

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

<b>IN RE: REQUEST FOR DECLARATORY</b>	)	
<b>RULING BY NATIVE ANGELS</b>	)	
<b>HEMOCARE AGENCY, INC. and</b>	)	<b>DECLARATORY RULING</b>
<b>ANGEL EXCHANGE, LLC</b>	)	
<b>Project I.D. No. N-7840-07</b>	)	

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.

Native Angels Homecare Agency, Inc. and Angel Exchange, LLC (collectively “Native Angels”) have requested a declaratory ruling allowing for a change in the site for Project I.D. No. N-7840-07 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 Native Angels 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. Renee J. Montgomery of Parker Poe Adams and Bernstein, LLP, counsel for Native Angels, has requested this ruling on behalf of Native Angels and has provided the material facts upon which this ruling is based.

## **STATEMENT OF THE FACTS**

Effective 29 April 2008, the CON Section issued a CON to Native Angels to construct and operate an eight-bed inpatient hospice facility to be located on Highway 211 in Red Springs, Robeson County (the “Original Site”). Native Angels represents that, subsequent to the issuance of the CON, it determined that another location, also owned by Native Angels, would better serve the needs of its hospice patients (the “Proposed Site”).

The Proposed Site is identified as a 28.678-acre tract of land at 201 Livermore Drive in Pembroke, Robeson County. Native Angels states that the Proposed Site is approximately eight miles from the Original Site and is located adjacent to Angel Exchange, the headquarters for Native Angels’ administrative and medical operations. Further, Native Angels states that since the Proposed Site is already owned by Native Angels, moving the facility to the Proposed Site will not increase the capital costs, operating costs, or charges proposed in its CON application. Native Angels represents that it does not contemplate any change to the scope or scale of the services proposed in its original application.

## **ANALYSIS**

The CON law would require a full review of Native Angels’ 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 Native Angels’ project does not constitute a material change in the physical location because of the close proximity of the Proposed Site to the Original Site. The change will not affect the scope of services offered or the costs and charges to the public. In addition, there is no proposed change in 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 Native Angels' CON if Native Angels 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. Native Angels 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 all the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the substitution of the Proposed Site for the Original Site for Native Angels' eight bed inpatient hospice facility (Project I.D. No. N-7840-07) 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 the \_\_\_\_\_ day of \_\_\_\_\_, 2010.

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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**

Renee J. Montgomery  
Parker Poe Adams & Bernstein, LLP  
Wachovia Capitol Center  
150 Fayetteville Street, Suite 1400  
Raleigh, NC 27601

This the \_\_\_\_\_ day of \_\_\_\_\_, 2010.

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Jesse Goodman  
Chief Operating Officer