

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

**IN RE: REQUEST FOR DECLARATORY )  
RULING BY HUGH CHATHAM MEMORIAL )  
HOSPITAL )                   DECLARATORY RULING  
Project I.D. No. G-8381-09 )**

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 to me by the Secretary of the Department of Health and Human Services.

Hugh Chatham Memorial Hospital (“Hugh Chatham”) has requested a declaratory ruling allowing for a change in location for Project I.D. No. G-8381-09 on the grounds that the change does not constitute a material change in scope or physical condition or a failure to materially comply with the representations made by Hugh Chatham 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.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. Robert V. Bode of the law firm Bode, Call & Stroupe, L.L.P. has requested this ruling on behalf of Hugh Chatham and has provided the material facts upon which this ruling is based.

## **STATEMENT OF THE FACTS**

On January 28, 2010, Hugh Chatham was issued a Certificate of Need (“CON”) for one gastrointestinal endoscopy procedure room and associated support areas to be located inside the hospital in Elkin, Surry County, North Carolina at a capital cost of \$428,000.

While Project I.D. No. G-8381-09 was under review; Hugh Chatham purchased the assets of Tri-County Gastroenterology, which included three CON approved gastrointestinal endoscopy procedure rooms. This transaction was approved by the CON Section in an Exempt from Review letter dated October 14, 2009. Tri-County Gastroenterology is located at 201 West Main Street, Elkin, Surry County, North Carolina.

Hugh Chatham decided it would be most effective to relocate the new CON approved gastrointestinal endoscopy procedure room to the outpatient center at Tri-County Gastroenterology and operate all four approved gastrointestinal endoscopy procedure rooms at the same location. This change in location would reduce the capital cost for the development to approximately \$240,000.

## **ANALYSIS**

The CON law would require a full review of Hugh Chatham’s site relocation, if that relocation were to represent a material change in the physical location or scope of the project. N.C.G.S. § 131E-181(a). The proposed site relocation does not constitute a material change in the physical location or scope of the proposed project for the following reasons:

Hugh Chatham’s request provides an alternate location that is acceptable for the development of the approved gastrointestinal endoscopy procedure room. The Tri-County Gastroenterology site is approximately three miles away from the Hugh Chatham Memorial

Hospital site that was initially approved in the CON application. Hugh Chatham owns Tri-County Gastroenterology and both are located in Surry County, North Carolina and will continue to serve the patient population for which the need was originally demonstrated.

The cost to relocate the approved gastrointestinal endoscopy procedure room from Hugh Chatham to Tri-County Gastroenterology will be lower than the approved cost in the CON application for development in the hospital.

The service area will be consistent with the service area listed in the application, the service offerings will be consistent with those proposed in the application, and there will be no changes in volume projections and demand as a result of the site change.

The site change will not change the services offered, the costs of providing endoscopy services, or the charges to the public.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw Hugh Chatham's CON if Hugh Chatham 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. Hugh Chatham will not be developing its project in a manner that is materially different from the representations 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 the relocation of the site of Hugh Chatham's gastrointestinal endoscopy procedure room from the Hugh Chatham Memorial Hospital site to the Tri-County Gastroenterology site, will not violate N.C. Gen. Stat. § 131E-181(a), because it will not constitute a material change in

the terms of the CON related to location, will not materially increase the capital cost of the project, and will not constitute a failure to satisfy a condition of the CON in violation of N.C.G.S. § 131E-189(b).

This the \_\_\_\_\_ day of September, 2011.

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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**

Robert V. Bode  
Bode, Call & Stroupe, L.L.P.  
Post Office Box 6338  
Raleigh, NC 27628-6338

This the \_\_\_\_\_ day of September, 2011.

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Drexdal Pratt, Director  
Division of Health Service Regulation  
N.C. Department of Health and Human Services