



State of New Jersey  
DEPARTMENT OF HEALTH AND SENIOR SERVICES  
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JON S. CORZINE  
Governor

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HEATHER HOWARD, J.D.  
Commissioner

April 18, 2008

**VIA UNITED PARCEL SERVICE**

Monsignor Ronald J. Rozniak  
Chief Executive Officer  
Saint James Hospital  
155 Jefferson Street  
Newark, New Jersey 07105

Re: Saint James Hospital  
CN# FR 080124-07-01  
Project Cost: 0  
Expiration Date: April 18, 2013

Dear Monsignor Rozniak:

I am approving Cathedral Health Services' (Cathedral) certificate of need (CN) application for the discontinuance of Saint James Hospital (Saint James) as a general hospital with 124 medical/surgical beds, 11 obstetrics/gynecology, 18 pediatrics, 9 adult ICU/CCU beds, 4 intermediate bassinets, 14 adult acute psychiatric beds and 6 adult closed acute psychiatric beds. In addition, I am approving the establishment of a 50-bed long term acute care (LTAC) facility at the Saint James site, as well as the transfer of the facility's full complement of twenty behavioral health beds (14 open and 6 closed adult acute beds) to the license of Saint Michael's Medical Center (Saint Michael's). I am, however, denying the transfer of the 4 intermediate bassinets from the license of Saint James to Saint Michael's. I note that separate CN applications have been filed for the transfer of ownership of Saint Michael's from Cathedral to Catholic Health East (CHE), the transfer in licensure of the aforementioned intermediate bassinets and psychiatric beds to Saint Michael's and the closure of Columbus Hospital (Columbus), another affiliate hospital of Cathedral. There are no capital costs associated with this project.

The standards that I am compelled to use in evaluating this application are set forth in statute (N.J.S.A. 26:2H-1 et seq.) and by administrative rule (N.J.A.C. 8:33). I must be satisfied that the project submitted by Cathedral is consistent with those

requirements. Therefore, for the reasons that follow, I am approving with conditions the application submitted by Cathedral for the closure of Saint James (except for the retention of the license for the intermediate care bassinets). As you are aware, my final decision concerning the CN application for the transfer of ownership of Saint Michael's included the addition of 20 behavioral health beds from Saint James to the license of Saint Michael's and the relocation of the total bed complement of psychiatric beds to the Saint James site. I note for the record that my decision to approve this Saint James application is consistent with the recommendation of the State Health Planning Board (SHPB), which recommended approval of CN# FR 080124-07-01 with conditions, at its April 3, 2008 meeting. In response to the exigent circumstances related to the CN application for Saint James and the severe financial conditions of Saint Michael's and Columbus, I reviewed the CN application for the closure of Saint James, the transcript of the public hearing, written comments, and received a briefing from department staff concerning the SHPB meeting, presentations, comments and findings. Also attached is the CN Saint Michael's determination letter, with required conditions, dated April 11, 2008 incorporated and made a part hereof.

N.J.S.A. 26:2H-8, as well as N.J.A.C. 8:33-4.9(a), provides for the issuance of a certificate of need only where the action proposed in the application for such certificate is necessary to provide required health care in the area to be served, can be economically accomplished and maintained, will not have an adverse economic or financial impact on the delivery of health services in the region or statewide, and will contribute to the orderly development of adequate and effective health care services. In making such determinations, I must take into consideration: (a) the availability of facilities or services which may serve as alternatives or substitutes, (b) the need for special equipment and services in the area, (c) the possible economies and improvement in services to be anticipated from the operation of joint central services, (d) the adequacy of financial resources and sources of present and future revenues, (e) the availability of sufficient manpower in the several professional disciplines, and (f) such other factors as may be established by regulation. As previously mentioned, I have also taken into consideration the recommendations made by the SHPB to approve this application. I have reviewed the application, the Department's recommendations, and transcripts of the public hearing and the two SHPB meetings in rendering my decision. The presentation by the Chief Executive Officer and supporting testimony by the chair and members of the board acknowledges the shared role of management and governance in submitting this application.

I am also mindful that in 1992, the Legislature enacted P.L. 1992, c. 160, the "Health Care Reform Act" (HCRA) to "move in the direction of a deregulated hospital reimbursement system" and promote a "truly competitive market environment." Indeed, in the years since the HCRA became law, the health care environment has changed dramatically: among other things, it has become increasingly competitive and in many ways more financially challenging for hospitals. For example, managed care penetration has grown significantly during this period and, partly as a result of this, hospital utilization has decreased substantially. The HCRA also eliminated authority for

hospital rate-setting, which in the past may have shielded hospitals from the financial consequences of their actions or inactions.

In accordance with N.J.S.A. 26:2H-5.8(c), facilities seeking to close or eliminate a health care facility or service subject to certificate of need review by SHPB are required to file a full review certificate of need application. The SHPB is also required to hold at least one public hearing in the service area of the health care facility or service proposed to be closed within 30 days of the application being declared complete by the Department. In this instance, a public hearing took place on March 14, 2008 where 135 people attended and 30 spoke. Twenty-seven of the speakers opposed the closure of Saint James and expressed concern that services currently offered at Saint James, particularly obstetrical and emergency services, would become less accessible to the residents in the hospital's service area.

As to the specifics of this application, N.J.S.A. 26:2H-8(a) requires that I consider the availability of facilities or services, which may serve as alternatives or substitutes. In Essex County, there are seven other acute care hospitals in addition to Saint James, which are all located within ten miles of the hospital. Since Columbus has also submitted an application for closure, for purposes of my decision, I have not considered it as an available alternative. Five are located within a five mile radius, with Saint Michael's the closest at 1.9 miles, University Hospital- UMDNJ (UMDNJ) at 2.4 miles and Newark Beth Israel Medical Center (Newark Beth) at 3.4, East Orange General Hospital (East Orange) at 3.7 and Clara Maass Medical Center (Clara Maass) at 4.9 miles. The remaining two include Mountainside Hospital (Mountainside) at 6.9 miles located in Montclair and Saint Barnabas Medical Center (Saint Barnabas) at 9.9 miles in Livingston. When looking at the current average daily census figures for Saint James, it is clear that there are a sufficient number of unused beds among the seven neighboring hospitals in Essex County to absorb the relatively small inpatient census at Saint James. I am satisfied that the proposed closure will not adversely affect access to health care services for the community, including the medically indigent and medically underserved population. Thus, I am satisfied that this criterion is met. I take notice of the many comments concerning transportation and the ability to access the available services and address this concern in the conditions below.

I also find that the requirement at N.J.S.A. 26:2H-8(b) to consider the need for special equipment and services in the area would be met in this case, I note that such specialized services, such as outpatient obstetrical/prenatal services, will continue to be provided by Saint Michael's at the Saint James site, pending approval of the transfer of ownership to CHE. There are also other providers in Essex County with services and resources to satisfy the former patients of Saint James without unduly disrupting their care. Thus, I take notice of the many comments concerning the problems of access to the available obstetrical and emergency services in Essex County and address this concern in the conditions below.

Prenatal clinic services will be maintained at the Saint James site and I am satisfied that the applicant has identified that these services will continue to be met after the closure of the facility. Although I am not mandating membership in a Maternal and Child Health Consortium as a condition, given the importance of prenatal care and continuity of care I am strongly recommending that Saint Michael's/CHE maintain hospital membership in a Maternal and Child Health Consortium serving the Saint James service area for a period of at least two years from the date of this approval in order to assure they are participating in, and cognizant of, the regional planning needs of the market area.

With respect to N.J.S.A. 26:2H-8(c) regarding the possible economies and improvement in services to be anticipated from the operation of joint central services, this provision is not applicable since Saint James would be discontinuing its services. N.J.S.A. 26:2H-8(d) requires me to examine the adequacy of financial resources and sources of present and future revenues. I am convinced that if the annual operating losses at Saint James continue, Saint Michael's, which is 1.9 miles away and also located in Newark, would be adversely affected and at risk of also closing. I believe the closure of Saint James by Cathedral would result in enhanced revenues, operational efficiencies and improve resource utilization to reverse the recent operating losses at Saint Michael's, a safety net hospital for the residents of Newark. Additionally, I agree that the applicant's rationale to discontinue services at Saint James is a realistic assessment of the health care environment in Essex County. I recognize that Cathedral can no longer afford to duplicate inpatient services which compete for the same market share of the population. I agree that any further investment in Saint James to update the facility would not be cost effective and only add to the financial losses that Cathedral is already experiencing, resulting in the potentially catastrophic closure of all three Cathedral hospitals. In this case, access to care, cost savings and quality would be more achievable for Saint Michael's through the closure of Saint James. The additional losses at Saint James, were it to remain open, would further jeopardize Saint Michael's and put at risk their provision of tertiary services for the Newark service area.

Finally, with respect to N.J.S.A. 26:2H-8(e) regarding the availability of sufficient manpower in the several professional disciplines, I am satisfied that there will be sufficient qualified personnel in this regard, since the application proposes closure of the inpatient portion of the facility, adequate staffing is not an issue. However, I note that the application indicates efforts by Saint Michael's/CHE to offer and hire displaced employees at Saint James without loss of seniority or benefits and has worked with other area providers to employ former Saint James employees.

N.J.S.A. 26:2H-8(f) requires consideration of such other factors as may be established by regulation; therefore, I have taken into consideration the applicable administrative rules governing the services subject to full review (i.e., N.J.A.C. 8:33-1.1 et seq.). Cathedral is in compliance with the access requirements set forth in N.J.A.C. 8:33-1.1 et seq. and N.J.A.C. 8:33-4.10(a). Specifically, Cathedral states that there will be no changes to the care or services currently provided at Saint Michael's, following

the transfer of ownership, and that outreach efforts will continue to low income, racial and ethnic minorities, women, disabled, elderly and all other patients in need of prevention, diagnostic and treatment services, which is one of the reasons I approved the transfer of ownership of SMMC to CHE. In addition, services to be provided by Saint Michael's/CHE (and mandated by condition in my April 11, 2008 approval of the SMMC's transfer) at the Saint James site include primary care, inclusive of pediatric services, obstetrical and prenatal clinics, and a satellite emergency department (SED). The applicant states that there will be no change in its policies regarding the provision of indigent care and Saint Michael's/CHE will continue to accept all patients regardless of their ability to pay. Cathedral notes that Saint Michael's/CHE will maintain a commitment to the community to continue providing medical care and treatment for medically underserved populations and has also indicated a commitment to preserve the same level of access to health care services for the Saint James community, including the medically indigent and medically underserved population.

I have also taken into consideration the statutory requirement to determine whether the action proposed will have an adverse economic or financial impact on the delivery of health care services in the region or statewide and will contribute to the orderly development of adequate and effective health care services. I note the project will result in the closure of a 182 bed acute-care facility, which is currently severely underutilized. I conclude that the applicant's decision to close Saint James appears sound and in the best interest of the county's health care delivery system. I also note that a primary objective of this closure is to strengthen the financial viability of Saint Michael's, preserving access to essential services.

Additionally, as previously noted, there will be sufficient regional capacity to meet the need for inpatient acute care services, even after closure of Saint James. As to whether the discontinuance of acute inpatient services at Saint James would contribute to the orderly development of adequate and effective health care services, I find that the discontinuance would strengthen Saint Michael's, contribute to rationalizing the delivery of inpatient acute care services in the region and not have a significant adverse impact on any hospital in Essex County or the surrounding counties.

Based on the foregoing, and noting the approval of the SHPB, I am approving Cathedral's application for the closure of Saint James and the establishment of a 50-bed LTAC at the Saint James site subject to the following conditions:

1. The applicant shall surrender the general hospital license for Saint James to the Department's Certificate of Need and Healthcare Facility Licensure Program.
2. An outreach effort shall be placed into effect to ensure that all residents of the hospital service area, especially the medically indigent, have access to the available services in the area. A self-evaluation of this effort shall be conducted six months after the closure of Saint James, for the next six

months after that and afterwards on a yearly basis for the next five years to measure service delivery and effectiveness. This self-evaluation shall be submitted to the Department for review and comment.

- a. By July 1, 2008, SMMC, Inc./CHE shall report to the Department with a plan documenting the availability of appropriate professional interpretation and translation services at SMMC. SMMC, Inc./CHE shall also prepare outreach and educational materials in the language of patient populations and communities it serves.
3. Within seven days from the date of CN approval, Saint James shall:
    - Notify, in writing, the Department's Certificate of Need and Healthcare Facility Licensure program of who, specifically, is responsible for the safekeeping and accessibility of all components of the patients' medical records (both active and stored) from Saint James, in accordance with N.J.S.A. 8:26:8.5 et seq. and N.J.A.C. 8:43G-15.2.
    - Provide a detailed description, in writing, of the established process to obtain a copy of a complete medical record, inclusive of electronic and hard copy components, and the projected timeframe from request to receipt of same.
    - Provide a detailed plan for public notification regarding the process to obtain a copy of a complete medical record. Public notification must occur immediately upon receipt of approval of the closure of Saint James by the Commissioner of Health.
  4. A communication plan notifying the public of the closure of Saint James and alternative area service providers shall be developed and published in at least two newspapers of general circulation in the area upon receipt of approval of the closure by the Commissioner of Health. This notice shall also be submitted to the Department for review and placement in the facility's permanent record on file at the Department.
  5. Compliance to all licensure standards in N.J.A.C. 8:43G-38 regarding the implementation of LTAC services is required, which includes the submission of a license application, an operational survey and authorization from the Department's Certificate of Need and Healthcare Facility Licensure Program prior to the initiation of LTAC services.
  6. This CN approval is subject to the adherence of all CN conditions as set forth in Saint Michael's CN approval for transfer of ownership, 15(a) through 15(d) inclusive (see Saint Michael's determination letter attached).

Failure to satisfy the aforementioned conditions of approval may result in sanctions, including license suspension, monetary penalties and other sanctions in accordance with N.J.S.A. 26:2H-1 et seq. and all other applicable requirements. Acceptance of these conditions will be presumed unless written objections are submitted to the Department within 30 days of receipt of this letter. Upon receipt of such objections, this approval will be deemed suspended and the project shall be re-examined in light of the objections.

I am denying the transfer of the licenses of the four intermediate bassinets from Saint James to SMMC's license. My reasons for denial are based on the need for the immediate availability of bassinets to care for infants who require intermediate care services, the fact that Saint Michael's has not provided Ob/neonatal care services for over five years and a written commitment by one of the Regional Perinatal Centers in Newark to undertake both an immediate and a longer term expansion to meet the inpatient Ob/neonatal care needs of the service area.

Pursuant to N.J.S.A. 26:2H-9, you are entitled to a hearing at the Office of Administrative Law to contest the partial denial of this application. A request for such a hearing should be made in writing, and should be forwarded to the Department's Office of Legal and Regulatory Affairs, P.O. Box 360, Room 805, Trenton, New Jersey 08625, within 30 days of receipt of this notice. Failure to do so will negate the opportunity for such a hearing.

We look forward to working with you and CHE and helping you both to provide a high quality of care to your patients. If you have any questions concerning this certificate of need, please do not hesitate to contact John Calabria, Director, Office of Certificate of Need and Healthcare Facility Licensure, at (609) 292-8773.

Sincerely,



Heather Howard  
Commissioner

Attachment

c: John A. Calabria



State of New Jersey  
DEPARTMENT OF HEALTH AND SENIOR SERVICES  
PO BOX 360  
TRENTON, N.J. 08625-0360

JON S. CORZINE  
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HEATHER HOWARD  
Commissioner

April 11, 2008

**VIA UNITED PARCEL SERVICE**

Alexander J. Hatala  
Senior Executive Officer  
Saint Michael's Medical Center, Inc.  
111 Central Avenue  
Newark, NJ 07102

Re: CN# FR 080123-07-01  
Saint Michael's Medical Center  
Project Cost: \$0  
Expiration Date: April 11, 2013

Dear Mr. Hatala:

I am approving Saint Michael's Medical Center, Inc./Catholic Health East's (SMMC Inc./CHE) certificate of need (CN) application, submitted pursuant to N.J.A.C. 8:33-3.1, for the transfer of ownership of Saint Michael's Medical Center (SMMC), to SMMC Inc. a wholly owned subsidiary of CHE, a not-for-profit Catholic health care system and the addition of 20 behavioral health beds. I am approving the addition of 14 open and 6 closed acute adult psychiatric beds, which are currently licensed and operated by Saint James Hospital (SJH) to the license of SMMC and the relocation of all psychiatric inpatient beds to the SJH site; however, I am denying the transfer of the license for four intermediate bassinets from SJH and six intermediate bassinets from Columbus Hospital (CH) to SMMC. Separate CN applications have been filed for SJH and CH for closure. This application is being approved at the total project cost noted above.

This CN approval is limited to the transfer of ownership of SMMC, a licensed general acute care hospital with 337 beds licensed of which 280 are medical/surgical beds, 6 pediatric beds, 30 adult ICU/CCU beds and 21 adult acute psychiatric beds. The service complement of the facility consists of 7 inpatient ORs, 1 cystoscopy room, a cardiac surgery center with 2 cardiac surgical rooms and 6 catheterization labs, acute hemodialysis, 13 chronic hemodialysis stations, 1 chronic peritoneal dialysis station, 2 linear accelerators and 1 CT unit. With the addition of the aforementioned 20 behavioral health beds from the SJH license, the total psychiatric bed complement of SMMC will be 35 open and 6 closed acute adult psychiatric beds and the total licensed



capacity of SMMC will be amended to 357 beds. As set forth in the CN application, SMMC, Inc./CHE agrees to operate SMMC as a general hospital following the transfer of the hospital, continue all existing medical services offered by SMMC and maintain the existing licensed bed capacity, service complement and programs at the SMMC location. SMMC, Inc./CHE also agrees to hire substantially all hospital employees who are employed at the time of the transfer of ownership.

The standards that I am compelled to use in evaluating this application are set forth in statute (N.J.S.A. 26:2H-1 et seq.) and by regulation (N.J.A.C. 8:33). I must be satisfied that the project submitted by SMMC, Inc./CHE is consistent with those requirements. Therefore, for the reasons that follow, I am approving with conditions, the application submitted for the transfer of ownership of SMMC to SMMC, Inc./CHE, and pending my final decision concerning the CN application for the closure of SJH, the addition of 20 behavioral health beds from SJH to the license of SMMC and the relocation of the total bed complement of psychiatric beds to the SJH site. I note for the record that my decision to approve this application is consistent with the recommendation of the State Health Planning Board (SHPB), which recommended approval of CN# FR 080123-07-01 with conditions, at its April 3, 2008, meeting. In response to the exigent circumstances related to the CN application for SMMC and the severe financial conditions of SJH and CH, I reviewed the CN application for the transfer of ownership of SMMC, the transcript of the public hearing, written comments, and received a briefing from department staff concerning the SHPB meeting, presentations, comments and findings. I have also reviewed the financial plan and assumptions deemed necessary to assure the continuation of essential health care services. I was also briefed on the CN application for the closure of SJH and the SHPB recommendations issued at the April 3, 2008, meeting.

N.J.S.A. 26:2H-8, as well as N.J.A.C. 8:33-4.9(a), provides for the issuance of a certificate of need only where the action proposed in the application for such certificate is necessary to provide required health care in the area to be served, can be economically accomplished and maintained, will not have an adverse economic or financial impact on the delivery of health services in the region or statewide, and will contribute to the orderly development of adequate and effective health care services. In making such determinations, I must take into consideration: (a) the availability of facilities or services which may serve as alternatives or substitutes, (b) the need for special equipment and services in the area, (c) the possible economies and improvement in services to be anticipated from the operation of joint central services, (d) the adequacy of financial resources and sources of present and future revenues, (e) the availability of sufficient manpower in the several professional disciplines, and (f) such other factors as may be established by regulation. A review of the aforementioned statutory criteria must be undertaken to demonstrate a need for the transfer of ownership as requested in the application. As previously mentioned, I have also taken into consideration the recommendations made by the SHPB to approve this application.

As to the specifics of this application, N.J.S.A. 26:2H-8(a) requires that I consider the availability of facilities or services, which may serve as alternatives or substitutes. I believe the applicant carefully and thoroughly examined its available options before deciding to proceed with the acquisition of SMMC. The applicant believes, and I concur, that this transfer of ownership is the only viable option to preserving the current level of health care services for city residents. The applicant does not intend to downsize services or reduce availability to any service previously provided at SMMC. I agree that the proposed transfer of ownership, as opposed to the closure of the hospital, will preserve access to health care services for the community, including the medically indigent and medically underserved populations. In addition, I believe that the licensure of the additional behavioral health beds from SJH to the license of SMMC and, thus, to the existing psychiatric services already being offered by SMMC, along with the relocation of this service to the SJH campus, would provide the surrounding community access to a continuum of psychiatric care. Thus, I am satisfied that this criterion is met.

I also find that the requirement at N.J.S.A. 26:2H-8(b) to consider the need for special equipment and services in the area would be met in this case since following the transfer of ownership, SMMC, Inc./CHE has agreed to offer the same services that are currently licensed at the present facility. With respect to N.J.S.A. 26:2H-8(c) regarding the possible economies and improvement in services to be anticipated from the operation of joint central services, I find that this is not applicable since the applicant will continue to operate a separate hospital. Moreover, I note that the application states that through medical staff development and management expertise following the transfer of ownership, and while maintaining all existing beds and services at SMMC, the applicant will enhance revenues, effect operational efficiencies and improve resource utilization to reverse the recent operating losses at SMMC. I concur that this will serve to enhance the financial viability of SMMC, a facility that serves as a safety net hospital and a vital resource to the residents of Newark. The SHPB noted that the applicant had demonstrated an interest in continuing access to the residents of Newark to essential health care services and that the transfer of ownership and consolidation of existing facilities was an appropriate mechanism to reduce the costs of running two systems while maintaining quality and access.

Pre-natal clinic services will be maintained therefore maintaining access; however, SMMC does not provide Ob/neonatal care services. I am satisfied that the applicant has identified that the services will be met in the affected community. Although I am not mandating membership in a Maternal and Child Health Consortium as a condition, given the importance of pre-natal care and continuity of care, I am strongly recommending that SMMC, Inc./CHE maintain hospital membership in a Maternal and Child Health Consortium serving the SMMC service area for a period of at least two years from the date of this approval in order to assure they are participating in, and cognizant of, the regional planning needs.

N.J.S.A. 26:2H-8(d) requires me to examine the adequacy of financial resources and sources of present and future revenues. Financial analysis of the SMMC, Inc./CHE application undertaken by Department of Health and Senior Services' (Department) staff reveals that SMMC, Inc./CHE possesses adequate financial resources to accomplish the proposed project. Finally, with respect to N.J.S.A. 26:2H-8(e) regarding the availability of sufficient manpower in the several professional disciplines, I am satisfied that there will be sufficient qualified personnel to staff the hospital since SMMC, Inc./CHE will continue to operate all existing beds and services at SMMC and has agreed to hire substantially all of SMMC's employees who are employed at the time of the sale.

N.J.S.A. 26:2H-8(f) requires consideration of such other factors as may be established by regulation; therefore, I have taken into consideration the applicable regulations for the services subject to full review (i.e., N.J.A.C. 8:33-1.1 et seq.). SMMC, Inc./CHE is in compliance with the access requirements set forth in N.J.A.C. 8:33-1.1 et seq. and N.J.A.C. 8:33-4.10(a). Specifically, SMMC, Inc./CHE states it will make no changes to the care or services currently provided by SMMC and will maintain a commitment to the community to continue to provide medical care and treatment to medically underserved populations. The applicant states that there will be no change in SMMC's policies regarding the provision of indigent care and that SMMC, Inc./CHE would continue to provide indigent care at the levels presently provided by SMMC. Therefore, SMMC, Inc./CHE would continue to accept all patients regardless of their ability to pay and maintain a commitment to the community to continue providing medical care and treatment for medically underserved populations.

In addition, N.J.A.C. 8:33-4.9(a) requires a demonstration that this transfer of ownership shall not have an adverse impact on the population being served in regard to access to and quality of care. The applicant indicates, and I concur, that the transfer of ownership of SMMC, as opposed to the closure of the hospital, will preserve and enhance the financial viability of the hospital, and allow it to remain with its current mission as a general acute care hospital providing healthcare services in the community. In addition, SMMC, Inc./CHE has made a commitment to maintain SMMC as a general acute care hospital after the transfer of ownership and will continue to offer at SMMC similar levels and types of services to the market area which were offered prior to the acquisition.

Finally, I find that SMMC, Inc./CHE has provided an appropriate project description, which includes information as to the total project cost, operating costs and revenues, services affected, equipment involved, source of funds, utilization statistics, and justification for the proposed project (N.J.A.C. 8:33-4.10(b)); assurance that all residents of the area, particularly the medically underserved, will have access to services (N.J.A.C. 8:33-4.10(a)); and assurance that it will meet appropriate licensing and construction standards (N.J.A.C. 8:43G-1.1 et seq. and N.J.A.C. 8:33-4.10(d)).

Based on the foregoing, I am approving the application for the transfer of ownership of SMMC. My decision to allow this transfer of ownership to SMMC, Inc./CHE is based on the fact that the operation of SMMC under the proposed new ownership would be beneficial to the population in its service area since the transfer of ownership, as opposed to the closure of the hospital, will preserve vital access to essential health care services for the community, including the medically indigent and medically underserved population. I believe that this approval will not have a significant negative impact on any hospital in Essex County or the surrounding counties but will, as previously stated, enhance the financial viability of SMMC enabling this safety net hospital to continue its essential mission to serve all residents of Newark. Thus, I firmly believe and conclude this approval is in the public interest, particularly for those who will continue to require the array of services provided by SMMC.

Finally, I acknowledge SMMC's long-standing commitment to the residents in its service area and believe that this approval will better enable SMMC to maintain and enhance this commitment into the foreseeable future. Based on the foregoing, and noting the approval of the SHPB, I am approving the application for the transfer of ownership of SMMC subject to the following conditions:

1. A license to operate Saint Michael's Medical Center (SMMC) will not be issued to SMMC, Inc./CHE until the transaction is approved by the Attorney General under P.L. 2000, c. 143, the Community Health Assets Protection Act (CHAPA), and a notarized letter indicating the actual date of the transfer has been submitted to the Office of Certificate of Need and Healthcare Facility Licensure. SMMC, Inc./CHE shall apply for a new license and surrender the existing license within ten days of CHAPA approval.
2. As noted in its Certificate of Need Application CN# FR 080123-07-01, SMMC, Inc./CHE shall hire substantially all SMMC employees who are employed at the time of the sale.
3. In accordance with the provisions of N.J.S.A. 26:2H-18.59h, SMMC, Inc./CHE shall "offer to its employees who were affected by the transfer, health insurance coverage at substantially equivalent levels, terms and conditions to those that were offered to the employees prior to the transfer."
4. As noted in its Certificate of Need Application CN# FR 080123-07-01, SMMC, Inc./CHE shall operate SMMC as a general hospital; this condition shall be imposed as a contractual condition of any subsequent sale or transfer, subject to appropriate regulatory or legal review, of SMMC by SMMC, Inc./CHE.

5. SMMC, Inc./CHE shall continue all clinical services and community health programs currently offered at SMMC by the previous ownership. Any changes in this commitment involving either a reduction or elimination of clinical services or community health programs offered by SMMC's former ownership shall require prior written approval from the Department and shall be subject to all applicable statutory and regulatory requirements.
6. SMMC, Inc./CHE shall continue compliance with N.J.A.C. 8:43G-5.21(a), which requires that "[a]ll hospitals provide on a regular and continuing basis, out-patient and preventive services, including clinical services for medically indigent patients, for those services provided on an in-patient basis." Documentation of compliance shall be submitted within 30 days of the issuance of the license and quarterly thereafter for a period of five years.
7. SMMC, Inc./CHE shall comply with all Departmental notice requirements regarding emergency department divert status.
8. SMMC, Inc./CHE shall submit a report to the Department, on an annual basis for the initial five years following the transfer of ownership, detailing:
  - a. the investments it has made during the previous year at the hospital. Such report shall also include a detailed annual accounting of any long or short term debt or other liabilities incurred on the hospital's behalf and reflected on the SMMC's balance sheet; and,
  - b. the transfer of funds from the hospital to any parent, subsidiary corporation, or corporate affiliate and shall indicate the amount of funds transferred. Transfer of funds shall include, but not be limited to, assessments for corporate services, transfers of cash and investment balances to centrally controlled accounts, management fees, capital assessments, and/or special one-time assessments for any purpose.
9. Within three months of approval of this application, SMMC, Inc./CHE shall develop and participate in a Community Advisory Group (CAG) to provide on-going community input to the hospital's CEO and the hospital's Board of Trustees on ways that SMMC can most effectively and efficiently meet the primary, preventive, reproductive health service needs, emergency health, transportation service needs, and any remaining inpatient needs of all residents in its service area. The CAG shall meet at least quarterly during its first year of operation.
  - a. Subject to the provisions below, SMMC, Inc./CHE shall determine the membership, structure, governance, rules, goals, timeframes, and the role of the CAG in accordance with the primary objectives set forth above, and

shall provide a written report setting forth same to the hospital's Board of Trustees, with a copy to the Department and subject to the Department's approval, within 60 days from the date of formation of the CAG.

- b. SMMC, Inc./CHE shall minimally seek participation from each town in the service area of SMMC by offering a seat on the CAG to each town's mayor or his/her designee. Membership on the CAG shall include a representative from the Department of Health and Senior Services, a Federally Qualified Health Center, a representative of the Maternal and Child Health Consortia serving the SMMC service area, hospital employee representatives, patient advocates, including patient advocates whose mission is to ensure that New Jersey residents are provided fully-integrated and comprehensive reproductive services, local health officials, clinical practitioners, including but not limited to, obstetricians, internists and other health care providers such as hospitals and clinics, particularly those from communities currently served by Saint James Hospital ("SJH") and Columbus Hospital ("CH").
- c. SMMC, Inc./CHE shall designate co-chairs of the CAG, one of whom shall be a member of the hospital's Board of Trustees and one of whom shall be a community member who is neither employed nor related to anyone employed by any parent, corporate subsidiaries or corporate affiliates.
- d. The co-chairs of the CAG shall jointly submit to the hospital's Board of Trustees, with a copy to the Department, a semi-annual report of the progress toward the goals of the CAG.
- e. The co-chairs of the CAG shall jointly transmit to the hospital's Board of Trustees, with a copy to the Department, a quarterly and any special report relative to the implementation of these conditions.
- f. The CAG shall also examine the need for the continuation of outpatient Prenatal/Obstetric, pediatric, other primary care and emergency services at the site of CH, should the latter be approved for closure.
- g. SMMC, Inc./CHE may petition the Department to disband the CAG not earlier than three years from the date of CN approval and on showing that all of the above conditions have been satisfied for at least one year.
  1. In consultation with the CAG, SMMC, Inc./CHE shall maintain current levels of essential out-patient prenatal, primary, and emergency services for the service area including the North Ward currently served by CH.

2. Any reduction in the availability of out-patient services offered at the CH site, SMMC, Inc./CHE shall receive written approval from the CAG and the Department. Any such reduction shall comply with any Department conditions and applicable administrative rules.
10. For five years after initial licensure of SMMC under SMMC, Inc./CHE ownership, the hospital's Board Chairperson, President/CEO and other senior hospital management shall meet with the Commissioner of the Department of Health and Senior Services (Commissioner) at regular intervals on a schedule to be determined by the Commissioner to discuss the hospital's condition and compliance with the terms of the certificate of need.
11. SMMC, Inc./CHE shall develop a patient transportation plan after performing an assessment, in consultation with the CAG, to determine transportation needs. This plan shall be submitted to the Department within three months of the date of certificate of need approval. This plan shall remain in effect for five years after licensure. Any changes in this plan require Department approval and shall require 120-day prior notice. A self-evaluation of the implementation of the plan shall also be conducted on a yearly basis for five years after licensure to measure effectiveness of this initiative and shall be submitted to the Department for review and comment.
12. An outreach effort shall be placed into effect to ensure that all residents of the hospital service areas, especially the medically indigent, have access to the available services at the location. A self-evaluation of this effort shall be conducted six months after the transfer of ownership, for the next six months after that and afterwards on a yearly basis for the next five years to measure service delivery. This self-evaluation shall be submitted to the Department for review and comment.
  - a. By July 1, 2008, SMMC, Inc./CHE shall report to the Department with a plan documenting the availability of appropriate professional interpretation and translation services at SMMC. SMMC, Inc./CHE shall also prepare outreach and educational materials in the language of patient populations and communities it serves.
13. SMMC, Inc./CHE shall notify the Department prior to any change of ownership or investment structure of SMMC.
14. SMMC, Inc./CHE shall maintain its current complement of 13 chronic hemodialysis stations and one peritoneal dialysis station and shall present a plan to the Department for meeting the dialysis needs of the communities it serves by October 1, 2008.

15. Should SJH be approved for closure, SMMC, Inc./CHE shall, at the site of SJH, provide the following:
  - a. As part of CHE's commitment to the City of Newark, the outpatient Prenatal/Obstetric and Primary Care Program that has been established at the SJH campus shall continue after closure of the facility. As part of its responsibilities, CHE, in consultation with the CAG, shall examine the need for all clinics to expand their hours to determine appropriate hours of operation which may include, but not be limited to, evening hours at least three times a week and operate at least a half-day on Saturdays. If recommended by the CAG, a plan for both implementing the increased hours and to advise the public of same shall be submitted to the Department prior to implementation for review and placement in the facility's permanent records on file at the Department.
    1. The outpatient Prenatal/Obstetric and Primary Care Program shall be operated and licensed in accordance with the Department's regulations for such services at N.J.A.C. 8:43A, the Standards for Licensure of Ambulatory Care Facilities.
    2. The outpatient Prenatal/Obstetric and Primary Care Program shall remain in operation for a minimum of five years and CHE must provide 120 days notice and receive written approval from the Department prior to ceasing or reducing services or hours of operation.
  - b. Under the licensure of the SMMC facility, CHE shall maintain a Satellite Emergency Department (SED) at the SJH campus and initiate operation of the SED concurrent with the closure of the SJH facility.
    1. The SED shall be operated and licensed in accordance with the Department's regulations for such services at N.J.A.C. 8:43G-36, the Hospital Licensure Standards.
    2. The SED shall remain in operation for a minimum of five years and CHE must provide 120 days notice and receive written approval from the Department prior to ceasing or reducing services or hours of operation.
  - c. The transportation services for patients and their families from the SJH campus shall remain in place and operating after closure of the SJH facility for a minimum of five years; CHE must provide 120 days notice and receive written approval from the Department prior to ceasing or reducing services. The plan for the transportation system shall be submitted within



thirty days from the date of this approval to the Department for review and placement in the facility's permanent records on file at the Department. The CAG shall review the effectiveness of transportation services as part of its responsibilities and recommend modifications as appropriate. Any modifications shall be reported to the Department prior to their implementation.

- d. Under the licensure of SMMC facility, CHE shall maintain the behavioral health unit, which includes 21 psychiatric beds from the SMMC facility and 20 psychiatric beds from SJH, at the SJH campus.
    1. The behavioral health unit at the SJH campus shall be operated and licensed in accordance with the Department's regulations for such services at N.J.A.C. 8:43G-26, the Hospital Licensure Standards.
    2. The behavioral health unit at the SJH campus shall remain in operation for a minimum of five years. Closure or subsequent deduction in services shall follow applicable rules and processes in N.J.A.C. 8:33.
16. All the above conditions shall also apply to any successor organization to SMMC, Inc./CHE who acquires SMMC within five years from the date of the CN approval.

Failure to satisfy the aforementioned conditions of approval may result in sanctions, including license suspension, monetary penalties and other sanctions in accordance with N.J.S.A. 26:2H-1 et seq. and all other applicable requirements. Acceptance of these conditions will be presumed unless written objections are submitted to the Department within 30 days of receipt of this letter. Upon receipt of such objections, this approval will be deemed suspended and the project shall be reexamined in light of the objections.

I am denying the transfer of the licenses of the ten intermediate care bassinets (four intermediate infant bassinets from SJH and six intermediate infant bassinets from CH) to SMMC's license. My reasons for denial of the retention of the ten intermediate care bassinets are based on the need for the immediate availability of bassinets to care for infants who require intermediate care services, the fact that St. Michael's has not provided Ob/neonatal care services for over five years and a written commitment by one of the Regional Perinatal Centers in Newark to undertake both an immediate and a longer term expansion to meet the inpatient Ob/neonatal care needs of the service area.

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Pursuant to N.J.S.A. 26:2H-9, you are entitled to a hearing at the Office of Administrative Law to contest the partial denial of this application. A request for such a hearing should be made in writing, and should be forwarded to the Department's Office of Legal and Regulatory Affairs, P.O. Box 360, Room 805, Trenton, New Jersey 08625, within 30 days of receipt of this notice. Failure to do so will negate the opportunity for such a hearing.

Please be advised that this approval is limited to the proposal as presented and reviewed. An additional review by the Department may be necessary if there is any additional change in scope, as defined in N.J.A.C. 8:33-3.9. However, effective August 5, 2002, a change in cost of an approved certificate of need is exempt from certificate of need review subject to the following:

1. The applicant shall file a signed certification as to the final total project cost expended for the project at the time of the application for the transfer of ownership of the facility with the Office of Certificate of Need and Healthcare Facility Licensure.
2. Where the actual total project cost exceeds the certificate of need approved total project cost and is greater than \$1,000,000, the applicant shall remit the additional certificate of need application fee due to the Office of Certificate of Need and Healthcare Facility Licensure. The required additional fee shall be 0.25 percent of the total project cost in excess of the certificate of need approved total project cost.
3. The Department will not issue a license for beds/services until the additional fee is remitted in full.

This approval is not intended to preempt in any way any municipality's Authority to regulate land use within its borders and shall not be used by you to represent that the Department has made any findings or determination relative to the use of any specific property. Finally, please be advised that the facility may not operate under the ownership of SMMC, Inc./CHE until such time as a license amendment, reflecting the change, has been issued by the Office of Certificate of Need and Healthcare Facility Licensure. In addition, any alteration, renovation, or new construction of the physical plant requires the submission of plans to the Department of Community Affairs, Division of Codes and Standards, Healthcare Facilities Plan Review, for review and approval prior to the initiation of work.

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Please be aware that the Department will forward the above-noted conditions to the Attorney General and request that they be incorporated as conditions within any action taken regarding SMMC, Inc./CHE's application under CHAPA. These conditions are imposed to assure a positive impact on quality of and access to care in Essex County as a result of the transfer.

We look forward to working with you and helping you to provide a high quality of care to your patients. If you have any questions concerning this certificate of need, please do not hesitate to contact John Calabria, Director, Office of Certificate of Need and Healthcare Facility Licensure, at (609) 292-8773.

Sincerely,

A handwritten signature in cursive script that reads "Heather Howard".

Heather Howard  
Commissioner

c: John A. Calabria