

**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-7001-04)**

I, Drexdal Pratt, as Director of the Division of Health Service Regulation, 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 N.C.A.C. 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 mobile MRI host site and the discontinuance of two current mobile MRI host sites is in material compliance 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 Heath Law Firm, PLLC has requested this ruling on behalf of Petitioner and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

In June 2005, Petitioner received a CON to acquire the mobile MRI scanner that corresponds to Project I.D. # F-7001-04. The scanner was approved to serve three host sites: (1) J. Arthur Doshier Hospital in Southport (“Doshier”); (2) Pender Memorial Hospital in Burgaw (“Pender”); and (3) Delaney Radiology at 8115 Market Street in Wilmington (“Delaney-Market Street”).

Based on a grandfathered MRI services agreement and several Declaratory Rulings, the scanner currently serves the following sites: (1) NHRMC-Porter's Neck on Market Street in New Hanover County; (2) Chadbourne in Columbus County; (3) NHRMC-Military Cutoff in New Hanover County; and (4) NHRMC-Brunswick Forest in Brunswick County. Two Wilmington host sites, Wilmington Orthopaedic Group, PA and the New Hanover Regional Center site on 17th Street were approved; however, they are no longer actively serving as host sites. Petitioner's contract for service with Wilmington Orthopaedic Group, PA has ended and New Hanover Regional site on 17th Street is now closed.

In this request, Petitioner is requesting that one of the originally served host sites, the Pender site, be added as a host site and that the two Wilmington sites that are no longer active be formally removed as host sites. Petitioner states that the modifications would not increase the total capital costs or the cost and charges to Petitioner or to patients for the provision of mobile MRI services, and would not affect Petitioner's material compliance with the representations made in its CON application or in the conditions imposed upon its CON.

Accordingly, Petitioner requests a declaratory ruling that its proposal is in material compliance with the CON for the project.

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 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 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 would fill a documented need and improve patient access to imaging services, thereby furthering the purposes of the CON law. *See* N.C.G.S. § 131E-175(1), (2), and (3). Finally, Petitioner states that the addition of the Pender site would not require any new equipment or alter the scope of services offered. The Pender site is within the same health service area ("HSA"), HSA V, for which Petitioner was originally awarded the CON. With respect to the two Wilmington sites, neither site is currently active and discontinuance of mobile MRI services at these sites will not affect the desired level of services being offered. Therefore, based upon the information provided by Petitioner, Petitioner's proposal does not constitute a material change in the physical location or the scope of Project I.D. # F-7001-04. Upon the issuance of this Declaratory Ruling, Petitioner's scanner will be approved to serve the following sites: (1) NHRMC-Porter's Neck on Market Street in New Hanover County; (2) Chadbourne in Columbus County; (3) NHRMC-Military Cutoff in New Hanover County; (4) NHRMC-Brunswick Forest in Brunswick County; and (5) the Pender site.

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 June, 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
Heath Law Firm, PLLC
514 Daniels Street, #182
Raleigh, North Carolina 27605

This the _____ day of June, 2012.

Dr. Patsy Christian, Assistant Director
Healthcare Quality and Safety