



North Carolina Department of Health and Human Services  
Division of Health Service Regulation

Pat McCrory  
Governor

Aldona Z. Wos, M.D.  
Ambassador (Ret.)  
Secretary DHHS

Drexdal Pratt  
Division Director

April 3, 2014

Kenneth L. Burgess, Partner  
Poyner & Spruill, LLP  
Post Office Box 1801  
Raleigh, NC 27602

**No Review**

Facility: Asbury Care Center  
Project Description: Apply for Medicare certification for 55 nursing facility beds in a 100 bed nursing facility which is part of a continuing care retirement community (CCRC)  
County: Mecklenburg  
FID#: 960237

Dear Mr. Burgess:

The Certificate of Need Section (CON Section) received your letter(s) of March 31, 2014 regarding the above referenced proposal. Based on the CON law **in effect on the date of this response to your request**, the proposal described in your correspondence is not governed by, and therefore, does not currently require a certificate of need. However, please note that 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.

Moreover, you need to contact the Nursing Home Licensure and Certification Section of the Division of Health Service Regulation to determine if they have any requirements for development of the proposed project.

It should be noted that this determination is binding only for the facts represented by you. Consequently, if changes are made in the project or in the facts provided in your correspondence referenced above, a new determination as to whether a certificate of need is required would need to be made by the Certificate of Need Section. Changes in a project include, but are not limited to: (1) increases in the capital cost; (2) acquisition of medical equipment not included in the original cost estimate; (3) modifications in the design of the project; (4) change in location; and (5) any increase in the number of square feet to be constructed.



**Certificate of Need Section**

[www.ncdhhs.gov](http://www.ncdhhs.gov)

Telephone: 919-855-3873 • Fax: 919-733-8139

Location: Edgerton Building • 809 Ruggles Drive • Raleigh, NC 27603

Mailing Address: 2704 Mail Service Center • Raleigh, NC 27699-2704

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Kenneth Burgess  
April 3, 2014  
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Please contact the CON Section if you have any questions. Also, in all future correspondence you should reference the Facility I.D. # (FID) if the facility is licensed.

Sincerely,

  
Fatimah Wilson, Project Analyst

  
Martha J. Frisone, Interim Chief  
Certificate of Need Section

cc: Medical Facilities Planning Branch, DHSR  
Nursing Home Licensure and Certification Section, DHSR

*Kalwah*

Received by  
the CON Section  
MAR 28 2014

Poyner Spruill<sup>LLP</sup>

March 31, 2014

Kenneth L. Burgess  
Partner  
D: 919-783-2917  
F: 919-783-1075  
kburgess@poynerspruill.com

VIA HAND-DELIVERY

Martha Frisone, Chief  
Certificate of Need Section  
N.C. Department of Health and Human Services  
Division of Health Service Regulation  
809 Ruggles Drive  
Raleigh, North Carolina 27603

**RE: *Asbury Care Center: Request for "No Review" Determination***

Dear Martha:

I am writing on behalf of our client, Asbury Care Center, a skilled nursing facility located at 3800 Shamrock Drive, Charlotte, North Carolina 28215 ("Asbury" or "the Facility"), (License number NH0573). Asbury is licensed for one hundred (100) nursing facility beds and five (5) adult care home beds. Although Asbury is part of a continuing care retirement community, Asbury's nursing facility beds were not developed under the CCRC exemption set forth in the State Medical Facilities Plan. As such, none of Asbury's nursing facility beds are "closed" beds and all are available to the general public.

Currently, only forty-five (45) of Asbury's beds are certified for participation in the Medicare program. Asbury now intends to apply for Medicare certification for the remaining fifty-five (55) beds. None of Asbury's beds are currently certified for participation in the North Carolina Medicaid Program and none of the additional fifty-five beds Asbury will certify for Medicare participation will be certified for Medicaid participation. As such, Asbury will not be applying to certify any "closed" beds for participation in the North Carolina Medicaid Program.

I am writing to ask that the Agency confirm that no certificate of need is required for Asbury to seek Medicare and Medicaid certification for the fifty-five (55) beds which are currently licensed-only beds. Officials at the Nursing Home Licensure and Certification Section, who will review the facility's application for certification, have advised us that they require such a letter from the Agency to process the certification application.

Please let me know if you need additional information regarding this request. Thank you for your attention to this matter.

Sincerely,

*Kenneth L. Burgess*

**Kenneth L. Burgess**  
Partner

cc: Emily Nunn