

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY NELSON MULLINS RILEY &)
SCARBOROUGH, LLP REGARDING)
ARTICLE 2, PART 1 OF CHAPTER 131E) **DECLARATORY RULING**
AND ARTICLE 9, CHAPTER 131E OF THE)
NORTH CAROLINA GENERAL STATUTES,)
CERTIFICATE OF NEED LAW)**

DECLARATORY RULING

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 N.C.A.C. 14A.0103 under the authority granted me by the Secretary of the Department of Health and Human Services.

Nelson Mullins Riley & Scarborough, LLP (“NMRS”) has requested a declaratory ruling concerning the applicability of Article 9, Chapter 131E of the North Carolina General Statutes, the Certificate of Need Law (“CON Law”) and the rules of the Department in order to advise its clients on the legal requirements with which they must comply if they find it necessary to terminate any service at, or close entirely, a hospital which has been acquired pursuant to N.C. Gen. Stat. § 131E-13. 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. Noah H. Huffstetler, III of NMRS has requested this ruling on behalf of NMRS and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

NMRS represents clients throughout North Carolina which own or operate health service facilities, including hospitals. A number of those hospitals were originally owned and operated by municipalities or hospital authorities, but were subsequently leased or sold to NMRS clients, pursuant to Article 2, Part 1 of Chapter 131E of the North Carolina General Statutes. *See* N.C. Gen. Stat. §§ 131E-8, 13. NMRS clients which have been acquired pursuant to N.C. Gen. Stat. § 131E-13 want to comply with necessary legal requirements if they find it necessary to terminate any service or close entirely.

NMRS seeks this declaratory ruling in order to provide guidance with certainty to the parties involved in such transactions. It should be noted that nothing in the requested ruling pertains to the reversionary interest of a municipality or hospital authority in a facility that has been transferred under this statute. *See* N.C. Gen. Stat. § 131E-13(a) (the party acquiring such a facility "shall further agree that if it fails to substantially comply with these conditions, or if it fails to operate the facility as a community general hospital open to the general public . . . all ownership or other rights in the hospital facility . . . shall revert to the municipality or hospital authority. . . .").

ANALYSIS

N.C. Gen. Stat. § 131E-13(a)(1) provides, among other conditions to which such transactions are subject, the following:

- (1) The corporation shall continue to provide the same or similar clinical hospital services to its patients in medical-surgery, obstetrics, pediatrics, outpatient and emergency treatment, including emergency services for the indigent, that the hospital facility provided prior to the lease, sale, or conveyance. These services may be terminated only as prescribed by Certificate of Need Law prescribed in Article 9 of Chapter 131E of the General Statutes, or, if Certificate of Need Law is inapplicable, by review

procedure designed to guarantee public participation pursuant to rules adopted by the Secretary of the Department of Health and Human Services.

In 1987, the CON Law was amended to eliminate the "termination of a health service" as an event requiring certificate of need approval. *See* former N.C. Gen. Stat. § 131E-176(16)(e), as amended by 1987 N.C. Sess. Laws, Ch. 511. The CON Law in effect as of the date of the request of this Declaratory Ruling does not include "termination of services" in the definition of "new institutional health service." Thus, a certificate of need is not required before services may be terminated or a hospital closed. The Secretary of DHHS has not adopted any rules establishing a review procedure applicable to the termination of any services or the closing of a hospital acquired pursuant to G.S. 131E-13.

CONCLUSION

Based on the foregoing facts and circumstances, I conclude that:

(1) Under the CON Law as it is in effect at this time, a certificate of need is not required to terminate any service at or close any hospital facility acquired pursuant to N.C. Gen. Stat. § 131E-13; and

(2) The Secretary of the Department of Health and Human Services has not promulgated any rules establishing a review procedure applicable to the termination of any services or closing of a hospital facility acquired pursuant to N.C. Gen. Stat. § 131E-13.

This the ____ day of September, 2015.

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 nonagency party by certified mail, return receipt requested, by causing a copy of same to be placed in the United States Mail, first-class, postage prepaid envelope addressed as follows:

CERTIFIED MAIL

Noah H. Huffstetler, III
Nelson Mullins Riley & Scarborough LLP
GlenLake One, Suite 200
4140 Parklake Avenue
Raleigh, NC 27612

This the _____ day of September, 2015.

Cheryl Ouimet
Chief Operating Officer