

**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 CAPE FEAR MOBILE IMAGING, LLC, Project I.D. No. O-6665-02)
) **DECLARATORY RULING**
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I, Mark Payne, 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.

Novant Health, Inc. (“Novant”), and Cape Fear Mobile Imaging, LLC (“CFMI”) (collectively, “Petitioners”), have requested a declaratory ruling allowing for the addition of two (2) host sites for a mobile MRI scanner for Project I.D. No. O-6665-02 (“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 the Project, pursuant to 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 Petitioners and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Pursuant to a Settlement Agreement, Wesvill, LLC, was issued a CON on February 24, 2004, to acquire a mobile MRI scanner. Subsequently, CFMI became the successor in interest to Wesvill, LLC. A Settlement Agreement dated May 10, 2006, and amended on June 27, 2006, authorized CFMI to serve a site in Greensboro, North Carolina. The June 27, 2006, amendment 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.”

Since June 2006, CFMI has obtained declaratory rulings that have allowed the MRI scanner to serve sites in Cumberland, Moore, and Wake Counties, which are located in HSAs IV and V. The most recent declaratory ruling issued in June 2016, authorized the addition of three host sites in Wake, Durham, and Vance Counties. Petitioners now propose to add Cary Orthopaedics and Sports Medicine, located at 1120 Southeast Cary Parkway, Cary, Wake County, North Carolina; and FirstHealth Montgomery Memorial Hospital, located at 520 Allen Street, Troy, Montgomery County, North Carolina (“Proposed New Host Sites”), as host sites for the mobile MRI scanner. Two host sites will be dropped at NCDI Cary, Wake County and Carolina Imaging-Fayetteville, Cumberland County.

ANALYSIS

The CON law would require a full review of Petitioners’ addition of the Proposed New Sites as host sites if the addition were to represent a material change in the scope or physical location of the Project. N.C.G.S. § 131E-181(a). The addition of the Proposed New Sites as host sites does not constitute a material change in the scope or physical location of the Project because

it will not affect the scope of the services currently offered and the Proposed New Sites are located in HSA IV and HSA V, which is an approved location pursuant to the 2006 Settlement Agreement. In addition, because the Proposed New Sites already have the required mobile MRI docking pad and utility connections, Petitioners state that there will be no capital costs associated with adding the Proposed New Sites as host sites. Further, the addition of the Proposed New Sites will not result in an increase in patient charges for the provision of mobile MRI services.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw the CFMI CON if Petitioners fail 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. Petitioners state that they will not operate the Project in a manner that is materially different from the representations made in the CON application or in a manner that is inconsistent with any of the conditions that were placed on the CON or the 2006 Settlement Agreement.

CONCLUSION

For the foregoing reasons, assuming the statement of facts and representations in the request to be true, I conclude that Petitioners' addition of Cary Orthopaedics and Sports Medicine, located at 1120 Southeast Cary Parkway, Cary, Wake County, North Carolina; and FirstHealth Montgomery Memorial Hospital, located at 520 Allen Street, Troy, Montgomery County, North Carolina, as host sites 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 August, 2016.

Mark Payne, 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 NOVANT HEALTH, INC., and CAPE
FEAR MOBILE IMAGING, LLC.

This the _____ day of August, 2016.

Cheryl Ouimet
Chief Operating Officer