

**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. F-6650-02         )**

I, Jeff Horton, as Acting 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. (hereinafter “Alliance”) has requested a declaratory ruling allowing for the addition of Rutherford Hospital in Rutherfordton as a host site receiving mobile PET services from Alliance’s mobile PET scanner, utilized in North Carolina pursuant to CON Project I.D. No. F-6650-02 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 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**

Alliance was previously awarded a CON to acquire a mobile PET scanner to serve the western part of the state, as set forth in Project I.D. F-6650-02. The proposed host sites originally named in the application included High Point Regional Medical Center in High Point; NorthEast Medical Center in Concord; Rowan Regional Medical Center in Salisbury; Alamance Regional Medical Center in Burlington; Cleveland Regional Medical Center in Shelby; Grace Hospital in Morganton; Valdese General Hospital in Rutherford College; and Watauga Medical Center in Boone.

Alliance currently provides mobile PET services to each of the host sites listed above, with the exception of NorthEast Medical Center and High Point Regional Medical Center, both of which have acquired a fixed PET scanner.

On September 2, 2004, Robert J. Fitzgerald, Director, Division of Facility Services issued a Declaratory Ruling stating that the addition of Hugh Chatham Memorial Hospital in Elkin and Harris Regional Hospital in Sylva to Alliance's service route does not constitute a material change in the physical location or the scope of the Project.

On August 19, 2005, Mr. Fitzgerald issued a second Declaratory Ruling stating that the addition of Northern Hospital of Surry County in Mt. Airy to Alliance's service route does not constitute a material change in the physical location or the scope of the Project.

On September 29, 2005, Mr. Fitzgerald issued a third Declaratory Ruling stating that the addition of Margaret R. Pardee Memorial Hospital ("Pardee") in Hendersonville and Park Ridge Hospital in Fletcher to Alliance's service route does not constitute a material change in the physical location or the scope of the Project.

On July 17, 2006, Mr. Fitzgerald issued a fourth Declaratory Ruling stating that the addition of Carolinas Medical Center-Union in Monroe to Alliance's service route does not constitute a material change in the physical location or the scope of the Project.

On September 18, 2006, Mr. Fitzgerald issued a fifth Declaratory Ruling stating that the addition of Lake Norman Regional Medical Center to Alliance's service route does not constitute a material change in the physical location or the scope of the Project.

On February 16, 2007, Mr. Fitzgerald issued a sixth Declaratory Ruling stating that the addition of Caldwell Memorial Hospital to Alliance's service route does not constitute a material change in the physical location or the scope of the Project.

Presently, the Scanner serves Pardee two days a month, and on those days the Scanner does not serve any other host sites. However, because of a decrease in the number of patients requiring mobile PET services at Pardee, Pardee no longer requires a full day of service from Alliance. Rutherford Hospital, which is in the same health planning region that the Scanner was approved to serve, has expressed interest in obtaining mobile PET services from Alliance. It desires to enter into a service contract with Alliance to receive mobile PET services one day per week every other week.

### **ANALYSIS**

The CON law would require a full review of Alliance's proposed addition of Rutherford Hospital as a host site receiving mobile PET services from Alliance's mobile PET scanner if that addition 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 Rutherford Hospital as a host site for

Alliance's mobile PET scanner does not constitute a material change in the physical location or the scope of the proposed project for the following reasons:

Rutherford Hospital will enter into a substantially similar service agreement as that executed by the original host sites previously mentioned.

The new proposed site will comply with all of the requirements of host sites that Alliance represented in its application, and will comply with all of the requirements for a mobile PET site.

The route expansion to include Rutherford Hospital will not affect the scope of services offered by Alliance or the costs, but will allow Alliance to serve an additional host site with the same equipment.

As a result of a decreased demand at Pardee, Alliance is able to modify its route to include Rutherford Hospital to better serve the population in HSA I.

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 addition of Rutherford Hospital in Rutherfordton as a host site receiving mobile PET services from Alliance's mobile PET scanner, Project I.D. No. F-6650-02, 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 the \_\_\_\_\_ day of August, 2008.

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Jeff Horton, Acting 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**

Wallace C. Hollowell, III  
Nelson Mullins Riley & Scarborough, LLP  
Glen Lake One, Suite 200  
4140 Parklake Avenue  
Raleigh, North Carolina 27612

This the \_\_\_\_\_ day of August, 2007.

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Jeff Horton  
Acting Director