

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY FORSYTH MEMORIAL)
HOSPITAL, INC. d/b/a FORSYTH MEDICAL) **DECLARATORY RULING**
CENTER)
Project I.D. No. G-7919-07)**

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.

Forsyth Memorial Hospital, Inc. d/b/a Forsyth Medical Center (“Forsyth”) has requested a declaratory ruling that allows a change in location for a fixed MRI scanner, contending that the change would not constitute a change in scope for purposes of N.C. Gen. Stat. § 131E-181 and that the location change would not affect Forsyth’s material compliance with representations made in the Certificate of Need (“CON”) application or the conditions imposed upon the CON. The CON law would require a full review of Forsyth’s proposal if it represented a material change in the physical location or scope of the project. N.C. Gen. Stat. § 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. Denise M. Gunter of Nelson Mullins Riley & Scarborough, LLP has requested this ruling on behalf of Forsyth and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

On November 28, 2007, the CON Section issued a CON to Forsyth for Project I.D. No. G-7919-07 to acquire a third fixed MRI scanner, to be installed at Forsyth Medical Center (“FMC”), 3333 Silas Creek Parkway, Winston-Salem, NC 27103. On December 29, 2011, the Department issued a declaratory ruling allowing Forsyth to relocate the approved, but unimplemented fixed MRI scanner from FMC to Kernersville Medical Center (“KMC”). Forsyth now proposes to relocate and install the approved, but unimplemented fixed MRI scanner from inside KMC to one of two mobile pads located outside the building.

The two mobile MRI pads at KMC have already been inspected and have been in use since KMC opened. The MRI scanner will be located and installed on the mobile pad 24 hours per day, 7 days per week and will not be moved without the Department’s approval. The approved capital cost for Project I.D. No. G-7919-07 was \$2,413,230.70. The proposed change in location to the mobile pad outside of KMC will cost \$1,114,341, saving over \$1.4 million in capital cost from the 2007 CON. Additionally, FMC has indicated it will be able to avoid future payments of \$900,000 annually, currently paid to a mobile MRI for the mobile MRI scanner currently located on a pad at KMC six days per week. Forsyth represents that the mobile MRI scanner will find a new host site once the approved fixed MRI scanner is implemented at KMC.

ANALYSIS

The CON law would require a full review of Forsyth’s proposal if it represented a material change in the physical location or scope of the project. N.C. Gen. Stat. § 131E-181(a). The requested MRI relocation does not represent a material change in the scope of the project for the following reasons:

The change in location for the MRI scanner will not affect the scope of services offered or increase the costs and charges to Forsyth or to the public for the provision of MRI services. The newly proposed host site is a slight revision to the location at KMC where the scanner will be implemented. Furthermore, Forsyth agrees to satisfy all the requirements and representations made regarding the host site in its original CON application. Therefore, Forsyth's proposal does not constitute a material change in the scope of the project.

N.C. Gen. Stat. § 131E-183(b) allows the Agency to withdraw the CON if Forsyth 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. Forsyth will not be operating the project in a manner that is materially different from the representation made in the application, nor in a manner that is inconsistent with any of the conditions that were placed on the CON.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the proposed change in location for the approved, but unimplemented fixed MRI scanner from inside Kernersville Medical Center to one of two mobile pads located outside the building does not constitute a change in the scope of the project, would not violate N.C. Gen. Stat. § 131E-181, and would not constitute a failure to satisfy a condition of the certificate of need in violation of N.C. Gen. Stat. § 131E-189(b).

This the _____ day of May, 2013.

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 May, 2013.

Cheryl Ouimet
Chief Operating Officer