

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY LIBERTY HEALTHCARE)
PROPERTIES OF KERNERSVILLE, LLC;)
LIBERTY COMMONS OF KERNERSVILLE,)
LLC; LIBERTY HEALTHCARE PROPERTIES) DECLARATORY RULING
OF SPRINGWOOD, LLC; and LIBERTY)
COMMONS NURSING AND REHABILITATION)
CENTER OF SPRINGWOOD, LLC)
Project I.D. No. G-10220-13)**

I, Drexdal Pratt, as 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 Statutes § 150B-4 and 10A NCAC 14A .0103, under the authority granted me by the Secretary of the Department of Health and Human Services.

Liberty Healthcare Properties of Kernersville, LLC, Liberty Commons of Kernersville, LLC; Liberty Healthcare Properties of Springwood, LLC; and Liberty Commons Nursing and Rehabilitation Center of Springwood, LLC (collectively, “Liberty”), has requested a declaratory ruling allowing for a change in location for Project I.D. No. G-10220-13 (“Project”) on the grounds that the change does not constitute a material change in scope or physical location or a failure to materially comply with the representations made by Liberty in its Certificate of Need (“CON”) application for this Project. N.C.G.S. §§ 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.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. Yoel H. Balter, Esq., has

requested this ruling on behalf of Liberty and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

On March 28, 2014, Liberty was issued a Certificate of Need to relocate 100 of the 200 nursing facility beds from Liberty Commons Nursing and Rehabilitation Center of Springwood, LLC d/b/a Springwood Care Center to a new facility located at 1720 Highway 66 South, Kernersville, Forsyth County, North Carolina (“Approved Site”). Liberty seeks to change the facility site to a new location on Kernersville Medical Parkway in Kernersville, Forsyth County, North Carolina (“Proposed Site”).

ANALYSIS

The CON law would require a full review of Liberty’s relocation to the Proposed Site if that relocation were to represent a material change in the scope or physical location of the Project. N.C.G.S. § 131E-181(a). The relocation to the Proposed Site does not constitute a material change in the scope or physical location of the Project for the following reasons:

The Proposed Site is located on Kernersville Medical Parkway in Kernersville, North Carolina, approximately 1.5 miles Northeast of the Approved Site. During preparation of its CON application, Liberty approached the owners of the Proposed Site regarding its purchase, but the purchase price of the Proposed Site was substantially higher than that of the Approved Site. Accordingly, Liberty chose the less expensive alternative and, at the time of the submittal of its CON application, Liberty was involved in contract negotiations to purchase the Approved Site. During the review period, Liberty was unable to reach an agreement to purchase the Approved Site. In addition, the purchase price of the Proposed Site was reduced to a price that was lower

than that of the Approved Site. Therefore, Liberty entered into an agreement to purchase the Proposed Site.

Additionally, the Proposed Site is located directly across the street from the new Kernersville Medical Center (“Hospital”); it is appropriately zoned for use as a skilled nursing facility; it has already been cleared and graded; and the utilities and road work have already been completed as a part of the development of the Hospital. As such, Liberty believes the development of the Project at the Proposed Site as opposed to the Approved Site will reduce its site preparation costs by as much as fifty percent (50%). Further, the Proposed Site is located within close proximity to downtown Kernersville and moving the Project to the Proposed Site would not change Liberty’s fundamental structure and service to the Forsyth County community or have any effect on Liberty’s ability to provide access to the medically underserved, the scope of the services it offers, its costs and charges to consumers, or the projected timetable for development of the Project.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw Liberty’s CON if Liberty 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. Liberty will not develop this Project in a manner that is materially inconsistent with the representations made in its application or in a manner that is inconsistent with any of the conditions that were placed on its CON.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the change of location of the facility from 1720 Highway 66 South, Kernersville, Forsyth County, North Carolina, to a new location on Kernersville Medical Parkway in Kernersville, Forsyth County, North Carolina, will not constitute a material change in the scope or

physical location of the project, will not violate N.C.G.S. § 131E-181, and will not constitute a failure to satisfy a condition of the CON in violation of N.C.G.S. § 131E-189(b).

This the _____ day of August, 2015.

Drexdal Pratt, Director
Division of Health Service Regulation
N.C. Department of Health and Human Services

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Declaratory Ruling upon the PETITIONER by certified mail, return receipt requested, by causing a copy of same to be placed in the United States Mail, first-class, postage pre-paid envelope addressed as follows:

CERTIFIED MAIL

Yoel H. Balter, Esquire
2334 South 41st Street
Wilmington, North Carolina 28403

This the _____ day of August, 2015.

Cheryl Ouimet
Chief Operating Officer