

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY FOUNDATION HEALTH MOBILE)
IMAGING, LLC AND NOVANT HEALTH, INC.) DECLARATORY RULING
Project ID # J-7008-04)**

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 N.C.G.S. § 150B-4 and 10A NCAC 14A .0103, under the authority granted me by the Secretary of the Department of Health and Human Services.

On November 20, 2017, Foundation Health Mobile Imaging, LLC and Novant Health, Inc. (hereinafter collectively, “Foundation”), requested a declaratory ruling allowing Foundation to add one (1) host site for the mobile MRI scanner in Project ID # J-7008-04 (“Project”) on the grounds that the change does not constitute a material change in the 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. Denise M. Gunter, of Nelson Mullins Riley & Scarborough, LLP, has requested this ruling on behalf of Foundation and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

On March 8, 2005, the Certificate of Need Section issued a CON to InSight Health Corporation (“InSight”) allowing InSight to acquire one (1) mobile MRI scanner to serve mobile host sites located in Health Service Areas (“HSA”) IV, V and VI. Through declaratory rulings, the Department then allowed InSight to change host sites for the mobile scanner within HSAs IV, V, and IV.

On June 29, 2010, the Certificate of Need Section issued a Notice of Exemption to Foundation, for the acquisition of certain InSight assets, including the mobile MRI scanner approved in Project ID # J-7008-04. Through subsequent declaratory rulings, the Department allowed Foundation to add other sites, within HSAs IV, V, and IV, in Carteret, Cumberland, Hoke, Montgomery, Moore and Wake counties. The mobile scanner currently serves two sites located in HSA V; Carolina Imaging of Fayetteville in Fayetteville, Cumberland County, (April 17, 2012 declaratory ruling) and FirstHealth Montgomery Memorial Hospital in Troy, Montgomery County, (February 25, 2015 declaratory ruling). Foundation now proposes to add a host site in HSA IV, specifically, Raleigh Neurosurgical Clinic, located at 5838 Six Forks Road, Raleigh, Wake County, North Carolina.

ANALYSIS

The CON law would require a full review of Foundation’s addition of the host site if the addition represented a material change in the scope or physical location of the Project. N.C.G.S. § 131E-181(a). The addition of the proposed host site does not constitute a material change in the scope or physical location of the Project because the original CON approved the mobile MRI scanner for use at host sites located in HSAs IV, V, and VI and the proposed site, Raleigh Neurosurgical Clinic, is located in HSA IV, within the originally approved HSAs. Further, the

current Cumberland County and Montgomery County sites, in addition to the other previously approved sites, combined with the addition of the proposed site in Wake County, would provide mobile MRI services consistent with any conditions placed on the CON. In addition, Foundation states that the proposed host site already has the required mobile MRI docking pad and electrical connections. Therefore, there will be no capital costs associated with adding Raleigh Neurosurgical Clinic as a host site and no increase in patient charges resulting from adding this host site to the route for the MRI scanner.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw Foundation's CON if Foundation 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. Foundation states that they will not develop 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 Foundation's proposal to add Raleigh Neurosurgical Clinic, located at 5838 Six Forks Road, Raleigh, Wake County, North Carolina, as a host site for the mobile MRI scanner, will not constitute a material change in the scope or physical location 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 January, 2018.

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
NELSON MULLINS RILEY & SCARBOROUGH, LLP
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Winston-Salem, North Carolina 27103
Attorney for Foundation Health Mobile Imaging, LLC and Novant Health, Inc.

This the _____ day of January, 2018.

Diana Barbry
Executive Assistant to the Director
Division of Health Service Regulation