

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

**IN RE: REQUEST FOR DECLARATORY )  
RULING BY HOSPICE HOUSE )  
FOUNDATION OF WNC, INC. AND )  
HOSPICE OF HENDERSON COUNTY, INC. )     **DECLARATORY RULING**  
D/B/A FOUR SEASONS COMPASSION )  
FOR LIFE )  
Project I.D. No. A-8569-10 )**

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.

On November 16, 2012, Hospice House Foundation of WNC, Inc. and Hospice of Henderson County, Inc. d/b/a Four Seasons Compassion for Life (“Petitioner”) was granted a certificate of need (CON) to develop a hospice facility with six inpatient hospice beds. By request dated September 9, 2013, Petitioner is requesting a declaratory ruling permitting it to change the project’s site location to 272 Maple Street, Franklin, Macon County, rather than the originally proposed site of 2255 Old Murphy Road, Franklin, Macon County. 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 of K&L Gates LLP has requested this ruling on behalf of Petitioner and has provided the material facts upon which this ruling is based.

## **STATEMENT OF THE FACTS**

Petitioner applied for and received a CON for Project I.D. No. A-8569-10 in which it was authorized to develop a hospice facility with six inpatient hospice beds. Petitioner proposes a new site located at 272 Maple Street, Franklin, Macon County. Petitioner represents that the original site is no longer available due to the inability to reach a purchase agreement with the site's owner.

Petitioner represents that the original site and the new site are approximately 2.4 miles away from each other. The cost of the new site is lower, but that cost will be offset by necessary design changes to accommodate the new site. Petitioner represents that the new site is a better location due to its closer proximity to Angel Medical Center than the original site. Petitioner represents that the new site is properly zoned for its proposed use and is closer to water and sewer service than the original site which will facilitate easier access. Petitioner represents that it can develop the project in a manner consistent with representations made in its CON application, including capital expenditures, financing options, and ownership structure.

## **ANALYSIS**

N.C.G.S. § 131E-181(a) provides that “[a] certificate of need shall be valid only for the defined scope, physical location, and person named in the application.” The recipient of the CON must also materially comply with the representations made in the CON application. N.C.G.S. § 131E-181(b). If Petitioner’s proposal were to represent a material change in the physical location or scope of the project, the CON law would require a full review of Petitioner’s proposal. N.C.G.S. § 131E-181(a).

Given the close proximity to the originally proposed site, and the proximity to the local hospital and other community health services and resources, Petitioner's proposal does not constitute a material change in the physical location or scope of the project and is allowable.

**CONCLUSION**

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that Petitioner's proposed site change 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 certificate of need in violation of N.C.G.S. § 131E-189(b).

This the \_\_\_\_\_ day of October, 2013.

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Drexdal Pratt, Director  
Division of Health Service Regulation  
N.C. Department of Health and Human Services

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this day served the foregoing Declaratory Ruling upon the PETITIONERS by certified mail, return receipt requested, by causing a copy of same to be placed in the United States Mail, first-class, postage pre-paid envelope addressed as follows:

**CERTIFIED MAIL**

Gary S. Qualls  
K&L Gates LLP  
430 Davis Drive, Suite 400  
Morrisville, NC 27560

This the \_\_\_\_\_ day of October, 2013.

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Cheryl Ouimet  
Chief Operating Officer