

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

**IN RE: REQUEST FOR DECLARATORY )  
RULING BY JACKSONVILLE DIAGNOSTIC )  
IMAGING, LLC ) **DECLARATORY RULING**  
Project I.D. No. F-6626-02 )**

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 Statutes § 150B-4 and 10A NCAC 14A .0103, under the authority granted me by the Secretary of the Department of Health and Human Services.

Jacksonville Diagnostic Imaging, LLC (hereinafter “JDI”) (formerly Imaging Associates of the Carolinas) has requested a declaratory ruling allowing for an additional host site - Novant Health Imaging Monroe at 2000 Wellness Boulevard, Suite #110, Monroe, North Carolina 28110 (hereinafter “the Monroe site”) in Union County for a mobile MRI scanner for Project I.D. No. F-6626-02 (the “Project”) on the grounds that the change does not constitute a material change in the scope or physical location of the Project. N.C.G.S. §§ 131E-181(a) and (b). 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.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 JDI and has provided the material facts upon which this ruling is based.

## STATEMENT OF THE FACTS

On October 21, 2004, the CON Section issued a CON to Imaging Associates of the Carolinas, LLC (“IAC”) for Project I.D. No. F-6626-02 to acquire one mobile MRI scanner (the “JDI Scanner”) to provide MRI services at “at least two host sites” each week. The issued CON specified the two host sites as Orion Imaging, LLC, 10420 Park Road Extension, Suite 100, Pineville, North Carolina (Mecklenburg County) and Orion Imaging, LLC, 900 Cox Road, Suite C, Gastonia, North Carolina (Gaston County). A declaratory ruling dated May 3, 2007 permitted the addition of a third site located at 10710 Ballantyne Commons Parkway, Winslow Building, Charlotte, North Carolina. On February 20, 2008, the Department issued an exemption for Novant Health, Inc. and/or its subsidiaries to acquire IAC. JDI is the Novant subsidiary which owns the assets of IAC. Through a series of Declaratory Rulings, JDI was permitted to drop the Gaston County site from the route and add other sites, including Novant Health Imaging Centers located at University and Steele Creek in Mecklenburg County and a Novant owned physician practice in Rowan County, RoMedical. Through a Declaratory Ruling issued March 27, 2012, JDI was permitted to resume service at the site in Gaston County. JDI currently provides mobile MRI services at four sites in Health Service Area (“HSA”) III, including one site in Gaston County and three sites in Mecklenburg County (the Ballentyne Site, the University Site and the Steele Creek Site).

Petitioners’ request for a declaratory ruling sets forth the following additional material facts and representations in support of its request. The Proposed Site at Monroe is in Union County, which is adjacent to Mecklenburg County and is also located in HSA III. Novant Health Imaging Centers presently serve Union County residents on mobile scanners owned by Novant or its subsidiaries and operated at the host sites in Mecklenburg County.

Allowing the JDI Scanner to serve the Monroe Site will improve the convenience and access to MRI services for those Union County residents. JDI represents that allowing it to use the mobile unit at the Monroe Site will not change the scope of the Project or increase costs and charges to JDI or the public. JDI states that the service agreements for the Monroe Site will be substantially similar to those in place at the existing sites served by the JDI Scanner. JDI further represents that it will comply with all other representations in the original CON for the Project and that there are no capital costs associated with JDI's request because the Monroe Site already has a mobile MRI pad and the required electrical connections.

### **ANALYSIS**

The CON law would require a full review of JDI's proposed addition of one new 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) provides that a CON "shall be valid only for the defined scope, physical location, and person named in the application." The proposed addition of the Monroe Site as a host site does not affect the scope of the project because the addition will not affect the scope of services offered to patients served by the JDI Scanner. The addition of the proposed host site in Monroe would simply allow JDI to provide mobile MRI services to MRI patients in Union County where they reside, rather than serving many of them at one of its other mobile MRI host sites in Mecklenburg County. Neither does the addition of the proposed host site in Monroe constitute a material change in the physical location of the project because the Monroe Site in Union County is adjacent to and in the same HSA as Mecklenburg County, one of the counties identified in the CON. The proposed addition of the Monroe Site is therefore in material compliance with the CON. There is no proposed change in ownership of the CON that would result in a violation of N.C.G.S. §131E-181(a).

Moreover, there will be no additional capital costs incurred since a mobile MRI pad and the required electrical connections already exist at the proposed Monroe site and there will be no increase in costs or charges for the provision of the proposed mobile MRI services.

### **CONCLUSION**

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the addition of the proposed Monroe site as a host site for JDI'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 and will not violate N.C.G.S. §131E-181.

This the \_\_\_\_ day of December, 2014.

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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 a copy of the foregoing Declaratory Ruling upon the PETITIONER by certified mail, return receipt requested, by causing a copy of same to be placed in the United States Mail, first-class, postage pre-paid envelope addressed as follows:

**CERTIFIED MAIL**

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

This the \_\_\_\_\_ day of December, 2014.

\_\_\_\_\_  
Cheryl Ouimet  
Chief Operating Officer