



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

June 12, 2019

William R. Shenton
WShenton@poynerspruill.com

No Review

Record #: 2964
Facility Name: The Elms at Abbotswood
FID #: 150329
Business Name: KC Greensboro Expansion, LLC
Business #: 2237
Project Description: Indirect ownership of KRC Greensboro Limited Partnership, which will acquire The Elms at Abbotswood, will change to KC Greensboro Expansion, LLC
County: Guilford

Dear Mr. Shenton:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) received your correspondence 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 that correspondence 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.

You may need to contact the Agency's Adult Care Licensure Section to determine if they have any requirements for development of the proposed project.

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,

Celia C. Inman

Celia C. Inman
Project Analyst

Martha J. Frisone

Martha J. Frisone
Chief

cc: Construction 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
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William R. Shenton
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June 10, 2019

VIA E-MAIL ONLY

Martha J. Frisone
Chief, Healthcare Planning and Certificate of Need
Division of Health Service Regulation, Healthcare
Planning and Certificate of Need Section
2704 Mail Service Center
Raleigh, NC 27699-2704

Re: KRC Greensboro Limited Partnership

Dear Ms. Frisone:

I am writing to follow up on a recent letter that you and Ms. Celia Inman sent to Mr. Craig Taylor with Kisco Senior Living. In that May 28 letter, a copy of which is attached, the Certificate of Need Section confirmed that the acquisition by KRC Greensboro Limited Partnership ("KRC") of an adjacent affiliated assisted living community known as the Elms at Abbotswood ("The Elms"), was exempt from review under NC Gen. Stat. § 131E-184 (a) (8). KRC has been licensed to operate the 28-bed AL community known as Abbotswood at Irving Park, which is located on an adjacent tract to the Elms; and so the net result is that KRC would operate both communities.

As Mr. Taylor explained in his prior communication with Ms. Inman, the acquisition of the Elms by KRC is occurring as part of a corporate restructuring and refinancing of the property there in Greensboro. There is one other aspect of this transaction which also we want to review with the Agency, concerning the underlying ownership of KRC.

As part of the corporate restructuring that Mr. Taylor mentioned to Ms. Inman, the current owners of KRC will transfer their ownership interests in KRC to an affiliated entity called KC Greensboro Expansion, LLC, effectively making KC Greensboro Expansion the owner of KRC. However, this will not impact the licensure of any of the health service facilities involved. KRC will continue as the licensed operator of Abbotswood, and will become the operator of the Elms, as Mr. Taylor has described to Ms. Inman. The corporate restructuring also will have no impact on the offering of services by KRC at either community.

In a number of recent similar situations over the past several months, the CON Section has confirmed that such changes in the underlying ownership of an existing facility are not governed by the Certificate of Need Law:

Alleghany House--Change in indirect ownership interests (March 4, 2019);

Matthews Radiation Oncology Center--Change in corporate structure and membership interests (January 23, 2019); and

Fayetteville Ambulatory Surgery Center change in indirect corporate ownership (January 4, 2019).

Martha J. Frisone
June 10, 2019
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In each of these cases, and in many others since enactment of the Certificate of Need Law, the Agency has confirmed that the Certificate of Need Law does not regulate or govern changes in the underlying ownership of existing health care facilities and organizations. Based on this same principle, the corporate restructuring related to the indirect or underlying ownership interests in KRC likewise should be determined to be a matter that is not governed by the Certificate of Need Law.

As Mr. Taylor noted in his previous communication with Ms. Inman, the transaction is expected to become effective on June 20, 2019 and we request confirmation before that date that the change in the underlying ownership of KRC Greensboro Limited Partnership is not a matter governed by the Certificate of Need Law. Thank you for your attention to this request.

Very truly yours,



William R. Shenton
Partner

WRS/dt

cc: Celia Inman (Via E-Mail)



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

May 28, 2019

Craig Taylor
Craig.Taylor@kiscosl.com

Exempt from Review – Acquisition of Facility

Record #: 2953
Facility Name: The Elms at Abbotswood
Type of Facility: Adult Care Home
FID #: 150329
Acquisition by: KRC Greensboro Limited Partnership
Business #: 2246
County: Guilford

Dear Mr. Taylor:

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 Adult Care Home Licensure 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,

Celia C. Inman
Celia C. Inman
Project Analyst

Martha J. Frisone
Martha J. Frisone
Chief

cc: Construction Section, DHSR
Adult Care Licensure Section, DHSR

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