

**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. d/b/a ALLIANCE IMAGING,) DECLARATORY RULING
INC.,)
Project I.D. Nos. H-6706-02 and F-6650-02)**

I, Mark Payne, 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 Statutes § 150B-4 and 10A NCAC 14A .0103, under the authority granted me by the Secretary of the Department of Health and Human Services.

On May 9, 2017, Alliance Healthcare Services, Inc. d/b/a Alliance Imaging, Inc. (hereinafter, “Alliance”), requested a declaratory ruling allowing for the addition of one (1) host site for either or both of its two mobile positron emission tomography (“PET”) scanners for Project I.D. Nos. H-6706-02 and F-6650-02 (“Projects”) on the grounds that the change does not constitute a material change in scope or a failure to materially comply with the representations made in the Certificate of Need (“CON”) applications for the Projects, pursuant to N.C.G.S. §§ 131E-181(a) and (b). This ruling will be binding upon the Department and the entity 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 J. French, a Consultant with Strategic Healthcare Consultants, Inc., has requested this ruling on behalf of Alliance and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

The 2002 State Medical Facilities Plan (“SMFP”) included an adjusted need determination for two (2) mobile PET scanners, one to serve host sites in PET Planning Region 1, which included HSAs I, II, and III, and one to serve PET Planning Region 2, which included HSAs IV, V, and VI. Effective October 13, 2003, the Certificate of Need Section issued a CON to Alliance to acquire a mobile PET scanner to serve three (3) hospitals in Rowan, Cabarrus, and Guilford Counties in PET Planning Region 1 (Project ID No. F-6650-02). Alliance was also issued a CON, effective May 1, 2003, to acquire a mobile PET scanner to serve five (5) hospitals in Moore, Nash, Pasquotank, Robeson, and Wayne Counties in PET Planning Region 2 (Project ID No. H-6706-02). Subsequent declaratory rulings approved additional host sites throughout HSAs I, II, III, IV, V, and VI. The 2015 SMFP included a change in policy that created a statewide service area for mobile PET scanners. In March 2015, Alliance obtained letters of material compliance to modify the service area of its mobile PET scanners to the statewide mobile PET service area. In July 2015, Alliance obtained a declaratory ruling that each of its mobile PET scanners be allowed to serve any and/or all of its approved host sites in North Carolina. Alliance now proposes to add Columbus Regional Healthcare System, located in Whiteville, Columbus County, North Carolina (HSA V), as a host site to be served by either or both of its mobile PET scanners.

ANALYSIS

The CON law would require a full review of Alliance’s addition of the proposed host site if the addition were to represent a material change in the scope or physical location of the Project. N.C.G.S. § 131E-181(a). The addition of the host site does not constitute a material change in the scope or physical location of either Project because it will not affect the scope of the services offered and the service area for mobile PET scanners is now statewide. In addition, Alliance has

obtained a declaratory ruling allowing either or both of its PET scanners to serve any and/or all of its host sites as needed. Further, Alliance represents that the proposed site already has an existing mobile pad that can accommodate mobile PET/CT services with no additional capital costs. Therefore, the addition of the proposed host site will not negatively impact the quality, scope, or availability of services provided and will not increase the costs or charges to Alliance or to the public for the provision of mobile PET services. Additionally, the service agreement that will be used for the PET scanners at the proposed site will be substantially similar to the service agreement Alliance uses for its other host sites.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw Alliance's CONs if Alliance fails to develop the service in a manner consistent with the representations made in the applications or with any conditions that were placed on the CONs. Alliance states that it will not develop the Project in a manner that is materially different from the representations made in the applications or in a manner that is inconsistent with any of the conditions that were placed on the CONs.

CONCLUSION

For the foregoing reasons, assuming the statement of facts and representations in the request to be true, I conclude that Alliance's addition of Columbus Regional Healthcare System, located in Whiteville, Columbus County, North Carolina (HSA V), as a host site to be served by either or both of its mobile PET scanners will not constitute a material change in the scope of the Projects, will not violate N.C.G.S. § 131E-181, and will not constitute a failure to satisfy a condition of the CONs in violation of N.C.G.S. § 131E-189(b).

This the _____ day of June, 2017.

Mark Payne, Director
Division of Health Service Regulation
N.C. Department of Health and Human Services

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Declaratory Ruling upon the PETITIONER by certified mail, return receipt requested, by causing a copy of same to be placed in the United States Mail, first-class, postage pre-paid envelope addressed as follows:

CERTIFIED MAIL

David J. French
Strategic Healthcare Consultants, Inc.
Post Office Box 2154
Reidsville, North Carolina 27323-2154

This the _____ day of June, 2017.

Cheryl Ouimet
Chief Operating Officer