

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY MOBILE IMAGING OF) DECLARATORY RULING
NORTH CAROLINA, LLC)
Project I.D. No. M-6605-02)**

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

Mobile Imaging of North Carolina, LLC (“Petitioner”) requests a declaratory ruling that the addition of one new site at Bladen County Hospital in Elizabethtown, one day per week, for the provision of mobile MRI services, is in material compliance with the terms of the CON originally awarded in 2003. 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. Denise M. Gunter of Nelson Mullins Riley & Scarborough LLP has requested this ruling on behalf of Petitioners and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

On April 8, 2003, pursuant to a settlement agreement, a CON was issued to Petitioner for Project I.D. # M-6605-02 to acquire a mobile MRI scanner to provide MRI services at Carolina Regional Radiology (“Carolina Regional”) in Angier, Harnett County, located in Health Service

Area (“HSA”) V, and Franklin Regional Medical Center (“Franklin Regional”), located in HSA IV. Subsequently, on June 18, 2004, Petitioner requested and obtained a declaratory ruling authorizing the addition of Durham Diagnostic Imaging – Southpoint, in Durham, Durham County, located in HSA IV.

On May 26, 2006, Franklin Regional received a CON to acquire a fixed MRI scanner and subsequently terminated the contract for mobile services with Petitioner. On December 21, 2006, an additional declaratory ruling was issued to Petitioner to provide MRI services at Durham Diagnostic Imaging in Henderson, Vance County, located in HSA IV. A third declaratory ruling was issued to Petitioner in 2007 to include Durham Diagnostic Imaging – Independence Park, in Durham, Durham County, located in HSA IV.

Currently, Petitioner provides MRI services 2 days per week at Carolina Regional, two days per week at Durham Diagnostic Imaging – Southpoint, and one day per week at Durham Diagnostic Imaging – Henderson. Petitioner represents that the mobile MRI is not currently serving Durham Diagnostic Imaging – Independence Park. The applicant continues to provide mobile MRI services in those counties originally approved in the CON and subsequently added through various declaratory rulings.

In the current request, Petitioner seeks to add Bladen County Hospital in Elizabethtown, Bladen County, as a new host site for its mobile MRI scanner. Petitioner states that mobile MRI services would be provided to Bladen County Hospital one day per week, in addition to the other sites currently being served. Accordingly, Petitioner requests a declaratory ruling that the addition of one new site at Bladen County Hospital, one day per week, for the provision of mobile MRI services is in material compliance with the terms of the CON awarded in 2003. Elizabethtown is located in HSA V, which is the same service area as the original CON.

ANALYSIS

N.C.G.S. § 131E-181(a) provides that “[a] certificate of need shall be valid only for the defined scope, physical location, and person named in the application.” The recipient of the CON must also materially comply with the representations made in the CON application. N.C.G.S. § 131E-181(b). If Petitioner’s proposal were to represent a material change in the scope of the project, the CON law would require a full review of the proposal. N.C.G.S. § 131E-181(a).

Petitioner currently provides MRI services to three locations: Carolina Regional and two Durham Diagnostic Imaging sites in Durham County. Petitioner seeks approval to provide mobile MRI services at Bladen County Hospital, located in HSA V, which is the area of the state that was approved in the original CON awarded in 2003. The proposed host site does not constitute a material change in the physical location or the scope of the proposed project because Bladen County Hospital is located in HSA V, as originally approved in the 2003 CON. Petitioner has not proposed a change in the scope of services or the person named in the originally approved application.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that Petitioner’s proposal will not violate N.C.G.S. § 131E-181, and will not constitute a failure to satisfy a condition of the certificate of need in violation of N.C.G.S. § 131E-189(b).

This the _____ day of December, 2011.

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

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

This the _____ day of December, 2011.

Jeff Horton
Chief Operating Officer