

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

**IN RE: REQUEST FOR DECLARATORY )  
RULING BY FIRST HEALTH OF THE )  
CAROLINAS, INC. D/B/A FIRSTHEALTH )       DECLARATORY RULING  
HOSPICE AND PALLIATIVE CARE, )  
Project I.D. No. H-7655-06 )**

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.

First Health of the Carolinas, Inc., d/b/a Firsthealth Hospice and Palliative Care (“Firsthealth”) has requested a declaratory ruling allowing for a change in the site for Project I.D. No. H-7655-06 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 Firsthealth 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 & Scarborough, LLP, counsel for Firsthealth, has requested this ruling on behalf of Firsthealth and has provided the material facts upon which this ruling is based.

## **STATEMENT OF THE FACTS**

Effective 8 August 2007, the CON Section issued a CON to Firsthealth to develop an 11-bed inpatient hospice facility known as the Firsthealth Hospice House (“Hospice House”). The Hospice House was approved to be located on the Firsthealth Moore Regional Hospital Campus at 30 First Village Drive, in Pinehurst, North Carolina (the “Original Site”). Firsthealth represents that, subsequent to obtaining the CON, it determined that a nearby parcel of land (the “Proposed Site”) is larger and “will allow the Hospice House the opportunity to grow and potentially expand its services in the future” and will “provide greater accessibility and privacy to patients and their families.”

Firsthealth states that the Proposed Site does not yet have a street address, but is a plot of land, known as the Pinehurst Campgrounds, approximately two miles north of the Original Site off of U.S. Highway 15-501 in Pinehurst. Firsthealth proposes to purchase a total of 37 acres at a cost of \$1,796,000. Firsthealth states that only 4.6 acres of this land are needed for the Hospice House. The allocated cost of the land for Hospice House is \$223,286. Firsthealth states that it revised its site preparation costs, storm water retention costs and other related costs to account for the site change. The original approved capital cost for the Hospice House was \$4,301,052. According to Firsthealth, the total revised capital cost for construction of the Hospice House utilizing the Proposed Site, including the cost of the land and the revised site preparation, storm water retention and other costs, would be \$4,677,101, an increase of approximately 8.7%. Firsthealth states 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 Firsthealth'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 Firsthealth'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. The capital cost difference for the Proposed Site is \$376,049, an 8.7% increase from the approved capital cost. 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 Firsthealth's CON if Firsthealth 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. Firsthealth 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 Firsthealth's inpatient hospice facility (Project I.D. No. H-7655-06) 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 increases in the approved capital expenditure for this project as stated on the face of the CON, 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 \_\_\_\_\_, 2008.

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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**

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

This the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

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Jeff Horton  
Chief Operating Officer