

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY THE CHARLOTTE-)
MECKLENBURG HOSPITAL AUTHORITY)
d/b/a CAROLINAS MEDICAL) **DECLARATORY RULING**
CENTER-NORTHEAST)
Project I.D. No. F-7729-06)**

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.

The Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Medical Center-Northeast (“Petitioner”) has requested a declaratory ruling permitting it to change the location of two additional gastrointestinal (GI) endoscopy procedure rooms approved pursuant to the Certificate of Need (“CON”) issued for Project I.D. No. F-7729-06. 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. Terrill Johnson Harris of Smith Moore Leatherwood 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

On October 31, 2006, the Department issued a CON to Cabarrus Memorial Hospital, Inc. d/b/a Northeast Medical Center to develop two new gastrointestinal (GI) endoscopy procedure rooms in a new outpatient campus to be built in Harrisburg, Cabarrus County. A separate CON

was issued to develop the new outpatient campus. Petitioner experienced significant, unanticipated delays in the project due to issues regarding water and sewer line construction. The outpatient campus is not expected to be operational until March 2014; consequently, the two GI endoscopy rooms are also not expected to be operational until that time.

Petitioner has continued to analyze how to effectively serve the patients in need of such services by making the two proposed GI endoscopy rooms readily available. In September 2011, Petitioner hired a pediatric gastrointestinal specialist who plans to provide services only at the main campus in Concord due to the need for proximity to anesthesia services for pediatric patients. To address the need that exists for these services and to avoid further delay, Petitioner requests approval to locate the two GI endoscopy rooms in the hospital in Concord, rather than in the newly proposed Harrisburg facility, with which allow the development of the GI endoscopy rooms within four months.

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 scope of the project, the CON law would require a full review of the proposal. N.C.G.S. § 131E-181(a).

Petitioner states that no new construction will be required to develop the two rooms in the hospital because the space is already in existence and only minor renovations will be needed. The only major expenses to develop the rooms in the hospital will be for the equipment, which will be the same as proposed in the application. Petitioner contends that development and

operation of the rooms in the hospital will promote patient accessibility, efficiency, and quality. Petitioner also states that there will be no change in the ownership, licensure, certification, or accreditation of the project. Petitioner will remain the holder of the CON and the scope of the original project approved by the Department will remain the same.

Petitioner has licensed endoscopy rooms that performed 7,090 procedures in FY 2010, which is an average of 1,772 procedures per room. Petitioner further states that there will be no changes to payor mix, operating costs or patient charges, and no changes to the service area or the ability to serve all patients. In addition, Petitioner expects to be better able to coordinate endoscopy room utilization. Further, if approved, the two new GI endoscopy procedure rooms would be operational in four months and the cost of the project would be less than one-third of the original proposal, from \$2,842,653 to \$775,000.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that Petitioner's proposal 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 August, 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 first-class, postage pre-paid envelope addressed as follows:

CERTIFIED MAIL

Terrill Johnson Harris
Smith Moore Leatherwood LLP
300 North Greene Street, Suite 1400
Greensboro, North Carolina 27401

This the _____ day of August, 2012.

Dr. Patsy Christian, Assistant Director
Healthcare, Quality and Safety