

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

**IN RE: REQUEST FOR DECLARATORY )  
RULING BY QUEEN CITY HEALTH )  
INVESTORS, LLC AND QUEEN CITY AL )       **DECLARATORY RULING**  
HOLDINGS, LLC )  
Project I.D. No. F-8523-10 )**

I, Drexdal Pratt, 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.

Queen City Health Investors, LLC (Lessor) and Queen City AL Holdings, LLC (Lessee) (collectively “Applicants”) has requested a declaratory ruling allowing for a change in location for Project I.D. No. F-8523-10 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, Jr. 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 90-bed ACH facility with a 48-bed special care unit in Northwest Mecklenburg County" at 7326 Bellhaven Boulevard, Charlotte, North Carolina 28214 (the "Original Site"). The Alternative Site is located on two parcels at 13600 S. Tryon Street and 13624 S. Tryon Street in Charlotte, Mecklenburg County, North Carolina 28278-7623.

The Alternative Site is 14.1 miles from the Original Site, and within the same city and county.

Water and sewer are in closer proximity to the Alternative Site, and the area around the Alternative site has less industrial property than the Original Site.

The Alternative Site is closer in proximity to physician offices, fire department, hospital, ambulance, pharmacy, and public transportation services than the Original Site.

The Alternative Site is closer in proximity to Interstate 485, improving access for the population served.

The Alternative Site also creates more space between this project and others approved in the same review. It is not near any existing ACH facility in Mecklenburg County.

## **ANALYSIS**

The CON law would require a full review of the Applicants' site relocation from the Original Site to the Alternative 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 Alternative Site is 14.1 miles from the Original Site, and located in the same city and county (Charlotte, Mecklenburg).

The Applicants will be developing its project in a manner consistent with the representations made in its Application and with any conditions that were placed on its CON.

Building the ACH facility on the Alternative Site will minimally increase the capital costs as compared to the Original Site listed in the CON Application, and will not increase the operating costs.

The Alternative Site provides better access to physician offices, fire department, hospital, ambulance, pharmacy, and public transportation services.

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 Applicants' may develop their 90-bed ACH facility with a 48-bed special care unit at the Alternative Site identified in this request, instead of the Original Site identified in the Application.

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**

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

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

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Dr. Patsy Christian, Assistant Director  
Healthcare, Quality and Safety