

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY GRACE HOSPITAL and BLUE)
RIDGE RADIOLOGY ASSOCIATES, P.A.) DECLARATORY RULING
Project I.D. No. G-7053-04)**

I, Drexdal Pratt, as 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.

Grace Hospital, Inc. (“Grace Hospital”) and Blue Ridge Radiology Associates, P.A. (“BRRRA”) have jointly requested a declaratory ruling allowing for a change in location for Project I.D. No. E-7066-04 on the grounds that the change does not constitute a material change in scope or physical location or a failure to materially comply with the representations made by BRRRA 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. Maureen Demarest Murray of SMITH MOORE LEATHERWOOD LLP has requested this ruling on behalf of Grace Hospital and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

BRRRA owns and operates a mobile MRI scanner for which it was issued a Certificate of Need effective January 18, 2005 to serve sites in Alexander, Burke, Caldwell, Catawba and Lincoln Counties.

On March 7, 2007, BRRRA received a Declaratory Ruling allowing a change in the host sites for the mobile MRI. Pursuant to the Declaratory Ruling, BRRRA was authorized to change its host site from Catawba Valley Medical Center (“CVMC Site”) at 801 Fairgrove Church Road, Hickory, North Carolina to Blue Ridge Radiology Associates, P.A., Lincolnton (“Lincolnton Site”) at 200 N. Grove Street, Lincolnton, North Carolina.

BRRRA seeks to change the Lincolnton Site to the BRRRA office site at 1041 Morganton Boulevard SW, Lenoir, Caldwell County, North Carolina (“Caldwell Site”). Grace Hospital joined BRRRA in the request because it is planning to acquire the BRRRA physician practice and the mobile MRI scanner. Grace Hospital has requested an exemption from the CON review of the propped acquisition in separate correspondence. BRRRA is proposing to change its Lincolnton Site to the Caldwell Site because Grace Hospital is not proposing to acquire the Lincolnton BRRRA physician office as part of the acquisition.

ANALYSIS

The CON law would require a full review of BRRRA’s site 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 site relocation does not constitute a material change in the physical location or the scope of the proposed project for the following reasons:

In the CON issued in 2005, the approved primary service area for this mobile MRI scanner included Alexander, Burke, Caldwell, Catawba, and Lincolnton Counties. The change

in host site is within the original approved 5-county primary service area. By changing host sites within the approved area, the patient population for which the need was originally demonstrated, will continue to be served.

The change in host site will not affect the scope of the services offered, will not affect the ability of ancillary and support services, and will not negatively impact underserved groups. The change in host sites will not adversely impact the capital or operational costs of the mobile diagnostic unit.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw BRRAs' CON if BRRAs fail 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. BRRAs 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, other than previously discussed.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the relocation of the host site of BRRAs' mobile MRI service from the Lincolnton Site to the Caldwell Site, Project I.D. No. E-7066-04 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 the _____ day of July, 2011.

Drexdal Pratt, 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

Maureen Demarest Murray
Smith Moore Leather wood LLP
Post Office Box 21927
Greensboro, NC 27420

This the _____ day of July, 2011.

Jeff Horton
Chief Operating Officer