

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

**IN RE REQUEST FOR DECLARATORY)
RULING BY NOVANT HEALTH, INC. and)
NOVANT HEALTH FORSYTH MEDICAL) **DECLARATORY RULING**
CENTER)**

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 10 NCAC 14A .0103 under the authority granted me by the Secretary of the Department.

Novant Health, Inc. and Forsyth Medical Center (“FMC”) (collectively “Petitioners”) have requested a declaratory ruling as to the applicability of Chapter 131E, Article 9 to their proposal to separately license FMC and the Novant Health Rehabilitation Center (“Rehabilitation Center”), and specifically that no new Certificate of Need (“CON”) is required for such a change in licensure. 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. Denise M. Gunter of Nelson Mullins Riley & Scarborough, LLP as counsel for Petitioners has requested this ruling and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

The Rehabilitation Center is a 68-bed inpatient rehabilitation facility located on the campus of FMC in Winston-Salem. The Rehabilitation Center opened in 1971, before the current CON law was in effect. The Rehabilitation Center was licensed under the acute care hospital license of FMC.

Novant Health is proposing to license the Rehabilitation Center separately from Novant Health Forsyth Medical Center. The ownership, location, bed capacity, services, and number of inpatient rehabilitation beds located in Health Service Area II will not change as a result of this request. Charges to patients and payors will not increase as a result of this proposal and there are no capital costs associated with the proposal. The Rehabilitation Center is currently accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF), and intends to remain accredited by CARF once separately licensed from Forsyth Medical Center.

ANALYSIS

A highly technical reading of the CON law could support the proposition that Petitioners' proposed change in licensure would create a new institutional health service subject to a CON requirement. N.C. Gen. Stat. § 131E-176(9)b states that a rehabilitation facility is a health service facility. N.C. Gen. Stat. §131E-176(16) provides: "The construction, development, or other establishment of a new health service facility" constitutes a new institutional health service." N.C. Gen. Stat. §131E-178(a) states: "No person shall offer or develop a new institutional health service without first obtaining a certificate of need from the Department; ... "

Despite the technical definition of a new institutional health service under the CON law, the Rehabilitation Center is not a new health service facility for CON law purposes. The Rehabilitation Center is an existing facility that opened in 1971. At that time, it could have been licensed separately from FMC without a CON. The Novant Health License Renewal application lists FMC and the Rehabilitation Center as separate entities with different National Provider Identifiers.

As noted above, the proposal involves no change in ownership, location, bed capacity, services, charges to patients and payors, or number of inpatient rehabilitation beds located in

Health Service Area II. The State Medical Facility Plan reports acute care bed utilization separately from inpatient rehabilitation utilization. The change sought by Petitioners, therefore, will cause no changes in the SMFP other than noting a name change. The proposed change in licensure does not infringe on the purposes of the CON law.

On occasion in the past, the Department has approved declaratory ruling requests for similar licensure changes without requiring a CON, noting that on the specific facts presented, an overly technical interpretation of the CON law would not be in furtherance of any statutory purpose. See, e.g., In Re Request for Declaratory Ruling by WakeMed, 15 July 2002.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that Petitioners' proposal to separately license the Rehabilitation Center does not violate N.C. Gen. Stat. Chapter 131E, Article 9.

This the ____ day of August, 2014.

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 PETITIONERS by causing a copy of same to be placed in the United States mail, postage pre-paid envelope, certified mail, return receipt requested, addressed as follows:

CERTIFIED MAIL

Denise M. Gunter
Nelson Mullins Riley & Scarborough LLP
380 Knollwood Street
Suite 530
Winston-Salem, NC 27103

This the ____ day of August, 2014.

Cheryl Ouimet
Chief Operating Officer