

**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) **DECLARATORY RULING**
HEALTHCARE SYSTEM AND MERCY)
HOSPITAL, INC.)
Project I.D. No. F-4791-93)**

I, Jeff Horton, 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.

Charlotte–Mecklenburg Hospital Authority d/b/a Carolinas Healthcare System (hereinafter “CHS”) and Mercy Hospital, Inc. (hereinafter “CR-Mercy”) has requested a declaratory ruling allowing for a temporary relocation of 10 rehabilitation beds for Project I.D. No. F-4791-93 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 CHS and CR-Mercy in their Certificate of Need (“CON”) application for its 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. William W. Stewart of K&L Gates LLP has requested this ruling on behalf of CHS and CR-Mercy and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

On October 28, 1998 a certificate of need was issued to CHS and CR-Mercy to develop no more than 10 inpatient rehabilitation beds at either CR-Mercy or Rowan Regional Medical Center (“Rowan”). The beds were developed at Rowan.

CHS later entered into a management agreement with Rowan, which was terminated during 2008. The terms of the management agreement allowed CHS to relocate the beds to CR-Mercy upon termination of the agreement.

CHS currently operates 119 inpatient rehabilitation beds in Mecklenburg County, 80 beds at Carolinas Rehabilitation (CR-Main) and 39 at CR-Mercy, both of which are under the license of Carolinas Rehabilitation.

CHS was issued a certificate of need in 2009 to develop a new inpatient rehabilitation hospital in Cabarrus County (CR-NorthEast) by relocating beds from both CR-Mercy (20) and CR-Main (10), as well as 10 beds from Stanly Regional Medical Center.

The petitioners contend that CR-Mercy has an immediate need to operate its 10 observation beds, which would have to be converted to 10 rehabilitation beds if the beds were relocated immediately.

Petitioners seek to relocate the 10 inpatient rehabilitation beds from Rowan in two steps: First, to CR-Main on a temporary basis, then to CR-Mercy.

ANALYSIS

The CON law would require a full review of CHS and CR-Mercy’s request for a change in sites if that change 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 change does not constitute a material change in the physical location or the scope of the proposed project for the following reasons:

CR-Mercy and Rowan are located within the same service area for rehabilitation beds, HSA III.

It is more cost effective to move the beds after the completion of CR-NorthEast, which is projected in January 2011.

CR-Main has the capacity to temporarily add 10 inpatient rehabilitation beds as CR-Main has had as many as 120 beds physically located on the main campus in prior years.

The inpatient rehabilitation beds located at CR-Mercy are licensed under CR-Main. Therefore, the number of licensed rehabilitation beds for CR-Main will not change. The resulting bed complement will be:

-29 inpatient rehabilitation beds at CR-Mercy following the relocation of 20 beds to CR-NorthEast and completion of this proposal to move 10 beds from Rowan to CR-Main and later to CR-Mercy.

-70 inpatient rehabilitation beds at CR-Main following the relocation of 10 beds to CR-NorthEast and completion of this proposal to move 10 beds from Rowan to CR-Main and then from CR-Main to CR-Mercy.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw CHS's CON if CHS and CR-Mercy 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. CHS and CR-Mercy will not be developing the project in a manner that is materially different from the representations made in the application, nor will it be developing the project in a manner that is inconsistent with any of the conditions that were placed on the CON.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the site change of CHS’s 10 rehabilitation beds currently located at RRMC by first temporarily relocating the 10 rehabilitation beds to CR-Main and then, upon the opening of CR-NorthEast, relocating the 10 rehabilitation beds from CR-Main to CR-Mercy, 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 May, 2010.

Jeff Horton, 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

K&L Gates LLP
William W. Stewart, Jr., Esq.
430 Davis Dr., Suite 400
Morrisville, NC 27560

This the _____ day of May, 2010.

Jesse Goodman
Chief Operating Officer