

**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 NOVANT) **DECLARATORY RULING**
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 10 NCAC 14A .0103 under the authority granted me by the Secretary of the Department.

Foundation Health Mobile Imaging, LLC and Novant Health, Inc. (“Petitioners”) have requested a declaratory ruling allowing the addition of two host sites for Project I.D. No. J-7008-04 (“Project”) on the grounds that the changes do 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 (“CON”) application for the Project. 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. 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. Denise M. Gunter of Nelson Mullins Riley & Scarborough LLP as counsel for Petitioners has requested this ruling and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Effective 8 March 2005, the CON Section issued a CON for the Project to InSight Health Corporation (“InSight”) to acquire a mobile MRI scanner and trailer to provide MRI services at

two or more host sites. On 29 June 2010, the CON Section issued a notice of exemption for the acquisition by Petitioners of certain InSight assets, including the mobile MRI scanner for the Project. As a result of several declaratory rulings, the MRI scanner currently serves host sites in Cumberland and Moore counties.

Petitioners seek to add two host sites in Cary, Wake County to the route for this scanner: North Carolina Diagnostic Imaging – Cary, 251 Keisler Drive, and Cary Orthopedics and Sports Medicine, 1120 Southeast Cary Parkway (collectively “Cary Sites”). Petitioners represent that there will be no capital costs associated with adding the Cary Sites as host sites because the Cary Sites already have mobile MRI pads and electrical hook ups. Petitioners further represent that the service agreements used at the Cary Sites will be similar to the service agreements used at other locations in North Carolina where Novant-owned mobile MRI scanners provide mobile MRI service. Petitioners state that there will be no change in the scope of services or increase in patient charges as a result of adding the Cary Sites to the route.

ANALYSIS

The CON law would require a full review of Petitioners’ addition of host sites 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 host sites does not constitute a material change in the physical location or scope of the Project for the following reasons:

The addition of the proposed host sites will not affect the scope of services or costs and charges to the Petitioners or to the public of providing mobile MRI services.

Petitioners agree to satisfy all the requirements and representations made regarding the host sites in the original CON application for the Project.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that adding North Carolina Diagnostic Imaging – Cary, 251 Keisler Drive, Cary, NC and Cary Orthopedics and Sports Medicine, 1120 Southeast Cary Parkway, Cary, NC as host sites for the Project does not constitute a material change in the physical location or scope of the Project, does not violate N.C. Gen. Stat. § 131E-181, and does not constitute a failure to satisfy a condition of the CON in violation of N.C. Gen. Stat. § 131E-189(b).

This ____ day of June, 2014.

Drexdal Pratt, Director
Division of Health Service Regulation
N.C. Department of Health and Human Services

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Declaratory Ruling upon the PETITIONER by causing a copy of same to be placed in the United States mail, postage pre-paid envelope, certified mail, return receipt requested, addressed as follows:

CERTIFIED MAIL

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

This the ____ day of June, 2014.

Cheryl Ouimet
Chief Operating Officer