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March 26, 2021

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**Re: Comments of EmergeOrtho, P.A. on the Competitive CON Applications Submitted for the 2021 Fixed MRI Need Determination for the Buncombe/Graham/Madison/Yancey Service Area**

Dear Ms. Hale,

Enclosed please find comments prepared by EmergeOrtho, P.A. regarding the above-referenced CON applications. Thank you for considering these comments during your review of the applications.

I appreciate your consideration. Please contact me if you have any questions.

Sincerely,

Allison Farmer  
Interim CEO, Blue Ridge Division

Enclosure

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**I. Overview**

Three competing applications were submitted in response to the need determination for one additional fixed MRI scanner in the Buncombe/Graham/Madison/Yancey MRI Service Area:

- Project ID #B-12023-21      FID #210090      EmergeOrtho Blue Ridge Division  
  ("EmergeOrtho")
- Project ID #B-12032-21      FID #960927      Open MRI and Imaging of Asheville  
  ("Open MRI")
- Project ID #B-12035-21      FID #210096      Mission Imaging Services Asheville  
  ("Mission Imaging")

With a need determination for one additional MRI scanner, only one application can be approved.

EmergeOrtho submits these comments to the Healthcare Planning and Certificate of Need Section (the "Agency") in accordance with N.C. Gen. Stat. § 131E-185(a1)(1) to address the representations and deficiencies in the Mission Imaging and Open MRI applications. These comments also include a comparative analysis and a discussion of the most significant issues regarding each applicant's conformity with the statutory and regulatory review criteria ("the Criteria") in N.C. Gen. Stat. §131E-183(a) and (b). Nothing contained in this document should be considered an amendment to the EmergeOrtho application as submitted.

**II. Comparative Comments**

The following factors are suggested for the review of the three MRI applications:

- Conformity to CON Review Criteria
- Scope of Services
- Historical Utilization
- Geographic Accessibility (Location within the Service Area)
- Access by Service Area
- Access by Underserved Groups
- Competition (Access to a New or Alternate Provider)
- Projected Average Net Revenue
- Projected Average Total Operating Cost
- MRI Staffing and Salary Projections

**Conformity to CON Review Criteria**

EmergeOrtho’s application is the only proposal conforming to all CON Criteria, and therefore, should be approved by the Agency. It contains well-supported utilization projections, strong staffing, ample documentation of project funding, and favorable financial metrics.

Open MRI’s application is non-conforming to multiple criteria based on multiple deficiencies. These include inadequate staffing, unreliable projections, omitted utilization projections from Section Q, and unclear funding availability with outdated financial statements.

Mission Imaging’s application is also non-conforming to multiple criteria. The application is based on unreasonable projections, omitted methodology, omitted methodology and assumptions for the existing Mission Hospital MRI scanners, deficient documentation of project funding, and incomplete and unreasonable financial projections.

Both Open MRI and Mission Imaging have submitted non-conforming applications. EmergeOrtho’s application is the most effective alternative regarding conformity to the Criteria and should, therefore, be approved.

<b>Applicant</b>	<b>Project I.D. #</b>	<b>Conforming/Non-conforming</b>
EmergeOrtho	B-12023-21	Conforming
Open MRI	B-12032-21	Non-conforming
Mission Imaging	B-12035-21	Non-conforming

**Scope of Services**

Each of the three applicants in this review proposes to acquire an additional fixed MRI scanner to be located in freestanding locations. None propose to provide inpatient MRI services. As with past CON comparative analyses, the MRI magnet strength and the design features of the various proposed MRI scanners are not components of the comparative analysis. While all three applications proposed similar scope of services, the Open MRI and Mission Imaging applications are not approvable. Thus, the EmergeOrtho proposal is the most effective alternative for Scope of Services

**Historical Utilization**

The table below provides the total MRI scans and adjusted MRI scans for each applicant and its affiliates as reported in the 2021 SMFP Table 17E-1.

<b>Applicant/Affiliate</b>	<b>Service Site Provider (Owner)</b>	<b>Fixed MRI</b>	<b>Total MRI Scans</b>	<b>Adjusted MRI Scans</b>
EmergeOrtho	EmergeOrtho Blue Ridge Division (InSight Imaging)*	1	2,900	2,919
Open MRI	Open MRI of Asheville (Asheville Open MRI, LLC)	1	5,199	5,851
Open MRI	Open MRI of Asheville (Asheville Open MRI, LLC)	1	5,975	6,519
Mission Imaging	Mission Imaging Services (MH Mission Imaging, LLP)	1	5,641	6,813
Mission Imaging	Mission Imaging Services (MH Mission Imaging, LLP)	1	5,701	7,009
Mission Hospital	Mission Childrens	1	1,572	1,908
Mission Hospital	Mission Hospital – Carolina Spine	1	2,768	3,258
Mission Hospital	Mission Hospital Main	2	7,920	12,213
Mission Hospital	Mission Hospital St. Joseph Campus	1	1,176	1,797

\* The current MRI scanner is a legacy unit owned by InSight Imaging made available to EmergeOrtho’s Blue Ridge Division through a services agreement.

EmergeOrtho does not own a fixed MRI scanner in the service area. The InSight MRI scanner that serves the EmergeOrtho site in Arden is a parked mobile unit exterior to the office. As documented in EmergeOrtho’s application, the InSight MRI is not the same as the fixed MRI scanners that are installed in a facility. The InSight MRI has operational and functional limitations that cause EmergeOrtho physicians to refer thousands of patients to other fixed MRI scanners.

Open MRI has two fixed MRI scanners in Buncombe County. Open MRI has no affiliates that own MRI scanners in the service area. Open MRI’s affiliates Novant Health and Medquest do have fixed and mobile MRI scanners in other MRI service areas.

Mission Imaging and its affiliate Mission Hospital control seven of the ten fixed MRI scanners in the service area. Mission Hospital has three fixed MRI scanners that performed fewer than 3,328 adjusted MRI scans. This means that each of those scanners now have available capacity.

It is illogical to make comparisons of the applicants’ historical utilization due to the extreme differences in their MRI capacity. The Open MRI and Mission Imaging applications are not approvable.

**Geographic Location**

The Buncombe/Graham/Madison/Yancey Service Area has existing fixed MRI scanners in the following locations:

<b>Applicant/Affiliate</b>	<b>Service Site (Provider/Owner)</b>	<b>Fixed MRI</b>	<b>Location</b>
EmergeOrtho	EmergeOrtho Blue Ridge Division (InSight Imaging) *	1	Arden
Open MRI	Open MRI of Asheville (Asheville Open MRI, LLC)	1	Asheville
Open MRI	Open MRI of Asheville (Asheville Open MRI, LLC)	1	Asheville
Mission Imaging	Mission Imaging Services (MH Mission Imaging, LLP)	1	Asheville
Mission Imaging	Mission Imaging Services (MH Mission Imaging, LLP)	1	Asheville
Mission Hospital	Mission Childrens	1	Asheville
Mission Hospital	Mission Hospital – Carolina Spine	1	Asheville
Mission Hospital	Mission Hospital Main	2	Asheville
Mission Hospital	Mission Hospital St. Joseph Campus	1	Asheville

\* The current MRI scanner is a legacy unit owned by InSight Imaging made available to EmergeOrtho’s Blue Ridge Division through a services agreement.

EmergeOrtho proposes to acquire a fixed MRI scanner to be located in Arden, an unincorporated area in southern Buncombe County. This fixed scanner would replace the parked Legacy MRI owned by InSight Health. Because Arden is unincorporated, population data is not readily available. EmergeOrtho’s proposed MRI would be incorporated into the physician office, offering superior patient access to convenient imaging services.

Nine of the existing MRI scanners are located in Asheville. North Carolina’s Office of State Budget and Management reports that Asheville had a 2019 population of 93,413, while Buncombe County has a total population of approximately 262,659. Currently, 90 percent of all existing MRI capacity is located within Asheville, which holds 35.6 percent of the county’s total population. Even still, Open MRI and Mission Imaging each propose to acquire additional MRI scanners to be located in Asheville.

Consequently, the EmergeOrtho proposal is the most effective alternative for the geographic location criteria.

**Access by Service Area**

The following table provides the Year 3 patient origin information for each applicant’s projections regarding the numbers and percentages of patients originating from within the MRI Service Area that includes Buncombe, Graham, Madison, and Yancey Counties. The projections for EmergeOrtho and Mission Imaging are for their proposed MRI scanners, while the Open MRI projections are for two existing MRI scanners and the one proposed MRI.

<b>Projections</b>	<b>EmergeOrtho</b>	<b>Open MRI</b>	<b>Mission Imaging</b>
Year 3 MRI Total Patients from Buncombe/ Graham/Madison/Yancey	2,137	7,088	2,703
Year 3 Total Projected MRI Patients	5,267	13,980	4,467
Percentages of Patients from MRI Service Area	43.47%	57.80%	68.52%

For this comparative factor, the applicant with the highest percentage of patients from within the MRI service area is the most effective proposal, while the applicant with the lowest percentage of patients is the least effective. Mission Imaging projects the highest number and percentage patients on a per scanner basis. However, the applications by Open MRI and Mission Imaging cannot be approved due to the failure to conform to all applicable CON Criteria. Therefore, the application by EmergeOrtho is the most effective for this factor.

**Access by Underserved Groups**

The table below provides the projected percentages and numbers of medically underserved patients for the three applicants to the extent that the information was provided in the applications.

Year 3	EmergeOrtho	Open MRI	Mission Imaging
Number of MRI Scanners	1	3	1
Total MRI Scans (Unweighted)	5,267	13,980	4,467
Charity %	1.50%	1.00%	1.70%
Medicare %	40.00%	43.08%	42.40%
Medicaid %	3.00%	3.56%	5.00%
Charity Patients	79	140	76
Medicare Patients	2,107	6,023	1,894
Medicaid Patients	158	498	223
Charity Patients per MRI	79	47	76
Medicare Patients per MRI	2,107	2,008	1,894
Medicaid Patients per MRI	79	166	76
Charity Deduction MRI	57,436	304,291	Not provided for the MRI alone
Medicare Revenue MRI	1,641,024	13,031,310	
Medicaid Revenue MRI	123,077	1,076,868	
Gross Revenue MRI	4,102,560	30,249,094	Not provided for the MRI alone
Net Revenue MRI	1,481,024	7,242,117	

EmergeOrtho’s projections are based on reasonable, operational and financial assumptions that are included in Section Q, Form C. All of EmergeOrtho’s assumptions are adequately supported.

Open MRI’s projections purportedly include its two existing MRI and the one proposed MRI. **However, Open MRI has completely omitted Form C.2b from Section Q. This means that Open MRI’s application does not include any Partial FY and the 1<sup>st</sup> Three Fiscal Years’ utilization projections for its existing diagnostic equipment, which includes CT, x-ray, and arthroscopy procedures.** Thus, the Open MRI financial projections are incomplete and unreliable. This flaw in Open MRI’s application is disqualifying.

Mission Imaging omitted the MRI-specific utilization projections, and instead erroneously provided projections for all of the diagnostic imaging equipment combined with the proposed MRI scanner. **The financial projections for revenues and expenses that are specific to the proposed MRI scanner are completely missing from Mission Imaging’s application.** The absence of specific detail pertaining to an additional MRI deprives the Agency (and the other applicants) the ability to conduct an actual comparative analysis of this criterion. Mission Imaging’s financial projections are therefore both incomplete and unreliable.

EmergeOrtho’s application projects the highest numbers of Charity patients and Medicare patients per MRI scanner. Open MRI projects the highest number of Medicaid patients per MRI scanner. The applications by Open MRI and Mission Imaging cannot be approved due to failing to conform to all applicable CON Criteria. Therefore, the application by EmergeOrtho is the most effective for this factor.

**Competition (Access to a New or Alternate Provider)**

Because EmergeOrtho does not own a fixed MRI scanner in the service area, EmergeOrtho is a potential new entrant to the market for MRI services. The InSight MRI scanner that currently serves the EmergeOrtho site in Arden is a parked mobile unit that is exterior to the EmergeOrtho office. As documented in the EmergeOrtho application the InSight MRI is not the same as the fixed MRI scanners that are installed in a facility.

Open MRI has two existing fixed MRI scanners in Buncombe County. Open MRI has no affiliates that own MRI scanners in the service area. Mission Imaging and its affiliate Mission Hospital control seven of the ten fixed MRI scanners in the service area.

Approval of the EmergeOrtho application would improve access and competition in the MRI Service Area by authorizing a new alternate provider.

**Projected MRI Revenues and Expenses**

The next table provides the projected MRI revenues and expenses of the three applicants to the extent that the information was provided in the applications.

Year 3	EmergeOrtho	Open MRI	Mission Imaging
Scanners per Proposed Site	1	3	1
Total MRI Scans (Unweighted)	5,267	13,980	4,467
Gross Revenue MRI	\$4,102,560	\$30,249,094	Not provided for the MRI alone
Net Revenue MRI	\$1,481,024	\$7,242,117	
Total MRI Operating Expenses	\$1,253,600	\$3,940,243	Data not available
Gross Revenue per Scan	\$779	\$2,164	
Net Revenue per Scan	\$281	\$518	
Average Expense per Scan	\$238	\$282	

As stated above, Mission Imaging omitted MRI-specific utilization data, and instead erroneously combined projections for its proposed MRI scanner with its other diagnostic imaging equipment. The financial projections for revenues and expenses that are specific for the proposed MRI scanner are not provided for the CON analyst to compare to the other proposals. The Mission Imaging financial projections are unreliable.

Open MRI financial projections are based on overstated volumes. Thus, the Open MRI financial projections are unreasonable.

Both Open MRI and Mission Imaging have failed to provide adequate data in their applications to demonstrate that their applications for a fixed MRI are competitive in the areas of revenues and expense. EmergeOrtho’s application is the most effective on this factor. Moreover, the applications by Open MRI and Mission Imaging are both so lacking on this particular factor that we can only conclude that both proposals fail to conform to all applicable CON Criteria.



**Projected Average Net Revenue for MRI**

EmergeOrtho projects an average gross revenue in Year 3 of \$779 per procedure and an average net revenue of \$281. These projections are based on the operational and financial projections that are specific to the proposed MRI and based on reasonable assumptions.

Open MRI’s financial projections reflect an average gross revenue in Year 3 of \$2,164 per procedure and an average net revenue of \$518.

It is impossible to determine Mission Imaging’s projected average revenues – gross and net – from the submitted application.

EmergeOrtho’s application is the most effective alternative regarding this factor. In addition, the applications by Open MRI and Mission Imaging cannot be approved due to failing to conform to all applicable CON Criteria.

**Projected Average Total Operating Cost for MRI**

EmergeOrtho projects an average expense per scan in Year 3 of \$238. Open MRI’s financial projections show an average expense per scan in Year 3 of \$282. In addition, the applications by Open MRI and Mission Imaging cannot be approved due to failing to conform to all applicable CON Criteria. Therefore, the application by EmergeOrtho is the most effective for this factor.

**Staffing and Salary Projections**

The comparative analysis of CON applications can include other factors, depending on the specifics of the review. All three applications in this review propose to acquire a fixed MRI scanner that would require additional staff to operate the equipment. MRI technologists are typically required to have MRI training and certification from the American Registry of Radiologic Technologists. The following table provides a comparison of the staffing information provided by each applicant.

<b>Staffing and Salary Projections</b>	<b>EmergeOrtho</b>	<b>Open MRI</b>	<b>Mission Imaging</b>
Current Radiology Technologist FTEs	3.6	6.5	12.74
Current MRI Technologist FTEs	0	0	0
Year 3 Radiology Technologist FTEs	3.6	7.5	17.24
Year 3 MRI Technologist FTEs	2	0	0
Year 3 Radiology Technologist Average Salary per FTE	\$64,405	\$86,619	\$55,182
Year 3 MRI Technologist Average Salary per FTE	\$73,064	0	0

EmergeOrtho’s application demonstrates that the proposed staffing will include two additional MRI technologists with the Year 3 salary of \$73,064. EmergeOrtho has existing radiology

technologists for the other imaging modalities. The staffing projections for the EmergeOrtho application are reasonable and adequately explained.

Open MRI projects to add only 1 FTE that it identifies as a radiology technologist for the proposed project. The applicant does not explain how one additional radiology technologist FTE will provide adequate staffing for an MRI scanner that is to be operational up to 6 days per week and 12 hours per day. Also, Open MRI's salary projection of \$86,619 for a radiology technologist position does not indicate if this includes overtime pay. The staffing projection for Open MRI's proposal is not reasonable due to the projected addition of only one FTE.

Mission Imaging's staffing table in Form H appears to show all imaging FTEs for its existing diagnostic imaging services, plus the proposed additional MRI scanner. The applicant does not indicate the FTEs that are allocated to its proposed MRI scanner versus those that are incremental staff for the other modalities. The salary projection of \$55,182 for the radiology technologist position is insufficient for recruiting and retaining a MRI-trained technologist. Mission Imaging's projected staffing and salaries are not adequately explained.

EmergeOrtho's application is the most effective for this factor. As discussed previously, the applications by Open MRI and Mission Imaging cannot be approved due to failing to conform to all applicable CON Criteria.

**III. EmergeOrtho’s Comments regarding Open MRI’s Application (CON Project ID# B-12032-21)**

**Criteria (1), (3), (4) and (6)**

The Agency should find Open MRI’s application nonconforming as to Criteria 1, 3, 4, and 6. The applicant’s methodology and assumptions for its projected patient origin and MRI utilization are unreasonable and lack adequate support.

Open MRI’s growth assumptions are based on the unsupported assumption that future growth in MRI referral volumes will occur consistent with historical data and that it will maintain its recent market share. Open MRI has no guarantee of maintaining or gaining market share, because, as demonstrated in the table below, its utilization and market share has been declining since 2015.

<b>Open MRI</b>	<b>2017 SMFP (10/1/14-9/30/15)</b>	<b>2021 SMFP (10/1/18-9/30/19)</b>	<b>Difference</b>
Utilization	11,807	11,174	-633
Buncombe Co. Total Utilization	35,357	39,210	3,853
<b>Market Share</b>	<b>33.39%</b>	<b>28.50%</b>	<b>-4.90%</b>

Future growth assumptions are also unreliable because EmergeOrtho providers have historically referred hundreds of MRI patients per year to Open MRI, but has made no commitment to continue this referral pattern. Beginning in December 2020, EmergeOrtho joined Mission Health Partners (MHP) – which currently serves approximately 90,000 patients in western North Carolina – because of its shared commitment to improving health outcomes and reducing costs.

MHP is one of the largest Accountable Care Organizations in North Carolina. It holds value-based agreements with payors that allow MHP to provide care coordination services for at-risk patients, while also providing incentives for physicians to improve quality and reduce unnecessary costs. Numerous other physician groups in western North Carolina participate in MHP. Enhanced coordination of care activities within organizations like MHP could affect EmergeOrtho’s traditional referral patterns.

Open MRI’s utilization projections are not reasonable and are not adequately supported. Open MRI’s application should be found nonconforming to CON Criteria 1, 3, 4, and 6, based on the following specific deficiencies:

- Open MRI does not conform with Criterion 1 and Policy GEN-3 because the application is not conforming to all other applicable statutory and regulatory review criteria, and thus, is not approvable. The applicant does not adequately demonstrate that the proposal is its least costly or most effective alternative to meet the need.
- The application fails to properly demonstrate the need for the proposed project as required by Criterion 3 because the utilization projections are unreasonable and overstated.

- The application does not to meet the MRI performance standards because the utilization projections are unreasonable.
- Open MRI fails to show that the proposed project is an effective alternative as described in Criterion 4 due to the exaggerated utilization projections and unreasonable and incomplete financial projections.
- Open MRI neglected to discuss the option of utilizing a Medquest mobile MRI scanner as a less costly alternative to the proposed project. This arrangement is feasible because Medquest has underutilized mobile MRI scanners in North Carolina, and Open MRI has an existing MRI pad.
- The proposed project fails to comply with Criterion 6 because it would unnecessarily duplicate existing MRI services in the service area, and because the projections are unreliable given Open MRI's declining trend in MRI utilization.

#### Criterion (5)

Financial projections for the proposed Open MRI project are based on the overstated utilization projections that are discussed in the Criterion 3 comments. Based on these overstated MRI volumes, the revenue and expense projections are unsound.

Open MRI's financial *pro forma* is incomplete as follows:

- **Forms C.2b are omitted** for utilization projections for the existing imaging modalities (CT, X-ray, MRI and Arthroscopy).
- Forms F.2a and F.2b for the total facility and the proposed MRI scanner have no assumptions to demonstrate that the projected revenues and deductions from revenue are reasonable.
- Forms F.3a and F.3b for the total facility and the proposed MRI scanner **have no assumptions** to demonstrate that the projected future expenses are reasonable. For example, no explanations are provided regarding inflation, or how the management fees and central office overhead are calculated.
- In Form H, Open MRI unreasonably projects to add **only one additional FTE** to staff its proposed additional MRI scanner. Staffing expenses are understated and unreliable.

The following table shows the unexplained variances between the Open MRI historical and projected financial metrics.

Forms F.2a and F.2b for MRI	Last Full Year	Year 3	Percentage
Open MRI	2019-2020	2024-2025	Change
MRI Scans	10,807	13,980	29.4%
Gross Revenue	22,554,603	30,249,094	34.1%
Net Revenue	6,398,811	7,242,117	13.2%
Total Expenses	3,008,861	3,940,243	31.0%
Average Gross Charge per Scan	2,087	2,164	3.7%
Average Net Revenue per Scan	592	518	-12.5%

Open MRI fails to adequately explain why the projected 29.4 percent increase in scan volume would result in a 34.1% increase in gross revenue but only a 13.2 percent increase in net revenue.

For these reasons, Open MRI's application should be found non-conforming to Criterion 5 because the financial projections are unreliable, incomplete, and lacking in assumptions.

**Criterion (7)**

Open MRI should be found non-conforming to CON Criterion 7 because the staffing projections are not based on reasonable assumptions. Open MRI projects to add only one FTE that it identifies as a radiology technologist for the proposed project. The applicant does not explain how one additional radiology technologist FTE will provide adequate staffing for an MRI scanner that is to be operational up to 6 days per week 12 hours per day. The salary projection of \$86,619 for radiology technologist does not indicate if this includes overtime pay. The staffing projection for the Open MRI proposal are not reasonable due to the projected addition of only one FTE.

**Criterion (18a)**

The application fails to conform to Criterion (18a) because the proposal does not adequately demonstrate that it will promote cost-effective services or enhance competition. Open MRI's projected utilization is not based on reasonable and adequately supported assumptions. EmergeOrtho's previous discussion above regarding analysis of need and projected utilization found in Criterion (3) are incorporated herein by reference.

Open MRI currently owns two of the ten fixed MRI scanners in the service area. The proposed project would actually diminish competition because Open MRI would then have 27 percent of the MRI capacity in the service area.

**IV. EmergeOrtho’s Comments regarding Mission Imaging’s Application (Project ID #B-12035-21)**

**Criteria (1), (3), (4), and (6)**

The Mission Imaging application should be found nonconforming to Criteria 1, 3, 4, and 6. The applicant’s methodology and assumptions for its projected patient origin and MRI utilization are unreasonable and lack adequate support. The applicant unreasonably projects far higher rates of growth in MRI utilization than it has historically achieved. As seen in the next table, Mission Imaging has experienced only modest growth in utilization in recent years.

Mission Imaging’s patient origin statistics are based on the overstated projections of 3,118 scans for Year 1; 3,773 scans for Year 2; and 4,467 scans in Year 3. These projections are based on unreasonable assumptions.

The 2015 to 2019 Compound Annual Growth Rate (CAGR) for the unweighted MRI scans performed at Mission Imaging is 4.05 percent. However, when looking more closely at the CAGR from 2017 to 2019, Mission Imaging’s rate of growth is only 1.43 percent, a minimal increase. (It is worth noting that in 2020, MRI utilization decreased for Mission Imaging and statewide due to COVID-19.)

Unweighted MRI	# MRI	2015	2016	2017	2018	2019	CAGR
Mission Imaging	1 MRI	3,244	5,171	5,624	5,406	5,641	4.05%
Mission Imaging	1 MRI	6,431	5,521	5,401	5,234	5,701	
Combined MRI Scans	2 MRI	9,675	10,692	11,025	10,640	11,342	

Sources: 2017 to 2021 SMFP

		2020	2021	2022	2023	2024	2025
Mission Imaging Asheland	2 MRI	11,243	11,798	10,758	10,412	10,412	10,412
Mission Imaging Biltmore	1 MRI	0	0	1,939	3,118	3,773	4,467
Combined Unweighted MRI Utilization		11,243	11,798	12,697	13,530	14,185	14,879
Annual Projected % Increases			4.93%	7.62%	6.56%	4.84%	4.89%

Sources: Mission Imaging CON, Section Q. Form C2.a

Mission Imaging uses contrived market share projections in its application to forecast unreasonable and overstated MRI utilization increases for the interim year 2021 and 2022. The combined unweighted MRI utilization is shown for Asheland and Biltmore. The annual increases in the combined MRI scan volumes are shown in the yellow highlighted row in the table above.

The applicant overinflates its utilization projections in 2021 and 2022 to predict higher annual growth than it has achieved in recent years. This exceptionally high growth in 2021 and 2022 is unreasonable because, if Mission Imaging’s application were to be approved, **this growth in utilization would actually occur before Mission Imaging plans to implement the new MRI scanner.**

Moreover, the utilization projection of 3,773 scans for the MRI scanner at Mission Imaging – Asheland in 2024 represents a 21 percent increase over the Year 1 projection of 3,118 scans. The

utilization projection of 4,467 scans for the new scan in Year 3 is an 18.4 percent increase from the Year 2 projection of 3,773 scans.

MRI projections for Mission Imaging – Asheland and Mission Imaging – Biltmore are unreasonable because the application fails to provide the methodology and assumptions for projecting the MRI utilization for all the other fixed MRI scanners that are owned by Mission Hospital in Buncombe County. Pages 57 to 61 do not include any methodology and assumptions for the MRI projections for the Mission Childrens MRI, the Mission Carolina Spine MRI, the Mission Main MRI scanners, or the St Joseph’s MRI scanner. Consequently, the Mission Imaging application fails to meet the necessary performance standards of 10A N.C.A.C. 14C .2703(b)(3) and (6).

Mission Hospital has multiple fixed MRI scanners that are underutilized. Whether these are located at the Mission Hospital – Carolina Spine, St Joseph’s campus, or the Childrens’ Hospital, all of these MRI scanners are mostly used to perform outpatient procedures. The MRIs at the Carolina Spine and Children’s Hospital locations performed 100 percent outpatient procedures and have available capacity. The applicant’s explanations for why these existing MRI scanners cannot be redeployed or relocated simply have no merit. Hospitals across the state have been relocating existing MRI scanners for decades, and Mission Hospital has the same options to relocate equipment to meet future expected needs.

Based on these deficiencies, the Mission Imaging application should be found nonconforming to CON Criteria 1, 3, 4, and 6:

- Mission Imaging does not conform with Criterion 1 and Policy GEN-3 because the application is not conforming to all other applicable statutory and regulatory review criteria and thus is not approvable. The applicant does not adequately demonstrate that the proposal is its least costly or most effective alternative to meet the need.
- The application fails to properly demonstrate the need for the proposed project as required by Criterion 3 because the patient origin projections are not credible and the utilization projections are not reasonable.
- The application does not meet the MRI performance standards.
- Mission Imaging fails to show that the proposed project is an effective alternative as described in Criterion 4 due to the unreliable utilization projections and flawed financial projections.
- The proposed project does not comply with Criterion 6. The project would unnecessarily duplicate existing MRI services in the service area because the projections are unreliable and Mission Hospitals has underutilized MRI capacity.

**Criterion (5)**

Mission Imaging’s application does not conform to Criterion 5 because of its failure to document the availability and commitment of funds and the incompleteness of its financial projections. Criterion 5 requires documentation of availability of funds for all financial needs identified in a CON application. Mission Imaging has not adequately shown a funding source for the financial needs of its project. Consequently, the application is nonconforming with Criterion 5.

The applicant provides the financial statements in the HCA Healthcare Inc., Form 10-K for 2019, but does not provide a letter from a fiscally responsible officer of that entity that documents a commitment to fund the project. Page 81 of Mission Imaging’s application states, “The project will be funded via an inter-company loan from HCA Healthcare, Inc. See Exhibit F-2.1 for a copy of the funding letter. No interest will be assessed for the inter-company loan.”

Exhibit F-2.1 is a letter from Mr. Terrence van Arkel, **who is not an officer of the parent company, HCA Healthcare Inc.** Mr. van Arkel is the Vice President of MH Master, LLC, which is described as a 1% General Partner of the applicant legal entity, MH Mission Imaging LLLP, on page 16 of the application. Thus, **he is a representative of the entity that intends to borrow** the money from the “upstream” parent company, HCA Healthcare Inc. There is nothing in the application to demonstrate that Mr. van Arkel (or anybody in particular) is in a position to authorize or oversee loans made by HCA Healthcare Inc. Furthermore, Mr. van Arkel is also not listed as an HCA officer in the same 2019 Form 10-K, which is reproduced in part below.

**Information about our Executive Officers**

As of February 1, 2020, our executive officers were as follows:

<u>Name</u>	<u>Age</u>	<u>Position(s)</u>
Samuel N. Hazen	59	Chief Executive Officer and Director
Jennifer L. Berres	49	Senior Vice President and Chief Human Resource Officer
Phillip G. Billington	52	Senior Vice President — Internal Audit Services
Jeff E. Cohen	48	Senior Vice President — Government Relations
Michael S. Cuffe, M.D.	54	President — Physician Services Group
Jane D. Englebright	62	Senior Vice President and Chief Nursing Officer
Jon M. Foster	58	President — American Group
Charles J. Hall	66	President — National Group
A. Bruce Moore, Jr.	59	President — Service Line and Operations Integration
Sandra L. Morgan	57	Senior Vice President — Provider Relations
J. William B. Morrow	49	Senior Vice President — Finance and Treasurer
P. Martin Paslick	60	Senior Vice President and Chief Information Officer
Jonathan B. Perlin, M.D.	58	President — Clinical Services Group and Chief Medical Officer
Deborah M. Reiner	58	Senior Vice President — Marketing and Communications
William B. Rutherford	56	Executive Vice President and Chief Financial Officer
Joseph A. Sowell, III	63	Senior Vice President and Chief Development Officer
Kathryn A. Torres	56	Senior Vice President — Payer Contracting and Alignment
Robert A. Waterman	66	Senior Vice President and General Counsel
Kathleen M. Whalen	56	Senior Vice President and Chief Ethics and Compliance Officer
Christopher F. Wyatt	42	Senior Vice President and Controller

In addition to inadequate loan documentation from the parent company, HCA Healthcare Inc., the application also fails to demonstrate that the terms of the loan are acceptable to the applicant MH



Mission Imaging, LLLP. Mr. van Arkel's funding letter is deficient because it doesn't explain what entity will be the borrower and when the loan must be repaid. Intercompany loans, even those that have no interest, have to be paid back at some point, but this is not discussed anywhere in the application.

Previous N.C. Court of Appeals decisions regarding funding for CON projects establish that the Agency must "determine the availability of funds for the project from the entity responsible for the funding." *Retirement Villages, Inc. v. N.C. Dep't of Human Res.*, 124 N.C. App. 495, 498, (1996). "Without a commitment, an applicant cannot adequately demonstrate availability of funds or the requisite financial feasibility." *Johnston Health Care Ctr., L.L.C. v. N.C. Dep't of Human Res.*, 136 N.C. App. 307, 313 (2000).

With Mission Imaging's scan volumes based on unreasonable and overstated growth projections, the revenues are likewise overstated and unreasonable. The Mission Imaging – Biltmore Form C.2a that projects MRI volumes also includes utilization projections for other imaging modalities based on 2 percent annual growth for the first three project years. This 2 percent annual growth assumption for the other imaging services at this location demonstrates that the MRI assumptions and resulting projections are greatly exaggerated.

The application does not provide a financial statement that is specific to the proposed MRI scanner to demonstrate that its MRI projected revenues and expenses are based on reasonable assumptions. Instead, Mission Imaging provides the Form F.2b Mission Imaging – Biltmore (All Dx Imaging + new MRI) and Form F.3b for projected expenses. These financial projections do not provide sufficient information to determine whether the projected MRI charges and costs are based on reasonable assumptions. The average gross revenue per MRI scan is not provided for Years 2023 through 2025. The average net revenue per MRI scan is also not shown. Therefore, the average expense per MRI scan cannot be determined.

The Form F.3b (for the entire facility) shows understated and partial building rent that is less than the actual building rental expense for the Mission Imaging – Biltmore project. The financial assumptions show that the rental expense is an allocation of the expense that is based on ownership between "MH Mission Imaging LLLP and ARA". A more accurate representation of the rental expense would be to show the actual full amount of the annual rent expense paid by the applicant entity. This is because the building ownership could change over time, but the actual total rent expense paid by the applicant is what should be reported in the CON application.

For all of these reasons, Mission Imaging should be found non-conforming to Criterion 5.

#### **Criterion (7)**

The Mission Imaging application should be found nonconforming to CON Criterion 7 because the staffing projections are not based on reasonable assumptions. Mission Imaging represents in Form C.2a that CT scans, fixed X-ray, ultrasound, and DEXA (bone density), comprise the majority of the procedures performed at Mission Imaging – Biltmore. Procedure volumes for these modalities are projected to increase over the next six years and the proposed MRI scanner will be added in

2022. Increases in the existing imaging modalities will require additional staff resources combined with the need to employ MRI-trained staff to operate the proposed MRI scanner. However, the staffing projections provided in Form H show increases in the FTEs for radiology technologists but no FTEs allocated for MRI technologists.

Mission Imaging's staffing expenses are unreliable because the Form H does not explain what positions will be added for the proposed MRI scanner. The projected salaries for the radiology technologists of \$53,040 in Year 1 to \$55,182 in Year 3 are far below the salary range for the MRI technologist. According to the online recruiting site ZipRecruiter at [www.ziprecruiter.com](http://www.ziprecruiter.com) the current MRI Tech salary for Asheville, NC, averages \$60,468. The salary projections for the proposed project are unreasonable.

### **Criterion (18a)**

The application fails to conform to Criterion (18a) because it does not adequately demonstrate how it will promote cost-effective services or enhance competition. Mission Imaging's projected utilization is not based on reasonable and adequately supported assumptions. The discussions regarding analysis of need and projected utilization found in Criterion (3) are incorporated herein by reference.

Mission Imaging and its affiliate Mission Hospital control seven of the ten fixed MRI scanners in the service area. Mission Hospital has three fixed MRI scanners that performed fewer than 3,328 adjusted MRI scans as documented in the 2021 SMFP. The proposed project would diminish competition because the addition of yet another Mission MRI scanner would give the Mission Imaging and Mission Health system control of 73 percent of all MRI capacity in the service area.

## **V. Conclusion**

According to the 2021 SMFP, no more than one fixed MRI scanner may be approved for the service area in this review. Because the applications collectively propose to develop three MRI projects, only one application may be approved. The application submitted by EmergeOrtho is conforming with all statutory and regulatory review criteria. Neither the Open MRI application, nor the Mission Imaging application conform with these criteria. Applications that are not conforming with all applicable criteria cannot be approved.

Accordingly, the Agency should approve the application submitted by EmergeOrtho, and deny the applications submitted by Open MRI and Mission Imaging.