

BAKER DONELSON
BEARMAN, CALDWELL & BERKOWITZ, PC

BAKER DONELSON CENTER,
SUITE 800
211 COMMERCE STREET
NASHVILLE, TENNESSEE 37201

MAILING ADDRESS:
P.O. BOX 190613
NASHVILLE, TENNESSEE 37219

PHONE: 615.726.5600

www.bakerdonelson.com

RICHARD G. COWART, SHAREHOLDER
Direct Dial: 615.726.5660
Direct Fax: 615.744.5660
E-Mail Address: dcowart@bakerdonelson.com

February 17, 2016

Gregory M. Duckett, Esq.
Senior Vice President & General Counsel
Baptist Memorial Health Care Corporation
350 North Humphreys Boulevard-Fifth Floor
Memphis, TN 38120-2177

Re: Freestanding Emergency Department

Dear Greg:

The purpose of this correspondence is to overview the provider-based status for the freestanding emergency department proposed by BMH-Memphis to be constructed at the Intersection of Highway 64 and Canada Road, Lakeland, Tennessee (the "Lakeland Site"), subject to CON approval (the "FED"). The FED will be included in a proposed Joint Operating Agreement ("JOA") with Regional One Health ("ROH"). The proposed JOA provides for the sharing of financial results after the facility is operational, but does not create a joint venture for ownership, governance or the operations of the health care services.

The proposed FED will be off-campus to BMH-Memphis, and I will briefly review the provider-based attestation that BMH-Memphis will be required to make:

1. Ownership and Control 42 C.F.R. §413.65(e)(1). Medicare regulations permit provider-based status for off-campus facilities so long as, among other requirements, the facility seeking provider-based status is under the ownership and control of the main provider as evidenced by the following:

- the business enterprise that constitutes the facility is 100 percent owned by the main provider;
- the main provider and the facility seeking provider-based status have the same governing body;

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- the facility seeking provider-based status is operated under the same organizational documents as the main provider (e.g., subject to common bylaws and operating decisions of the governing board of the main provider); and
- the main provider has final responsibility for administrative decisions, final approval for contracts with outside parties, final approval for personnel actions, final responsibility for personnel policies, and final approval for medical staff appointments in the facility.

The proposed JOA with ROH allows ROH to participate in the FED LLCs and the results of operations, but it does not displace the ownership and control of BMH in the FED clinical departmental service line. The proposed FED would be in compliance with the Medicare provider-based regulations regarding ownership and control. BMH-Memphis intends to attest to the provider-based certifications accordingly, as follows:

- Ownership. BMH-Memphis will own the FED service line.
- Governance. BMH-Memphis and the FED will have the same BMH-Memphis governing body.
- Organization. The FED will be operated under the BMH-Memphis organizational documents (i.e., common medical staff, bylaws), and the FED is subject to common operating decisions flowing from BMH-Memphis administration.

2. Administration and Supervision - 42 C.F.R. §413.65(e)(2). Medicare regulations provide the following regarding administration and supervision for off-campus provider-based site:

- The provider-based entity is under the direct supervision of the main hospital.
- The provider-based entity is operated under the same monitoring and oversight by the main hospital as any other department of the main hospital, and is operated just as any other department of the main hospital with regard to supervision and accountability. The director or individual responsible for daily operations at the provider-based entity:
 - maintains a reporting relationship with a manager at the main hospital that has the same frequency, intensity, and level of accountability that exists in the relationship between the main hospital and its departments; and
 - is accountable to the governing body of the main hospital, in the same manner as any department head of the provider.
- The following administrative functions of the provider-based entity are integrated with those of the main hospital: billing services, medical records, human resources,

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payroll, employee benefit package, salary structure, and purchasing services. Either the same employees or group of employees handle these administrative functions for the provider-based entity and the main hospital, or the administrative functions for both the entity and the main hospital are: a) contracted out under the same contract agreement; or b) handled under different contract agreements, with the contract of the entity being managed by the main hospital.

BMH-Memphis will meet each of these criteria in the proposed JOA:

- The FED will be directly supervised by BMH-Memphis.
- FED will be a component part of the BMH-Memphis emergency department reporting directly to the departmental manager and with oversight from the BMH-Memphis Board.
- The enumerated administrative functions (e.g. billing, medical records, human resources, et al.) for the FED will all be provided by BMH-Memphis.

The CMS' central office has issued guidance regarding provider-based on-campus and off-campus joint ventures. CMS has not issued guidance on joint operating arrangements. The proposed JOA is not a joint venture for health law or other purposes. We have had conceptual discussions regarding various operating structures that are not joint ventures. The CMS position has consistently been that the provider-based attestation controls. If the provider-based sponsor can accurately attest to the provider-based elements, CMS then may certify the location as being provider-based.

I hope this is responsive to your inquiry. Please contact me if you have any additional questions.

Sincerely,

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, PC



Richard G. Cowart

RGC:jwn

