



NC DEPARTMENT OF
**HEALTH AND
HUMAN SERVICES**

ROY COOPER • Governor
MANDY COHEN, MD, MPH • Secretary
MARK PAYNE • Director, Division of Health Service Regulation

VIA EMAIL ONLY

September 28, 2021

Kenneth Burgess, Poyner Spruill
kburgess@poynerspruill.com

Exempt from Review – Acquisition of Facility

Record #: 3689
Date of Request: September 17, 2021
Facility Name: Maxim Healthcare Services
Type of Facility: Home Health Agency
FID #: 943980
Acquisition by: Tender Loving Care Health Care Services Southeast, LLC d/b/a Amedisys Home Health
Business #: 2248
County: Wake

Dear Mr. Burgess:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) determined that the project described above is exempt from certificate of need (CON) review in accordance with G.S. 131E-184(a)(8). Therefore, the above referenced business may proceed to acquire the health service facility identified above without first obtaining a CON. The Agency's determination is limited to the question of whether the above referenced business would have to obtain a CON if the current owners of the health service facility do in fact sell it to the business listed above. Note that pursuant to 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.*"

If the business listed above does acquire the facility, you should contact the Agency's Acute and Home Care Licensure and Certification Section to obtain instructions for changing ownership of the existing facility.

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 regarding whether a certificate of need would be required. If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,

Michael J. McKillip
Project Analyst

Micheala Mitchell
Chief

cc: Acute and Home Care Licensure and Certification Section, 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: 809 Ruggles Drive, 2704 Mail Service Center, Raleigh, NC 27699-2704
<https://info.ncdhhs.gov/dhsr/> • TEL: 919-855-3873

AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER

September 17, 2021

Kenneth L. Burgess
Partner
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kburgess@poynerspruill.com

VIA E-MAIL

Micheala Mitchell, Chief
Lisa Pittman, Assistant Chief
N.C. Department of Health and Human Services
N.C. Division of Health Service Regulation
Certificate of Need Section
809 Ruggles Drive, Raleigh, N.C. 27603
Via email to: micheala.mitchell@dhhs.nc.gov
lisa.pittman@dhhs.nc.gov

RE: **Notice of Exemption: Acquisition of Existing Health Service Facility**

Dear Micheala and Lisa:

I am writing on behalf of our clients Emerald Care, LLC d/b/a Amedisys Home Health Care and Tender Loving Care Health Services Southeast, LLC d/b/a Amedisys Home Health, ("Amedisys") to provide the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Certificate of Need Section ("the CON Section" or "the Agency") with prior written notice of Amedisys' intent to acquire two existing licensed home health agencies as further detailed below ("the Project"). We believe the Project is exempt from further CON Section review, and does not require a certificate of need ("CON") pursuant to N.C. Gen. Stat. § 131E-184(a)(8).

Background and Project Description

Amedisys has entered into a purchase agreement pursuant to which the following Amedisys-related entities will acquire the assets of the following two licensed home health agencies:

1. Emerald Care, LLC d/b/a Amedisys Home Health Care will acquire the assets of Maxim Healthcare Services, Inc. d/b/a Maxim Healthcare Services, located at 1300 Baxter Street, Suite 455, Charlotte, North Carolina 28202, FID # 944774; and
2. Tender Loving Care Health Care Services Southeast, LLC d/b/a Amedisys Home Health will acquire the assets of Maxim Healthcare Services, Inc. d/b/a Maxim Healthcare Services, located at 8521 Six Forks Road, Suite 360, Raleigh, N.C. 27615, FID # 943980.

The transaction is scheduled to close on or about October 18, 2021.

Applicable Legal Authorities

The CON Law includes a specific exemption for health-related capital expenditures where the purpose of the expenditure is "to acquire an existing health service facility, including any equipment owned by the health service facility at the time of the acquisition." N.C. Gen. Stat. § 131E-184(a)(8). Home health agency offices are included in the definition of "health service facilities" at N.C.G.S. § 131E-176(9b). As

Lisa Pittman
September 17, 2021
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such, the acquisition of an existing home health agency does not require a CON and is not subject to further CON Section review where the CON Section receives advance written notice of the acquisition. N.C.G.S § 131E-184(a)(8).

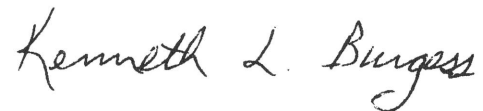
Because the two Amedisys-related entities described herein are acquiring existing home health agency offices and thus "existing health service facilities," the acquisition of these home health agencies is exempt from further CON Section review and Amedisys is not required to obtain a CON to proceed with the Project. Amedisys will coordinate with the Acute and Home Care Licensure Section to complete the required change of ownership licensure process for both agencies.

Conclusion

For the reasons recited herein, the Project qualifies under the exemption from CON Section review set forth at N.C. Gen. Stat. § 131E-184(a)(8). Please allow this letter to serve as the advance written notice required by N.C. Gen. Stat. § 131E-184(a)(8). We would appreciate the CON Section acknowledging at its earliest opportunity that the proposed project, as described herein, is not subject to CON Section Review and that Amedisys may proceed with the project without first obtaining a CON.

Please let me know if you have questions or need further information regarding this notice.

Very truly yours,



Kenneth L. Burgess
Partner

cc: Alex Dupuis, Esq.

From: [Mitchell, Micheala L](#)
To: [Waller, Martha K](#)
Subject: Fw: [External] Notice of Exempt Acquisition of Existing Home Health Agency Offices
Date: Friday, September 17, 2021 4:42:37 PM
Attachments: [image002.png](#)
[image003.png](#)
[image004.png](#)
[CON Notice of Exemption.pdf](#)

I'm sorry...

From: Burgess, Kenneth L. <KBurgess@poynerspruill.com>
Sent: Friday, September 17, 2021 2:53 PM
To: Mitchell, Micheala L <Micheala.Mitchell@dhhs.nc.gov>; Pittman, Lisa <lisa.pittman@dhhs.nc.gov>
Cc: Alexandra Dupuis <alexandra.howard@amedisys.com>; Stauffer, Iain M. <IStauffer@poynerspruill.com>
Subject: [External] Notice of Exempt Acquisition of Existing Home Health Agency Offices

CAUTION: External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to [Report Spam](#).

Micheala and Lisa, attached please find a Notice of Exemption we are filing on behalf of our clients Emerald Care, LLC d/b/a Amedysis Home Health Care and Tender Loving Care Health Services Southeast, LLC d/b/a Amedisys Home Health ("Amedisys") in connection with Amedisys' acquisition of two existing home health agency offices in Wake and Mecklenburg Counties. Further details regarding the transaction are set forth in the attached Exemption Notice. Please let me know if you have questions or need additional information regarding the Exemption Notice or underlying transaction. Thanks, Ken Burgess

Kenneth L. Burgess | Partner

Poyner Spruill^{LLP}
ATTORNEYS AT LAW

1151 Falls Road, Suite 1000

Rocky Mount, N.C. 27804

D: 919 783 2917 | **M:** 919 449 4754

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