

**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 MECKLENBURG)	
COUNTY, LLC and LIBERTY COMMONS)	DECLARATORY RULING
NURSING & REHABILITATION CENTER)	
OF MINT HILL, LLC)	
Project I.D. No. F-7911-07)	

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 Statute § 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 Mecklenburg County, LLC and Liberty Commons Nursing & Rehabilitation Center of Mint Hill, LLC (collectively “Liberty”) have requested a declaratory ruling allowing for a change in location for Project I.D. No. F-7911-07 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 its 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. Lee M. Whitman of Wyrick Robbins Yates & Ponton, LLP 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 July 16, 2007, Liberty filed an application in Project I.D. # F-7911-07 for a CON to relocate 120 existing nursing facility beds from Liberty Nursing & Rehabilitation Center of Mecklenburg County to a new replacement facility in Mecklenburg County named Churchill Commons, to be located at 7712 Wilson Gove Road in Mint Hill (the "Mint Hill site").

Due to litigation between Liberty, the Agency, and Liberty's competitor, Britthaven, Inc., the CON Section did not issue the CON approving the relocation until May 21, 2009. As a result of mediation between Liberty, Britthaven, and the Agency, a settlement agreement was agreed upon where Liberty agreed that it would not begin construction until 12 months from the issuance of the CON (May 21, 2010).

During the period between July 16, 2007 and May 21, 2010, Britthaven began work on a new 120-bed nursing facility in Mint Hill, approximately two (2) miles from Liberty's Mint Hill site, and Liberty believes construction will begin on that facility in the near future.

Liberty also learned that its Mint Hill site has several characteristics that would make construction of the facility difficult or impossible, including sewer/water connection, zoning, and wetlands issues.

Liberty has now identified a site in the Ballantyne area of Charlotte at 10021 Providence Road West ("the Ballantyne site"), less than fifteen (15) miles away from the Mint Hill site. The Ballantyne land is located inside the Charlotte Township and borders the Providence Township.

Liberty has calculated that the total cost of construction at the Ballantyne site would amount to \$9,314,797.00.

ANALYSIS

The CON law would require a full review of Liberty's site relocation from the Mint Hill site to the Ballantyne site if that relocation were to represent a material change in the physical location or scope of the project. N.C.G.S. § 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 Ballantyne site is in the same service area, Mecklenburg County, as the Mint Hill site, and will serve the same patient population identified in the original CON application.

The Ballantyne site is closer in proximity to support, hospital, and emergency services than the Mint Hill site. The closest hospital to the Mint Hill site, Presbyterian Hospital-Matthews, is over six (6) miles away and has 114 licensed beds. The Ballantyne site is less than five (5) miles from Carolinas Medical Center-Pineville, which currently has 109 beds but is undergoing renovations that will add 97 beds, for a total of 206 beds.

Although the total capital cost of construction at the Ballantyne site would amount to \$9,314,797.00, and is more than the \$8,587,383.00 approved in the CON for construction on the Mint Hill site, it is within the 15% cost overrun permitted by N.C. Gen. Stat. § 131E-176(e).

Churchill Commons' fundamental structure and service to the Mecklenburg County community would not change with a move to the Ballantyne site. Liberty Healthcare Properties of Mecklenburg County, LLC would be the owner of the Ballantyne site property and Liberty Commons Nursing & Rehabilitation Center of Mint Hill, LLC would be the lessor of the property.

The move to the Ballantyne site will have no effect on Liberty's ability to provide access to the medically underserved, nor will it have any effect on the scope of services offered or costs and charges.

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 be developing its project in a manner that is materially different from the representations 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 its CON.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the site relocation from the Mint Hill site to the Ballantyne site, Project I.D. No. F-7911-07 will not constitute a material change in the physical location or scope 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, 2011.

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

Wyrick Robbins Yates & Ponton LLP
Lee M. Whitman
Sarah M. Johnson
4101 Lake Boone Trail, Suite 300
Raleigh, NC 27607

This the _____ day of August, 2011.

Jeff Horton
Chief Operating Officer