

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY THE EVERGREENS, INC.)
and ASHTON PLACE HEALTH) **DECLARATORY RULING**
AND REHAB, LLC)
Project I.D. No. G-7720-06)**

I, Jeff Horton, as Acting 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.

The Evergreens, Inc. and Ashton Place Health and Rehab, LLC (collectively “Ashton Place”) have requested a declaratory ruling allowing for a change in host sites for Project I.D. No. G-7720-06 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 Ashton Place 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. Maureen Demarest Murray of Smith Moore LLP has requested this ruling on behalf of Ashton Place and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

On May 1, 2007, the CON Section issued a CON for Project I.D. No. G-7720-06 authorizing the Evergreens to relocate 134 nursing beds to a new nursing facility to be constructed on a site located originally at 10 Franz Warner Parkway, Rock Creek Center, Whitsett, North Carolina, and to be leased to and operated by Ashton Place.

On October 8, 2007 Ashton Place submitted a Request for Declaratory Ruling asking for permission to develop the approved nursing facility at an alternate site located at 400/420 First Street in Gibsonville, North Carolina.

On October 24, 2007 a Declaratory Ruling was issued approving the development of the approved nursing facility at the Gibsonville alternate site.

Since issuance of the CON and the first Declaratory Ruling, Ashton Place has determined that several issues exist that no longer make the site at 400/420 First Street suitable for the approved nursing facility, primarily environmental factors that would increase the cost and cause a delay of the project.

The new alternative site at 5585 Burlington Road in McLeansville is two miles from the original site and less costly than the first alternative site in Gibsonville. The new alternative site in McLeansville is also closer to the existing Evergreens facility, which should make the transition to the new facility easier for residents and families.

ANALYSIS

The CON law would require a full review of Ashton Place's proposed change of host 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 host site for Ashton Place's project does

not constitute a material change in the physical location or the scope of the proposed project for the following reasons:

The new alternative site at 5585 Burlington Road, McLeansville is two miles from the original site listed in the CON application.

The cost of the new alternative site will be approximately \$150,000 less than the original site and even more cost effective compared to the alternative site in Gibsonville.

The new alternative site is closer to the existing Evergreens facility, which should make the transition and access to the new facility easier for residents and families.

The new alternative site should provide easier access for existing staff.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw Ashton Place's CON if Ashton Place 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. Ashton Place 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 substitution of 5585 Burlington Road in McLeansville for 400/420 First Street in Gibsonville as a host site for Ashton Place's 134 nursing bed relocation, Project I.D. No. G-7720-06, 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 the _____ day of July, 2008.

Jeff Horton, Acting 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

Maureen Demarest Murray
300 North Greene Street
Suite 1400
Greensboro, NC 27420

This the ____ day of July, 2008.

Jeff Horton
Acting Director