



DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF HEALTH SERVICE REGULATION

ROY COOPER  
GOVERNOR

MANDY COHEN, MD, MPH  
SECRETARY

MARK PAYNE  
DIRECTOR

January 26, 2017

Ms. A. Paige Miller  
Bradley Arant Boult Cummings LLP  
1600 Division Street, Suite 700  
Nashville, TN 37203-2754

**No Review**

**Record #:** 2146  
Facility Name: See Exhibit A  
FID #: See Exhibit A  
Business Name: See Exhibit A  
Business #: See Exhibit A  
Project Description: Change in indirect ownership of the entities owning the facilities  
County: See Exhibit A

Dear Ms. Miller:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) received your letter of January 18, 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 Acute and Home Care Licensure and Certification Section 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 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.

**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

AN EQUAL OPPORTUNITY/ AFFIRMATIVE ACTION EMPLOYER



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,



Celia C. Inman  
Project Analyst



Martha J. Frisone  
Assistant Chief, Certificate of Need

cc: Acute and Home Care Licensure and Certification Section, DHSR  
Paige Bennett, Assistant Chief, Healthcare Planning, DHSR

**Exhibit A**

<b>ASC Facility Name and Address</b>	<b>License #</b>	<b>Facility ID</b>	<b>Facility Owner* per Master Facility File and Access Database</b>
Charlotte Surgery Center 2825 Randolph Road Charlotte, NC 28211 Mecklenburg County	AS0026	943093	Charlotte Surgery Center (MFF) Charlotte Surgery Center, Limited Partnership Bus ID 470
Blue Ridge Surgery Center 2308 Wesvill Ct Raleigh, NC 27607 Wake County	AS0029	922977	Blue Ridge Day Surgery Center, LP Bus ID 201
The Eye Surgery Center of the Carolinas 2170 Midland Rd. Southern Pines, NC 28387 Moore County	AS0022	953347	The Eye Surgery Center of the Carolinas, L.P. Bus ID 2557
Fayetteville Ambulatory Surgery Center 1781 Metromedical Drive Fayetteville, NC 28304 Cumberland County	AS0006	943168	Fayetteville Ambulatory Surgery Center, Ltd Partnership Bus ID 2558
Greensboro Specialty Surgical Center <sup>1</sup> 3512 N. Elm Street Greensboro, NC 27455 Guilford County	AS0009	923202	Greensboro Specialty Surgical Center, Ltd. (MFF) Greensboro Specialty Surgery Center, LLC Bus ID 2489
Surgical Center of Greensboro <sup>2</sup> 1211 Virginia Street Greensboro, NC 27401 Guilford County	AS0018	943477	Surgical Center of Greensboro, LLC Bus ID 2488
Eastern Regional Surgical Center 1709 Medical Park Drive Wilson, NC 27893 Wilson County	AS0005	923475	Surgery Center Wilson, LLC Bus ID 2559

\*All facility owners remain the same following the proposed transaction, in which Surgical Care Affiliates, Inc., currently a publicly-owned corporation, becomes a wholly-owned subsidiary of UnitedHealth Group Incorporated.

<sup>1</sup> Certificate of Need Project ID #G-10209-13 / Renovate and expand existing ambulatory surgery center and add one procedure room / Still under development

<sup>2</sup> Certificate of Need Project ID #G-10210-13 / Relocate existing ASC from 1211 Virginia St. & 1101 Carolina St. to new replacement facility and add two procedure rooms in the new location / Assigned new FID #130461 / Still under development

**A. Paige Miller**

pmiller@bradley.com  
615.252.3886 direct  
615.248.3046 fax

**Bradley**

January 18, 2017

**VIA FEDERAL EXPRESS**

Ms. Martha Frisone  
North Carolina Department of Health and Human Services  
Division of Health Service Regulation  
Certificate of Need Section  
809 Ruggles Drive  
Raleigh, North Carolina 27603



**Re: Notice of Proposed Transaction; Request for Determination of Reviewability**

Dear Ms. Frisone:

I write on behalf of our client, Surgical Care Affiliates, Inc. (“SCA”). The purpose of this letter is to provide notice of a proposed transaction involving SCA and certain of its subsidiaries, and to request a formal determination regarding whether the proposed transaction is subject to certificate of need (“CON”) review under North Carolina law. As described more fully below, it is our understanding that the proposed transaction will not require CON review.

**DESCRIPTION OF PROPOSED TRANSACTION**

SCA is a publicly-traded corporation that, by and through its subsidiaries, operates one of the largest networks of surgical facilities in the United States, which as of December 31, 2016, included 198 ambulatory surgery centers and seven surgical hospitals. Seven of these facilities are located in North Carolina. UnitedHealth Group Incorporated (“UHG”) is a publicly-traded corporation that, by and through its subsidiaries, operates a diversified family of businesses dedicated to helping people live healthier lives. SCA and UHG are parties to an agreement that, subject to the satisfaction or waiver of certain conditions, will result in the merger of SCA with a wholly-owned subsidiary of UHG (the “Proposed Transaction”). As a result, following the closing of the Proposed Transaction, SCA will cease to be a publicly-traded corporation and will become a wholly-owned subsidiary of UHG. The Proposed Transaction is expected to be completed in the first half of 2017.

Enclosed for your reference as Exhibit A is a listing of all of the SCA-affiliated facilities holding ambulatory surgery center licenses issued by the North Carolina Department of Health and Human Services (the “Department”) that will be included in the Proposed Transaction (each, a “Facility” and collectively, the “Facilities”). In addition, enclosed as Exhibit B are ownership charts showing the ownership structure of each of the Facilities before and after the closing of the Proposed Transaction.<sup>1</sup> As you can see, the Proposed Transaction will not result in any change in

<sup>1</sup> Immediately following the closing of the merger transaction, UHG will complete an internal reorganization through which the former SCA system will be incorporated into UHG’s OptumCare business line. The attached charts depict the ownership structure after the completion of both the merger transaction and this internal reorganization.

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the direct ownership of the legal entities that own and operate the Facilities. Instead, the Proposed Transaction will result in a change in the ownership structure several levels up the ownership chain from the legal entities that own and operate the Facilities. In each case, the legal entity that owns and operates the Facility will retain its assets, and there will be no change in the direct ownership of its stock. The legal entities that own and operate the Facilities will also retain their respective legal business names and federal tax identification numbers. Accordingly, the Proposed Transaction will not result in a change of ownership of any of the Facilities for Medicare purposes. In addition, no change in the local governing bodies or day-to-day operations of the Facilities is anticipated as a result of the Proposed Transaction.

### **APPLICABLE LAW**

It is our understanding that the Proposed Transaction will not require CON review, and that no other filings will be required in connection with the Proposed Transaction. Under North Carolina law, a CON is required for the “acquisition by donation, lease, transfer, or comparable arrangement ... if the acquisition would have been a new institutional health service if it had been made by purchase.” N.C. Gen. Stat. § 131E-178(b). The term “new institutional health services” is defined to include “[t]he purchase, lease, or acquisition of any health service facility, or portion thereof, or a controlling interest in the health service facility or portion thereof, if the health service facility was developed under a certificate of need issued pursuant to [N.C. Gen. Stat. § 131E-180].” N.C. Gen. Stat. § 131E-176(16)(l). As reflected in Exhibit B, the Proposed Transaction will not result in the purchase, lease, or acquisition of the Facilities, nor will it result in the purchase, lease, or acquisition of a controlling interest in the Facilities. Rather, the legal entities that own and operate the Facilities will remain the same following the closing of the Proposed Transaction. However, the Proposed Transaction will result in a change in the legal entities that own indirect ownership interests in the legal entities that own and operate the Facilities, and we understand that the Department may interpret the Proposed Transaction to constitute an “acquisition” in the case of at least one of the Facilities.<sup>2</sup>

Although it is our understanding that the Proposed Transaction will not constitute an “acquisition” for purposes of North Carolina CON law, we understand that the acquisition of an existing health service facility is, in any event, exempt from CON review pursuant to N.C. Gen. Stat. § 131E-184(a)(8), provided that prior written notice is provided to the Department. In the event that the Department determines that the Proposed Transaction will constitute an acquisition of an existing health service facility with respect to any of the Facilities, please allow this letter to serve as the notice required under N.C. Gen. Stat. § 131E-184(a) and a request for confirmation that the Proposed Transaction is exempt from CON review.

### **REQUEST FOR DETERMINATION OF REVIEWABILITY**

We respectfully request a determination from your office regarding whether the Proposed Transaction is subject to CON review under North Carolina law or will otherwise require action with the Department. Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me at (615) 252-3886 or pmiller@bradley.com.

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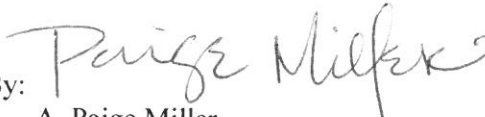
<sup>2</sup> As described in the enclosed ownership structure charts, SCA’s indirect ownership interest in all but one of the Facilities is less than 50 percent.



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Very truly yours,

BRADLEY ARANT BOULT CUMMINGS LLP

By:   
A. Paige Miller

Enclosures

cc: Richard L. Sharff, Jr., Esq. (via email: [rich.sharff@scasurgery.com](mailto:rich.sharff@scasurgery.com))  
Megan A. McGovern, Esq. (via email: [megan.mcgovern@hoganlovells.com](mailto:megan.mcgovern@hoganlovells.com))

**EXHIBIT A**

**SCA-AFFILIATED FACILITIES IN NORTH CAROLINA**

FACILITY NAME	LEGAL ENTITY	LICENSE NO.	LOCATION
Charlotte Surgery Center	Charlotte Surgery Center, Limited Partnership	AS0026	Charlotte, NC
Blue Ridge Surgery Center	Blue Ridge Day Surgery Center, L.P.	AS0029	Raleigh, NC
The Eye Surgery Center of the Carolinas	The Eye Surgery Center of the Carolinas, L.P.	AS0022	Southern Pines, NC
Fayetteville Ambulatory Surgery Center	Fayetteville Ambulatory Surgery Center, L.P.	AS0006	Fayetteville, NC
Greensboro Specialty Surgery Center	Greensboro Specialty Surgery Center, LLC	AS0009	Greensboro, NC
Surgical Center of Greensboro	Surgical Center of Greensboro, LLC	AS0018	Greensboro, NC
Eastern Regional Surgical Center	Wilson Surgery Center, LLC	AS0005	Wilson, NC

**EXHIBIT B**

**OWNERSHIP STRUCTURE CHARTS**

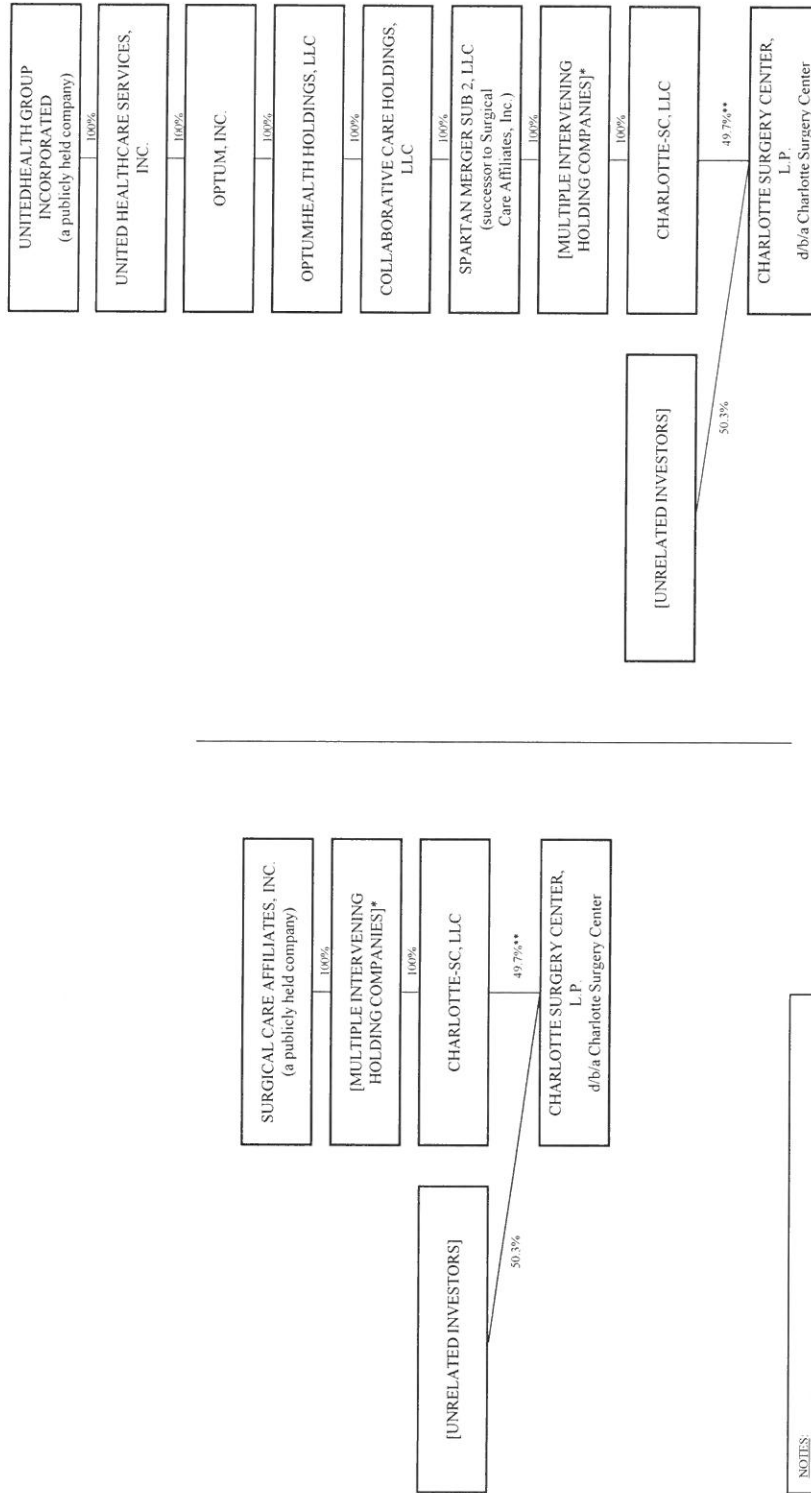
Please see attached.



**CHARLOTTE SURGERY CENTER, L.P.  
OWNERSHIP STRUCTURE CHART**

BEFORE PROPOSED TRANSACTION

AFTER PROPOSED TRANSACTION

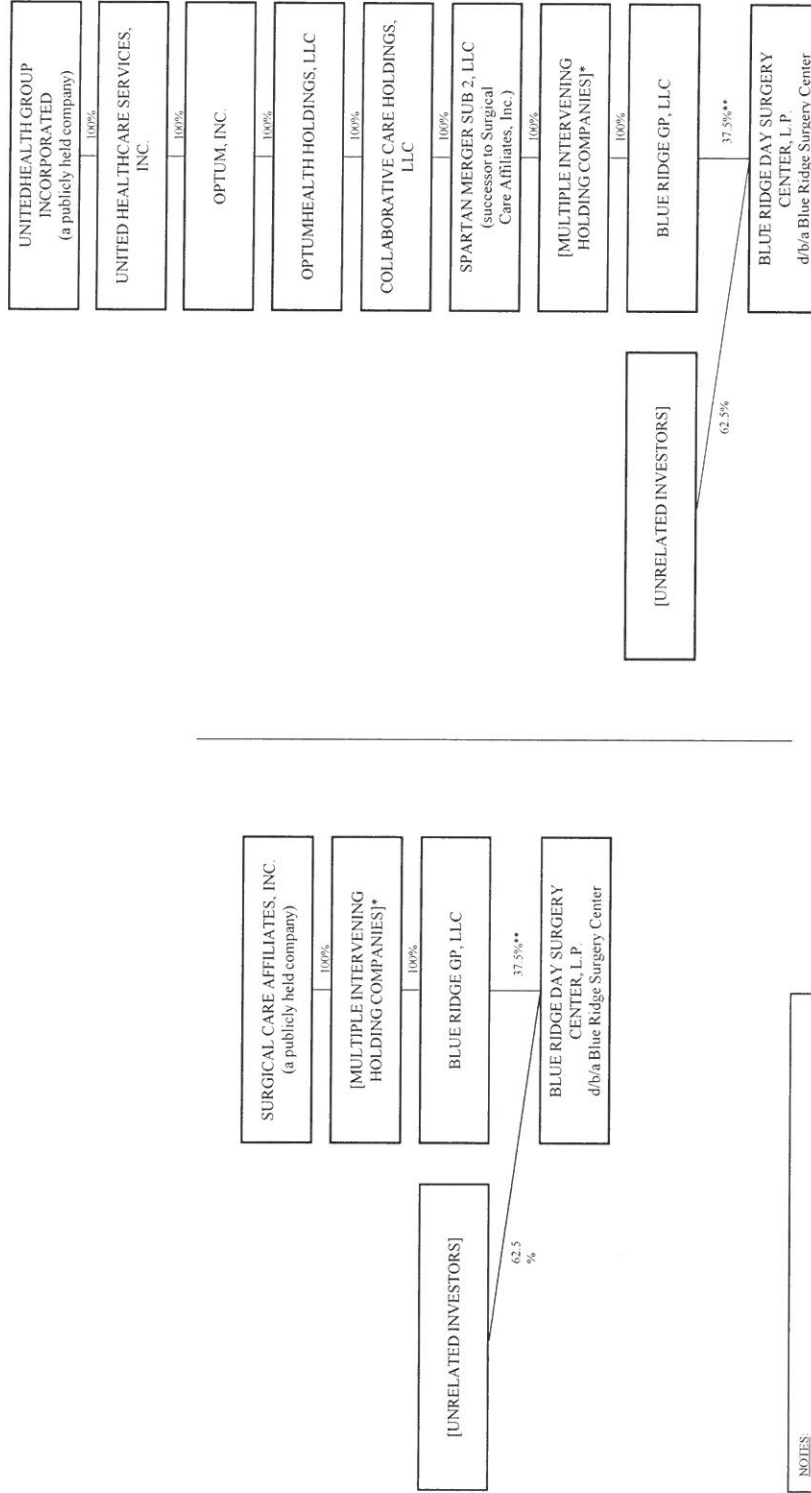


**NOTES:**  
 \* Interests held by multiple wholly-owned holding companies, all of which are under common control. No changes in these holding companies or the interests they hold will occur as a result of the Proposed Transaction.  
 \*\* Total beneficial ownership interests: Charlotte-SC, LLC holds 40% general partner interest and 9.7% limited partner interest.

**BLUE RIDGE DAY SURGERY CENTER, L.P.  
OWNERSHIP STRUCTURE CHART**

BEFORE PROPOSED TRANSACTION

AFTER PROPOSED TRANSACTION

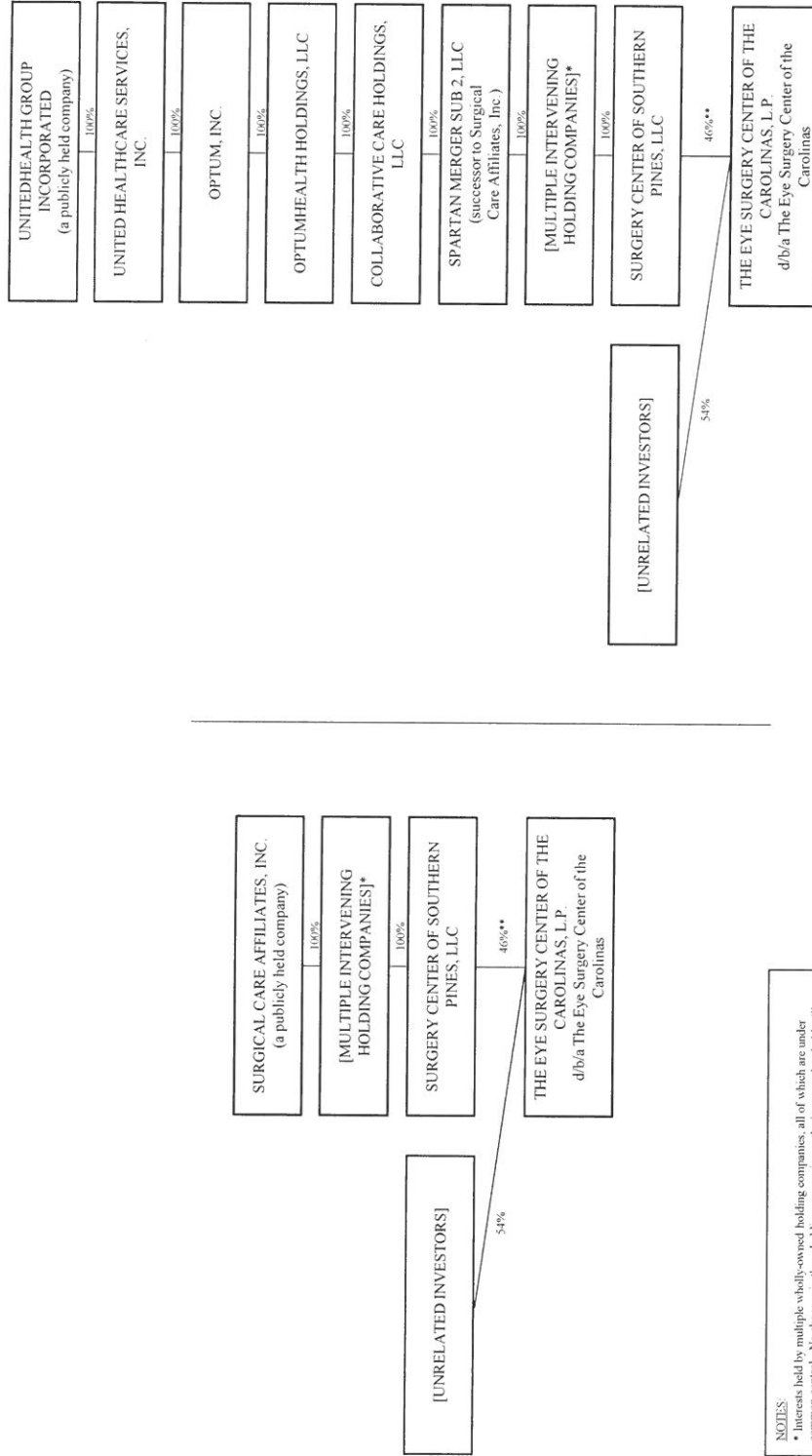


**NOTES**  
 \* Interest held by multiple wholly-owned holding companies, all of which are under common control. No changes in these holding companies or the interests they hold will occur as a result of the Proposed Transaction.  
 \*\* Total beneficial ownership interests. Blue Ridge GP, LLC holds 37.5% general partner interest.

**THE EYE SURGERY CENTER OF THE CAROLINAS, L.P.  
OWNERSHIP STRUCTURE CHART**

BEFORE PROPOSED TRANSACTION

AFTER PROPOSED TRANSACTION

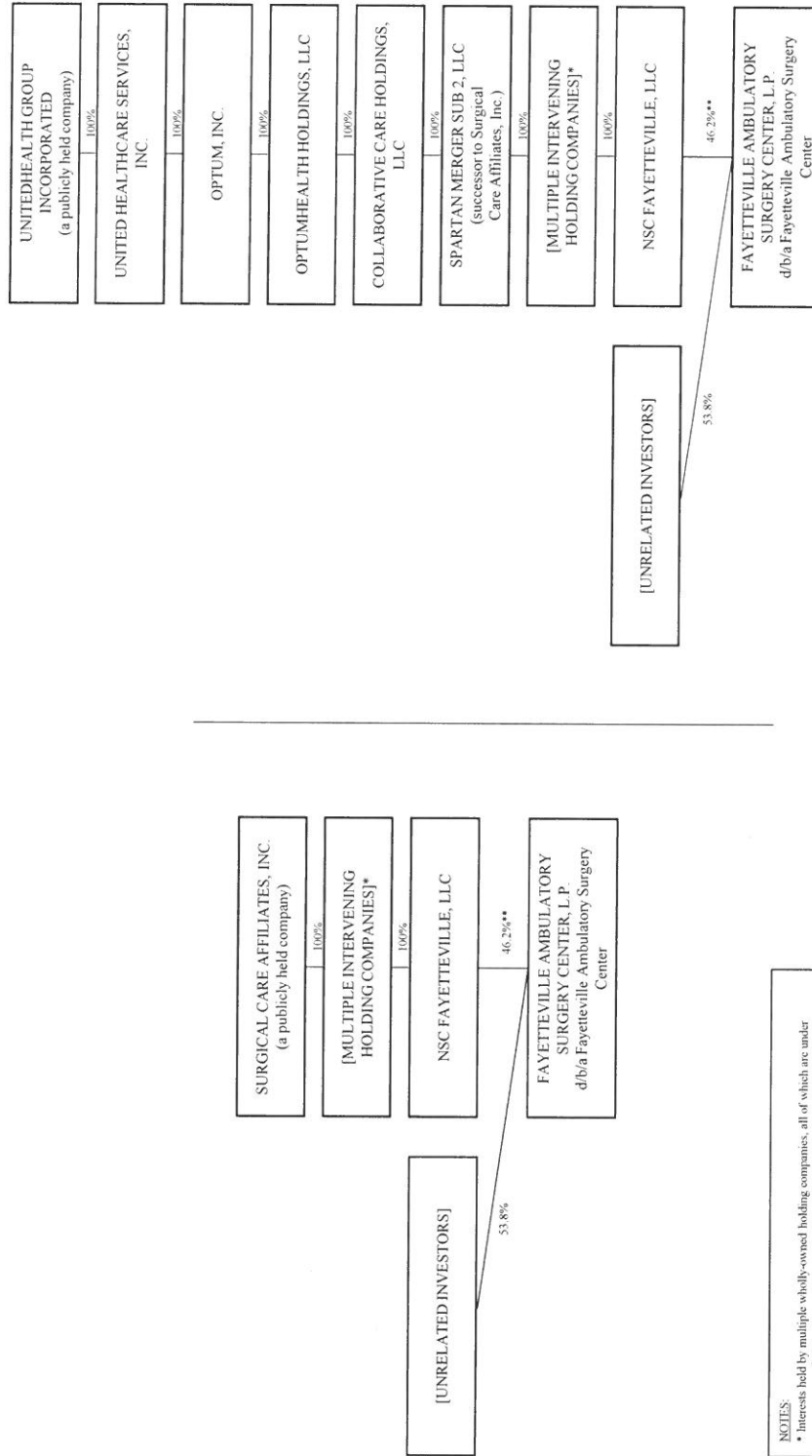


**NOTES:**  
 • Interests held by multiple wholly-owned holding companies, all of which are under common control. No changes in these holding companies or the interests they hold will occur as a result of the Proposed Transaction.  
 •• General partner interest. Unrelated investors hold remaining limited partner interest.

**FAYETTEVILLE AMBULATORY SURGERY CENTER, L.P.  
OWNERSHIP STRUCTURE CHART**

BEFORE PROPOSED TRANSACTION

AFTER PROPOSED TRANSACTION



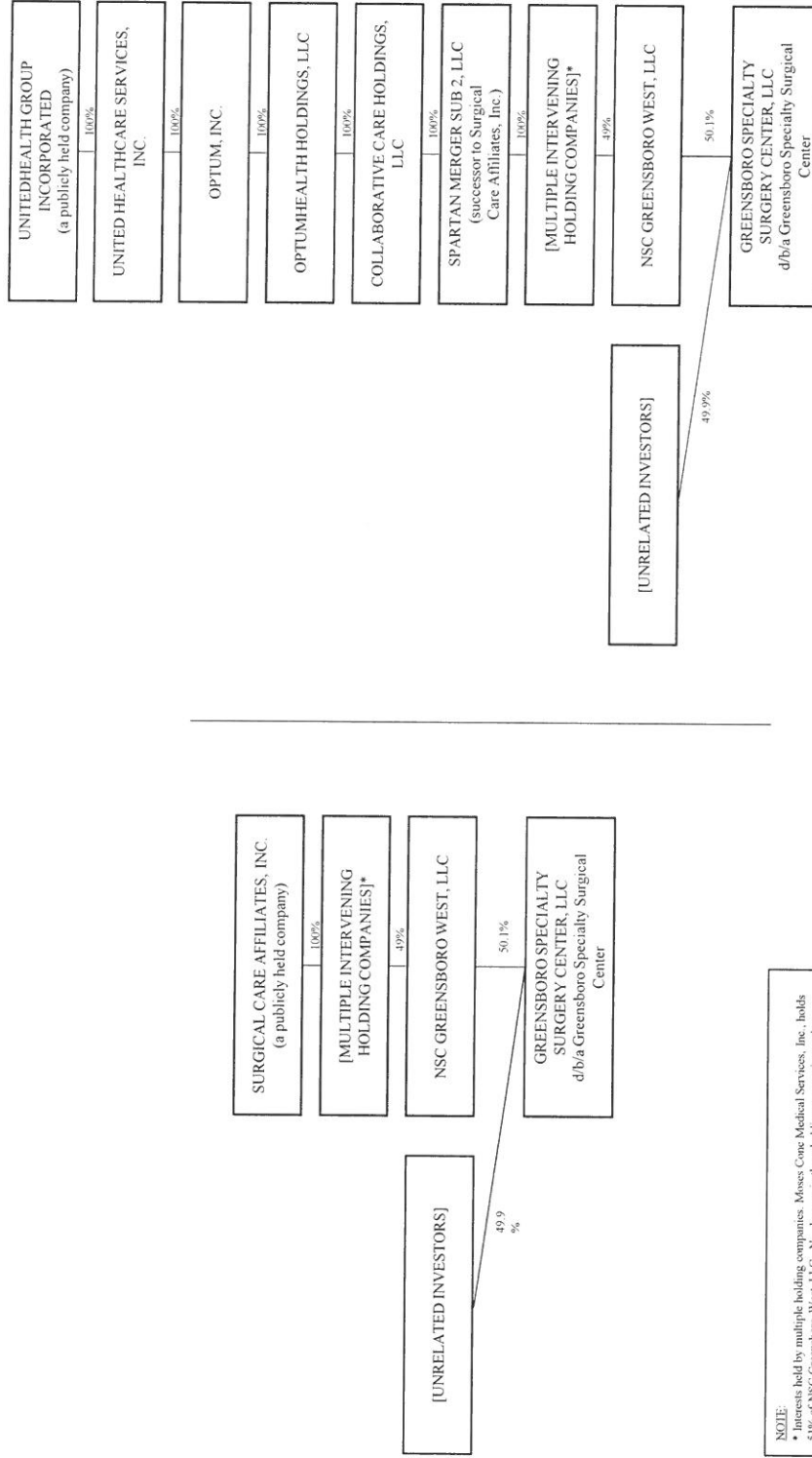
**NOTES:**

- Interests held by multiple wholly-owned holding companies, all of which are under common control. No changes in these holding companies or the interests they hold will occur as a result of the Proposed Transaction.
- \*\* Total beneficial ownership interests. NSC Fayetteville, LLC holds 43.74% general partner interest and 2.48% limited partner interest.

**GREENSBORO SPECIALTY SURGERY CENTER, LLC  
OWNERSHIP STRUCTURE CHART**

BEFORE PROPOSED TRANSACTION

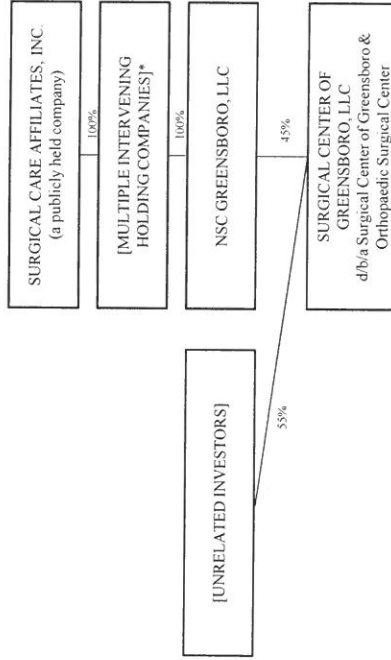
AFTER PROPOSED TRANSACTION



**NOTE:**  
 \* Interests held by multiple holding companies. Moses Cone Medical Services, Inc., holds 51% of NSC Greensboro West, LLC. No changes in these holding companies or the interests they hold will occur as a result of the Proposed Transaction.

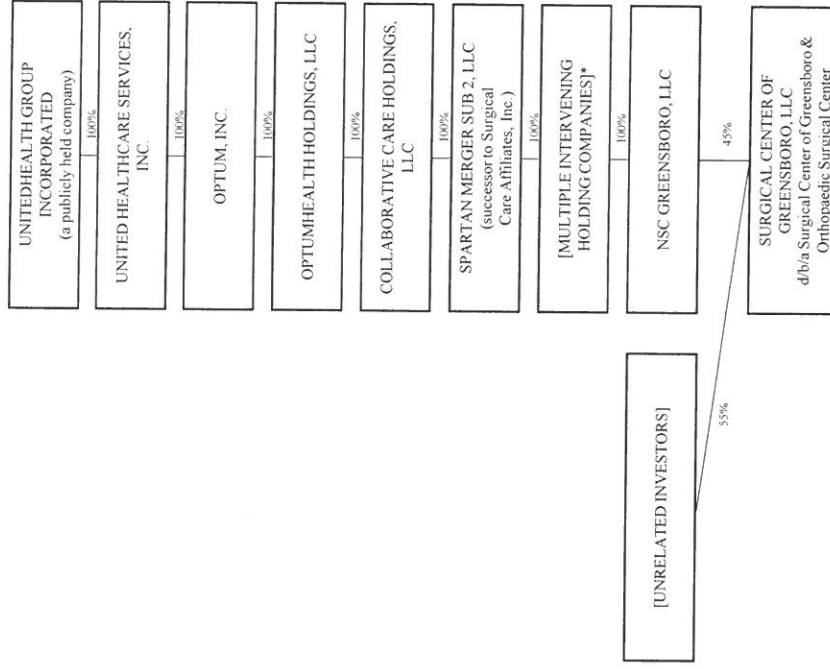
**SURGICAL CENTER OF GREENSBORO, LLC  
OWNERSHIP STRUCTURE CHART**

BEFORE PROPOSED TRANSACTION



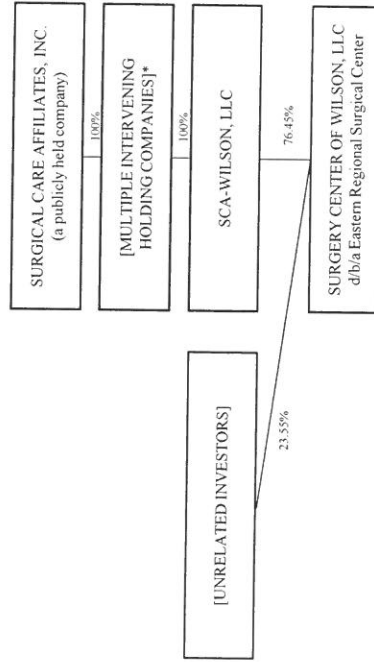
**NOTE:**  
 • Interests held by multiple wholly-owned holding companies, all of which are under common control. No changes in these holding companies or the interests they hold will occur as a result of the Proposed Transaction.

AFTER PROPOSED TRANSACTION



**SURGERY CENTER OF WILSON, LLC  
OWNERSHIP STRUCTURE CHART**

BEFORE PROPOSED TRANSACTION



NOTE:  
\* Interests held by multiple wholly-owned holding companies, all of which are under common control. Changes in these holding companies or the interests they hold will occur as a result of the Proposed Transaction.

AFTER PROPOSED TRANSACTION

