

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

**IN RE: REQUEST FOR DECLARATORY )  
RULING BY JACKSON HEALTH )  
INVESTORS, LLC AND SKYLAND )       **DECLARATORY RULING**  
HOUSE, LLC )  
Project I.D. No. A-7318-05 )**

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.

Jackson Health Investors, LLC and Skyland House, LLC (hereinafter “JHI”) has requested a declaratory ruling allowing for a change in location for Project I.D. No. A-7318-05 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 JHI 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. Gina L. Bertolini of K&L Gates, LLP has requested this ruling on behalf of JHI and has provided the material facts upon which this ruling is based.

## **STATEMENT OF THE FACTS**

JHI filed a CON application to develop a new 90-bed adult care home in Jackson County. The application was conditionally approved by the CON Section, which issued a CON for the Project on June 13, 2007.

JHI's CON authorized the construction of a 90-bed adult care home on Savannah Drive, Dillsboro, Jackson County, North Carolina.

JHI later discovered that a sewer moratorium existed on the property, and therefore construction could not begin as planned.

Although the sewer moratorium was lifted on May 1, 2008, the site was determined not suitable for the project authorized by JHI's CON.

JHI has located an alternative site at 185 Brickfarm Road in Sylva, North Carolina, within one mile of the original site.

JHI does not expect operating or capital costs to increase above those projected in the CON application as a result of the site change proposed herein.

## **ANALYSIS**

The CON law would require a full review of JHI's site relocation from Savannah Drive in Dillsboro to Brickfarm Road in Sylva if that relocation were to represent a material change in the physical location or scope of the project. N.C.G.S. § 131E-181(a). The proposed site relocation does not constitute a material change in the physical location or the scope of the proposed project for the following reasons:

The alternative site at 185 Brickfarm Road is less than one mile from the original site on Savannah Drive.

The change in site will not increase JHI's capital or operating costs as compared to the original site.

Access to the medically underserved will be equivalent because the population to be served is the same due to the proximity of the two sites.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw JHI's CON if JHI 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. JHI 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 site relocation from Savannah Drive, Dillsboro, Jackson County, North Carolina to 185 Brickfarm Road, Sylva, North Carolina for Project I.D. No. A-7318-05 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 the \_\_\_\_\_ day of May, 2009.

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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**

Gary S. Qualls  
William W. Stewart, Jr.  
K&L Gates, LLP  
430 Davis Drive, Suite 400  
Morrisville, NC 27560

This the \_\_\_\_\_ day of May, 2009.

\_\_\_\_\_  
Jesse Goodman  
Acting Chief Operating Officer