

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY CALDWELL MEMORIAL)
HOSPITAL, INC.) **DECLARATORY RULING**
Project I.D. No. E-8278-09)**

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

Caldwell Memorial Hospital, Inc. (hereinafter “CMH”) has requested a declaratory ruling allowing for a change in location for Project I.D. No. E-8278-09 on the grounds that the change does not constitute a material change in scope or physical location or a failure to materially comply with the representations made by CMH 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. Laura Easton of CMH has requested this ruling on behalf of CMH and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

On January 15, 2009, CMH filed a CON application, designated Project I.D. No. E-8278-09, to purchase a 64-slice CT scanner and relocate its existing 16-slice CT scanner to leased space on the hospital campus located at 321 Mulberry Street SW, Lenoir, NC.

On May 8, 2009, the CON Section conditionally approved CMH's CON application. On June 8, 2009, the CON Section issued a CON for CMH's project.

CMH now seeks approval to relocate the 16-slice CT scanner to 212 Mulberry Street SW, Lenoir, NC.

ANALYSIS

The CON law would require a full review of CMH'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 the scope of the proposed project for the following reasons:

The alternative site is located approximately one tenth of a mile from the 321 Mulberry Street SW site and will not affect the population to be served or the services to be provided as proposed in CMH's CON application.

The alternative site is a less costly alternative because CMH owns the existing building located at 212 Mulberry Street, and is able to complete up fits to the building at a cost that will be less than originally projected to construct a new building.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw CMH's CON if CMH 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. CMH 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 site relocation from 321 Mulberry Street SW, Lenoir, NC to 212 Mulberry Street SW, Lenoir, NC Project I.D. No. E-8278-09 will not constitute a material change in the physical location or scope of the project, will not violate N.C.G.S. § 131E-181, 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 July, 2012.

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

Laura Easton, CEO
Caldwell Memorial Hospital
321 Mulberry Street SW
Lenoir, NC 28645

This the _____ day of July, 2012.

Dr. Patsy Christian, Assistant Director
Healthcare, Quality and Safety