

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

**IN RE: REQUEST FOR DECLARATORY )  
RULING BY EDUCARE COMMUNITY ) DECLARATORY RULING  
LIVING CORPORATION D/B/A COMMUNITY )  
ALTERNATIVES - NORTH CAROLINA )  
Project I.D. No. F-7714-06 )**

I, Jeff Horton, as Acting 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.

EduCare Community Living Corporation d/b/a Community Alternatives North Carolina. (“Community Alternatives”) requested a declaratory ruling allowing for a change of sites for Project I.D. No. F-7714-06 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 Community Alternatives 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. Fred M. Wood, Jr., and C. Marshall Lindsay of Sonnenschein Nath & Rosenthal LLP have requested this ruling on behalf of Community Alternatives and have provided the material facts upon which this ruling is based.

## STATEMENT OF THE FACTS

Effective 10 March 2007, the CON Section issued a CON to Community Alternatives for Project F-7714-06 to relocate an existing six-bed Intermediate Care Facility for the Mentally Retarded (ICF/MR) to a new facility located at 1812 McClean Road, Charlotte, Mecklenburg County, North Carolina (the “Original Site”). On 16 August 2007, Robert F. Fitzgerald, Director of the Division of Health Service Regulation issued a Declaratory Ruling concluding that a change of site from the Original Site to 1003 Breezewood Drive (“Breezewood Drive”) in Charlotte would not constitute a material change in the physical location or scope of the project. Community Alternatives now has requested a declaratory ruling approving an alternate site for the facility: 6745 and 6749 View Way Drive, Charlotte, Mecklenburg County (the “Alternate Site”).

Community Alternatives represents that the Breezewood Drive location is unsuitable for the development and operation of the project. A Recombination Survey shows that two-thirds of the lot falls within a S.W.I.M. buffer designation and the remaining area is too tight for an economical development of the site plan. Community Alternatives has identified the Alternate Site which is only 4.4 miles away from the Original Site, as a viable option for its proposed project.

Community Alternatives states that the upfit expense for the new location will be substantially similar to the expense projected in its CON application, and does not anticipate that the site change will result in any increase in the capital cost of its project. The pro forma financial statements submitted with the CON application are not affected by the proposed change in sites.

Community Alternatives represents that the site change will not affect its charges to the public or its operating costs. It states that because of the proximity of the Alternate Site to the Original Site, the change will not affect the population to be served by the project, the scope of services to be offered by Community Alternatives, or the availability of ancillary or support services.

### **ANALYSIS**

The CON law would require a full review of Community Alternatives' 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 Community Alternatives' 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 or the costs and charges to Community Alternatives or to the public. Because of the close proximity of the Alternate Site to the Original 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 Community Alternatives' CON if Community Alternatives 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. Community Alternatives 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 change of site from 1003 Breezewood Drive to 6745 and 6749 View Way Drive in Charlotte for Community Alternatives' new facility (Project I.D. No. F-7714-06) 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, 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 June, 2008.

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Jeff Horton, Acting 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**

Fred M. Wood, Jr.  
C. Marshall Lindsay  
Sonnenschein Nath & Rosenthal LLP  
2100 Rexford Road, Suite 100  
Charlotte, NC 28211

This the 16<sup>th</sup> day of June, 2008.

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Jeff Horton  
Acting Director