

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY ALLIANCE IMAGING, INC.) DECLARATORY RULING
Project I.D. No. G-7038-04)**

I, Robert J. Fitzgerald, 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 Imaging, Inc. (“Alliance”) has requested a declaratory ruling allowing for a change in host sites for Project I.D. No. G-7038-04 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. Wallace C. Hollowell, III, of Nelson Mullins Riley & Scarborough 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

Effective 30 November 2004, the CON Section issued a CON to Alliance for Project G-7038-04 to acquire a mobile MRI scanner (the “Project”) to provide MRI services to “at least

two host sites.” The proposed host sites were Davie County Hospital in Mocksville, Hoots Memorial Hospital in Yadkinville and Orthopaedic Specialists of the Carolinas (“OSC”) in Winston-Salem. By correspondence dated 14 January 2005, Alliance notified the Department of its intention to use an existing scanner unit, already owned by Alliance but located outside of North Carolina, for CON Project I.D. No. G-7038-04. On 3 February 2005, the Department confirmed that this change was in material compliance with the representations Alliance made in the CON Application.

Alliance states that because OSC has been approved to acquire a fixed MRI scanner, it proposes to discontinue service to OSC and, instead, to provide services to Hickory Orthopaedic Group, P.A. (“Hickory Orthopaedic”) located in Hickory. Hickory Orthopaedic currently receives services from Alliance using a different, grandfathered scanner unit. Alliance states that it plans to assign the grandfathered unit to another site or sites.

Alliance represents that its service agreement with Hickory Orthopaedic is substantially similar to its agreement with OSC. It also represents that this change in route for the Project Unit will not affect the scope of services offered, the cost of providing MRI services, or the charges for such services to the public. Alliance states that it will continue to satisfy all of the conditions of its CON.

ANALYSIS

The CON law would require a full review of Alliance’s proposed change of 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 change of the host site for Alliance’s project to Hickory Orthopaedic does not constitute a material change in the physical location or the scope of the proposed project because the use of Hickory Orthopaedic as a host site will not affect the scope

of services offered or the costs and charges to Alliance or to the public for the provision of mobile MRI services. 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 Alliance's CON if Alliance fails 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. Alliance will not be developing its project in a manner that is materially different from the representations made in its application, nor will it be developing its project in a manner that is inconsistent with any of the conditions that were placed on its CON.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the substitution of Hickory Orthopaedic for OSC as a host site for Alliance's mobile MRI scanner, Project I.D. No. G-7038-04, 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 _____, 2008.

Robert J. Fitzgerald, 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

Wallace C. Hollowell, III
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This the 27th day of February, 2008.

Jeff Horton
Chief Operating Officer