

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY NOVANT HEALTH, INC. AND)
FORSYTH MEMORIAL HOSPITAL, INC.) DECLARATORY RULING
d/b/a FORSYTH MEDICAL CENTER)
Project I.D. No. G-7065-04)**

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.

Novant Health, Inc. and Forsyth Memorial Hospital, Inc. d/b/a Forsyth Medical Center (“Petitioners”) request a declaratory ruling that the addition of a new mobile MRI host site is in material compliance with the terms of the certificate of need (“CON”) previously issued to Petitioners. 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 Gunter of Nelson Mullins Riley & Scarborough LLP has requested this ruling on behalf of Petitioners and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Effective November 13, 2004, the Agency issued a CON to Petitioners for Project I.D. No. G-7065-04 to acquire a mobile MRI scanner for the provision of mobile MRI services at the following sites: Mountainview Medical in King, Stokes County; Winston-Salem Health Care in Winston-Salem, Forsyth County; Central Triad Imaging Center in Kernersville, Forsyth County;

Thomasville Medical Center in Thomasville, Davidson County; and Northern Hospital of Surry County in Mount Airy, Surry County. According to Petitioners' CON Application, service to Thomasville Medical Center and Northern Hospital of Surry County was for backup mobile service on an "as needed" basis.

Pursuant to several prior Declaratory Rulings, Petitioners have added several host sites for the mobile MRI scanner, including Medical Associates at Davie in Davie County in 2006, Mecklenburg Diagnostic Imaging in Mooresville in Iredell County in 2009 (the "Mooresville site"), Forsyth Medical Center Imaging – Maplewood in Forsyth County in 2010, and Novant Health Kernersville Medical in Forsyth County in 2011. Subsequent to the Declaratory Rulings obtained in 2006 and 2009, all of the host sites were dropped except for Novant Health Imaging Mooresville in Iredell County because mobile MRI services were no longer needed.

As part of a settlement agreement, Petitioners have agreed to move the mobile MRI scanner out of Forsyth County no later than December 31, 2013. Due to the loss of sites in Forsyth County, Petitioners propose to operate the mobile MRI scanner at the Mooresville site, which is already authorized for service, as well as Novant Health Imaging Cabarrus, located at 925 Bradley Street, NE, Concord, North Carolina, 28025 in Cabarrus County (the "Cabarrus site"). The Cabarrus site is currently served by a fixed MRI scanner in addition to a "grandfathered" mobile MRI scanner which operates 3 days per week; therefore, the pad and electrical components necessary for operation are already in place. Accordingly, Petitioners request a declaratory ruling that the addition of the Cabarrus site is in material compliance with the CON.

ANALYSIS

N.C.G.S. § 131E-181(a) provides that “[a] certificate of need shall be valid only for the defined scope, physical location, and person named in the application.” The recipient of the CON must also materially comply with the representations made in the CON application. N.C.G.S. § 131E-181(b). If Petitioners’ proposal were to represent a material change in the scope of the project, the CON law would require a full review of the proposal. N.C.G.S. § 131E-181(a).

Petitioners represent that the scanner will complement the existing services at the Cabarrus site due to the demand for high-field mobile MRI services. Petitioners further represent that there will be no change in the scope of services originally proposed for the mobile MRI scanner. There will be no increases in costs or charges to Petitioners or to the public for the provision of mobile MRI scanner services as a result of the route change. The scanner has also served residents of Cabarrus County in the past and would improve MRI access for Cabarrus County residents. Petitioners represents that they will continue serving at least two host sites per week as required by the conditions placed on the CON and required by 10A NCAC 14C .2701.

Based on these circumstances and the proposed location within the same mobile MRI region as defined by 10A NCAC 14C .2701(10), Petitioners’ proposal does not constitute a material change in the physical location or scope of the project and is allowable.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that Petitioners' proposal will not violate N.C.G.S. § 131E-181, and will not constitute a failure to satisfy a condition of the certificate of need in violation of N.C.G.S. § 131E-189(b).

This the _____ day of December, 2013.

Drexdal Pratt, Director
Division of Health Service Regulation
N.C. Department of Health and Human Services

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Declaratory Ruling upon the PETITIONERS by certified mail, return receipt requested, by causing a copy of same to be placed in the United States Mail, first-class, postage pre-paid envelope addressed as follows:

CERTIFIED MAIL

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

This the _____ day of December, 2013.

Cheryl Ouimet
Chief Operating Officer