

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY THE NORTH MECKLENBURG)
NURSING HOME, LLC AND THE)
CHARLOTTE MECKLENBURG HOSPITAL) **DECLARATORY RULING**
AUTHORITY d/b/a AUTUMN CARE OF)
MECKLENBURG)
Project I.D. No. F-7716-06)**

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 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.

The North Mecklenburg Nursing Home, LLC and the Charlotte Mecklenburg Hospital Authority d/b/a Autumn Care of Mecklenburg (“Autumn Care”) requested a declaratory ruling allowing for a change of sites for Project I.D. No. F-7716-06 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 Autumn Care 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. Maureen Demarest Murray and Allyson Jones Labban of Smith Moore LLP have requested this ruling on behalf of Autumn Care and have provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Effective 24 April 2007, the CON Section issued a CON to Autumn Care for Project F-7716-06 to relocate 102 existing skilled nursing beds at Huntersville Oaks, to a new replacement facility at located at the intersection of Magnolia Estates Drive and West Catawba Avenue in Cornelius, Mecklenburg County, North Carolina (the "Original Site"). Autumn Care now has requested a declaratory ruling approving an alternate site for the facility: 19600 Zion Street, Cornelius, Mecklenburg County (the "Alternate Site").

Autumn Care represents that the approved cost for the Original Site was \$150,000 per acre, for a total property cost of \$1,500,000. However, after issuance of the CON, the owner of the Original Site doubled the cost to \$300,000 per acre, for a total property cost of \$3,000,000. The new cost for the Original Site would exceed the 15% cost overrun permitted on the project's total capital costs.

Autumn Care proposes an alternate location for the new facility at 19600 Zion Street, Cornelius, N.C., ("Alternate Site") approximately 2.75 miles from the Original Site location. The Alternate Site will be leased from Mt. Zion United Methodist Church for a period of 35 years with six 5 year renewal options for a total lease period of 65 years. Lease payments will be calculated based on a land value of \$84,600 per acre plus a capitalization rate of 6.5%, for a total cost of \$846,000.

The capital cost of the Alternate Site is \$654,000 less than the Original Site cost of \$1,500,000. Further, Autumn Care represents that the site change will not increase the project's capital or operating costs and it will not affect the scope of services offered or the staffing. Because of the proximity of the Alternate Site to the Original Site, the change will not affect the

population to be served by the project, the scope of services to be offered by Autumn Care, or the staffing.

ANALYSIS

The CON law would require a full review of Autumn Care' proposed change of 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 Autumn Care' project does not constitute a material change in the physical location or the scope of the proposed project because locating the project at the Alternate Site will not affect the scope of services offered or the costs and charges to Autumn Care or to the public. Because of the close proximity of the Alternate Site to the Original Site, the change will not affect the population to be served. 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 Autumn Care's CON if Autumn Care 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. Autumn Care 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 change of site from intersection of Magnolia Estates Drive and West Catawba Avenue in Cornelius to 19600 Zion Street in Cornelius will not constitute a material change in the physical location or scope of the project (Project I.D. No. F-7714-06), 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 August, 2008.

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

Maureen Demarest Murray
Allyson Jones Labban
SMITH MOORE, LLP
Post Office Box 21927
Greensboro, North Carolina 27420

This the _____ day of August, 2008.

Jeff Horton
Acting Director