

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY IMAGING ASSOCIATES OF) DECLARATORY RULING
THE CAROLINAS, LLC)**

I, Robert J. Fitzgerald, as Director of the Division of Facility Services, 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.

Imaging Associates of the Carolinas, LLC. (“IAC”) has requested a declaratory ruling allowing for an additional host site for Project I.D. No. # F-6626-02 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 IAC 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. Frank S. Kirschbaum of Kirschbaum, Nanney, Keenan & Griffin, P.A., has requested this ruling on behalf of IAC and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Effective October 21, 2004, the CON Section issued a CON to IAC for Project # F-6626-02 to acquire a mobile MRI scanner (the “Project Unit”) to provide MRI services at “at least two” host sites. The specified host sites were Orion Imaging, LLC, 10420 Park Road Extension, Suite 100, Pineville, NC, and Orion Imaging, LLC, 900 Cox Road, Suite C, Gastonia, NC.

IAC proposes to add a site for the operation of the Project Unit at 10710 Ballantyne Commons Parkway, Winslow Building, Charlotte, NC (the “Additional Location”). It represents that the Additional Location is less than three miles from the existing Park Road location, and that it will not represent a change of service area. IAC states that the Additional Location is a site owned and operated by the Presbyterian Hospital, and the Project Unit will be operated at the Additional Location pursuant to a service agreement between IAC and the Presbyterian Hospital. The service agreement will be substantially similar to the service agreement under which the Project Unit is currently operated. IAC represents that it intends to comply with all other terms and conditions of its CON.

ANALYSIS

The CON law would require a full review of IAC’s proposed change of host 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 addition of the Additional Location for the Project Unit does not constitute a material change in the physical location or the scope of the project because the use of the Additional Location as a host site will not affect the scope of services offered or the costs and charges to IAC 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 such that a violation of N.C.G.S. § 131E-181(a) would result.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw IAC's CON if IAC 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. IAC 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.

CONCLUSION

For all the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that subject to the conditions set out herein, the addition of 10710 Ballantyne Commons Parkway, Winslow Building, Charlotte, NC as a host site for IAC's mobile MRI Scanner (Project I.D. No. # F-6626-02) 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 subject to the following conditions:

- (1) IAC shall enter into a service agreement with the Presbyterian Hospital that is substantially similar to the agreement signed by its other host sites.
- (2) IAC shall satisfy all the requirements and representations regarding the host sites in its original CON application.

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 _____, 2007.

Robert J. Fitzgerald, Director
Division of Facility Services
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

Frank S. Kirschbaum
Kirschbaum, Nanney, Keenan & Griffin, P.A.
Post Office Box 19766
Raleigh, NC 27619-9766

This the 3rd day of May, 2007.

Jeff Horton
Chief Operating Officer