

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY INSIGHT HEALTH CORP.) DECLARATORY RULING
Project I.D. No. J-7008-04)**

I, Robert J. Fitzgerald, 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.

InSight Health Corp. (“InSight”) has requested a declaratory ruling allowing for a change in host sites for Project I.D. No. J-7008-04 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 InSight in its Certificate of Need (“CON”) application for its project. 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. Gen. Stat. § 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. Marcus C. Hewitt of Williams Mullen Maupin Taylor, P.C. has requested this ruling on behalf of InSight and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

On 15 March 2004, InSight filed a CON application, designated Project I.D. No. J-7008-04, to acquire a mobile MRI scanner (the “Project Unit”) to serve Health Service Areas IV, V, and VI. On 11 August 2004, the CON Section conditionally approved the application in a noncompetitive review. The CON Section issued a CON to InSight for the project on 8 March 2005.

In accordance with the application, the CON authorized InSight to provide mobile MRI service at Capital Neurosciences in Carteret County one day per week; Raleigh Community Hospital in Wake County two days per week; Washington County Hospital one day per week; and Wilmington Orthopedics in New Hanover County two days per week. Two of these sites (Washington County Hospital and Wilmington Orthopedics) became unavailable to InSight as sites for the Project Unit because they entered into contracts for mobile service with another provider. In a declaratory ruling issued 26 September 2005, the Department approved provision of services at Carolina Spine Rehabilitation and Surgical Associates (“Carolina Spine”) in Wake County two days per week as an alternative to Washington County Hospital and Wilmington Orthopedics.

In a declaratory ruling request dated 12 January 2006, InSight represented that Capital Neurosciences and Raleigh Community Hospital no longer required mobile service from InSight. As an alternative to these two sites, InSight identified provision of mobile MRI services at Scotland Imaging, LLC (“Scotland Imaging”) in Scotland County three days per week. In a declaratory ruling issued 8 March 2006, the Department approved provision of service at Scotland Imaging three days per week.

Scotland Imaging contracted with InSight for only two days per week of services rather than three days. InSight then identified as another alternative provision of mobile MRI services at Hamlet, H.M.A., Inc. d/b/a Sandhills Regional Medical Center (“Sandhills Regional”) in Richmond County (1000 West Hamlet Avenue, Hamlet, NC 28345) three days per week. In a declaratory ruling dated 16 May 2006, the Department approved provision of services at Sandhills Regional.

InSight now states that decreased procedure volumes at Sandhills Regional have resulted in the availability of the Project Unit one day per week. InSight proposes to serve on that day an additional site, Carolina Radiology, located at 11550 Common Oaks Drive, Raleigh, Wake County, NC 27614. InSight represents that its provision of mobile MRI services at Carolina Radiology will not increase the capital costs or materially change the operating costs or the charges from the amounts proposed in InSight’s application. InSight represents that its services at Carolina Radiology will replace mobile MRI services provided by another InSight MRI scanner.

In addition, InSight states that the scope of services it currently provides will not change. InSight also states that use of Carolina Radiology as an additional site will not affect the services to be provided at Carolina Spine, Scotland Imaging, or Sandhills Regional. InSight further represents that the route for the mobile scanner, as modified to include Carolina Radiology, meets the CON criteria and standards under which InSight’s application was approved and is consistent with the representations in the application.

ANALYSIS

The CON law would require a full review of InSight’s proposed change of host site if that change were to represent a material change in the physical location or scope of the project. N.C.

Gen. Stat. § 131E-181(a). The proposed addition of Carolina Radiology as a host site for InSight's project does not constitute a material change in the physical location or the scope of the proposed project because the use of Carolina Radiology as a host site will not affect the scope of services offered or the costs and charges to InSight or to the public for the provision of mobile MRI services. Carolina Radiology is located within Health Service Area IV. In addition, there is no proposed change in the person named in the application such that a violation of N.C. Gen. Stat. § 131E-181(a) would result.

N.C. Gen. Stat. § 131E-189(b) allows the Agency to withdraw InSight's CON if InSight either 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. InSight 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 all the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that subject to the conditions set out herein, the addition of Carolina Radiology to the route for InSight's mobile MRI scanner (Project I.D. No. J-7008-04) will not constitute a material change in the physical location or scope 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 ruling is subject to the following conditions:

- (1) InSight shall enter into a service agreement with Carolina Radiology that is substantially similar to the agreement signed by its other host sites.

- (2) InSight shall satisfy all the requirements and representations regarding the host sites in its original CON application.

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 January, 2008.

Robert J. Fitzgerald, 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

Marcus C. Hewitt
Williams Mullen Maupin Taylor P.A.
P.O. Box 19764
Raleigh, North Carolina 27619-9764

This the _____ day of January, 2008.

Jeff Horton
Chief Operating Officer