

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY ROSE GLEN MANOR ASSISTED) DECLARATORY RULING
LIVING, LLC, d/b/a ROSE GLEN MANOR)
Project I.D. No. D-7643-06)**

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 Statutes § 150B-4 and 10A NCAC 14A .0103, under the authority granted me by the Secretary of the Department of Health and Human Services.

Rose Glen Manor Assisted Living, LLC, d/b/a Rose Glen Manor (“Rose Glen Manor”) has requested a declaratory ruling allowing for a change in location for Project I.D. No. D-7643-06 (“Project”) 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 Rose Glen Manor in its Certificate of Need (“CON”) application for this 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. Chuck White, Authorized Representative for Rose Glen Manor Assisted Living, LLC, has requested this ruling on behalf of Rose Glen Manor and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

On January 23, 2007, Rose Glen Manor was issued a Certificate of Need to develop a 60-bed adult care home, with a 16-bed special care unit, in Wilkes County. The approved location for the facility was 609 West Main Street, Wilkesboro, Wilkes County, North Carolina (“Original Site”). On August 23, 2007, a declaratory ruling was granted by the Division of Health Service Regulation (“DHSR”) authorizing Rose Glen Manor to move the location to a proposed site on Corporation Drive, Wilkesboro, Wilkes County, North Carolina, after Rose Glen Manor discovered that the removal of pipes running under the Original Site would significantly increase development costs. On July 1, 2010, Rose Glen Manor notified DHSR that it desired to change the ownership structure of the entities that owned Rose Glen Manor. On August 10, 2010, DHSR issued a Transfer for Good Cause, allowing transfer of the certificate of need to the new corporate owner of Rose Glen Manor. Rose Glen Manor then informed DHSR that it would resume attempts to develop the Project on the Original Site. On August 25, 2014, Rose Glen Manor informed DHSR that it again seeks to change the approved site from the Original Site to a new site located at the intersection of Main Street and Independence Avenue, North Wilkesboro, Wilkes County, North Carolina (listed as Lot 5, Block 46, Independence Avenue, North Wilkesboro, Wilkes County) (“Proposed Site”).

ANALYSIS

The CON law would require a full review of Rose Glen Manor’s relocation to the Proposed Site if that relocation were to represent a material change in the scope or physical location of the Project. N.C.G.S. § 131E-181(a). The relocation to the Proposed Site does not constitute a material change in the scope or physical location of the Project for the following reasons:

The Proposed Site is located in North Wilkesboro, Wilkes County, North Carolina, approximately 1.5 miles away from the Original Site. Since receiving its CON, Rose Glen Manor has discovered dry cleaning chemicals in the groundwater at the Original Site in concentrations exceeding North Carolina regulatory standards, which makes the Original Site less than optimal to develop the Project. Rose Glen Manor has filed the required report regarding groundwater contamination with the North Carolina Department of Environmental and Natural Resources. Since that time, Rose Glen Manor has entered into an agreement to purchase the Proposed Site from the Town of North Wilkesboro. In addition, because the Town of North Wilkesboro is ensuring appropriate water and sewer services at the Proposed Site, as well as sharing in grading costs as a part of the purchase price, the capital expenditures for development of the Project at the Proposed Site will be less than if the Project were developed at the Original Site. Further, Rose Glen Manor proposes to develop the Project in a manner that will satisfy all other requirements and representations made in its original CON application and there will be no change in access for underserved populations.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw Rose Glen Manor's CON if Rose Glen Manor 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. Rose Glen Manor will not develop this Project in a manner that is materially different from the representations made in its application or 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 change of location of the facility from 609 West Main Street, Wilkesboro, Wilkes

County, North Carolina, to a new site located at the intersection of Main Street and Independence Avenue, North Wilkesboro, Wilkes County, North Carolina (listed as Lot 5, Block 46, Independence Avenue, North Wilkesboro, Wilkes County), will not constitute a material change in the scope or physical location 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 October, 2014.

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 a first-class, postage pre-paid envelope addressed as follows:

CERTIFIED MAIL

Chuck White
ROSE GLEN MANOR ASSISTED LIVING, LLC
Post Office Box 2568
Hickory, North Carolina 28603

This the _____ day of October, 2014.

Cheryl Ouimet
Chief Operating Officer