

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

IN RE: REQUEST FOR DECLARATORY)
RULING BY THE UNIVERSITY OF NORTH)
CAROLINA HEALTH CARE SYSTEM, THE)
UNIVERSITY OF NORTH CAROLINA)
AT CHAPEL HILL D/B/A UNC HOSPITALS)
AND HIGH POINT REGIONAL HEALTH)

**DECLARATORY
RULING**

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 Gen. Stat. §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.

On February 19, 2018, The University of North Carolina Health Care System (“UNC Health Care”), The University of North Carolina at Chapel Hill d/b/a UNC Hospitals (“UNC Hospitals”), and High Point Regional Health (“HPRH”) (collectively the “Parties”) gave notice to the Division of Health Service Regulation (“DHSR”) requesting a determination that the re-designation (without relocation) of UNC Hospitals’ Cancer Center Space on the HPRH campus, and Radiation Therapy Equipment located therein, to provider-based space of HPRH: (1) is permitted by the Hospital Licensure Act; and (2) does not require a Certificate of Need (“CON”). 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 the Parties, and has provided the material facts upon which this ruling is based.

STATEMENT OF FACTS

HPRH operates an acute care hospital in High Point, Guilford County. UNC Health Care is the sole corporate member of HPRH. Thus, UNC Health Care currently owns, as the parent, both HPRH and UNC Hospitals.

On February 8, 2016, the Parties gave notice to DHSR requesting a determination that the re-designation (without relocation) of HPRH's Cancer Center Space, and Radiation Therapy Equipment located therein, to unlicensed, provider-based space of its sister hospital, UNC Hospitals: (1) was permitted by the Hospital Licensure Act; and (2) did not require a CON. Supplemental information was provided on March 14, 2016.

On March 24, 2016, the Department issued a Declaratory Ruling pursuant to North Carolina Gen. Stat. §150B-4 and N.C.A.C. 14A .0103 as to the applicability of Chapter 131E, Articles 5 and 9 of the North Carolina General Statutes, and of the department's rules, to the facts described above, concluding that the re-designation (without relocation) of HPRH's Cancer Center Space, and Radiation Therapy Equipment located therein, to unlicensed, provider-based space of its sister hospital, UNC Hospitals: (1) was permitted by the Hospital Licensure Act; and (2) did not require a Certificate of Need ("CON") (the "2016 Re-designation").

The Parties now wish to reverse the 2016 Re-designation and return the Cancer Center Space to the same status that existed prior to the 2016 Re-designation, that is, re-designate the Cancer Center Space to be provider-based licensed space of HPRH (the "2018 Re-designation").

Pursuant to the 2018 Re-designation, the Cancer Center Space, and the Radiation Therapy Equipment therein, will remain in the precise same location, in the same Hayworth Cancer Center Building at 302 Westwood Avenue, High Point, NC, 27262. HPRH owns the Cancer Center Space, including Radiation Therapy Equipment, which is currently leased to UNC Hospitals for its use

through operating leases. These leases will be terminated upon the 2018 Re-designation of the Cancer Center Space. Further, it is anticipated that in the summer of 2018, UNC Health Care will enter into a transaction pursuant to which the ownership of HPRH, including the Cancer Center space, will be transferred to a third party and will no longer be part of UNC Health Care.

ANALYSIS

A. Licensure Discussion

The 2018 Re-designation entails the Parties shifting the designation of the Cancer Center Space from a provider-based, unlicensed location of UNC Hospitals to a provider-based, licensed location of HPRH. No assets are physically moving as a result of the Re-designation.

Given the foregoing features, the Department confirms that the 2018 Re-designation (without relocation) from a provider-based, unlicensed location of UNC Hospitals to a provider-based, licensed location of HPRH is permitted by Chapter 131E, Article 5, the Hospital Licensure Act.

B. CON Discussion

The 2018 Re-designation does not trigger any of the definitions of a “new institutional health service,” which would implicate CON review. N.C. Gen. Stat. § 131E-178(a) provides that no person shall offer or develop a “new institutional health service” without first obtaining a CON. The term “new institutional health service” is defined in numerous ways in N.C. Gen. Stat. § 131E-176(16).

N.C. Gen. Stat. §131E-178(b) states:

“No person shall make an acquisition by donation, lease, transfer, or comparable arrangement without first obtaining a certificate of need from the Department, if the acquisition would have been a new institutional health service if it had been made by purchase. In determining whether an acquisition would have been a new institutional health service, the capital expenditure for the asset shall be deemed to be the fair market value of the asset or the cost of the asset, whichever is greater.”

The 2018 Re-designation of the Cancer Center Space does not trigger any of the “acquisition-related” new institutional health service definitions in N.C. Gen. Stat. §131E-176(16). The Cancer Center Space and the Radiation Therapy Equipment are not being acquired, because no legal entity is acquiring anything. Rather, the 2018 Re-designation would reverse the 2016 Re-designation. HPRH remains the owner of the Cancer Center Space and Radiation Therapy Equipment.

10A NCAC 14C.0502 states:

“(b) Ownership of a certificate of need is transferred when any person acquires a certificate from the holder by purchase, donation, lease, trade, or any comparable arrangement, except that ownership of a certificate of need is not transferred when:

- (1) the holder of the certificate is a corporation and the identity of the holder changes because of a corporate reorganization; or*
- (2) the holder of the certificate is a partnership and the identity of the holder changes because the same partners reorganize as a new partnership.”*

The 2018 Re-designation does not constitute the establishment of a new health service facility under §131E-176(16)(a) because the proposal would reverse the 2016 Re-designation and the Cancer Center Space and Radiation Therapy Equipment continue to belong to HPRH.

N.C. Gen. Stat. §131E-176(16)(b) defines a “new institutional health service” to include:

“. . . [T]he obligation by any person of a capital expenditure exceeding two million dollars (\$2,000,000) to develop or expand a health service or a health service facility, or which relates to the provision of a health service . . . ”

The 2018 Re-designation does not constitute a “new institutional health service” under N.C. Gen. Stat. §131E-176(16)(b), because no capital expenditures are being incurred as part of the Re-designation.

Because no beds are involved, the 2018 Re-designation does not constitute a “change in bed capacity” under N.C. Gen. Stat. §131E-176(16)(c). Because no operating rooms are involved, the 2018 Re-designation does not implicate N.C. Gen. Stat. §131E-176(16)(u). Nor does the 2018 Re-

designation constitute a “new institutional health service” under any other CON trigger in N.C. Gen. Stat. §131E-176(16).

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the 2018 Re-designation (without relocation) of UNC Hospitals’ Cancer Center Space on the HPRH campus, and Radiation Therapy Equipment located therein, to provider-based space of HPRH: (1) is permitted by the Hospital Licensure Act; and (2) does not require a Certificate of Need.

This the _____ day of April, 2018.

Mark Payne, 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:

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

This the _____ day of April, 2018.

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