

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

IN RE: REQUEST FOR DECLARATORY)	
RULING BY HEDGEHOG LAND)	
INVESTMENT, LLC AND ALAMANCE)	DECLARATORY RULING
MANOR ASSISTED LIVING, LLC)	
Project I.D. No. G-8220-08)	

I, Drexdal Pratt, as 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.

Hedgehog Land Investment, LLC and Alamance Manor Assisted Living, LLC (hereinafter “Petitioners”) have requested a declaratory ruling allowing for a change in location for Project I.D. No. G-8220-08 on the grounds that the change does not constitute a material change in scope or physical location, does not amount to a new institutional health service, or a failure to materially comply with the representations made by Petitioners in their 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, LLP has requested this ruling on behalf of the Petitioners and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Effective March 24, 2009, the CON Section issued a CON to Petitioners for Project I.D. # G-8220-08 to build a new 125 bed adult home care facility that included a thirty-two (32) bed Alzheimer's unit (the "Facility") to replace the Graham Manor facility, which closed due to bankruptcy in 2005.

The proposed location of the Facility was 1325 East Main Street, Graham, North Carolina, 27253, (the "Original Location").

The approved total capital expenditure amount in the Application was \$7,794,285.00.

Petitioners seek to change the facility site to a location at approximately 2010 North Carolina 119, Mebane, North Carolina 27302 (the "New Location").

ANALYSIS

The CON law would require a full review of Petitioners' site relocation 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 New Location is in the same area of Alamance County, approximately four (4) miles from the Original Location. The change in location therefore will not alter the patient population to be served.

The change in location will not affect the scope of services offered or affect the population to be served as proposed in the approved Application. Petitioners still intend to construct and operate a 125 bed adult care home facility with a thirty-two (32) bed Alzheimer's unit.

Petitioners have represented that constructing the Facility at the New Location will not add to the total capital expenditure cost. Because the total capital expenditure will not exceed the proposed capital expenditure amount by greater than 15%, the change will not amount to a new institutional health service as defined in N.C. Gen. Stat. § 131E-176(16)(e).

N.C.G.S. § 131E-189(b) allows the Agency to withdraw the Petitioners' CON if the Petitioners fail 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. Petitioners 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 the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the change of location for the facility from 1325 East Main Street, Graham, North Carolina 27253, to a location at approximately 2010 North Carolina 119, Mebane, North Carolina 27302, Project I.D. No. G-8220-08, will not constitute a material change in the physical location or scope of the project, will not violate N.C.G.S. § 131E-181, will not amount to a new institutional health service, 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 January, 2013.

Drexdal Pratt, 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, LLP
P.O. Box 6338
Raleigh, North Carolina 27628-6338

This the _____ day of January, 2013.

Cheryl Ouimet
Chief Operating Officer