

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY COLUMBUS REGIONAL) DECLARATORY RULING
DIAGNOSTICS)
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”), do hereby issue this Declaratory Ruling pursuant to North Carolina General Statute § 150B-4 and 10A N.C.A.C. 14A .0103 under the authority granted me by the Secretary of the Department of Health and Human Services.

In 2013, Columbus Regional Diagnostics (“Columbus” or “Petitioner”) acquired the assets of Waccamaw Ultrasound & Diagnostics (“Waccamaw”), including a mobile MRI scanner acquired pursuant to the Certificate of Need (“CON”) issued for Project I.D. # O-7340-05. Columbus is now requesting to add two (2) host sites for the mobile MRI at Orthopaedic Specialists, PA, 509 Olde Waterford Way (“Olde Waterford Way Site”), Suite 103, Leland, NC; and Rocky Point Medical Center (“Rocky Point Medical Center Site”), 27 Commerce Drive, Rocky Point, NC. 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. Susan Fradenburg and Justin Mark Puleo of Smith Moore Leatherwood LLP have requested this ruling on behalf of Petitioner 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. # O-7340-05. The original host sites for the mobile MRI scanner were 619 Jefferson Street, Whiteville and 604 North Madison Street, Whiteville.

A settlement agreement (“the 2008 settlement agreement”) dated October 23, 2008 established that the service area for the Waccamaw Mobile MRI scanner included the counties of Columbus, Robeson Bladen, Pender, Brunswick, and New Hanover. According to the 2008 settlement agreement, the Agency also agreed to permit Waccamaw to use its scanner and trailer at the locations in Wilmington, New Hanover County and Rocky Point, Pender County as proposed in Waccamaw’s Requests for Declaratory Rulings.

Pursuant to subsequent declaratory rulings and the 2008 settlement agreement Waccamaw also served the following sites with its mobile MRI scanner: 1414 30th Street, Wilmington; 404 Hatfield Court, Lumberton; 27 Commerce Drive, Rocky Point, and 1515 Medical Center Drive, Wilmington.

Columbus no longer serves the sites located at 1414 30th Street, Wilmington; 515 Medical Center Drive, Wilmington, and 604 North Madison Street, Whiteville. Columbus is proposing to serve the additional host site at the Olde Waterford Way Site with mobile MRI services one day per week. Further, Columbus proposes to reactivate the previously approved site at the Rocky Point Medical Center Site which was deactivated pursuant to Waccamaw’s request in 2011.

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 Petitioner's proposal were to represent a material change in the physical location or scope of the project, the CON law would require a full review of Petitioner's proposal. N.C.G.S. § 131E-181(a).

Petitioner states there will be no change in the scope of services originally proposed for the mobile MRI scanner and the two new sites will not create any increases in charges to the public. Petitioner also states it will not incur any capital costs to serve these two new locations because each site already has a pad for a mobile MRI scanner.

Based on the facts as presented by Petitioner, Petitioner's proposal does not constitute a material change in the physical location or scope of the project and is allowable. The proposed host sites are within the approved service areas. The addition of the proposed host sites will not change the population served by the mobile MRI scanner, will not negatively impact the quality, scope, or availability of services provided by the mobile diagnostic program, and will not increase costs or charges. Petitioner agrees to materially comply with all the requirements and representations made in its original CON application, subsequent declaratory rulings, and settlement agreement.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw Petitioner's CON if Petitioner either fails to develop the service in a manner consistent with the representations made in the Petitioner's application or with any conditions that were placed on the CON. Petitioner will not be developing its project in a manner that is materially different from the representations made in its application, declaratory rulings, and settlement agreement 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 Petitioner's request for a declaratory ruling to add two new host sites for the mobile MRI scanner at Orthopaedic Specialists, PA, 509 Olde Waterford Way, Suite 103, Leland; and

Rocky Point Medical Center, 27 Commerce Drive, Rocky Point, 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 certificate of need in violation of N.C.G.S. § 131E-189(b).

This the _____ day of December, 2014.

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

Susan Fradenburg
Justin Mark Puleo
Smith Moore Leatherwood LLP
434 Fayetteville Street, Suite 2800
Raleigh, North Carolina 27601

This the _____ day of December, 2014.

Cheryl Ouimet
Chief Operating Officer