

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY HOSPICE OF WAKE COUNTY) DECLARATORY RULING
Project I.D. No. #J-7454-05**

I, Robert J. Fitzgerald, as Director of the Division of Facility Services, 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.

Hospice of Wake County. (“HOWC”) has requested a declaratory ruling allowing for a change in site for Project I.D. No. J-7454-05 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 HOWC 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. Gary S. Qualls of Kennedy Covington Lobdell & Hickman, PLLC has requested this ruling on behalf of HOWC and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Effective 28 August 2006, the CON Section issued a CON to HOWC for Project I.D. No. J-7454-05 to construct a facility for administrative offices and program space (the “Project”) to

be located on Weston Oaks Court in Cary, North Carolina (the “Original Site”). HOWC now seeks to construct the Project on a site not identified in the Application (the “Alternative Site”). The Alternative Site is located on the north side of Trinity Road between Interstate 40 and Trenton Road, in Raleigh, North Carolina.

HOWC represents that the Alternative Site is at the same location as the hospice inpatient and residential care facility for which it has received a CON. HOWC states that the purchase price for the Original Site is \$607,662, while the Alternative Site is available by a land lease for two consecutive 25-year terms at a rate of \$1 per year. The change to the Alternative Site, therefore, would reduce capital costs of the Project by \$607,612, and would not increase operating costs above those projected in HOWC’s application for the Project.

HOWC states that the Alternative Site is located 6.5 miles from the Original Site. It represents that it will develop the Project in a manner consistent with the representations made in the Application and with any non-site-specific conditions placed on its CON. It states that access to the medically underserved and the remainder of the originally identified population will be equivalent because the same population as projected in its application will be served, and because of the proximity of the two sites.

ANALYSIS

The CON law would require a full review of HOWC’s 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 HOWC’s project to the Alternative Site does not constitute a material change in the physical location or the scope of the proposed project because it will not affect the scope of services offered or increase the costs and charges to

HOWC or to the public for the Project. 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 HOWC's CON if HOWC either fails to develop the Project in a manner consistent with the representations made in the application or with any conditions that were placed on the CON. HOWC will not be developing the 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 subject to the conditions set out herein, the substitution of the Alternative Site for the Original Site for HOWC's facility for hospice administrative offices and program space (Project I.D. No. Project I.D. No. J-7454-05) 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 ruling is not intended, and should not be interpreted, to authorize any increases in the approved capital expenditure for this project, a change in the approved timetable, a change in the conditions placed on the certificate of need, or any other change in the approved project.

This the _____ day of November, 2006.

Robert J. Fitzgerald, Director
Division of Facility Services
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

Gary S. Qualls
Kennedy Covington Lobdell & Hickman, PLLC
2801 Slater Road, Suite 120
Morrisville, NC 27602

This the 15th day of November, 2006.

Jeff Horton
Chief Operating Officer