

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY WACCAMAW ULTRASOUND)
& DIAGNOSTICS, INC.) **DECLARATORY RULING**
Project I.D. No. O-7340-05)
(Re Writsville Family Practice))**

I, Robert J. Fitzgerald, 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 Statute § 150B-4 and 10A NCAC 14A .0103 under the authority granted me by the Secretary of the Department of Health and Human Services.

Waccamaw Ultrasound & Diagnostics, Inc. (“Waccamaw”) has requested a declaratory ruling allowing for an additional host site for Project I.D. No. O-7340-05 on the grounds that the change does not constitute a material change in physical location or a failure to materially comply with the representations made by Waccamaw in its Certificate of Need (“CON”) application for its project. N.C.G.S. §§ 131E-181(a) and (b). For the reasons stated below, I must deny this request.

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. Anthony Grigsby, President of Waccamaw, has requested this ruling on behalf of Waccamaw and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Effective 30 November 2006, the CON Section issued a CON to Waccamaw for Project I.D. No. O-7340-05 to acquire a mobile MRI scanner and trailer (the “Project Unit”) to provide MRI services at two host sites. The proposed host sites were 619 Jefferson Street, Whiteville, NC and 604 North Madison Street, Whiteville, NC (the “Original Sites”). Both sites are in Columbus County. By declaratory ruling dated 7 September 2007, I authorized the addition of Allen Orthopedics, 404 Hatfield Court in Lumberton, Robeson County, as a host site one day per week. In its petition, Waccamaw does not list Allen Orthopedics as a site that it currently serves.

Waccamaw proposes to serve an additional host site one day per week. The proposed site is Wrightsville Family Practice, P.A., a physician practice located at 1414 39th Street, Wilmington, New Hanover County, NC 28403 (the “Proposed Site”).

Waccamaw also proposes, in separate requests for declaratory ruling filed contemporaneously with this request, to serve two additional sites, one in Brunswick County and one in Columbus County. Those requests will each be the subject of a separate declaratory ruling.

ANALYSIS

The CON law would require a full review of Waccamaw’s proposed change of host site if that change were to represent a material change in the physical location or scope of the project. N.C.G.S. § 131E-181(a). The proposed addition of the Proposed Site for Waccamaw’s Project Unit does constitute a material change in the physical location or the scope of the proposed project because in its CON application, Waccamaw did not include New Hanover County in the service area for its proposed MRI scanner. The Proposed Site is in a county that is not contiguous to Columbus County.

CONCLUSION

For all the foregoing reasons, I conclude that the addition of the Proposed Site as a host site for Waccamaw's mobile MRI scanner, Project I.D. No. O-7430-05, will constitute a material change in the physical location or scope of the project. Waccamaw's request, therefore, is denied.

This the _____ day of _____, 2007.

Robert J. Fitzgerald, Director
Division of Health Service Regulation
N.C. Department of Health and Human Services

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Declaratory Ruling has been served upon the nonagency party by certified mail, return receipt requested, by depositing the copy in an official depository of the United States Postal Service in first-class, postage pre-paid envelope addressed as follows:

CERTIFIED MAIL

Anthony Grigsby, President
Waccamaw Ultrasound & Diagnostics, Inc.
112 East White Oak Street
Lake Waccamaw, NC 28450

This the _____ day of _____, 2007.

Jeff Horton
Chief Operating Officer