

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

**IN RE: REQUEST FOR DECLARATORY )  
RULING BY BRUNSWICK COMMUNITY ) DECLARATORY RULING  
HOSPITAL, LLC AND NOVANT HEALTH, INC. )  
Project I.D. No. O-7767-06 )**

I, Robert J. Fitzgerald, 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.

Brunswick Community Hospital, LLC (“BHC”) and Novant Health, Inc. (“Novant”) (collectively “Petitioners”), have requested a declaratory ruling allowing for a change of site for Project I.D. No. O-7767-06 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 BCH 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. Renee J. Montgomery and Robert A. Leandro of Parker Poe Adams & Bernstein, LLP have requested this ruling on behalf of Petitioners and have provided the material facts upon which this ruling is based.

## **STATEMENT OF THE FACTS**

Effective 1 June 2007, the CON Section issued a CON to BCH for Project O-7767-06 to build a replacement hospital in Brunswick County, North Carolina. Novant is the parent company of BCH. BCH represented in its CON application that it would build the new facility on a 37-acre tract of land located at the intersection of College Road and Highway 17 in Bolivia, North Carolina (the "Original Site"). BCH was to purchase the Original Site for \$50,000 per acre. Petitioners now request a declaratory ruling approving an alternate site for the facility at a location at the intersection of Highway 17 and Old Ocean Highway (Brunswick County Tax Parcel I.D. #15200044) (the "Alternate Site").

BCH states that the property it proposes to purchase for the Alternate Site for its project is 37 acres at \$50,000 per acre. Therefore, it represents that the capital costs for the project will not be affected by this site change. It states that the zoning for both sites is the same. According to BCH, the Alternate Site offers several advantages over the Original Site: better and safer access to Highway 17, proximity to public utilities, and less wetland, which will provide more usable land for future expansion.

Petitioners represent that the Alternate Site is within one and a half miles of the Original Site, within the same zip code, and closer to the existing BCH in Supply, North Carolina, so the population to be served will not be affected by the change.

## **ANALYSIS**

The CON law would require a full review of BCH'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 BCH's project does not constitute a material change in the physical location or the scope of the proposed project because locating

the project at the Alternate Site will not affect the scope of services offered or the costs and charges to Community Alternatives or to the public. Because of the close proximity of the Alternate Site to the Original Site, the change will not affect the population to be served. 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 BCH's CON if BCH 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. BCH 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 all the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the change of site from the Original Site to the Alternate Site for BCH's replacement facility (Project I.D. No. O-7767-06) 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 December, 2007.

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Robert J. Fitzgerald, 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**

Renee J. Montgomery  
Robert A. Leandro  
Parker Poe Adams & Bernstein, LLP  
150 Fayetteville Street  
Suite 1400  
Raleigh, NC 27602-0389

This the \_\_\_\_\_ day of December, 2007.

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Jeff Horton  
Chief Operating Officer