



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

October 12, 2021

Kenneth Lee Burgess
kburgess@bakerdonelson.com

Exempt from Review – Acquisition of Facility

Record #: 3694
Date of Request: October 4, 2021
Facility Name: Caswell County Home Health Agency
Type of Facility: Home Care
FID #: 923688
Acquisition by: HealthView Capital Partners, LLC
Business #: 3398
County: Caswell

Dear Mr. Burgess:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) determined that the project described above is exempt from certificate of need (CON) review in accordance with G.S. 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 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 G.S. 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.”

If the business listed above does acquire the facility, you should contact the Agency’s Acute and Home Care Licensure and Certification 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 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 Gregory F. Yakaboski]

Gregory F. Yakaboski
Project Analyst

[Handwritten signature of Micheala Mitchell]

Micheala Mitchell
Chief

cc: 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

KENNETH LEE BURGESS, SHAREHOLDER
Direct Dial: 615.726.5719
Direct Fax:
E-Mail Address: kburgess@bakerdonelson.com

October 1, 2021

Via Email

Micheala Mitchell, Esq., Chief
Lisa Pittman, Assistant Chief
N.C. Department of Health and Human Services
Division of Health Service Regulation
Certificate of Need Section
809 Ruggles Drive
Raleigh, N.C. 27603
micheala.mitchell@dhhs.nc.gov
Lisa.pittman@dhhs.nc.gov

Re: *Notice of Exemption for Acquisition of Existing Home Health Agency*

Dear Micheala and Lisa:

I'm writing on behalf of our client HealthView Capital Partners, LLC ("HealthView") to provide the N.C. Department of Health and Human Services, Division of Health Service Regulation, Certificate of Need Section ("the CON Section" or "the Agency") with prior written notice of HealthView's intent to acquire the existing health service facility known as the Caswell County Home Health Agency, as further described below ("the Project"). We believe that the Project is exempt from further CON Section Review, and does not require that HealthView obtain a CON before proceeding with the Project, pursuant to N.C. Gen. Stat. section 131E-184(a)(8).

Background and Project Description

HealthView will enter into an asset purchase agreement with the County of Caswell ("Caswell County") pursuant to which HealthView will acquire the assets of the Caswell County Home Health Agency. The transaction is scheduled to close on or about October 30, 2021

Applicable Legal Authorities

The CON Law includes a specific exemption for health-related expenditures where the purpose of the expenditure is “to acquire an existing health service facility, including any equipment owned by the health service facility at the time of the acquisition.” N.C. Gen. Stat. section 131E-184(a)(8). Home health agency offices are included in the definition of “health service facilities” at N.C. Gen. Stat. section 131E-176(9b)). As such, the acquisition of an existing home health agency does not require a CON and is not subject to further CON Section review where the Agency receives advance written notice of the acquisition. N.C. Gen. Stat. section 131E-184(a)(8).

Because HealthView is acquiring an existing home health agency, and thus an “existing health service facility,” the acquisition of the Caswell County home health agency is exempt from further CON Section review and HealthView is not required to obtain a CON to proceed with the Project. HealthView will coordinate with the DHSR Acute and Home Care Licensure Section to complete the required change of ownership licensure application.

Conclusion

For the reasons stated herein, the Project qualifies under the exemption from CON Section review set forth at N.C. Gen. Stat. section 131E-184(a)(8). Please allow this letter to serve as the advance written notice required by N.C. Gen. Stat. section 131E-184(a)(8). We would appreciate the CON Section acknowledging at its earliest convenience that the Project, as described herein, is not subject to CON Section review and that HealthView may proceed with the Project without first obtaining a CON.

Please let me know if you have questions or need additional information regarding this notice.

Very truly yours,

/s/ Kenneth Lee Burgess

Kenneth Lee Burgess, Shareholder

From: [Hunt, Tiffany C](#)
To: [Waller, Martha K](#)
Subject: FW: [External] Ken Burgess sent you "4813-8170-6749 v.1 4838-0096-7677 v.1 CON Exemption Notice"
Date: Monday, October 4, 2021 2:37:07 PM
Attachments: [4813-8170-6749 v.1 4838-0096-7677 v.1 CON Exemption Notice.docx](#)

When you get a chance can you walk me through what to do with this letter? Not quite sure on exemption notices? I've looked at the instructions but still not very clear.

Tiffany Hunt

Administrative Specialist I

[Division of Health Service Regulation](#), Healthcare Planning and CON Section
[NC Department of Health and Human Services](#)

Help protect your family and neighbors from COVID-19.

[Know the 3 Ws. Wear. Wait. Wash.](#)

#StayStrongNC and get the latest at nc.gov/covid19.

Office: 919-855-3872

Tiffany.C.Hunt@dhhs.nc.gov

809 Ruggles Drive, Edgerton Building

2704 Mail Service Center

Raleigh, NC 27699-2704

[Twitter](#) | [Facebook](#) | [YouTube](#) | [LinkedIn](#)

Email correspondence to and from this address is subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized State official. Unauthorized disclosure of juvenile, health, legally privileged, or otherwise confidential information, including confidential information relating to an ongoing State procurement effort, is prohibited by law. If you have received this email in error, please notify the sender immediately and delete all records of this email.

From: Mitchell, Micheala L <Micheala.Mitchell@dhhs.nc.gov>
Sent: Monday, October 4, 2021 2:23 PM
To: Hunt, Tiffany C <Tiffany.C.Hunt@dhhs.nc.gov>
Subject: FW: [External] Ken Burgess sent you "4813-8170-6749 v.1 4838-0096-7677 v.1 CON Exemption Notice"

I think this goes to you, Tiffany. Let me know if I got it wrong.

Thank you.

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
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).

Twitter | Facebook | Instagram | YouTube | LinkedIn

Email correspondence to and from this address is subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized State official. Unauthorized disclosure of juvenile, health, legally privileged, or otherwise confidential information, including confidential information relating to an ongoing State procurement effort is prohibited by law. If you have received this e-mail in error, please notify the sender immediately and delete all records of this email.

From: Burgess, Ken <kburgess@bakerdonelson.com>
Sent: Monday, October 4, 2021 2:13 PM
To: Mitchell, Micheala L <Micheala.Mitchell@dhhs.nc.gov>; Pittman, Lisa <lisa.pittman@dhhs.nc.gov>
Cc: Erin Roberts <erin@robertslawnc.com>; Stauffer, Iain <istauffer@bakerdonelson.com>
Subject: [External] Ken Burgess sent you "4813-8170-6749 v.1 4838-0096-7677 v.1 CON Exemption Notice"

CAUTION: External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to [Report Spam](#).

Micheala and Lisa, Happy Monday. Attached please find a Notice of Exemption I'm filing on behalf of our client, HealthView Capital Partners, LLC, in connection with HealthView's planned acquisition of the existing health service facility Caswell County home health agency. I have copied the County's counsel on this email as well. Please let us know if you need additional information or have questions regarding this Exemption Notice. Thank you, Ken Burgess

NOTICE: This electronic mail transmission with any attachments may constitute an attorney-client communication, protected health information (PHI) or other confidential information that is in fact confidential, legally protected from disclosure and/or protected by the attorney-client privilege. If you are the intended recipient, please maintain confidentiality and be aware that forwarding this e-mail to others may result in a waiver of these protections and privileges and regardless electronic communications may be at times illegally accessed and viewed. If you are not the intended recipient, this e-mail is not intended for transmission to you, nor to be read, reviewed, used, distributed or even received by you or any other unauthorized persons. If you have received this electronic mail transmission in error, please double delete it from your system immediately without copying, reading or disseminating it, and notify the sender by reply e-mail, so that our address record can be corrected. Thank you very much.