

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

<b>IN RE: REQUEST FOR</b>	)	
<b>DECLARATORY RULING BY</b>	)	
<b>THE CHARLOTTE-MECKLENBURG</b>	)	
<b>HOSPITAL AUTHORITY D/B/A</b>	)	<b>DECLARATORY RULING</b>
<b>CAROLINAS HEALTHCARE SYSTEM</b>	)	
<b>AND PINEVILLE RADIATION THERAPY</b>	)	
<b>CENTER, LLC</b>	)	

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 d/b/a Carolinas Healthcare System (“CMHA”) and Pineville Radiation Therapy Center, LLC (“PRTC”) have requested a Declaratory Ruling modifying a previous Declaratory Ruling issued on November 4, 2011, confirming that CMHA’s acquisition of the membership interests of University Radiation Oncology Center, LLC (“UROC”) and its continued operation of that facility may proceed without first obtaining a Certificate of Need (“CON”). 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 PRTC and has provided the material facts upon which this ruling is based.

## STATEMENT OF THE FACTS

By declaratory ruling dated November 4, 2011, the Department ruled that CMHA could acquire, without a CON, the entire membership interest of UROC through transfer by Radiation Oncology Centers of the Carolinas, Inc. ("ROCC") and become UROC's sole member. CMHA has now decided to structure the proposed transaction differently, and CMHA asks that the Department approve this non-substantive change.

Instead of CMHA being the sole member of UROC, CMHA will be the sole member of PRTC, and PRTC will then be the sole member of UROC. Just as with the original transaction approved by the November 4, 2011 Declaratory Ruling, UROC will remain intact as the same LLC owning the linac operations, but with a different membership composition.

## ANALYSIS

The November 4, 2011 Declaratory Ruling reasoned as follows in approving the request:

CMHA's acquisition of the membership interests in UROC does not constitute the acquisition of a linear accelerator or a simulator because the ownership of the equipment will not change, and the same equipment will be used to provide the same radiation oncology services, in the same location. UROC will continue to own the two pieces of equipment and UROC's legal status as a corporate entity will not change.

The purchase of ROCC's membership interests in UROC does not involve the offering or expansion of any new facility, service or equipment, and the state's inventory of linear accelerators and simulators will not change. No new or additional equipment will be acquired or placed in operation in the State.

*See Declaratory Ruling for the Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Healthcare System, November 4, 2011, p. 3.*

The same rationale applies here. PRTC's acquisition of the membership interests in UROC does not constitute the acquisition of a linear accelerator or a simulator because the ownership of the equipment will not change. UROC will continue to own the two

pieces of equipment and UROC's legal status as a corporate entity will not change. No new institutional health service will be created and no new equipment will be added to the inventory.

### **CONCLUSION**

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that PRTC (with CMHA being the sole member in PRTC) may purchase ROCC's membership interests in UROC without a CON.

This the \_\_\_\_\_ day of January, 2012.

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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**

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

This the \_\_\_\_\_ day of January, 2012.

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Jeff Horton  
Chief Operating Officer