

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

IN RE: REQUEST FOR DECLARATORY)	
RULING BY LUTHERAN HOME)	
WINSTON-SALEM, INC. AND)	DECLARATORY RULING
LUTHERAN HOME WINSTON-SALEM)	
PROPERTY, INC.)	
Project I.D. No. G-8231-08)	

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.

Lutheran Home Winston-Salem, Inc. and Lutheran Home Winston-Salem Property, Inc. (collectively “LHWS”) have requested a declaratory ruling allowing for a change in the site for Project I.D. No. G-8231-08 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 LHWS 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. Ted W. Goins, Jr., President of Lutheran Services for the Aging, Inc., has requested this ruling on behalf of LHWS and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Effective 30 April 2009, the CON Section issued a CON to LHWS to replace and relocate 117 of LHWS's 217 nursing beds to a new facility to be located on Waterworks Road in Winston-Salem, North Carolina (the "Original Site"). LHWS represents that, subsequent to the issuance of the CON, it learned that the approved site is too narrow for the proposed facility because of sewer easements and site grading requirements. Due to these issues, LHWS has identified another location for development of the facility (the "Proposed Site").

The Proposed Site is identified as Parcel #64886-50-2848 on Waterworks Road and is located across the street from the Original Site. LHWS states that the purchase price for the Proposed Site is approximately \$248,800, which is about \$51,200 less than the purchase price of the Original Site. Further, LHWS states that moving the facility to the Proposed Site will not increase the capital costs, operating costs, or charges proposed in its CON application. LHWS represents that it does not contemplate any change to the scope or scale of the services proposed in its original application.

ANALYSIS

The CON law would require a full review of LHWS'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 LHWS's project does not constitute a material change in the physical location because of the close proximity of the Proposed Site to the Original Site. The change will not affect the scope of services offered or the costs and charges to the public. 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 LHWS's CON if LHWS 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. LHWS 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 substitution of the Proposed Site for the Original Site for LHWS's 117-bed nursing facility (Project I.D. No. G-8231-08) 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 November, 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

Ted W. Goins, Jr.
President
Lutheran Services for the Aging, Inc.
1416 S. Martin Luther King, Jr. Ave.
P.O. Box 947
Salisbury, NC 28145

This the _____ day of November, 2009.

Jesse Goodman
Acting Chief Operating Officer