

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY ROSE GLEN MANOR ASSISTED) DECLARATORY RULING
LIVING, LLC, d/b/a ROSE GLEN MANOR)
Project I.D. No. D-7643-06)**

I, Robert J. Fitzgerald, 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.

Rose Glen Manor Assisted Living, LLC, d/b/a Rose Glen Manor (“Rose Glen Manor”) has requested a declaratory ruling allowing for a change of site for Project I.D. No. D-7643-06 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 Rose Glen Manor 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. S. Todd Hemphill of Bode, Call & Stroupe, L.L.P., has requested this ruling on behalf of Rose Glen Manor and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Effective 23 January 2007, the CON Section issued a CON to Rose Glen Manor for Project D-7643-06 to construct a 60-bed adult care home facility, including a 16-bed Alzheimer's unit, in Wilkes County, North Carolina. The proposed site identified in the application was 609 West Main Street, Wilkesboro, NC (the "Original Site"). Rose Glen Manor now has requested a declaratory ruling approving an alternate site for the facility on Corporation Street, Wilkesboro, North Carolina (the "Alternate Site").

Rose Glen Manor represents that after the CON was issued, it discovered that the Original Site was not suitable for the project. It states that there are two sewer lines running through the site, which would be expensive to relocate. In addition, the site abuts a dry cleaning store, which affects its suitability for an assisted living facility.

Rose Glen Manor proposes to build its facility on the Alternate Site, which it states is less than a mile from the Original Site. Rose Glen Manor represents that the Alternate Site is equally accessible to Wilkes County residents and the other services identified in the CON application. The Alternate Site is larger than the Original Site (6 acres rather than 2.9 acres), and Rose Glen Manor states that the Alternate Site will cost \$300,000 and the Original Site cost was \$275,000. Rose Glen Manor states that the total approved capital cost of the project is \$4,764,890. Rose Glen Manor represents that the development of the project at the Alternate Site will not otherwise constitute a failure to satisfy a condition of the CON because none of the conditions imposed on the CON refer to or relate to the project site.

ANALYSIS

The CON law would require a full review of Rose Glen Manor'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 Rose Glen Manor's project does not constitute a material change in the physical location or the scope of the proposed project because locating the project at the Alternate Site will not affect the scope of services offered, and the increase of \$25,000 in the purchase price of the site does not significantly increase the approved capital expenditure. Because of the close proximity of the Alternate Site to the New Site, the change will not affect the population to be served. 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 Rose Glen Manor's CON if Rose Glen Manor 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. Rose Glen Manor 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, subject to the conditions set out herein, the change of site from West Main Street to Corporation Street in Wilkesboro for Rose Glen Manor's new facility (Project I.D. No. D-7643-06) 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 ruling is not intended, and should not be interpreted, to authorize any additional 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 August, 2007.

Robert J. Fitzgerald, 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

S. Todd Hemphill
Bode, Call & Stroupe, L.L.P.
3105 Glenwood Avenue, Suite 300
Raleigh, NC 27612

This the _____ day of August, 2007.

Jeff Horton
Chief Operating Officer