

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

IN RE: REQUEST FOR DECLARATORY)	
RULING BY UNIVERSITY OF NORTH)	
CAROLINA AT CHAPEL HILL d/b/a)	DECLARATORY RULING
UNC HOSPITALS INPATIENT HOSPICE)	
FACILITY CHATAM COUNTY)	
Project I.D. No. J-10175-13)	

I, Drexdal Pratt, as Director of the Division of Health Service Regulation, North Carolina Department of Health and Human Services (“Department”) 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.

University of North Carolina at Chapel Hill d/b/a UNC Hospitals Inpatient Hospice Facility Chatam County (“UNC Hospitals”) has requested a declaratory ruling allowing for a site relocation for Project I.D. No. J-10175-13 on the grounds that the site relocation does not constitute a material change in scope or physical location or a failure to materially comply with the representations made by UNC Hospitals in its Certificate of Need (“CON”) application for its project. N.C. Gen. Stat. §§ 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. Gen. Stat. § 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 UNC Hospitals and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

On February 25, 2014, UNC Hospitals was issued a CON, Project I.D. No. J-10175-13, to develop a new hospice inpatient facility with six inpatient hospice beds and four residential hospice beds. The approved location was on Russet Road in Pittsboro (“Original Site”). Since the issuance of the CON, UNC Hospitals has become aware of another parcel (“Alternate Site”) on Russet Road that is further away from the road and provides better buffering for the patients, family, and facility.

ANALYSIS

The CON law would require a full review of UNC Hospitals’ 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 Alternative Site is a few hundred feet from the Original Site. The Alternate Site provides reduced site preparation costs. The Alternate Site provides less costly access to utilities. UNC Hospitals states it will develop the project consistent with all other material representations in its application.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw UNC Hospitals’ CON if UNC Hospitals 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. UNC Hospitals 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, other than previously discussed.

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 Original Site on Russet Road to the Alternate Site on Russet Road in Pittsboro 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 June, 2014.

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

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

This the _____ day of July, 2014.

Cheryl Ouimet
Chief Operating Officer