

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY EDUCARE COMMUNITY) DECLARATORY RULING
LIVING CORPORATION D/B/A COMMUNITY)
ALTERNATIVES NORTH CAROLINA)
Project I.D. No. F-7714-06)**

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.

EduCare Community Living Corporation d/b/a Community Alternatives North Carolina. (“Community Alternatives”) has requested a declaratory ruling regarding Project I.D. No. F-7714-06 to change the address of the proposed building in Charlotte 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 Community Alternatives 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. Fred M. Wood, Jr., and C. Marshall Lindsay of Sonnenschein Nath & Rosenthal LLP have requested this ruling on behalf of Community Alternatives and have provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Effective 10 March 2007, the CON Section issued a CON to Community Alternatives for Project ID No. F-7714-06 to relocate an existing six-bed Intermediate Care Facility for the Mentally Retarded (ICF/MR) to a new location at 1812 McClean Road, Charlotte, Mecklenburg County, North Carolina. On August 16, 2007, the Department issued a declaratory to Community Alternatives approving an alternate site, 1003 Breezewood Drive, Charlotte, Mecklenburg County, for the facility. A second declaratory ruling was issued by the Department on June 16, 2008 approving the development of the facility at 6745 and 6749 View Way Drive, Charlotte, Mecklenburg County. Community Alternatives intends to proceed with the development of the facility at the View Way Drive location but now requests a ruling to allow a change in the address of the facility because the entrance to the building will face Kings Road instead of View Way Drive. Thus, the facility's address would change to 8007 Kings Road, but there would not be a change in the physical location.

Community Alternatives represents that it seeks only to modify the address previously approved and that it intends to develop the project on the previously approved View Way Drive site. It represents that the upfit expense will be substantially similar to the expense projected in its CON application and does not anticipate that the new address will result in any increase in the capital cost of its project. Additionally, Community Alternatives represents that the address change will not affect its charges to the public, its operating costs or its pro forma financial statements. According to Community Alternatives, the new address will not affect the population to be served by the project, the scope of services to be offered by Community Alternatives, or the availability of ancillary or support services.

ANALYSIS

The CON law would require a full review of Community Alternatives' 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 address for Community Alternatives' project does not constitute a material change in the physical location or the scope of the proposed project or to the costs and charges to Community Alternatives or to the public. Because the actual site is the same, 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 Community Alternatives' CON if Community Alternatives 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. Community Alternatives 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 address from 6745 and 6749 View Way Drive to 8007 Kings Road in Charlotte for Community Alternatives' new facility (Project I.D. No. F-7714-06) 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 March, 2009.

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

Fred M. Wood, Jr.
C. Marshall Lindsay
Sonnenschein Nath & Rosenthal LLP
2100 Rexford Road, Suite 100
Charlotte, NC 28211

This the _____ day of March, 2009.

Jesse Goodman
Chief Operating Officer