

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

**IN RE: REQUEST FOR )  
DECLARATORY RULING BY )       DECLARATORY RULING  
COURTYARDS OF NEW BERN, LLC )**

I, Robert J. Fitzgerald, Director of the Division of Facility Services (the “Department”), hereby issue this declaratory ruling to Courtyards of New Bern, LLC (“Petitioner”) pursuant to N.C.G.S. § 150B-4, 10A NCAC 14A.0103, and the authority delegated to me by the Secretary of the North Carolina Department of Health and Human Services. Petitioner has filed a Declaratory Ruling Request (the “Request”) asking the Department to issue a ruling that it may transfer five beds from the license of The Courtyards at Berne Village (“Courtyards”) to the license of The Courtyards at Berne Village Memory Care (“Memory Care”) without obtaining a Certificate of Need (“CON”). For the reasons given below, I conclude that Petitioner may transfer the beds without first obtaining a CON, subject to meeting applicable requirements for licensure.

This ruling is binding on the Department and the person requesting it if the material facts stated in the Request are accurate and no material facts have been omitted from the request. The ruling applies only to this request. Except as provided by N.C.G.S. § 150B-4, the Department reserves the right to change the conclusions which are contained in this ruling. Pamela D. Kerrin, Executive Assistant, has requested this ruling on behalf of Petitioner. The material facts as provided by Petitioner and as contained in the files of the Department are set out below.

**STATEMENT OF THE FACTS**

Petitioner operates two separately licensed adult care home facilities on a single campus in New Bern, North Carolina. Courtyards is licensed as a 60-bed facility; Memory Care is licensed as a 20-bed facility. Memory Care’s license includes a 20-bed Special Care Unit for

Alzheimer's/Dementia. Petitioner describes Courtyards as an "assisted living" facility, and Memory Care as a "memory care" facility. Both facilities are owned and operated by Petitioner and are located on the same property, although the two buildings are not physically connected. Petitioner is named as Licensee for both Courtyards and Memory Care. Because Petitioner owns the real property for both facilities, Petitioner also owns the beds in both buildings.

Petitioner states that it wishes to transfer five beds from Courtyards to Memory Care to accommodate its maturing residents by increasing the memory care unit from private to semi-private rooms. It represents that the overall total of 80 beds will not increase, that the ownership of the two buildings will not change, and that there will not be major changes to the Petitioner's facilities. The total cost of the proposed transfer is expected to be approximately \$5,000.

### **ANALYSIS**

Prior to 2001, a CON was not required for an adult care home. In S.L. 2001-234, N.C.G.S. § 131E-176 was amended to include adult care homes among the facilities included in the definition of "health service facility bed." "Adult care home" was 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.

The findings of fact by the General Assembly in S.L. 2001-234, now codified in N.C.G.S. § 131E-175(10), state:

It is in the public interest to promote efficiencies in delivering care in [adult care homes] by controlling and directing their growth in an effort to prevent underutilization and higher costs and provide appropriate geographic distribution.

Under the CON law as amended in 2001, a CON is required for a "new institutional health service." N.C.G.S. § 131E-178. The definition of new institutional health service in

N.C.G.S. § 131E-176(16)(c) includes “Any change in bed capacity as defined in G.S. 131E-176(5).”

“Change in bed capacity” is defined as:

(i) any relocation of health service facility beds . . . from one licensed facility or campus to another, or (ii) any redistribution of health service facility bed capacities among the categories of health service facility bed as defined in G.S. 131E-176(9c), or (iii) any increase in the number of health service facility beds . . . .”

In N.C.G.S. § 131E-176(9c), “adult care home beds” is a single category of health service facility. The transfer of five beds from Courtyards to Memory Care, therefore, is not a redistribution of beds among categories of health service facilities.

If Courtyards and Memory Care are viewed as units of a single facility, the proposed transfer is not a relocation of beds from one facility to another, nor is it an increase in the number of health service facility beds. Courtyards and Memory Care are owned and operated by the same entity, which is also the licensee on both licenses. The two buildings are physically located on the same campus, within close proximity of one another. Both buildings are adult care homes as defined in N.C.G.S. § 131E-176, and are in the same category of health service facility. The apparent reason that Petitioner holds two licenses rather than one relates to the somewhat different licensure requirements for special care units in adult care homes and the practical consequences of those requirements.

A transfer of five beds from the license of the Courtyards to the license of Memory Care results in no change in the total number of adult care home beds owned and operated by Petitioner on its New Bern Avenue campus and does not change the inventory of health service facility beds in Craven County or operated by Petitioner. The transfer, therefore, is consistent with the purposes of the CON statute as it relates to adult care home beds.

Petitioner has requested that its two licenses be consolidated into a single license. Because I find that a CON is unnecessary for the proposed transfer of beds, there is no need to determine in a declaratory ruling whether the appropriate licensure for Courtyards and Memory Care is a single license or separate licenses. The Adult Care Home Section may address that question in its licensure determination. Petitioner may be granted licensure reflecting the transfer of beds provided that it meets all applicable licensure requirements.

### **CONCLUSION**

For the foregoing reasons, assuming the statements of fact in the Request to be true, I conclude that a CON is not required for Petitioner's proposed transfer of five beds from Courtyards to Memory Care.

This \_\_\_\_ day of \_\_\_\_\_, 2007.

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Robert J. Fitzgerald, Director  
Division of Facility Services  
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 a first class, postage prepaid envelope addressed as follows:

**CERTIFIED MAIL**

Pamela D. Kerrin  
Executive Assistant  
The Courtyards at Berne Village  
2701 Amhurst Boulevard  
New Bern, NC 28562

This \_\_\_\_ day of \_\_\_\_\_, 2007.

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Jeff Horton  
Chief Operating Officer