



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

January 19, 2024

Anthony Del Rio

[Anthony.delrio@kirkland.com](mailto:Anthony.delrio@kirkland.com)

**No Review**

**Record #:** 4357  
**Date of Request:** January 11, 2024  
**Business Name:** North Carolina Radiation Therapy Management Services, LLC  
**Business #:** 2124  
**Project Description:** Change in indirect ownership structure with no change in direct ownership of the LINACs  
**County:** Multi-County

Dear Mr. Del Rio:

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,

Gregory F. Yakaboski  
Project Analyst

Micheala Mitchell  
Chief

cc: Radiation Protection 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

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# KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

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## VIA EMAIL ONLY

### *Expedited Review Requested*

January 10, 2024

Michaela Mitchell, Chief  
Greg Yakaboski, Project Analyst  
Healthcare Planning and Certificate of Need Section  
N.C. Department of Health and Human Services  
Division of Health Service Regulation  
2704 Mail Service Center Raleigh, NC 27699-2704  
micheala.mitchell@dhhs.nc.gov  
cc: greg.yakaboski@dhhs.nc.gov

RE: Request for Certificate of Need No Review (or Exemption) Determination / Notice of Transfer of Indirect Ownership Interest

Dear Ms. Mitchell:

We represent GenesisCare Pty Ltd and its various subsidiaries, including North Carolina Radiation Therapy Management Services, LLC (“NCRT”), and on NCRT’s behalf, we are writing to provide notice of an upcoming change of control of the indirect equityholders of NCRT, several entities above NCRT. We are requesting the Healthcare Planning and Certificate of Need Section (the “CON Section”) confirm this transaction is not subject to review pursuant to N.C. Gen. Stat. § 131E-176(16), or in the alternative, is exempt from review pursuant to N.C. Gen. Stat. § 131E-184(a)(8).

As you may be aware, on June 1, 2023, GenesisCare Pty Ltd and certain affiliates (collectively “GenesisCare”) filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 1532 (the “Bankruptcy Code”), in the United States Bankruptcy Court for the Southern District of Texas (Case no. 23-90614) (the “Bankruptcy Case”).<sup>1</sup> As a part of this bankruptcy, certain creditors who currently hold debt in GenesisCare, including Oaktree Capital Management LP, Oaktree Capital Management (UK) LLP and Oaktree Capital Management (Europe) LLP; Bain Capital Credit LP; Avenue Capital Group LLC; Canyon Capital Advisors LLC; and Challenger Limited or their affiliates (the “New Owners”), will acquire an equity interest at or above the great-grandparent level (Genesis Care USA Holdings, Inc.) (the “Restructuring”). See Exhibit A for an illustrative diagram of the Restructuring. The

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<sup>1</sup> More information about the Bankruptcy Case can be found here: <https://restructuring.ra.kroll.com/GenesisCare/Home-Index>.

January 10, 2024

Restructuring, which remains subject to Bankruptcy Case proceedings, is expected to occur **on or about January 31, 2024.**

The Restructuring will result in the New Owners becoming the **indirect** owners of NCRT, which would encompass all of NCRT's equipment including linear accelerators (the "LINACs") at the following locations:

- a. North Carolina Radiation Therapy Management Services - Brevard
- b. North Carolina Radiation Therapy Management Services - Clinton
- c. North Carolina Radiation Therapy Management Services - Clyde
- d. North Carolina Radiation Therapy Management Services - Forest City
- e. North Carolina Radiation Therapy Management Services - Franklin
- f. North Carolina Radiation Therapy Management Services - Goldsboro
- g. North Carolina Radiation Therapy Management Services - Hendersonville
- h. North Carolina Radiation Therapy Management Services - Marion
- i. North Carolina Radiation Therapy Management Services - Asheville
- j. North Carolina Radiation Therapy Management Services – Weaverville

NCRT will continue to own and operate LINACs in substantially the same manner and in the locations as they exist today. The Restructuring is not expected to result in any change to NCRT's direct owner, federal tax ID number, facilities, management, or operations.

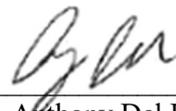
We believe that the above-mentioned Restructuring is not a "new institutional health service" within the meaning of N.C. Gen. Stat. § 131E-176(16) which would require CON Section review and approval, because the direct owner of NCRT will not change. Based on that statutory definition and multiple previous CON Section determinations, a change in ownership or control of an indirect owner of a health service facility is a not new institutional health service which requires a CON.

However, even if the CON Section were to conclude that the Restructuring is a reviewable acquisition of an existing health service facility, then please accept this letter as a notice of exemption pursuant to N.C. Gen. Stat. § 131E-184(a)(8).

N.C. Gen. Stat. § 131E-184(a)(8) provides that the acquisition of a health service facility, along with equipment owned by the health service facility at the time of acquisition, are exempted from Certificate of Need review. The Restructuring will result in the New Owners' acquisition of the indirect interest health service facility, along with its equipment. The LINACs are expected to remain in their current locations following the transaction closing.

We request that the CON Section confirm that the proposed transaction is exempt from CON review pursuant to N.C. Gen. Stat. § 131E-184(a)(8). The parties anticipate the Restructuring will occur no sooner than January 31, 2024, subject to requisite regulatory approvals. We thank you in advance for your consideration and assistance in this process. If you have any questions or concerns, please contact me at 312-862-4210 or via email [anthony.delrio@kirkland.com](mailto:anthony.delrio@kirkland.com).

Best,



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Name: Anthony Del Rio  
Title: Partner

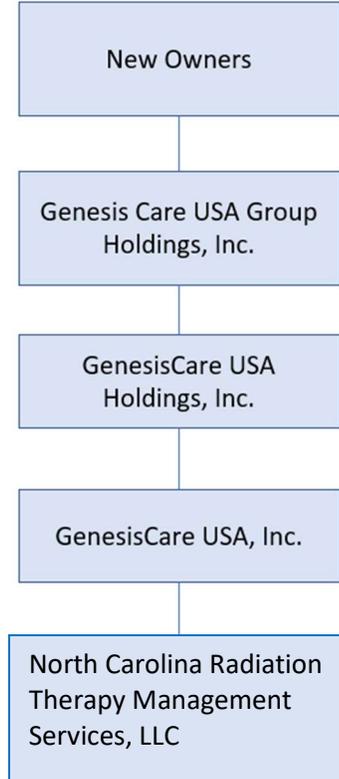
January 10, 2024

**Exhibit A – Illustrative Example of Restructuring**

**Current Ownership  
Structure (Simplified)**



**Post-Restructuring Ownership (Simplified)**



**From:** [Mitchell, Micheala L](#)  
**To:** [Stancil, Tiffany C](#)  
**Subject:** FW: [External] Expedited Review Requested - No Review/Exemption Request for North Carolina Radiation Therapy Management Services, LLC  
**Date:** Thursday, January 11, 2024 12:27:04 PM  
**Attachments:** [No Review or Exemption Request - North Carolina Radiation Therapy Management Services LLC \(1.10.2024, 103471572.3\).pdf](#)

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Tiffany, would you mind logging this as an exemption request and assigning to Greg?

Thanks,

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](mailto: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).  
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**From:** Kierum, Caitlin A. <caitlin.kierum@kirkland.com>  
**Sent:** Thursday, January 11, 2024 12:23 PM  
**To:** Mitchell, Micheala L <Micheala.Mitchell@dhhs.nc.gov>  
**Cc:** Del Rio, Anthony M. <anthony.delrio@kirkland.com>; Yakaboski, Greg <greg.yakaboski@dhhs.nc.gov>  
**Subject:** [External] Expedited Review Requested - No Review/Exemption Request for North Carolina Radiation Therapy Management Services, LLC

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Micheala,

We spoke a few weeks ago regarding the expected upcoming indirect ownership change for North Carolina Radiation Therapy Management Services, LLC, which owns and operates various LINACs in North Carolina. Please see attached for our request for either No Review or Exemption from the CON Section, regarding an indirect ownership change that is expected to occur **on or about January 31, 2024** (subject to GenesisCare's emergence from bankruptcy).

Please let me or Anthony (cc'd) know if there is any additional information the CON Section requires and thanks in advance for your consideration.

Best,  
Caitlin

**Caitlin Kierum**

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[caitlin.kierum@kirkland.com](mailto:caitlin.kierum@kirkland.com)

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