

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY ROWAN REGIONAL) DECLARATORY RULING
MEDICAL CENTER, INC.)
Project I.D. No. F-7868-07)**

I, Drexdal Pratt, as 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.

Rowan Regional Medical Center, Inc. (“Rowan”) has requested a declaratory ruling allowing for a change in the site for Project I.D. No. F-7868-07 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 Rowan 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. Denise M. Gunter of Nelson Mullins Riley and Scarborough, LLP, counsel for Rowan, has requested this ruling on behalf of Rowan and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Effective 27 November 2007, the CON Section issued a CON to Rowan to construct and operate a 14-bed hospice facility with seven inpatient hospice beds and seven inpatient residential hospice beds to be located at 3278 Bringle Ferry Road in Salisbury, Rowan County (the “Original Site”). Rowan represents that, subsequent to the issuance of the CON, it merged with Novant Health, Inc. and it learned that the Original Site has several limitations. First, the Original Site is outside the city limits of Salisbury, which means that it is not served by public transportation and bringing utilities to the site would be more expensive. Second, it has a significant elevation rise which would make construction more expensive. Due to these issues, Rowan has identified another location for development of the facility (the “Proposed Site”).

The Proposed Site is located at 1229 Statesville Boulevard in Salisbury, Rowan County. Rowan states that the Proposed Site is approximately 5.62 miles from the Original Site and approximately 1.72 miles from Rowan Regional Medical Center. Rowan represents that the Proposed Site is served by public transportation. Further, Rowan states that moving the facility to the Proposed Site will not materially change the capital costs of the project or result in any increase in operating costs or charges proposed in its CON application. Rowan 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 Rowan’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 Rowan’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 Rowan's CON if Rowan 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. Rowan 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 Rowan's 14-bed hospice facility (Project I.D. No. F-7868-07) 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 April, 2011.

Drexdal Pratt, 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

Denise M. Gunter
Nelson Mullins Riley and Scarborough, LLP
380 Knollwood Street
Suite 530
Winston-Salem, NC 27103

With a courtesy copy to:

Ronald L. Smith
113 Canteberry Drive
Salisbury, NC 28144-9459

This the _____ day of April, 2011.

Jeff Horton
Chief Operating Officer