical care units.

III. Operative Facts

The following is a summary of the operative facts underlying Noland's application for the Project CON, the initial litigation affecting the Project CON, the issuance of the Project CON, the subsequent litigation affecting the Project CON, and the requested project modification:

1. On September 15, 1998, Noland filed its CON application with SHPDA seeking the reclassification of 55 acute care beds at HSMW as LTACH beds. SHPDA denominated the CON application as Project No. AL 98061, and deemed the application complete on October 9, 1998.
2. On November 20, 1998, Baptist intervened in Noland's Project No. AL 98061, and on December 3, 1998, Baptist requested a contested case hearing concerning Project No. AL 98061.

3. On January 21, 2000, the administrative law judge assigned to the contested case involving the Project and related CON applications, entered an order recommending approval of the Project CON.
4. By letter dated February 11, 2000, SHPDA's counsel advised SHPDA that, in the absence of exceptions having been filed, the administrative law judge's recommended order should become the final decision of SHPDA without further proceedings.
5. Also on February 11, 2000, The City of Fairfield Healthcare Authority ("FHA") under the direction and financial control of HealthSouth Corporation ("HealthSouth") filed suit against Noland and SHPDA in the Circuit Court of Montgomery County, Alabama, Civil Action No. CV-2000-391 (the "FHA Litigation"), seeking to prohibit SHPDA from issuing the Project CON. Thereafter, FHA moved to intervene in the Project's contested case in order to oppose the issuance of the Project CON.
6. On February 1, 2001, Noland filed suit against Tenet Healthcare Corporation ("Tenet") in the United States District Court for the Northern District of Alabama, Civil Action No. CV-01-G-0437-S (the "Noland/Tenet Litigation"), seeking damages from Tenet resulting from the actions of FHA in interfering with Noland's CON application and breaching contract obligations of Tenet, which were assumed by FHA, to cooperate in obtaining approval of the Project by commencing the FHA Litigation and by attempting to intervene in the Project's contested case to oppose the Project. For reasons beyond Noland's control, this litigation continued for a period of eight years, and was not resolved until May 2009.
7. On July 3, 2001, Tenet filed a third-party complaint against FHA and HealthSouth Corporation ("HealthSouth") in the Noland Litigation alleging that the interference by FHA and HealthSouth with Noland's CON Project was a breach of an indemnification agreement from FHA and HealthSouth and seeking damages, costs, expenses and attorneys' fees incurred by Tenet as the result of Noland's claims against Tenet in the Noland/Tenet Litigation.
8. On February 22, 2002, the Alabama Supreme Court ruled in the FHA Litigation that FHA had "breached its obligations to cooperate as a matter of law by commencing [the FHA Litigation], and by attempting intervention in the contested case to oppose [Noland's] CON applications," clearing the way for SHPDA to issue the CONs to Noland and requiring FHA to transfer ownership of the 55 reclassified beds to Noland, Lloyd Noland Foundation, Inc. v. City of Fairfield Healthcare Authority, 837 So.2d 253, 266 (Ala. 2002), rehearing denied.
9. On June 28, 2002, SHPDA issued the Project CON to Noland for the reclassification of 55 acute care beds at HSMW as LTACH beds. The LTACH was to be located on the campus of HSMW in Jefferson County. FHA delayed

the transfer of ownership of the 55 beds for several additional months and then conditioned the transfer on financial obligations to HealthSouth and on an LTACH facility agreement satisfactory to HealthSouth.

10. Noland filed for and received a one-year extension for the Project CON on May 28, 2003.
11. Noland filed for and received a project modification for the Project CON on May 28, 2004.
12. On August 27, 2004, Noland filed suit against HealthSouth in the Circuit Court of the Tenth Judicial Circuit of Alabama, Jefferson County, CV0405144 (the "Noland/HealthSouth Litigation"), seeking damages from HealthSouth resulting from, among other things, the actions of FHA, as the alter ego and mere instrumentality of HealthSouth, in breaching FHA's assumed obligations to cooperate in obtaining approval of the Project by commencing the FHA Litigation and by attempting to intervene in the Project's contested case to oppose the Project. On February 3, 2005, the Noland/HealthSouth Litigation was transferred to the Bessemer Division of the Circuit Court of the Tenth Judicial Circuit of Alabama and redesignated Civil Action No. CV-2004-1638.
13. On or about September 1, 2004, and while Noland and HealthSouth were negotiating an LTACH facilities agreement, HealthSouth closed HSMW as an acute care hospital, thus preventing Noland from establishing the 55-bed LTACH at that facility.
14. On March 30, 2005, Noland provided SHPDA a status report on the Project in which it reported that the Project CON was still involved in litigation. SHPDA advised Noland, by letter dated April 18, 2005, that "*Inasmuch as this project is in litigation, we will wait to hear from the court before taking any further action.*" SHPDA's letter dated April 18, 2005 is attached hereto as Exhibit C. Pursuant to CON Rule 410-1-11-.01, the running of the duration of the Project CON was tolled during the pendency of the litigation. Noland provided SHPDA further updates regarding the litigation in 2006 and 2007.
15. By Order Vacating Judgment and Dismissing Case dated May 21, 2009, the Noland/Tenet Litigation was finally resolved and all claims and causes of action were dismissed with prejudice.
16. By Order dated May 29, 2009, the Noland/HealthSouth Litigation was finally resolved and all claims and causes of action were dismissed with prejudice.
17. Noland has executed an agreement with Shelby Baptist, and has secured an alternative location for the LTACH authorized by the Project CON.
18. Noland will locate the LTACH on the campus of Shelby Baptist, and will operate the LTACH in an existing nursing unit on the third floor of the South Tower at Shelby Baptist. The LTACH will be operated as a "hospital within a hospital."

Noland will lease space from Shelby Baptist, in a manner similar to that outlined in the Project CON application.

19. No construction will be involved in the relocation of the 55 LTACH beds to Shelby Baptist.
20. No change in the ownership of the Project has occurred.
21. The Project is identical in scope and purpose as the original application.
22. The Project will continue to serve the same population identified in the original application.
23. The modification of the Project does not involve any increase or decrease in the bed capacity approved by the Project CON.
24. Financing for the Project will be the same.
25. The modification of the Project does not involve any new services.
26. The Project is the same as described in the original application in every respect, with the exception of its physical location.

IV. Proposed Modification

Location and Operation of Project

As stated, the Project is to be located on the campus of Shelby Baptist, which is located in Region III for LTACH planning purposes. The LTACH will be operated in a nursing unit located on the third floor of Shelby Baptist.

Financials

The overall cost of the Project is projected as follows:

Major Medical Equipment	\$ 500,000
Leasehold Improvements	100,000
First Year Annual Operating Costs	<u>4,285,224</u>
Total	\$ 4,888,224

The costs originally approved for the Project totaled \$5,321,317. As evidenced by the projections, the estimated costs track very closely to those originally submitted. As stated in the original Project, the LTACH will not receive any Medicaid funds.

Noland is a non-profit corporation described in Section 501(c)(3) of the Internal Revenue Code of 1986 and is financially sound. Noland has committed funding to the Project, and the Project will be funded by cash on hand.

Agreements

Noland has executed a Lease Agreement with Shelby Baptist whereby it will lease space in which to operate the 55-bed LTACH provided for in the Project CON. The physical plant meets the life safety requirements for hospitals, and will not require any significant renovations prior to occupation. Noland has made an allowance for minor leasehold improvements if needed. The Lease Agreement with Shelby Baptist is similar to the lease agreement that was in place at the time the Project CON was approved.

Noland will also purchase ancillary and support services from Shelby Baptist via a Purchased Services Agreement. Services will be purchased in a manner similar to that contemplated at the time the Project CON was approved.

Timeline

Noland is prepared to begin work on the Project immediately upon approval of this project modification.

Operational Factors

Noland will operate the 55-bed LTACH provided for in the Project CON as a "hospital within a hospital" and will comply with all of the applicable rules and regulations for such facilities. Noland will communicate with regulatory agencies to complete licensure and certification requirements in a timely manner, and will apply for Joint Commission on Accreditation of Healthcare Organizations accreditation as soon as practical.

Noland has a management team that is experienced in the start-up and operation of LTACH's, and Noland will employ additional personnel as needed.

Noland's request for this project modification is consistent with the CON Rules.

V. Conclusion

The facts set forth herein stress the urgency of this project modification. Noland's request is consistent with the SHP, the CON Rules and past precedent of the CON Review Board. The Project is exempted from the CMS moratorium mandated by the MMSEA because the Project CON was issued June 28, 2002, and modified on May 28, 2004, and thus qualifies for exemption (C) to the moratorium. If Noland's project modification is not approved, Region III will be adversely impacted, and Noland will be irreversibly harmed. Noland respectfully requests the CON Review Board approval of this project modification.

Exhibit A
Copy of CON AL 98061
And
AL 98061-2004 LTACH EXT MOD

**ALABAMA
STATE HEALTH PLANNING & DEVELOPMENT AGENCY
CERTIFICATE OF NEED
FOR HEALTH CARE SERVICES**

I. IDENTIFICATION

1. Certificate of Need 2004-LTACH	2. Date Issued: June 28, 2002	3. Termination Date: June 27, 2003
4. Project Number: AL-98061	5. Name of Facility: Lloyd Noland Foundation, Inc.	
6. Service Area: Jefferson County	7. Location of Facility: Fairfield, AL	
8. Type of Facility: LTACH	9. Number of Beds: 55	10. Estimated Cost: \$4,871,317

11. Services to be provided: The applicant will reclassify fifty-five beds from acute care to long term acute care beds. These beds will be located in leased existing space at HealthSouth Metro West, f/k/a, Lloyd Noland Hospital in Fairfield, Alabama.

II. CERTIFICATE OF NEED

In accordance with Section 22-21-264 through 22-21-279, Code of Alabama, 1975, the Certificate of Need Review Board finds as follows:

1. There is a need for the project.
2. There are in force in the State of Alabama reasonable minimum standards of licensure and methods of operation for hospitals and health facilities.
3. The prescribed standards of licensure and operation will be applied and enforced with respect to the applicant, hospital or other health facility.

III. ISSUANCE OF CERTIFICATE OF NEED

This Certificate of Need is issued to **Lloyd Noland Foundation, Inc.** only, for a period not to exceed 12 months from the date of issuance. This Certificate of Need is not transferable and any action on the part of the Applicant to transfer this Certificate of Need will render the Certificate of Need null and void.

ORIGINAL



Alva M. Lambert
Executive Director

ALABAMA
STATE HEALTH PLANNING & DEVELOPMENT AGENCY
CERTIFICATE OF NEED
FOR HEALTH CARE SERVICES

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1. Certificate of Need 2004-LTACH-EXT	2. Date Issued: June 28, 2003	3. Termination Date: June 27, 2004
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EXTENSION



Alva M. Lambert
Executive Director

Exhibit B

Map of Region III

(SHP – LTACH Planning Regions)

Alabama State Health Plan
LTACH Planning Region III



Exhibit C

SHPDA's Response Letter of April 18, 2005 to Noland



STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

100 NORTH UNION STREET, SUITE 870
MONTGOMERY, ALABAMA 36104

April 18, 2005

Barbara Estep
Director, Regulatory Affairs
Noland Health Services
Post Office Box 925
Fairfield, AL 35064

RE: **AL 98061 CON 2004-LTACH-EXT-MOD**
Lloyd Noland Hospital

Dear Ms. Estep:

This is written in response to your progress report dated March 30, 2005 in which you advised this Agency that Noland continues to evaluate issues related to this Certificate of Need. Inasmuch as this project is in litigation, we will wait to hear from the Court before taking any further action. If you have questions or comments, please contact Betty Schoenfeld at (334) 242-4103.

Sincerely,

Alva M. Lambert
Executive Director

AML:bws

M. Shane Spees
President and Chief Executive Officer

3701 Fourth Avenue South
Birmingham, AL 35277
205.715.5310
205.715.5882 fax
shane.spees@bhsala.com

www.bhsala.com

*As a Witness
to the love of God,
revealed through
Jesus Christ,
Baptist Health
System is committed
to ministries that
enhance the health,
dignity and
wholeness
of those we serve
through Integrity,
Compassion,
Advocacy,
Resourcefulness and
Excellence.*

November 2, 2009

Mr. Alva Lambert
Executive Director
State Health Planning and Development Agency
100 North Union Street, Suite 870
Montgomery, AL 36104

Re: Letter of Support
Project Modification AL 98061

Dear Mr. Lambert:

Baptist Health System, Inc. is in full support of the project modification filed by Noland Health Services, Inc. ("Noland"). Noland's project modification will allow a Long Term Acute Care Hospital ("LTACH") to be located on the campus of Shelby Baptist Medical Center ("Shelby Baptist"). The relocation of the project to the campus of Shelby Baptist will significantly enhance access to LTACH services in Region III. Additional LTACH services are needed in Region III, and Noland's project modification fulfills that need.

Again, Baptist Health System, Inc. is in full support of Noland's project modification, and urges the CON Review Board to approve Noland's request.

Sincerely,



M. Shane Spees