



NC DEPARTMENT OF
**HEALTH AND
HUMAN SERVICES**
Division of Health Service Regulation

ROY COOPER • Governor
MANDY COHEN, MD, MPH • Secretary
MARK PAYNE • Director

June 15, 2018

Emily W. G. Towey
P.O. Box 72050
Richmond, VA 23225-2050

Exempt from Review – Acquisition of Facility

Record #: 2611
Facility Name: Autumn Care of Mocksville
Type of Facility: NH
FID #: 90838
Acquisition by: Davie Nursing and Rehabilitation Center, LLC
Business #: 2847
County: Davie

Dear Ms. Towey:


The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) determined that based on your letter of June 8, 2018, the above referenced proposal is exempt from certificate of need review in accordance with N.C. Gen. Stat. §131E-184(a)(8). Therefore, Davie Nursing and Rehabilitation Center, LLC may proceed to acquire the above referenced health service facility without first obtaining a certificate of need. However, you need to contact the Agency's Nursing Home Licensure and Certification Section to obtain instructions for changing ownership of the existing facility. Note that pursuant to N.C. Gen. Stat. §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.

Please contact this office if you have any questions. Also, in all future correspondence you should reference the Facility ID # (FID) if the facility is licensed.

Sincerely,


Celia C. Inman
Project Analyst


Martha J. Frisone, Chief
Healthcare Planning and Certificate of Need Section

cc: Nursing Home Licensure and Certification Section, DHSR
Amy Craddock, Assistant Chief, Healthcare Planning, DHSR

NC DEPARTMENT OF HEALTH AND HUMAN SERVICES • DIVISION OF HEALTH SERVICE REGULATION

HEALTHCARE PLANNING AND CERTIFICATE OF NEED SECTION

LOCATION: 809 Ruggles Drive, Edgerton Building, Raleigh, NC 27603
MAILING ADDRESS: 2704 Mail Service Center, Raleigh, NC 27699-2704
www.ncdhhs.gov/dhsr/ • TEL: 919-855-3873

Emily W. G. Towey
Ext. 432
Email: emily.towey@hancockdaniel.com

June 8, 2018



VIA FEDERAL EXPRESS

Ms. Martha Frisone
North Carolina Department of Health and
Human Services
Division of Health Service Regulation
Certificate of Need Section
809 Ruggles Drive
Raleigh, NC 27603

**Re: Notification of Internal Reorganization
CON Project ID: #G-8431-09**

Dear Ms. Frisone:

This letter is being written on behalf of Autumn Corporation to provide notification to the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Certificate of Need Section (the "Department") that Autumn Corporation will undergo an internal corporate reorganization and to request a formal determination regarding whether the proposed corporate reorganization is subject to certificate of need ("CON") review under North Carolina law. As described more fully below, it is our understanding that the proposed corporate reorganization will not require CON review.

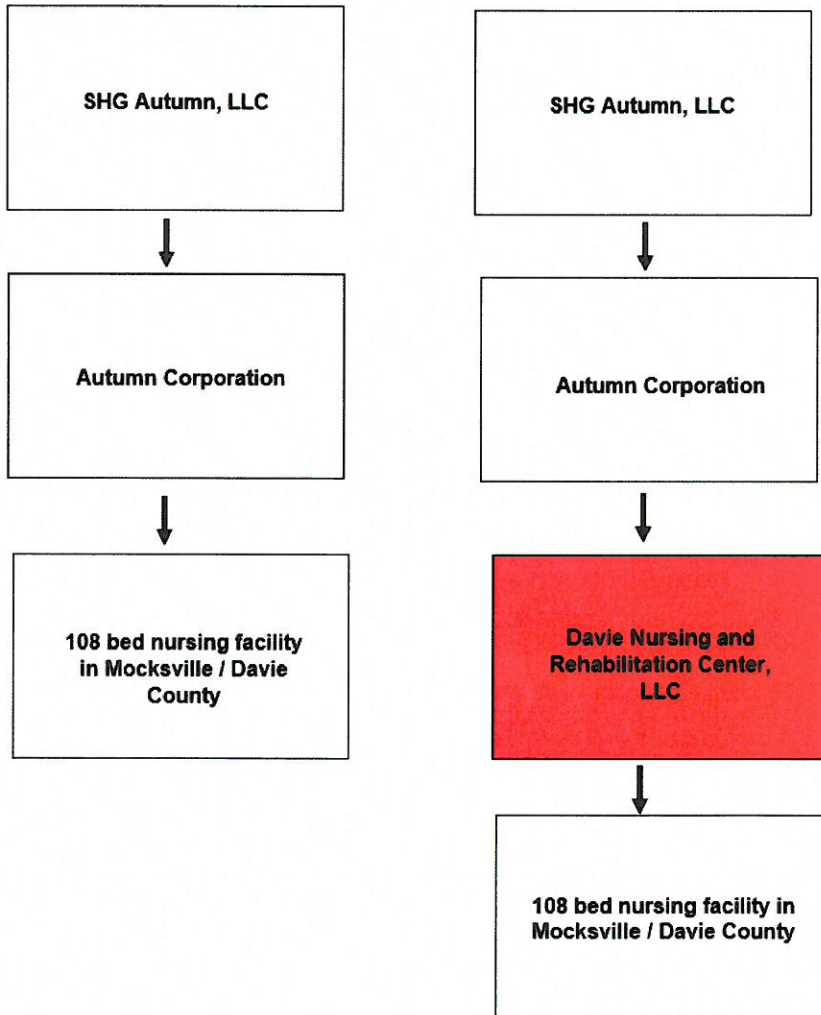
I. Background

Project I.D. # G-8431-09 is a CON granted to Autumn Corporation to replace and relocate an existing 108-bed nursing facility (the "Facility") to a new location in Mocksville/Davie County. A copy of the CON for Project I.D. # G-8431-09 is attached as Exhibit A. On January 7, 2016, the Department approved a transfer of ownership or control for good cause for the above referenced project. See Exhibit B. In the Request for Transfer for Good Cause, Autumn Corporation reported SHG Autumn, LLC's acquisition of 100% of stock in Autumn Corporation. Autumn Corporation remained the holder of CON Project I.D. # G-8431-09.

II. Description of Proposed Corporate Reorganization

Autumn Corporation is the current holder of the CON certificate. Autumn Corporation intends to undergo a corporate reorganization by creating a single purpose entity to operate the Facility in Mocksville / Davie County. The holder of the CON will become the new single purpose entity, Davie Nursing and Rehabilitation Center, LLC Exhibit C. Autumn Corporation will be the sole member of Davie Nursing and Rehabilitation Center, LLC. The below charts illustrate the ownership structure before and after the planned reorganization:

Planned Reorganization Ownership Structure:



II. Applicable Law

It is our understanding that the planned corporate reorganization will not require CON review, and that no other filings will be required in connection with the planned reorganization. Under North Carolina law, a CON is required for “an acquisition by donation, lease, transfer, or comparable arrangement . . . if the acquisition would have been a new institutional health service if it had been made by purchase.” N.C. Stat. § 131E-178(b). The term “new institutional health services” is defined to include “[t]he purchase, lease, or acquisition of any health service facility, or portion thereof, or a controlling interest in the health service facility or portion thereof, if the health service facility was developed under a certificate of need issued pursuant to [N.C. Gen. Stat. § 131E-180].” N.C. Gen. Stat. § 131E-176(16)(1). The regulations further explain that “the ownership of a certificate of need is not transferred when . . . the holder of the certificate is a corporation and the identity of the holder changes because of a corporate reorganization. . . .” 10 A NCAC 14 C. 0502. As discussed above, the planned reorganization will not result in the purchase, lease, or acquisition of a health service facility. Instead, the planned reorganization is a corporate restructuring and will only result in the formation of a new single purpose entity that will serve to operate the Facility.

Although it is our understanding that the planned reorganization will not constitute an “acquisition” for purposes of North Carolina CON law, we understand that the acquisition of an existing health service facility is exempt from CON review pursuant to N.C. Gen. Stat. § 131E-184(a)(8), provided that prior written notice is provided to the Department. In the event that the Department determines that the planned reorganization will constitute an acquisition of an existing health service facility with respect to the Facility, please allow this letter to serve as the notice required under N.C. Gen. Stat. § 131E-184(a) and a request for confirmation that the planned reorganization is exempt from CON review.

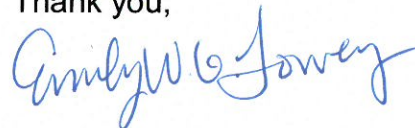
III. Request for Determination of Reviewability

We respectfully request a determination from your office regarding whether the planned corporate reorganization is subject to CON review under North Carolina law or will otherwise require action with the Department.

Ms. Martha Frisone
Division of Health Service Regulation
Certificate of Need Section
June 8, 2018
Page 4

Thank you for your time and assistance with this matter. Please do not hesitate to reach out to me at (804) 967-9604 or emily.towey@hancockdaniel.com should you have any questions or need any additional information.

Thank you,



Emily W.G. Towey

cc: Gregory Nicoluzakis, Esq., SABER HEALTHCARE GROUP (*via email*).

EXHIBIT A

STATE OF NORTH CAROLINA
Department of Health and Human Services
Division of Health Service Regulation

CERTIFICATE OF NEED

for

Project Identification Number #G-8431-09

FD #090838

ISSUED TO: Autumn Corporation
P.O. Box 1579
Morganton, NC 28680

Pursuant to N.C. Gen. Stat. § 131E-175, et. seq., the North Carolina Department of Health and Human Services hereby authorizes the person or persons named above (the "certificate holder") to develop the certificate of need project identified above. The certificate holder shall develop the project in a manner consistent with the representations in the project application and with the conditions contained herein and shall make good faith efforts to meet the timetable contained herein. The certificate holder shall not exceed the maximum capital expenditure amount specified herein during the development of this project, except as provided by N.C. Gen. Stat. § 131E-176(16)e. The certificate holder shall not transfer or assign this certificate to any other person except as provided in N.C. Gen. Stat. § 131E-189(c). This certificate is valid only for the scope, physical location, and person(s) described herein. The Department may withdraw this certificate pursuant to N.C. Gen. Stat. § 131E-189 for any of the reasons provided in that law.

SCOPE: Autumn Corporation shall replace and relocate Autumn Care of Mocksville, an existing 108-bed nursing facility, to a new location in Mocksville / Davie County

CONDITIONS: See Reverse Side

PHYSICAL LOCATION: Autumn Care of Mocksville
Woodruff Property Book 762
Page 663 Davie County Registry

MAXIMUM CAPITAL EXPENDITURE: \$9,681,900

TIMETABLE: See Reverse Side

FIRST PROGRESS REPORT DUE: September 30th, 2010

This certificate is effective as of the 15th day of March, 2010


Chief, Certificate of Need Section
Division of Health Service Regulation

CONDITIONS:

1. Autumn Corporation shall materially comply with all representations made in its certificate of need application.
2. Autumn Corporation shall develop a replacement nursing home facility with a total licensed bed complement of no more than 96 nursing facility beds and 12 adult care home beds upon completion of the project.
3. Autumn Corporation shall provide documentation that the existing 96 nursing facility beds and 12 adult care home beds at Autumn Care of Mocksville have been delicensed upon licensure of the replacement facility.
4. Autumn Corporation shall receive the Medicaid per diem reimbursement rates allowed by the Division of Medical Assistance, under the NC State Plan Section .0102.
5. For the first two full federal fiscal years of operation following completion of the project, actual private pay charges shall not be increased more than 5% of the projected private pay charges provided in Section X of the application without first obtaining a determination from the Certificate of Need Section that the proposed increase is in material compliance with the representations in the certificate of need application.
6. Autumn Corporation shall acknowledge acceptance of and agree to comply with all conditions stated herein to the Certificate of Need Section, in writing prior to issuance of the certificate of need.

A letter acknowledging acceptance and compliance with all conditions stated in the conditional approval letter was received by the Certificate of Need Section on February 18, 2010.

TIMETABLE:

Contract Award	June 30, 2010
25% Completion of Construction	December 15, 2010
50% Completion of Construction	March 1, 2011
75% Completion of Construction	June 15, 2011
Completion of Construction	September 15, 2011
Licensure of Facility	October 1, 2011



**North Carolina Department of Health and Human Services
Division of Health Service Regulation**

Pat McCrory
Governor

Richard O. Brajer
Secretary DHHS

Mark Payne
Assistant Secretary for Audit and
Health Service Regulation

January 7, 2016

Robert L. Wilson, Jr.
Smith Moore Leatherwood LLP
434 Fayetteville Street, Suite 2800
Raleigh, NC 27601

Transfer for Good Cause

Project ID #: G-8431-09
Facility: Autumn Care of Mocksville
Project Description: Replace and relocate existing 108-bed nursing facility to a new location in Mocksville/Davie County
County: Davie
FID #: 90838

Dear Mr. Wilson:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) received your correspondence of December 30, 2016, in which you requested approval of a transfer of ownership or control for good cause for the above referenced project. The Agency has determined that good cause exists based on finding the transfer will have no effect on the development of the CON project as identified above. Consequently, the Agency shall not withdraw the certificate of need as a result of this transfer. However, you should contact the Agency's Nursing Home Licensure and Certification Section to determine if they have any special requirements regarding the proposed transfer of ownership or control.

Please be advised that pursuant to G.S. 131E-181(b), any person who subsequently acquires a certificate of need is required to materially comply with the representations made in the application that was submitted to the Agency for the project. Further, in accordance with G.S. 131E-190(i), the Agency may bring action in Superior Court for injunctive relief requiring the successor to operate the service in material compliance with those representations.

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 office and a



Healthcare Planning and Certificate of Need Section

www.ncdhhs.gov

Telephone: 919-855-3873 • Fax: 919-715-4413

Location: Edgerton Building • 809 Ruggles Drive • Raleigh, NC 27603

Mailing Address: 2704 Mail Service Center • Raleigh, NC 27699-2704

An Equal Opportunity/ Affirmative Action Employer



Mr. Wilson
January 7, 2016
Page 2

separate determination. If you have any questions concerning this matter, please feel free to contact this office.

Please refer to the Project ID # and Facility ID # (FID) in all correspondence.

Sincerely,



Celia C. Inman
Project Analyst



Martha J. Frisone
Assistant Chief, Certificate of Need

cc: Construction Section, DHSR
Nursing Home Licensure and Certification Section, DHSR
Kelli Fisk, Program Assistant, Healthcare Planning, DHSR



NORTH CAROLINA

Department of the Secretary of State

EXHIBIT C

CERTIFICATE OF AUTHORITY

I, Elaine F. Marshall, Secretary of State of the State of North Carolina, do hereby certify that

DAVIE NURSING AND REHABILITATION CENTER, LLC

having filed on this date an application conforming to the requirements of the General Statutes of North Carolina, a copy of which is hereto attached, is hereby granted authority to transact business in the State of North Carolina.



Scan to verify online.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Raleigh, this 4th day of June, 2018.

Elaine F. Marshall

Secretary of State