

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY WACCAMAW ULTRASOUND) DECLARATORY RULING
& DIAGNOSTICS, INC.)
Project I.D. No. O-7340-05)**

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.

Waccamaw Ultrasound & Diagnostics, Inc. (hereinafter “Waccamaw”) has requested a declaratory ruling allowing for a change in host sites for Project I.D. No. O-7340-05 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 Waccamaw 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. Renee J. Montgomery and Robert A. Leandro of Parker Poe Adams & Bernstein LLP have requested this ruling on behalf of Waccamaw and have provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

On January 27, 2006 Waccamaw was approved to acquire a mobile MRI scanner pursuant to a settlement agreement in Project I.D. No. O-7340-05. The original host sites were 619 Jefferson Street, Whiteville and 604 North Madison Street, Whiteville. Pursuant to subsequent declaratory rulings and a settlement agreement Waccamaw also serves the following sites with its mobile MRI scanner: 1414 30th Street, Wilmington; 404 Hatfield Court, Lumberton; and 27 Commerce Drive, Rocky Point.

A settlement agreement dated October 25, 2008 established that the service area for the Waccamaw Mobile MRI scanner consists of Columbus, Robeson, Bladen, Pender, Brunswick, and New Hanover County. The settlement agreement also stated, “The Agency agrees to permit Waccamaw to use its mobile MRI scanner and trailer at the locations in Wilmington, New Hanover County and Rocky Point, Pender County as proposed in Waccamaw’s Requests for Declaratory Ruling.”

Waccamaw has identified an additional site at Medical Center Diagnostics, 1515 Medical Center Drive, Wilmington, within its approved service area, where it proposes to provide mobile MRI services two days per week.

Waccamaw will no longer serve the current site located at 27 Commerce Drive, Rocky Point, North Carolina, 28457.

The proposed Medical Center Drive site currently contains a mobile MRI docking pad. Therefore there are no capital costs associated with the delivery of mobile MRI services at this site.

ANALYSIS

The CON law would require a full review of Waccamaw's site addition if it were to constitute a material change in the scope of the project. N.C.G.S. § 131E-181(a). The proposed site addition does not constitute a material change in the physical location or the scope of the proposed project for the following reasons:

The addition of Medical Center Diagnostics as a host site will not affect the scope of services offered or the costs and charges to Waccamaw or to the public of providing mobile MRI services.

Waccamaw agrees to satisfy all requirement and representations made regarding the host sites in its original CON application, subsequent declaratory rulings, and settlement agreement.

The proposed host site at Medical Center Diagnostics is within the service area for the Mobile MRI established by the settlement agreement.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw Waccamaw's CON if Waccamaw 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. Waccamaw 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 Medical Center Diagnostics of New Hanover County to the route of Waccamaw's mobile MRI scanner does 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 October, 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

Renee J. Montgomery
Robert A. Leandro
Parker Poe Adams & Bernstein LLP
Post Office Box 389
Raleigh, North Carolina 27602

This the _____ day of October, 2011.

Jeff Horton
Chief Operating Officer