



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

September 28, 2021

Anthony Brett
anthony.brett@wbd-us.com

Exempt from Review – Acquisition of Facility

Record #: 3684
Date of Request: September 21, 2021
Facility Name: See Attachment A
Type of Facility: ACH
FID #: See Attachment A
Acquisition by: See Attachment A
Business #: See Attachment A
County: See Attachment A

Dear Mr. Brett:

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 businesses may proceed to acquire the health service facilities 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 Adult Care Licensure 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,

Celia C. Inman
Project Analyst

Micheala Mitchell
Chief

cc: Adult Care Licensure 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

Attachment A

Facility	FID	Address	County	Seller	Buyer	Buyer Bus #
Chatham Ridge Assisted Living	110283	114 Polks Village Lane, Chapel Hill, NC 27516	Chatham	Chatham Ridge Assisted Living, LLC	114 Polks Village Lane LP	3456
Deerfield Ridge Assisted Living	990258	287 Bamboo Road, Boone, NC 28607	Watauga	Deerfield Ridge, LLC	287 Bamboo Road LP	3457
Forest Ridge Assisted Living	020751	151 Village Park Drive, West Jefferson, NC 28694	Ashe	Forest Ridge Assisted Living, LLC	151 Village Park Drive LP	3458
Kerner Ridge Assisted Living	990384	250 Hopkins Road, Kernersville, NC 27284	Forsyth	Kerner Ridge Assisted Living, LLC	250 Hopkins Road LP	3459
Mallard Ridge Assisted Living	980506	9420 North NC Hwy 150, Clemmons, NC 27012	Davidson	Mallard Ridge, LLC	9420 North NC Highway 150 LP	3460
Mebane Ridge Assisted Living	130248	1999 South NC Hwy 119, Mebane, NC 27302	Alamance	Mebane Ridge Assisted Living, LLC	1999 South NC Highway 119 LP	3461
Preston House Memory Care	970707	4910 Harris Woods Blvd, Charlotte, NC 28269	Mecklenburg	Preston House of Charlotte, LLC	4910 Harris Woods Boulevard LP	3462
Priddy Manor Assisted Living	030406	1294 Priddy Road, King, NC 27021	Stokes	Priddy Manor Assisted Living, LLC	1294 Priddy Road LP	3463
Walnut Ridge Assisted Living	970584	411 Windmill Street, Walnut Cove, NC 27052	Stokes	Walnut Ridge Assisted Living, LLC	411 Windmill Street LP	3464



September 21, 2021

Micheala Mitchell, Chief, Certificate of Need
Heathcare Planning and Certificate of Need
Division of Health Service Regulation
North Carolina Department of Health and Human Services
809 Ruggles Drive
Raleigh, NC 27603
micheala.mitchell@dhhs.nc.gov

Womble Bond Dickinson (US) LLP

One West Fourth Street
Winston-Salem, NC 27101

t: 336.721.3600
f: 336.721.3660

Via E-mail Only

Re: Notice of Exempt Acquisition pursuant to N.C.Gen.Stat. §131E-184(a)(8)-Acquisition of Existing Health Service Facilities (Adult Care Homes)

and

Request for Good Cause Transfer pursuant to N.C.Gen.Stat. §131E-189(c) – Adult Care Home Beds

Anthony Brett
Partner
Direct Dial: 336-721-3620
Direct Fax: 336-733-8331
E-mail: Anthony.Brett@wbd-us.com

Dear Ms. Mitchell:

This correspondence is with respect to the matter that was discussed in a conference call on September 9, 2021 with you which included Frank Kirschbaum and me, among others. Mr. Kirschbaum is an attorney for the selling parties, and I am an attorney for the buying parties in a transaction involving the sale of 12 adult care homes as a single transaction (the "Transaction").

Of the 12 facilities, nine are adult care homes located in North Carolina which are the subject of the Notice of Exempt Acquisition. Two facilities are independent living communities located in North Carolina (which are not generally subject to the jurisdiction of the CON Section), but one of these communities is the holder of a certificate of need that is the subject of the Request for Good Cause Transfer below. The 12th facility is located in West Virginia, so it is not a matter to be considered by the CON Section.

The anticipated closing date for the Transaction is December 31, 2021. The Transaction, which is a single one involving all 12 facilities, is occurring at a "parent entity" level for both sides, although for each facility there are individual selling and buying legal entities which are identified in this correspondence as the parties to the Transaction.

Notice of Exempt Acquisition

This Notice is with respect to nine facilities that will be purchased by affiliated entities in the Transaction with the identifying information contained in the attached Schedule A. For each facility, the Buyer will acquire, among other things, the land, buildings and fixtures of the nine existing adult care homes listed in Schedule A.



Pursuant to N.C.Gen.Stat. §131E-184(a)(8), I understand that these transactions are exempt from certificate of need review. Therefore, I am requesting that you confirm that understanding by providing written confirmation to that effect. It is also my understanding based upon the CON Section's past practice that the written confirmation of exemption can be provided in a single response referencing the information in Schedule A rather than nine individual responses; however, if the CON Section would prefer to issue individual exemption letters for each facility, that is, of course, fine also.

Request for Good Cause Transfer

Arbor Ridge at Stanleyville ("Arbor Ridge") is a 70-unit independent living community located in Forsyth County at 350 Arbor View Lane, Winston-Salem, NC 27105. Arbor Ridge was granted the Certificate of Need (Project ID #G-11466-18) to develop 26 adult care home beds as Special Care Unit beds attached as Exhibit 1. The seller of Arbor Ridge is Arbor Ridge at Stanleyville, LLC; the buyer of Arbor Ridge is 350 Arbor View Lane LP. The Transaction includes the transfer of the Arbor Ridge CON from the Arbor Ridge seller to the Arbor Ridge buyer (subject, of course, to the Request for Good Cause Transfer being approved by the CON Section).

As you know, N.C. Gen. Stat. § 131E-181(a) states that "[a] certificate of need shall be valid only for the . . . person named in the application." This statute further provides as follows: "A certificate of need shall not be transferred or assigned as except as provided in G.S. § 131E-189(c)." Because the project that is the subject of this CON has not yet been developed, good cause must be demonstrated in order for the CON to be transferred.

N.C. Gen. Stat. § 131E-189(c) provides as follows: "Transfers resulting from death or personal illness or other good cause, as determined by the Department, shall not result in withdrawal if the Department receives prior written notice of the transfer and finds good cause." (emphasis added). This statute further provides that "[a]ny transfer . . . will be subject to the requirement that the service be provided consistent with the representations made in the application and any applicable conditions the Department has placed on the certificate of need."

The Arbor Ridge buyer has read the CON application submitted on behalf of Arbor Ridge and the CON issued in Exhibit 1. The Arbor Ridge buyer commits to materially comply with the representations made in the application and the conditions placed on the CON in compliance with N.C. Gen. Stat. § 131E-181(b).

Good cause exists to permit the transfer of the CON because the transfer is incidental to the (much) larger Transaction for the sale and purchase of the 12 facilities. Two examples of declaratory rulings in the context of transfer of certificates of need for adult care home beds are attached as Exhibits 2 and 3. The logic applied in the declaratory rulings contained in Exhibits 2 and 3 is applicable in this instance because the transfer of the Arbor Ridge CON "is peripheral to the objective of the [T]ransaction" (Exhibit 2, page 3) and "is merely incidental to that [T]ransaction". (Exhibit 3, page 3).

Allowing the transfer of the Arbor Ridge CON will allow the approved services to be developed for the benefit of the residents of the community. Therefore, it is respectfully

September 21, 2021
Page 3



requested that the Department find that good cause exists for the transfer of the Arbor Ridge CON and, accordingly, approve the transfer request.

If there are any questions, please let me know at your earliest convenience. Thank you for your cooperation.

Sincerely yours,



Anthony H. Brett

Attachments: Schedule A and Exhibits 1-3

cc: Lisa.Pittman@dhhs.nc.gov (Assistant Chief, Certificate of Need)

SCHEDULE A

FACILITY NAME (AND ADDRESS)	COUNTY (AND HSA)	FID #	SELLER	BUYER
Chatham Ridge Assisted Living (114 Polks Village Lane Chapel Hill, NC 27516)	Chatham (IV)	110283	Chatham Ridge Assisted Living, LLC	114 Polks Village Lane LP
Deerfield Ridge Assisted Living (287 Bamboo Road Boone, NC 28607)	Watauga (I)	990258	Deerfield Ridge, LLC	287 Bamboo Road LP
Forest Ridge Assisted Living (151 Village Park Drive West Jefferson, NC 28694)	Ashe (I)	020751	Forest Ridge Assisted Living, LLC	151 Village Park Drive LP
Kerner Ridge Assisted Living (250 Hopkins Road Kernersville, NC 27284)	Forsyth (II)	990384	Kerner Ridge Assisted Living, LLC	250 Hopkins Road LP
Mallard Ridge Assisted Living (9420 North NC Hwy 150 Clemmons, NC 27012)	Davidson (II)	980506	Mallard Ridge, LLC	9420 North NC Highway 150 LP
Mebane Ridge Assisted Living (1999 South NC Hwy 119 Mebane, NC 27302)	Alamance (II)	130248	Mebane Ridge Assisted Living, LLC	1999 South NC Highway 119 LP
Preston House Memory Care (4910 Harris Woods Blvd. Charlotte, NC 28269)	Mecklenburg (III)	970707	Preston House of Charlotte, LLC	4910 Harris Woods Boulevard LP
Priddy Manor Assisted Living (1294 Priddy Road King, NC 27021)	Stokes (II)	030406	Priddy Manor Assisted Living, LLC	1294 Priddy Road LP
Walnut Ridge Assisted Living (411 Windmill Street Walnut Cove, NC 27052)	Stokes (II)	970584	Walnut Ridge Assisted Living, LLC	411 Windmill Street LP



NC DEPARTMENT OF
**HEALTH AND
 HUMAN SERVICES**
 Division of Health Service Regulation

ROY COOPER • Governor
 MANDY COHEN, MD, MPH • Secretary
 MARK PAYNE • Director



June 12, 2018

Jordan Qualls
 533 Meadowmont Village Circle
 Chapel Hill, NC 27517

Transmittal of Certificate of Need

Project ID #: G-11466-18
 Facility: Arbor Ridge at Stanleyville
 Project Description: Acquire and relocate no more than 26 ACH beds to Arbor Ridge at Stanleyville (independent living facility) from the Crest at Clemmons for a total of no more than 26 ACH beds upon project completion. All 26 ACH beds will be SCU beds
 County: Forsyth
 FID #: 180100

Dear Mr. Qualls:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) is happy to transmit your certificate of need for the above referenced project. At this time, you should contact the Agency's Adult Care Home Licensure Section and the Construction, regarding their procedures and requirements for the development of this project. This office will notify the appropriate Sections that the certificate of need has been issued. However, please note that it is the responsibility of the holder of the certificate of need to contact these Sections concerning the next steps to follow in the development of the approved project.

Please be aware that pursuant to N.C. Gen. Stat. §131E-181(b), you are required to materially comply with the representations made in your application for a certificate of need, or with any conditions the Agency placed on the certificate of need. **If you subsequently propose to develop the project on a site different from that named on this certificate, you must first seek and obtain approval from the Agency.** If you operate a service which materially differs from the representations made in your application for a certificate of need, or with any conditions the Agency placed on the certificate of need, including any increase in per diem reimbursement rates/charges, the Agency may bring remedial action against the holder of the certificate of need pursuant to N.C. Gen. Stat. §131E-189 and 131E-190.

The holder of a certificate of need is obligated to submit progress reports to this office as required by 10A NCAC 14C .0209. The applicant shall notify this office of any variations from the schedule or the projected capital cost of the project. During the development of the

project, this office may request any additional information pertinent to the project, including additional progress reports, to determine:

- 1) If the timetable specified on the certificate is being met;
- 2) If the amount of the capital expenditure for the development of the project is expected to exceed the maximum amount under the certificate;
- 3) If the terms and conditions of the approval are being met; and
- 4) If the project is progressing as proposed in the application.

The first progress report on this project is due February 1, 2019. Forms for the submittal of these reports are enclosed. Failure to submit any scheduled or requested progress report in a timely manner may result in the Agency withdrawing the certificate pursuant to N.C. Gen. Stat. §131E-189. If after reviewing the status of the project, the Agency determines that the holder of the certificate is not meeting the timetable and is not making a good faith effort to meet it, the Agency may withdraw the certificate in accordance with N.C. Gen. Stat. §131E-189.

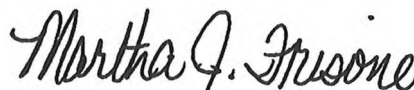
Moreover, please be advised that this Agency may assess a civil penalty not to exceed \$20,000 against any person who violates the terms of a certificate of need which has been issued each time the service provided is in violation of this provision (N.C. Gen. Stat. §131E-190(f)). If for some reason, the holder of a certificate of need determines it necessary to request an increase in a per diem charge or reimbursement rate over that which was stated in the application for the certificate of need, then the holder must first contact the Agency to obtain proper instructions for initiating such a request. The request for the increase will be considered by the Agency pursuant to N.C. Gen. Stat. §131E-181(b).

Please keep us informed of the progress in the development of this project. Please refer to the Project ID # and Facility ID # (FID) in all correspondence.

Sincerely,



Celia C. Inman
Project Analyst



Martha J. Frisone
Chief, Healthcare Planning and
Certificate of Need Section

CCI:MJF:enb

Enclosures

cc: Construction Section, DHSR
Adult Care Licensure Section, DHSR
Amy Craddock, Assistant Chief, Healthcare Planning, DHSR

STATE OF NORTH CAROLINA

*Department of Health and Human Services
Division of Health Service Regulation*

CERTIFICATE OF NEED

for

Project ID #: G-11466-18

FID #: 180100

ISSUED TO: Arbor Ridge at Stanleyville, LLC

Pursuant to N.C. Gen. Stat. § 131E-177(6), the North Carolina Department of Health and Human Services hereby authorizes the person or persons named above (the "certificate holder") to develop the certificate of need project described below. The certificate holder shall develop the project in a manner consistent with the representations in the application and with the conditions contained herein and shall make good faith efforts to meet the timetable contained herein, as documented by the periodic progress reports required by 10A NCAC 14C .0209. The certificate holder shall not exceed the maximum capital expenditure amount specified herein during the development of this project, except as provided by N.C. Gen. Stat. § 131E-176(16)e. The certificate holder shall not transfer or assign this certificate to any other person except as provided in N.C. Gen. Stat. § 131E-189(c). This certificate is valid only for the scope, physical location, and person(s) described herein. The Department may withdraw this certificate pursuant to N.C. Gen. Stat. § 131E-189 for any of the reasons provided in that section.

SCOPE: Acquire and relocate no more than 26 ACH beds to Arbor Ridge at Stanleyville (independent living facility) from The Crest at Clemmons for a total of no more than 26 ACH beds upon project completion. All 26 ACH beds will be SCU beds / Forsyth County

CONDITIONS: See Reverse Side

**PHYSICAL LOCATION: Arbor Ridge at Stanleyville
350 Arbor View Lane
Winston-Salem, NC 27105**

MAXIMUM CAPITAL EXPENDITURE: \$2,508,970

TIMETABLE: See Reverse Side

FIRST PROGRESS REPORT DUE: February 1, 2019

This certificate is effective as of the 12th day of June, 2018.


Martha J. Frisone
Martha J. Frisone, Chief

CONDITIONS:

1. **Arbor Ridge at Stanleyville, LLC shall materially comply with all representations made in the certificate of need application and any supplemental responses. In the event that representations conflict, Arbor Ridge at Stanleyville, LLC shall materially comply with the last made representation.**
2. **Arbor Ridge at Stanleyville, LLC shall acquire and relocate no more than 26 adult care home beds from The Crest of Clemmons to Arbor Ridge at Stanleyville, for a facility total of no more than 26 adult care home beds, which may be a special care unit if a Special Care Unit Moratorium Exception is granted, following completion of the project.**
3. **Approval by the Healthcare Planning and Certificate of Need Section to develop the proposed special care unit beds means only that the applicant is authorized to construct the proposed special care unit beds. It does not mean that the applicant will be able to obtain a license for the special care unit beds if a moratorium on licensure of special care unit beds is still in effect. In that instance, the applicant would need to demonstrate that they meet the criteria for an exception and it be granted by the Secretary of the Department of Health and Human Services.**
4. **Arbor Ridge at Stanleyville, LLC shall provide care to recipients of State/County Special Assistance with Medicaid, commensurate with representations made in the application.**
5. **For the first two years of operation following completion of the project, The Arbor Ridge at Stanleyville, LLC shall not increase private pay charges more than 5% of the projected private pay charges provided in Section X of the application without first obtaining a determination from the Healthcare Planning and Certificate of Need Section that the proposed increase is in material compliance with the representations in the certificate of need application.**
6. **No later than three months after the last day of each of the first three full years of operation following initiation of the services authorized by this certificate of need, Arbor Ridge at Stanleyville, LLC shall submit, on the form provided by the Healthcare Planning and Certificate of Need Section, an annual report containing the:**
 - a. **Payor mix for the services authorized in this certificate of need.**
 - b. **Utilization of the services authorized in this certificate of need.**
 - c. **Revenues and operating costs for the services authorized in this certificate of need.**
 - d. **Average gross revenue per unit of service.**
 - e. **Average net revenue per unit of service.**
 - f. **Average operating cost per unit of service.**
7. **Arbor Ridge at Stanleyville, LLC shall acknowledge acceptance of and agree to comply with all conditions stated herein to the Agency in writing prior to issuance of the certificate of need.**

A letter acknowledging acceptance of and agreeing to comply with all conditions stated in the conditional approval letter was received by the Agency on June 5, 2018.

TIMETABLE:

1.	Financing Obtained _____	December 2, 2018
2.	Drawings Completed _____	November 30, 2018
3.	Construction/Renovation Contract(s) Executed _____	January 2, 2019
4.	25% of Construction/Renovation Completed (25% of the cost is in place) _____	March 29, 2019
5.	50% of Construction/Renovation Completed _____	June 28, 2019
6.	75% of Construction/Renovation Completed _____	September 28, 2019
7.	Construction/Renovation Completed _____	December 22, 2019
8.	Building/Space Occupied _____	January 1, 2020
9.	Licensure Obtained _____	January 1, 2020
10.	Services Offered _____	January 1, 2020
11.	Medicare and/or Medicaid Certification Obtained _____	January 1, 2020
12.	Facility or Service Accredited _____	January 1, 2020
13.	Final Annual Report Due _____	March 30, 2024

**NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES
 DIVISION OF HEALTH SERVICE REGULATION
 RALEIGH, NORTH CAROLINA**

IN RE: REQUEST FOR DECLARATORY)	
RULING BY WC-ALBEMARLE, LLC,)	
ALBEMARLE HOUSE HOLDINGS, LLC)	DECLARATORY RULING
d/b/a ALBEMARLE HOUSE, AND)	
ALBEMARLE HCRE, LLC)	
Project I.D. No. F-8131-08)	

I, Jeff Horton, as Acting Director of the Division of Health Service Regulation, North Carolina Department of Health and Human Services (“Department” or “Agency”), do hereby issue this Declaratory Ruling pursuant to North Carolina General Statute § 150B-4 and 10A NCAC 14A .0103 under the authority granted me by the Secretary of the Department of Health and Human Services.

WC-Albemarle (“WC-Albemarle”), LLC, Albemarle House Holdings, LLC d/b/a Albemarle House (“Albemarle House LLC”), and Albemarle HCRE, LLC, (collectively “the Applicants”) have requested a declaratory ruling finding that the Applicants have satisfied the requirements for a “good cause” transfer of ownership of Albemarle House, pursuant to Section 131E-181(a) and Section 131E-189(c). This ruling will be binding upon the Department and the entity requesting it, as long as the material facts stated herein are accurate. This ruling pertains only to the matters referenced herein. Except as provided by N.C.G.S. § 150B-4, the Department expressly reserves the right to make a prospective change in the interpretation of the statutes and regulations at issue in this Declaratory Ruling. Gary S. Qualls of K&L Gates, LLP has requested this ruling on behalf of Albemarle House LLC, Renee Montgomery of Parker Poe Adams & Bernstein LLP has requested this ruling on behalf of Albemarle HCRE, and they provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

On October 24, 2008 the Certificate of Need Section (“CON Section”) conditionally approved Albemarle House’s Certificate of Need (“CON”) Application, identified as Project I.D. # F-8131-08 (the “Albemarle House Application”) to relocate 12 adult care home beds from The First Baptist Church of Oakboro d/b/a Oakboro Baptist Church Home For The Aged (“Oakboro”) to the existing adult care facility known as Albemarle House (the “Facility”) for a complement of 44 adult care home (“ACH”) beds and 32 Special Care Unit adult care home beds. On November 4, 2008 the applicants for the Albemarle House Application (the “CON Applicants”) notified the CON Section in writing of their acceptance of the conditions placed upon its CON, and it has now been issued.

At the time of the Albemarle House Application filing and approval, WC-Albemarle was the owner/lessor of the Facility and Albemarle House LLC was the licensee and operator of the Facility.

On December 1, 2009 Albemarle HCRE, LLC will be acquiring ownership of the Facility from WC-Albemarle, the current lessor and building owner. The current lessee/license holder, Albemarle House LLC will continue to operate the Facility as the licensee after the December 1 transaction.

ANALYSIS

The CON law allows the transfer of a CON for good cause: “A certificate of need shall not be transferred or assigned except as provided in G.S. § 131E-189(c).” N.C. Gen. Stat. § 131E-181(a). “Transfers resulting from death or personal illness or other good cause, as determined by the Department, shall not result in withdrawal [of the CON] if the Department

receives prior written notice of the transfer and finds good cause.” N.C. Gen. Stat. § 131E-189(c).

Good cause exists for the transfer of ownership from WC-Albemarle, LLC to Albemarle HCRE, LLC because the transaction at issue here is part of a larger refinancing transaction in which 18 ACH’s owned and operated by related entities are being sold by the current Facility owners to the owners of Albemarle HCRE, LLC. Additionally, the primary purpose of the transaction is to allow for the refinancing of these 18 facilities. The fact that the Facility was approved for a CON for twelve additional beds is peripheral to the objective of the transaction.

The transaction will have no impact on the Facility’s ability to develop the project in a manner consistent with the representations made in the application and with any conditions imposed by the Agency.

The current lessor, WC-Albemarle, as a party to this Request for a Declaratory Ruling, agrees that it shall not impede or impair the ability of Albemarle HCRE, LLC and lessee Albemarle House LLC to develop the proposed project.

There will be no change in the administration or day-to-day health care operations of the Facility or this project.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that pursuant to Section 131E-181(a) and Section 131E-189(c), good cause exists for the transfer of the ownership of the Facility from WC-Albemarle, LLC to Albemarle HCRE, LLC.

This the _____ day of November, 2009.

Jeff Horton, Acting Director
Division of Health Service Regulation
N.C. Department of Health and Human Services

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Declaratory Ruling has been served upon the nonagency party by certified mail, return receipt requested, by depositing the copy in an official depository of the United States Postal Service in a first-class, postage pre-paid envelope addressed as follows:

CERTIFIED MAIL

K&L Gates, LLP
Gary S. Qualls
Susan K. Hackney
430 Davis Drive, Suite 400
Morrisville, NC 27560

Parker Poe Adams & Bernstein LLP
Renee J. Montgomery
150 Fayetteville Street, Suite 1400
Raleigh, NC 27601

This the _____ day of November, 2009.

Jesse Goodman
Acting Chief Operating Officer



**NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF HEALTH SERVICE REGULATION
RALEIGH, NORTH CAROLINA**

**IN RE: REQUEST FOR)
DECLARATORY RULING BY YANCEY)
HEALTH INVESTORS, LLC, YANCEY) **DECLARATORY RULING**
HOUSE, LLC, AND WC-YANCEY, LLC,)
Project I.D. No. D-7915-07)**

I, Robert J. Fitzgerald, Director of the Division of Health Service Regulation (the “Department”), hereby issue this declaratory ruling to Yancey Health Investors, LLC (“Yancey Health Investors”), Yancey House, LLC (“Yancey House”), and WC-Yancey, LLC (“WC-Yancey”) (collectively “Petitioners”) pursuant to N.C.G.S. § 150B-4, 10A NCAC 14A.0103, and the authority delegated to me by the Secretary of the North Carolina Department of Health and Human Services. Petitioners have filed a Declaratory Ruling Request (the “Request”) asking the Department to issue a ruling as to the applicability of N.C.G.S. Chapter 131E, Article 9 to the facts described below.

This ruling is binding on the Department and the person requesting it if the material facts stated in the Request are accurate and no material facts have been omitted from the request. The ruling applies only to this request. Except as provided by N.C.G.S. § 150B-4, the Department reserves the right to change the conclusions which are contained in this ruling. Gary S. Qualls and Gina L. Bertolini of Kennedy Covington Lobdell & Hickman, L.L.P., counsel for Petitioners, have requested this ruling on behalf of Petitioners and have provided the statement of facts upon which this ruling is based. The material facts as provided by counsel for Petitioners are set out below.

STATEMENT OF THE FACTS

On 10 October 2007, the Certificate of Need Section conditionally approved the application of Yancey Health Investors and Yancey House for a Certificate of Need ("CON") (identified as Project I.D. No. D-7915-07) to develop and operate an additional 10 adult care home ("ACH") beds at their existing 60-bed ACH facility, known as Yancey House, located in Burnsville, North Carolina, (hereafter, "the Facility"). Upon approval and completion of the project, the Facility was to have a total of 70 ACH beds, 40 of which would be designated as a Special Care Unit for patients with Alzheimer's Disease. On 29 October 2007, Yancey Health Investors and Yancey House notified the CON Section in writing of their acceptance of the conditions placed upon the CON.

On 29 October 2007, WC-Yancey provided notice to the Agency, pursuant to N.C. Gen. Stat. § 131E-184(a)(8), of its intent to acquire the ownership interest of Yancey Health Investors in the Facility.

Petitioners represent that on 30 October 2007, through an Asset Purchase Agreement, WC-Yancey acquired Yancey Health Investors' interest, replacing Yancey Health Investors as the lessor of the Facility. They state that this transaction was part of a larger acquisition involving the refinancing and acquisition of six ACH facilities with common ownership interests. Petitioners represent that in each acquisition, only the lessor changed, while the lessee/licensee remained the same. According to Petitioners, Yancey House has been and will continue to be the lessee, operator, and licensee of the Facility, and WC-Yancey will have no involvement in any operational issues related to the Facility. Petitioners now request approval for a "good cause" transfer of the CON for Project I.D. No. D-7915-07, pursuant to N.C. Gen. Stat. § 131E-189(c) and 10A N.C. Admin. Code 14C.0502.

Petitioners state that the transaction will have no impact on the Facility's ability to develop the project in a manner consistent with the representations made in the application and with any conditions imposed by the Agency. Moreover, Petitioners assert that WC-Yancey, as a party to this Request for a Declaratory Ruling, agrees that it shall not impede or impair the ability of the lessee, Yancey House, to develop the proposed project. They also assert that while the ownership of the Facility was transferred, the operational control of the Facility and the project remain with Yancey House, which will continue to be the licensee.

ANALYSIS

N.C.G.S. § 131E-181(a) provides that a CON “shall be valid only for the defined scope, physical location, and person named in the application. A certificate of need shall not be transferred or assigned except as provided in G.S. 131E-189(c).”

N.C.G.S. § 131E-189(c) provides:

The Department may immediately withdraw any certificate of need if the holder of the certificate, before completion of the project or operation of the facility, transfers ownership or control of the facility, the project or the certificate of need. . . . Transfers resulting from death or other good cause, as determined the Department, shall not result in withdrawal if the Department receives prior written notice of the transfer and finds good cause. . . .

Petitioners have shown good cause for the transfer of the CON because (1) the operations and operational control of the Facility will remain unchanged for both its currently licensed beds and the ten additional beds approved in the CON for Project I.D. No. D-7915-07, (2) WC-Yancey’s acquisition of the assets of Yancey Health Investors is part of a larger acquisition involving the refinancing and acquisition of six ACH facilities with common ownership interests, and the transfer of the CON is merely incidental to that transaction, and (3)

the transfer will not result in any failure by Yancey House to materially comply with the representations of its CON application or the conditions of its CON.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the Request to be true and subject to the condition set out below, I conclude that on the facts presented here Petitioners have shown good cause to transfer the CON for Project I.D. No. D-7915-07 from Yancey Health Investors to WC-Yancey. This transfer is subject to the condition that WC-Yancey and Yancey House comply with all conditions in the CON for Project I.D. No. D-7915-07.

This the ____ day of January, 2008.

Robert J. Fitzgerald, Director
Division of Health Service Regulation
N.C. Department of Health and Human Services

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Declaratory Ruling has been served upon the nonagency party by certified mail, return receipt requested, by depositing the copy in an official depository of the United States postal service in a first class, postage prepaid envelope addressed as follows:

CERTIFIED MAIL

Gary S. Qualls
Gina L. Bertolini
Kennedy Covington Lobdell & Hickman, L.L.P.
430 Davis Drive, Suite 400
Morrisville, NC 27560

This _____ day of January, 2008.

Jeff Horton
Chief Operating Officer

From: [Mitchell, Micheala L](#)
To: [Waller, Martha K](#)
Cc: [Pittman, Lisa](#)
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Date: Tuesday, September 21, 2021 9:09:11 AM
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[image666bf9.PNG](#)
[CON Notice and Request.pdf](#)
[Schedule A.docx](#)
[Exhibits 1-3.pdf](#)

Good morning Martha,

Forwarding this along.

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
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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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Anthony Brett

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