

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY HIGH POINT REGIONAL) DECLARATORY RULING
HEALTH SYSTEM)
Project I.D. No. G-7064-04)**

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.

High Point Regional Health System (“High Point”) has requested a declaratory ruling allowing it to serve another mobile magnetic resonance imaging (“MRI”) provider with the mobile MRI scanner acquired as part of Project I.D. No. G-7064-04 (“the Project Unit”) on the grounds that the addition does not constitute a material change in physical location or a failure to materially comply with the representations made by High Point 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. Gary S. Qualls of K&L Gates, LLP, counsel for High Point, has requested this ruling on behalf of High Point and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Effective 12 August 2004, the CON Section issued a CON to High Point for Project I.D. No.G-7064-04 to acquire the Project Unit to provide mobile MRI services at two host sites. The approved host sites are a medical office building at 404 Westwood Avenue on the campus of High Point Regional Hospital (“Hospital Campus”) in High Point, North Carolina and Johnson Neurological Clinic (“JNC”) at 606 North Elm Street in High Point, North Carolina (collectively “the Original Sites”).

High Point proposes to use the Project Unit to allow another provider to provide mobile MRI services. Currently, High Point operates the Project Unit at the medical office building on the Hospital Campus on Monday and Wednesday through Friday of each week, where High Point bills for the services, and at the JNC site on Tuesdays each week, where JNC bills for the services. High Point proposes for MedVentures, LLC, (“MedVentures”) a limited liability company wholly owned by High Point, to also operate the Project Unit at the 404 Westwood Avenue site during some portion of the time when the Project Unit is already at the site. High Point states the MedVentures’ physicians will bill the mobile MRI services under MedVentures’ billing numbers during the time when MedVentures operates the Project Unit. High Point will continue to bill for the mobile MRI services during the time when High Point operates the Project Unit. High Point represents that having multiple mobile MRI service providers at the same physical location will not add to the CON-approved capital budget for the project nor will it cause any changes in the fees charged by High Point for mobile MRI services. High Point 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 High Point's proposed addition of a third mobile MRI service provider 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 MedVentures as a third provider does not constitute a material change in the physical location or the scope of the proposed project because the utilization of the Project Unit by MedVentures will not affect the scope of services offered or the costs and charges to High Point or to the public for the provision of mobile MRI services. The additional provider is located at the same physical location as one of the Original Sites proposed in the CON Application and therefore, no change in physical location is proposed. In addition, there is no proposed change in the person to whom the CON was issued 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 High Point's CON if High Point 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. The conditions placed on High Point's CON provide, in pertinent part, that "the mobile MRI scanner shall be moved each week to provide MRI services to at least two host sites" and that "the mobile MRI shall not, at any time, be converted to a fixed MRI scanner and such equipment shall not, at any time, serve less than two host sites each week." While the addition of MedVentures as a third provider will result in multiple providers at the 404 Westwood Avenue site, High Point will continue to use the Project Unit to serve two physically different host sites, which are the one Hospital Campus site and the other JNC site. Therefore, High Point 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 MedVentures as a third mobile MRI service provider for High Point's mobile MRI scanner, Project I.D. No.G-7064-04, is not the addition of a third host site or a third host facility. Rather, 404 Westwood Avenue is determined to be one host site or facility regardless of the number of providers that use the mobile MRI scanner at that site. Consequently, the change in the project 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.

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

Gary S. Qualls
K&L Gates, LLP
430 Davis Drive, Suite 400
Morrisville, NC 27560

This the _____ day of _____, 2008.

Jeff Horton
Acting Director