

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY LINCOLN HEALTH SYSTEM)
D/B/A CMC-LINCOLN AND THE)
CHARLOTTE-MECKLENBURG HOSPITAL) **DECLARATORY RULING**
AUTHORITY D/B/A CAROLINAS)
HEALTHCARE SYSTEM)
Project I.D. No. F-8081-08)**

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.

Lincoln Health System d/b/a CMC-Lincoln and The Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas HealthCare System (“CMC-Lincoln”) has requested a declaratory ruling allowing for a change in location for Project I.D. No. F-8081-08 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 CMC-Lincoln in its Certificate of Need (“CON”) application for its project. N.C.G.S. §§ 131E-181(a). 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. William W. Stewart of K&L Gates, LLP has requested this ruling on behalf of CMC-Lincoln and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

CMC-Lincoln filed a CON Application to acquire a fixed MRI Scanner to be located at the existing CMC-Lincoln Hospital's Radiology Department, identified as Project I.D. No. F-8081-08 ("CMC-Lincoln's MRI Application"). In the same CON Application, CMC-Lincoln also proposed that the fixed MRI Scanner would be relocated to CMC-Lincoln's Replacement Hospital in 2010, once the Replacement Hospital was completed.

At the time the Application for the MRI Scanner was filed, the proposed timeline to have the MRI Scanner installed and operational was April, 2009. The MRI Application was part of a competitive review, which was appealed and later settled. The original timeline in the MRI Application proposed for the MRI to be operational 18 months before the completion of the Replacement Hospital. After the delay due to the MRI appeal, the new MRI operational date in the CON is less than one year before the opening of the Replacement Hospital.

CMC-Lincoln now believes the more cost effective alternative would be to locate the fixed MRI Scanner at the Replacement Hospital when it opens, rather than incurring unnecessary costs of installing the fixed MRI Scanner at the existing Hospital for a short time period.

ANALYSIS

The CON law would require a full review of CMC-Lincoln's proposed change of location 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 change of location for CMC-Lincoln's approved fixed MRI Scanner to the Replacement Hospital does not constitute a material change in the physical location or the scope of the proposed project for the following reasons:

The MRI Scanner was originally to be relocated to the Replacement Hospital upon completion of construction of the Replacement Hospital.

It will decrease capital costs by not having to install the MRI Scanner at the existing Hospital prior to its relocation.

The change in site will not increase CMC-Lincoln's capital or operating costs associated with the approved project.

Access to the medically underserved and the remainder of the originally identified population will be equivalent because the same population as projected in the application will be served and because of the proximity of the two sites.

The MRI Scanner will be operated by CMC-Lincoln's staff, as a hospital scanner, just as proposed in its MRI application.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw CMC-Lincoln's CON if CMC-Lincoln 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. CMC-Lincoln 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 proposed change in location for CMC-Lincoln's approved fixed MRI Scanner, Project I.D. No. F-8081-08, 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 December, 2009.

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

William W. Stewart
K&L Gates, LLP
430 Davis Drive, Suite 400
Morrisville, NC 27560

This the _____ day of December, 2009.

Jesse Goodman
Acting Chief Operating Officer