



DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF HEALTH SERVICE REGULATION

ROY COOPER  
GOVERNOR

MANDY COHEN, MD, MPH  
SECRETARY

MARK PAYNE  
DIRECTOR

November 29, 2017

Gary S. Qualls  
PO Box 14210  
Research Triangle Park, NC 27709-4210

**No Review**

**Record #:** 2444

**Business Name:** The Charlotte-Mecklenburg Hospital Authority

**Business #:** 1770

**Project Description:** Develop an addition to an existing physician office building and relocate existing equipment into the addition as well as re-designate the freestanding physician office building to an outpatient provider-based location of CHS Cleveland

**County:** Rutherford

Dear Mr. Qualls:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) received your letter of November 22, 2017 regarding the above referenced proposal. Based on the CON law **in effect on the date of this response to your request**, the proposal described in your correspondence is not governed by, and therefore, does not currently require a certificate of need. However, please note that if the CON law is subsequently amended such that the above referenced proposal would require a certificate of need, this determination does not authorize you to proceed to develop the above referenced proposal when the new law becomes effective.

However, you need to contact the Agency's Construction and Acute and Home Care Licensure and Certification Sections to determine if they have any requirements for development of the proposed project.

It should be noted that this determination is binding only for the facts represented in your correspondence. Consequently, if changes are made in the project or in the facts provided in your correspondence referenced above, a new determination as to whether a certificate of need is required would need to be made by this office. Changes in a project include, but are not limited to: (1) increases in the capital cost; (2) acquisition of medical equipment not included in the

**HEALTHCARE PLANNING AND CERTIFICATE OF NEED SECTION**

WWW.NCDHHS.GOV

TELEPHONE 919-855-3873

LOCATION: EDGERTON BUILDING • 809 RUGGLES DRIVE • RALEIGH, NC 27603

MAILING ADDRESS: 2704 MAIL SERVICE CENTER • RALEIGH, NC 27699-2704

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original cost estimate; (3) modifications in the design of the project; (4) change in location; and (5) any increase in the number of square feet to be constructed.

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,



Julie Halatek  
Project Analyst



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

cc: Construction Section, DHSR  
Acute and Home Care Licensure and Certification Section, DHSR  
Sharetta Blackwell, Program Assistant, Healthcare Planning, DHSR



November 22, 2017

Gary S. Qualls  
D 919.466.1182  
F 919.516.2072  
gary.qualls@klgates.com

**Via Hand Delivery**

Martha Frisone, Chief  
N.C. Department of Health and Human Services  
Division of Health Service Regulation  
Healthcare Planning and CON Section  
809 Ruggles Drive  
Raleigh, NC 27603

Re: No Review Letter Regarding Redesignation of CMHA-Owned Medical Oncology-Related Physician Office Space In Rutherford County to a Provider-Based Outpatient Department of CHS Cleveland

Dear Ms. Frisone:

Our client, The Charlotte-Mecklenburg Hospital Authority (“CMHA”), is requesting a No Review Determination that the North Carolina Certificate of Need (“CON”) law does not require CON review of new construction and relocation (next door) of already operational medical oncology and physician office space being redesignated from freestanding to provider-based to Carolinas HealthCare System Cleveland (“CHS Cleveland”).

The space being redesignated has been historically owned and operated as freestanding physician office, specifically medical oncology, space in Forest City, Rutherford County (the “Medical Oncology Space”) known as Levine Cancer Institute-Rutherford (a/k/a LCI-Rutherford). CMHA now seeks this Agency’s confirmation that the following two actions are both non-CON-reviewable.

**I. Construction Project**

First, CMHA decided to: (1) construct a new building addition next to the current LCI-Rutherford Medical Oncology Space; and (2) move that Medical Oncology Space into the new building upon construction completion. The attached diagrams show the construction in relation to the current Medical Oncology Space (Exhibit 1) and the floor plan for the new Medical Oncology Space in the new building (Exhibit 2). Exhibit 3 is the certified cost estimate showing that the capital costs for the project do not exceed \$2 Million.

## **II. Redesignation of the Medical Oncology Space to Provider-Based Status**

Second, CMHA also plans to redesignate the Medical Oncology Space to be an unlicensed, provider-based location of CHS Cleveland, yet physically remaining at the same Rutherford County site.

CMHA is a North Carolina hospital authority. CMHA owns and operates several hospitals. Among those hospitals, CMHA operates CHS Cleveland, a hospital in Cleveland County. CHS Cleveland is an operating division of CMHA. It is not a separate legal entity from CMHA.

In 2002, CMHA started operating the LCI-Rutherford Medical Oncology Space, and has operated it since then as a freestanding physician office. CMHA is shifting the designation of that Medical Oncology Space from a freestanding physician office to an unlicensed, provider-based location of CHS Cleveland (the “Redesignation”).

The Medical Oncology Space will be provider-based to CHS Cleveland, and is permitted to be operated as an unlicensed outpatient department of CHS Cleveland under the Business Occupancy Exception, in accordance with N.C. Gen. Stat. § 131E-76(3).<sup>1</sup> Because outpatient Business Occupancy locations are not part of a licensed hospital under the Business Occupancy exception, they are not restricted by the “County Line Licensure Rule” – codified

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<sup>1</sup> That statute defines “hospital” as follows for licensure purposes:

“Hospital” means any facility which has an organized medical staff and which is designed, used, and operated to provide health care, diagnostic and therapeutic services, and continuous nursing care primarily to inpatients where such care and services are rendered under the supervision and direction of physicians licensed under Chapter 90 of the General Statutes, Article 1, to two or more persons over a period in excess of 24 hours. The term includes facilities for the diagnosis and treatment of disorders within the scope of specific health specialties. **The term does not include private mental facilities licensed under Article 2 of Chapter 122C of the General Statutes, nursing homes licensed under G.S. 131E-102, adult care homes licensed under Part 1 of Article 1 of Chapter 131D of the General Statutes, and any outpatient department including a portion of a hospital operated as an outpatient department, on or off of the hospital's main campus, that is operated under the hospital's control or ownership and is classified as Business Occupancy by the Life Safety Code of the National Fire Protection Association as referenced under 42 C.F.R. § 482.41 . . .**”

See N.C. Gen. Stat. § 131E-76(3) (emphasis added).

at 10A N.C.A.C. 13B.3101(f) and N.C. Gen. Stat. § 131E-77(e1) – and thus can be located in a county other than the county in which the hospital is located and still be provider-based to that hospital. Therefore, the Medical Oncology Space (in Rutherford County) can operate as an unlicensed, provider-based outpatient department of CHS Cleveland (in Cleveland County).

The Redesignation does not trigger any of the definitions of a “new institutional health service,” which would implicate CON review. N.C. Gen. Stat. § 131E-178 provides that no person shall offer or develop a “new institutional health service” without first obtaining a CON. The term “new institutional health service” is defined in numerous ways in N.C. Gen. Stat. § 131E-176(16).

Among these definitions is N.C. Gen. Stat. § 131E-176(16)(b), which defines a “new institutional health service” to include:

. . . [T]he obligation by any person of a capital expenditure exceeding two million dollars (\$2,000,000) to develop or expand a health service or a health service facility, or which relates to the provision of a health service . . . .

See N.C. Gen. Stat. § 131E-176(16)(b).

As discussed in Part I above, the Redesignation does not constitute a “new institutional health service” under N.C. Gen. Stat. § 131E-176(16)(b) because capital expenditures associated with the relocation next door (simultaneous with the Redesignation) do not exceed \$2 Million. Moreover, this is purely an intra-organizational Redesignation within CMHA. No legal entity is acquiring anything from any other legal entity.

Moreover, none of the equipment in the Medical Oncology Space is either “major medical equipment” under N.C. Gen. Stat. § 131E-176(14o) or *per se* reviewable pursuant to N.C. Gen. Stat. § 131E-176(16)(f1). However, even if it were, the Medical Oncology Space (and any equipment therein) is not being acquired because no legal entity is acquiring anything from any other legal entity in this Redesignation as this is purely an intra-organizational Redesignation within CMHA.

Ms. Martha Frisone  
November 22, 2017  
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Finally, the Redesignation does not constitute the establishment of a new health service facility under N.C. Gen. Stat. § 131E-176(16)(a) because the existing space is simply transitioning from CMHA-owned freestanding physician office space to outpatient space at an existing hospital. Because no beds are involved, the Redesignation does not constitute a "change in bed capacity" under N.C. Gen. Stat. § 131E-176(16)(c). Because no operating rooms are involved, the Redesignation does not implicate N.C. Gen. Stat. § 131E-176(16)(u). Nor does the Redesignation constitute a "new institutional health service" under any other CON trigger in N.C. Gen. Stat. § 131E-176(16).

### **III. Conclusion**

Accordingly, neither the foregoing construction project (Part I) nor the Redesignation (Part II) requires CMHA to obtain a CON pursuant to any provision of the CON statutes. Thus, based upon the foregoing information and the attached documents, CMHA hereby requests that the Agency provide a written response confirming that the projects described herein do not require a CON.

Please let us know if you need additional information. We thank you for your consideration of this submission.

Sincerely,



Gary S. Qualls

Enclosures

Ms. Martha Frisone  
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**Exhibits**

1. Diagram showing new Medical Oncology Space construction in relation to the current Medical Oncology Space
2. Floor Plan for new Medical Oncology Space
3. Certified cost estimate for construction of new Medical Oncology Space





FLOOR PLAN - NEW  
 1/8" = 1'-0"



- FLOOR PLAN GENERAL NOTES**
1. THE GENERAL CONTRACTOR SHALL FIELD VERIFY ALL DIMENSIONS AND CONDITIONS PRIOR TO INSTALLATION.
  2. ALL MATERIALS AND EQUIPMENT PROVIDED BY THE OWNER SHALL BE STORED IN A DRY, SECURE LOCATION AND PROTECTED FROM WEATHER AND VANDALISM.
  3. ALL MATERIALS AND EQUIPMENT SHALL BE STORED IN A DRY, SECURE LOCATION AND PROTECTED FROM WEATHER AND VANDALISM.
  4. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED TIME FRAME.
  5. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED TIME FRAME.
- FLOOR PLAN KEY NOTES**
1. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED TIME FRAME.
  2. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED TIME FRAME.
  3. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED TIME FRAME.
  4. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED TIME FRAME.
  5. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED TIME FRAME.



2100 WATER RIDGE PARKWAY  
 FARMINGTON, NC 27834  
 703.825.5117 FAX 703.825.5117



DATE	REVISIONS



**Building Key Map**

DATE: 08/02/2016  
 ISSUE: 01  
 OWNER: LCI Rutherford Addition  
 ARCHITECT: WRIGHT MCGRAW BEVER ARCHITECTS  
 PROJECT NO: 2797501

PROJECT NO: 2797501  
 PROJECT NAME: LCI Rutherford Addition  
 SHEET NO: 01  
**FLOOR PLAN - LEVEL**

**EXHIBIT**  
 2 p.1

INTERIORS WALL FINISH LEGEND

- WALL FINISH TAG
- CORNER GUARD TAG

TAG	DESCRIPTION	MANUFACTURER	ACCESS	FINISH	COMMENTS
CD-1	CORNER GUARD	INFRIO	18x18x1/8	BRN	2x4x INSTALL ABOVE BASE



**CAROLINAS HEALTHCARE SYSTEM**  
 PROJECT: LCI Rutherford Addition  
 183 Laurel Rd. Forest City, NC 28043  
 Charlotte, NC 28273

**WRIGHT MCGRAW BEYER ARCHITECTS**  
 1000 W. HARRIS STREET  
 SUITE 400 CHARLOTTE, NC 28217  
 704.393.8151 FAX 704.353.9527



Revisions Schedule

Rev #	Revised Drawing	Revised Date



**Building Key Map**

DATE: 08/09/2018  
 ISSUE: 02  
 DRAWN BY: JAS  
 CHECKED BY: JWP  
 PROJECT: LCI Rutherford Addition  
 183 Laurel Rd. Forest City, NC 28043

SHEET NAME:  
**WALL FINISH PLAN - LEVEL 01**

SHEET NUMBER:  
**1131**

THIS DOCUMENT IS THE PROPERTY OF WRIGHT MCGRAW BEYER ARCHITECTS. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREIN. NO PART OF THIS DOCUMENT IS TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT PERMISSION IN WRITING FROM WRIGHT MCGRAW BEYER ARCHITECTS.

**EXHIBIT**

2 p.2

DATE: 08/09/2018 09:30:21 AM  
 PROJECT: LCI Rutherford Addition  
 SHEET: WALL FINISH PLAN - LEVEL 01  
 SHEET NUMBER: 1131

**PROPOSED TOTAL CAPITAL COST OF PROJECT**

**Project name:** LCI Rutherfordton 800 Compliance

**Provider/Company:** \_\_\_\_\_

(1) Purchase price of land	_____
(2) Closing costs	_____
(3) Site Preparation	_____
(4) Construction/Renovation Contract	\$32,750
(5) Landscaping	\$1,200,860
(6) Architect/Engineering Fees	\$20,300
(7) Medical Equipment	\$292,626
(8) Non Medical Equipment	_____
(9) Furniture	\$180,144
(10) Consultant Fees (CON Fees, Legal Fees, Design Fees)	\$8,876
(11) Financing Costs	_____
(12) Interest During Construction	_____
(13) Other (IS, Security, Internal Allocation)	_____
(14) <b>Total Capital Cost</b>	<b>\$236,755</b>
	<b>\$1,972,311</b>

*I certify that, to the best of my knowledge, the above construction related costs of the proposed project named above are complete and correct.*

**ToddrMcgraw**

NC License # 3963

**November 7, 2017**

\_\_\_\_\_  
*(Signature of Licensed Architect or Engineer)*

\_\_\_\_\_  
*DATE*

Sales taxes have been included in these equipment costs. However, because CHS is entitled to a sales tax refund under N.C. Gen. Stat. § 105-164.14(b) and 105-467, the sales tax that CHS initially incurs for this medical equipment purchase will be refunded to CHS, and thus will reduce the capital costs that CHS actually incurs for the equipment by \$\_\_\_\_\_.