

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY REX HOSPITAL, INC. d/b/a) DECLARATORY RULING
UNC REX)
FID# 953429)**

I, Mark Payne, 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 NCAC 14A .0103, under the authority granted me by the Secretary of the Department of Health and Human Services.

On December 12, 2017, Rex Hospital, Inc. d/b/a UNC REX (hereinafter, “Rex”), requested a declaratory ruling regarding the applicability of N.C.G.S. Chapter 131E, Article 9 (Certificate of Need Law), and the Department’s rules to its proposal to operate its 418 licensed non-NICU acute care beds in any of the 510 non-NICU bed spaces it has available that currently meets the licensure standards for acute care beds without having to file a new bed plan each time it desires to use a different complement of bed spaces. On February 19, 2018, the Department issued to Rex a request for additional information. On February 20, 2018, Rex submitted to the Department the additional information as requested. 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. Gary S. Qualls, of K&L Gates, LLP, has requested this ruling on behalf of Rex and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Rex Hospital is located at 4420 Lake Boone Trail, Raleigh, Wake County, North Carolina. It is currently licensed for 439 acute care beds—418 are used as General Acute Care Beds, fifteen (15) are used as Neonatal Level III Beds, and six (6) are used as Neonatal Level IV Beds. Rex currently has 510 non-NICU bed spaces that meet the licensure standards for acute care beds. Rex now proposes (i) operate its 418 licensed non-NICU acute care beds in any of the 510 non-NICU bed spaces it has available that currently meets the licensure standards for acute care beds, so long as it does not operate more than 439 acute care licensed beds at any given time; and (ii) that it need not file a new bed plan with the Department each time it decides to use a different complement of bed spaces to operate its 418 licensed non-NICU acute care beds.

ANALYSIS

A certificate of need would only be required if Rex’s proposal results in the offering or development of a “new institutional health service.” N.C.G.S. § 131E-178(a). Rex’s proposal would not result in the construction, development, or other establishment of a new health service facility; change its bed capacity; and appears to imply that there is no capital cost associated therewith. Therefore, the proposal would not result in the offering or development of a “new institutional health service,” as that term is defined. N.C.G.S. § 131E-176(16). In addition, Rex has specifically identified the additional bed spaces it proposes to use, asserts that those spaces meet the current licensure standards for acute care beds, and agrees that it will not exceed the use of 439 beds at any given time.

Rex asserts that it has several unique features that pose unique bed allocation and placement challenges. Rex states that the more beds it has designated specifically to observation

status, the less flexibility it has to move patients seamlessly through the hospital, which can result in long delays while patients await appropriate bed placement.

However, based on Rex's own self-reported data, which is included in its 2018 License Renewal Application, Rex has thirty-one (31) unlicensed observation beds and the average daily census (ADC) in FY2017 was 36.5 patients. During the same time period, the ADC for the licensed acute care beds was 306 patients ($111,613 / 365 = 305.8$) and the occupancy rate was 70% ($305.8 / 439 = 0.697$). The target occupancy rate for a hospital with an ADC greater than 200 is 75.2% (see Policy AC-5 in the 2018 State Medical Facilities Plan (SMFP)). In addition, according to the 2018 SMFP, Rex Hospital is projected to have a surplus of 37 licensed acute care beds in 2020 (the planning horizon). Further, in the event of an emergency and with the approval of the Department, "a hospital may temporarily increase its bed capacity by up to ten percent (10%) over its licensed bed capacity by utilizing observation beds for hospital inpatients." See N.C. Gen. Stat. § 131E-83.

Allowing a licensed provider the latitude to unilaterally designate and undesignate some of its licensed beds from a pool of unused, excess beds creates numerous potential safety and regulatory issues. Moreover, Rex's request would impose significant additional survey and licensure responsibilities upon the Department for which the Department lacks the resources to perform.

CONCLUSION

For the foregoing reasons, assuming the statement of facts and representations made in the request of December 12, 2017, and the additional information submitted on February 20, 2018, by Rex to be true, I conclude that Rex's request to operate its 418 licensed non-NICU acute care beds in any of the 510 non-NICU bed spaces it has available that currently meets the licensure standards

for acute care beds, so long as it does not operate more than 439 acute care licensed beds at any given time, is hereby denied.

This the _____ day of February, 2018.

S. Mark Payne, 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 PETITIONER by certified mail, return receipt requested, by causing a copy of same to be placed in the United States Mail, first-class, postage pre-paid envelope addressed as follows:

CERTIFIED MAIL

Gary S. Qualls
K&L GATES, LLP
430 Davis Drive, Suite 400
Morrisville, North Carolina 27560
ATTORNEY FOR REX HOSPITAL, INC.

This the _____ day of February, 2018.

Diana Barbry
Executive Assistant to the Director
Division of Health Service Regulation