

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY RV NURSING HOME, LLC,)
d/b/a NORTHHAMPTON REHABILITATION) DECLARATORY RULING
CENTER and RICH HEALTHCARE, LLC)
Project I.D. No. L-8033-07)**

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 N.C.A.C. 14A .0103 under the authority granted me by the Secretary of the Department of Health and Human Services.

RV Nursing Home, LLC d/b/a Northampton Rehabilitation Center and Rich Healthcare, LLC (collectively “Northampton” or “Petitioners”) have requested a declaratory ruling allowing for a change of site for Project I.D. No. L-8033-07 on the grounds that the change does not constitute a material change in physical location. N.C.G.S. §§ 131E-181(a).

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. Gary S. Qualls, Colleen M. Crowley, William W. Stewart, Jr. and Katharine L. Schaeffer of the law firm of K&L Gates, LLP request this ruling on behalf of Northampton and have provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Northampton filed a certificate of need (“CON”) application to replace and relocate its 69-bed nursing home facility within Northampton County (the “Facility”). Northampton’s application, identified as Project I.D. No. L-8033-07, was conditionally approved, and a CON was issued April 15, 2008.

In its CON application, Northampton identified the proposed location for its replacement facility as NC Highway 46, Gaston, Northampton County (the “original site”). Since the issuance of the CON, it was discovered that the original location is no longer desirable for the development of the project. As a result, Northampton’s secondary site #3 (the “alternate site”), identified in the application, has been selected.

The alternate site, which is adjacent to the existing facility, has not been assigned a street name but is located on Jackson East Street and North Main Street in Rich Square, North Carolina. According to Northampton, developing the replacement nursing home at the alternate site will offer advantages such as ease of relocating patients, remaining in the community that has hosted the nursing home since 1992, and sharing the same location as the assisted living facility. Northampton asserts that building the facility on the alternate site will not increase the capital costs or the operating costs of its project. Access to the medically underserved will be equivalent because the facility will serve the same population as projected in the application.

Northampton now requests a declaratory ruling approving a change in address from the original site to the alternate site for Project ID No. L-8033-07 on the grounds that the change does not constitute a material change in physical location.

ANALYSIS

The CON law would require a full review of Northampton's 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 Northampton's Project ID No. L-8033-07 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 cost of the project. Because the alternate site is adjacent to the existing facility, the new facility will be closer to the existing facility than the original site. The facility will serve the same population as proposed in its application. In addition, there is no proposed change in the scope or 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 Northampton's CON if Northampton 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. Northampton will not develop its project in a manner that is materially different from the representations made in its application, nor will it develop 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 the original site to the alternate site, adjacent to the existing facility on Jackson East Street and North Main Street in Rich Square, North Carolina, for Northampton's 69-bed replacement nursing home facility (Project ID No. L-8033-07) will not constitute a material change in the physical location 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 August, 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 non-agency 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

Mr. Gary S. Qualls
Colleen M. Crowley
William W. Stewart, Jr.
Katharine L. Schaeffer
K&L Gates, LLP
430 Davis Drive, Suite 400
Morrisville, NC 27560

This the _____ day of August, 2009.

Jesse Goodman
Acting Chief Operating Officer