

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

**IN RE: REQUEST FOR DECLARATORY )  
RULING BY HARNETT HEALTH )  
INVESTORS, LLC )           **DECLARATORY RULING**  
Project I.D. No. M-8672-11 )**

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

Harnett Health Investors, LLC (“Harnett Health”) has requested a Declaratory Ruling allowing for a site relocation and replacement for Project I.D. No. M-8672-11 on the grounds that the relocation and replacement do not constitute a material change in scope or physical location or a failure to materially comply with the representations made in the Certificate of Need (“CON”) application for the project. N.C. Gen. Stat. §§ 131E-181(a) and (b). 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. Gen. Stat. § 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 Harnett Health and has provided the material facts upon which this ruling is based.

**STATEMENT OF THE FACTS**

On October 3, 2011, the Certificate of Need Section (“CON Section”) issued a CON to Dunn RE, LLC (Lessor) and Blessed Health & Rehab of Dunn, LLC d/b/a Blessed Health &

Rehab of Angier, LCC (“Blessed Health & Rehab,” Lessee) for Project I.D. No. M-8672-11. That CON allowed Dunn RE and Blessed Health & Rehab to replace and relocate a 96-bed skilled nursing facility known as Blessed Health & Rehab ( the “Blessed Health Facility”) from its current location at 201 North Ellis Avenue in Dunn, Harnett County (the “Dunn site”), to a newly-constructed facility located at 758 Tippet Road in Angier, Harnett County (the “Angier site”).

Subsequently, Dunn RE, LLC and Blessed Health & Rehab decided to transfer ownership of the Blessed Health Facility. Harnett Health intends to buy the Blessed Health Facility from them through an asset purchase agreement. This acquisition is exempt from CON review, as stated in a letter of June 12, 2012 to Harnett Health from Craig Smith, Chief of the CON Section, and Tanya Rupp, Project Analyst. The transfer of ownership also satisfies the Department’s requirement for good cause, as stated in a separate letter of June 12, 2012 from Craig Smith and Tanya Rupp. As noted in the two letters, these approvals do not relieve Harnett Health of the responsibility of materially complying with the terms of the CON or of consulting with the Adult Care Home Licensure and Nursing Home Licensure Sections of the Division of Health Service regarding any requirements they may have for the transfer of ownership.

Harnett Health wishes to establish a new site for the Blessed Health Facility. The currently-approved Angier site is no longer available, as Blessed Health & Rehab indicated in a Progress Report to the Department on February 23, 2012. At that time, the CON Section advised Blessed Health & Rehab to submit a Declaratory Ruling Request once it had located a new site.

Harnett Health has now located a new site on the Brightwater Science and Technology Campus in Lillington, Harnett County (the “Lillington site”). It is approximately 250 feet from the new Harnett Health System hospital that is expected to open in January 2013. Harnett Health

seeks permission from the Department to relocate the Blessed Health Facility to the Lillington site rather than to the Angier site. Since Harnett Health would need to purchase the Lillington site and build the Blessed Health Facility there, it would operate out of the current Dunn site during construction.

With the relocation, Harnett Health seeks to increase the square footage of the Blessed Health Facility and change the mix of semi-private and private beds. Therefore, it also seeks permission from the Department for these changes.

### **ANALYSIS**

The CON law would require a full review of Harnett Health's proposed site relocation if that change were to represent a material change in the physical location or scope of the project. *See* N.C. Gen. Stat. § 131E-181(a). The proposed site relocation does not constitute a material change in the physical location or the scope of the proposed project for the following reasons:

The proposed Lillington site is located 6.3 miles from the currently-approved Angier site and 13.3 miles from its current site in Dunn. Furthermore, the Angier site is no longer available. Harnett Health intends to provide services to the same population proposed in the CON Application, which will be possible due to the Lillington Site's proximity to both the Angier site and the current Dunn site.

The project approved in the original application was for a 44,084 square foot facility with 96 nursing facility beds, comprised of 94 semi-private beds and two private beds. Harnett Health now proposes a 47,947 square foot facility with 96 nursing facility beds, comprised of 64 semi-private beds and 32 private beds. These changes are in material compliance with the representations made in the original CON application.

Building the Blessed Health Facility on the Lillington site will not increase the operating costs or the charges to the public. Although Harnett Health states that capital costs will increase due to the purchase price for the site, the project is not expected to exceed 115% of the approved capital expenditure of \$7,747,488. Accordingly, N.C. Gen. Stat. § 131E-176(16)e does not apply.

N.C. Gen. Stat. § 131E-189(b) allows the Department to withdraw the CON for Project I.D. No. M-8672-11 if Harnett Health fails to develop the service in a manner consistent with the representations made in the Application or with any conditions that were placed on the CON. Harnett Health will not be developing its project in a manner that is materially different from the representation made in its Application, nor will it be developing its project in a manner that is inconsistent with any of the conditions that were placed on the CON for the Project.

### **CONCLUSION**

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that Harnett Health's proposed relocation of the Blessed Health Facility from the Angier site to the Lillington site and its replacement of the facility with a 47,947 square foot structure with a larger proportion of private beds than originally proposed will not violate N.C. Gen. Stat. § 131E-181 and will not constitute a failure to satisfy a condition of the certificate of need in violation of N.C. Gen. Stat. § 131E-189(b).

This the \_\_\_\_\_ day of July, 2012.

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Drexdal Pratt, 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 first-class, postage pre-paid envelope addressed as follows:

**CERTIFIED MAIL**

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

This the \_\_\_\_\_ day of July, 2012.

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Dr. Patsy Christian  
Assistant Director of Healthcare Quality and Safety