

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

IN RE: REQUEST FOR DECLARATORY)	
RULING BY PINNACLE HEALTH)	DECLARATORY RULING
SERVICES OF NORTH CAROLINA, LLC)	
d/b/a RALEIGH RADIOLOGY AT)	
CEDARHURST)	
Project I.D. No. J-8268-08)	

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 to me by the Secretary of the Department of Health and Human Services.

Pinnacle Health Services of North Carolina, LLC d/b/a Raleigh Radiology at Cedarhurst (“Pinnacle”) has requested a declaratory ruling allowing for a change in one host sites for one of the three locations to be served by a new mobile magnetic resonance imaging (“MRI”) scanner for which a Certificate of Need (“CON”) was previously approved by the Department (Project I.D. No. J-8268-08), and the addition of a fourth host site, on the grounds that the changes do not constitute a material change in physical location nor a failure to materially comply with the representations made by Pinnacle in its 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.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. Marcus C. Hewitt of Williams Mullen has requested this ruling on behalf of Pinnacle and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

On June 14, 2012, Pinnacle received a certificate of need to acquire a mobile MRI scanner and trailer to provide MRI services at three host sites, including two sites in Wake County and one site in Johnston County. Pinnacle has undertaken a relocation of its Clayton location and construction is underway for a new Clayton Office which is located at 166 Springbrook Avenue, Suite 103 in Clayton, approximately 1 mile from the original Clayton location. In this request, Pinnacle proposes to change the Johnston County site from the current office at 300 Guy Road, Suite 102 in Clayton to the new office located at 166 Springbrook Avenue, Suite 103 in Clayton. The new Clayton location will maintain or improve patient access to the mobile MRI scanner and will be as or more convenient for patients utilizing the MRI scanner.

Pinnacle also proposes to add a fourth site located at 8851 Ellstree Lane in Raleigh (Wake County). Pinnacle currently provides computed tomography (“CT”), mammography, ultrasound, x-ray and bone densitometry services at this location and proposes to add services with the Mobile MRI scanner by adding its Briar Creek Location as a fourth host site. The Briar Creek location is located in Wake County, one of the two counties in which Pinnacle was approved to provide services. There is no proposed change in the operating costs or charge per procedure. The proposed addition of Pinnacle’s Briar Creek location as a host site for Pinnacle’s mobile MRI scanner will not be a material change to the project as proposed in the Pinnacle application, and will not violate any of the statutes referenced herein or any other provision of the CON law.

ANALYSIS

The CON law would require a full review of Pinnacle's proposed additional host site if that change were to represent a material change in the physical location or scope of the project. *See* N.C. Gen. Stat. §131E-181(a). The proposed addition of a host site and change in the Johnston County host site does not constitute a material change in the physical location or the scope of the proposed project for the following reasons:

The change in the Johnston County host site and the addition of another host site in Wake County will not affect the scope of services offered or the costs and charges to Pinnacle or to the public of providing mobile MRI services. Pinnacle agrees to materially comply with all the requirements and representations made in its original CON application. The proposed host site is within the health service area for which the CON was issued.

N.C. Gen. Stat § 131E-189(b) allows the Agency to withdraw Pinnacle's CON if Pinnacle either fails to develop the service in a manner consistent with the presentations made in the Pinnacle application or with any conditions that were placed on the CON. Pinnacle will not be developing its project in a manner that is materially different from the representation 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 Pinnacle's request for a declaratory ruling should be granted to change the physical location of the previously approved mobile MRI scanner to add their new office located at 166 Springbrook Avenue, Suite 103 in Clayton as a host site, and to add a fourth host site located at 8851 Ellstreet Lane in Raleigh (Wake County).

Except as set forth herein, this ruling is not intended, and should not be interpreted, to authorize any 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 September, 2012

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

Marcus C. Hewitt
Williams Mullen
P.O. Box 1000
Raleigh, North Carolina 27602

This the _____ day of September, 2012.

Dr. Patsy Christian, Assistant Director
Healthcare, Quality and Safety