

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

**IN RE: REQUEST FOR DECLARATORY )  
RULING BY ALLIANCE IMAGING, INC. )     DECLARATORY RULING  
Project I.D. No. H-6706-02         )**

I, Robert J. Fitzgerald, as Director of the Division of Facility Services, North Carolina Department of Health and Human Services (“Department”), 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 Imaging, Inc. (“Alliance”) has requested a declaratory ruling allowing for an additional host site for Project I.D. No. H-6706-02 on the grounds that the change does not constitute a material change in physical location or a failure to materially comply with the representations made by Alliance in its Certificate of Need (“CON”) application for its 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. Terrill Johnson Harris of Smith Moore LLP has requested this ruling on behalf of Alliance and has provided the material facts upon which this ruling is based.

## **STATEMENT OF THE FACTS**

Alliance was awarded a CON on May 1, 2003, to acquire a mobile PET/CT scanner to serve the eastern part of the State, as set forth in Project I.D. No. H-6706-02. The proposed host sites named in the application include Albemarle Hospital, Elizabeth City; Nash Healthcare System (Nash Co.); Wayne Memorial Hospital, Goldsboro; First Health Moore Regional, Pinehurst; and Southeastern Regional Medical Center, Lumberton. Through declaratory rulings, Alliance was permitted to extend services to the following sites: Albemarle Hospital, Elizabeth City; Nash Day Hospital, Rocky Mount; Raleigh Community Hospital, Raleigh; Scotland Memorial Hospital, Laurinburg; Southeastern Regional Medical Center, Lumberton; Wilson Medical Center, Wilson; and Wayne Memorial Hospital, Goldsboro.

Alliance represents that it currently provides mobile PET/CT services to each of the host sites listed above. Alliance further represents that it has availability to provide services on its mobile PET/CT scanner on a regular schedule.

Alliance represents that Lenoir Memorial Hospital (“Lenoir Memorial”) in Kinston, Lenoir County, North Carolina, has requested mobile PET/CT services from Alliance to be provided on a regular schedule, at least twice per month. Alliance further represents that Lenoir Memorial satisfies all of the requirements for a mobile PET/CT host site and that its request to add this site complies with the representations it made in its application regarding proposed host sites. Lenoir Memorial is located in PET/CT scanner planning region 2, the area to be served by the CON that was issued.

Alliance seeks a declaration that a modification of its approved host sites to include Lenoir Memorial would not constitute a material change in the scope of Project I.D. No. H-6706-02.

**ANALYSIS**

The CON law would require a full review of Alliance's proposed change of host sites 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). However, the proposed addition of this host site for Alliance's project does not constitute a material change in the physical location or the scope of the proposed project for the following reasons:

Rule 10A N.C.A.C. 14C.3702 provides as follows:

- (b) An applicant proposing to acquire a PET scanner, including a mobile PET scanner, shall provide the following information for each facility where the PET scanner will be operated:

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- (2) Documentation that all of the following services were provided, at each facility where the PET scanner will be operated, continuously throughout the 12 months immediately prior to the date on which the application is filed:
  - (A) nuclear medicine imaging services;
  - (B) single photon emission computed tomography (including brain, bone, liver, gallium and thallium stress);
  - (C) magnetic resonance imaging scans;
  - (D) computerized tomography scans;
  - (E) cardiac angiography;
  - (F) cardiac ultrasound; and
  - (G) neuroangiography.

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- (d) An applicant proposing to acquire a mobile PET scanner shall demonstrate that each host facility offers or contracts with a hospital that offers comprehensive cancer services including radiation oncology, medical oncology, and surgical oncology.

Alliance submitted documentation demonstrating that the proposed new host site, Lenoir Memorial, complies with the requirements of 10A N.C.A.C. 14C.3702. Alliance has represented in its request that this hospital satisfies all the requirements for a mobile PET/CT scanner host

site. Consequently, there would not be any violation of the CON Statute by permitting the proposed addition of this host site.

**CONCLUSION**

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the addition of a new host site for Alliance's eastern mobile PET/CT scanner, Project I.D. No. H-6706-02, 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 November, 2006.

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Robert J. Fitzgerald, Director  
Division of Facility Services  
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 non-agency 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 prepaid envelope addressed as follows:

**CERTIFIED MAIL**

Terrill J. Harris  
William R. Forstner  
Smith Moore LLP  
Post Office Box 21927  
Greensboro, NC 27420

This 21<sup>st</sup> day of November, 2006.

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Jeff Horton  
Chief Operating Officer