



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

January 29, 2020

Gary S. Qualls
gary.qualls@klgates.com

Exempt from Review – Acquisition of Facility

Record #: 3190
Facility Name: Union Regional Home Care
Type of Facility: Medicare-certified home health agency
FID #: 955428
Acquisition by: Carolinas Medical Center at Home, LLC
Business #: 2433
County: Union

Dear Mr. Qualls:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) determined that based on your representations, the above referenced proposal is exempt from certificate of need (CON) review in accordance with N.C. Gen. Stat. §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 or not 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 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.*"

In the event that 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 or not a certificate of need would be required. If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,

Julie M. Faenza
Project Analyst

Martha J. Frisone
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

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AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER



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January 23, 2020

Via E-mail to: disraeliza.flores@dhhs.nc.gov
Martha J. Frisone, Chief
Healthcare Planning and Certificate of Need Section
Division of Health Service Regulation
N.C. Department of Health and Human Services
809 Ruggles Drive
Raleigh, NC 27603

Re: No Review Request and, Alternatively, Exemption Notice Regarding Reorganization of Union Regional Home Care into Wholly Owned Controlled Affiliate Carolinas Medical Center at Home, LLC

Dear Ms. Frisone:

We are writing to notify you of an upcoming transaction (the "Transaction") between:

1. The Charlotte-Mecklenburg Hospital Authority ("CMHA") d/b/a Union Regional Home Care; and
2. Carolinas Medical Center at Home, LLC ("LLC").

The purpose of this letter is to:

- a. provide notice to the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Healthcare Planning and Certificate of Need Section (the "Agency") of the LLC's acquisition, via an internal restructuring, of CMHA's Medicare-certified home health agency office known as Union Regional Home Care (the "Union HHA Office"), which is located at 101 East Franklin Street, Monroe, NC 28112 (License No. HC1238; Provider Number: 347210); and

- b. Seek the Agency's confirmation that the proposed Transaction is either:
 - (1) not subject to CON review; or alternatively
 - (2) exempt from CON review under N.C. Gen. Stat. § 131E-184(a)(8).

I. The Transaction

CMHA currently owns the rights to, and operates, the Union HHA Office. CMHA is also the sole member of the LLC. As part of an internal restructuring to be effective on or about April 1, 2020, the LLC will acquire substantially all the assets of the Union HHA Office from CMHA (the "Transaction"). The Union HHA Office is already operated as a part of the CMHA health care system, as an operating division of CMHA. After the Transaction, the Union HHA Office will be operated by CMHA's wholly owned controlled affiliate, the LLC, and will be known as Atrium Health At Home Union.

Given that the Transaction involves only the reorganization of an existing health service facility ultimately owned by CMHA (pre- and post-Transaction), the Transaction is not CON reviewable because it does not constitute a new institutional health service. However, if you decide that the Transaction does constitute a new institutional health service, then please confirm that the Transaction is nevertheless exempt from CON review under N.C. Gen. Stat. § 131E-184.

II. No Review Request

Under North Carolina law, a CON is required only prior to offering or developing a "new institutional health service." "New institutional health service[s]" include a variety of services and activities, including the construction, development, or establishment of a new home health agency office. See N.C. Gen. Stat. §§ 131E-176(9b) and 131E-176(16)(a). However, the Transaction does not involve any of those new institutional health service triggers.

Instead, the Transaction -- a corporate reorganization -- is not expressly addressed in N.C. Gen. Stat. § 131E-176(16). The reorganization of a parent-owned facility into the parent's wholly-owned subsidiary is not a CON reviewable event because it is not included in the list of activities that constitute the development of a new institutional health service, requiring a CON. Pursuant to the maxim of statutory construction *expressio unius est exclusio alterius*, those transactions not included in N.C. Gen. Stat. § 131E-176(16) do not require a CON. See, e.g., In re Miller, 357 N.C. 316, 325, 584 S.E.2d 772, 780 (2003) (stating that "[u]nder the doctrine of *expressio unius est exclusio alterius*, when a statute lists the situations to which it applies, it implies the exclusion of situations not contained in the list"); see also

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Jackson v. A Woman's Choice, Inc., 130 N.C. App. 590, 594, 503 S.E.2d 422, 425 (1998) (internal citations omitted) (“[W]here a statute is explicit on its face, the courts have no authority to impose restrictions that the statute does not expressly contain.”).

Second, even though the holder of the CON for the Union HHA Office is changing to the LLC, a CMHA affiliate, CMHA remains the ultimate owner (as the LLC's parent). Thus, the identity of the CON holder is changing solely because of an internal CMHA corporate reorganization. It is not the type of transaction that would trigger CON review.

Further, no capital expenditures are being incurred to accomplish this corporate reorganization Transaction. After the Transaction, the CMHA wholly owned controlled affiliate, the LLC, will continue to operate the Union HHA Office at its current location.

For the reasons described above, and pursuant to the maxim of statutory construction *expressio unius est exclusio alterius*, please confirm that this Transaction is not reviewable because it is not included in the list of new institutional health service items requiring a CON under N.C. Gen. Stat. § 131E-176(16).

III. Exemption

For the reasons described above, we do not think that notice under N.C. Gen. Stat. § 131E-184(a)(8) is technically required. However, to the extent that you disagree, please accept this letter as the required notice under N.C. Gen. Stat. § 131E-184(a)(8) for an exemption.

The General Assembly has chosen to exempt certain otherwise reviewable events from CON review, including the acquisition of an existing health service facility and the equipment owned by the health service facility at the time of the acquisition. See N.C. Gen. Stat. § 131E-184(a)(8). Under N.C. Gen. Stat. § 131E-176(9b), the Union HHA Office is a “health service facility.”

Assuming that the Transaction is deemed by the Agency to be an acquisition under the CON law, upon consummation of the Transaction, the LLC will acquire the Union HHA Office, including all equipment owned at the time of acquisition.

Furthermore, the proposed Transaction does not entail the acquisition of any major medical equipment or any *per se* reviewable equipment as defined in N.C. Gen. Stat. §§ 131E-176(14)(o) and (16)(f1). Likewise, the Transaction does not include the offering of any *per se* reviewable services. See N.C. Gen. Stat. § 131E-176(16)(f).

Accordingly, given that the proposed Transaction involves only an existing health service facility, it is exempt from CON review (assuming it is even reviewable in the first instance).

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IV. CONCLUSION

Based upon the foregoing information, we hereby request the Agency's confirmation that the proposed Transaction (as described above): (1) is not subject to CON review; or (2) alternatively, is exempt from CON review under N.C. Gen. Stat. § 131E-184(a)(8).

Thank you for your assistance in regard to this matter. Please feel free to contact me at the number above if you have any questions of need further information.

Sincerely,


Gary S. Qualls