

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

**IN RE: REQUEST FOR DECLARATORY )  
RULING BY HOSPICE OF DAVIDSON )  
COUNTY, INC. )           DECLARATORY RULING  
Project I.D. No. G-7382-05 )**

I, Robert J. Fitzgerald, as Director of the Division of Facility Services, 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.

Hospice of Davidson County, Inc. (“HDC”) has requested a declaratory ruling allowing it to relocate its proposed facility to a different site than that approved for Project I.D. No. G-7382-05 on the grounds that the change does not constitute a material change in physical location and will not constitute a failure to satisfy a condition of its Certificate of Need (“CON”). N.C.G.S. §§ 131E-181(a); 131E-189(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. Gary Drake, Executive Director of HDC, has requested this ruling on behalf of HDC and has provided the material facts upon which this ruling is based.

## **STATEMENT OF THE FACTS**

Effective March 31, 2006, the CON Section issued a CON to HDC for Project I.D. No. G-7382-05 to develop in Davidson County a 10-bed hospice facility with four inpatient hospice and six residential hospice beds (the "Facility"). The approved 28-acre site is located at 5950 U.S. Highway 64 East in Lexington (the "Approved Site"). HDC represents that after the CON was issued, HDC and its architect / engineer determined that the Approved Site is "sub-optimal with regard to land percolation and supporting a septic system." HDC has identified another parcel of land (the "Proposed Site"), approximately 31 acres, also located on Highway 64, within one-half mile of the Approved Site. HDC represents that the Proposed Site was not available for purchase at the time the original CON application for the Project was filed.

HDC also represents that, although the purchase price for the Proposed Site is \$40,000 greater than for the Approved Site, the increase will not cause the total capital cost of the project to exceed 115% of the total approved capital cost. The total approved capital cost is \$3,271,987, and HDC represents that with the Proposed Site, the total capital cost will be \$3,311,987.

The Proposed Site requires rezoning to either O/I (Office and Institutional District) or HC (Highway Commercial District). HDC expects the rezoning to be approved based on previous approvals in the vicinity.

HDC has attached to its Request documentation that water is available at the Proposed Site, and that the Proposed Site perks and is capable of sustaining an appropriately sized septic system.

## **ANALYSIS**

The CON law would require a full review of HDC's proposed change of site if that change were to represent a material change in the physical location of the project according

to N.C.G.S. § 131E-181(a). N.C.G.S. § 131E-189(b) allows the Department to withdraw HDC's CON if HDC fails to develop the service in a manner consistent with the representations made in its application or with any of the conditions that were placed on the CON. If during development or within one year of completion, a change in a project for which a CON was issued is more than 15% of the approved capital expenditure amount, it is a "new institutional health service" and a new CON may be required unless otherwise exempt. N.C.G.S. § 131E-176(16)(e).

The relocation of the site for the Facility does not constitute a material change in either the physical location or in the scope of the proposed project because HDC will be developing its project in a manner which is not materially different from the representations made in its application and not inconsistent with any conditions that were placed on its CON. The new site is located in close proximity to the primary site identified in HDC's application. The change of site will not materially impact the project's original capital costs.

### **CONCLUSION**

For all the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the change in the site for the Facility will not violate N.C.G.S. § 131E-181, because it will not constitute a material change in the physical location of the proposed facility, will not constitute a failure to satisfy a condition of the CON in violation of N.C.G.S. § 131E-189(b), and is not subject to additional certificate of need review as a new institutional health service under N.C.G.S. § 131E-176(16).

This ruling is not intended, and should not be interpreted, to authorize any increases in the approved capital expenditure for this project, a change in the approved timetable, a change in the conditions placed on the certificate of need, or any other change in the approved project.

This the \_\_\_\_\_ day of \_\_\_\_\_, 2006.

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Robert J. Fitzgerald, Director  
Division of Facility Services  
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**

Mr. Gary Drake  
Executive Director  
Hospice of Davidson County, Inc.  
Post Office Box 1941  
Lexington, NC 27293-1941

This the 2<sup>nd</sup> day of October, 2006.

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Patricia Bryant  
Administrative Assistant