



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

February 23, 2024

Kenneth Burgess
kburgess@bakerdonelson.com

No Review

Record #: 4382
Date of Request: February 12, 2024
Facility Name: See Attached
FID #: See Attached
Business Name: Welltower OP LLC
Business #: 3791
Project Description: Corporate reorganization of related entities which own adult care homes and/or nursing facilities
Counties: Harnett, Johnston, New Hanover

Dear Mr. Burgess:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) received your correspondence regarding the project described above. Based on the CON law **in effect on the date of this response to your request**, the project as described is not governed by, and therefore, does not currently require a certificate of need. 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.

This determination is binding only for the facts represented in your correspondence. If changes are made in the project or in the facts provided in the correspondence referenced above, a new determination as to whether a certificate of need is required would need to be made by this office.

Please do not hesitate to contact this office if you have any questions.

Sincerely,

Cynthia Bradford, 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
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AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER

ENNETH L. BURGESS
Direct Dial: 984-844-7912
E-Mail Address: kburgess@bakerdonelson.com

February 12, 2024

Via Email to: micheala.mitchell@dhhs.nc.gov

Micheala Mitchell
Chief
N.C. Division of Health Service Regulation
Certificate of Need Section
2701 Mail Service Center
Raleigh, N.C. 27699-2701

Re: No Review Determination Requestion or, in the Alternative, Exemption Notice

Dear Micheala:

On behalf of our client, Welltower OP LLC and the entities named below (“Welltower”), we are submitting this No Review Determination Request or, in the Alternative, Notice of Exempt Acquisition in connection with our clients’ corporate reorganization of certain related entities which own North Carolina adult care homes and/or skilled nursing facilities, as described below (the “Reorganization”). We request that the N.C. Department of Health and Human Services, Division of Health Service Regulation, Healthcare Planning and Certificate of Need Section (the “Agency”) confirm in writing that our client may proceed with the proposed Reorganization without further Agency review and without the need to first obtain a CON or CONs.

The attached chart identifies six (6) North Carolina long term care facilities which are owned by Welltower’s affiliated entities, consisting of four (4) adult care homes and two (2) skilled nursing facilities. The chart reflects the public-facing name of each facility, its current corporate real property owner, the facility type, the license number and the facility address. Each of the entities in the column labeled WELL Legal Title Owner is an entity affiliated with Welltower which is the ultimate upstream owner of each owning entity.

The Proposed Reorganization

For tax and other corporate purposes, our client proposes to merge each of the real property-owning entities identified in the attached chart with and/or into its parent entities, and up to another Welltower related affiliate, HCRI North Carolina Properties III Limited Partnership. As

a result of the mergers, after the Reorganization, the real property of each of the six (6) long term care facilities identified in the attached chart will be owned by HCRI North Carolina Properties III, Limited Partnership as a matter of law. Each of the current owning entities identified in the attached chart and HCRI North Carolina Properties III Limited Partnership are entities ultimately owned by Welltower OP LLC. The Reorganization will not involve any transfer of property deeds or properties.

After the Reorganization, each of the licensees and operating entities of the six (6) long term care facilities will remain the same. As such, this is solely a Reorganization that affects the ownership of the real property comprising each facility, not of the operations.

The Agency historically has not viewed such related entity reorganizations as a change of ownership or the sale or transfer of an existing health service facility. We request that the Agency confirm that this historical interpretation applies in this situation also and, as such, our clients do not need to obtain a CON or CONs to proceed with the Reorganization.

Should the Agency view this Reorganization as a change of facility ownership or the sale or transfer of existing health service facilities then, in the alternative, we request that the Agency view this correspondence as a Notice of Exempt Acquisition. As you know, both adult care homes and skilled nursing facilities are “health service facilities” as defined at N.C. Gen. Stat. § 131E-176(9b). The CON Statute at N.C. Gen. Stat. § 131E-184(8) exempts from Agency review the acquisition of an existing health service facility. As such, even if the Agency views the Reorganization as the “acquisition” of an existing health service facility, that acquisition is exempt from further Agency review and no CON is required to proceed with the Reorganization.

We would appreciate the Agency confirming in writing at your earliest convenience that the proposed Reorganization is not subject to further Agency review and that no CON is required for our client to proceed with the Reorganization. Please let me know if you have questions or need further information regarding this correspondence.

Best regards,

A handwritten signature in blue ink that reads "Kenneth L. Burgess". The signature is written in a cursive style with a large initial 'K'.

Kenneth L. Burgess

klb

Attachment

Property Name/Licensee	Property Address	Asset Type	WELL Legal Title Owner	Facility License #
Green Leaf Care Center / Lillington Operations, LLC	2041 NC-210 N, Lillington, NC	Assisted Living	Lillington AL Health Investors, LP	HAL-043-027
Emerald Health & Rehab Center Harnett Healthcare Group, LLC	54 Red Mulberry Way, Lillington, NC	Skilled Nursing	Harnett Health Investors, LP	NH0144
Franklin House / Franklin Operations, LLC	100 Sunset Drive, Youngsville, NC	Memory Care	RSF SP Franklin V L.P.	HAL-035-024
Meadowview Assisted Living / Meadowview AL Operations, LLC	250 Highway 210 West, Smithfield, NC	Assisted Living	RSF SP Meadowview V L.P.	HAL-051-047
Gabriel Manor / Smithfield East Health Holdings, LLC	84 Johnson Estate Road, Clayton, NC	Memory Care	RSF SP Smithfield V L.P.	HAL-051-048
Azalea Health and Rehab / Wrightsville Health Holdings, LLC	3828 Independence Blvd, Wilmington, NC	Skilled Nursing	RSF SP Wrightsville V L.P.	NH0632

From: [Mitchell, Micheala L](#)
To: [Stancil, Tiffany C](#)
Subject: Fw: [External] No Review Determination Request or, in the Alternative, Notice of Exemption
Date: Friday, February 9, 2024 8:30:45 AM
Attachments: [4894-4362-2819 v.1 No Review Letter to CON Section.docx](#)

Would you mind assigning this no review to Cindy?

Thx

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

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From: Burgess, Ken <kburgess@bakerdonelson.com>
Sent: Friday, February 9, 2024 8:04 AM
To: Mitchell, Micheala L <Micheala.Mitchell@dhhs.nc.gov>
Subject: [External] No Review Determination Request or, in the Alternative, Notice of Exemption

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Micheala, attached please find a No Review Determination Request or, in the Alternative, Notice of Exemption we are filing on behalf of our client Welltower OP LLC and its affiliated entities. Please let me know if you have any questions about or need further information regarding this filing. Thank you, Ken Burgess

PLEASE NOTE NEW ADDRESS

Kenneth (Ken) L. Burgess
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Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
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Baker, Donelson, Bearman, Caldwell & Berkowitz, PC represents clients across the U.S. and abroad from offices in Alabama, Florida, Georgia, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia and Washington, D.C.

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