

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY ALAMANCE REGIONAL) DECLARATORY RULING
MEDICAL CENTER, INC.)
Project I.D. No. G-7053-04)**

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.

Alamance Regional Medical Center, Inc. (“ARMC”) has requested a declaratory ruling allowing a change in host sites for the mobile MRI scanner (“the Project Unit”) to be acquired as part of Project I.D. No. G-7053-04 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 ARMC 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. Wallace C. Hollowell, III of Nelson Mullins Riley & Scarborough LLP, counsel for ARMC, has requested this ruling on behalf of ARMC and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Effective 9 November 2004, the CON Section issued a CON to ARMC for Project I.D. No.G-7064-04 (“the Project”) to acquire the Project Unit to provide mobile MRI services at three host sites. The approved host sites were (1) the Kernoodle Clinic, a physician practice on the ARMC campus in Burlington (the “Kernoodle Site”); (2) Mebane Medical Park of ARMC, an outpatient center in Mebane (the ”Mebane Site”); and (3) Person Memorial Hospital in Roxboro (the “Person Site”). The CON included a condition that the Project Unit shall not at any time be converted to a fixed MRI scanner and shall not at any time serve less than two host sites each week.

According to ARMC, the Project has been delayed for a variety of reasons, and two of the original host sites – the Kernoodle Site and the Person Site – are no longer available for services from the Project Unit. ARMC now proposes to provide services at the Mebane Site and at an existing pad site at 1240 Huffman Mill Road on the ARMC campus in Burlington (the “ARMC Site”). ARMC represents that the ARMC Site is ready for use and is located less than 200 yards from the Kernoodle Site that was originally proposed and approved as a host site.

ARMC states that the capital costs of the Project are anticipated to be less than or no more than approved for the Project, and otherwise will be within one hundred fifteen percent (115%) of the approved capital costs. It represents that the change in host sites will not affect the scope of services offered, the costs of providing MRI services, or the charges to the public. It asserts that because of the proximity of the ARMC Site to the Kernoodle Site, the same population will be served.

ANALYSIS

The CON law would require a full review of ARMC's proposed change in host sites if it were to represent a material change in the physical location or scope of the project. N.C.G.S. § 131E-181(a). The proposed change to the ARMC Site instead of the Kernoodle Site does not constitute a material change in the physical location or the scope of the proposed project because it will not affect the scope of services offered or the costs and charges to ARMC or to the public for the provision of mobile MRI services. The ARMC Site is located in close proximity to the Kernoodle Site approved in the CON. 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 ARMC's CON if ARMC 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 ARMC'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." ARMC 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 ARMC Site in place of the Kernoodle Site as a host site for 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

Wallace C. Hollowell, III
Nelson Mullins Riley & Scarborough LLP
Glen Lake One, Suite 200
4140 Parklake Avenue
Raleigh, North Carolina 27612

This the _____ day of _____, 2008.

Jesse Goodman
Acting Chief Operating Officer