

**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 (“Foundation”) and Novant Health, Inc. (“Novant”) (collectively, “Petitioners”) have requested a declaratory ruling for Project I.D. No. J-7008-04 (“Project”) allowing for the addition of two host sites 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 application or the conditions imposed upon the certificate. N.C.G.S. §§ 131E-181(a) and (b). 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 Petitioners and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

On March 8, 2005, the CON Section issued a certificate of need to InSight Health Corporation allowing InSight to acquire a mobile MRI Scanner (“Scanner”) as set forth in Project I.D. No. J-7008-04 to serve HSAs IV, V and VI. Through declaratory rulings, the Department permitted InSight to change host sites for the Scanner within HSAs IV, V and VI. On June 29, 2010, the CON section issued a notice of exempt acquisition allowing Foundation to acquire certain mobile diagnostic programs owned by InSight, including those serving HSAs IV, V and VI pursuant to the certificate of need for Project I.D. No. J-7008-04.

Southern Pines Diagnostic Imaging, 415 South Bennett Street, Southern Pines, North Carolina, is an affiliate of Petitioners that currently offers MRI services on both fixed and mobile units. Southern Pines Diagnostic Imaging’s current mobile unit is scheduled to be moved to another location in North Carolina. Due to patient volumes, Petitioners still require mobile MRI service at Southern Pines. Petitioners propose to use the Scanner at Southern Pines two days per week. Southern Pines is within HSA V, and the Scanner has served counties adjacent to Moore County (where Southern Pines is located).

Petitioners also have identified another site in Halifax County – MRI Services of North Carolina, Inc., 171 Hwy 25, Roanoke Rapids, North Carolina – as a host site for the mobile unit. Petitioners propose to use the Scanner at Roanoke Rapids on Wednesdays. Roanoke Rapids is in HSA VI, and the Scanner previously has been in service in Halifax County.

Petitioners represent that there will be no capital costs associated with adding these two sites as host sites for Project I.D. No. J-7008-04 because these sites already have mobile MRI pads and electrical hook ups. Petitioners further represent that the service agreements at the new locations will be similar to those used at others locations in North Carolina where Novant-owned

mobile MRI scanners provide service. Finally, Petitioners represent that the additions will not change the scope of services provided and will not increase patient charges.

ANALYSIS

The CON law would require a full review of Petitioners' proposed change 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 host site additions do not constitute a material change in the physical location or the scope of the project. The sites are within HSAs that the Scanner was approved to serve. The additions will not create capital costs, increase patient charges or change the scope of services provided.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw a certificate of need if the applicant 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 certificate. Petitioners will not be developing their project in a manner that is materially different from the representations made in the application, nor will they be developing their project in a manner that is inconsistent with any of the conditions that were placed on the certificate of need.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the addition of the above sites as sites for the Scanner approved in 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.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 November, 2010.

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

This the _____ day of December, 2010.

Jeff Horton
Chief Operating Officer