

**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. ET AL ) 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. et al (“Novant”) requests a declaratory ruling that obtaining a material compliance determination from the Healthcare Planning and Certificate of Need Section (“CON Section”) before a host site change instead of a declaratory ruling does not violate the CON Law, Article 9 of Chapter 131E of the North Carolina General Statutes, and satisfies a condition imposed on a certificate of need that requires obtaining a declaratory ruling before a site change.

**STATEMENT OF THE FACTS**

In the past, the CON Section imposed a condition on certificates of need for mobile equipment which requires that the certificate holder obtain a declaratory ruling from the Division Director for a host site change. Novant, through a number of companies owned by Novant, has several certificates of need which include this condition. However, the certificate of need for Forsyth Memorial Hospital, Inc.’s mobile PET scanner contains a different condition which requires that the certificate holder obtain a material compliance determination from the CON Section for a host site change, not a declaratory ruling.

Declaratory rulings are issued by the Director, not the CON Section. However, the CON Section is asked to review the declaratory ruling requests for host site changes and make a recommendation as to whether the Director should issue the requested declaratory ruling. In calendar year 2017, the CON Section was asked to review eight requests for declaratory ruling. Seven of the eight requests involved host site changes. Three of the eight requests involved the same two mobile PET scanners owned by Alliance Healthcare Services. The Director issued and granted all seven declaratory ruling requests.

### **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.” N.C.G.S. § 131E-181(b) provides that a certificate holder or its successor must materially comply with the representations made in the application. N.C.G.S. § 131E-181(b) allows the CON Section to withdraw a certificate of need if the certificate holder does not develop the service in a manner consistent with the representations made in the application or with any conditions that were placed on the certificate of need.

Obtaining a declaratory ruling for a host site change can take up to 75 days and involves the Director, the CON Section, and the Attorney General’s Office. A material compliance determination involves only the CON Section and is typically issued in far less time than a declaratory ruling.

The purpose of requiring a certificate holder to obtain a declaratory ruling before a host site change is to ensure that the host site change materially complies with the representations made in the application and with any conditions that were placed on the certificate. However, the purpose of requiring a material compliance determination before a host site change is identical to

the purpose of requiring a declaratory ruling and the CON Section no longer imposes a condition of requiring a declaratory ruling for a host site change but instead imposes one requiring a material compliance determination.

Regardless of whether the certificate holder requests a declaratory ruling or a material compliance determination, the CON Section will review the proposal to determine if it is consistent with the representations made in the CON application and any conditions imposed on the certificate.

### **CONCLUSION**

For the foregoing reasons, I conclude that obtaining a material compliance determination instead of a declaratory ruling for a host site change does not violate the CON Law, Article 9 of Chapter 131E of the North Carolina General Statutes, and satisfies a condition imposed on a certificate of need that requires obtaining a declaratory ruling before a host site change.

This the \_\_\_\_\_ day of March, 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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Winston-Salem, North Carolina 27103  
ATTORNEY FOR NOVANT HEALTH, INC.,  
and CAPE FEAR MOBILE IMAGING, LLC

This the \_\_\_\_\_ day of March, 2018.

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