

**NORTH CAROLINA STATE HEALTH COORDINATING COUNCIL**

**PETITION FOR ADJUSTMENT TO NEED DETERMINATION  
IN SERVICE AREA 20 FOR ADDITIONAL LINEAR ACCELERATOR**

Petitioner Duke University Health System, Inc. d/b/a Duke Raleigh Hospital (“Duke Raleigh”) hereby submits this petition to adjust the need determination for linear accelerators in Service Area 20 in Chapter 9 of the 2014 State Medical Facilities Plan for one additional machine.

**Petitioner**

Duke University Health System, Inc. d/b/a Duke Raleigh Hospital  
3400 Wake Forest Road  
Raleigh, NC 27609-7373

Contact: Catharine W. Cummer  
Regulatory Counsel, Strategic Planning  
Duke University Health System  
3100 Tower Blvd.  
Suite 1300  
Durham, NC 27707  
(919) 668-0857  
catharine.cummer@duke.edu

**Statement of the Proposed Change**

Duke Raleigh proposes that the need for linear accelerators in Service Area 20 (Wake and Franklin Counties) be increased to one additional linear accelerator, to meet the unmet demand for additional linear accelerator capacity in the service area.

**Reasons for Proposed Change**

The existing need determination that no additional linear accelerators for Service Area 20 are needed results from a methodology reflecting the total number of existing and approved number of linear accelerators in the Service Area, regardless of implementation status or operational volumes. The actual capacity of linear accelerators to serve patients in Service Area 20 is much lower than the methodology considers as there are two machines included in the inventory that are not meaningfully contributing to meeting the need in the area.

The following circumstances differentiate actual capacity from the methodology's perceived capacity.

- 1) Cancer Centers of North Carolina obtained a certificate of need for a second linear accelerator pursuant to a need determination established in the 2007 State Medical Facilities Plan. After all appeals were completed, the certificate of need was issued in February 2011. In more than two years since then, Cancer Centers of North Carolina has made no progress towards the implementation of this asset. The project timeline has been delayed several times with no action on CCNC's part. Therefore, the need remains unmet.
- 2) There is a low volume machine in the service area that alters the supply of linear accelerators in the area. The machine accounted for only .3% of the linear accelerator treatments provided in Service Area 20 in 2012.
- 3) Utilization over the past several years reflects an imbalance between highly utilized and underutilized equipment that has not corrected over several years, suggesting that apparent capacity in the service area may not be available as a practical matter to alleviate demand.
- 4) Overall Service Area 20 utilization and volumes continue to grow.

These factors are discussed at greater length below.

1. Cancer Centers of North Carolina undeveloped certificate of need

A need for an additional linear accelerator was recognized in the 2007 State Medical Facilities Plan, reflecting 36,620 ESTVs performed on a total of 7 linear accelerators. Several applicants, including Duke Raleigh Hospital, applied to acquire equipment pursuant to this need determination. After a competitive review, the CON Section issued a decision approving the application of Cancer Centers of North Carolina ("CCNC") to acquire a linear accelerator capable of performing stereotactic radiosurgery. After appeals of the decision, a CON was issued to CCNC in February 2011.

In the interim, however, CCNC acquired Wake Radiology Oncology Services and thereby gained access to a second linear accelerator. Since the issuance of its CON in February 2011, CCNC has not spent any money, ordered the equipment, begun construction, nor taken any material steps toward the development of the equipment for which it has a CON. Although in public comments last year, CCNC expressed its commitment "to the acquisition and installation of its new CON Section-approved linear accelerator in a reasonably expedited timeframe," CCNC still has made no progress. In its latest progress report, it proposed to begin construction this fall, to complete construction in 2014 (but then to wait 4 months after the purported completion of construction before ordering the equipment), and finally to install and operate the equipment only in 2015. See CCNC's May 1, 2013 progress report to the CON Section attached

as Exhibit A. Even if CCNC were finally to identify the equipment it would purchase, its lack of progress in actually implementing the project means that this piece of equipment in the inventory is only illusory.

Therefore, equipment found to be needed six years ago has yet to be added to the inventory, resulting in no true added capacity in the area.

2. Franklin County Cancer Center low volumes

An office-based linear accelerator was put into service in Franklin County in 2006 at Franklin County Cancer Center. This linear accelerator was acquired without a certificate of need under a prior version of the certificate of need statute, which regulated “oncology treatment centers” but not linear accelerators if the total cost of the equipment and construction was less than \$250,000. Accordingly, the Franklin County Cancer Center began serving patients in Louisburg on a linear accelerator (purchased for \$57,726.50) on May 1, 2006. (See May 9, 2011 correspondence from CON Section attached as Exhibit B.) Its reported utilization for 2010-2011 was 1407 ESTVs, and fell even more in 2011-12 to only 141 ESTVs, or 2% of capacity. This machine is not contributing to the effective capacity of linear accelerators for patients in the area.

3. Relative utilization of linear accelerator providers in Service Area 20

Although the overall linear accelerator utilization has grown significantly since the need for an additional accelerator was found in the 2007 SMFP, two providers in particular have significantly higher utilization per machine than the others.

Service Area 20 linear accelerator utilization (ESTVs) per existing machine

Facility	2007-08 (2010 SMFP)	2008-09 (2011 SMFP)	2009-10 (2012 SMFP)	2010-11 (2013 SMFP)	2011-12 (2014 SMFP)	2012-13 (Exhibit C)
Duke Raleigh Hospital (1 machine)	7566	7268	7572	7486	9807	9153.5
CCNC (1 machine until 2010-11, then 2 machines; does not include undeveloped CON for additional machine)	11,727	11,923	11,506	8351.5	7885	
Wake Radiology Oncology Services (1 machine)	6216	4718	5633	--	---	
Rex Hospital (4 machines)	4242.5	4233	4909	4724.5	4850	
Franklin County Cancer Center (1 machine)	not reported	not reported	not reported	1407	141	

As set forth above, the Duke Raleigh and CCNC linear accelerators are operating well above the assumed capacity of 6,750 ESTVs per year, on a continued and regular basis. At the same time, Rex is operating under that threshold and Franklin County Cancer Center has negligible volume. This imbalance in volumes between the high-utilization and lower-utilization providers has existed for several years and shows no sign of amelioration.

In fact, while it has been operating in excess of assumed capacity for several years, Duke Raleigh's utilization has increased dramatically even further over the past two years. As set forth in Exhibit C, Duke Raleigh provided 9153.5 ESTVs in 2012-13, more than 135% of the methodology's assumed linear accelerator capacity of 6,750 ESTVs for the second year in a row. Duke's high utilization is limiting any further ability to meet patient demand, both because it becomes impossible to schedule additional appointments and because the constant high utilization leads to maintenance issues. Because patients must generally receive their entire course of procedures on a single machine, it is not usually feasible for patients to seek out another linear accelerator during times of high demand once they have begun treatment. As a result, Duke schedules as many as 40 patients per day, regularly scheduling treatments from 7am to 6pm or later daily. However, this increased utilization causes stress on the machine, and is reflected in an increase in maintenance issues. In the past year, Duke had to cancel 110 patient appointments and delay many others to deal with equipment problems; its total utilization would otherwise be even higher. While Duke is planning to file an application to replace its existing linear accelerator, an equipment replacement can only address some of the immediate maintenance problems, not the fundamental issue of meeting continued high patient demand.

#### 4. Growth in overall utilization in Service Area 20

Excluding the Franklin County Cancer Center machine and its minimal procedure volume, the most recent utilization of the 7 existing machines in Service Area 20 as reported in the proposed 2014 SMFP is 44,978 ESTVs, an increase of 17% since the need for an additional machine was originally found in the 2007 SMFP.<sup>1</sup> The population of Wake and Franklin Counties has also increased more than 19% since that time, from 864,443 (2008 SMFP) to 1,028,770 (2014 SMFP), higher than the statewide population growth of 10% during the same period. Therefore, the need for an additional machine in the service area has only increased since 2007, yet the need remains unmet.

When the need was generated in 2007, Service Area 20 included Harnett County, which is now a separate service area. Even with the removal of the Harnett County population from the service area, however, the population per linear accelerator and ESTVs per linear accelerator have both increased dramatically since the 2007 need determination for an additional machine, as the population increase in Wake and Franklin Counties over that time is greater than the total

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<sup>1</sup> In addition, Parkway Urology, PA d/b/a Cary Urology PA has been awarded a certificate of need for a demonstration project for a model multidisciplinary prostate health center focused on the treatment of prostate cancer, which may not be counted in the regular inventory of linear accelerators. Because this is a dedicated-use machine, it is not anticipated that this accelerator would alleviate the demand on the existing high-volume accelerators in the service area in any event. For example, Duke Raleigh's urologic cancer volumes reflect less than 15% of its total.

population of Harnett County.<sup>2</sup> As set forth in the following table, the increase in per-machine utilization stands in contrast to the rest of the state, where the average ESTVs per machine has decreased.

Measure	2007 SMFP	2014 SMFP	% Change
Linear Accelerators contributing to effective capacity in the Service Area*	7	7	0%
Population within Service Area	928,651 (Wake, Franklin, and Harnett)	1,028,770 (Wake and Franklin)	11%
Population within Service Area per linear accelerator contributing to effective capacity	132,664	146,967	11%
Total ESTVs**	36,620	44,978	23%
ESTVs per effective machine in Service Area 20 at time of need determination**	5231	6,425	23%
ESTVs per machine in North Carolina	5,446	4967	-4%

\*Proposed SMFP 2014 lists 9 linear accelerators in Service Area 20 (Franklin and Wake Counties), however one (Franklin County Cancer Center) is a very low volume contributor with only 141 ESTVs, and one (CCNC) is not yet operational so they are not included in the count of linear accelerators contributing to effective capacity.

\*\* Excluding Franklin County Cancer Center machine and volumes and CCNC undeveloped CON; based on 44,978 total ESTVs on 7 remaining operational linear accelerators

**Adverse effect on providers and consumers without change:**

Although providers with high utilization can continue to further expand hours of treatment to address patient needs in the short term, a long term solution is needed. The increased maintenance required for over-used machines adds expense to providers and limits the amount of treatments they can provide.

Without the requested adjustment to the need determination, patients will face challenges in finding access to high quality linear accelerator treatment options. Treatment delays caused by scheduling difficulties and maintenance problems on high utilization machines could have negative effects on patient outcomes.

**Alternatives considered**

The only alternative to adjusting the need is to leave the determination as it currently stands, which does not provide sufficient access to services in the Service Area 20.

<sup>2</sup> Duke Raleigh would note that in 2011-2012, it served only 7 Harnett County patients for fewer than 100 ESTVs.

**Evidence that the proposed change would not result in unnecessary duplication of health resources in the area**

As set forth above, some existing providers appear to have capacity on their existing equipment, but the experience of several years demonstrates that this apparent capacity has not relieved the high utilization on other providers. Therefore, while the proposed change would increase the number of linear accelerators in the Service Area, the expansion is necessary to provide adequate access.

**Evidence that the requested change is consistent with the Basic Principles of Safety and Quality, Access, and Value**

The requested change will improve value by allowing potential providers to pursue cost-effective and efficient expansions of services. Reducing the burden of highly utilized machines will increase the usable life of the machinery and increase access to patients seeking treatment.

It is not a tenable long-term solution to have certain providers continue to provide services well above capacity while other providers are not meaningfully contributing to meeting the capacity needs of the service area. High utilization rates create needless access hurdles with scheduling procedures for patients. It can cause increased maintenance costs and delays, and may require more frequent replacement of equipment.

**Conclusion**

For all the reasons set forth herein, Duke Raleigh respectfully requests that the need determination for linear accelerators in Service Area 20 be adjusted to find a need for a single additional linear accelerator.



United in Healing with US Oncology

US Oncology  
4000 Westchase Blvd  
Suite 300  
Raleigh, NC 27607

Received by  
the CON Section  
MAY 2 2013

May 1, 2013

Mr. Michael J. McKillip  
Project Analyst  
Certificate of Need Section  
NC Dept of Health and Human Services  
Division of Health Service Regulation  
2704 Mail Service Center  
Raleigh, NC 27699-2704

RE: Progress Report / Project I.D. #J-7941-07; Facility ID #050382

*(Sent via e-mail and first-class mail)*

Dear Mr. McKillip:

Please find enclosed our latest progress report for the above referenced project. Please let me know if I can answer any questions in this regard.

Sincerely,

Tom Grates  
Executive Director

EXHIBIT A

CERTIFICATE OF NEED  
PROGRESS REPORT FORM

County: Wake Date of Progress Report: May 1, 2013  
Facility: Cancer Centers of North Carolina, P.C. Facility I.D. #: 050382  
formerly known as Raleigh Hematology Oncology Associates, P.C.

Project I.D. #: #J-7941-07 Effective Date of Certificate: February 4, 2011

Project Description: Acquire a second linear accelerator with stereotactic radiosurgery capabilities to be located at the Macon Pond Road facility in Raleigh/Wake County.

Received  
The CON Section  
MAY 2 2013

**A. Status of the Project**

- (a) Describe in detail the current status of the project. If the project is not going to be developed exactly as proposed in the certificate of need application, describe all differences between the project as proposed in the application and the project as currently proposed. Such changes include, but are not limited to, changes in the: 1) design of the facility; 2) number or type of beds to be developed; 3) medical equipment to be acquired; 4) proposed charges; and 5) capital cost of the project. (See the Capital Cost Section of this form for additional questions regarding changes in the total capital cost of the project).

We are still fully committed to the acquisition of a Trilogy Linear Accelerator that was proposed in this project. Since the issuance of the CON, we have been monitoring the continued advances in the Varian Trilogy technology as well as intervening developments which have impacted our implementation plans. These developments involve improvements in the Varian Trilogy platform which may enable us to acquire a Trilogy machine with the same basic technology, and with enhanced capabilities, but at the same or even a lesser cost.

We are obtaining up-to-date information from Varian about these enhancements in the equipment technology, and we expect to have that information by mid-June, 2013. Since submitting the last progress report, we have decided that it would be unwise and inefficient to proceed with site drawings and plans, or with the shielding calculations by our Physicist, until we have reached a definitive conclusion about the machine that will be acquired. That decision may very well have an impact on project design, and in turn could affect both the selection of an architectural firm as well as the scope of its design engagement. Based on the decisions we make about the Trilogy machine, we will develop requests for proposals and solicit responses from architectural firms for this work and expect to select a firm by July, 2013. As a result of these considerations, our estimated completion date is 7/14/15.

- (b) Pursuant to G.S. 131E-181(d), the CON Section cannot determine that a project is complete until "the health service or the health service facility for which the certificate of need was issued is licensed and certified and in material compliance with the representations made in the certificate of need application." To document that new or replacement facilities, new or additional beds, new or replacement equipment or new services have been licensed and certified, provide copies of correspondence from the appropriate section within the Division of Health Service Regulation and the Centers for Medicare and Medicaid Services (CMS).

**B. Timetable**

1. Complete the following table. The first column must include the timetable dates found on the certificate of need. If the CON Section has authorized an extension of the timetable in writing, you may substitute the dates from that letter.



PROJECT MILESTONES	Projected Completion Date from certificate	Actual completion date	Proposed completion date
	Month/day/year	Month/day/year	Month/day/year
Obtain Funds for the Project	01/15/2011		7/1/13
Final Drawings and Specifications Sent to DHSR	03/01/2011		8/15/13
Acquisition of land/facility	N/A		N/A
Construction Contract Executed	04/01/2011		8/1/13
25% completion of construction	05/01/2011		11/1/13
50% completion of construction	05/21/2011		12/31/13
75% completion of construction	06/12/2011		3/15/14
Completion of construction	07/07/2011		6/30/14
Ordering of medical equipment	01/15/2011		10/1/14
Operation of medical equipment	07/07/2011		7/14/15
Occupancy/offering of services	07/07/2011		7/14/15
Licensure	07/07/2011		7/14/15
Certification	N/A		7/14/15

2. If the project is experiencing significant delays in development:

- a. explain the reasons for the delay; and
- b. provide a revised timetable for the CON Section to consider.

**Please see the response above in Section A and revised timetable in Section B.**

**C. Medical Equipment Projects** – If the project involves the acquisition of any of the following equipment: 1) major medical equipment as defined in NCGS §131E-176(14f); 2) the specific equipment listed in NCGS §131-176(16); 3) equipment that creates an oncology treatment center as defined in NCGS §131-176(18a); or 4) equipment that creates a diagnostic center as defined in NCGS §131E-176(7a), provide the following information for each piece or unit of equipment: 1) manufacturer; 2) model; 3) serial number; and 4) date acquired.

**We plan to acquire a Varian Trilogy Linear Accelerator, but as indicated in the response above in Section A, the precise model will be determined at a later date.**


**D. Capital Expenditure**

1. Complete the following table.
  - a. Include all capital costs that have been paid to date as well as those that the applicant(s) are legally obligated to pay.
  - b. If you have not already done so, provide copies of the executed construction contracts, including the one for architect and engineering services, and all final purchase orders for medical equipment costing more than \$10,000/unit.
  - c. If the project involves renovation or construction, provide copies of the Contractors Application for Payment [AIA G702] with Schedule of Values [AIA G703].

	<u>Capital Expense Since Last Report</u>	<u>Total Cumulative Capital Expenditure</u>
<b>Site Costs</b>		
Purchase price of land	0	0
Closing costs	0	0
Legal Fees	0	0
Site preparation costs	0	0
Landscaping	0	0
Other site costs (identify)	0	0
	<hr/>	<hr/>
<b>Subtotal Site Costs</b>	<b>0</b>	<b>0</b>
<b>Construction Costs</b>		
Construction Contract	0	0
<b>Miscellaneous Costs</b>		
Moveable Equipment	0	0
Fixed Equipment	0	0
Furniture	0	0
Consultant Fees	0	0
Financing Costs	0	0
Interest during Construction	0	0
Other Misc. Costs (identify)	0	0
	<hr/>	<hr/>
<b>Subtotal Misc. Costs</b>	<b>0</b>	<b>0</b>
<b>Total Capital Cost of the Project</b>	<b>0</b>	<b>0</b>

2. What do you project to be the remaining capital expenditure required to complete the project? **\$4,336,603.00**
  3. Will the total actual capital cost of the project exceed 115% of the approved capital expenditure on the certificate of need? If yes, explain the reasons for the difference. **Not expected at present.**
- E. CERTIFICATION** – The undersigned hereby certifies that the responses to the questions in this progress report and the attached documents are correct to the best of his or her knowledge and belief.

Signature of Officer:  
 Name and Title of Responsible Officer  
 Telephone Number of Responsible Officer

  
 \_\_\_\_\_  
**Alan Kritz, MD** **President**  
**919-781-7070**



North Carolina Department of Health and Human Services  
Division of Health Service Regulation  
Certificate of Need Section  
2704 Mail Service Center • Raleigh, North Carolina 27699-2704

Beverly Eaves Perdue, Governor  
Lanier M. Cansler, Secretary

www.ncdhhs.gov/dhssr

Craig R. Smith, Section Chief  
Phone: 919-855-3873  
Fax: 919-733-8139

May 9, 2011

Robert McLaurin, M.D., President  
Precision Radiation Oncology Systems, Inc.  
d/b/a Franklin County Cancer Center  
113 Jolly Street  
Louisburg, NC 27549

RE: Inquiry / Precision Radiation Oncology Systems, Inc. d/b/a Franklin County Cancer Center / Acquire  
a linear accelerator prior to August 26, 2005 / Franklin County

Dear Dr. McLaurin:

The purpose of this letter is to notify you of the Certificate of Need Section's determination regarding the  
above referenced inquiry.

Pertinent portions of the Certificate of Need Law are summarized below:

1. Prior to August 26, 2005 and as of the date of this letter, G.S. 131E-178(a) states in part "*No person shall offer or develop a new institutional health service without first obtaining a certificate of need from the Department.*"
2. Prior to August 26, 2005 and as of the date of this letter, "new institutional health service" is defined in part in G.S. 131E-176(16)a as "*The construction, development, or other establishment of a new health service facility.*"
3. Prior to August 26, 2005, "health service facility" was defined in G.S. 131E-176(9b) as "*a hospital; psychiatric facility; rehabilitation facility; nursing home facility; adult care home; kidney disease treatment center, including freestanding hemodialysis units; intermediate care facility for the mentally retarded; home health agency office; chemical dependency treatment facility; diagnostic center; oncology treatment center; hospice, hospice inpatient facility, hospice residential care facility; and ambulatory surgical facility.*" (Emphasis added.)
4. Prior to August 26, 2005, "oncology treatment center" was defined in G.S. 131E-176(18a) as "*a facility, program, or provider, other than an existing health service facility that provides services for diagnosis, evaluation, or treatment of cancer and its aftereffects or secondary results and for which the total cost of all the medical equipment utilized by the center, exceeds two hundred fifty thousand dollars (\$250,000). In determining whether costs are more than two hundred fifty thousand dollars (\$250,000), the costs of equipment, studies, surveys, designs, plans, working drawings, specifications, construction, installation, and other activities essential to acquiring and making operational the facility, program, or provider shall be included. The capital expenditure for the equipment shall be deemed to be the fair market value of the equipment or the cost of the equipment, whichever is greater.*"
5. Prior to August 26, 2005 and as of the date of this letter, "new institutional health service" is defined in part in G.S. 131E-176(16)b as "*Except as otherwise provided in G.S. 131E-184(e), the obligation by any*



*person of a capital expenditure exceeding two million dollars (\$2,000,000) to develop or expand a health service or a health service facility, or which relates to the provision of a health service. The cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities, including staff effort and consulting and other services, essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure is made shall be included in determining if the expenditure exceeds two million dollars (\$2,000,000)."*

The CON Section has determined the following:

1. On July 21, 2005, Precision Radiation Oncology Systems, Inc. (PROS) and RSA executed a contract whereby PROS purchased a linear accelerator from RSA.
2. Raleigh Development Company (RDC) proposed to buy the Perry-Medders Building and lease it to PROS. There was no common ownership or other relationship between PROS and RDC.
3. On August 22, 2005, RDC entered into a contract to purchase the Perry-Medders Building.
4. The total capital cost to acquire and make operational the linear accelerator acquired by PROS on July 21, 2005 was \$181,495.45, as shown in the following table.

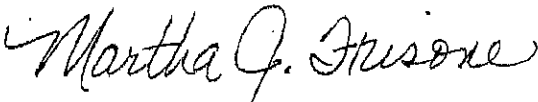
Linear Accelerator (includes couch)	\$57,726.50
Vault	\$79,583.48
Treatment Planning Workstation (online service)	\$5,000.00
Film Processor, film cassettes, viewboxes	\$8,169.45
Patient Monitoring	\$200.00
Positioning Lasers	\$2,257.70
Movable Equipment	\$11,482.31
Landscaping	\$1,000.00
Legal Fees	\$5,346.00
Architect & Engineering Fees	\$10,730.01
Total	\$181,495.45

6. When PROS acquired the linear accelerator, the threshold for an oncology treatment center was \$250,000. The total capital cost to acquire and make operational the linear accelerator acquired by PROS on July 21, 2005 was less than \$250,000. Therefore, as of July 21, 2005 when PROS acquired the linear accelerator, the proposal was not a new institutional health service which required a certificate of need.
7. During the 2005 Session, the General Assembly ratified Senate Bill 740 which:
  - a. deleted "oncology treatment center" from the definition of "health service facility" in G.S. 131E-176(9b);
  - b. deleted the definition of "oncology treatment center" in G.S. 131E-176(18a);
  - c. added a definition of "linear accelerator" in G.S. 131E-176(14b1); and
  - d. added "linear accelerator" to G.S. 131E-176(16)f1.
  - e. Section 7 of Senate Bill 740 provides that the change in the law regarding hospices and hospice offices would be effective December 31, 2005 and the remainder of the act would be effective when it became law. Senate Bill 740 was signed by the Governor on August 26, 2005. As a result, effective August 26, 2005, the acquisition of a linear accelerator requires a certificate of need regardless of the cost to acquire and make it operational.
8. RDC and PROS were unable to agree on the terms of the lease and RDC and PROS "terminated" the lease on September 9, 2005.

9. Jolly Holdings, LLC was created on September 20, 2005. There is significant common ownership between Jolly Holdings, LLC and PROS. Jolly Holdings, LLC is wholly-owned by Robert McLaurin, MD, who owns approximately 98% of the outstanding shares in PROS.
10. Jolly Holdings, LLC purchased the Perry-Medders Building for \$271,250 on November 14, 2005.
11. The linear accelerator acquired by PROS on July 21, 2005 was installed in a vault added to the Perry-Medders Building. The linear accelerator began serving patients on May 1, 2006 and has continued to serve patients since then.
12. Including the cost to purchase the Perry-Medders Building, the total capital cost to acquire and make operational the linear accelerator acquired by PROS on July 21, 2005 was \$452,745.45.
13. PROS already owned the linear accelerator before the law changed on August 26, 2005, having acquired a vested interest as of July 21, 2005, including the cost to install it in the Perry-Medders Building which was to be leased from RDC, an unrelated third party.
14. The plans for RDC to acquire the Perry-Medders Building and lease it to PROS fell through after the law changed on August 26, 2005.
15. As of November 14, 2005, the applicable threshold for determining if the acquisition of the Perry-Medders Building resulted in a new institutional health service which required a certificate of need was \$2,000,000. Including the cost to purchase the Perry-Medders Building, the total capital cost to acquire and make operational the linear accelerator acquired by PROS on July 21, 2005 was only \$452,745.45. Therefore, acquisition of the Perry-Medders Building by Jolly Holdings, LLC on November 14, 2005 did not result in the development of a new institutional health service which required a certificate of need.

It should be noted that this Agency's position is based solely on the facts represented by you and that any change in facts as represented would require further consideration by this Agency and a separate determination. If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,



Martha J. Frisone, Assistant Chief



Craig R. Smith, Chief  
Certificate of Need Section

cc: Medical Facilities Planning Section, DHSR  
Lee M. Whitman, Wyrick Robbins Yates & Ponton, LLP



Duke Raleigh Hospital  
Linear Accelerator Procedures

Charge Code Description	CPT CODE	FY13A	ESTV	
			Conversion	ESTVs
RAD TX DEL SIMPLE 6-10	77403	17	1	17
RAD TX DEL SIMPLE 11-19	77404	80	1	80
RAD TX DEL INTRMD 6-10	77408	-	1	0
RAD TX DEL INTRMD 11-19	77409	10	1	10
RAD TX DEL CMLPX TO 5	77412	-	1	0
RAD TX DEL CMLPX 6-10	77413	877	1	877
(M) 11-19 MeV	77414	-	1	0
11-19 MeV	77414	4,606	1	4606
RAD TX DEL CMLPX 11-19	77414	-	1	0
(M) 20 MeV OR GREATER	77416	-	1	0
THER RAD PORT FILM	77417	3,049	0.5	1524.5
IMRT TX	77418	2,039	1	2039
				<u>9153.5</u>

EXHIBIT C