

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

**IN RE: REQUEST FOR DECLARATORY )  
RULING BY CORNERSTONE HEALTH )  
CARE, P.A. )                   DECLARATORY RULING  
Project I.D. No. G-7269-05 )**

I, Jeff Horton, as Acting 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.

Cornerstone Health Care, P.A. (“Cornerstone”) has requested a declaratory ruling allowing for a relocation of its existing computed tomography (“CT”) scanner and existing fixed magnetic resonance imaging (“MRI”) scanner currently located at 624 Quaker Lane in High Point on the grounds that the relocation does not constitute a failure to satisfy a condition on the CON, a material change in physical location, or a failure to materially comply with the representations made by Cornerstone in its 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. Marcus C. Hewitt, of Williams Mullen, counsel for Cornerstone, has requested this ruling on behalf of Cornerstone and has provided the material facts upon which this ruling is based.

## **STATEMENT OF THE FACTS**

Cornerstone represents that prior to changes in the Certificate of Need (“CON”) law that were effective 18 March 1993, it purchased and operated a fixed CT scanner (the “Grandfathered CT scanner”). The Grandfathered CT scanner did not require a CON at the time it was acquired, and therefore, for the Grandfathered CT scanner, Cornerstone does not have a CON with which it is now required to materially comply. The Grandfathered CT scanner is currently located at Cornerstone’s office at 624 Quaker Lane in High Point, North Carolina (the “Quaker Lane office”). In 2003, the CON Section determined that the Quaker Lane office was a diagnostic center as that term is defined in N.C. Gen. Stat. § 131E-176(7a). Effective 28 June 2006, the CON Section issued a CON to Cornerstone for Project I.D. No. G-7269-05 to acquire a fixed MRI scanner to provide MRI services at its Quaker Lane office (the “MRI scanner”). The CON Section deemed Project I.D. No. G-7269-05 complete as of 11 May 2007. Cornerstone represents that the Grandfathered CT scanner and the MRI scanner are the only diagnostic modalities currently operated by Cornerstone at the Quaker Lane office.

Cornerstone proposes to relocate the Grandfathered CT scanner and existing MRI scanner to a physician office building currently being constructed by CHC Realty, LLC at 607 Idol Street in High Point (“the Proposed Site”). Cornerstone represents that the Proposed Site is approximately two miles from the Quaker Lane office. Cornerstone also represents that the relocation of the Grandfathered CT scanner and the MRI scanner will not affect the scope of services to be provided by Cornerstone.

As Exhibit D to its Request for Declaratory Ruling, Cornerstone attached a copy of the No-Review Request submitted to the Agency on 14 May 2008 requesting confirmation that the relocation of the existing diagnostic center, including the Grandfathered CT scanner and the MRI

scanner, at the Quaker Lane office is not a new institutional health service, and is therefore not subject to CON review. Cornerstone and its architect/engineer certify that the total capital cost to relocate the existing diagnostic center is \$545,773, which includes the allocated cost of construction (\$234,565), upfit costs (\$197,708) and the cost to uninstall and reinstall the scanners (\$113,500). Thus the total capital cost to relocate the existing diagnostic center is less than \$2,000,000. Cornerstone states that the relocation of the diagnostic center will not affect the scope of services to be provided by Cornerstone.

### ANALYSIS

The CON law would require a full review of Cornerstone's proposed relocation if that relocation were to represent a material change in the physical location or scope of the project. N.C.G.S. § 131E-181(a). The proposed relocation of the MRI scanner acquired pursuant to the CON issued for Project I.D. No. G-7269-05, does not constitute a material change in the physical location because of the close proximity of the Proposed Site to the Quaker Lane office. The change will not affect the scope of services offered to the public. The proposed relocation is also not inconsistent with the conditions imposed on the CON for Project I.D. No. G-7269-05. In addition, there is no proposed change in the person named in the application such that a violation of N.C.G.S. § 131E-181(a) would result. Further, because the projected capital cost is less than \$2,000,000, the proposed relocation of the existing diagnostic center, including the Grandfathered CT scanner and the MRI scanner, located at 624 Quaker Lane is not a new institutional health service which requires a CON.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw Cornerstone's CON if Cornerstone 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. Cornerstone 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 all the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the relocation of the MRI scanner to the Proposed Site 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 for Project I.D. No. G-7269-05. Cornerstone must continue to operate in material compliance with the representations made in its CON application. I further conclude that the relocation of the existing diagnostic center, including the Grandfathered CT scanner and the MRI scanner, from 624 Quaker Lane to the Proposed Site is not a new institutional health service which requires a CON.

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

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Jeff Horton, Acting 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**

Marcus C. Hewitt  
Williams Mullen  
Post Office Drawer 19764  
Raleigh, NC 27619

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

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Jeff Horton  
Acting Director