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PETITION

TO: North Carolina Division of Health Service Regulation
Medical Facilities Planning Section

FROM: Thomas & Brooks, PLLC

RE: Petition for Adjustment to Need Determination

DATE: July 30, 2008

DFS Health Planning
RECEIVED

JUL 30 2008

Medical Facilities
PLANNING SECTION

Thomas & Brooks, PLLC, hereby makes this Petition requesting an adjustment to the need determination in the Proposed 2009 State Medical Facilities Plan for linear accelerators for Service Area 20, which is comprised of Wake, Franklin and Harnett Counties.

Petitioner, Thomas & Brooks, PLLC, makes this petition by and through its members Joy Heath Thomas and James Tyler Brooks. Their contact information is as follows:

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Petitioner requests an adjustment to the inventory of linear accelerators (a component of the need methodology used to identify the need determination for Service Area 20). Specifically, we request that the inventory data in Table 9F (p. 152 of the 2009 Proposed SMFP) be adjusted to include two (2) additional linear accelerators not presently identified. Upon information and belief, Petitioner asserts that:

- (1) There is a linear accelerator in Harnett County, North Carolina which is not included in the Proposed 2009 SMFP inventory for Service Area 20. This linear accelerator is located at Betsy Johnson Regional Hospital. On page 15 of Betsy Johnson's 2008 Hospital License Renewal Application (attached hereto), the hospital identifies one linear accelerator.
- (2) There is a linear accelerator in Franklin County, North Carolina which is not included in the Proposed 2009 SMFP inventory for Service Area 20. This linear accelerator is owned and/or operated under the auspices of Franklin County Cancer Center (a/k/a Franklin Regional Medical Center; Franklin Regional Cancer Treatment Center; Dr. McLaurin). Evidence of the existence of this linear accelerator is attached hereto.

Based on the foregoing, Petitioner requests that the inventory of linear accelerators be adjusted from a total of eight (8) linear accelerators to an accurate total of ten (10) linear accelerators in Service Area 20. Petitioner stands prepared to provide any additional information to the Planning staff as deemed necessary to effectuate an addition of these linear accelerators to Service Area 20.

Petitioner is aware that a need determination of zero (0) appears on page 152 in Table 9F in the Proposed 2009 SMFP. We acknowledge that the requested adjustment will not alter or create the identification of a need for a new linear accelerator for Service Area 20. Nevertheless, Petitioner requests that the Planning Section make the requested adjustment. The reason for the proposed adjustment is to revise the inventory of linear accelerators to accurately reflect the full range of equipment available for the provision of linear accelerator services in Service Area 20.

Were the proposed adjustment not to be made, the 2009 SMFP would not accurately identify all of the linear accelerators in Service Area 20 that could offer services to the citizens of Area 20 and surrounding areas. Sound health planning decisions require accurate data; an adverse effect could result if the requested adjustment is not made and health planning decisions are made on the basis of inaccurate assumptions about the number of linear accelerators available for operation in Service Area 20. Moreover, a failure to include these accelerators in the reported inventory for Service Area 20 would be inconsistent with prior Agency action.

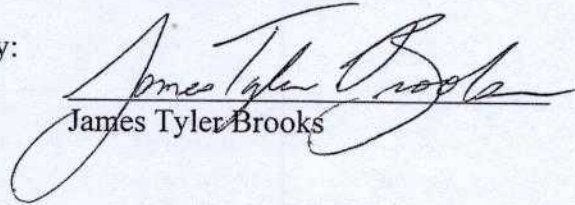
Petitioner considered, as an alternative to this Petition, submitting this request as a Comment on the 2009 SMFP. Prior to filing this Petition, Petitioner submitted an informal request to the Medical Facilities Planning Section for an adjustment to the inventory for Service Area 20. Although Petitioner's request was well-received, there was insufficient time prior to the Petition deadline for the Planning Section to take action on Petitioner's request. Thus, Petitioner considered it necessary to submit this timely Petition for an Adjustment to the Need Determination for Service Area 20 to ensure that the 2009 SMFP would incorporate an accurate depiction of the full inventory of linear accelerator equipment. We thank Ms. Potter and Mr. Cogley for their advice and direction on this matter.

This Petition does **not** request that a need determination be identified for Service Area 20. To the contrary, the Petitioner asserts that the Proposed 2009 SMFP correctly identifies no need in Service Area 20. Because this Petition does **not** advocate the identification of a need determination, Petitioner's proposed adjustment would not implicate any considerations regarding unnecessary duplication of resources.

We thank the Planning Section staff for its consideration and respectfully request that an adjustment be made to the Proposed 2009 SMFP inventory of linear accelerators in Service Area 20 to accurately identify ten (10) linear accelerators.

THOMAS & BROOKS, PLLC

By:


James Tyler Brooks