

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY LOWER CAPE FEAR)
HOSPICE, INC.) DECLARATORY RULING
Project I.D. No. O-8093-08)**

I, Jeff Horton, as 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.

Lower Cape Fear Hospice, Inc. (hereinafter “LCFH”) has requested a declaratory ruling allowing for a change in location for Project I.D. No. O-8093-08 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 LCFH 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. Lauren L. Bystrom has requested this ruling on behalf of LCFH and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

LCFH was awarded a CON to construct a 7-bed inpatient hospice facility in Brunswick County, as set forth in Project I.D. No. O-8093-08.

Pursuant to the CON, the approved site for the 7-bed inpatient hospice facility was to be on either “Poplar Branch Road or Benton Road, Bolivia, North Carolina.”

After further discussion and review, it has been determined that locating the 7-bed inpatient hospice facility at a site on Old Ocean Highway in Bolivia, North Carolina will be more effective and provide better patient access, and a better patient environment.

The new proposed site is less than 2.5 miles from the Poplar Branch Road site and less than 1.0 mile from the Benton Road site.

There will be no increase in costs as a result of this change in site. Because the Old Ocean Highway property is being donated to LCFH, the total cost of the project will actually decrease.

ANALYSIS

The CON law would require a full review of LCFH’s site relocation from the Poplar Branch Road site or the Benton road site to the Old Ocean Highway site 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 Old Ocean Highway site is also in Bolivia, North Carolina, and is less than 2.5 miles from the Poplar Branch Road site and less than 1.0 mile from the Benton Road site.

The change in site will not increase LCFH’s capital or operating costs as compared to the original sites.

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.

The site relocation will not affect the scope of services offered, the costs or charges, or the level of occupancy.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw LCFH's CON if LCFH 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. LCFH 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 Poplar Branch Road or Benton Road, Bolivia, Brunswick County, North Carolina to Old Ocean Highway in Bolivia, North Carolina for Project I.D. No. O-8093-08 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 April, 2010.

Jeff Horton, 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

Lauren L. Bystrom
1414 Physicians Drive
Wilmington, North Carolina 28401

This the _____ day of April, 2010.

Jesse Goodman
Chief Operating Officer