

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY CAPE FEAR DIAGNOSTIC) DECLARATORY RULING
IMAGING, INC.)
Project I.D. No. O-6434-01)**

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.

Cape Fear Diagnostic Imaging, Inc. (hereinafter “CFDI”) has requested a declaratory ruling allowing a change in host sites for Project I.D. No. O-6434-01 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 CFDI 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. Denise M. Gunter of Nelson Mullins Riley & Scarborough, LLP, counsel for CFDI, has requested this ruling on behalf of Alliance and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Effective 23 July 2002, the CON Section issued a CON to CFDI for Project I.D. No.O-6434-01 to acquire a mobile magnetic resonance imaging (“MRI”) scanner (the “Project Unit”) to provide MRI services at “at least two” host sites. The initial host sites named in the CON application were CFDI’s office at 1602 Physicians Drive in Wilmington (“CFDI site”), and Columbus County Hospital in Whiteville (“Hospital site”).

As a result of several declaratory rulings subsequently requested by CFDI and issued by the Department, CFDI was allowed to add host sites at: (1) Jacksonville Diagnostic Imaging in Jacksonville (Onslow County) (the “JDI Site”), (2) Atlantic Diagnostic Center in Morehead City (Carteret County), (3) CFDI-Waterford in Leland (Brunswick County), and (4) Carolina Imaging in Fayetteville (Cumberland County). According to CFDI, the Project Unit currently provides services at the JDI Site in Jacksonville and the CFDI-Waterford Site in Leland. CFDI represents that the CFDI-Waterford Site has now closed and is requesting to add Carteret Surgical Associates, P.A. at 3714 Guardian Drive in Morehead City (the “Proposed Site”) as an additional host site for the Project Unit.

CFDI proposes to serve the Proposed Site one day per week and the JDI Site four days per week. CFDI states that the Proposed Site already has the required mobile pad and utility connections. CFDI represents that adding the Proposed Site will not result in any changes in the scope of services offered or any increase in costs to patients for its mobile MRI services. CFDI further represents that the addition of the Proposed Site will allow it to comply with Condition No. 4 of its CON which requires CFDI to serve not less than two host sites each week.

ANALYSIS

The CON law would require a full review of CFDI's proposed change in 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 in host site does not constitute a material change in the physical location or the scope of the proposed project because the use of the Proposed Site as a host site will not affect the scope of services offered or the costs and charges to CFDI or to the public for the provision of mobile MRI services. The Project Unit is required by both rule and CON condition to serve at least two host sites and the Project Unit has previously served a host site in Morehead City. 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 CFDI's CON if CFDI 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. CFDI 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 substitution of Carteret Surgical Associates, P.A., 3714 Guardian Avenue, Morehead City, N.C. as a host site for CFDI's mobile MRI Scanner (Project I.D. No. # O-6434-01), 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 _____, 2010.

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

Denise M. Gunter
Nelson Mullins Riley & Scarborough, LLP
380 Knollwood Street
Suite 530
Winston-Salem, North Carolina 27103

This the _____ day of _____, 2010.

Jeff Horton
Chief Operating Officer