

**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. Nos. H-6706-02 and)
Project I.D. Nos. H-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 two mobile positron emission tomography (“PET”) scanners, Project I.D. #H-6706-02 (“Eastern Scanner”) and Project I.D. #H-6650-02 (“Western Scanner”), be allowed to serve all of the approved host sites in North Carolina. 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. David French of Strategic Health Consultants has requested this ruling on behalf of Petitioner and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Petitioner owns and operates two mobile PET scanners. Petitioner was issued a certificate of need (CON), effective May 1, 2003, for the Eastern Scanner to serve approved host sites in PET Planning Region 2 which includes Health Service Areas (HSAs) IV, V, and VI.

Effective October 13, 2003, Petitioner was issued a CON for the Western Scanner to serve approved host sites in PET Planning Region 1 which includes HSAs I, II, and III. Subsequent Declaratory Rulings issued by the Department have approved each of the above scanners to make changes in the host sites served within their specified regions.

The 2015 State Medical Facilities Plan (SMFP), page 138, includes the following change in policy: “*A mobile PET scanner has a statewide service area.*” Based upon this change in policy, Petitioner was issued Material Compliance approval on March 31, 2015 to change the service area for each mobile PET unit from the specified individual regional service areas to a statewide service area.

Petitioner requests that each of the two mobile PET scanners be allowed to serve all of the approved host sites in North Carolina to improve patient access, achieve operational efficiencies and provide cross-coverage on an as needed basis. Petitioner states the proposal would not require new equipment or additional capital cost. No new host sites are proposed at this time. The scope of services and types of mobile PET scans would not change. No increases in costs and charges for the Petitioner or the public will result from the proposal. The Petitioner commits to comply with all conditions of the applicable CONs and regulations.

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).

Based on the facts as presented by Petitioner, Petitioner's proposal does not constitute a material change in the physical location or scope of the projects and is allowable. The existing host sites are within the 2015 SMFP identified statewide service area which includes all Health Service Areas. Allowing each mobile PET scanner to serve any approved host site within the State, will not negatively impact the quality, scope, or availability of services provided by the mobile diagnostic program, and will not increase costs or charges. Petitioner agrees to materially comply with all the requirements and representations made in its original CON applications.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw Petitioner's CONs if Petitioner either fails to develop the service in a manner consistent with the representations made in the Petitioner's applications or with any conditions that were placed on the CONs. Petitioner will not be developing the projects in a manner that is materially different from the representations made in the applications, nor will it be developing the projects in a manner that is inconsistent with any of the conditions that were placed on its CONs.

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 July, 2015.

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

David French
Strategic Healthcare Consultants Inc.
P.O. Box 2154
Reidsville, NC 27323

This the _____ day of July, 2015.

Cheryl Ouimet
Chief Operating Officer