

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY HIGH POINT REGIONAL) DECLARATORY RULING
HEALTH SYSTEM)
Project I.D. No. G-7064-04)**

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.

High Point Regional Health System (“High Point”) has requested a declaratory ruling allowing it to add an additional host site for Project I.D. No. G-7064-04 (the “Project Unit”) on the grounds that the addition does not constitute a material change in physical location or a failure to materially comply with the representations made by High Point 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. Gary S. Qualls of K&L Gates, LLP, counsel for High Point, has requested this ruling on behalf of High Point and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Effective 12 August 2004, the CON Section issued a CON to High Point for Project I.D. No.G-7064-04 to acquire the Project Unit to provide mobile MRI services at two host sites. The approved host sites are a medical office building at 404 Westwood Avenue on the campus of High Point Regional Hospital (the “Hospital Campus Site) in High Point, North Carolina and Johnson Neurological Clinic (“JNC”) at 606 North Elm Street (the “JNC Site”) in High Point, North Carolina (collectively “the Original Sites”). On 17 November 2008, the Department issued a Declaratory Ruling allowing High Point to add an additional service provider, MedVentures, LLC (“MedVentures”), a limited liability company wholly owned by High Point, at the Hospital Campus Site.

In this Request, High Point proposes to add an additional host site for its mobile MRI scanner. The proposed site is High Point Health Care Ventures, Inc.’s (“HPHCV”) imaging center which was approved to relocate to Premier Medical Plaza located on Premier Drive, High Point, North Carolina (“the Premier Drive Site”) pursuant to CON Project I.D. No. G-8001-07. High Point states that adding the Premier Drive Site will not result in any changes in the scope of services offered nor will it affect the population proposed to be served. High Point represents that adding the Premier Drive Site will not result in any increase in costs to patients for its mobile MRI services. High Point further represents that it will comply with all conditions of its CON and all applicable regulations.

Currently, High Point operates the Project Unit at the Hospital Campus Site on Monday, Wednesday, Thursday and Friday of each week, and at the JNC site on Tuesday each week. High Point proposes to operate the Project Unit at the Hospital Campus Site two days a week, at the JNC Site one day a week, and at the Premier Drive Site three days a week.

ANALYSIS

The CON law would require a full review of High Point's proposed addition of a third 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 addition of the Premier Drive Site as a third host site does not constitute a material change in the physical location or the scope of the proposed project because the use of the Premier Drive Site as a host site will not affect the scope of services offered or the costs and charges to High Point or to the public for the provision of mobile MRI services. The Premier Drive Site is in the same county as the Original Sites. 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 High Point's CON if High Point 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. High Point 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 the Premier Drive Site as a third host site for High Point's mobile MRI scanner, Project I.D. No. G-7064-04, 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