

**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