

February 4, 2021

**VIA EMAIL**

Ms. Ruby Potter  
[ruby.potter@maryland.gov](mailto:ruby.potter@maryland.gov)  
Health Facilities Coordination Officer  
Maryland Health Care Commission  
4160 Patterson Avenue  
Baltimore, Maryland 21215

Re: Encompass Health Rehabilitation Hospital  
Inpatient Rehabilitation Hospital  
Matter No. 18-16-2423

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Dear Ms. Potter:

On behalf of applicant Encompass Health Rehabilitation Hospital of Southern Maryland, LLC, we are transmitting its Request for Project Change in the above-referenced matter. WORD and EXCEL files will be provided to Commission Staff by separate email.

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

Sincerely,



Ella R. Aiken

TCD/ERA:blr

Enclosure

cc: Kevin McDonald, Chief, Certificate of Need  
Suellen Wideman, Esq., Assistant Attorney General  
Dr. Ernest Carter, Health Officer, Prince George's County Health Dept.  
Dr. Diana E. Abney, Health Officer, Charles County Health Dept.  
Dr. Meenakshi G. Brewster, Health Officer, St. Mary's County Health Dept.  
Dr. Laurence Polsky, Health Officer, Calvert County Health Dept.  
Dr. Nilesh Kalyanaraman, Health Officer, Anne Arundel County Health Dept.

#730964  
013996-0001

IN THE MATTER OF

ENCOMPASS HEALTH REHABILITATION

HOSPITAL OF SOUTHERN MARYLAND

Matter No. 18-16-2423

CON Granted May 21, 2020

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BEFORE THE

MARYLAND HEALTH

CARE COMMISSION

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**REQUEST FOR POST-APPROVAL PROJECT CHANGE**

Encompass Health Rehabilitation Hospital of Southern Maryland, LLC (“Encompass”), by its undersigned counsel, respectfully requests the Maryland Health Care Commission (the “Commission”) to approve a project change to the Certificate of Need (“CON”) issued on May 21, 2020, as described herein.

**I. BACKGROUND OF APPROVED PROJECT**

The Commission issued a CON on May 21, 2020, authorizing Encompass to establish a 60-bed special rehabilitation hospital in Bowie, Maryland. (**Exhibit 1**, May 21, 2020 CON.) The approved project consists of construction of a 61,810 square foot (SF) building with 60 patient private rooms. The Commission approved \$39,019,894 in total use of funds for the project, including \$36,830,894 in total capital expenditures, not including inflation.

Encompass expects to satisfy the applicable performance requirements of COMAR § 10.24.01.12. Zoning hearings are complete, and Encompass expects final

zoning approval by the end of February 2021. Once obtained, Encompass will sign a construction contract, obtain all necessary permits, and begin construction in May 2021.

## **II. BASIS FOR REQUESTED PROJECT CHANGE**

Encompass requests a project change to increase the capital costs associated with the project. Encompass's capital costs have increased due to: (1) an underestimation of construction costs in Encompass's CON application filed on April 20, 2018, and modified on January 4, 2019; (2) an unanticipated cost increase for the project site; (3) unexpected increases in the price of moveable equipment, and, (4) an increase in contingency funds.

Encompass submitted its CON application on April 20, 2018, and modified it on January 4, 2019. Encompass originally estimated project completion within 28 months from submission (August 20, 2020) and did not include any inflation allowance in its budget. Encompass received the CON on May 21, 2020. While the Commission permits an adjustment for inflation of \$1,436,405, that amount is insufficient to cover additional expected inflation costs of \$5,525,907 between the application filing date and Encompass's current projected opening date, May 2022. Encompass calculates that it underestimated total costs by \$6,962,312. The four items listed above account for 98.5% of the total costs, or \$6,857,584. These are addressed in order.

Increased construction costs account for 53.5% of the total projected cost increase, or \$3,725,446. The increase is a combination of factors, including inflation in

construction itself and unanticipated design changes required for local regulatory approval. Site and infrastructure cost increases account for 14.7% of the total projected cost increase, or \$1,026,400. Moveable equipment cost increases account for 19.6% of the total projected cost increase, or \$1,364,418, and result from price increases imposed by vendors and the time between filing and expenditure. The final item is contingency costs, which increase by \$741,320 and represent 10.6% of the total projected cost increase. Though Encompass expects no further cost increases, it believes this projected increase in contingency costs prudent and accounts for any unforeseen expenses due to events beyond its control.

As a result of these increased project costs, Encompass requests a \$5,525,907 increase in permitted capital expenditures after subtraction of \$1,436,405 in allowable inflation calculated to the midpoint of construction as described in Section II below and in accordance with COMAR § 10.24.01.17B(2). A revised budget showing the approved costs, requested increase, and variance is attached as **Exhibit 2, Revised Table E** If approved, Encompass will pay for the additional capital costs using available corporate funds.

As a special rehabilitation hospital, Encompass's project is not subject to comprehensive rate regulation by the Health Services Cost Review Commission. As a result, the Commission adopted decision finds the "key feature" of Project Review Standard 10.24.09.04B(4) not applicable (Recommended Decision, p.55). However, in an abundance of caution, Encompass supplies a new letter from Fred C. Frederick, AIA, of

Frederick & Associates-Architects, Inc., confirming that the construction costs for the project remain reasonable and consistent with current industry and cost experiences in Maryland. **Exhibit 3.** As described in this letter, Mr. Frederick estimates a cost of construction of \$349 per square foot.

### **III. COMPARISON OF NEW TOTAL PROJECT COSTS AND ALLOWABLE CURRENT PROJECT COSTS**

To assess whether the Commission must approve the increases in project costs described above, the CON-approved costs must be inflated by means of the inflation index set forth in the Commission's regulations to determine the currently allowable project costs. *See* COMAR § 10.24.01.17B(2). This computation is based on the process outlined in the document on the Commission's website: "Determining the Threshold for Required Approval of Changes in Certificate of Need Approved Capital Cost."<sup>1</sup>

The net requested increase after allowable inflation is \$5,525,907. Encompass submitted its Application on April 20, 2018, a modified budget on January 4, 2019. The Commission approved the issuance of a CON on May 21, 2020. The approved capital costs for the project were \$36,830,894, excluding inflation. Applying the inflation index, which the Commission requires applicants to use once an application is approved in accordance with COMAR § 10.24.01.17B(2) permits 3.9% inflation as calculated below.

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<sup>1</sup> [https://mhcc.maryland.gov/mhcc/pages/hcfs/hcfs\\_con/documents/con\\_cap\\_cost\\_index\\_20200127.pdf](https://mhcc.maryland.gov/mhcc/pages/hcfs/hcfs_con/documents/con_cap_cost_index_20200127.pdf)

<u>Quarter</u>	<u>CAPB06</u>	<u>%MOVAVG</u>	<u>Inflation</u>
2018:2	1.170	1.4	N/A
2019:2	1.188	1.6	1.016
2020:2	1.205	1.5	1.015
2020:4	1.214	1.5	1.0075

The product of the three inflation values is 1.039, or 3.9% inflation. Applying this rate to the \$36,830,894 in approved Total Current Capital Costs amounts to:

Total Approved Capital Costs	\$36,830,894
Allowable Inflation at 3.9%	\$1,436,405
Total Allowable Capital Costs	\$38,267,299

Because the increase in the project's total current project cost exceeds the allowable total current project cost, Encompass must obtain Commission approval. *See* COMAR § 10.24.01.17B(2).

#### **IV. THE REQUESTED PROJECT CHANGES ARE APPROVABLE**

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

- (1) Before making a significant change in physical plant design;
- (2) Before incurring capital cost increases that exceed the approved capital cost inflated by an amount determined by applying the Building Cost Index published in Health Care Cost Review from the application submission date to the date of the filing of a request for approval of a project change;
- (3) When total projected operating expenses or revenue increases exceed the projected expenses or revenues in the approved Certificate of Need Application, inflated by 10 percent per year;
- (4) Before changing the financial mechanisms of the project;
- (5) Before changing the location or address of the project.

COMAR § 10.24.01.17B. The only applicable change here is the increase of capital costs exceeding the approved capital costs inflated by the allowable amount.

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 medical service categories from those approved;
- (3) Any change that requires an extension of time to meet the applicable performance requirements specified under Regulation .12 of this chapter, except as permitted under Regulation .12E of this chapter.

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 as previously approved; and will not require any extension of time beyond what is permitted under COMAR § 10.24.01.12E to meet applicable performance requirements.

### **CONCLUSION**

For the foregoing reasons, Encompass respectfully requests that the Commission approve the proposed changes described above.

Respectfully submitted,



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Thomas C. Dame



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Ella R. Aiken

Hannah L. Perng

Gallagher Evelius & Jones LLP

218 North Charles Street, Suite 400

Baltimore MD 21201

(410) 727-7702

*Attorneys for Encompass Health Rehabilitation  
Hospital of Southern Maryland, LLC*

Date: February 4, 2020



# **EXHIBIT 1**

# **MARYLAND HEALTH CARE COMMISSION**

## **Certificate of Need**

**To:** Walter Smith, Director, State Regulatory Affairs      **Date:** May 21, 2020  
Rehabilitation Hospital Corporation of America  
9001 Liberty Parkway  
Birmingham, Alabama 35242

**Re:** Encompass Health Rehabilitation Hospital of      **Docket No.:** 18-16-2423  
Southern Maryland, LLC - Establishment of 60 bed  
Rehabilitation Hospital

## **PROJECT DESCRIPTION**

This Certificate of Need authorizes Encompass Health Rehabilitation Hospital of Southern Maryland, LLC to establish a 60-bed special rehabilitation hospital in Bowie (Prince George's County), Maryland. The project consists of construction of a 61,810 square foot (SF) building with 60 private patient rooms. The total estimated project cost is \$39,019,894 and the project will be funded with cash.

## **ORDER**

The Maryland Health Care Commission reviewed the Reviewer's Recommended Decision and, based on that analysis and the record in the review, ordered, on May 21, 2020 that a Certificate of Need be issued for the project, with the following conditions:

1. In its request for first use approval, provide information, acceptable to Commission staff, that details the activities it has undertaken for outreach to the community regarding the availability of charitable services.
2. Maintain compliance with the provisions of COMAR 10.24.09.04A(1) regarding the availability of charity care and a sliding scale of discounted charges for low income individuals who do not qualify for full charity care.
3. Prior to first use, provide written transfer and referral agreements, acceptable to Commission staff, with facilities, agencies, and organizations that are capable of managing cases that exceed its own capabilities and/or provide alternative treatment programs appropriate to the needs of the persons it serves.

## **PERFORMANCE REQUIREMENTS**

In accordance with the conditions of the Certificate of Need set forth above and COMAR 10.24.01.12C (2) and (3), the project is subject to the following performance requirements:

1. Obligation of not less than 51 percent of the approved capital expenditure, as documented by a binding construction contract, within 36 months, no later than May 21, 2023.
2. Initiation of construction within four months of the effective date of a binding construction contract.
3. Documentation that the project is complete no later than 36 months after the effective date of the binding construction contract.

Failure to meet these performance requirements will render this Certificate of Need void, subject to the requirements of COMAR 10.24.01.12F through I.

### **PROPOSED CHANGES TO THE APPROVED PROJECT**

Before making any changes to the facts in the Certificate of Need application approved by the Commission, Encompass Health Rehabilitation Hospital of Southern Maryland, LLC must notify the Commission in writing and receive Commission approval of each proposed change, including the obligation of any funds above those approved by the Commission in this Certificate of Need, in accordance with COMAR 10.24.01.17.

### **DESIGN APPROVAL AND FACILITIES LICENSURE BY MDH**

This CON does not constitute a license or replace any approvals required by the Office of Health Care Quality (OHCQ) or others within the Maryland Department of Health (MDH). Encompass Health Rehabilitation Hospital of Southern Maryland, LLC must provide OHCQ and MDH with all information required for facility licensure.

### **QUARTERLY STATUS REPORTS**

In accordance with COMAR 10.24.01.13B, Encompass Health Rehabilitation Hospital of Southern Maryland, LLC must submit quarterly status reports to the Commission, beginning March 19, 2020, three months from the date of this Certificate of Need, and continuing at three-month intervals, until the completion of the project.

### **REQUEST FOR FIRST USE REVIEW**

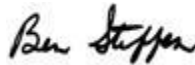
Encompass Health Rehabilitation Hospital of Southern Maryland, LLC must request in writing, not less than 60 days but not more than 120 days before the first use of the rehabilitation hospital, a first use review from the Commission, specifying the anticipated date of first use and documenting that the project has been substantially completed and will be completed, within 120 days or less, in a manner and consistent with this Certificate of Need. Commission staff will review the request in consultation with the Office of Health Care Quality, as provided in COMAR 10.24.01.18, to determine whether the project conforms to this Certificate of Need. First use approval does not constitute a license or replace any approvals required by OHCQ or others within MDH to operate a health care facility. Therefore, Encompass Health

Rehabilitation Hospital of Southern Maryland, LLC should assure that OHCQ is notified of the imminent completion of the project and should arrange for completion of any inspections and or approvals required by OHCQ in a timely manner. First use approval remains in effect for 90 days. If first use of the new building does not occur within 90 days of approval, Encompass Health Rehabilitation Hospital of Southern Maryland, LLC shall reapply for first use approval.

**ACKNOWLEDGEMENT OF RECEIPT OF CERTIFICATE OF NEED**

Acknowledgement of your receipt of this Certificate of Need, stating acceptance of its terms and conditions, is required within thirty (30) days.

**MARYLAND HEALTH CARE COMMISSION**



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Ben Steffen  
Executive Director

cc: Patricia T. Nay, M.D., Executive Director, Office of Health Care Quality  
Ernest L. Carter, MD, PhD, Health Officer, Prince Georges County  
Carolyn Jacobs, Esquire, Jacobs & Dembert P.A. Law Offices  
Katie Wunderlich, Executive Director of HSCRC

# **EXHIBIT 2**

TABLE E. PROJECT BUDGET--REVISED 2-4-21

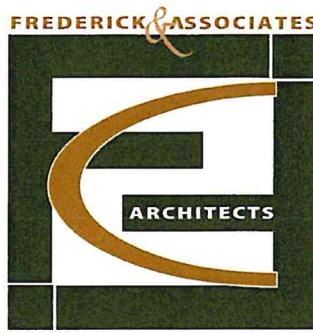
**INSTRUCTION:** Estimates for Capital Costs (1.a-e), Financing Costs and Other Cash Requirements (2.a-g), and Working Capital Startup Costs (3) must reflect current costs as of the date of application and include all costs for construction and renovation. Explain the basis for construction cost estimates, 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	Other Structure	Total
<b>A. USE OF FUNDS</b>			
<b>1. CAPITAL COSTS</b>			
<b>a. New Construction</b>			
(1) Building	\$21,566,286		\$21,566,286
(2) Bed Purchase	\$2,321,000		\$2,321,000
(3) Site and Infrastructure	\$3,120,000		\$3,120,000
(4) Architect/Engineering Fees	\$1,788,398		\$1,788,398
(5) Permits (Building, Utilities, Etc.)	\$628,699		\$628,699
<b>SUBTOTAL</b>	<b>\$29,424,383</b>	<b>\$0</b>	<b>\$29,424,383</b>
<b>b. Renovations</b>			
(1) Building	-		\$0
(2) Fixed Equipment (not included in construction)	-		\$0
(3) Architect/Engineering Fees	-		\$0
(4) Permits (Building, Utilities, Etc.)	-		\$0
<b>SUBTOTAL</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>c. Other Capital Costs</b>			
(1) Movable Equipment	\$3,864,618		\$3,864,618
(2) Contingency Allowance	\$1,851,471		\$1,851,471
(3) Gross interest during construction period	\$840,000		\$840,000
(4) Technology Equipment	\$1,507,734		\$1,507,734
<b>SUBTOTAL</b>	<b>\$8,063,823</b>	<b>\$0</b>	<b>\$8,063,823</b>
<b>TOTAL CURRENT CAPITAL COSTS</b>	<b>\$37,488,206</b>	<b>\$0</b>	<b>\$37,488,206</b>
<b>d. Land Purchase</b>	\$ 6,305,000		\$6,305,000
<b>e. Inflation Allowance</b>			\$0
<b>TOTAL CAPITAL COSTS</b>	<b>\$43,793,206</b>	<b>\$0</b>	<b>\$43,793,206</b>
<b>2. Financing Cost and Other Cash Requirements</b>			
a. Loan Placement Fees	-		\$0
b. Bond Discount	-		\$0
c. CON Application Assistance			\$0
c1. Legal Fees	\$600,000		\$600,000
c2. Other (CON Consulting, Traffic Study, Comm. Support)	\$750,000		\$750,000
d. Non-CON Consulting Fees			
d1. Legal Fees	\$0		\$0
d2. Appraisal, traffic study, title costs, engineering	\$150,000		\$150,000
e. Debt Service Reserve Fund	\$0		\$0
f. ACE-IT Installation	\$289,000		\$289,000
<b>SUBTOTAL</b>	<b>\$1,789,000</b>	<b>\$0</b>	<b>\$1,789,000</b>
<b>3. Working Capital Startup Costs</b>	<b>\$400,000</b>		<b>\$400,000</b>
<b>TOTAL USES OF FUNDS</b>	<b>\$45,982,206</b>	<b>\$0</b>	<b>\$45,982,206</b>
<b>B. Sources of Funds</b>			
1. Cash	\$45,982,206		\$45,982,206
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			
a. Federal	-		\$0
b. State	-		\$0
c. Local	-		\$0
8. Other (Specify/add rows if needed)	-		\$0
<b>TOTAL SOURCES OF FUNDS</b>	<b>\$45,982,206</b>		<b>\$45,982,206</b>
	Hospital Building	Other Structure	Total
<b>Annual Lease Costs (if applicable)</b>			
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.

# **EXHIBIT 3**



January 5, 2021

Ben Steffen  
Executive Director  
Maryland Health Care Commission  
4160 Patterson Avenue  
Baltimore, Maryland 21215

**RE: Encompass Health Rehabilitation Hospital of Prince George's County, LLC  
Melford, MD**

Dear Mr. Steffen,

As part of the Certificate of Need process, please accept this letter of verification for construction cost for the development of a 60-bed freestanding inpatient rehabilitation hospital in Bowie (Prince George's County), Maryland.

The new hospital is expected to be 61,810 square feet and we estimate construction costs for the building will be \$21,571,690, which is \$349 per square foot. We also estimated architectural and engineering costs will be \$1,788,398 (including civil engineering). The proposed construction costs for the project shall be reasonable and consistent with current industry and cost experience in Maryland.

We referenced historical data using two recent Encompass Health projects, adjusting for location and used the most recent, as well as the closest match to the building in square footage, for cost of construction which is \$350 per square foot.

The project will be designed with Construction Documents prepared to adhere to the current applicable codes of the State of Maryland Health Plan for Facilities and Services, and the City of Bowie Building Department. They currently include;

- 2018 International Building Codes w/ Prince George's County Amendments (IBC)
- 2018 International Plumbing Codes w/ Prince George's County Amendments (IBC)
- 2018 International Mechanical Codes w/ Prince George's County Amendments (IBC)
- 2018 International Building Code (MBPS)
- 2017 National Electrical Code Nfpa 70 (NEC)
- 2018 WSSC Plumbing And Fuel Gas Code
- 2018 International Mechanical Code (MBPS) w/ HVACR Admendments
- 2019 Maryland Accessibility Code
- 2018 International Energy Conservation Code (MBPS)

**Frederick & Associates - Architects, Inc.**

330 S. Pineapple Ave. Suite 204, Sarasota, FL 34236

T 941-366-3231

F 941-366-3245



- Prince George County Sub-Title 4
- Prince George County Sub-Title 11
- 2018 NFPA 101 Life Safety Code
- 2018 NFPA 99
- 2018 FGI Guidelines for Design And Construction Of Healthcare Facilities (FGI)

We are pleased to assist you and Encompass Health in maintaining high standards of quality in design and operation of your facility.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Fred C. Frederick', with a stylized flourish at the end.

Fred C. Frederick, AIA  
Principal  
MD Registration Number 0018787

Cc; Mr. John Tschudin, Encompass Health  
File