



## Health Care Regulatory Update

09.16.2008

### North Carolina Certificate of Need (CON)

#### **“No Review” Determinations and Actions on Requests for Declaratory Rulings**

The tables linked below list (a) requests for no-review determinations from the CON Section and (b) requests for declaratory rulings from the Division of Health Services Regulation that are pending or have recently been acted upon. This information is maintained and available to the public at the offices of the CON Section and DHSR in Raleigh but is not posted on the Internet or otherwise publicly distributed.

These documents are current as of 09.11.2008.

[Actions on Requests for No-Review Determinations](#)

[Actions on Requests for Declaratory Rulings](#)

#### **Note: Appeal deadlines**

Under North Carolina law, the general deadline to appeal an administrative agency action is 60 days (N.C.G.S. § 150B-23(f)) and the deadline to appeal an action by the CON Section to issue, deny or withdraw a CON or exemption is 30 days from the decision (N.C.G.S. § 131E-188).

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### **Update – Technology and Equipment Need Determinations for 2009 North Carolina State Medical Facilities Plan**

By: Marcus C. Hewitt

The Technology and Equipment Committee of the State Health Coordinating Council (SHCC) met on Wed., Aug. 28, 2008, to adopt recommendations for inclusion in the 2009 State Medical Facilities Plan (SMFP). The full SHCC will meet on Oct. 8, 2008 to consider these and other committees' recommendations.

The significant recommendations by the Technology and Equipment Committee were as follows:

Linear Accelerators – The Committee voted to recommend that there is no need for any additional linear accelerators anywhere in the State.

Two petitions were denied, including a petition by Parkway Urology, PA d/b/a Cary Urology for an adjusted need determination for an additional linear accelerator and multidisciplinary prostate cancer treatment center in Service Area 20, which includes Wake County. The agency recommended denial of requested adjusted need determination, but recommended that a statewide need determination be adopted for a demonstration project for a model multidisciplinary prostate cancer center, particularly for minorities. This recommendation recognized the merit of the unconventional multidisciplinary approach, but recommended that a CON be available as a demonstration project to all providers statewide. After significant discussion, the Committee narrowly voted not to adopt the agency recommendation, and to deny Cary Urology's petition, resulting in no need determination for an additional linear accelerator, either in Service Area 20 or as a demonstration project.

MRI Scanners –

Fixed MRI Scanners - The committee adopted the agency's revised Table 9J, which showed a need for one additional fixed MRI scanner in each of the following 11 service areas (counties):

- |             |              |
|-------------|--------------|
| • Edgecombe | • Randolph   |
| • Forsyth   | • Rowan      |
| • Guilford  | • Rutherford |
| • Harnett   | • Scotland   |
| • Onslow    | • Wake       |
| • Orange    |              |

Mobile MRI Scanners – (Note - Unlike fixed MRI scanners, mobile MRI scanners are not currently subject to a need determination. Therefore, any person may therefore apply for a CON for a mobile MRI scanner anywhere in the state.) The committee considered a petition by Carolinas HealthCare System that proposed a determination that there is no need for any new mobile MRI scanners anywhere in the state, and requested the formation of a workgroup to consider the incorporation of a need determination for mobile MRI scanners in the 2010 plan, or the inclusion of mobile MRI scanners within the existing need methodology/determination for fixed MRI scanners. The petition was denied, primarily because it was not timely filed for consideration as part of the 2009 SMFP. Therefore, mobile MRI scanners will not be subject to a need determination in the 2009 SMFP. However, there was some discussion as to the disparate treatment of mobile versus fixed MRI's. The committee chair said he anticipated a meeting of the committee in early 2009 to discuss treatment of mobile MRI scanners at which mobile MRI providers and other stakeholders would be asked for their input.

PET Scanners – No need for any additional fixed dedicated PET scanners, mobile dedicated PET scanners, or coincidence circuitry anywhere in the state.

Lithotripsy

– No need for additional lithotripters anywhere in the state.

Gamma Knife – No need for additional Gamma Knife anywhere in the state.

Cardiac Catheterization Equipment – No need for additional fixed cardiac catheterization or shared fixed cardiac catheterization anywhere in the state. Also recommended that mobile cardiac catheterization equipment and services only be approved for development on hospital sites.

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