

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY HOSPICE OF SURRY)
COUNTY, INC. D/B/A MOUNTAIN VALLEY) **DECLARATORY RULING**
HOSPICE AND PALLIATIVE CARE,)
Project I.D. No. G-7693-06)**

I, Robert J. Fitzgerald, 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.

Hospice of Surry County, Inc. d/b/a Mountain Valley Hospice and Palliative Care. (“MVHPC”) has requested a declaratory ruling allowing for a change in the site for Project I.D. No. G-7693-06 on the grounds that the change does not constitute a material change in physical location or a failure to materially comply with the representations made by MVHPC in its Certificate of Need (“CON”) application for its project. N.C.G.S. §§ 131E-181(a) and (b). This ruling will be binding upon the Department 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.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. Denise Watson, Executive Director of MVHPC, has requested this ruling on behalf of MVHPC and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Effective 2 April 2007, the CON Section issued a CON to MVHPC to develop a 20-bed hospice facility with thirteen inpatient hospice and seven residential hospice beds. The approved 20-acre site is located at 301 Alex Lane in Surry County (the “Original Site”). MVHPC represents that, subsequent to obtaining the CON, it and its architect / engineer determined that the site is “problematic with regard to site development costs and timeliness, as well as less favorable road access.” MVHPC states that it has identified a nearby parcel of land that it believes will serve effectively as the site for its facility (the “Proposed Site”).

MVHPC states that the Proposed Site is on Zephyr Road, a main east/west thoroughfare connecting I-77 and Dobson in Surry County. The Proposed Site is less than a mile from the Original Site. The purchase price of the Proposed Site is \$260,000, compared to the price of \$350,000 for the Original Site. The Proposed Site has appropriate zoning, and water and sewer are available. MVHPC states that it does not contemplate any change to the scope or scale of the services proposed in its original application.

ANALYSIS

The CON law would require a full review of MVHPC’s proposed change of host site if that change were to represent a material change in the physical location or scope of the project. N.C.G.S. § 131E-181(a). The proposed change of the site for MVHPC’s project does not constitute a material change in the physical location because of the close proximity of the Proposed Site to the Original Site. The change will not affect the scope of services offered or the costs and charges to the public. In addition, there is no proposed change in the person named in the application such that a violation of N.C.G.S. § 131E-181(a) would result.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw MVHPC's CON if MVHPC fails to develop the service in a manner consistent with the representations made in the application or with any conditions that were placed on the CON. MVHPC will not be developing its project in a manner that is materially different from the representations made in its application, nor will it be developing its project in a manner that is inconsistent with any of the conditions that were placed on its CON.

CONCLUSION

For all the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the substitution of the Proposed Site for the Original Site for MVHPC's hospice facility (Project I.D. No. G-7693-06) 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 CON in violation of N.C.G.S. § 131E-189(b).

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

This the _____ day of _____, 2007.

Robert J. Fitzgerald, 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

Denise Watson
Executive Director
Mountain Valley Hospice & Palliative Care
401 Technology Lane, Suite 200
Mount Airy, NC 27030

This the _____ day of _____, 2007.

Jeff Horton
Chief Operating Officer