

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

IN RE: REQUEST FOR DECLARATORY)	
RULING BY BEYSTONE HEALTH AND)	
REHABILITATION COMPANY AND)	DECLARATORY RULING
FLETCHER ACADEMY, INC.)	
Project I.D. No. B-8759-11)	

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.

On April 2, 2012, Beystone Health and Rehabilitation Company and Fletcher Academy, Inc. (“Petitioners”) were issued a certificate of need (CON) to construct a replacement 50-bed nursing facility and relocate the facility from Fletcher to Mills River. On July 13, 2012, Petitioners gave notice to the Department that they wanted to change the approved new location from Haywood Road in Mills River in Henderson County to a proposed new site five to seven miles away at Old Haywood Road and Highway 191 North in Mills River. 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. Kenneth L. Burgess of Poyner Spruill LLP 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 applied for and received a CON for Project I.D. Number B-8759-11, in which they proposed to relocate fifty (50) skilled nursing facility beds from their current location at 80 Brownsberger Circle in Fletcher, North Carolina, Henderson County, to a new facility consisting of fifty (50) beds to be constructed and operated at Haywood Road (Parcel I.D. No. 963159030), Mills River, NC (“the New Facility”). After receiving the CON to relocate the facility, Petitioners determined that a new site, which is approximately five to seven miles from the original site, was available. The new site is located at Old Haywood Road and Highway 191 North (Parcel I.D. No. 9632580936) in Mills River, NC 28759 (Henderson County) (“Proposed New Site”).

The Proposed New Site costs less than the original site. In the CON Application, Petitioners budgeted a total of \$1,032,000 for the original site, consisting of eight (8) acres. The total cost of the Proposed New Site is only \$600,000 for a plot of ten (10) acres. Petitioners’ engineer has estimated that minimal site preparation is required for the Proposed New Site, costing only \$50,000 or less, in contrast to an estimate of \$480,000 for the original site. The Proposed New Site is properly zoned for a free-standing skilled nursing facility and power and municipal water services are available at the new site. Although there is an estimated cost of \$100,000 to tie-in to a nearby private sewer system, development and operation of the facility at the New Proposed Site will still result in reduced capital costs.

The location of the Proposed New Site is approximately the same distance to most support services in the community that were identified in the CON Application. The Proposed New Site is closer to the northwest portion of Henderson County and farther from Universal of Fletcher, an existing skilled nursing facility, thereby improving access to skilled nursing facilities

service in that area of the county. The Proposed New Site is suitable in all respects for the development of the New Facility as originally configured and designed and Petitioners plan to offer the same services at the new site as were proposed in the CON Application as well as operate the same number of skilled nursing facility beds.

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 physical location or scope of the project, the CON law would require a full review of Petitioners’ proposal. N.C.G.S. § 131E-181(a).

Given the close proximity to the originally proposed site and Petitioners’ representations, the change does not constitute a material change in the physical location or scope of the proposed project. Petitioners will not be developing their project in a manner that is materially different from the representations made in their application, nor will they be developing the project in a manner that is inconsistent with any of the conditions that were placed on their CON.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that Petitioners’ proposed site change 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 certificate of need in violation of N.C.G.S. § 131E-189(b).

This the _____ day of August, 2012.

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

Kenneth L. Burgess
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Post Office Box 1801
Raleigh, North Carolina 27602-1801

This the _____ day of August, 2012.

Dr. Patsy Christian, Assistant Director
Healthcare Quality and Safety