

# Cabaniss Johnston

CABANISS, JOHNSTON, GARDNER, DUMAS & O'NEAL LLP

RECEIVED

Aug 28 2019

STATE HEALTH PLANNING AND  
DEVELOPMENT AGENCY

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August 28, 2019

Emily Marsal, Esq.  
Executive Director  
State Health Planning  
And Development Agency  
100 North Union Street, Suite 870  
Montgomery, AL 36104

**Re: Notice of Change of Ownership — Community Home Care**

Dear Ms. Marsal:

Our firm represents C & P Home Health, LLC, an Alabama limited liability company ("Provider"). On behalf of our client, we respectfully submit to the State Health Planning and Development Agency ("SHPDA") this letter as an attachment to the Notice of Change of Ownership form that we are contemporaneously filing pursuant to the Alabama Certificate of Need Program Rules and Regulations ("CON Rules") section 410-1-7-.04. The change of ownership involves transferring the rights to operate a home health service in Elmore County, Alabama, and counties contiguous to Elmore County, Alabama (the "Home Health Rights") to the below described joint venture. The following summarizes the transaction proposed to take place on or after September 20, 2019, and addresses SHPDA requirements under the CON Rules for a change of ownership.

1. Facts:

Provider is a newly formed affiliate of Community Hospital, Inc. (the "Hospital"). The Hospital operates health services in Elmore County, Alabama, and wishes to operate them through the Provider as a separate entity.

Subject to certain terms and conditions of an agreement between the Hospital and Provider, including SHPDA approval and program certification by the Alabama Department of Public Health, the Hospital contemplates transferring the Home Health Rights to the Provider for the purpose of Provider operating as a home health agency in the permitted county of Elmore and each county contiguous to Elmore County ("Home Health Services").

It is contemplated that, in the immediate future, the Hospital will convey up to 80% of its membership interests in Provider to Prime Home Health of Lee County, LLC, which is an Alabama limited liability company ("Prime") unrelated to the Hospital, and thereby create a joint venture with Prime to operate the Home Health Services (the "Joint Venture"). The contemplated transaction would be subject to the following terms (the "Joint Venture Terms"):

- (a) The Hospital would maintain at least 50% of all voting rights in the decisions of the Joint Venture and, in the event there is a deadlock, the only remedy will be the dissolution of the Joint Venture;
- (b) the name C & P Home Health, LLC (designating Community Hospital and Prime) will be the Provider's legal name and the Provider will operate under the d/b/a of Community Home Health to operate the Home Health Services;
- (c) the Home Health Services operated by the Joint Venture will be prohibited from taking on duties and/or services that are otherwise reserved to the rural hospital by Alabama or federal law;
- (d) upon the dissolution of the contemplated Joint Venture; all regulatory authority to own and operate the Home Health Services will remain with the Hospital;
- (e) the day to day management of the Joint Venture will be conducted by a manager under the oversight and direction of a management committee (the "Management Committee"), on which the Hospital will have equal representation. The Management Committee will oversee and direct all clinical operations of the Home Health Services. The clinical operations shall include operational management, quality of care, provision of services, compliance, personnel, medical records, physical environment, and use of supplies. The Management Committee may not take or recommend any action which may negatively affect the home health agency's licensure or Medicare certification or which would violate any state or federal law or regulation;
- (f) in the event the manager defaults in the performance of its duties under its management agreement and is not removed after a demand for removal by the Hospital, or the parties cannot agree on a new manager, the Hospital, at its option, may exercise its default option to purchase Prime's interest in the Joint Venture at fair market value or demand a dissolution of the Joint Venture;
- (g) the Home Health Services operated by the Joint Venture will be required to ensure continuity of care and further the mission of the Hospital and in the furtherance thereof, the Joint Venture will admit any patient for home health services who is referred by the Hospital, as long as the patient's needs meet the eligibility criteria established by the Management Committee and the patient's payor source;

- (h) an authorized representative of the Hospital will have the reasonable right to access and examine records and information of the Joint Venture to ensure compliance with all of the provisions of the Joint Venture documents;
- (i) the Joint Venture will be limited to offering or providing home health services, unless granted express consent by the Hospital; and
- (j) the office for the Joint Venture will be located within a 10-mile radius of the main campus of the Hospital.

2. SHPDA Requirements for Change of Ownership:

Financial Scope of Project: For fair market consideration, the Hospital is (i) transferring the Home Health Rights to the Provider (the "Home Health Transfer"), and (ii) subject to the Joint Venture Terms, for fair market consideration, contemplates conveying 80% of the Hospital's membership interests in Provider to Prime (the Joint Venture Establishment"), subject to the Joint Venture Terms. The closing for the Home Health Transfer is expected and the closing for the Joint Venture Establishment is expected to close on or after September 20, 2019. There will be no capital expenditures in excess of the spending thresholds set forth in Ala. Code § 22-21-263(a)(2) contemplated in conjunction with the above described transactions, nor is it anticipated that there will be any additional new annual operating costs in excess of the Certificate of Need spending threshold associated with the above-described capital expenditures.

No New Services: The proposed transaction will not involve creating any new health services.

No New Beds: There will be no addition or reduction of beds with respect to the proposed transaction.

No Conversion of Beds: The proposed transaction will not involve the conversion of beds.

Nature of Transaction: The proposed transaction will involve the transfer of Home Health Rights, and, except for the conveyance of membership interests associated with the Joint Venture Establishment, does not involve the sale of stock.

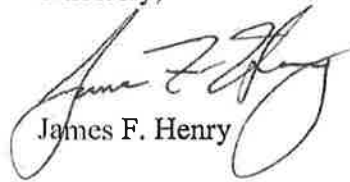
Based on the above showing that there will be no change in health services, no conversion of beds or increase in bed capacity, or any capital expenditure in excess of the thresholds set forth in Alabama Code § 22-21-263(a)(2), we respectfully request that you exercise your authority under Chapter 410-1-7-.04(2) of the Rules and determine that a certificate of need is not required for the consummation of the above-described proposed transactions.

Emily Marsal, Esq.  
August 28, 2019  
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In accordance with the Rules, I am sending a check in the amount of \$2,500.00 via overnight courier. The executed change of ownership form is enclosed.

If you have any questions or need further information, please feel free to contact me at (205) 716-5257.

Sincerely,



James F. Henry

cc:

Enclosure

# Cabaniss Johnston

CABANISS, JOHNSTON, GARDNER, DUMAS & O'NEAL LLP

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Sep 20 2019

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Facsimile: (251) 415-7350

September 20, 2019

Ms. Kristin Norman  
State Health Planning and  
Development Agency  
100 N. Union Street - Suite 870  
Montgomery, Alabama 36104

**Re: Filing Fee for Change of Ownership: Community Home Care**

Dear Ms. Norman:

Thank you for your email.

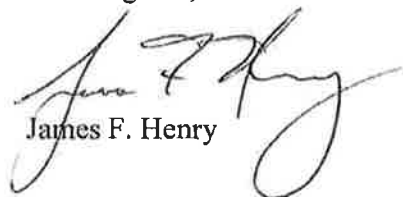
The Change of Ownership for Community Home Care will involve no new expenditures for major medical equipment, thus not exceeding the expenditure threshold for CON review of \$3,024,899.

The Change of Ownership for Community Home Care will involve no new annual operating costs, thus not exceeding the expenditure threshold for CON review of \$1,209,958.

The Change of Ownership for Community Home Care will involve no other capital expenditures, thus not exceeding the expenditure threshold for CON review of \$6,049,799.

If you need anything further, please let me know.

Best Regards,



James F. Henry

JFH/js

**NOTICE OF CHANGE OF OWNERSHIP/CONTROL**

The following notification of intent is provided pursuant to all applicable provisions of ALA. CODE § 22-21-270 (1975 as amended) and ALA. ADMIN. CODE r. 410-1-7-.04. This notice must be filed at least twenty (20) days prior to the transaction.

Change in Direct Ownership or Control (of a vested Facility; ALA. CODE §§ 22-20-271(d), (e))

Change in Certificate of Need Holder (ALA. CODE § 22-20-271(f))

Change in Facility Management (Facility Operator)

Any transaction other than those above-described requires an application for a Certificate of Need.

**Part I: Facility Information**

SHPDA ID Number: 051-H7135  
(This can be found at [www.shpda.alabama.gov](http://www.shpda.alabama.gov), Health Care Data, ID Codes)

Name of Facility/Provider: Community Home Care  
(ADPH Licensure Name)

Physical Address: 1526 Gilmer Avenue  
Tallassee, AL 36078

County of Location: ELMORE

Number of Beds/ESRD Stations: \_\_\_\_\_

CON Authorized Service Area (Home Health and Hospice Providers Only). Attach additional pages if necessary. Elmore, Coosa, Macon, and Tallapoosa Counties

**Part II: Current Authority** (Note: If this transaction will result in a change in direct ownership or control, as defined under ALA. CODE § 22-20-271(e), please attach organizational charts outlining current and proposed structures.)

Owner (Entity Name) of Facility named in Part I: Community Hospital, Inc.

Mailing Address: 805 Friendship Road  
Tallassee, AL 36078

Operator (Entity Name): Same as owner

**Part III: Acquiring Entity Information**

Name of Entity: Prime Home Health of Lee County, LLC

Mailing Address: 2125 Executive Park Drive  
Opelika, AL 36801

State Health Planning and Development Agency

Alabama CON Rules & Regulations

Operator (Entity Name): same as owner

Proposed Date of Transaction is on or after: 09/20/2019

**Part IV: Terms of Purchase**

Monetary Value of Purchase: \$ 140,000.00

Type of Beds: NA

Number of Beds/ESRD Stations: \_\_\_\_\_

**Financial Scope:** to include Preliminary Estimate of the Cost Broken Down by Equipment, Construction, and Yearly Operating Cost:

Projected Equipment Cost: \$ \_\_\_\_\_

Projected Construction Cost: \$ \_\_\_\_\_

Projected Yearly Operating Cost: \$ \_\_\_\_\_

Projected Total Cost: \$ 0.00

**On an Attached Sheet Please Address the Following:**

- 1.) The services to be offered by the proposal (the applicant will state whether he has previously offered the service, whether the service is an extension of a presently offered service, or whether the service is a new service).
- 2.) Whether the proposal will include the addition of any new beds.
- 3.) Whether the proposal will involve the conversion of beds.
- 4.) Whether the assets and stock (if any) will be acquired.

**Part V: Certification of Information**

**Current Authority Signature(s):**

The information contained in this notification is true and correct to the best of my knowledge and belief.

Owner(s): Jennie R. Rumbold Lee S. Green

Operator(s): Jennie R. Rumbold Lee S. Green

Title/Date: J CEO 8/21/19 CEO 8/21/19

State Health Planning and Development Agency

Alabama CON Rules & Regulations

SWORN to and subscribed before me, this 21 day of August, 2019.

(Seal)

Debbie J. Adair  
Notary Public My Commission Expires:  
November 14, 2022  
My Commission Expires: \_\_\_\_\_

**Acquiring Authority Signature(s):**

I agree to be responsible for reporting of all services provided during the current annual reporting period, as specified in ALA. ADMIN. CODE r. 410-1-3-.12. The information contained in this notification is true and correct to the best of my knowledge and belief.

Purchaser(s): Archie J. Jones \_\_\_\_\_

Operator(s): Archie J. Jones \_\_\_\_\_

Title/Date: president \_\_\_\_\_

SWORN to and subscribed before me, this 22<sup>nd</sup> day of August, 2019.

(Seal)

Bruce McCall  
Notary Public  
My Commission Expires: 10/15/2021

Author: Alva M. Lambert  
Statutory Authority: § 22-21-271(c), Code of Alabama, 1975  
History: New Rule