



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 15, 2020

Francisco T. Morales
fmorales@waldrepllp.com

Exempt from Review – Acquisition of Facility

Record #: 3282
Facility Name: Morganton Long Term Care, Southview Facility
Type of Facility: Adult Care Home
FID #: 956885
Acquisition by: Morganton Propco II, LLC
Business #: 3217
County: Burke

Dear Mr. Morales:

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 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,

[Handwritten signature of Ena Lightbourne]

Ena Lightbourne
Project Analyst

[Handwritten signature of Martha J. Frisone]

Martha J. Frisone
Chief

cc: 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



101 S. Stratford Road  
Suite 210  
Winston-Salem, NC 27104

Telephone: (336) 717-1440  
Fax: (336) 717-1340  
www.WaldrepLLP.com

Francisco T. Morales  
Direct Dial: 336-717-1289  
E-mail: FMorales@WaldrepLLP.com

May 28, 2020

Martha Frisone, Chief  
Healthcare Planning and Certificate of Need Section  
Division of Health Service Regulation  
North Carolina Department of Health and Human Services  
2704 Mail Service Center  
Raleigh, NC 27699-2704



Re: **Exemption from Review / Non-Withdrawal of Certificate of Need**  
Change of Ownership for *Morganton Long Term Care, Southview Facility*  
151 Southview St., Morganton, Burke County, North Carolina 28655  
License No. HAL-012-007 (the "Facility")

Dear Ms. Frisone:

I am writing on behalf of my clients Morganton Propco II, LLC, a North Carolina limited liability company ("New Owner") and Morganton Opco II, LLC, a North Carolina limited liability company ("New Operator"). New Owner and New Operator have entered into an asset purchase agreement to buy the Facility real estate and its operations from the Facility's current owner and operator, Morganton Long Term Care, Inc., a North Carolina Corporation ("Current Owner").

Because the Facility was developed prior to the enactment of N.C. Session Law 1997-443, the Facility has not been issued a Certificate of Need ("CON") by the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Healthcare Planning and Certificate of Need Section (the "Agency"), though the Facility is subject to North Carolina CON law. Stated differently, the Facility's ACH beds were "grandfathered in" at the time ACHs became subject to the CON law. The Facility is listed in the "Inventory of Adult Care Home Beds" in the 2020 State Medical Facilities Plan as having 64 adult care home beds.

As part of the proposed transaction, the owner and operator of the Facility will change. Please refer to the attached Exhibit A showing the current and proposed new ownership structure. Other than the changes reflected in Exhibit A, New Owner and New Operator plan to rename the Facility *The Gardens of Morganton*. The proposed transaction is scheduled to close on or before July 1, 2020.

The parties believe it is in the best interests of the community for the transaction to take place. New Owner and New Operator propose to engage Affinity Living Group, LLC (the "Manager") to manage the day-to-day operations of the Facility. The Manager is an experienced manager of adult care homes in North Carolina and will operate the Facility in accordance with the provisions of N.C. Gen. Stat. § 131D *et seq.* and 10A NCAC 13F *et seq.*



Under North Carolina law, a CON is required only prior to offering or developing a “new institutional health service.” “New institutional health service” includes a variety of services and activities, including a capital expenditure exceeding \$2 million. N.C. Gen. Stat. § 131E-176(16)(b).

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 of an existing health service facility, “including equipment owned by the health service facility at the time of acquisition.” N.C. Gen. Stat. § 131E-184(a)(8).

The proposed transaction involves the acquisition of an existing adult care home, which falls within the purview of the statutory definition of “health service facility.” After acquisition, the New Operator will operate the Facility as an adult care home. Furthermore, the New Owner’s acquisition 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(14)(o) and (16)(f1). Likewise, the acquisition does not include the offering of any *per se* reviewable services. N.C. Gen. Stat. § 131E-176(16)(f). Thus, given that the transaction involves only the acquisition of an existing health services facility, it is exempt from CON review.

Based on the foregoing, and in accordance with the provisions of N.C. Gen. Stat. § 131E-184(a)(8) and N.C. Gen. Stat. § 131E-189(c), please allow this letter to serve as prior written notice to the Agency of the intent by New Owner to acquire the Facility from Current Owner as outlined herein, and a formal request that the Agency conclude that the proposed transaction is exempt from CON review and that the Facility’s CON will not be withdrawn as a result of the proposed transaction.

Should you need additional information in order to make a decision on this matter, please do not hesitate to contact me directly.

Sincerely,

WALDREP LLP

Francisco T. Morales  
Partner

*Counsel for Morganton Propco II, LLC  
& Morganton Opco II, LLC*

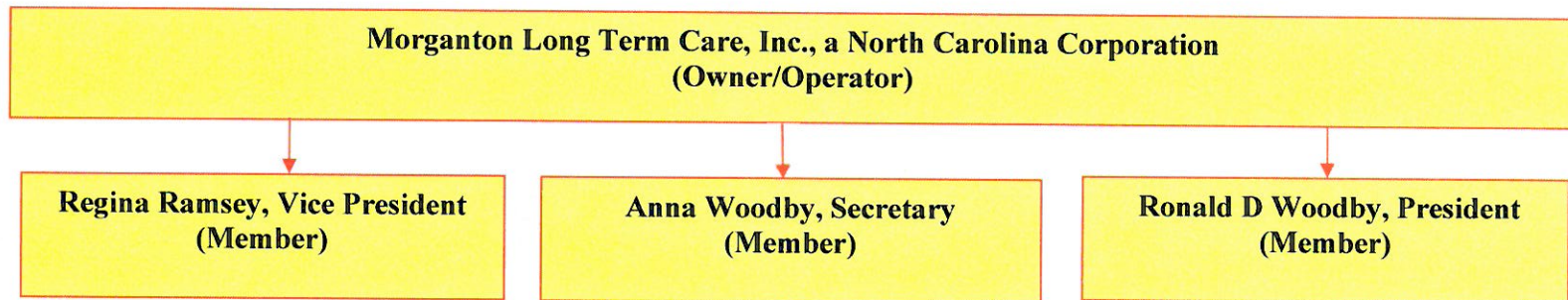
Exhibit A:  
Proposed Changes in Ownership Structure





**EXHIBIT A**

***Morganton Long Term Care, Southview Facility***  
**Current Corporate Structure**





### *The Gardens of Morganton* Proposed New Corporate Structure

