

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY AVANT & NUNN, LLC) DECLARATORY RULING
Project I.D. No. O-7934-07)**

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

Avant & Nunn, LLC (“Petitioner”) has requested a declaratory ruling allowing for a change in location for Project I.D. No. O-7934-07 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 Petitioner in its Certificate of Need (“CON”) application for its project. 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. Kenneth L. Burgess of Poyner & Spruill, LLP has requested this ruling on behalf of Petitioner and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

The Petitioner applied for and received a certificate of need to develop a 100-bed adult care home, to be known as Stone Bridge at Woodbury, on a site in Hampstead, North Carolina,

approximately two hundred yards or less from the site of Petitioner's existing skilled nursing facility known as Woodbury Wellness Center.

Petitioner has now encountered problems with sewer services at the original site. Petitioner has identified another site, which is located at Petitioner's existing skilled nursing facility, Woodbury Wellness Center.

There is sufficient available land at the Woodbury Wellness Center site to accommodate construction of the new adult care home for which Petitioner has received CON approval.

The approved adult care home must be physically attached to the existing Woodbury skilled nursing facility to take advantage of the existing unused sewer capacity, and therefore Petitioner will have to make certain minor physical plant modifications to the facility as initially proposed.

ANALYSIS

The CON law would require a full review of Petitioner's proposed change of location 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 location for Petitioner's approved adult care home does not constitute a material change in the physical location or the scope of the proposed project for the following reasons:

The new site and related structural modifications to the proposed adult care home as originally proposed and approved by the CON Section materially comply with the representations in the certificate of need application, and with the terms of the certificate of need.

Use of the new site for the new adult care home will not entail any change in the services that are described in the certificate of need application.

Relocating the facility to the proposed new site will not increase project costs beyond those approved in the original CON approval. Both the original site and the proposed new site are already owned by Petitioner.

There will be no increases in charges to the residents or in reimbursement from the State of North Carolina as a result of this site change and related minor structural modifications.

The relocation of the facility to the new site is not a material change since the site is less than two hundred yards from the original site.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw Petitioner's CON if Petitioner 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. Petitioner 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 proposed change in location for Petitioner's approved Project I.D. No. O-7934-07, 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 January, 2010.

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

Kenneth L. Burgess
Poyner & Spruill, LLP
P.O. Box 1801
Raleigh, NC 27602-1801

This the _____ day of January, 2010.

Jesse Goodman
Acting Chief Operating Officer