

**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 VOCA CORPORATION</b>	)	
<b>NORTH CAROLINA D/B/A</b>	)	
<b>COMMUNITY ALTERNATIVES</b>	)	<b>DECLARATORY RULING</b>
<b>NORTH CAROLINA</b>	)	
<b>Project I.D. No. F-8242-08</b>	)	

I, Drexdal Pratt, as Director of the Division of Health Service Regulation, North Carolina Department of Health and Human Services (“Department”) 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.

VOCA Corporation North Carolina d/b/a Community Alternatives North Carolina (“Community Alternatives”) has requested a declaratory ruling allowing for a site relocation for Project I.D. No. F-8242-08 on the grounds that the site relocation does not constitute a material change in scope or physical location or a failure to materially comply with the representations made by Community Alternatives in its Certificate of Need (“CON”) application for its project. N.C. Gen. Stat. §§ 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. Gen. Stat. § 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. Robert V. Bode of Bode, Call & Stroupe, L.L.P. has requested this ruling on behalf of Community Alternatives and has provided the material facts upon which this ruling is based.

## **STATEMENT OF THE FACTS**

On February 23, 2010, Community Alternatives was issued a CON, Project I.D. No. F-8242-08, to construct a six-bed Intermediate Care Facility for the Mentally Retarded (ICF/MR) at 1200 Waycross Drive, Charlotte in Mecklenburg County. The originally-proposed site was found unsuitable so Community Alternatives secured a new site at 8205 Browne Road, Charlotte (“Browne Road site”).

Community Alternatives was issued a separate CON, Project I.D. No. F-7714-06, for a six-bed ICF/MR group home to be located at 1812 McClean Road, Charlotte in Mecklenburg County. Due to several delays with the project site location, Community Alternatives requested to use the Browne Road site for Project I.D. No. F-7714-06 instead of Project I.D. No. F-8242-08. The Department approved the use of the Browne Road site for Project I.D. No. F-7714-06 in a Declaratory Ruling issued March 31, 2011. That Declaratory Ruling stated that an alternative site would be named for Project I.D. No. F-8242-08.

Community Alternatives now requests a location at 4109 Enoch Drive, Charlotte (“Enoch Drive site”) in Mecklenburg County as the alternative site for Project I.D. No. F-8242-08. Community Alternatives thus seeks approval to relocate Project I.D. No. F-8242-08 from the Browne Road site to the Enoch Drive site.

## **ANALYSIS**

The CON law would require a full review of Community Alternatives’ proposed site relocation if that change were to represent a material change in the physical location or scope of the project. *See* N.C. Gen. Stat. § 131E-181(a). The proposed site relocation from 8205 Browne Road to 4109 Enoch Drive does not constitute a material change in the physical location or the scope of the proposed project for the following reasons:

Community Alternatives cannot use the Brown Road site for the proposed facility because that site has already been approved by the Agency for another project being developed by the applicant. The proposed site on Enoch Drive site is within nine miles of the previously-approved site. The alternate site is currently zoned for the proposed facility. Community Alternatives states that it will not incur any additional capital cost for the new site. Community Alternatives intends to provide all services as proposed in its CON Application, to the same populations identified, including the medically underserved. Community Alternatives contends that the scope of the project will remain the same and that the proposed change in site location will not materially change the terms of the CON between Community Alternatives and the Agency.

N.C. Gen. Stat. § 131E-189(b) allows the Department to withdraw Community Alternatives' CON if Community Alternatives 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. Community Alternatives will not be developing its project in a manner that is materially different from the representation 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 Community Alternatives' proposed relocation of Project ID. No. F-8242-08 from the Browne Road site to the Enoch Drive site will not violate N.C. Gen. Stat. § 131E-181 and will not constitute a failure to satisfy a condition of the Certificate of Need in violation of N.C. Gen. Stat. § 131E-189(b).

This the \_\_\_\_\_ day of August, 2012.

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Drexdal Pratt, 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**

Robert V. Bode  
BODE, CALL & STROUPE, LLP  
Post Office Box 6338  
Raleigh, NC 27628-6338

This the \_\_\_\_\_ day of August, 2012.

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Dr. Patsy Christian, Assistant Director  
Healthcare Quality and Safety