

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

IN RE: REQUEST FOR)	
DECLARATORY RULING BY)	
THE CHARLOTTE-MECKLENBURG)	DECLARATORY RULING
HOSPITAL AUTHORITY D/B/A)	
CAROLINAS HEALTHCARE SYSTEM)	

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

The Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Healthcare System (“CMHA”) has requested a declaratory ruling to confirm that its acquisition of the membership interests of University Radiation Oncology Center, LLC (“UROC”) and its continued operation of that facility may proceed without first obtaining a Certificate of Need (“CON”). This ruling will be binding upon the Department and the entities 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. William W. Stewart of K&L Gates LLP has requested this ruling on CMHA’s behalf and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

UROC, which is located at 8310 University Executive Park, Suite 500, Charlotte, NC 28262, is a limited liability company which provides radiation therapy treatment. UROC was

acquired by Radiation Oncology Centers of the Carolinas, Inc. (“ROCC”) pursuant to an exemption in August 1997. Currently, UROC operates a Varian 2100C linear accelerator and a GE Highspeed Advantage CT simulator, which the CON Section previously approved.

On August 18, 2011, the Department issued a Declaratory Ruling determining that ROCC could transfer, without a CON, its interest in UROC and Matthews Radiation Oncology Center (“MROC”) to two wholly owned subsidiaries of ROCC. Once that transaction is consummated, ROCC will be the sole member of UROC. ROCC will then transfer its entire membership interest in UROC to CMHA and CMHA will become UROC’s sole member. Thus, UROC will remain intact as the same LLC, but with a different membership composition.

ANALYSIS

The CON law provides that no person shall offer or develop a “new institutional health service” without first obtaining a CON. N.C. Gen. Stat. § 131E-178. The list of new institutional health services includes “the acquisition by purchase, donation, lease, transfer or comparable arrangement” of a linear accelerator or simulator “by or on behalf of any person,” N.C. Gen. Stat. § 131E-176(16)(f1)5a, 9, and “the 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,” N.C. Gen. Stat. § 131E-176(16)(b).

Prior declaratory rulings show that the Department has already determined that these definitions do not require an entity to obtain a CON to acquire membership interests in an existing legal entity like UROC which owns and operates a linear accelerator or simulator. The declaratory ruling requested by CMHA is consistent with the Department’s prior rulings that

have interpreted the applicability of the CON Law to the purchase of ownership interests in health care organizations, for the following reasons:

CMHA's acquisition of the membership interests in UROC does not constitute the acquisition of a linear accelerator or a simulator because the ownership of the equipment will not change, and the same equipment will be used to provide the same radiation oncology services, in the same location. UROC will continue to own the two pieces of equipment and UROC's legal status as a corporate entity will not change.

The purchase of ROCC's membership interests in UROC does not involve the offering or expansion of any new facility, service or equipment, and the state's inventory of linear accelerators and simulators will not change. No new or additional equipment will be acquired or placed in operation in the State.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that CMHA does not require a certificate of need in order to proceed with the purchase of ROCC's membership interests in UROC.

This the _____ day of November, 2011.

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

William W. Stewart, Esq.
K&L Gates LLP
430 Davis Drive, Suite 400
Morrisville, NC 27560

This the _____ day of November, 2011.

Jeff Horton
Chief Operating Officer