

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY CURRITUCK HEALTH)
INVESTORS, LLC/CHI HOLDINGS, LLC) **DECLARATORY RULING**
d/b/a CURRITUCK HOUSE)
Project I.D. No. R-8057-08)**

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.

Currituck Health Investors, LLC/CHI Holdings, LLC d/b/a Currituck House (hereinafter “CHI”) has requested a declaratory ruling allowing for a change in location for Project I.D. No. R-8057-08 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 CHI 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. William W. Stewart of K&L Gates, LLP has requested this ruling on behalf of CHI and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

CHI filed a CON application to develop a new 90-bed adult care home with a 36-bed special care unit in Currituck County. The application was conditionally approved by the CON Section, which issued a CON for the Project on August 28, 2008.

CHI's application proposed a primary site for the project to be located at Caratoke Highway and Guinea Road in Moyock, Currituck County, North Carolina.

CHI's application also proposed a secondary site for the project to be located at Moyock Landing and Caratoke Highway in Moyock, Currituck County, North Carolina.

The primary site was selected in anticipation of Currituck County expanding its municipal sewer system to that location.

The sewer system expansion is going forward, but will only reach the secondary site proposed in CHI's application, not the primary site.

The secondary site located at Moyock Landing and Caratoke Highway is within four miles of the original site.

There will be no increase in costs as a result of this change in site, and CHI anticipates that costs will be reduced by this change in site because of the availability of the municipal sewer system.

ANALYSIS

The CON law would require a full review of CHI's site relocation from the primary site at Caratoke Highway and Guinea Road to the secondary site at Moyock Landing and Caratock Highway 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 secondary site at Moyock Landing and Caratock Highway is within four miles of the primary site at Caratoke Highway and Guinea Road.

The change in site will not increase CHI'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 CHI's CON if CHI 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. CHI 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 Caratoke Highway and Guinea Road in Moyock, Currituck County, North Carolina to Moyock Landing and Caratoke Highway in Moyock, North Carolina for Project I.D. No. R-8057-08 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 October, 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

K&L Gates, LLP
William W. Stewart, Esquire
430 Davis Drive, Suite 400
Morrisville, NC 27560

This the _____ day of October, 2009.

Jesse Goodman
Acting Chief Operating Officer