

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY WAKE RADIOLOGY) **DECLARATORY RULING**
SERVICES, LLC)
Project I.D. No. J-7012-04)**

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 to me by the Secretary of the Department of Health and Human Services.

Wake Radiology Services, LLC (hereinafter “WRS”) has requested a declaratory ruling allowing for two additional host sites, located at 7636 Purfoy Road, Suite 200, Fuquay-Varina, North Carolina and 3150 Rogers Road, Suite 115, Wake Forest, North Carolina, for Project I.D. No. J-7012-04 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 WRS 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. Frank Kirschbaum of Nexsen Pruet, PLLC has requested this ruling on behalf of WRS and has provided the material facts upon which this ruling is based:

STATEMENT OF THE FACTS

On September 1, 2004, WRS was issued a certificate of need, Project I.D. No. J-7012-04, to acquire a mobile MRI scanner and trailer to provide MRI services at “two or more host sites.” The MRI scanner is currently authorized to be operated at the four following host sites: Building 1, Health Park at Timber Lake, Garner, North Carolina; Raleigh MR Imaging Center, 3821 Merton Drive, Raleigh, North Carolina; 300 Asheville Avenue, Cary, North Carolina; and 8300 Health Park, Suite 220, Raleigh, North Carolina (collectively the “Approved Sites”).

In its request, WRS proposes to two additional host sites located at 7636 Purfoy Road, Suite 200, Fuquay-Varina, North Carolina and 3150 Rogers Road, Suite 115, Wake Forest, North Carolina, as host sites for the above-described mobile MRI scanner and requests a determination that the new host sites are in material compliance with the certificate of need issued for Project I.D. No. J-7012-04.

ANALYSIS

The CON law requires a full review of WRS’s proposed additional host sites if the changes were to represent a material change in the physical location or scope of the project. N.C. Gen. Stat. §131E-181(a) states that a CON is “valid only for the defined scope, physical location and person named in the application.” However, the Agency has allowed approved applicants to change physical location named in their application where convenience dictates or the objectives of the CON law are otherwise advanced. The proposed addition of two host sites is in material compliance with its original CON for the following reasons:

At the additional locations, WRS will be able to operate its MRI scanner in a manner consistent with the conditions placed on its CON. The additional host sites will not affect the scope of services offered. The additional host sites will improve the cost effectiveness and

efficiency of the mobile MRI service by increasing the volume of procedures performed. Providing MRI services at the additional host sites will not add to the CON-approved capital budget for the project. Use of the scanner at the additional sites will not cause any changes on fees by WRS for mobile MRI services.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request and previous requests to be true, I conclude WRS may include 7636 Purfoy Road, Suite 200, Fuquay-Varina, North Carolina and 3150 Rogers Road, Suite 115, Wake Forest, North Carolina as two additional host sites for its mobile MRI Scanner, Project ID No. J-7012-04, as this additional host site will not constitute a change in the scope or physical location of the Project; will not violate N.C. Gen. Stat. §131E-181; and will not constitute a failure to satisfy a condition of the CON in violation of N.C. Gen. Stat. §131E-189(b).

This the _____ day of May, 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 a first-class, postage pre-paid envelope addressed as follows:

CERTIFIED MAIL

Frank Kirschbaum
Nexsen Pruet, PLLC
4141 Parklake Avenue, Suite 200
Raleigh, NC 27612

This the _____ day of May, 2012.

Jeff Horton
Chief Operating Officer