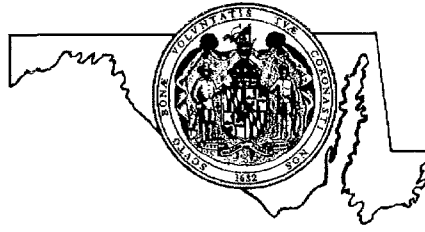


STATE OF MARYLAND

Andrew N. Pollak, MD
CHAIRMAN



Ben Steffen
EXECUTIVE DIRECTOR

MARYLAND HEALTH CARE COMMISSION

4160 PATTERSON AVENUE – BALTIMORE, MARYLAND 21215
TELEPHONE: 410-764-3460 FAX: 410-358-1236

August 23, 2019

By E-Mail and USPS

Carolyn Jacobs, Esquire
Jacobs & Dembert, P.A.
One South Street, Suite 2100
Baltimore, Maryland 21202-3280

Re: Request for Additional Information
Rehabilitation Hospital Corporation of America, LLC
d/b/a Encompass Health Rehabilitation Hospital of Salisbury
Docket No. 18-22-2435

Dear Ms. Jacobs:

As you know, staff of the Maryland Health Care Commission (MHCC) currently is reviewing the above-referenced Certificate of Need (CON) application filed by Rehabilitation Hospital Corporation of America, LLC d/b/a Encompass Health Rehabilitation Hospital of Salisbury (Encompass-Salisbury), which was previously known as HealthSouth Chesapeake Rehabilitation Hospital. In its application, Encompass-Salisbury proposes to add ten acute rehabilitation beds to its existing 64-bed special hospital for acute rehabilitation. The CON application identifies Encompass Health Corporation as the owner of Encompass-Salisbury.

MHCC staff has recently become aware of a settlement, announced on June 28, 2019, between the U.S. Department of Justice (DOJ) and Encompass Health Corporation. The DOJ announcement states that Encompass Health Corporation agreed to pay \$48 million to resolve allegations under the Fraudulent Claims Act that some Encompass Health Corporation inpatient rehabilitation facilities (IRFs) “provided inaccurate information to Medicare to maintain their status as an IRF and to earn a higher rate of reimbursement.”

<https://www.justice.gov/opa/pr/encompass-health-agrees-pay-48-million-resolve-false-claims-act-allegations-relating-its>

Encompass Health Corporation’s recent settlement of three lawsuits raises concerns with respect to the proposed expansion of Encompass-Salisbury. As you know, under COMAR 10.24.09.04A(2)(iii), an applicant seeking CON approval for a project involving an acute rehabilitation hospital must document that it “is ... in compliance with the conditions of

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participation of the Medicare and Medicaid programs.” MHCC staff requests that the applicant and its owner, Encompass Health Corporation, provide the following information:

(1) Provide details of the settlement. Include each limitation and/or condition placed on Encompass Health Corporation and/or any of its facilities regarding admissions or other operations.

(2) Does the settlement or other document require one or more specific actions by Encompass Health Care and/or any of its facilities? If so please describe and provide underlying documentation.

(3) As a result of allegations that led to the settlement or as a result of the settlement, has Encompass Health Care instituted new operational policies or changes to management’s oversight of operations? If so, please detail changes or policies, etc. that have been put in place to assure that all IRFs owned by Encompass Health Care comply with federal and state law.

(4) Did Encompass Health Care, the Centers for Medicare and Medicaid Services (CMS), and/or any government agency investigate or inquire about admission and/or billing practices at Encompass-Salisbury? If yes, please provide documents regarding findings and/or conclusions of each such inquiry and each corrective and/or other action taken.

Note that answers to the above four questions supplement the application and, for this reason, must be signed by person(s) available for cross-examination duly authorized by the Board of Directors of Encompass Health Corporation, on behalf of Encompass Health Corporation and the applicant. Each such person shall sign a statement/affidavit as follows:

I hereby declare and affirm under the penalties of perjury that I have been designated by Encompass Health Corporation and that the facts stated in this response and attachments are true and correct to the best of my knowledge, information, and belief.

(5) Encompass-Salisbury and Encompass Health Corporation must provide current and complete information in Part III of its CON application (Part III). I note that the applicant did not provide the information required by Part III in its original application. Question 2 of Part III asks:

Is any applicant, owner, or responsible person listed above now involved, or has any such person ever been involved, in the ownership, development, or management of another health care facility? If yes, provide a listing of each such facility, including facility name, address, the relationship(s), and dates of involvement.

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Although Encompass-Salisbury's CON application lists Encompass Health Corporation as the owner of the applicant (on page 1, and in response to Question 1 of Part III), it does not provide the requested information in response to Question 2. Specifically, it does not list each facility owned currently or in the past by Encompass Health Corporation. Instead the applicant's response to Question 2 was "See Attachment 5 for Mr. Mowen's resume."

(6) Since Questions 3, 4, and 5 of Part III refer to the answer to Question 2, the applicant and Encompass Health Corporation must also provide updated and complete responses to each of these questions.

Attached as a separate document is the Part III form, which contains an affirmation that has been revised to account for the specific circumstances regarding Part III. Encompass Health Corporation and the applicant should feel free to provide any additional information that either believes will be helpful to the MHCC and/or MHCC staff.

If you have any questions regarding this request, please call Suellen Wideman, Assistant Attorney General, at 410-764-3326.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin McDonald", with a long horizontal flourish extending to the right.

Kevin McDonald
Chief, Certificate of Need

enclosure

cc: Walter Smith, Director, State Regulatory Affairs, Encompass Health
Suellen Wideman, AAG, MHCC
Ben Steffen, Executive Director, MHCC
Paul Parker, MHCC
Lori Brewster, MS, APRN/BC, LCADC, Health Officer, Wicomico County

**PART III - APPLICANT HISTORY, STATEMENT OF RESPONSIBILITY,
AUTHORIZATION AND RELEASE OF INFORMATION, AND SIGNATURE**

1. List names and addresses of all owners and individuals responsible for the proposed project.
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2. Is any applicant, owner, or responsible person listed above now involved, or has any such person ever been involved, in the ownership, development, or management of another health care facility? If yes, provide a listing of each such facility, including facility name, address, the relationship(s), and dates of involvement.
-

3. In the last 5 years, has the Maryland license or certification of the applicant facility, or the license or certification from any state or the District of Columbia of any of the facilities listed in response to Question 2, above, ever been suspended or revoked, or been subject to any disciplinary action (such as a ban on admissions)? If yes, provide a written explanation of the circumstances, including the date(s) of the actions and the disposition. If the applicant(s), owners, or individuals responsible for implementation of the Project were not involved with the facility at the time a suspension, revocation, or disciplinary action took place, indicate in the explanation.
-

4. Other than the licensure or certification actions described in the response to Question 3, above, has any facility with which any applicant is involved, or has any facility with which any applicant has in the past been involved (listed in response to Question 2, above) ever received inquiries from a federal or any state authority, the Joint Commission, or other regulatory body regarding possible non-compliance with Maryland, another state, federal, or Joint Commission requirements for the provision of, the quality of, or the payment for health care services that have resulted in actions leading to the possibility of penalties, admission bans, probationary status, or other sanctions at the applicant facility or at any facility listed in response to Question 2? If yes, provide, for each such instance, copies of any settlement reached, proposed findings or final findings of non-compliance and related documentation including reports of non-compliance, responses of the facility, and any final disposition or conclusions reached by the applicable authority.
-

5. Has any applicant, owner, or responsible individual listed in response to Question 1, above, ever pled guilty to, received any type of diversionary disposition, or been convicted of a criminal offense in any way connected with the ownership, development, or management of the applicant facility or any of the health care facilities listed in response to Question 2, above? If yes, provide a written explanation of the circumstances, including as applicable the court, the date(s) of conviction(s), diversionary disposition(s) of any type, or guilty plea(s).
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This Part III must be signed by one or more persons with knowledge of the information sought and officially Board-designated in writing by Encompass Health Corporation, the owner of the applicant to sign for and act for Encompass Health Corporation and Rehabilitation Hospital Corporation of America, LLC d/b/a Encompass Health Rehabilitation Hospital of Salisbury, the applicant in this review.

I hereby declare and affirm under the penalties of perjury that I have been designated by the Board of Encompass Health Corporation and that the facts stated in this Part III of the application and attachments to Part III are true and correct to the best of my knowledge, information, and belief.

Date

Signature of Board-designated Official

Position/Title

Printed Name

Date

Signature of Board-designated Official

Position/Title

Printed Name