

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY BRITTHAVEN, INC.) DECLARATORY RULING
Project I.D. No. J-8540-10)**

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.

Britthaven, Inc. (hereinafter “Britthaven”) has requested a declaratory ruling allowing for a change in location for Project I.D. No. J-8540-10 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 Britthaven 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. Erik P. Lindberg of Britthaven has requested this ruling on behalf of Britthaven and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

On January 5, 2011, Britthaven was issued a CON to construct a new 100-bed nursing facility in the Town of Clayton, Johnston County, North Carolina on an 11 acre site located near the intersection of NC Highway 42 and Amelia Church Road (the “Approved Primary Site”).

In its CON application Britthaven also identified a Secondary Site, a 10-acre parcel in the Spring Branch Medical Park along NC Highway 42, which is located less than one mile from the Approved Primary Site.

Britthaven’s proposed Alternative Site is an 8.25 acre parcel located within the same Spring Branch Medical Park along NC Highway 42 as its identified Secondary Site.

The cost of the proposed Alternative Site (\$1,600,000) is less than the cost of the Approved Primary Site (\$1,978,930.80).

The Alternative Site is located within a Medical Park that contains physician offices and an adult care home, and is adjacent to Johnston Health System’s Clayton Medical Center.

Britthaven does not expect to incur any additional capital costs associated with the acquisition of the Alternative Site and does not expect the total cost of the project to exceed 115% of the approved capital expenditure of \$10,607,069.

ANALYSIS

The CON law would require a full review of Britthaven’s site relocation 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 Alternative Site is located within the same Medical Park as Britthaven’s approved Secondary Site and is less than one mile from the Approved Primary Site.

There will be no additional capital cost associated with the acquisition of the Alternative Site given that it is less costly than the Approved Primary Site.

The service offerings will be consistent with those proposed in the application and there will be no changes in volume projections and demand, access to the medically underserved, or increase in charges, operating costs, or staffing.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw Britthaven's CON if Britthaven 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. Britthaven 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 Approved Primary Site to the Alternative Site identified in this request, for Project I.D. No. J-8540-10 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 March, 2013.

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

Erik P. Lindberg
Britthaven, Inc.
Post Office Box 1010
Garner, NC 27529

This the _____ day of March, 2013.

Cheryl Ouimet
Chief Operating Officer