

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY CALDWELL HOSPICE AND)
PALLIATIVE CARE, INC.) DECLARATORY RULING
Project I.D. No. E-7854-07)**

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.

Caldwell Hospice and Palliative Care, Inc. (“CHPC”) has requested a declaratory ruling allowing for a change in the site for Project I.D. No. E-7854-07 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 CHPC 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. Cathy Swanson, MPH, Executive Director of CHPC, has requested this ruling on behalf of CHPC and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Effective 3 December 2007, the CON Section issued a CON to CHPC to develop a 12-bed combination hospice facility to be located on a 96.5 acre site in south Caldwell County at 2640 Baker Circle in Granite Falls, North Carolina (the “Original Site”). CHPC represents that, subsequent to obtaining the CON, it determined that a nearby parcel of land (the “Proposed Site”) is a “more suitable and centralized location.”

CHPC states that the Proposed Site is a 62-acre tract located in south Caldwell County on Pine Mountain Road in Hudson, North Carolina. The purchase price of the Proposed Site is \$395,000, compared to the price of \$500,000 for the Original Site. CHPC represents that the Proposed Site has appropriate zoning and water and that it is awaiting its engineer’s recommendation for sewer service. CHPC further represents that its architect, GMK Associates, has reviewed the Proposed Site and has determined it is a suitable building site for the facility. CHPC 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 CHPC’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 CHPC’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. 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 CHPC's CON if CHPC 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. CHPC 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 CHPC's combination hospice facility (Project I.D. No. E-7854-07) 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.

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 a first-class, postage pre-paid envelope addressed as follows:

CERTIFIED MAIL

Cathy Swanson, MPH
Executive Director
Caldwell Hospice and Palliative Care, Inc.
902 Kirkwood Street, N.W.
Lenoir, NC 28645

This the 25th day of July, 2008.

Jeff Horton
Acting Director