

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

**IN RE: REQUEST FOR DECLARATORY )  
RULING BY NOVANT HEALTH, INC. )       DECLARATORY RULING  
AND CAPE FEAR DIAGNOSTIC )  
IMAGING, INC. )**

I, Mark Payne, as Assistant Secretary for Audit and 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 Statutes § 150B-4 and 10 NCAC 14A .0103, under the authority granted me by the Secretary of the Department of Health and Human Services.

On February 29, 2016, Novant Health, Inc. ("Novant") and Cape Fear Diagnostic Imaging, Inc. ("CFDI") (hereinafter collectively, "Petitioners") requested a declaratory ruling allowing for the addition of two (2) host sites for a mobile MRI scanner for Project I.D. No. 0-6434-01 (the "Project") on the grounds that the change does not constitute a material change in scope or a failure to materially comply with the representations made in the Certificate of Need ("CON") application for the Project, pursuant to N.C.G.S. §§ 131E-181(a) and (b). On March 15, 2016, the Department requested additional information from Petitioners' counsel. Petitioners' counsel provided the additional information on March 23, 2016. This ruling will be binding upon the Department and the entities 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 Novant and has provided the material facts upon which this ruling is based.

### **STATEMENT OF THE FACTS**

CFDI was awarded a CON to acquire a mobile MRI scanner as set forth in Project I.D. O-6434-01. Pursuant to the CON, the original host sites were CFDI's office in Wilmington, North Carolina and Columbus County Hospital in Whiteville, North Carolina. Through a series of declaratory rulings, CFDI was permitted to add sites in Morehead City (Carteret County), Jacksonville (Onslow County), Leland (Brunswick County) and Fayetteville (Cumberland County). CFDI presently serves Carolinas Center for Surgery (f/k/a Carteret Surgical Associates, PA), 3714 Guardian Ave, Morehead City, North Carolina 28557 and Carolina Imaging Fayetteville, 3628 Cape Center Dr, Fayetteville, North Carolina 28304 (collectively, the "Current Host Sites"). CFDI proposes to add two additional sites to its route: Moore Orthopedics & Sports Medicine, 1165 Cedar Point Blvd, Cedar Point, North Carolina 28584 (Carteret County) and Novant Health Brunswick Imaging Center<sup>1</sup>, 75 Emerson Bay Road SW, Calabash, North Carolina 28467 (Brunswick County) (collectively, the "Proposed Additional Host Sites"). Presently, the CFDI scanner serves Carteret Surgical on Mondays for 8 hours and Carolina Imaging Fayetteville on Tuesdays, Wednesdays and Fridays for 8 hours per day.

Petitioners' request for a declaratory ruling sets forth the following additional material facts and representations in support of its request. CFDI's service agreements with the Proposed Additional Host Sites will be similar to the service agreements CFDI has with its Current Host Sites. The Moore Orthopedics & Sports Medicine site already has a mobile pad and electrical hook ups, and the Novant Health Brunswick Imaging Center site is in the process of constructing

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<sup>1</sup> Petitioners state that Novant Health Brunswick Imaging Center is a department of Novant Health Brunswick Medical Center.

a mobile pad which is expected to be ready shortly. The Proposed Additional Host Sites will not affect the scope of services offered or the costs or charges to CFDI or to the public for MRI services. Serving the Proposed Additional Host Sites also allows CFDI to maximize utilization of the CFDI mobile MRI scanner. The scanner will continue to be used four days per week, but instead of concentrating the service at two host sites, the scanner will cover four different sites: Carteret Surgical (Mondays); Carolina Imaging Fayetteville (Tuesdays); Novant Health Brunswick Imaging (Wednesdays); and Moore Orthopedics and Sports Medicine (Thursdays).

### **ANALYSIS**

The CON Law would require a full review of the Proposed Additional Host Sites site if the addition represented a material change in the physical location or scope of the project. N.C. Gen. Stat. § 131E-181(a). The Proposed Additional Host Sites do not constitute a material change in the physical location of the project because CFDI was previously approved to serve host sites in Carteret County and Brunswick County. Similarly, the Proposed Additional Host Sites do not affect the scope of services offered by CFDI. In addition, there is no proposed change in the person named in the application in violation of N.C. Gen. Stat. § 131E-181(a).

N.C. Gen. Stat. § 131E-189(b) allows the Agency to withdraw CFDI's CON if CFDI 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. Based on the information presented in the declaratory ruling request, CFDI will not be operating its project in a manner that is materially different from the representations made in its application, nor in a manner that is inconsistent with any of the conditions that were placed on its CON.

## **CONCLUSION**

Assuming the statement of facts and representations in the request of February 29, 2016 and additional information provided on March 23, 2016 to be true, I conclude that Petitioners' addition of Moore Orthopedics and Sports Medicine, PA, located at 1165 Cedar Point Boulevard, Cedar Point, North Carolina 28584 and Novant Health Brunswick Imaging Center, 75 Emerson Bay Road, SW, Calabash, North Carolina 28467 as host sites for the mobile MRI scanner will not constitute a material change in the scope or location 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) or any of the rules of the Department.

This the \_\_\_\_ day of \_\_\_\_\_, 2016.

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Mark Payne, Assistant Secretary for Audit and  
Health Service Regulation  
Division of Health Service Regulation  
N.C. Department of Health and Human Services