

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY CGM INVESTMENTS, LLC)
AND CANTON CHRISTIAN)
CONVALESCENT CENTER, LLC) **DECLARATORY RULING**
d/b/a CANTON CHRISTIAN)
CONVALESCENT CENTER)
Project I.D. No. A-8299-09)**

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.

CGM Investments, LLC (Lessor) and Canton Christian Convalescent Center, LLC (Lessee) d/b/a Canton Christian Convalescent Center (collectively “Applicants”) has requested a declaratory ruling allowing for a change in location for Project I.D. No. A-8299-09 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 the Applicants 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. William W. Stewart of K&L Gates, LLP has requested this ruling on behalf of the Applicants and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

The Applicants' CON authorizes the construction of "a replacement 114-bed nursing facility in Haywood County at Parcel #8647-72-1503, adjacent to 5636 Old Clyde Road, Clyde, Haywood County, North Carolina 28721 (the "Original Site").

The Alternative Site is at Parcel #7686-07-1348 located at the corner of Fisher Loop and Amos Court in the town of Maggie Valley, Haywood County, North Carolina.

The Alternative Site is approximately ten miles from the Original Site.

Both the Original Site and the Alternative Site are located within Haywood County. The Alternative Site is within Canton Christian Convalescent Center's primary service area, Haywood County, and does not impact Canton Christian Convalescent Center's need determination or the population to be served.

Water and sewer service is closer to the Alternative Site.

There will be no increase in the capital costs or operating costs as a result of this change in site.

ANALYSIS

The CON law would require a full review of the Applicants' site relocation from the primary site at 5636 Old Clyde Road in Clyde, North Carolina to the secondary site at the corner of Fisher Loop and Amos Court in Maggie Valley, 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:

The secondary site at Fisher Loop and Amos Court in Maggie Valley is approximately ten miles away from the primary site at 5636 Old Clyde Road in Clyde.

The change in site will not increase the Applicants' capital or operating costs as compared to the original site.

Access to the medically underserved will be equivalent because the population to be served is the same due to the proximity of the two sites.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw the Applicants' CON if the Applicants fail 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. The Applicants 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 5636 Old Clyde Road, Clyde, North Carolina, Haywood County, North Carolina to the corner of Fisher Loop and Amos Court in the town of Maggie Valley, Haywood County, North Carolina for Project I.D. No. A-8299-09 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 February, 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

K&L Gates, LLP
William W. Stewart, Esquire
430 Davis Drive, Suite 400
Morrisville, NC 27560

This the _____ day of February, 2010.

Jesse Goodman
Acting Chief Operating Officer