

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY HAYWOOD HEALTH)
INVESTORS, LLC / HAYWOOD HEALTH) **DECLARATORY RULING**
HOLDINGS, LLC d/b/a HAYWOOD HOUSE)
Project I.D. No. A-8083-08)**

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.

Haywood Health Investors, LLC / Haywood Health Holdings, LLC d/b/a Haywood House (hereinafter “Haywood House”) has requested a declaratory ruling allowing for a change in location for Project I.D. No. A-8083-08 on the grounds that the change does not constitute a material change in scope or physical location or a failure to materially comply with the representations made by Haywood House 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. Gina L. Bertolini of K&L Gates, LLP has requested this ruling on behalf of Haywood House and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Haywood House filed a CON application to construct a new 50-bed adult care home with a 24-bed special care unit in Haywood County. The application was approved by the CON Section, which issued a CON for the Project on September 29, 2008.

Haywood House's CON authorizes the construction of a 50-bed adult care home at 5593 Old Clyde Road, in Clyde, North Carolina. The alternative site is an existing building occupied by Canton Christian Convalescent Center, an existing nursing home located at 27 N. Main Street, in Canton, North Carolina, approximately 2.9 miles from the original site.

The lessor and lessee of Canton Christian Convalescent Center are filing a CON Application to relocate the existing nursing home facility to a new site in Haywood County in a building yet to be constructed.

Haywood House proposes to develop its new adult care home at the vacated Canton Christian Convalescent Center building at 27 N. Main Street, in Canton. The vacated building will be renovated and upfitted consistent with current code for a new adult care home.

Haywood House does not expect operating or capital costs to increase above those projected in the CON application as a result of the site change proposed herein.

ANALYSIS

The CON law would require a full review of Haywood House's site relocation from the Old Clyde Road site in Clyde, North Carolina to the N. Main Street site in Canton, North Carolina if that relocation were to represent a material change in the physical location or scope of the project. N.C.G.S. § 131E-181(a). The proposed site relocation does not constitute a material change in the physical location or the scope of the proposed project for the following reasons:

Both the original site and the alternative site are located within Haywood County, and within Haywood House's primary service area, as defined in their CON application.

The proposed site at 27 N. Main Street in Canton, North Carolina is approximately 2.9 miles from the originally proposed site at Old Clyde Road in Clyde, North Carolina.

Renovating the existing nursing home building for a new adult care facility will not affect the services described in the CON application, and the proposed charges and rates will not change.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw Haywood House's CON if Haywood House 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. Haywood House 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 the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the site relocation from 5593 Old Clyde Road in Clyde, North Carolina to 27 N. Main Street in Canton, North Carolina for Project I.D. No. A-8083-08 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 the _____ day of May, 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

K&L Gates, LLP
Gina L. Bertolini
430 Davis Drive, Suite 400
Morrisville, NC 27560

This the _____ day of May, 2009.

Jesse Goodman
Acting Chief Operating Officer