

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY NEW HANOVER HOUSE,)
LLC and NEW HANOVER HEALTH)
INVESTORS, LLC) **DECLARATORY RULING**
Project I.D. No. J-7142-04)**

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 N.C.A.C. 14A .0103 under the authority granted me by the Secretary of the Department of Health and Human Services.

New Hanover House, LLC and New Hanover Health Investors, LLC (collectively “New Hanover House” or “Petitioners”) have requested a declaratory ruling allowing for a change of site for Project I.D. No. O-7448-05 on the grounds that the change does not constitute a material change in physical location. N.C.G.S. §§ 131E-181(a).

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. Gary S. Qualls, Colleen M. Crowley and William W. Stewart, Jr. of the law firm of K&L Gates, LLP request this ruling on behalf of New Hanover House and have provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

New Hanover House filed a certificate of need (“CON”) application to replace and relocate a 61-bed adult care home from its existing location at Carolina Beach to Wilmington, New Hanover County, North Carolina. The application was denied, appealed and then settled. Pursuant to the settlement agreement, New Hanover House received a CON on September 4, 2007 to develop its project.

In its CON application, New Hanover House identified the proposed location for its replacement facility as 6854 Carolina Beach Road, Wilmington, North Carolina 28412 (the “original site”). In 2007, it was discovered that the original location would not be suitable for construction of the facility due to the existence of wetlands. Through progress reports filed in March 2008 and January 2009, New Hanover House notified the CON Section that the original site was not suitable and that New Hanover House was working to identify a new location. After identifying and exploring at least ten sites, New Hanover House has located an alternative site at 4140 Independence Boulevard, Wilmington, North Carolina (the “alternative site”).

According to New Hanover House, the alternative site is located approximately seven miles from the original site, is within the same zip code as the original site and will serve the same service area as that proposed to be served in New Hanover House’s CON application. New Hanover House asserts that building the facility on the alternative site will not increase the capital costs or the operating costs of its project.

New Hanover House now requests a declaratory ruling approving a change in address from the original site to the alternative site for Project ID No. O-7448-05 on the grounds that the change does not constitute a material change in physical location.

ANALYSIS

The CON law would require a full review of New Hanover House'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 New Hanover House's Project ID No. O-7448-05 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 cost of the project. 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 scope or 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 New Hanover House's CON if New Hanover House 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. New Hanover House will not develop its project in a manner that is materially different from the representations made in its application, nor will it develop 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 the original site to the alternate site at 4140 Independence Boulevard in Wilmington, North Carolina for New Hanover House's 61-bed replacement adult care home facility (Project ID No. O-7448-05) will not constitute a material change in the physical location 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, 2009.

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 non-agency 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

Mr. Gary S. Qualls
Colleen M. Crowley
William W. Stewart, Jr
K&L Gates, LLP
430 Davis Drive, Suite 400
Morrisville, NC 27560

This the _____ day of June, 2009.

Jesse Goodman
Chief Operating Officer