



NC DEPARTMENT OF
**HEALTH AND
HUMAN SERVICES**

ROY COOPER • Governor

KODY H. KINSLEY • Secretary

MARK PAYNE • Director, Division of Health Service Regulation

VIA EMAIL ONLY

April 12, 2024

Joy Heath

Jheath@williamsmullen.com

Exempt from Review – Acquisition of Facility

Record #: See Attachment A & B
Date of Request: March 20, 2024
Facility Name: See Attachment A
Type of Facility: See Attachment A
FID #: See Attachment A
Acquisition by: UH Carolina Realty Holdings, LLC
Business #: 3800
County: Multiple

Dear Joy Heath:

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 facilities 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 facilities 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 facilities, you should contact the Agency's Adult Care Licensure Section and Nursing Home Licensure and Certification Section to obtain instructions for changing ownership of the existing facilities.

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,

Crystal Kearney, Project Analyst

Micheala Mitchell, Chief

cc: Nursing Home Licensure and Certification Section, DHSR
Adult Care Licensure 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

Attachment A

| Record # | Name of Facility | Type of Facility | County | FID |
|-----------------|--|-------------------------|---------------|------------|
| 4412 | Catawba Valley Living at Rock Barn | ACH | Catawba | 041372 |
| 4409 | Blumenthal Jewish Nursing & Rehabilitation Center | NF | Guilford | 990621 |
| 4413 | Universal Health Care /King | NF | Stokes | 923159 |
| 4410 | Universal Health Care/Lillington | NF | Harnett | 943230 |
| 4414 | Litchford Falls Healthcare and Rehabilitation Center | NF | Wake | 920763 |
| 4415 | Universal Health Care/ Oxford | NF | Granville | 943387 |
| 4411 | Saturn Nursing and Rehabilitation Center | NF | Mecklenburg | 923538 |
| 4402 | Universal Health Care/ Brunswick | NF | Brunswick | 050906 |
| 4416 | Lenior Healthcare Center | NF | Caldwell | 923302 |
| 4403 | Universal Health Care /Greenville | NF | Pitt | 923482 |
| 4404 | Universal Health Care/Fuquay -Varina | NF | Wake | 923011 |
| 4405 | Universal Health Care / North Raleigh | NF | Wake | 971329 |
| 4406 | Universal Health Care/ Fletcher | NF | Henderson | 990860 |
| 4407 | Universal Health Care and Rehabilitation Center | NF | Cabarrus | 923114 |
| 4408 | Universal Health Care/Ramseur | NF | Randolph | 991059 |

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March 19, 2024

VIA E-MAIL ONLY

Micheala Mitchell, Chief
North Carolina Department of Health and Human Services
Division of Health Service Regulation
Healthcare Planning and Certificate of Need Section
809 Ruggles Drive
Raleigh, North Carolina 27603
micheala.mitchell@dhhs.nc.gov

Re: Prior Written Notice of the Proposed Acquisition of Skilled Nursing & Adult Care Home Facilities & Request for Good Cause Transfer to Allow Project Developments

Dear Ms. Mitchell:

On behalf of UH Carolina Realty Holdings, LLC, a Delaware limited liability company (together with any assignees, collectively, the "LTC Buyers"), I am writing to request written confirmation that the following proposed transaction (the "Transaction") does not require Certificate of Need ("CON") review. The Transaction would involve a number of licensed, operating facilities, the transfer of ownership in which is subject to the exemption in Section 131E-184 of North Carolina's CON Law, as described below. The Transaction also would include two open CON approvals, and based on the broad scope of the Transaction, this letter also asks the Department to confirm that under Section 131E-189 (c), good cause exists to permit the transfer of these CON approvals as part of the larger Transaction, and that following the closing of the Transaction, LTC Buyers may develop these projects as approved by the CON Section.

Description of the Transaction

LTC Buyers propose to purchase substantially all of the assets of one (1) adult care home and fourteen (14) other facilities that operate either as skilled nursing facilities or as combination facilities with skilled nursing and adult care home beds, as further identified on **Exhibit A** (the "Facilities") as well as other assets from the owners of the Facilities identified on **Exhibit A** (such owners, collectively, the "Sellers" and each a "Seller"). The Sellers are the owners of the real property and other property located at the Facilities identified on **Exhibit A** and the entities identified as Facility Operators on **Exhibit A** are the licensed operators of the Facilities.¹

In addition to the existing facilities, undeveloped land owned by Universal Health Care, Inc. and planned for use in the development of one of the two CON-approved projects, as described below, will also be acquired as part of the Transaction, as further described below. Other assets that would be included in the Transaction, but which are not governed by North Carolina's CON Law, include: (a) a Multiunit Assisted Housing with Services community located in Boone, North Carolina; (b) one skilled nursing facility located in South Carolina; (c) a pharmacy; (d) a durable medical equipment company; and (e) a

¹ LTC Buyers intend to lease each Facility to an affiliate of LTC Buyers such that "New Operators" will operate each of the Facilities under agreements between LTC Buyers and their respective affiliates.

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provisions and over the counter shop. Together with the fifteen (15) Facilities, the entire Transaction will result in the sale of substantially all of the assets of the Sellers and their affiliates.

No new or additional health services will be offered as a result of the Transaction.

Exemption from Review

As set forth on **Exhibit A**, the Transaction involves fifteen (15) existing North Carolina health service facilities. Based upon the law and facts set forth below, LTC Buyers respectfully request a letter confirming that the Transaction is exempt from CON review in accordance with North Carolina's CON Law.

As you know, Section 131E-184 of North Carolina's CON Law provides that the Department shall exempt from CON review a new institutional health service ("NIHS") if it receives prior written notice from the entity proposing the NIHS which notice explains why the NIHS is required for any one of a list of stated reasons. Subsection (a)(8) directs the Department to exempt from review a proposal "to acquire an existing health service facility, including equipment owned by the health service facility at the time of acquisition." Section 131E-176(9b) defines a "health service facility" to include nursing home and adult care home facilities.

In this instance, LTC Buyers propose to acquire the fifteen (15) existing health service facilities, including substantially all of the assets and equipment owned by these health service facilities at the time of acquisition. Specifically, LTC Buyers submit this letter as prior written notice of LTC Buyers' intent to acquire the Facilities identified on **Exhibit A** including the real estate, improvements, personal property and other assets of these Facilities. One of the 15 existing facilities, Litchford Falls Healthcare and Rehabilitation Facility ("Litchford Falls," listed as Number 4 among the combination skilled nursing and adult care facilities on Exhibit A) is the subject of an open CON approval; and the inclusion of that open CON approval and another in the Transaction will be addressed below.

In accordance with Section 131E-184 and based upon the timely submission of this prior written notice of the proposed acquisition of the identified existing health service facilities, LTC Buyers seek confirmation that the acquisition of the 15 existing facilities as part of the Transaction is exempt from CON Review.

Good Cause Transfer

LTC Buyers further respectfully request that in accordance with the CON Law, the Department confirm that good cause exists to permit the transfer of the CON approvals associated with the two projects described in further detail below and that LTC Buyers may develop these projects in accordance with their respective CON approvals; and that at the conclusion of development, LTC Buyers may operate each completed facility under arrangements with affiliates of LTC Buyers similar to those that are planned for the 15 existing and operating facilities.

In accordance with the CON approvals described below, beds were previously approved to be relocated among various sites such that, upon the completion of the two projects, Universal Health

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Care/Wake Forest will operate as a new 119-bed skilled nursing facility (“SNF”), and the existing Litchford Falls facility will operate as a 75-bed adult care home (“ACH”).

Universal Properties/Wake Forest, LLC and Universal Health Care/Raleigh, Inc. were approved in 2021 for a cost overrun for Universal Health Care/Wake Forest, a previously approved project involving construction of a new 119-bed nursing facility by relocating 90 beds from Litchford Falls Health and Rehabilitation, nine (9) beds from Universal Health Care (Nashville), and 20 beds from Universal Health Care (Oxford). The original CON for Project ID # J-10308-14 was issued in January of 2015 and authorized a capital cost of \$10.260 million. The 2021 cost overrun CON for Project ID # J-11971-20 approved an additional \$5.541 million over the previous capital cost, for a combined capital cost authorization of \$15.8 million.

Progress reporting submitted to the CON Section indicates that although the new facility has not yet commenced construction, land for the project has been acquired at a cost of \$3.5 million and a construction contract was executed, which was submitted to the CON Section in September of 2023.

As part of the Transaction, pursuant to a Real Estate Purchase Agreement, UH Carolina Vacant Land Holdings, LLC, a Delaware limited liability company, together with any assignees, (collectively, the “Buyer”) will acquire the Real Property located at 651 Gilcrest Farm Road, Wake Forest, North Carolina 27587 in a transaction with Universal Health Care, Inc., a North Carolina corporation (“the Real Property Transaction”).

A separate CON for Project ID # J-10303-14 was issued effective February 17, 2015. It appears this CON authorized the CON Holders² to replace and relocate ACH beds within Wake County such that, upon project completion, the Litchford Falls facility would be licensed for a total of 75 ACH beds.³ Based on the wording of Condition #2 on the CON, the CON authorized the relocation of 20 ACH beds from Universal Health Care/North Raleigh and 31 ACH beds from Universal Health Care/Fuquay Varina to Litchford Falls. The Litchford Falls facility, at project completion, will operate its current 24 ACH beds plus the 20 ACH beds relocated from North Raleigh and 31 ACH beds from Fuquay (24 + 20 + 31 = 75). The most recently filed CON Progress Report indicates that the Litchford Falls facility is presently operational; and still licensed for 90 SNF beds and 24 ACH beds under License No. NH0558.

² The CON for Project ID # J-10303-14 was issued to: Litchford Assisted Living, LLC (lessor), Universal Health Care/Raleigh, Inc. (lessee), Universal Properties/North Raleigh, LLC (lessor), Universal Health Care/North Raleigh, Inc. (lessee), Universal Properties/Wake, LLC (lessor), and Universal Health Care/Fuquay Varina, Inc. (lessee).

³ The “Scope” description on the face of the CON for Project ID # J-10303-14 only references the relocation of 20 beds and mistakenly refers to these beds as being relocated from Universal Health Care/Fuquay Varina. The conditions on the CON and the project description on the first page of the CON Findings for Project ID # J-10303-14 make it clear that the project approval authorized the relocation of: a) 20 adult care home beds from Universal Health Care/North Raleigh and b) the relocation of 11 existing and 20 CON-approved adult care home beds, a total of 31 beds, from Universal Health Care/Fuquay Varina such that Litchford Falls will operate with a total of 75 ACH beds. If the Department elects, issuance of an Amended CON may be appropriate in this instance.

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The Transaction, as proposed, involves both of these projects. LTC Buyers seek written confirmation from the Department that these two CON-approved projects may be developed by LTC Buyers as described in the CON applications and Certificates of Need.

As you are aware, Section 131E-181(a) describes a CON as being valid only for the “person named in the application” and states that a CON shall not be transferred or assigned other than as provided in Section 131E-189(c). However, Section 131E-189(c) states that transfers resulting from death or personal illness, or “other good cause” as determined by the Department, shall not result in withdrawal if the Department receives prior written notice and finds good cause. Because the projects described above have not yet been developed and the LTC Buyers seek to acquire these projects as part of the Transaction, LTC Buyers seek to confirm that good cause exists to allow for the transfer of the CON approvals associated with these projects and that LTC Buyers may develop these projects as CON-approved.

The CON Law mandates that any transfer allowed by this Section be subject to the requirement that the services be provided consistent with the representations of the applications and any conditions imposed by the Department on the CON approvals. LTC Buyers accept the obligation to carry out the CON-approved projects in accordance with the application representations and CON conditions as required by Section 131E-189(c).

Good cause for the transfer exists in this instance because the two undeveloped projects referenced above are part of a larger Transaction involving the acquisition of fifteen (15) Facilities and other assets. In the past, the Department has found that good cause exists for the transfer of CON approvals when the undeveloped projects are part of larger transactions, thus rendering those projects “peripheral to the objective of the transaction” and “merely incidental to the transaction.” See copies of Declaratory Rulings appended as **Exhibits B and C**. The same analysis that was applied in the attached Rulings applies here where the two undeveloped projects are but a small part of a proposed Transaction involving the acquisition of fifteen (15) Facilities in locations across North Carolina. The public policy which evidently undergirds the transfer prohibition codified in Section 131E-189 is to prevent certificates of need being converted into marketable commodities. That is not the case when undeveloped projects are part of a much larger transaction, and particularly here, where the Transaction will result in the sale of substantially all of the assets of the Sellers and their affiliates.

Good cause for transfer also exists because such a transfer will permit the LTC Buyers to bring to fruition two CON-approved projects which were determined to be needed for the benefit of the populations to be served. These projects, once developed, will provide care to residents, and help to meet the demands for important health care services.

For these reasons, LTC Buyers respectfully ask the Department to confirm that the LTC Buyers may develop these projects as CON-approved and to find good cause for the transfer of these CONs under Section 131E-189(c).

Request for Confirmation

On behalf of the LTC Buyers, thank you for your attention and consideration in this matter. Based on the above, LTC Buyers respectfully request the Department’s written confirmation that the foregoing

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Micheala Mitchell

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Transaction does not require CON review. LTC Buyers further request confirmation that the good cause transfer provisions of Section 131E-189(c) apply to permit the transfer to LTC Buyers of the CON approvals for (a) the development of the UHC Wake Forest Nursing Facility (Project ID # J-10308-14 and Project ID # J-11971-20), and (b) the conversion of Litchford Falls to an exclusively ACH facility (Project ID # J-10303-14), as part of the contemplated Transaction; and that LTC Buyers may develop these projects as CON-approved.

If any further information or clarifications would be helpful to you, please do not hesitate to contact the undersigned. We look forward to your response.

Sincerely,



Joy Heath

Enclosures

cc: Derek L. Hunter, Esq.
With Enclosures
Via E-Mail Only: dhunter@ncdoj.gov

Michael J. McKillip
With Enclosures
Via E-Mail Only: mike.mckillip@dhhs.nc.gov

Martha Waller
With Enclosures
Via E-Mail Only: martha.waller@dhhs.nc.gov

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Exhibit A

Adult Care Home:

1. Catawba Valley Living At Rock Barn
Seller: Universal Properties/Conover, LLC
Facility Operator: Catawba Valley Living, LLC
4174 Shook Road, Claremont, NC
License No.: HAL-018-024

Combination Skilled Nursing Facilities and Adult Care Homes:

1. Blumenthal Nursing & Rehabilitation Center
Seller: Universal Properties/Greensboro, LLC
Facility Operator: Universal Health Care/Blumenthal, Inc.
3724 Wireless Drive, Greensboro, NC
License No.: NH0135
2. Universal Health Care/King
Seller: Universal Properties/King, LLC
Facility Operator: Universal Health Care/King, Inc.
115 White Road, King, NC
License No.: NH0555
3. Universal Health Care / Lillington
Seller: Universal Properties/Lillington, LLC
Facility Operator: Universal Health Care Lillington, Inc.
1995 E. Cornelius Harnett Blvd, Lillington, NC
License No.: NH0444
4. Litchford Falls Healthcare and Rehabilitation Center
Seller: Universal Properties/Raleigh, LLC
Facility Operator: Universal Health Care/Raleigh, Inc.
8200 Litchford Road, Raleigh, NC
License No.: NH0558
5. Universal Health Care/Oxford
Seller: Universal Properties/Oxford, LLC
Facility Operator: Universal Health Care/Oxford, Inc.
500 Prospect Avenue, Oxford, NC
License No.: NH0447
6. Saturn Nursing and Rehabilitation Center
Seller: Universal Properties/Charlotte, LLC
Facility Operator: Saturn Health, Inc.
1930 West Sugar Creek Road, Charlotte, NC
License No.: NH0557

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Skilled Nursing Facilities:

1. Universal Health Care/Brunswick
Seller: Universal Properties/Brunswick, LLC
Facility Operator: Universal Health Care/Brunswick Inc
1070 Old Ocean Highway, Bolivia, NC
License No.: NH0626
2. Lenoir Healthcare Center
Seller: Universal Properties/Lenoir, LLC
Facility Operator: Universal Health Care/Lenoir Inc
322 Nuway Circle, Lenoir, NC, 28645
License No.: NH0407
3. Universal Health Care/Greenville
Seller: Universal Properties/Greenville, LLC
Facility Operator: Universal Health Care/Greenville Inc
2578 West Fifth Street, Greenville, NC
License No.: NH0446
4. Universal Health Care/Fuquay-Varina
Seller: Universal Properties/Fuquay-Varina, LLC
Facility Operator: Universal Health Care/Fuquay-Varina Inc
410 S Judd Parkway SE, Fuquay Varina, NC
License No.: NH0637
5. Universal Health Care/North Raleigh
Seller: Universal Properties/North Raleigh, LLC
Facility Operator: Universal Health Care/North Raleigh Inc
5201 Clarks Fork Drive, NW, Raleigh, NC
License No.: NH0611
6. Universal Health Care/Fletcher
Seller: Universal Properties/Hendersonville, LLC
Facility Operator: Universal Health Care/Fletcher Inc
86 Old Airport Road, Fletcher, NC
License No.: NH0608
7. Universal Health Care and Rehabilitation Center
Seller: Universal Properties/Concord, LLC
Facility Operator: Universal Health Care/Concord Inc
430 Brookwood Avenue, NE, Concord, NC
License No.: NH0247
8. Universal Health Care/Ramseur
Seller: Universal Properties/Ramseur, LLC
Facility Operator: Universal Health Care/Ramseur Inc
7166 Jordan Road, Ramseur, NC
License No.: NH0609

From: [Heath, Joy](#)
To: [Mitchell, Micheala L](#); [Mckillip, Mike](#); [Waller, Martha K](#)
Cc: [Hunter, Derek L](#)
Subject: [External] Attached Correspondence [WMIMAN-IWOVRIC.FID2539199]
Date: Tuesday, March 19, 2024 4:31:45 PM
Attachments: [0205_001.pdf](#)

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Good Afternoon,

Please find attached a letter constituting Prior Written Notice and a Good Cause Transfer Request. We would appreciate a reply e-mail to confirm receipt of this correspondence and we thank you for your review and consideration. Please do not hesitate to let me know if you have any questions or require further information.

We appreciate your attention to this matter and will stand by for your acknowledgement and subsequent response.

Thanks again,
Joy



Joy Heath (she/her)
Attorney
T 919.981.4001 | C 919.559.3904
[email](#) | [v-card](#) | [website](#) | [LinkedIn](#)

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