

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

**IN RE: REQUEST FOR DECLARATORY )  
RULING BY ARBOR RIDGE at CHATHAM, )  
LLC And FCSB REAL ESTATE HOLDINGS, )       DECLARATORY RULING  
Project I.D. No. J-8662-11 )**

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.

Arbor Ridge at Chatham, LLC and FCSB Real Estate Holdings, LLC (“Petitioners”) have requested a declaratory ruling which would allow Petitioners to change the location of a proposed forty (40) bed replacement adult care home. The adult care home at issue was originally approved pursuant to the certificate of need (“CON”) issued for Project I.D. No. J-8662-11. 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. Frank Kirschbaum and Robert A. Hamill of Nexsen Pruet, PLLC have requested this ruling on behalf of Petitioners and have provided the material facts upon which this ruling is based.

**STATEMENT OF THE FACTS**

On October 28, 2011, Petitioners were awarded a CON allowing them to relocate forty adult care home beds within Chatham County and construct a forty-bed replacement adult care home in Chatham County at a proposed capital expenditure of \$4,075,833. The original site of the proposed project was identified as 72 Marvin Edwards Lane, Chapel Hill, North Carolina

27516. Petitioners now propose to change the location to 10677 U.S. 15-501 North, Chapel Hill, North Carolina 27512, a distance of 1.7 miles from the originally proposed location.

Petitioners' CON application proposed that the facility's patient population would be comprised of residents of Orange and Chatham counties, with approximately 80% of the facility's residents coming from Chatham County and approximately 20% of the facility's residents coming from Orange County. Petitioners state that the site change will have no material effect on the population to be served by the facility.

### **ANALYSIS**

N.C.G.S. § 131E-181(a) provides that "[a] certificate of need shall be valid only for the defined scope, physical location, and person named in the application." The recipient of the CON must also materially comply with the representations made in the CON application. N.C.G.S. § 131E-181(b). If Petitioners' proposal were to represent a material change in the scope of the project, the CON law would require a full review of the proposal. N.C.G.S. § 131E-181(a). Petitioners state that the change in location will not alter the patient population to be served, nor will the change affect the scope of services offered. Petitioners further state that the change will not cause the total capital expenditure to exceed the proposed capital expenditure by an amount greater than 15%.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw the Petitioners' CON if the Petitioners fail 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. Petitioners 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 Petitioners' proposal will not violate N.C.G.S. § 131E-181, and will not constitute a failure to satisfy a condition of the certificate of need in violation of N.C.G.S. § 131E-189(b).

This the \_\_\_\_\_ day of March, 2013.

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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 PETITIONERS 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**

Frank Kirschbaum  
Robert A. Hamill  
Nexsen Pruet, PLLC  
4141 Parklake Avenue, Suite 200  
Raleigh, NC 27612

This the \_\_\_\_\_ day of March, 2013.

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Cheryl Ouimet  
Chief Operating Officer