

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY FRYE REGIONAL) DECLARATORY RULING
MEDICAL CENTER)
Project I.D. No. E-7059-04)**

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.

Frye Regional Medical Center (“Frye”) has requested a declaratory ruling allowing for a change in host sites for Project I.D. No. E-7059-04 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 Frye 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. Robert V. Bode of Bode, Call & Stroupe, L.L.P. has requested this ruling on behalf of Frye and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Effective 18 January 2005, the CON Section issued a CON to Frye for Project I.D. No. E-7059-04 to acquire a mobile MRI scanner (the "Project Unit") to provide mobile MRI services. Among the conditions of the CON was that the equipment "shall not, at any time, serve less than two host sites each week." The CON conditions also provided that "Frye shall use the mobile MRI scanner only at Frye Regional Medical Center's FryeCare located at 1781 Eighteenth Street, S.E. Hickory, N.C. 28602 (the "FryeCare Site") and at Alexander Hospital, 226 NC Highway 16 South, Taylorsville, NC 28681" unless a change in host sites were authorized by the Director of the Division of Facility Services. Hickory is in Catawba County; Taylorsville is in Alexander County.

In January 2007, Alexander Hospital ceased operations and on 8 October 2007, Frye submitted a Declaratory Ruling request proposing to change the secondary host site from Alexander Hospital to the Unifour Pain Treatment Center, located at 250 18th Street Circle, S.E. in Hickory. On 26 November 2007, the Agency issued a Declaratory Ruling denying Frye's request. Frye challenged the Agency's decision. Through settlement, the Agency agreed to allow Frye to substitute the Alexander County Public Health Department (the "Public Health Site") located at 338 1st Avenue SW in Taylorsville, (Alexander County) North Carolina as the secondary host site for the Project Unit. In this request, Frye proposes to substitute a new host site (the "Proposed Site") for the Public Health Site because its lease with the Public Health Site will terminate on 30 April 2011.

The Proposed Site is the Family Care Center located at 1668 NC Hwy 16 S. in Taylorsville, (Alexander County) North Carolina. Frye states that the Proposed Site is approximately 1.6 miles from the Public Health Site. Frye represents that adding the Proposed

Site will not result in any changes in the scope of services offered or any increase in costs to patients for its mobile MRI services. Frye further represents that it will comply with all conditions of its CON and all applicable regulations and that it will continue to serve the FryeCare host site.

ANALYSIS

The CON law would require a full review of Frye's proposed addition of the Proposed 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 Frye or to the public for the provision of mobile MRI services. 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 Frye's CON if Frye 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. Frye 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 or the settlement terms reached between Frye and the Agency.

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 Frye's mobile MRI scanner, Project I.D. No.E-7059-04, 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 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 April, 2011.

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

Robert V. Bode
Bode, Call & Stroupe, LLP
3105 Glenwood Avenue, Suite 300
Raleigh, NC 27612

This the 18th day of April, 2011.

Jeff Horton
Chief Operating Officer