

GALLAGHER

GALLAGHER EVELIUS & JONES
ATTORNEYS AT LAW

March 29, 2024

VIA EMAIL

Ms. Ruby Potter
MHCC.confilings@maryland.gov
Health Facilities Coordination Officer
Maryland Health Care Commission
4160 Patterson Avenue
Baltimore, Maryland 21215

Re: **Conversion of Edward W. McCready Memorial Hospital to a Freestanding
Medical Facility - Request for Post-Approval Project Change
Docket No. 19-19-EX010**

Dear Ms. Potter:

On behalf of TidalHealth Peninsula Regional, Inc. (“TidalHealth”), we are submitting an electronic copy of its Request for Post-Approval Project Change and related exhibit in the above-referenced matter. A WORD version will be forwarded in a separate email. Four (4) hard copies will be sent separately by U.S. Mail.

We hereby certify that a copy of this submission has also been forwarded to the appropriate local health planning agency as noted below.

Please let us know if you have any questions.

Thank you,



Mallory Regenbogen



James Buck
Gallagher Evelius & Jones LLP
218 North Charles Street
Suite 400
Baltimore, MD 21201
410.727.7702
Counsel for TidalHealth

GALLAGHER

GALLAGHER EVELIUS & JONES
ATTORNEYS AT LAW

March 29, 2024

Page 2

cc: Ben Steffen, Executive Director
Wynee Hawk, Director, Center for Health Care Facilities Planning & Development
Jeanne Marie Gawel, Chief, Certificate of Need Program
Alexa Bertinelli, Esquire, Assistant Attorney General
Caitlin E. Tepe, Esquire, Assistant Attorney General
Danielle Weber, R.N., Somerset County Health Officer
Theodore Delbridge, M.D., Executive Director, Maryland Institute for Emergency Medical Services Systems
Pat Gainer, J.D., MPA, Deputy Director, Maryland Institute for Emergency Medical Services Systems
Steven Leonard, President and CEO, Tidal Health, Inc.
Stephanie Gary, Vice President and CFO, Tidal Health, Inc.
Christopher Hall, Vice President, Strategy and Business Development/Chief Business Officer, Tidal Health, Inc.

IN THE MATTER OF CONVERSION OF *
 EDWARD W. McCREADY MEMORIAL *
 HOSPITAL TO A FREESTANDING MEDICAL * BEFORE THE
 FACILITY * MARYLAND HEALTH
 * CARE COMMISSION
 *
 Matter No. 19-19-EX010 *
 *
 CON Exemption Granted January 16, 2020 *

* * * * *

REQUEST FOR POST-APPROVAL PROJECT CHANGE

TidalHealth Peninsula Regional, Inc. (“Peninsula Regional”), by its undersigned counsel, respectfully requests the Maryland Health Care Commission (the “Commission”) to approve a project change to the Exemption from Certificate of Need (“CON”) issued on January 16, 2020, as described herein.

I. BACKGROUND OF APPROVED PROJECT

The Commission issued an exemption from CON review on January 16, 2020, authorizing Peninsula Regional and Edward W. McCready Memorial Hospital (“McCready Hospital”) to convert to a freestanding medical facility (“FMF”) in two phases. (*See In re Conversion of the Edward W. McCready Memorial Hospital into a Freestanding Medical Facility*, Staff Report and Recommended Decision, Jan. 16, 2020, Docket No. 19-19-EX010.)

In Phase I of the approved project and upon Peninsula Regional becoming the sole corporate member of McCready Hospital, McCready Hospital was approved to be converted to an FMF at the existing hospital location with an approved budget of \$133,346. Peninsula Regional became the sole corporate member of McCready Hospital on March 1, 2020, and converted the hospital to an FMF known as TidalHealth McCready Pavilion in the old McCready

Hospital building also on March 1, 2020, thereby completing Phase I. Total costs associated with the Phase I conversion were \$97,260.70, below the Commission approved amount of \$133,346.¹ (See **Exhibit 1**, Table E with Actual Costs Incurred). TidalHealth McCready Pavilion has operated as an FMF in same location since March 1, 2020, providing the FMF services approved through the exemption from CON review and the Health Services Cost Review Commission.

Phase II of the approved project, involved construction of a new 23,299 square foot FMF building to be located at 4660 Crisfield Highway in Crisfield, Maryland, at an approved cost of \$25,589,294. The Commission also imposed the following performance requirements on Peninsula Regional with respect to Phase II of the project: (1) obligate not less than 51 percent of the approved capital expenditure, as documented by a binding construction contract, within 24 months of the date of the CON exemption; (2) initiate construction no later than four months after the effective date of the binding construction contract; and (3) document that the approved project has been completed, has been licensed, and has met all legal requirements and is providing the approved services no later than 24 months after the effective date of the binding construction contract.

Unfortunately, planning for Phase II of the project was delayed as a result of the need to divert staff and resources to address the COVID-19 pandemic, including the need for two emergency CON projects at Peninsula Regional. The planned location for Phase II of the project at 4660 Crisfield Highway, however, was ultimately determined not to be a suitable location for the new FMF building. Due to the flood plain, Peninsula Regional would have needed to truck approximately 6 feet of fill dirt to the entirety of the 10-acre parcel, rendering construction of the

¹ The renovations to the TidalHealth McCready Pavilion did not ultimately require any architect or engineering fees or permits as was initial estimated, which resulted in a cost savings of approximately \$20,000.

FMF at this location cost prohibitive by a multiple of the approved project budget. Peninsula Regional has thus far been unable to locate another suitable site to relocate TidalHealth McCready Pavilion within a five-mile radius of the extant McCready Hospital. As a result, Peninsula Regional was unable to meet any of the performance requirements imposed on Phase II of the project.

II. BASIS FOR REQUESTED PROJECT CHANGE

A. Change to the Location of the Project

As described above, Peninsula Regional converted McCready Hospital to an FMF, known as TidalHealth McCready Pavilion, in the hospital's former location on March 1, 2020. TidalHealth McCready Pavilion provides the same services and occupies the same physical plant design as approved by the Commission on January 16, 2020 for Phase I of the project. Unfortunately, the approved location for Phase II of the project was determined not to be a suitable building site. Despite continuing efforts, Peninsula Regional has not been able to locate another suitable site within 5 miles of McCready Hospital.

Accordingly, Peninsula Regional hereby requests a post-approval project change to the exemption from CON review to continue to allow TidalHealth McCready Pavilion to operate at the former site of McCready Hospital, 201 Hall Highway, Crisfield, Maryland 21817. Peninsula Regional recognizes that any future relocation of TidalHealth McCready Pavilion would require a Certificate of Need.

B. Requested Changes to Performance Requirements

With respect to Phase II of the project, the Commission imposed performance requirements on the project, including timelines for obligation of capital expenditures, initiation of construction, and documentation that the approved project has been completed. Because

Peninsula Regional was unable to complete Phase II of the project involving relocation of TidalHealth McCready Pavilion, Peninsula Regional requests that the Commission eliminate the performance requirements for Phase II of the project and permit TidalHealth McCready Pavilion to continue to operate as an FMF at its current location.

III. THE REQUESTED PROJECT CHANGES ARE APPROVABLE

Commission regulation COMAR § 10.24.01.17A requires notification of any proposed project changes. Certain types of proposed project changes are impermissible, including the following:

- (1) Changes in the fundamental nature of a facility or the services to be provided in the facility from those that were approved by the Commission;
- (2) Increases in the total licensed bed capacity or operating room inventory;
- (3) Changes in the medical service provided or approved.

COMAR § 10.24.01.17C.

The proposed changes identified in this filing do not change the fundamental nature of the project; will not result in an increase in the total licensed bed capacity or operating room inventory; and will not result in changes to the medical service provided or approved.

The following types of changes to a project require formal Commission approval:

- (1) A significant change in physical plant design;
- (2) A capital cost increase that exceeds the approved capital cost inflated by an amount determined by applying the Hospital Capital Market Baskets published by IHS Markit in Health Care Cost Review or other guidance approved by the Commission and posted on the Commission;
- (3) A change in the financing mechanisms of the project; or
- (4) A change in the location of the project.

COMAR § 10.24.01.17B.

The proposed changes do not require any increased capital costs, do not impact the total project operating expenses or revenue of the project, and do not change the financing mechanisms of the project. COMAR § 10.24.01.17B (2)-(5).


CONCLUSION

For all of the reasons set forth above, Peninsula Regional respectfully requests that the Commission approve the proposed change described above.

Respectfully submitted,



Mallory M. Regenbogen



James C. Buck
Gallagher Evelius & Jones LLP
218 North Charles Street, Suite 400
Baltimore MD 21201
(410) 727-7702
*Attorneys for University of Maryland Medical
System*

Date: March 29, 2024

I hereby declare and affirm under the penalties of perjury that the facts stated in this Request for Post-Approval Project Change and its attachments are true and correct to the best of my knowledge, information, and belief.

3/29/2024

Date

DocuSigned by:

Christopher Hall

4AB928942CE04F8...

Christopher Hall

Vice President, Chief Business Officer
Strategy and Business Development
TidalHealth, Inc.

EXHIBIT 1

TABLE E. PROJECT BUDGET

INSTRUCTION: Estimates for Capital Costs (1.a-e), Financing Costs and Other Cash Requirements (2.a-g), and Working Capital Startup Costs (3) must reflect current costs as of the date of application and include all costs for construction and renovation. Explain the basis for construction cost estimates, renovation cost estimates, contingencies, interest during construction period, and inflation in an attachment to the application.

NOTE: Inflation should only be included in the Inflation allowance line A.1.e. The value of donated land for the project should be included on Line A.1.d as a use of funds and on line B.8 as a source of funds

	Hospital Building Approved Budget Phase I	Actual Costs Incurred	Total
A. USE OF FUNDS			
1. CAPITAL COSTS			
a. New Construction			
(1) Building			\$0
(2) Fixed Equipment		\$0	\$0
(3) Site and Infrastructure			\$0
(4) Architect/Engineering Fees			\$0
(5) Permits (Building, Utilities, Etc.)			\$0
SUBTOTAL	\$0		\$0
b. Renovations			
(1) Building	\$113,346	\$97,261	\$97,261
(2) Fixed Equipment (not included in construction)			\$0
(3) Architect/Engineering Fees	\$5,000	\$0	\$0
(4) Permits (Building, Utilities, Etc.)	\$15,000	\$0	\$0
SUBTOTAL	\$133,346	\$97,261	\$97,261
c. Other Capital Costs			
(1) Movable Equipment			\$0
(2) Contingency Allowance			\$0
(3) Gross interest during construction period			\$0
(4) Other (Specify/add rows if needed)			\$0
SUBTOTAL	\$0	\$0	\$0
TOTAL CURRENT CAPITAL COSTS	\$133,346		\$97,261
d. Land Purchase			\$0
e. Inflation Allowance	\$5,432	\$0	\$0
TOTAL CAPITAL COSTS	\$138,778	\$0	\$97,261
2. Financing Cost and Other Cash Requirements			
a. Loan Placement Fees			\$0
b. Bond Discount			\$0
c. CON Application Assistance			\$0
c1. Legal Fees			\$0
c2. Other (Specify/add rows if needed)			\$0
d. Non-CON Consulting Fees			\$0
d1. Legal Fees			\$0
d2. Other (Specify/add rows if needed)			\$0
e. Debt Service Reserve Fund			\$0
f. Other (Specify/add rows if needed)			\$0
SUBTOTAL	\$0		\$0
3. Working Capital Startup Costs			
TOTAL USES OF FUNDS	\$138,778	\$0	\$97,261
B. Sources of Funds			
1. Cash		\$97,261	\$97,261
2. Philanthropy (to date and expected)			\$0
3. Authorized Bonds			\$0
4. Interest Income from bond proceeds listed in #3			\$0
5. Mortgage			\$0
6. Working Capital Loans			\$0
7. Grants or Appropriations			\$0
a. Federal			\$0
b. State			\$0
c. Local			\$0
8. Other (Specify/add rows if needed)			\$0
TOTAL SOURCES OF FUNDS	\$0	\$97,261	\$97,261
	Hospital Building	Other Structure	Total
Annual Lease Costs (if applicable)			
1. Land			\$0
2. Building			\$0
3. Major Movable Equipment			\$0
4. Minor Movable Equipment			\$0
5. Other (Specify/add rows if needed)			\$0

* Describe the terms of the lease(s) below, including information on the fair market value of the item(s), and the number of years, annual cost, and the interest rate for the lease.