

**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) DECLARATORY RULING
MECKLENBURG DIAGNOSTIC IMAGING,)
LLC, Project I.D. No. F-8237-08)**

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 Mecklenburg Diagnostic Imaging (“MDI”) (collectively, “Petitioners”) request a declaratory ruling that the addition of one mobile MRI host site and the discontinuance of one current mobile MRI host sites is in material compliance with the terms of the Certificate of Need (“CON”) previously issued to Petitioner. 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

On January 6, 2012, Petitioners received a CON to acquire the mobile MRI scanner that corresponds to Project I.D. # F-8237-08. The scanner was approved to serve two host sites: (1) Presbyterian Medical Plaza Monroe in Monroe, Union County, (“Monroe site”); and (2)

Mecklenburg Diagnostic Imaging in Gaston, Gaston County (“Gaston site”). Petitioners state that the Gaston site no longer needs mobile MRI services. The CON requires that the mobile MRI scanner serve at least two host sites each week.

In this request, Petitioners seek to add one host site, Novant Health Imaging-Cabarrus, located in Concord, Cabarrus County (“Cabarrus site”) in order to serve at least two host sites as required in Condition 2 of the CON. Accordingly, Petitioner requests a declaratory ruling that its proposal is in material compliance with the CON for the project.

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 Petitioners’ proposal were to represent a material change in the scope of the project, the CON law would require a full review of the proposal. N.C.G.S. § 131E-181(a).

Petitioners state that the Cabarrus site, located in Cabarrus County is adjacent to Union County where the Monroe site is located. Both sites are HSA III. Petitioners state that the two host sites, Monroe site and Cabarrus site, would provide mobile MRI services consistent with Condition 2 of the CON issued for Project I.D. # F-8237-08 on January 6, 2012, which is to provide mobile MRI services to at least two host sites. Both the Monroe site and the Cabarrus site would serve patients two days a week. In addition, Petitioners state that there will be no additional costs incurred since a mobile MRI scanner pad and electrical hookups exist at the Cabarrus site, and further, that there will be no increases in patient charges.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw the 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 be developing the CON 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.

CONCLUSION

For the foregoing reasons, assuming the statement of facts and representations in the request to be true, I conclude that Petitioners' addition of Novant Health Imaging-Cabarrus, located in Concord, Cabarrus County, 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 October, 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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Winston-Salem, North Carolina 27103
ATTORNEY FOR NOVANT HEALTH, INC.
and CAPE FEAR MOBILE IMAGING, LLC.

This the 20th day of October, 2016.

Cheryl Ouimet
Chief Operating Officer