

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY WAKE COUNTY SPECIALIZED)
RESIDENTIAL HOME FOR CHILDREN) DECLARATORY RULING
d/b/a HILLTOP HOME)
Project I.D. No. J-7614-06)**

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.

Wake County Specialized Residential Home for Children d/b/a Hilltop Home (hereinafter “Hilltop”) has requested a declaratory ruling allowing Hilltop to relocate the project to the Kidd Road site described in its CON application due to the sale of the primary Sunnybrook Road site, and on the grounds that the change does not constitute a material change in scope or physical location or a failure to materially comply with the representations made by Hilltop 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. Robert V. Bode of Bode, Call & Stroupe, L.L.P. has requested this ruling on behalf of Alliance and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Hilltop filed a CON application on or about June 15, 2006 to construct a new Intermediate Care Facility for the Mentally Retarded and transfer 22 Intermediate Care Facility for the Mentally Retarded beds from O'Berry Center to Hilltop Home in Wake County.

In its application Hilltop identified a primary and secondary site. The primary site was on Sunnybrook Road in Raleigh. The secondary site is on Kidd Road in Raleigh and is approximately ½ mile from the Sunnybrook site.

After the award of the CON and during the planning for the construction of the facility at this site, Hilltop learned that the owner of the property had sold the Sunnybrook site.

Hilltop will be able to secure the Kidd Road site for \$225,000 which is approximately \$100,000 less than the cost of the Sunnybrook Road site. In addition, the Kidd Road site contains 2.17 acres versus the Sunnybrook Road site's 1.97 acres.

ANALYSIS

The CON law would require a full review of Hilltop's site relocation from the Sunnybrook Road site to the Kidd Road site if that relocation were to represent a material change in the physical location or scope of the project. N.C.G.S. § 131E-181(a). The proposed site relocation does not constitute a material change in the physical location or the scope of the proposed project for the following reasons:

The proposed site at 2820 Kidd Road is .68 miles from WakeMed and .5 miles from the originally proposed site at 117 Sunnybrook Road.

The land cost will be lower than the cost proposed in the original CON. Hilltop will be able to secure the Kidd Road site for \$225,000 which is approximately \$100,000 less than the cost of the Sunnybrook Road site.

The Kidd Road site is larger than the original Sunnybrook Road site. The Kidd Road site contains 2.17 acres versus the Sunnybrook Road site's 1.97 acres. The Kidd Road site has water and sewer available and is properly zoned.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the site relocation from 117 Sunnybrook Road to 2820 Kidd Road for Project I.D. No. J-7614-06 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 the _____ day of September, 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 first-class, postage pre-paid envelope addressed as follows:

CERTIFIED MAIL

Robert V. Bode
Bode, Call & Stroupe, L.L.P.
3105 Glenwood Avenue, Suite 300
Raleigh, North Carolina 27612

This the _____ day of September, 2008.

Jeff Horton
Acting Director