

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

IN RE: REQUEST FOR DECLARATORY)	
RULING BY FOUNDATION HEALTH)	
MOBILE IMAGING, LLC AND)	DECLARATORY RULING
NOVANT HEALTH, INC.)	
Project I.D. No. J-7008-04)	

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.

Foundation Health Mobile Imaging and Novant Health, Inc. (collectively “Petitioners”) have requested a declaratory ruling for Project I.D. No. J-7008-04 allowing for the addition of one host site on the grounds that the addition does not constitute a material change in scope or physical location or a failure to materially comply with the representations made in the certificate of need (CON) application or the conditions imposed upon the certificate. N.C. Gen. Stat. §§ 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. Denise M. Gunter of Nelson Mullins Riley & Scarborough LLP has requested this ruling on behalf of Petitioners and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

On March 8, 2005, a CON was issued to InSight Health Corporation (“InSight”) for Project I.D. No. J-7008-04 to acquire a mobile MRI scanner to provide mobile MRI services at several locations in health service areas (HSAs) IV, V, and VI. Through subsequent declaratory rulings, the Department approved the change and addition of certain other host sites within the three originally approved HSAs. On June 29, 2010, the CON section issued an exemption notice which authorized Foundation Health Mobile Imaging, LLC (“Foundation”) to acquire additional mobile MRI programs, including those owned by InSight, and operated in HSAs IV, V, and VI. On November 30, 2011, the Department issued another declaratory ruling, authorizing Foundation to add two additional host sites for the mobile MRI services, in Moore and Halifax Counties, both of which are located in HSAs V and VI, respectively.

Petitioners continue to provide mobile MRI services in those counties originally approved in the CON and subsequently added through declaratory rulings and exemptions. In this request, Petitioners seek to add Carolina Imaging, LLC of Fayetteville, in Cumberland County, as a new host site for its mobile MRI scanner. Cumberland County is in HSA V, one of the original HSAs included in the CON approved in Project I.D. No. J-7008-04. In their request, Petitioners state that mobile MRI services would be provided to Carolina Imaging, LLC in the same manner as and in addition to the other sites currently served. Petitioners further state that there will be no increase in capital cost associated with this request, there will be no increase in patient charges, nor will there be a material change in location or scope from those services originally approved. Petitioners assert that the addition of one new site at Carolina Imaging, LLC in Fayetteville, in HSA V, for the provision of mobile MRI services is in material compliance with the terms of the CON awarded in 2005.

ANALYSIS

N.C.G.S. § 131E-181(a) provides that “[a] certificate of need shall be valid only for the defined scope, physical location, and person named in the application.” The recipient of the CON must also materially comply with the representations made in the CON application. N.C.G.S. § 131E-181(b). If Petitioners’ proposal were to represent a material change in the physical location or scope of the project, the CON law would require a full review of Petitioners’ proposal. N.C.G.S. § 131E-181(a).

Petitioners currently provide mobile MRI services to several locations in HSAs IV, V, and VI, pursuant to the CON awarded in Project I.D. No. J-7008-04. The proposed additional site is located in HSA V, which is an area that was originally approved for the project. Petitioners state that there will be no capital cost increase, change in scope, or increase in patient charges as a result of the addition of mobile MRI services at Carolina Imaging. Given these circumstances, the proposed host site does not constitute a material change in the physical location or scope of the project.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that Petitioners’ proposed additional site 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 certificate of need in violation of N.C.G.S. § 131E-189(b).

This the _____ day of April, 2012.

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

Denise Gunter
Nelson Mullins Riley & Scarborough LLP
380 Knollwood Street, Suite 530
Winston-Salem, NC 27103

This the _____ day of April, 2012.

Dr. Patsy Christian, Assistant Director
Healthcare Quality and Safety