



NC DEPARTMENT OF  
**HEALTH AND  
HUMAN SERVICES**

JOSH STEIN • Governor

DEVPUTTA SANGVAI • Secretary

MARK PAYNE • Director, Division of Health Service Regulation

VIA EMAIL ONLY

July 1, 2025

Gary S. Qualls

[Gary.qualls@klgates.com](mailto:Gary.qualls@klgates.com)

**No Review**

**Record #:** See Attachment A

**Date of Request:** June 25, 2025

**Facility Name:** See Attachment A

**FID:** See Attachment A

**Business Name:** The Charlotte Mecklenburg Hospital Authority

**Business #:** 1770

**Project Description:** Assumption of direct ownership of diagnostic centers through removal of intervening subsidiaries

**County:** Mecklenburg

Dear Gary S. Qualls:

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 representation in your request and 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. **As a reminder, it is unlawful to offer or develop a new institutional health service without first obtaining a certificate of need. The Department reserves the right to impose sanctions, including civil penalties and the revocation of a license, upon any entity that offers or develops a new institutional health service without first obtaining a certificate of need.**

Please do not hesitate to contact this office if you have any questions.

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

AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER

Sincerely,

*Chalice L. Moore*

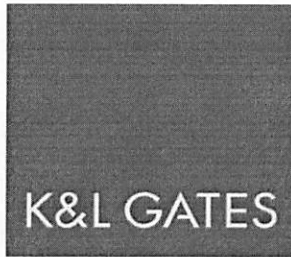
Chalice L. Moore  
Project Analyst

*Micheala Mitchell*

Micheala Mitchell  
Chief

### Attachment A

Record #	Diagnostic Center	FID	County
4828	Sanger Heart and Vascular Institute Concord	060080	Cabarrus
4818	Atrium Health Ballantyne MOB Diagnostic Center	200461	Mecklenburg
4819	Atrium Health Imaging-Kenilworth Diagnostic Center	200471	Mecklenburg
4820	Atrium Health Kenilworth Diagnostic Center #1	190165	Mecklenburg
4821	Atrium Health Kenilworth Diagnostic Center #2	190278	Mecklenburg
4822	Atrium Health Providence Medical Office Building Diagnostic Center	200290	Mecklenburg
4823	Atrium Health Pineville Medical Plaza I Diagnostic Center	200141	Mecklenburg
4824	Atrium Health Women's Care-Maternal Fetal Medicine Diagnostic Center	220470	Mecklenburg
4825	Atrium Health Pineville Medical Plaza II Diagnostic Center	200294	Mecklenburg
NA	Sanger Heart and Vascular Institute	NA	Mecklenburg
4826	Atrium Health Union West MOB Diagnostic Center	200460	Union



June 25, 2025

Gary S. Qualls  
D 919.466.1182  
F 919.516.2072  
gary.qualls@klgates.com

**VIA E-MAIL**

Micheala Mitchell  
Chief, Certificate of Need  
NCDHHS, Division of Health Service Regulation  
Healthcare Planning and Certificate of Need Section  
809 Ruggles Drive  
Raleigh, North Carolina 27603

Re: No Review / Exemption Notice for CMHA to Assume Direct Ownership of CPN's Diagnostic Centers

Dear Ms. Mitchell:

This letter is to inform you of a proposed transaction (the "Transaction") where The Charlotte-Mecklenburg Hospital Authority ("CMHA") will become the direct owner of diagnostic centers that it already owns through indirect ownership. The Transaction, proposed to be effective July 1, 2025, will simply remove the intervening related CMHA subsidiaries.

Carolinas Physicians Network, Inc. ("CPN") owns numerous diagnostic centers, which are listed and described below (the "Diagnostic Centers"). In turn, CMHA is CPN's parent entity through an intermediary, wholly owned entity, Carolinas Health Network, Inc. (CHN). To be precise:

- CMHA is the sole member of CHN.
- CHN is the sole member of CPN.
- Thus, CMHA is CPN's wholly owned parent.

In the Transaction, all of the Diagnostic Centers will be transferred from CPN to its ultimate, wholly owned parent, CMHA. Thus, after the Transaction, CMHA will directly own the Diagnostic Centers, without an intermediary subsidiary. The Transaction will increase organizational efficiencies.

**I. Description of the Diagnostic Centers.**

CMHA will assume direct ownership of the following Diagnostic Centers from CPN:

- Sanger Heart and Vascular Institute Concord located at 100 Medical Park Drive, Suite 210, Concord, 28025, Cabarrus County (CON Project I.D. No. F-7466-05)
- Atrium Health Ballantyne MOB Diagnostic Center, located at 15110 John J. Delaney Drive, Charlotte, 28277 (CON Project I.D. No. F-11905-20)
- Atrium Health Imaging-Kenilworth Diagnostic Center, located at 1237 Harding Place, Charlotte, 28204 (CON Project I.D. Nos. F-12226-22 and F-12506-24) (CMHA already co-CON holder with CPN on the first CON). The CON for Project ID #F-12506-24 to acquire/develop a photon-counting CT scanner was effective July 26, 2024. This project is functionally complete and currently operational. It is technically still “under development” because the final progress report has not been filed.
- Atrium Health Kenilworth Diagnostic Center #1, also located at 1237 Harding Place, Charlotte, 28204 (CON Project I.D. No. F-11700-19)
- Atrium Health Kenilworth Diagnostic Center #2, located at 1225 Harding Place, Charlotte, 28204 (CON Project I.D. No. F-11722-19)
- Atrium Health Providence Medical Office Building Diagnostic Center, located at 11530 Providence Road, Charlotte, 28277 (CON Project I.D. No. F-11896-20)
- Atrium Health Women’s Care – Maternal Fetal Medicine Diagnostic Center, located at 905 Kenilworth Avenue, Charlotte, 28204 (CON Project I.D. No. F-12225-22)
- Atrium Health Pineville Medical Plaza I Diagnostic Center, located at 10650 Park Road, Charlotte, 28210 (CON Project I.D. No. F-11863-20)
- Atrium Health Pineville Medical Plaza II Diagnostic Center, located at 10660 Park Road, Charlotte, 28210 (CON Project I.D. No. F-11901-20)
- Sanger Heart and Vascular Institute located at 1001 Blythe Boulevard, Charlotte, 28203 (Grandfathered under CON Law)
- Atrium Health Union West MOB Diagnostic Center, located at 1100 Healing Way, Matthews, 28104, Union County (CON Project I.D. No. F-11903-20)

We request that the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Healthcare Planning and Certificate of Need Section (the “Agency”) confirm that the Transaction is either:

1. not reviewable under the North Carolina Certificate of Need (“CON”) law because the Transaction is simply an intra-corporate reorganization where ultimate ownership of the Diagnostic Centers will not change, or (in the alternative);
2. exempt from review under the CON law’s exemption provisions in N.C. Gen. Stat. § 131E-184(a)(8).

## **II. No Review Request**

The Transaction is not a CON reviewable event because such an event is not expressly addressed in any of the new institutional health service “CON triggers” in N.C. Gen. Stat. § 131E-176(16). The conversion of ultimate indirect ownership into direct ownership of existing health service facilities is not included in the list of activities that constitute the development of a new institutional health service, requiring a CON. Because CMHA is already the ultimate owner of the Diagnostic Centers (as the organizational parent), the Transaction is entirely intra-organizational in any event. Moreover, with respect to the Atrium Health Imaging-Kenilworth Diagnostic Center, CMHA is already a co-CON holder. The Diagnostic Centers will all continue to be operated in the same manner as they are currently operated, and under the same ultimate ownership, control, and management.

Pursuant to the maxim of statutory construction *expressio unius est exclusio alterius*, those transactions not included in N.C. Gen. Stat. § 131E-176(16) – such as this Transaction – do not require a CON. See e.g., In re Miller, 357 N.C. 316, 325, 584 S.E.2d 772, 780 (2003) (stating that “[u]nder the doctrine of *expressio unius est exclusio alterius*, when a statute lists the situation to which it applies, it implies the exclusion of situations not contained in the list”); see also Jackson v. A Woman’s Choice, Inc., 130 N.C. App. 590, 594, 503 S.E.2d 422, 425 (1998) (internal citations omitted) (“[W]here a statute is explicit on its face, the courts have no authority to impose restrictions that the statute does not expressly contain.”).

Therefore, we request your confirmation that the Transaction is not subject to CON review.

## **III. Exemption Notice (If Transaction Deemed CON Reviewable)**

However, if the Agency treats the Transaction as the acquisition of the Diagnostic Centers (as health service facilities), and thus CON reviewable, this letter serves as an exemption notice of CMHA’s acquisition of the Diagnostic Centers, pursuant to N.C. Gen. Stat. § 131E-184(a)(8). The General Assembly has chosen to exempt certain, otherwise reviewable, events from CON review, including the acquisition of an existing health service facility, including the equipment owned by the health service facility at the time of the acquisition. See N.C. Gen. Stat. § 184(a)(8). Under N.C. Gen. Stat. § 131E-176(9b), each of the Diagnostic Centers constitutes a “health service facility.”

Accordingly, given that the Transaction involves only the Diagnostic Centers, which are existing health service facilities, even if the Agency deems the Transaction to trigger a new institutional health service definition, the Transaction is nevertheless exempt from CON review.

#### **IV. Good Cause Transfer Request**

To the extent that the Transaction is considered to be a transfer of the Atrium Health Imaging-Kenilworth Diagnostic Center CON for Project ID #F-12506-24 to acquire/develop a photon-counting CT scanner (even though the project is functionally complete and currently operational), we request approval for a “good cause” transfer of this CON under N.C. Gen. Stat. § 131E-189. We believe that good cause exists for such a transfer.

As discussed above, nothing about the Transaction will affect that Diagnostic Center’s ability to materially comply with any CON Application material representations or CON conditions. In all material respects, the operations and development of that Diagnostic Center – as with all of the Diagnostic Centers – will continue to be the same.

#### **CONCLUSION**

Based upon the foregoing information, we hereby request the Agency’s confirmation that the Transaction:

1. is not CON reviewable because it does not trigger any of the new institutional health service definitions, or (alternatively);
2. is exempt from CON review under N.C. Gen. Stat § 131E-184(a)(8).

The effective Transaction date is currently anticipated to be July 1, 2025. Thank you for your assistance with respect to this matter. Please feel free to contact me at the number above if you have any questions or need further information.

Sincerely,



Gary S. Qualls

**From:** [Mitchell, Micheala L](#)  
**To:** [Stancil, Tiffany C](#)  
**Cc:** [Moore, Chalice L](#); [Mckillip, Mike](#)  
**Subject:** FW: [External] No Review / Exemption Notice for CMHA to Assume Direct Ownership of CPN's Diagnostic Centers  
**Date:** Wednesday, June 25, 2025 1:12:14 PM  
**Attachments:** [06252025\\_K&L\\_GATES.pdf](#)

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Tiffany- would you mind logging this and assigning to Chalice.

Chalice/Mike- Apologies; It's very time sensitive.

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)

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**From:** Qualls, Gary <Gary.Qualls@klgates.com>  
**Sent:** Wednesday, June 25, 2025 1:06 PM  
**To:** Mitchell, Micheala L <Micheala.Mitchell@dhhs.nc.gov>  
**Subject:** [External] No Review / Exemption Notice for CMHA to Assume Direct Ownership of CPN's Diagnostic Centers

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Micheala:

Attached for filing is a No Review / Exemption Notice for CMHA to Assume Direct Ownership of CPN's Diagnostic Centers. I apologize in advance for the short notice, but this transaction is scheduled to occur on July 1, 2025. Therefore, we would appreciate any efforts your Agency can make to provide a response by then.

Please confirm receipt for my records.

Thanks

Gary





**Gary S. Qualls**

Partner

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