

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY JOHNSTON MEMORIAL)
HOSPITAL AUTHORITY) DECLARATORY RULING
Project I.D. No. J-7556-06)**

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.

Johnston Memorial Hospital Authority (“JMHA”) has requested a declaratory ruling allowing for a change in the site for Project I.D. No. J-7556-06 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 JHMA 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., counsel for JMHA, has requested this ruling on behalf of JMHA and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Effective 1 March 2007, the CON Section issued a CON to JMHA to develop a 12-bed freestanding inpatient and residential hospice facility (Project I.D. No. J-7556-06) in Smithfield, Johnston County, North Carolina. As of the date of the original CON application, JMHA was considering two available sites for its proposed freestanding hospice facility, the primary site (the “original site”) on Berkshire Road, a 2.98 acre site less than one mile from the hospital, and the secondary site on US Highway 301 South, approximately six miles from the hospital. JMHA has since identified another site at 426 Hospital Road (the “proposed site”) in Smithfield, which it would prefer to use for the development of the hospice facility. The proposed site is less than one mile from the original site listed in the application and is also located on the same road as Johnston Memorial Hospital, allowing for greater efficiency in sharing various support services with the hospital. While the purchase price of the proposed site (\$456,000) is \$81,000 more than the original site purchase price listed in the application, this represents only a 2.2% increase in the total approved capital costs of \$3,630,194 for the project.

JMHA states that the service area will be consistent with the service area listed in the application, the service offerings will be consistent with those proposed and there will be no changes in volume projections and demand as a result of the site change. Further, the site change will not result in an increase in charges or other operating costs, and no changes in staffing.

ANALYSIS

The CON law would require a full review of JMHA’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 JMHA’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 proposed in the application. 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 JMHA's CON if JMHA 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. JMHA 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 JMHA's freestanding inpatient and residential hospice facility (Project I.D. No. J-7556-06) 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 December, 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

S. Todd Hemphill
BODE, CALL & STROUPE, L.L.P.
3105 Glenwood Avenue, Suite 300
Raleigh, NC 27612
COUNSEL FOR PETITIONER

This the _____ day of December, 2008.

Jesse Goodman
Acting Chief Operating Officer