

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY UNITED HOSPICE, INC., d/b/a) DECLARATORY RULING
PRUITTHEALTH HOSPICE-FAYETTEVILLE)
Project I.D. No. M-10233-13)**

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 Statutes § 150B-4 and 10A NCAC 14A .0103 under the authority granted me by the Secretary of the Department of Health and Human Services.

United Hospice, Inc., d/b/a PruittHealth Hospice-Fayetteville (“PruittHealth”) has requested a declaratory ruling allowing for a change in location for Project I.D. No. M-10233-13 (“Project”) on the grounds that the change does not constitute a material change in scope or physical location, or a failure to materially comply with the representations made by PruittHealth in its Certificate of Need (“CON”) application for this 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. Denise M. Gunter of Nelson Mullins Riley & Scarborough, LLP, has requested this ruling on behalf of PruittHealth and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

On March 29, 2014, PruittHealth was issued a Certificate of Need to establish a new hospice home care office in Cumberland County. The approved location for the facility was 2905 Breezewood Avenue, Suite 201, Fayetteville, Cumberland County, North Carolina (“Original Site”). PruittHealth seeks to change the facility site to a new location at 2944 Breezewood Avenue, Suite 102, Fayetteville, Cumberland County, North Carolina (“Proposed Site”).

ANALYSIS

The CON law would require a full review of PruittHealth’s relocation to the Proposed Site if that relocation were to represent a material change in the scope or physical location of the Project. N.C.G.S. § 131E-181(a). The relocation to the Proposed Site does not constitute a material change in the scope or physical location of the Project for the following reasons:

The Proposed Site is located on the same street as the Original Site. It is 0.21 miles and approximately thirty (30) seconds travel time from the Original Site. Since receiving its CON, PruittHealth has learned that the Original Site has been leased to another tenant and is no longer available to rent. Therefore, in order for PruittHealth to provide the hospice home care services to the community, it was required to secure another location. PruittHealth proposes to develop the Project in a manner that will satisfy all other requirements and representations made in its original CON application.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw PruittHealth’s CON if PruittHealth 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. PruittHealth will not develop this Project in a manner that is materially different from the representations made in its application or 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 of the facility from 2905 Breezewood Avenue, Suite 201, Fayetteville, Cumberland County, North Carolina, to a new location at 2944 Breezewood Avenue, Suite 102, Fayetteville, Cumberland County, North Carolina, will not constitute a material change in the scope or 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 the _____ day of October, 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

Denise M. Gunter
NELSON MULLINS RILEY & SCARBOROUGH, LLP
308 Knollwood Street
Suite 530
Winston-Salem, North Carolina 27103
ATTORNEY FOR UNITED HOSPICE, INC., d/b/a
PRUITTHEALTH HOSPICE-FAYETTEVILLE

This the _____ day of October, 2014.

Cheryl Ouimet
Chief Operating Officer