

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

IN RE: REQUEST FOR)	
DECLARATORY RULING BY)	DECLARATORY RULING
THE CHARLOTTE-MECKLENBURG)	
HOSPITAL AUTHORITY)	

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.

The Charlotte-Mecklenburg Hospital Authority (“CMHA”) requests a Declaratory Ruling that: (1) the relocation of a diagnostic center (the “Diagnostic Center”) currently owned by Blue Ridge Radiology Associates (“BRRA”) to a site in Denver, Lincoln County is not a new institutional health service, requiring a certificate of need (“CON”); and (2) after a brief period during which the existing Diagnostic Center is non-operational in its exiting location (and the current equipment is stored), CMHA may replace the existing Diagnostic Center equipment with the equipment currently operated by CMHA d/b/a CMC-Lincoln at East Lincoln Imaging Center in the space currently operated as East Lincoln Imaging Center. This ruling will be binding upon the Department and the entities 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 CMHA and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

BARRA currently owns the Diagnostic Center located at 200 North Grove Street, Lincolnton, Lincoln County, North Carolina, which operates a computerized axial tomography (“CT”) scanner, an ultrasound unit, a mammography unit, a bone densitometry unit and an x-ray unit (collectively the “BARRA Equipment”), and BARRA has contracted for a mobile magnetic resonance imaging (“MRI”) unit. BARRA was awarded a CON to develop the Diagnostic Center on March 2, 2007.

CMHA operates CMC-Lincoln located in Lincolnton, North Carolina. As part of CMC-Lincoln, CMHA operates a hospital-based imaging center known as East Lincoln Imaging Center. East Lincoln Imaging Center is located at Catawba Springs Commons, 275 Highway 16 North, Denver, Lincoln County, North Carolina (the “East Lincoln site”), and provides imaging services such as x-ray, mammography, ultrasound and CT services.

On March 16, 2012, CMHA filed an Exemption Notice, providing notice of its exempt acquisition of the Diagnostic Center. CMHA now seeks a ruling that the relocation of the Diagnostic Center to the East Lincoln Site does not require a CON. CMHA plans to dispose of the existing BARRA Equipment and, once the Diagnostic Center is relocated to the East Lincoln Site, CMHA will use the existing equipment at East Lincoln Imaging Center (the “East Lincoln Equipment”) as the new Diagnostic Center equipment at the East Lincoln Site.

CMHA’s purchase of the Diagnostic Center includes the purchase of the following BARRA Equipment: a CT scanner, an x-ray unit, a DEXA bone density unit, and an ultrasound unit. The Diagnostic Center’s mammography unit will be sold prior to CMHA’s purchase of the

Diagnostic Center. Thus, CMHA will not purchase BARRA's mammography unit. Also, the Diagnostic Center's contract for the mobile MRI will cease.

After the acquisition, CMHA will relocate the Diagnostic Center to the East Lincoln Site. CMHA represents that the Diagnostic Center will be non-operational for a short period of time, not to exceed one year, before the Diagnostic Center is moved to the East Lincoln Site. During this interim period, the BARRA Equipment will be stored at an off-site location while CMHA puts into place the necessary provider agreements which will be associated with the freestanding Diagnostic Center. Once the provider agreements are in place, the Diagnostic Center will be relocated to the East Lincoln Site, where it will continue to be operated as a freestanding diagnostic center.

The relocated Diagnostic Center will take over and operate the East Lincoln Imaging Center space and East Lincoln Equipment and operate it as the Diagnostic Center instead of as part of CMC-Lincoln. The BARRA Equipment will be disposed of or sold. The East Lincoln Equipment will not be moved, and other than placing the BARRA Equipment into storage, the relocation of the Diagnostic Center will not entail the relocation of any medical equipment.

ANALYSIS

N.C. Gen. Stat. § 131E-178 provides, "No person shall offer or develop a new institutional health service without first obtaining a certificate of need from the Department." N.C. Gen. Stat. § 131E-178(a). The definition of "new institutional health services" includes the "relocation of a health service facility from one service area to another." N.C. Gen. Stat. § 131E-176(16)(q). A "health service facility" includes a "diagnostic center." N.C. Gen. Stat. § 131E-176(9b).

CMHA proposes to relocate the Diagnostic Center to another location within its existing service area, not to another service area. Thus, the relocation of the Diagnostic Center is not a new institutional health service that requires a CON.

Since CMHA, the same entity that is acquiring the Diagnostic Center, currently owns the equipment at East Lincoln Imaging Center, there is no actual cost to acquire the East Lincoln Equipment. However, if the cost of the East Lincoln Equipment is attributed to the Diagnostic Center since it is a separate health service facility owned by CMHA, CMHA's attributed "acquisition costs" would not meet the definition of major medical equipment as defined in N.C. Gen. Stat. § 131E-176(14o). The original cost of all the East Lincoln Equipment totals \$1,151,348.51.

Because the Diagnostic Center will lease space from Norman Plantation, Inc., there is no capital cost attributable to the new East Lincoln Site. The existing equipment at East Lincoln Equipment will be used, as is, and the costs to temporarily store the BRRR Equipment will not exceed \$30,000. Therefore, the total cost CMHA will incur to relocate the Diagnostic Center will not exceed two million dollars (\$2,000,000). See N.C. Gen. Stat. § 131E-176(16)(b).

N.C.G.S. § 131E-189(b) allows the Agency to withdraw the Applicants' CON if the Applicants 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. The Applicants 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 relocation of the Diagnostic Center to the East Lincoln Site is not a new institutional health service requiring a CON, and that after a time period during which the BRRA Equipment is stored, CMHA may operate the relocated Diagnostic Center using the East Lincoln Equipment.

This the _____ day of May, 2012.

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 a first-class, postage pre-paid envelope addressed as follows:

CERTIFIED MAIL

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

This the _____ day of May, 2012.

Dr. Patsy Christian, Assistant Director
Healthcare Quality and Safety