

NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF FACILITY SERVICES
RALEIGH, NORTH CAROLINA

IN RE: REQUEST FOR DECLARATORY)
RULING BY EULA KIRKMAN BRITT,)
ANT MARY’S FAMILY CARE HOME, INC.,) DECLARATORY RULING
ANT MARY’S FAMILY CARE HOME, and)
ANT MARY’S FAMILY CARE HOME #2)

I, Robert J. Fitzgerald, as Director of the Division of Facility Services, North Carolina Department of Health and Human Services (“Agency”), do hereby issue this Declaratory Ruling pursuant to N.C. Gen. Stat. § 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.

Eula Kirkman Britt, Ant Mary’s Family Care Home, Inc., Ant Mary’s Family Care Home and Ant Mary’s Family Care Home #2 (collectively referred to as “Ant Mary’s”) have requested that the Agency issue a Declaratory Ruling finding that: the six beds located at Ant Mary’s Family Care Home, Inc., #2 facility, located at 6198 Washington Street, LaGrange, North Carolina, and the six beds located at the original Ant Mary’s Family Care Home, located at 127 E. Railroad Street, LaGrange, North Carolina can be licensed and operated as one twelve-bed facility to be located at 203 S. Center Street, LaGrange, North Carolina, with at least three of the beds licensed for care of non-ambulatory residents.

For the reasons set forth below, I conclude that granting Ant Mary’s request would violate N.C. Gen. Stat. § 131E-178, and therefore, this request is hereby denied. This ruling is binding upon the Agency 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 Agency expressly reserves the right to make a prospective change in the interpretation of the statutes and regulations at issue in this Declaratory Ruling. William W. Stewart, Jr. of the law firm Smith Moore, LLP has requested this ruling on behalf of Ant Mary's has provided the following *material* facts upon which this ruling is based.

STATEMENT OF FACTS

The original Ant Mary's Family Care Home Presently is licensed for and consists of a total of six beds. Ant Mary's Family Care Home is located at 127 E. Railroad Street, LaGrange, Lenoir County, North Carolina, and holds Family Care License Number 054-041 through year-end 2005.

Ant Mary's Family Care Home #2 presently is licensed for and consists of a total of six ambulatory beds, up to three of which may be for non-ambulatory residents. This facility is located at 6198 Washington Street, LaGrange, Lenoir County, North Carolina, and holds Family Care License Number 054-046 through year-end 2005.

The real property housing Ant Mary's Family Care Home is owned by Ms. Rachel Mannings and was leased to Eula Kirkman Britt ("Ms. Britt") for use as Ant Mary's since May 2002. The real property upon which Ant Mary's Family Care Home #2 is located also is owned by Ms. Rachel Mannings and was leased to Ms. Britt for use as Ant Mary's since May 2004. Ant Mary's has operated both facilities continuously as Family Care Homes since the inception of the respective leases. Upon information and belief, the facility where Ant Mary's Family Care Home #2 is located was operated as a family care home approximately ten years prior to Ant Mary's leasing the property.

Ant Mary's is not aware of any other family care home licensed or operating in LaGrange, North Carolina, at this time. The web site of the Division of Facility Services lists McCoy's Cottage Care #2 as a licensed family care home in LaGrange. However, this is the facility that operated on Washington Street, and has been replaced by Ant Mary's. Likewise, Ant Mary's is not aware of any adult care homes operating in LaGrange, North Carolina. The web site of the Division of Facility Services lists no adult care home operating in LaGrange.

Throughout all the relevant time periods, Eula Kirkman Britt was and is the sole owner of Ant Mary's Family Care Home and Ant Mary's Family Care Home #2, the lessor of the real property on which these facilities are located and the owner of the legal entities that operate all of the family care home beds.

Each facility above is licensed for and consists of six beds dedicated to providing care and supervision to its residents. Ant Mary's Family Care Home is licensed for six ambulatory beds, while Ant Mary's Family Care Home #2 is licensed for up to three non-ambulatory beds and the remainder for ambulatory beds.

The six beds at the original Ant Mary's Family Care Home and the six beds located at Ant Mary's Family Care Home #2 are located in LaGrange, Lenoir County, in the same zip code, within the same health service area, and less than two miles from each other. The proposed new facility will be leased from the Town of LaGrange and is located between the two existing facilities.

On February 1, 2005, the annual inspection was conducted of Ant Mary's Family Care Home #2 in accordance with 15A N.C.A.C. 15A .1603. As reflected on the inspection form furnished by the North Carolina Department of Environment and Natural

Resources, Division of Environmental Health, to the local health department, several problems at this facility were discovered, which resulted in the issuance of twenty demerits to this facility. 15A N.C.A.C. 18A .1605. The demerits primarily resulted from the need to repair the physical facility or to replace certain parts of the structure. Inspections have revealed similar issues with the original Ant Mary's Family Care Home, which are also being resolved temporarily, resulting in even more expenditures.

ANALYSIS

Ant Mary's is proposing to consolidate the family care home beds from their respective locations at 127 E. Railroad Street, and 6198 Washington St., LaGrange, North Carolina. The new facility will be leased from the Town of LaGrange and located between the two original facilities. The two original facilities, when combined into one facility would result in the conversion of non-health service facility beds (family care home beds) to health service facility beds (adult care home beds). An "Adult Care Home" is defined as :

[A] facility with seven or more beds licensed under G.S. 131D-2 or Chapter 131E of the General Statutes that provides residential care for aged or disabled persons whose principal need is a home which provides the supervision and personal care appropriate to their age and disability and for whom medical care is only occasional or incidental.

N.C. Gen. Stat. § 131E-176(1). Under this definition, combining the two six-bed facilities creates an adult care home under N.C. Gen. Stat. § 131E-176(1).

A "new institutional health service," which includes the establishment of an adult care home, cannot be developed without first obtaining a certificate of need. N.C. Gen. Stat. §§ 131E-176 and -178. The 2005 State Medical Facilities Plan ("SMFP")

establishes the quantity of health services and beds that are needed across the State each year. N.C. Gen. Stat. § 131E-171(4). The SMFP states that Lenoir County has a surplus of fifty adult care home beds. Therefore, there is no need for additional adult care home beds in Lenoir County. Although the request cites the physical deterioration of the facilities as an issue, the condition of the facilities is not dispositive to the issue in this ruling. Approval of this Declaratory Ruling Request would unlawfully add twelve adult care home beds to the inventory reflected in the SMFP, to create a surplus of 62 adult care home beds in Lenoir County. There is simply no legal authority which provides for the circumvention the Certificate of Need Act to convert non-health service facility beds (family home care beds) to health services facility beds (adult care home beds).

Moreover, the Town of LaGrange, as the owner of the building in which the beds will be located, would be required to obtain a certificate of need to establish an adult care home before it could lease the building to Ms. Britt for the purpose of operating the beds. *See* N.C. Gen. Stat. § 176(1). A certificate of need could not be approved, however, because the SMFP shows a surplus of adult care home beds in Lenoir County. Therefore, there is no need for additional adult care home beds. The need determination in the SMFP is a determinative limitation on the establishment of adult care home beds. N.C. Gen. Stat. § 183(a)(1). A certificate of need for additional beds cannot be issued if the beds are not shown as needed under the SMFP. In this instance, the establishment of adult care home beds in Lenoir County would not be consistent with the need determination in the SMFP which states there is no need for beds and Ant Mary's Declaratory Ruling Request must be denied.

CONCLUSION

For all the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that Ant Mary's request to consolidate two existing family care homes and create a new twelve-bed adult care home, would violate N.C.G.S. § 131E-178, and therefore, Ant Mary's request is denied.

This the _____ day of June, 2005.

Robert J. Fitzgerald, Director
Division of Facility Services
N.C. Dept. of Health and Human Services