

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

**IN RE: REQUEST FOR DECLARATORY )  
RULING BY E.N.W., LLC and BELLAROSE )  
NURSING AND REHAB CENTER )       DECLARATORY RULING  
Project I.D. No. J-8729-11 )**

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.

E.N.W., LLC and BellaRose Nursing and Rehab Center, Inc. (BellaRose) has requested a declaratory ruling allowing for a change in location for Project I.D. No. J-8729-11 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 BellaRose 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. Joy Health of LAW OFFICE OF JOY HEALTH has requested this ruling on behalf of BellaRose and has provided the material facts upon which this ruling is based.

## **STATEMENT OF THE FACTS**

BellaRose was granted a Certificate of Need on July 30, 2013 to develop a new 100-bed nursing care facility. The approved location for the facility was 5120 Rock Quarry Road in Raleigh, North Carolina (Wake County). BellaRose seeks to change the facility site to a new location at a site identified as 0 Benson Road near the intersection of Benson Road and New Bethel Church Road in Garner, North Carolina (Wake County).

## **ANALYSIS**

The CON law would require a full review of BellaRose's site relocation, 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 proposed site is approximately 7 miles and an 11 minute driving time from the original site. The proposed site is within the St. Mary Township in Wake County which is the applicants proposed service area. The applicant states the proposed facility will continue to be accessible to the patients in the applicant's proposed service area. BellaRose proposes to develop the project in a manner that will satisfy all other requirements and representations made in its original CON application.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw BellaRose's CON if BellaRose 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. BellaRose 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, other than previously discussed.

## CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the change of location for the facility from 5120 Rock Quarry Road in Raleigh, North Carolina (Wake County) to a new location at a site identified as 0 Benson Road near the intersection of Benson Road and New Bethel Church Road in Garner, North Carolina (Wake County) 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, 2014.

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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**

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This the \_\_\_\_\_ day of April, 2014.

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Cheryl Ouimet  
Chief Operating Officer