

**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.) DECLARATORY RULING
Project I.D. No. J-7284-05)**

I, Jeff Horton, as Acting 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.

Rex Hospital (“Rex”) has requested a declaratory ruling allowing for a change in host sites for Project I.D. No. J-7284-05 on the grounds that the change does not constitute a material change in physical location or a failure to materially comply with the representations made by Rex in its Certificate of Need (“CON”) application for its project. N.C.G.S. §§ 131E-181(a). 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

Effective August 4th, 2006, the CON Section issued a CON to Rex for Project I.D. No. J-7284-05 to acquire one mobile MRI scanner. The proposed host sites for the scanner were Rex Family Practice of Wakefield and Rex Hospital’s main campus on Lake Boone Trail in Raleigh.

Rex currently provides mobile MRI services at Rex Family Practice of Wakefield five days per week and Rex Hospital's main campus two days per week.

Rex represents that it will move its mobile MRI so as to serve two or more sites per week and adjust its schedule to provide service at Rex Knightdale one day per week.

The addition of mobile MRI services through its mobile MRI at Rex Knightdale will not increase the capital costs above the amounts in Rex's mobile MRI CON.

Rex Knightdale is located in Wake County and Rex is currently approved to provide mobile MRI services in Wake County.

ANALYSIS

The CON law would require a full review of Rex's proposed change of host site if that change were to represent a material change in the physical location or scope of the project. N.C.G.S. § 131E-181(a). The proposed change of the host site for Rex's project to Rex Knightdale does not constitute a material change in the physical location or the scope of the proposed project because the use of Rex Knightdale as a host site will not affect the scope of services offered or the costs and charges to Rex or to the public for the provision of mobile MRI services. In addition, there is no proposed change in the person named in the application that would result in a violation of N.C.G.S. § 131E-181(a).

N.C.G.S. § 131E-189(b) allows the Agency to withdraw Rex's CON if Rex 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. Rex 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 addition of Rex Knightdale as a host site for Rex’s mobile MRI unit, Project I.D. No. J-7284-05, 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 ruling is not intended, and should not be interpreted, to authorize any increases in the approved capital expenditure for this project, a change in the approved timetable, a change in the conditions placed on the certificate of need, or any other change in the approved project.

This the _____ day of _____, 2009.

Jeff Horton, Acting 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

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

This the _____ day of _____, 2009.

Jesse Goodman
Acting Chief Operating Officer