



North Carolina Department of Health and Human Services
Division of Health Service Regulation
Certificate of Need Section

2704 Mail Service Center • Raleigh, North Carolina 27699-2704

<http://www.ncdhhs.gov/dhsr/>

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December 12, 2012

Susan K. Hackney
Attorney
K&L Gates, LLP
P.O. Box 14210
Research Triangle Park, NC 27709-4210

Exempt from Review – Acquisition of Facility

Facility: Brookfield Assisted Living Center
Acquisition by: Lillington AL Investors
County: Harnett
FID #: 920134

Dear Ms. Hackney:

In response to your letter of October 19, 2012, the above referenced proposal is exempt from certificate of need review in accordance with N.C.G.S 131E-184(a)(8). Therefore, Lillington AL Investors may proceed to acquire the above referenced health service facility without first obtaining a certificate of need. However, you need to contact the Adult Care Licensure Section of the Division of Health Service Regulation to obtain instructions for changing ownership of the existing facility. Note that pursuant to N.C.G.S. §131E-181(b): *“A recipient of a certificate of need, or any person who may subsequently acquire, in any manner whatsoever permitted by law, the service for which that certificate of need was issued, is required to materially comply with the representations made in its application for that certificate of need.”*

It should be noted that this Agency's position is based solely on the facts represented by you and that any change in facts as represented would require further consideration by this Agency and a separate determination. If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,

Tanya S. Rupp, Project Analyst
Project Analyst

Craig R. Smith, Chief
Certificate of Need Section

cc: Adult Care Licensure Section, DHSR



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October 19, 2012

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Mr. Craig Smith, Chief
Certificate of Need Section
Division of Health Service Regulation
Department of Health and Human Services
809 Ruggles Drive
Raleigh, NC 27603

Re: Exemption Notice for Brookfield Assisted Living Center (Adult Care Home in Harnett County)

Dear Craig:

Our client, Lillington AL Investors, LLC ("Lillington Investors") is planning to acquire an adult care home in Lillington, Harnett County, known as Brookfield Assisted Living Center (hereafter "the Facility"). The Facility is located at 2041 NC 210 North in Lillington. The Facility is listed in the "Inventory of Adult Care Home Beds" in the 2012 State Medical Facilities Plan as having 105 adult care home beds. See Exhibit A.

Lillington Investors is seeking to purchase the Facility through a purchase and sale agreement. The purpose of this letter is to provide prior notice of this acquisition, which is exempt from certificate of need ("CON") review, to the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Certificate of Need Section (the "Agency"). Lillington Investors seeks confirmation that it is permitted to acquire the Facility as described herein without CON Review, thus acquiring the Facility's grandfathered rights to own and operate that existing health service facility (as defined in the CON statute) with 105 adult care home beds.

I. THE PROPOSAL

Brookfield Assisted Living Center was not developed pursuant to a CON since adult care homes were not reviewable by the CON Section at the time of its development in approximately 1992. As of this date, The B & W Co., Inc. owns the property and building comprising the Facility which is an existing "health service facility," as that term is defined in N.C. Gen. Stat. § 131E-176(9b). Brookfield Assisted Living Center, Inc. is the current licensee. Lillington Investors will purchase the Facility and Lillington Operations, LLC will become the licensee

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through an operations transfer agreement. The name of the Facility will not change. Lillington Operations is completing a Change Licensure Application Packet and will submit it to the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Adult Care Licensure Section.

II. EXEMPTION NOTICE

Under North Carolina law, a certificate of need ("CON") is required only prior to offering or developing a "new institutional health service." "New institutional health service" includes a variety of services and activities, including a capital expenditure exceeding \$2 million. N.C. Gen. Stat. § 131E-176(16)(b).

The North Carolina General Assembly saw fit to exempt certain types of services or proposals from CON review, pursuant to N.C. Gen. Stat. § 131E-184. One such exempt service or proposal includes the acquisition of an existing health service facility, "including equipment owned by the health service facility at the time of acquisition." N.C. Gen. Stat. § 131E-184(a)(8).

This project involves only the acquisition of an existing adult care home, which falls within the purview of the statutory definition of "health service facility." After acquisition, Lillington Investors will continue to operate the Facility as an adult care home. Furthermore, Lillington Investors' acquisition of the Facility does not entail the purchase of any major medical equipment or any *per se* reviewable equipment as defined in N.C. Gen. Stat. §§ 131E-176(14o) and (16)(f1). Likewise, the acquisition does not include the offering of any *per se* reviewable services. N.C. Gen. Stat. § 131E-176(16)(f). Thus, given that the transaction involves only the acquisition of an existing health service facility, it is exempt from CON review.

III. CONCLUSION

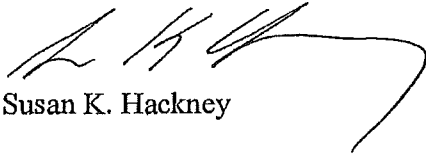
Based on the foregoing information, we hereby request the Agency's confirmation that the proposal described above is exempt from CON review, pursuant to N.C. Gen. Stat. § 131E-184(a)(8), and thus Lillington Investors may acquire the Facility with all its existing CON rights without a CON.

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We respectfully request that this request be considered by December 15, 2012 because the parties wish to proceed with this transaction in late December, 2012. If you require additional information to consider this request, please contact us at the above number as soon as possible. We thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Hackney', with a long, sweeping horizontal line extending to the right.

Susan K. Hackney

