

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY MOBILE IMAGING OF) DECLARATORY RULING
NORTH CAROLINA, LLC AND DURHAM)
DIAGNOSTIC IMAGING, INC.)**

I, Robert J. Fitzgerald, as Director of the Division of Facility Services, North Carolina Department of Health and Human Services (“Department”), 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 (“MINC”) and Durham Diagnostic Imaging, Inc. (“DDI”) have requested a declaratory ruling to interpret whether MINC, by entering into a service agreement with DDI to provide mobile MRI service in space subleased by Orthopaedic Specialists of North Carolina, located in Henderson, Vance County, North Carolina, remains in material compliance with its certificate of need (“CON”) issued for Project I.D. No. M-6605-02.

For the reasons set forth herein, the proposed additional site does not materially alter the conditions of the CON issued to MINC. 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. S. Todd Hemphill of Bode, Call, & Stroupe, LLP, has requested this ruling on behalf of MINC and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

MINC submitted a CON application on or about April 15, 2002, identified as Project I.D. No. M-6605-02, to acquire a mobile MRI scanner. The CON Section notified MINC that its CON application was denied and MINC filed an appeal of the Agency Decision and Findings. A settlement agreement was signed by MINC and the Agency on April 4, 2003. Pursuant to this settlement agreement, MINC was issued a CON, effective April 8, 2003, to acquire a mobile MRI scanner and trailer to provide MRI services at “two or more host sites.” The proposed host sites named in the application were Carolina Regional Radiology in Angier, Harnett County and Franklin Regional Medical Center in Louisburg, Franklin County.

In addition, by Declaratory Ruling issued June 18, 2004, the Department approved provision of mobile MRI services at Durham Diagnostic Imaging – Southpoint in Durham County two days per week.

On May 26, 2006, Franklin Regional Medical Center (“FRMC”) was awarded a CON to acquire a fixed MRI scanner. MINC represents that on August 9, 2006, FRMC indicated its intention to terminate its contract for mobile MRI services with MINC effective October 10, 2006.

MINC further represents that it seeks to replace the two days of service at FRMC by entering into a service agreement with DDI to provide mobile MRI service in space subleased by DDI from Orthopaedic Specialists of North Carolina, located at 857 South Beckford Drive, Henderson, Vance County, North Carolina.

MINC seeks a declaration that a modification of its approved host sites to include DDI’s site at 857 Beckford Drive in Henderson, Vance County, would be in material compliance with MINC’s application and CON.

ANALYSIS

The CON law would require a full review of MINC's proposed addition of a host site if that addition were to represent a material change in the physical location or scope of the project. N.C.G.S. ' 131E-181(a). However, the proposed addition of DDI's site at 857 Beckford Drive in Henderson, Vance County, does not constitute a material change in the terms of the CON or settlement agreement between MINC and the Department for the following reasons:

1. DDI will sign a service agreement with MINC that is substantially similar to the agreement signed by its other host sites.
2. The addition of DDI as a host site will not affect the scope of services offered or the costs and charges by MINC to the public of providing mobile MRI services.
3. MINC agrees to satisfy the requirements and representations made regarding the host sites in its original CON application.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that MINC's addition of a new host site at DDI's site at 857 Beckford Drive in Henderson, Vance County, 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 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 December, 2006.

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 a first class, postage prepaid envelope addressed as follows:

CERTIFIED MAIL

S. Todd Hemphill
Bode, Call & Stroupe, LLP
3105 Glenwood Avenue
Suite 300
Raleigh, NC 27612

This _____ day of December, 2006.

Jeff Horton
Chief Operating Officer