

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

<b>IN RE: REQUEST FOR DECLARATORY</b>	)	
<b>RULING BY MERCY HOSPITAL, INC.</b>	)	
<b>D/B/A CAROLINAS MEDICAL</b>	)	
<b>CENTER-MERCY AND THE</b>	)	<b>DECLARATORY RULING</b>
<b>CHARLOTTE-MECKLENBURG</b>	)	
<b>HOSPITAL AUTHORITY D/B/A</b>	)	
<b>CAROLINAS HEALTHCARE SYSTEM</b>	)	
<b>Project I.D. No. F-8704-11</b>	)	

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.

Mercy Hospital, Inc. d/b/a Carolinas Medical Center (“CMC-Mercy”) and The Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas HealthCare System (“CHS”), have requested a declaratory ruling allowing for a site relocation for Project I.D. No. F-8704-11 on the grounds that the site relocation does not constitute a material change in scope or physical location or a failure to materially comply with the representations made by CHS in its 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. 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. Gary S. Qualls of K&L Gates, LLP has requested this ruling on behalf of CHS and has provided the material facts upon which this ruling is based.

## **STATEMENT OF THE FACTS**

Mercy Hospital, Inc., d/b/a/ CMC-Mercy and The Charlotte Mecklenburg Hospital Authority, d/b/a CHS currently have a CON to develop a behavioral health center in Huntersville, Mecklenburg County. This CON, issued November 30, 2011 as Project I.D. No. F-8704-11, involves transferring 66 psychiatric beds from Broughton Hospital pursuant to Policy PSY-1 in the 2011 State Medical Facilities Plan. The beds will be licensed to CMC-Mercy and the project will be known as Carolinas HealthCare System Behavioral Health Center (the “Behavioral Health Center”).

The approved site for the Behavioral Health Center is located on Verhoeff Drive in Huntersville (the “Huntersville Site”), on property owned by CHS. The Huntersville site had to be rezoned from Neighborhood Residential to allow construction of the Behavioral Health Center as CHS indicated in its CON Application. CHS believed that the Town of Huntersville would approve its rezoning request however the Town Board denied the rezoning. As a result, current zoning prevents CHS from building the Behavioral Health Center at the Huntersville site.

In response, CHS has identified an alternative site for the project. This site is located on N.C. Highway 73 and comprises portions of Tax Parcel Nos. 007-441-04 and 007-441-06 in Davidson, Mecklenburg County (the “Davidson site”). The Davidson site is approximately seven miles from the Huntersville site. Current zoning at the Davidson site would permit the construction of the Behavioral Health Center. CHS now seeks approval to relocate the Behavioral Health Center from the Huntersville site to the Davidson site.

## ANALYSIS

The CON law would require a full review of CHS's proposed site relocation if that change were to represent a material change in the physical location or scope of the project. *See* N.C. Gen. Stat. § 131E-181(a). The proposed site relocation does not constitute a material change in the physical location or the scope of the proposed project for the following reasons:

The physical location of the Behavioral Health Center will only change by seven miles. Furthermore, the proposed Davidson site is zoned to allow the project to move forward. CHS intends to provide the same services proposed in its CON Application, to the same populations identified, including the medically underserved. The physical proximity of the two locations ensures that the populations served will remain the same. Building the Behavioral Health Center on the Davidson site will not increase the operating costs or the charges to the public. Although CHS states that it will incur an additional \$4,556,950 in capital cost for the purchase of the new site, the project is not expected to exceed 115% of the approved capital expenditure of \$32,204,000. CHS contends that the scope of the project will remain the same and the proposed change in site location will not materially change the terms of the CON.

N.C. Gen. Stat. § 131E-189(b) allows the Department to withdraw CHS's CON if CHS fails 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 will not be developing its project in a manner that is materially different from the representation 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 CHS's proposed relocation of the Behavioral Health Center from Verhoeff Drive in Huntersville to N.C. Highway 73 in Davidson will not violate N.C. Gen. Stat. § 131E-181 and will not constitute a failure to satisfy a condition of the certificate of need in violation of N.C. Gen. Stat. § 131E-189(b).

This the \_\_\_\_\_ day of June, 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  
K&L Gates, LLP  
430 Davis Drive, Suite 400  
Morrisville, NC 27560

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

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Jeff Horton  
Chief Operating Officer