

**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. AND UNIVERSITY)	
HEALTH SYSTEMS OF EASTERN)	<u>DECLARATORY</u>
CAROLINA, INC.)	<u>RULING</u>
FID#: 030799)	
Project ID# Q-6884-03)	

I, Mark Payne, Director, North Carolina Department of Health and Human Services (“Department” or “Agency”), do hereby issue this Declaratory Ruling pursuant to North Carolina General Statutes § 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. (hereinafter “Alliance”) and University Health Systems of Eastern Carolina, Inc. (hereinafter “UHS”) (collectively “Petitioners”) have requested a declaratory ruling allowing them to add a single new host site - Onslow Memorial Hospital at 317 Western Boulevard, Jacksonville, NC (hereinafter “the Onslow Site”) in Onslow County for a mobile MRI scanner for Project I.D. No. Q-6884-03 (the “Project”) on the grounds that the change does not constitute a material change in the scope or physical location of the Project. N.C.G.S. §§ 131E-181(a) and (b). This ruling will be binding upon the Department and the entities 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. David French of Strategic Health Consultants, Inc. has requested this ruling on behalf of Petitioners and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Effective July 22, 2004, the Healthcare Planning and Certificate of Need Section issued a Certificate of Need (“CON”) to Petitioners for Project I.D. No. Q-6884-03 to acquire one mobile magnetic resonance imaging (“MRI”) scanner to provide MRI services in HSAs IV, V, and VI at “at least two host sites” each week. The issued CON specified the initial host sites as 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). Through a series of Declaratory Rulings, Petitioners were permitted to add other sites, including Eastern Carolina Internal Medicine (Jones County), Vidant Pungo/ Pungo District Hospital (Beaufort County), Duplin General Hospital (Duplin), Cary Diagnostic Radiology in Cary (Wake County), Martin General Hospital (Martin County), Pender Memorial Hospital (Pender County) and Washington County Hospital (Washington County).

Petitioners have discontinued providing mobile MRI services at Chowan Hospital (Chowan County) and at Bertie Memorial Hospital (Bertie County). Vidant Pungo/ Pungo District Hospital in Beaufort County has closed. The Outer Banks Hospital (Dare County) and Roanoke-Chowan Hospital (Hertford County) have been approved to acquire fixed MRI scanners and no longer use Petitioners’ mobile MRI scanner services. Consequently, Petitioners currently provide mobile MRI services at only three of the various host sites identified either in the CON issued for Project I.D. No. Q-6884-03 or added as allowed in subsequent Declaratory Rulings – Duplin

General Hospital (Duplin County), Martin General Hospital (Martin County) and Pender Memorial Hospital (Pender County). Specifically, Petitioners' scanner currently provides mobile MRI scanner services several days a week at Duplin General Hospital and on an as-needed basis as a back-up to grandfathered mobile MRI scanners at Martin General Hospital and Pender Memorial Hospital.

Petitioners' request for a declaratory ruling sets forth the following additional material facts and representations in support of its request. The proposed site at Onslow Memorial Hospital in Jacksonville is in Onslow County, which is in HSA VI. Petitioners desire to use the proposed site as a host site for its mobile MRI scanner one day per week. Petitioners represent that allowing it to use the mobile unit at the Onslow Site will not change the scope of the Project or increase costs to Petitioners or charges to the public for the provision of mobile MRI services. Petitioners state that the service agreements for the Onslow Site will be substantially similar to those in place at the existing sites served by Petitioners' Scanner. Petitioners further represent that there are no capital costs associated with their request because the Onslow Site already has a mobile MRI pad and the required electrical connections. Petitioners agree to comply with all the material requirements and representations made in their original CON application.

ANALYSIS

The CON law would require a full review of Petitioners' proposed addition of one new host site 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) provides that a CON "shall be valid only for the defined scope, physical location, and person named in the application." The proposed addition of the Onslow Site as a host site does not affect the scope of the project because the addition will not affect the scope of services offered to patients served by Petitioners' scanner. Neither does the addition of the

proposed host site in Jacksonville constitute a material change in the physical location of the project because the Onslow Site in Onslow County is in HSA VI, which is consistent with the CON. The proposed addition of the Onslow Site is therefore in material compliance with the CON. There is no proposed change in ownership of the CON that would result in a violation of N.C.G.S. §131E-181(a).

Moreover, there will be no additional capital costs incurred since a mobile MRI pad and the required electrical connections already exist at the proposed Onslow Site and there will be no increase in costs or charges for the provision of the proposed mobile MRI services.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the addition of the proposed Onslow Site as a host site 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 and will not violate N.C.G.S. §131E-181.

This the ____ day of March, 2017.

Mark Payne, 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

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

This the _____ day of March, 2017

Cheryl Ouimet
Chief Operating Officer