

**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. G-6271-00)**

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 two new mobile MRI host sites and the discontinuance of one current mobile MRI host site 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 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

In June 2008, Petitioner entered into a settlement agreement with the Department regarding the scope of services for the mobile MRI scanner that corresponds to Project I.D. # G-6271-00. The terms of the agreement approved Petitioner to use that specific mobile MRI scanner to serve three host sites: (1) Davie County Hospital in Mocksville; (2) Hoots Memorial

Hospital in Yadkinville; and (3) Hickory Orthopaedic Group, P.A. in Hickory as well as locations within Health Service Areas (“HSAs”) I and II.

Following Declaratory Rulings requested by Petitioner and issued by the Department on March 21, 2011, April 15, 2011, May 21, 2012, Petitioner added mobile MRI scanner services at Burlington Imaging and Breast Services in Alamance County, MRI Specialists of the Carolinas, LLC in Shelby; Vanguard Brain & Spine Specialists, P.A. (f/k/a Guilford Neurosurgical, P.A.) in Guilford County; Imaging-Kernersville in Forsyth County; and Cone Health (f/k/a Moses Cone Health System) in Guilford County. Following the April 15, 2011 and May 21, 2012 Declaratory Rulings, Petitioner ceased serving two sites with the mobile MRI scanner, the Hickory Orthopaedic Group site in Catawba County, and the MRI Specialists of Carolinas, LLC site in Cleveland County (added by the April 15, 2011 Declaratory Ruling and cease granted by the May 21, 2012 Declaratory Ruling) and began serving those sites with grandfathered MRI scanners on a full-time basis.

In sum, Petitioner currently provides the mobile MRI scanner from Project I.D. # G-6271-00 (a GE 1.5 Tesla Excite Mobile, Serial No. 1S9FA482641182704) to the following sites: Davie County Hospital in Mocksville; Yadkin Valley Community Hospital in Mocksville, Davie County; Hoots Memorial Hospital in Yadkinville, Yadkin County; Burlington Imaging and Breast Services in Burlington, Alamance County; Vanguard Brain & Spine Specialists, P.A. in Greensboro, Guilford County; Greensboro Imaging-Kernersville in Kernersville, Forsyth County; and Cone Health (f/k/a Moses Cone Health System) in High Point, Guilford County. In this request, Petitioner seeks to add two mobile MRI host sites to the scanner’s route: Wake Forest University Medical Center Outpatient Center at 2340 Lewisville-Clemmons Road in Clemmons, Forsyth County (“Clemmons”) and MRI Specialists of the Carolinas at 520 Dekalb

Street in Shelby, Cleveland County (“Shelby”). MRI Specialists of the Carolinas is a wholly owned subsidiary of CaroMont Health, Inc. Additionally, Petitioner seeks to discontinue services at Cone Health in High Point (f/k/a Moses Cone Health System) through this particular mobile MRI scanner and instead serve the site by another Alliance grandfathered MRI scanner.

Accordingly, Petitioner requests a declaratory ruling that the addition of the host sites and discontinuance of a host site is in material compliance with the CON for the project and with the aforementioned settlement agreement.

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).

The mobile MRI scanner continues to serve two of the three host sites identified in the Settlement Agreement, plus four additional sites in HSAs I and II, serving two or more sites per week. Due to increasing demand for MRI services, Petitioner seeks to put its existing mobile MRI into service at two additional host sites. The proposed schedule will be finalized pending the outcome of this requested Declaratory Ruling. Petitioner states that it will continue to serve multiple host sites per week in compliance with the representations in and conditions of its CON and in accordance with all applicable regulations.

Petitioner states that the two additional host sites at Clemmons and Shelby will improve patient access to MRI services, decrease time and travel associated with accessing the mobile

MRI in other locations and allow for optimal utilization of the equipment. The Clemmons site is located in Forsyth County HSA II, and the Shelby site in Cleveland County is located in HSA I. Petitioner states that the Clemmons and Shelby sites are not unlike other Alliance host sites and that the services will be offered in substantially the same manner with similar costs and charges for Petitioner and its patients. Furthermore, Petitioner states that the desired level of services at Cone Health can be obtained by one of its grandfathered MRI scanners rather than the mobile MRI currently offering services at that location, hence the request to discontinue use of the mobile MRI scanner at that site.

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 the Clemmons and Shelby host sites and the discontinuance of services at Cone Health do not constitute a material change in the physical location or the scope of Project I.D. G-6271-00. The host sites are located in HSA I and HSA II, which is consistent with the approved area for the scanner, and discontinuance of mobile MRI services at Cone Health will not affect the desired level of services being offered at that 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 March, 2013.

Drexdal Pratt, Director
Division of Health Service Regulation
N.C. Department of Health and Human Services

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Declaratory Ruling has been served upon the DEFENDANT 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 March, 2013.

Cheryl Ouimet, Chief Operating Officer