



NC DEPARTMENT OF  
**HEALTH AND  
HUMAN SERVICES**

**JOSH STEIN** • Governor

**DEVPUTTA SANGVAI** • Secretary

**MARK PAYNE** • Director, Division of Health Service Regulation

**VIA EMAIL ONLY**

June 4, 2025

Mr. Gary S. Qualls

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

**No Review**

**Record #:** 4794

Date of Request: May 27, 2025

Facility Name: Atrium Health Anson

FID #: 120335

Business Name: The Charlotte-Mecklenburg Hospital Authority

Business #: 1770

Project Description: Transfer of operations and sale and leaseback of medical equipment

County: Anson

Dear Mr. 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.

Sincerely,

Tanya M. Saporito, Project Analyst

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

AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER

May 27, 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 Atrium Health Anson

Dear Ms. Mitchell:

This letter is to inform you of a proposed transaction (the “Transaction”) where The Charlotte-Mecklenburg Hospital Authority (“CMHA”) plans to transfer certain interests in Atrium Health Anson (the “Hospital”) to Atrium Health Hospitals, Inc. (“AHH”), a CMHA subsidiary. Effective July 1, 2025, the Transaction entails the following proposed changes at Atrium Health Anson:

1. CMHA will transfer operations of the Hospital to AHH.
2. CMHA will transfer ownership of certain Hospital non-CON-regulated medical equipment and other assets to AHH.
3. However, CMHA will retain ownership of:
  - a. the real estate on which the Hospital is situated and the buildings housing the Hospital, and CMHA will lease the hospital space to AHH;
  - b. the CON rights to own and operate the Hospital and ownership of the equipment identified below that is CON-regulated or potentially CON-regulated.<sup>1</sup>

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<sup>1</sup> Some equipment may not have been CON regulated on its own. However, such equipment (or its predecessor equipment) might have been acquired years ago and might have been part of a larger project. We are conservatively assuming that certain equipment might have been regulated at some point in the past, and CMHA is thus retaining ownership of such equipment to streamline this process and to avoid any doubt. This equipment demarcation is not a representation that any of the named equipment is currently CON regulated.

CMHA will retain ownership of, and lease to AHH, the following Hospital equipment items:

- One (1) CT Scanner;
- One (1) Ultrasound Unit;
- One (1) Mammography Unit;
- Two (2) Fixed X-Ray Units; and
- One (1) C-Arm Unit.

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 the Hospital and CON ownership 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).

**I. No Review Request**

CMHA’s Transaction with AHH 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). Transferring the day-to-day operations of an existing health service facility is not included in the list of activities that constitute the development of a new institutional health service, requiring a CON. Nor does the transfer of non-CON regulated equipment to AHH trigger any new institutional health service definitions in the CON statute. Moreover, AHH is a subsidiary of CMHA, and thus the Transaction is entirely intra-organizational in any event.

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.

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

However, if the Agency treats the Transaction as the acquisition of the Hospital (as a health service facility), and thus CON reviewable, this letter serves as an exemption notice of AHH's acquisition of the Hospital, 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), the Hospital constitutes a "health service facility."

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

### **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 in regard 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](#)  
**Subject:** FW: [External] No Review / Exemption Requests for: (1) Atrium Health Anson; and (2) Atrium Health Stanly  
**Date:** Tuesday, May 27, 2025 11:47:25 AM  
**Attachments:** [05272025 K&L GATES.pdf](#)  
[05272025 K&L GATES\\_001.pdf](#)

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Tiffany would you mind logging and assigning the Anson exemption to Tanya and the Stanly exemption to Greg?

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:** Tuesday, May 27, 2025 11:39 AM  
**To:** Mitchell, Micheala L <Micheala.Mitchell@dhhs.nc.gov>  
**Subject:** [External] No Review / Exemption Requests for: (1) Atrium Health Anson; and (2) Atrium Health Stanly

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Micheala:

I have attached for filing two separate No Review / Exemption Requests as follows:

1. The Atrium Health **Anson** No Review / Exemption Request; and
2. The Atrium Health **Stanly** No Review / Exemption Request.

The requests are quite similar, so I wanted to highlight that they are two separate requests for two separate hospitals in order to avoid any confusion.

Please confirm your receipt for my records. As always, do not hesitate to let me know if you have any questions.

Thanks

Gary



**Gary S. Qualls**

Partner

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