

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY CARROLTON HOME CARE, INC.) DECLARATORY RULING
PROJECT ID NO. M-7285-05)**

I, Robert J. Fitzgerald, Director of the Division of Facility Services of the North Carolina Department of Health and Human Services (the “Department”), do hereby issue this Declaratory Ruling to Carrolton Home Care, Inc. (“CHC”) pursuant to N.C.G.S. § 150B-4 and 10A NCAC 14A .0310, and the authority granted to me by the Secretary of the Department of Health and Human Services. CHC seeks a declaratory ruling to allow it to construct and operate a new 7-bed hospice inpatient facility in Lillington, Harnett County (the “Facility”), for which it has previously received a certificate of need (“CON”), at the secondary site described in its CON application rather than the primary site. For the reasons set out below, I conclude that CHC’s change of site for the Facility does not constitute a material change in the implementation of the project under N.C.G.S. § 131E-189(b) and is not subject to further CON review as a new institutional health service under N.C.G.S. § 131E-176(16).

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. Michael C. Hale, Vice-President of Legal Services for Community Health, Inc., has requested this ruling on behalf of CHC and has provided the material facts set out below.

STATEMENT OF THE FACTS

CHC applied for and received a CON to construct and operate the Facility. The approved site was located on Cornelius Harnett Blvd. in Lillington (the “Primary Site”). CHC now has determined that the secondary site identified in the application (the “Secondary Site”) is a more effective alternative for the Facility. The Secondary Site is on Pine Street, Lots 9 and 10, in Lillington, which CHC states is approximately 2 miles from the Primary Site.

CHC represents that the Secondary Site is approximately 2.13 acres; the Primary Site is approximately 1.8 acres. CHC states that the Secondary Site is a more effective alternative because CHS intends to apply for 9 additional hospice beds to add to the Facility. The Primary Site will not accommodate a 16-bed hospice inpatient facility because of various Lillington zoning requirements. The Secondary Site zoning now would permit such a facility.

CHC represents that the projected cost of the Primary Site was \$150,000. The capital cost of the Secondary Site will be \$255,000. The maximum capital expenditure permitted by the CON here is \$1,239,765. The total capital costs of the CON utilizing the Secondary Site would be \$1,344,765, an increase of approximately 8.5%.

CHC states that changing sites will not materially alter the services as proposed and approved in its CON application.

ANALYSIS

The CON law would require a full review of CHC’s proposed change of site if that change were to represent a material change in the physical location of the project according to N.C.G.S. § 131E-181(a). N.C.G.S. § 131E-189(b) allows the Department to withdraw CHC’s CON if CHC fails to develop the service in a manner consistent with the

representations made in its application or with any of the conditions that were placed on the CON. If during development or within one year of completion, a change in a project for which a CON was issued is more than 15% of the approved capital expenditure amount, it is a “new institutional health service” and a new CON may be required unless otherwise exempt. N.C.G.S. § 131E-176(16)(e).

The relocation of the site for the Facility does not constitute a material change in either the physical location or in the scope of the proposed project because CHC will be developing its project in a manner which is not materially different from the representations made in its application and not inconsistent with any conditions that were placed on its CON. The new site is located in close proximity to the primary site identified in CHC’s application. The change of site will not materially impact the project’s original capital costs.

CONCLUSION

For the foregoing reasons, and assuming the statements of fact in the request to be true, I conclude that the change in the site for CHC’s 7-bed hospice inpatient facility will not violate N.C.G.S. § 131E-181, because it will not constitute a material change in the physical location of the proposed facility, will not constitute a failure to satisfy a condition of the CON in violation of N.C.G.S. § 131E-189(b), and is not subject to additional certificate of need review as a new institutional health service under N.C.G.S. § 131E-176(16).

This ruling is not intended, and should not be interpreted to authorize any increase in the approved capital expenditure for this project, a change in the approved timetable, a change in the conditions placed on the CON, or any other change in the approved project.

This _____ day of April, 2006.

Robert J. Fitzgerald, Director
Division of Facility 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

Michael C. Hale
Vice-President of Legal Services
Community Health, Inc.
P.O. Box 8109
Rocky Mount, NC 27804-1109

This the 19th day of April, 2006.

Jeff Horton
Chief Operating Officer