

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY BLUE RIDGE HEALTHCARE) DECLARATORY RULING
HOSPITALS, INC.)
Project I.D. No. E-7066-04)**

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.

Blue Ridge Healthcare Hospitals, Inc. (“Petitioner”) has requested a declaratory ruling allowing it to operate its mobile MRI scanner, which originally received CON approval as part of Project I.D. No. E-7066-04, at an additional host site. 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. Gary S. Qualls of K&L Gates, LLP has requested this ruling on behalf of Petitioner and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Blue Ridge Healthcare Hospitals, Inc. (BRHH) was established as of December 1, 2012 through the merger of Grace Hospital, Inc. (Grace) and Valdese General Hospital, Inc. (Valdese). Grace had previously acquired the assets of Blue Ridge Radiology Associates, P.A. (BRRA),

including its mobile MRI scanner. The mobile MRI scanner application had been identified by the CON Section as Project I.D. No. E-7066-04 and a certificate of need had been issued for the project on January 18, 2005. As part of the conditional approval of the mobile MRI scanner, the CON Section imposed a condition which states that BRRA could not add or change a host site without first obtaining a declaratory ruling from the Department. Pursuant to a declaratory ruling issued July 8, 2011, Grace (which by then had acquired the mobile MRI scanner) was approved to provide services using the mobile MRI scanner at two sites, one in Lenoir in Caldwell County and one in Morganton in Burke County. Petitioner now requests a declaratory ruling allowing it to provide services using the mobile MRI scanner at an additional site, a physician's office, in Marion which is located in McDowell County.

Petitioner represents that McDowell County was identified in the original CON application for the mobile MRI scanner as part of its secondary service area. Petitioner states that, at the time of the CON application, McDowell County had the second highest patient origin for the mobile MRI scanner. Petitioner represents that there is currently only one fixed MRI scanner in McDowell County and no mobile MRI scanner site in the county.

Petitioner represents that the new site will not increase capital costs for the mobile MRI scanner and will not materially increase operating costs, as there is already a pad and electrical connections in place at the physician's office to accommodate the needs of the mobile MRI scanner. Petitioner states that the additional site will not negatively impact the scope, quality, or availability of services provided. Additionally, Petitioner states that adding a host site will instead increase utilization of the mobile MRI scanner which is currently underutilized. Petitioner represents that the new host site will not materially vary from the geographic services area stated in the CON application.

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).

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 new site 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 capital costs nor will it material increase operating costs.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that Petitioner’s proposal 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 August, 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

Gary S. Qualls
K&L Gates, LLP
430 Davis Drive, Suite 400
Morrisville, NC 27560
ATTORNEY FOR PETITIONER

This the 16th day of August, 2013.

Cheryl Ouimet
Chief Operating Officer