

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY PRESTON HOUSE I, LLC) **DECLARATORY RULING**
AND PRESTON HOUSE II, LLC)**

I, Jeff Horton, as Acting 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 to Preston House I, LLC and Preston House II, LLC (collectively “Petitioners”) 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. Petitioners have filed a Declaratory Ruling Request (the “Request”) asking the Department to issue a ruling allowing the Petitioners to be combined on a single Special Care Unit license. For the reasons given below, I conclude that Petitioners’ Request should be granted.

This ruling will be binding upon the Department and the entities 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. Norman J. Gordon, Administrator / Owner of Petitioners, has requested this ruling on behalf of Petitioners and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Petitioners state that Preston House I and Preston House II are each licensed as adult care 20-bed Special Care Units. Petitioners represent that the two facilities are located on the same campus in Mecklenburg County. They are attached by a covered and conditioned hallway. They

share operational equipment, staff, supplies and other resources, and are known in the community as a single facility. The same individual owns all of the financial interests in both entities, and Petitioner now are able to operate as a single financial entity.

Petitioners request that they be allowed to consolidate both licenses into a single license as an adult care 40-bed Special Care Unit, under the existing Preston House I, LLC license. Petitioners represent that this consolidation will not increase the total number of beds, will not change the ownership of the buildings, and will not involve any other changes to the facilities or services.

ANALYSIS

A change in bed capacity as defined in N.C.G.S. § 131E-176(5) is a new institutional health service under the Certificate of Need (CON) law. N.C.G.S. § 131E-176(16)c. “Change in bed capacity” includes any increase in the number of health service facility beds. N.C.G.S. § 131E-176(5). Since Petitioners’ request would increase the number of beds in the Preston House I facility, this transaction technically might constitute a new institutional health service.

On the facts of this request, however, there is no actual increase of beds in a facility, and this simply is a reorganization in the administrative entity. The total number of beds in Preston House I and Preston House II will be unchanged, no physical bed locations will change, and the facility ownership will not change. There is no change in service to the public. The only change is administrative. This proposed transaction is not offering or developing a new institutional health service within the intent of the CON law.

CONCLUSION

I conclude that on the specific facts of this request, the proposed transaction does not constitute a new institutional health service. The Petitioners’ facilities may be consolidated as a

single licensed facility, provided Petitioners meet all other licensing requirements for the facility.

This the _____ day of October, 2009.

Jeff Horton, Acting 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

Norman J. Gordan
(Address)

This the _____ day of October, 2009.

Jesse Goodman
Acting Chief Operating Officer