

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY CAPE FEAR MOBILE)
IMAGING, LLC) DECLARATORY RULING
Project I.D. No. O-6434-01)**

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.

Cape Fear Mobile Imaging, LLC (“CFMI”) has requested a declaratory ruling allowing CFMI to use its mobile MRI scanner (the "CFMI scanner") at an additional host site – North Carolina Diagnostic Imaging – Cary (“NCDI-Cary”) at 251 Keisler Drive – Suite 100, Cary, North Carolina 27518 in Wake County on the grounds that the change does not constitute a material change in the scope or physical location of the Project. N.C.G.S. §§ 131E-181(a) and (b). This ruling will be binding upon the Department and the entities 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 CFMI and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Pursuant to a Settlement Agreement dated February 23, 2004 (“2004 Settlement Agreement”), Wesvill, LLC was issued a CON for the Wesvill Project, and authorized to acquire a mobile MRI scanner to provide mobile MRI services at Brunswick Community Hospital in Brunswick County, and at Atlantic Diagnostic Center in New Hanover County. Subsequently, CFMI became the successor in interest to Wesvill, LLC (the “Wesvill Project” is hereafter referred to as the “CFMI Project”). A Settlement Agreement executed in May 2006, and amended in June 2006 (the “2006 Settlement Agreement”) provides “in the event that the CFMI mobile scanner should no longer serve the Greensboro site authorized herein, CFMI shall request a declaratory ruling to relocate it to (1) an alternative site within the city limits of Greensboro if the alternate site will serve the same provider, or (2) an alternate site in HSAs IV, V or VI.” CFMI’s CON (Project I.D. No . O-6434-01) permits it to use the CFMI scanner and trailer to provide MRI services at “two or more host sites.”

Declaratory rulings in 2006 and 2007 have authorized the CFMI Project to serve Carolina Imaging, LLC of Fayetteville, located at 3628 Cape Center Drive, Fayetteville, Cumberland County and Southern Pines Diagnostic Imaging in Southern Pines, Moore County, both of which are in Health Service Area (“HSA”) V. A declaratory ruling issued in 2008 permits the CFMI scanner to serve Cary Diagnostic Imaging, located at 3700 NW Cary Parkway, Cary, Wake County (“HSA IV”). Declaratory rulings issued in 2012 permit the CFMI scanner to serve Raleigh Radiology – Brier Creek, located at 8851 Ellstree Lane, Suite 100 in Raleigh, Wake County and Cary Orthopaedics and Sports Medicine, located at 1120 Southeast Cary Parkway, Cary, Wake County, both of which are also in HSA IV. CFMI currently provides mobile MRI services at one host site in HSA V (Southern Pines Diagnostic Imaging in Moore County) and two host sites in

HSA IV (Raleigh Radiology-Brier Creek in Wake County and Cary Orthopaedics and Sports Medicine in Wake County).

Petitioners' request for a declaratory ruling sets forth the following additional material facts and representations in support of its request. The Proposed Site at NCDI-Cary is in Wake County and is located in HSA IV. NCDI-Cary has a mobile MRI pad and electrical hookups so there will be no additional costs to add NCDI-Cary to the CFMI route. CFMI represents that allowing it to use the mobile unit at the NCDI-Cary Site will not change the scope of services approved for the CFMI scanner, nor will adding the NCDI-Cary Site to the CFMI route result in any increase in patient charges. CFMI states that the service agreements for the NCDI-Cary Site will be substantially similar to those in place at the existing sites served by the CFMI scanner. CFMI further represents that it will comply with all other requirements and representations regarding the host sites in the original CON application for the CFMI scanner.

ANALYSIS

The CON law would require a full review of CFMI's proposed addition of the NCDI-Cary site as a host site if the addition were to represent a material change in the physical location or scope of the project. N.C.G.S. §131E-181(a) provides that a CON "shall be valid only for the defined scope, physical location, and person named in the application." The proposed addition of the NCDI-Cary Site as a host site for the CFMI scanner does not affect the scope of the project because the addition will not affect the scope of services offered to patients served by the CFMI scanner. Neither does the addition of the proposed host site in Cary constitute a material change in the physical location of the project because the NCDI-Cary site is in Wake County in HSA IV, where CFMI is already providing services and is an approved location pursuant to the 2006 Settlement Agreement. The proposed addition of the NCDI-Cary Site is therefore in material

compliance with the CON and consistent with the 2006 Settlement Agreement. There is no proposed change of ownership of the CON that would result in a violation of N.C.G.S. §131E-181(a).

Moreover, there will be no additional capital costs incurred since a mobile MRI pad and the required electrical connections already exist at the proposed NCDI-Cary Site and there will be no increase in patient charges as a result of adding the NCDI-Care Site to the route for the CFMI scanner.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the addition of the proposed NCDI-Cary Site as a host site for CFMI's mobile MRI scanner, Project I.D. No. O-6434-01, will not constitute a material change in the physical location or scope of the project and will not violate N.C.G.S. §131E-181.

This the ____ day of May, 2015.

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 a first-class, postage pre-paid envelope addressed as follows:

CERTIFIED MAIL

Denise M. Gunter, Esquire
Nelson, Mullins, Riley & Scarborough, LLP
380 Knollwood Street, Suite 530
Winston-Salem, NC 27103

This the _____ day of May, 2015.

Cheryl Ouimet
Chief Operating Officer