

**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, Jeff Horton, as Acting 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.

Wake Radiology Services, LLC (“WRS”) has requested a declaratory ruling allowing it to add an additional host site for Project I.D. No. J-7012-04 on the grounds that the addition does not constitute a material change in 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 S. Kirschbaum of Kirschbaum, Nanney, Keenan & Griffin, P.A., counsel for WRS, has requested this ruling on behalf of WRS and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Effective 1 September 2004, the CON Section issued a CON to WRS for Project I.D. No.J-7012-04 to acquire a mobile magnetic resonance imaging (“MRI”) scanner (the “Project Unit”) to provide MRI services at “two or more” host sites. The proposed host sites were Building 1, Health Park at Timber Lake in Garner (“Timber Lake Site”), Raleigh MR Imaging Center, 3821 Merton Drive in Raleigh (“Merton Drive Site”), Granville Medical Center, 101 College Street in Oxford (“GMC”), and Good Hope Hospital, 410 Denim Drive in Erwin (“GHH”) (collectively the “Original Sites”).

Pursuant to a Declaratory Ruling issued by the Department on 12 February 2008, WRS was authorized to add WRS’s facility located at 300 Asheville Avenue in Cary (“Asheville Avenue Site”) as an additional host site for its mobile MRI scanner. WRS currently operates the MRI scanner at the Timber Lake, Merton Drive and Asheville Avenue Sites. In this request, WRS proposes to serve an additional host site. The proposed site is WRS’s facility located at 8300 Health Park, Suite 220 in Raleigh (“the Proposed Site”). WRS proposes to take one day of service from the Asheville Avenue Site in order to provide one full day of service at the Proposed Site. WRS states the Proposed Site is within the same MRI service area as the three currently authorized sites of service and the change will not add to the CON-approved capital budget for the project nor will it cause any changes in the fees charged by WRS for mobile MRI services. WRS represents that it will comply with all conditions of its CON and of applicable regulations.

ANALYSIS

The CON law would require a full review of WRS’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.G.S. § 131E-181(a). The proposed addition of the Proposed Site does not constitute a material change in the physical location or the scope of the proposed project because the use of the Proposed Site as a host site will not affect the scope of services offered or the costs and charges to WRS or to the public for the provision of mobile MRI services. The Proposed Site is in the same MRI service area as the Original Sites. In addition, there is no proposed change in the person named in the application that would result in a violation of N.C.G.S. § 131E-181(a).

N.C.G.S. § 131E-189(b) allows the Agency to withdraw WRS's CON if WRS 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. WRS 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 the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the addition of the Proposed Site as a host site for WRS's mobile MRI scanner, Project I.D. No.J-7012-04, 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 ruling is not intended, and should not be interpreted, to authorize an increase 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 August, 2009.

Jeff Horton, Acting 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

Frank S. Kirschbaum
Kirschbaum, Nanney, Keenan & Griffin, PA
2418 Blue Ridge Road, Suite 200
P.O. Box 19766
Raleigh, NC 27619-9766

This the _____ day of August, 2009.

Jesse Goodman
Acting Chief Operating Officer