

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

**IN RE: REQUEST FOR DECLARATORY )  
RULING BY WAKE RADIOLOGY )       DECLARATORY RULING  
SERVICES, LLC )  
Project I.D. No. J-7012-04 )**

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.

Wake Radiology Services, LLC (“WRS”) has requested a declaratory ruling allowing for a change in host sites for Project I.D. No. J-7012-04 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 WRS in its Certificate of Need (“CON”) application for its project. 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. Frank Kirschbaum of Kirschbaum, Nanney, Keenan & Griffin, P.A., counsel for WRS, has requested this ruling on behalf of WRS and has provided the material facts upon which this ruling is based.

## **STATEMENT OF THE FACTS**

Effective September 1, 2004, the CON Section issued a CON to WRS for Project I.D. No.J-7012-04 to acquire a mobile magnetic resonance imaging (“MRI”) scanner (the “Project Unit”) to provide MRI services at “two or more” host sites. The proposed host sites were Building 1, Health Park at Timber Lake in Garner, North Carolina and Raleigh MR Imaging Center, 3821 Merton Drive in Raleigh, North Carolina (“the Original Sites”).

WRS proposes to serve an additional host site two days per week. The proposed site is WRS’s facility located at 300 Asheville Avenue, Cary, North Carolina (“the Proposed Site”). WRS proposes to take one day of service each from the Original Sites in order to provide the two full days of service at the Proposed Site. WRS states the Proposed Site is within the same MRI service area as the Original Site and the change will not add to the CON-approved capital budget for the project nor will it cause any changes in the fees charged by WRS for mobile MRI services. WRS represents that it will comply with all conditions of its CON and of applicable regulations.

## **ANALYSIS**

The CON law would require a full review of WRS’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 does not constitute a material change in the physical location or the scope of the proposed project because the use of the Proposed Site as a host site will not affect the scope of services offered or the costs and charges to WRS or to the public for the provision of mobile MRI services. The Proposed Site is in the same county as the Original Sites, and it is in the same HSA as the Original Sites. In

addition, there is no proposed change in the person named in the application that would result in a violation of N.C.G.S. § 131E-181(a).

N.C.G.S. § 131E-189(b) allows the Agency to withdraw WRS's CON if WRS 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. WRS will not be developing its project in a manner that is materially different from the representations made in its application, nor will it be developing its project in a manner that is inconsistent with any of the conditions that were placed on its CON.

### **CONCLUSION**

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the addition of the Proposed Site as a host site for WRS's mobile MRI scanner, Project I.D. No.J-7012-04, will not constitute a material change in the physical location or 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 ruling is not intended, and should not be interpreted, to authorize any increases in the approved capital expenditure for this project, a change in the approved timetable, a change in the conditions placed on the certificate of need, or any other change in the approved project.

This the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

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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**

Frank S. Kirschbaum  
Kirschbaum, Nanney, Keenan & Griffin, PA  
P.O. Box 19766  
Raleigh, NC 27619-9766

This the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

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Jeff Horton  
Chief Operating Officer