

**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.) DECLARATORY RULING
Project I.D. No. F-6650-02)**

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.

Alliance Healthcare Services, Inc. (“Petitioner”) requests a declaratory ruling that the addition of one additional host site to the route of its mobile positron emission tomography (“PET”) scanner is consistent with the terms of the certificate of need (“CON”) previously issued to Petitioner. 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. Joy Heath of the Law Office of Joy Heath has requested this ruling on behalf of Petitioner and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

On October 13, 2003, a CON was issued to Petitioner for Project I.D. # F-6650-02 to acquire a mobile PET scanner to provide mobile services at host site locations in the western portion of the State. The locations named in the application included High Point Medical Center, NorthEast Medical Center (currently CMC-NorthEast), Rowan Regional Medical Center,

Alamance Regional Medical Center, Cleveland Regional Medical Center, Grace Hospital, Valdese General Hospital, and Watauga Medical Center. Of the original host sites, Alamance Regional Medical Center, CMC-NorthEast and High Point Regional Medical Center acquired their own fixed PET scanners and terminated their agreements for service with Petitioner. Between September 2004 and February 2011, the Department has issued ten declaratory rulings stating that the addition of host sites to the mobile PET scanner's route would not constitute a material change in the physical location or scope of the project.

Currently, Petitioner serves the following hospital sites: Watauga Medical Center in Boone, Caldwell Memorial Hospital in Lenoir, Grace Hospital in Morganton, Valdese General Hospital in Rutherford College, Harris Regional Midwest in Sylva, Rowan Regional Medical Center in Salisbury, Lake Norman Regional Medical Center in Mooresville, Margaret R. Pardee Hospital in Hendersonville, Stanley Regional Medical Center in Albermarle, Presbyterian Hospital Matthews in Matthews, Presbyterian Hospital Huntersville in Huntersville, Randolph Hospital in Asheboro, Thomasville Medical Center in Thomasville, Northern Hospital of Surry County in Mount Airy, Rutherford Regional Hospital in Rutherfordton, and Park Ridge Hospital in Hendersonville.

In its current proposal, Petitioner proposes to add one additional host site, MedCenter High Point, to the list of sites it currently serves. MedCenter High Point is located in the western Planning Region (HSAs I, II, and III). Opened in June 2009, MedCenter High Point is owned and operated by Cone Health and includes a satellite emergency department, an imaging center, laboratory, satellite offices for Moses Cone's Regional Cancer Center and outpatient rehabilitation program, and a medical office building. Petitioner represents that the provision of mobile PET services at MedCenter High Point would not require any new equipment, would not

affect the scope of services offered, and would not affect the costs and charges to Petitioner or the public for the provision of mobile PET services.

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 physical location or scope of the project, the CON law would require a full review of the proposal. N.C.G.S. § 131E-181(a).

Petitioner states that the provision of mobile PET services to MedCenter High Point would not increase the total capital costs or the cost and charges to Petitioner or to patients for the provision of mobile PET services. Further, Petitioner states that the new host site would not affect Petitioner’s material compliance with the representations made in its original CON application or in the conditions imposed upon its CON. According to Petitioner, addition of the host site will fill a documented need and improve patient access to imaging services, thereby furthering the purposes of the CON law. Pursuant to the 2002 State Medical Facilities Plan (“SMFP”), any applicant proposing to acquire a mobile dedicated PET scanner must demonstrate that each host site offers or contracts with a hospital that offers comprehensive care services, including radiation oncology, medical oncology, and surgical oncology. Petitioner’s request is consistent with this requirement.

The CON Law would require a full review of Petitioner’s site proposals were they to represent a material change in the physical location or scope of the project. N.C. Gen. Stat. § 131E-181(a). Based upon the information provided by Petitioner, the proposed addition of

MedCenter High Point as an additional host site does not constitute a material change in the physical location or the scope of Project I.D. # F-6650-02.

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 May, 2012.

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

Joy Heath
Ruth Levy
Law Office of Joy Heath
514 Daniels Street, #182
Raleigh, North Carolina 27605

This the _____ day of May, 2012.

Dr. Patsy Christian, Assistant Director
Healthcare Quality and Safety