

**NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF HEALTH SERVICE REGULATION
RALEIGH, NORTH CAROLINA**

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| IN RE: REQUEST FOR DECLARATORY |) | |
| RULING BY ALLIANCE HEALTHCARE |) | |
| SERVICES, INC. & UNIVERSITY |) | DECLARATORY RULING |
| HEALTH SYSTEMS OF EASTERN |) | |
| CAROLINA, INC. |) | |
| Project I.D. No. Q-6884-03 |) | |

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. (hereinafter “Alliance”) and University Health Systems of Eastern Carolina, Inc. (hereinafter “UHS”) (collectively “Petitioners”) have requested a declaratory ruling allowing them to add one additional host site for Project I.D. No. Q-6884-03 on the grounds that the change does not constitute a material change in scope or physical location or a failure to materially comply with the representations made by Petitioners in their Certificate of Need (“CON”) application for their project. 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. Franklin Scott Templeton and Wallace C. Hollowell, III of Nelson Mullins Riley & Scarborough, LLP, counsel for Petitioners, have requested this ruling on behalf of Petitioners and have provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Effective 22 July 2004, the CON Section issued a CON to Petitioners for Project I.D. No.Q-6884-03 to acquire a mobile magnetic resonance imaging (“MRI”) scanner (the “Project Unit”) to provide MRI services at “host sites in HSAs IV, V and IV”. The initial host sites named in the CON application were 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) (collectively the “Original Sites”).

Pursuant to a declaratory ruling requested by Petitioners and issued by the Department on 11 August 2006, MRI scanner services were discontinued at The Outer Banks Hospital and Roanoke-Chowan Hospital and MRI scanner services were added at Eastern Carolina Internal Medicine (Jones County) and Pungo District Hospital (Beaufort County).

In this request, Petitioners seek to add Duplin General Hospital in Kenansville (Duplin County) (the “Proposed Site”) as an additional host site for its mobile MRI scanner two days per week. Petitioners seek to begin providing MRI scanner services at the Proposed Site once Chowan Hospital obtains its own fixed MRI scanner. UHS also plans to serve the Bertie Memorial Hospital site with the fixed MRI scanner at Chowan Hospital.

Petitioners state that the Proposed Site already has the required mobile pad, utility connections, and an existing mobile MRI services agreement with Alliance. Petitioners represent that adding the Proposed Site will not result in any changes in the scope of services offered or any increase in costs to patients for their mobile MRI services. Petitioners further represent that they will comply with all conditions of their CON and all applicable regulations.

ANALYSIS

The CON law would require a full review of Petitioners' proposed addition of the 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). The proposed addition of the Proposed Site does not constitute a material change in the physical location or the scope of the proposed project because the use of the Proposed Site as a host site will not affect the scope of services offered or the costs and charges to Petitioners or to the public for the provision of mobile MRI services. The defined service area for the Project Unit includes HSAs IV, V, and VI. Duplin County is in HSA VI. Thus, the Proposed Site is in the mobile service area for the Project Unit. In addition, there is no proposed change in the person named in the application that would result in a violation of N.C.G.S. § 131E-181(a).

N.C.G.S. § 131E-189(b) allows the Agency to withdraw Petitioners' CON if Petitioners fail to develop the service in a manner consistent with the representations made in the application or with any conditions that were placed on the CON. Petitioners will not be developing their project in a manner that is materially different from the representations made in their application, nor will they be developing their project in a manner that is inconsistent with any of the conditions that were placed on their CON.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the addition of the Proposed 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, will not violate N.C.G.S. § 131E-181, and will not constitute a failure to satisfy a condition of the CON in violation of N.C.G.S. § 131E-189(b).

This ruling is not intended, and should not be interpreted, to authorize any increases in the approved capital expenditure for this project, a change in the approved timetable, a change in the conditions placed on the certificate of need, or any other change in the approved project.

This the _____ day of _____, 2011.

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

Franklin Scott Templeton
Wallace C. Hollowell, III
Nelson Mullins Riley & Scarborough, LLP
380 Knollwood Street
Suite 530
Winston-Salem, North Carolina 27103

This the _____ day of _____, 201__.

Jeff Horton
Chief Operating Officer