

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY SMITHFIELD EAST HEALTH)
HOLDINGS, LLC and AA HOLDINGS-)
SMITHFIELD WEST, LLC)
Project I.D. No. J-8566-10)**

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.

Smithfield East Health Holdings, LLC (“SEHH”) and AA Holdings – Smithfield West, LLC (“AAHSW”) have jointly requested a declaratory ruling allowing for a change in location for Project I.D. No. J-8566-10 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 SEHH 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 entities 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. Renee J. Montgomery and Robert A. Leandro have requested this ruling on behalf of SEHH and AAHSW and have provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

SEHH and AAHSW were granted a Certificate of Need on March 7, 2011 to construct a 77 bed replacement adult care home. The approved location for the facility was 430 Firetower Road, Selma, North Carolina, 27576 in Johnston County. SEHH and AAHSW seek to change the facility site to a new location at 2138 NC Hwy. 42 W. Clayton, North Carolina, 27520 in Johnston County.

ANALYSIS

The CON law would require a full review of SEHH and AAHSW's site relocation, 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:

In the CON issued in 2011, the approved location was in Johnston County. The change in host site is within the original approved county, approximately 17.5 miles from the originally approved location. By changing locations within the approved area, the patient population for which the need was originally demonstrated, will continue to be served.

The change in location will not affect the scope of the services offered or effect the population to be served as proposed in the approved CON application. The new location is .2 miles from Johnston Medical Center – Clayton which provides the residents of the facility with a timelier and with more convenient access to emergency and diagnostic health care creating the potential to positively affect health outcomes for the residents of the facility. The proposed change is in material compliance with the CON for the project.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw SEHH and AAHSW's CON if they 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. SEHH and AAHSW 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, other than previously discussed.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the change of location for the facility from 430 Firetower Road, Selma, North Carolina, 27576 in Johnston County to 2138 NC Hwy. 42 W. Clayton, North Carolina, 27520 in Johnston County 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 September, 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

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This the _____ day of September, 2011.

Jeff Horton
Chief Operating Officer