

**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) DECLARATORY RULING
& DIAGNOSTICS, INC.)
Project I.D. No. O-7340-05)
(Re: Rocky Point Medical Center))**

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.

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). 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 magnetic resonance imaging (“MRI”) scanner and trailer (the “Project Unit”) to provide MRI services at two host sites. The proposed host sites, both of which are located in Columbus County, were 619 Jefferson Street, Whiteville, North Carolina and 604 North Madison Street, Whiteville, North Carolina (“the Original Sites”). By declaratory ruling dated 7 September 2007, Robert J. Fitzgerald, Director of the Division of Health Service Regulation, 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.

On 10 October 2007, Waccamaw requested three Declaratory Rulings seeking the addition of three new host sites to be served by Waccamaw’s mobile MRI scanner. Two sites were approved in separate declaratory rulings: Thigpen & Traylor Partnership, 823 Jefferson Street, Whiteville, Columbus County on Wednesdays and Chicora Medical Group, P.A., 20 Medical Campus Drive, Supply, Brunswick County on Thursdays. In Waccamaw’s present petition, these two approved sites were not mentioned as sites currently served. The third proposed site, Wrightsville Family Practice P.A., 1414 39th Street, Wilmington, New Hanover County, was denied as a material change because in its CON application Waccamaw did not include New Hanover County in its service area for the proposed MRI scanner.

In this request, Waccamaw proposes to serve an additional host site one day per week. The proposed site is a physician's practice, Rocky Point Medical Center, located at 27 Commerce Drive, Rocky Point, Pender County, North Carolina ("the Proposed Site"). Waccamaw represents that the mobile scanner is not scheduled to be used at the Original Sites at the time it proposes to provide service and that it does not intend to make any changes in the schedule for the Original Sites. According to Waccamaw, the Proposed Site currently contains a mobile CT/MRI docking pad and there are no capital costs associated with the addition of the Proposed Site. Additionally, Waccamaw represents that the route expansion will not affect the scope of services offered, the costs of providing MRI services, or charges to the public

ANALYSIS

The CON law requires a full review of Waccamaw's proposed change of host site when the change represents a material change in the physical location or scope of the project. N.C.G.S. § 131E-181(a). The addition of the Proposed Site constitutes a material change in the physical location and the scope of the proposed project because in its CON application, Waccamaw did not include Pender County in its primary or secondary service area. Accordingly, Waccamaw's request to add a mobile MRI site in Pender County does not materially comply with the representations made in its application because it significantly changes the population to be served with the approved mobile MRI scanner.

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, constitutes a material change in the physical location and scope of the project. Waccamaw's request, therefore, is denied.

This the _____ day of July, 2008.

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

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

This the _____ day of July, 2008.

Jeff Horton
Acting Director