

**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

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This the _____ day of November, 2009.

Jesse Goodman
Acting Chief Operating Officer