



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

March 7, 2024

Gary Qualls
Gary.qualls@klgates.com

Exempt from Review – Reopening a Legacy Medical Care Facility

Record #: 4388
Date of Request: February 20, 2024
Facility Name: Carolinas ContinueCare Hospital at University
FID #: 130487
Business Name: The Charlotte-Mecklenburg Hospital Authority
Business #: 1770
Project Description: Notice of intent to reopen the hospital within 36 months of the Date of Request
County: Mecklenburg

Dear Mr. Qualls:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency), determined that the above referenced project is exempt from certificate of need review in accordance with G.S. 131E-184(h). Therefore, you may proceed to reopen the hospital within 36 months of the Date of Request identified above without first obtaining a certificate of need.

It should be noted that this determination is binding only for the facts represented by you. Consequently, if changes are made 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 the Agency.

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

Sincerely,

Gloria C. Hale

Gloria C. Hale
Team Leader

Micheala Mitchell

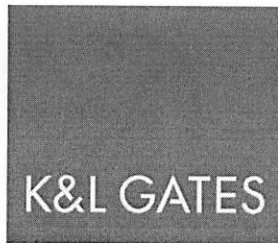
Micheala Mitchell
Chief

cc: Construction Section, DHSR
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



February 20, 2024

Gary S. Qualls  
D 919.466.1182  
F 919.516.2082  
gary.qualls@klgates.com

**VIA E-MAIL**

Micheala Mitchell, Chief  
Healthcare Planning and Certificate of Need Section  
Division of Health Service Regulation  
Department of Health and Human Services  
809 Ruggles Drive  
Raleigh, NC 27603

Re: Exemption Notice for The Charlotte-Mecklenburg Hospital Authority to Reopen the LTACH Previously Operated on the Atrium Health University City Campus Pursuant to CMHA's Contractual CON Rights

Dear Ms. Mitchell:

The Charlotte-Mecklenburg Hospital Authority d/b/a Atrium Health University City (formerly known as Carolinas HealthCare System University) ("CMHA") is planning to reopen the long term acute care hospital ("LTACH") and the beds therein (the "Facility" or the "University City LTACH"), formerly operated on the campus of Atrium Health University City in Mecklenburg County. The Facility was operated by Crawley Memorial Hospital, Inc. d/b/a Carolinas ContinueCARE Hospital at University ("CMH"). As explained below, CMHA owns the CON rights to the Facility and CON Project (the "University City LTACH Project"), the CON for which was originally issued on February 25, 2014 (Project I.D. No. F-10217-13).

The purpose of this letter is to provide notice of this reopening, which is exempt from certificate of need ("CON") review, to the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Healthcare Planning and Certificate of Need Section (the "Agency"). CMHA seeks confirmation that it is permitted to reopen the Facility as described herein without CON Review, based on CMHA's rights to own and operate the Facility, a health service facility (as defined in the CON statute) with long term acute care beds.

## **I. BACKGROUND**

The Facility was operated on the campus of Atrium Health University City (formerly known as Carolinas HealthCare System University), pursuant to a Lease between CMH (as Tenant) and CMHA (as Landlord). Pursuant to Paragraph 6.1 of the Lease:

Upon the expiration or termination of this Lease for any reason, the Beds shall revert back to Landlord, and Tenant shall no longer retain any Certificate of Need-related rights, other tangible or intangible rights, or any other associated health service facility rights in the Beds. Tenant shall cooperate with Landlord to take any and all action necessary to document the transfer of all Certificate of Need-related rights, other tangible or intangible rights, and any other associated health service facility rights in the Beds to Landlord.

CMH and CMHA decided to terminate the Lease, and the Facility closed effective March 15, 2022. According to the Lease, the Facility and all CON rights thereto revert to CMHA. Because the Facility has not continuously operated for at least the past six months, but was operational within the last 24 months, we are filing this exemption notice under the Legacy Medical Care Facility exemption provisions contained in N.C. Gen. Stat. § 131E-184(h).

## **II. EXEMPTION NOTICE**

The North Carolina General Assembly saw fit to exempt certain types of services or proposals from CON review, pursuant to N.C. Gen. Stat. § 131E-184. One such exempt service or proposal includes the acquisition or reopening of a Legacy Medical Care Facility pursuant to N.C. Gen. Stat. § 131E-176(14f) and § 131E-184(h). Those "Legacy Exemption Provisions" provide as follows:

The Department shall exempt from certificate of need review the acquisition or reopening of a Legacy Medical Care Facility. The person seeking to operate a Legacy Medical Care Facility shall give the Department written notice of all of the following:

- (1) Its intention to acquire or reopen a Legacy Medical Care Facility within the same county and the same service area as the facility that ceased continuous operations. If the Legacy Medical Facility will become operational in a new location within the same county and the same service area as the facility that ceased continuous operations, then the person responsible for giving the written notice required by this section shall notify the Department, as soon as reasonably practicable and prior to becoming operational, of the new location of the Legacy Medical Care Facility. For purposes of this subdivision, "service area" means the service area identified in the North

Carolina State Medical Facilities Plan in effect at the time the written notice required by this section is given to the Department.

- (2) That the facility will be operational within 36 months of the notice.

See N.C. Gen. Stat. § 131E-184(h).

As referenced above, a “Legacy Medical Care Facility” is defined under the CON statute as a facility that meets all of the following requirements:

- a. Is not presently operating.
- b. Has not continuously operated for at least the past six months.
- c. Within the last 24 months:
  1. Was operated by a person holding a license under G.S. 131E-77; and
  2. Was primarily engaged in providing to inpatients or outpatients, by or under supervision of physicians, (i) diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons or (ii) rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

See N.C. Gen. Stat. § 131E-176(14f).

This project involves CMHA proposing to reopen its University City LTACH in a manner that comports with all of the Legacy Exemption Provisions. Specifically:

- CMHA owns the University City LTACH CON rights per the CON and the lease provisions quoted above.
- The University City LTACH has been closed for more than six months. See N.C. Gen. Stat. § 131E-176(14f)(a) and (b).
- The University City LTACH operated as an LTACH within the last two years, which was licensed under N.C. Gen. Stat. § 131E-77, and otherwise in accordance with the requirements in N.C. Gen. Stat. § 131E-176(14f)(c).
- CMHA plans to make the University City LTACH operational within the same county (Mecklenburg County), and within 36 months of this notice, in accordance with N.C. Gen. Stat. § 131E-184(h)(1) and (2).

Ms. Micheala Mitchell, Chief  
February 20, 2024  
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Furthermore, CMHA's reopening of the Facility does not entail the purchase of any major medical equipment or any *per se* reviewable equipment as defined in N.C. Gen. Stat. §§ 131E-176(14o) and (16)(f1). Likewise, the acquisition does not include the offering of any *per se* reviewable services. See N.C. Gen. Stat. § 131E-176(16)(f). Thus, given that the event at issue involves only the reopening of a Legacy Medical Care Facility to which CMHA already owns the rights, it is exempt from CON review.

### **III. CONCLUSION**

Based on the foregoing information, we hereby request the Agency's confirmation that the event described above is exempt from CON review, pursuant to N.C. Gen. Stat. § 131E-184(h), and thus CMHA may reopen the Facility with all of its existing CON rights, without the need to obtain a new CON.

If you require additional information to consider this request, please do not hesitate to contact me. Thank you for your consideration of this request.

Sincerely,



Gary S. Qualls

**From:** [Mitchell, Micheala L](#)  
**To:** [Stancil, Tiffany C](#)  
**Subject:** Fw: [External] 20240220\_K&L GATES.pdf  
**Date:** Tuesday, February 20, 2024 5:05:15 PM  
**Attachments:** [20240220\\_K&L GATES.pdf](#)

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Tiffany,

Would you mind logging this as an exemption and assigning to Gloria?

Thanks,

Micheala

Micheala Mitchell, JD  
[NC Department of Health and Human Services](#)  
[Division of Health Service Regulation](#)  
Section Chief, Healthcare Planning and CON Section  
809 Ruggles Drive, Edgerton Building  
2704 Mail Service Center  
Raleigh, NC 27699-2704  
Office: [919 855 3879](tel:9198553879)  
[Micheala.Mitchell@dhhs.nc.gov](mailto:Micheala.Mitchell@dhhs.nc.gov)

Don't wait to vaccinate. Find a COVID-19 vaccine location near you at [MySpot.nc.gov](https://www.myspot.nc.gov).  
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**From:** Qualls, Gary <[Gary.Qualls@klgates.com](mailto:Gary.Qualls@klgates.com)>  
**Sent:** Tuesday, February 20, 2024 4:30 PM  
**To:** Mitchell, Micheala L <[Micheala.Mitchell@dhhs.nc.gov](mailto:Micheala.Mitchell@dhhs.nc.gov)>  
**Subject:** [External] 20240220\_K&L GATES.pdf

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Micheala:

Attached for filing is a Legacy Statute Exemption Notice on behalf of The Charlotte-Mecklenburg Hospital Authority (“CMHA”). Please confirm receipt for my records.

Thanks

Gary



**Gary S. Qualls**

Partner

K&L Gates LLP

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