

**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, 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.

On June 28, 2016, Columbus Regional Diagnostics, a wholly owned subsidiary of Columbus Regional Healthcare System (hereinafter, “Columbus”), requested a declaratory ruling allowing for the addition of one (1) host site for a mobile MRI scanner for Project I.D. No. O-7340-05 (“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 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. Susan M. Fradenburg and Justin M. Puleo of Smith Moore Leatherwood, LLP, have requested this ruling on behalf of Columbus and have provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

On November 27, 2006, the Certificate of Need Section issued a CON to Waccamaw Ultrasound & Diagnostics, Inc., d/b/a Waccamaw Imaging (“Waccamaw”) allowing Waccamaw to acquire a mobile MRI scanner to provide mobile MRI services at two (2) sites in Whiteville, Columbus County, North Carolina. Through declaratory rulings and pursuant to a settlement agreement effective October 2008, the Department expanded the service area for Waccamaw’s mobile MRI scanner to include Bladen, Brunswick, Columbus, New Hanover, Pender, and Robeson Counties, and permitted Waccamaw to add four (4) additional host sites, two (2) in New Hanover County, and one (1) each in Pender and Robeson Counties.

On February 27, 2013, the Agency approved an exemption request whereby Columbus acquired Waccamaw. On October 14, 2014, the Agency issued another declaratory ruling that allowed Columbus to add two (2) additional host sites, one (1) in Brunswick County and one (1) in Pender County. On April 16, 2016, the Agency issued a subsequent declaratory ruling that allowed Columbus to add one (1) additional host site in Columbus County. Columbus now proposes to add a Columbus Regional Properties II physician practice, located at 701 Jefferson Street, Whiteville, Columbus County, North Carolina (“701 Jefferson”), as a host site for the mobile MRI scanner.

ANALYSIS

The CON law would require a full review of Columbus’s addition of the host sites if the 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 currently offered. In addition, because Columbus will not have to expend any capital to add 701 Jefferson as a host site and Columbus Regional

Properties II will only have to expend approximately \$3,500 to establish the required mobile MRI docking pad and utility connections, Columbus states that there will be no material capital costs associated with adding 701 Jefferson as a host site. Further, the addition of the 701 Jefferson site 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 Columbus's CON if Columbus 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. Columbus 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 statement of facts and representations in the request to be true, I conclude that Columbus's addition of the Columbus Regional Properties II physician practice, located at 701 Jefferson Street, Whiteville, Columbus 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 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

Susan M. Fradenburg
Justin M. Puleo
SMITH MOORE LEATHERWOOD, LLP
434 Fayetteville Street, Suite 2800
Raleigh, North Carolina 27601
ATTORNEYS FOR COLUMBUS
REGIONAL DIAGNOSTICS

This the _____ day of August, 2016.

Cheryl Ouimet
Chief Operating Officer