

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

**IN RE: REQUEST FOR DECLARATORY)
RULING FOUNDATION HEALTH MOBILE) DECLARATORY RULING
IMAGING, LLC, and NOVANT HEALTH, INC.)
Project I.D. No. J-7008-04)**

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 Statutes § 150B-4 and 10A NCAC 14A .0103, under the authority granted me by the Secretary of the Department of Health and Human Services.

Foundation Health Mobile Imaging, LLC (“Foundation”), and Novant Health, Inc. (“Novant”) (hereinafter collectively, “Foundation”), have requested a declaratory ruling allowing for the addition of a host site for a mobile MRI scanner for Project I.D. No. J-7008-04 (“Project”) on the grounds that the change does not constitute a material change in scope or a failure to materially comply with the representations made in the Certificate of Need (“CON”) application for this 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, has requested this ruling on behalf of Foundation and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

On March 8, 2005, the Certificate of Need Section issued a CON to Insight Health Corporation (“Insight”) allowing Insight to acquire a mobile MRI scanner to serve Health Service Areas IV, V, and VI. On June 29, 2010, the Certificate of Need Section issued a notice of exemption to Foundation for the acquisition of certain Insight assets, including the mobile MRI scanner. Through declaratory rulings, the Department has permitted Foundation to add various host sites and the mobile MRI scanner currently serves host sites in Cumberland, Moore, and Wake counties. Foundation now proposes to add FirstHealth Montgomery Memorial Hospital (“Montgomery”), located at 520 Allen Street, Troy, Montgomery County, North Carolina, as a host site for the mobile MRI scanner. Montgomery County is located in HSA V.

ANALYSIS

The CON law would require a full review of Foundation’s addition of the host site if that addition were to represent a material change in the scope of the Project. N.C.G.S. § 131E-181(a). The addition of the host site does not constitute a material change in the scope of the Project because it will not affect the scope of the services offered. Further, because Montgomery already has a mobile MRI pad and electrical hook ups, Foundation states that there will be no capital costs associated with adding Montgomery as a host site and no increase in patient charges for mobile MRI services.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw Foundation’s CON if Foundation 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. Foundation states that it will not operate the Project in a manner that is materially different from the representations made in the application or 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 Foundation's addition of FirstHealth Montgomery Memorial Hospital, located at 520 Allen Street, Troy, Montgomery County, North Carolina, as a host site for the mobile MRI scanner, will not constitute a material change in the 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 February, 2015.

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 PETITIONER 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 M. Gunter
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ATTORNEY FOR FOUNDATION HEALTH MOBILE
IMAGING, LLC, and NOVANT HEALTH, INC.

This the _____ day of February, 2015.

Cheryl Ouimet
Chief Operating Officer