

**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.

On December 1, 2017, Novant Health, Inc. (“Novant”), and Cape Fear Mobile Imaging, LLC (“CFMI”) (collectively, “Petitioners”), requested a declaratory ruling allowing for the addition of one (1) host site 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 the scope or physical location of the Project, pursuant to N.C.G.S. § 131E-181(a). 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 certificate of need (“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, Durham, Moore, Montgomery, Vance, and Wake Counties. CFMI currently serves host sites at Orthopaedic Specialists of North Carolina, Raleigh, North Carolina; Durham Diagnostic Imaging-Southpoint, Durham, North Carolina; Durham Diagnostic Imaging-Henderson, Henderson, North Carolina; and Cary Orthopaedics and Sports Medicine, Cary, North Carolina. Petitioners now propose to add Cary Orthopaedics and Sports Medicine, located at 101 Lattner Court, Morrisville, Wake County, North Carolina (“Proposed New Site”), as a host site for the mobile MRI scanner.

## **ANALYSIS**

The CON law would require a full review of Petitioners’ addition of the Proposed New Site as a host site 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 Site as a host site 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 Site is located

in HSA IV, which is an approved location pursuant to the 2006 Settlement Agreement. In addition, the Proposed New Site already has the required mobile MRI docking pad and Cary Orthopaedics and Sports Medicine will install the necessary power pole solely at its cost. Therefore, Petitioners state that there will be no capital costs associated with adding the Proposed New Site as a host site and the addition of the Proposed New Site will not result in an increase in patient charges for the provision of mobile MRI services. Further, Petitioners state that the service agreement that will be used for the mobile MRI scanner at the Proposed New Site will be substantially similar to the service agreements used for its other host sites and the addition of the Proposed New Site will help ensure that the mobile MRI scanner is fully utilized.

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 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 contained in 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 101 Lattner Court, Morrisville, Wake 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 February, 2018.

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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 February, 2018.

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