

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

IN RE: REQUEST FOR DECLARATORY)	
RULING BY ALLIANCE HEALTHCARE)	
SERVICES, INC. & UNIVERSITY)	DECLARATORY RULING
HEALTH SYSTEMS OF EASTERN)	
CAROLINA, INC.)	
)	
Project I.D. No. Q-6884-03)	

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.

Alliance Healthcare Services, Inc. and University Health Systems of Eastern Carolina, Inc. (collectively “Petitioners”) have requested a declaratory ruling allowing them to add three additional host sites for Project I.D. No. Q-6884-03 on the grounds that the change does not constitute a material change in scope or physical location or a failure to materially comply with the representations made by Petitioners in their certificate of need application for their 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. Franklin Scott Templeton and Wallace C. Hollowell, III of Nelson Mullins Riley & Scarborough, LLP, counsel for Petitioners, have

requested this ruling on behalf of Petitioners and have provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Effective July 22, 2004, the CON Section issued a certificate of need to Petitioners for Project I.D. No. Q-6884-03 to acquire a mobile magnetic resonance imaging (“MRI”) scanner to provide MRI services at “host sites in HSAs IV, V and VI.” The initial host sites named in the CON application were Chowan Hospital in Edenton (Chowan County), Heritage Hospital in Tarboro (Edgecombe County), The Outer Banks Hospital in Nags Head (Dare County), Roanoke-Chowan Hospital in Ahoskie (Hertford County), and Bertie Memorial Hospital in Windsor (Bertie County).

Pursuant to subsequent declaratory rulings, MRI scanner services were added at Eastern Carolina Internal Medicine (Jones County), Pungo District Hospital (Beaufort County), and Duplin General Hospital (Duplin County), and were discontinued at Chowan Hospital in Edenton (Chowan County) and Bertie Memorial Hospital in Windsor (Bertie County). In addition, the Outer Banks Hospital and Roanoke-Chowan Hospital have been approved to acquire fixed MRI scanners and no longer use the Alliance mobile scanner services. Heritage Hospital’s MRI services are expected to conclude in June 2011.

In this request, Petitioners seek to add three sites – Cary Diagnostic Radiology in Cary located at 101 SW Cary Parkway #40 (Wake County), Martin General Hospital in Williamston located at 310 South McCaskey Road (Martin County), and Washington County Hospital in Plymouth located at 958 US Highway 64 East (Washington County) (collectively, “Proposed Sites”). Alliance proposes to provide MRI scanner services to each of these sites one day per week using the scanner for Project I.D. No.Q-6884-03 once Heritage Hospital acquires its own

fixed MRI scanner. Wake County is located in HSA IV while Martin and Washington Counties are located in HSA VI. The Proposed Sites are currently served by one or more of Alliance's grandfathered mobile MRI units.

Petitioners state that the Proposed Sites already have the required mobile pad, utility connections, and an existing mobile MRI services agreement with Alliance. Petitioners represent that adding the Proposed Sites will not result in any changes in the scope of services offered or any increase in costs to patients for mobile MRI services. Petitioners further represent that they will comply with all conditions of their CON and all applicable regulations.

ANALYSIS

The CON law would require a full review of Petitioners' proposed addition of the new host sites 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 Proposed Sites does not constitute a material change in the physical location or the scope of the Project. The use of the Proposed Sites as host sites will not affect the scope of services offered or the costs and charges to Petitioners or to the public for the provision of mobile MRI services. The defined service area for the Project Unit includes HSAs IV, V, and VI. Thus, the Proposed Sites are in the mobile service area for the Project Unit.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw Petitioners' certificate of need if Petitioners fail to develop the service in a manner consistent with the representations made in the application or with any conditions that were placed on the certificate of need. Petitioners will not be developing their project in a manner that is materially different from the representations made in their application, nor will they be developing their project in a manner that is inconsistent with any of the conditions that were placed on their certificate of need.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the addition of the Proposed Sites as host sites for Petitioners' mobile MRI scanner, Project I.D. No.Q-6884-03, 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 certificate of need in violation of N.C.G.S. § 131E-189(b).

This the _____ day of _____, 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 a first-class, postage pre-paid envelope addressed as follows:

CERTIFIED MAIL

Franklin Scott Templeton
Wallace C. Hollowell, III
Nelson Mullins Riley & Scarborough, LLP
380 Knollwood Street
Suite 530
Winston-Salem, North Carolina 27103

This the _____ day of _____, 2011.

Jeff Horton
Chief Operating Officer