

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

**IN RE: REQUEST FOR )  
DECLARATORY RULING BY ALLIANCE )     DECLARATORY RULING  
ONCOLOGY, LLC )**

I, Jeff Horton, Acting Director of the Division of Health Service Regulation (the “Department”), hereby issue this declaratory ruling to Alliance Oncology, LLC (“Petitioner”) pursuant to N.C.G.S. § 150B-4, 10A NCAC 14A.0103, and the authority delegated to me by the Secretary of the North Carolina Department of Health and Human Services. Petitioner has filed a Declaratory Ruling Request (the “Request”) asking the Department to issue a declaratory ruling that Alliance may acquire all of the membership interests of Radiation Services of North Carolina, LLC (“RSNC”) without certificate of need (“CON”) review.

This ruling is binding on the Department and the person requesting it if the material facts stated in the Request are accurate and no material facts have been omitted from the request. The ruling applies only to this request. Except as provided by N.C.G.S. § 150B-4, the Department reserves the right to change the conclusions which are contained in this ruling. Wallace C. Hollowell, III of Nelson Mullins Riley & Scarborough LLP, counsel for Petitioner, has requested this ruling on behalf of Petitioner and has provided the statement of facts upon which this ruling is based. The material facts as provided by counsel for the Petitioner are set out below.

**STATEMENT OF THE FACTS**

Except as noted, the following statement of the facts is based on the representations of the Petitioner in the Request.

Petitioner Alliance Oncology is a North Carolina limited liability company. Petitioner states that Alliance will be acquiring all of the membership interests of RSNC.

RSNC provides linear accelerator and radiation therapy services. Under prior law, because of the provisions in effect at the time, it was not subject to CON review either as an oncology treatment center or in connection with its acquisition of a linear accelerator.

Petitioner represents that ownership of RSNC's linear accelerator will be unaffected by the proposed transaction; it will continue to be owned by RSNC.

### **ANALYSIS**

N.C.G.S. § 131E-178 provides that no person shall offer or develop "a new institutional health service" without first obtaining a CON. N.G.C.S. § 131E-176(16) defines "new institutional health service" to include: (1) "The acquisition by purchase, donation, lease, transfer, or comparable arrangement" of a linear accelerator "by or on behalf of any person," N.G.C.S. § 131E-176(16)f1.5a, and (2) "The obligation by any person of a capital expenditure exceeding two million dollars (\$2,000,000) to develop or expand a health service or a health service facility, or which relates to the provision of a health service," N.C.G.S. § 131E-176(16)b.

The transaction described by the Petitioner does not constitute the acquisition of a linear accelerator by any person because ownership of the linear accelerator here will not change. RSNC will continue to be the owner of this equipment, and RSNC's legal status as a limited liability company will not change.

Similarly, the transaction is not an obligation to develop or expand a health service or a health service facility, since Petitioner represents that RSNC will continue to operate in the same manner and in all material respects as it operated prior to the transaction. In addition, pursuant to S.L. 2005-325, oncology treatment centers are not "health service facilities" for purposes of the CON law.

## CONCLUSION

For the foregoing reasons, assuming the statements of fact in the Request to be true, I conclude that the acquisition by Alliance Oncology, LLC of all of the membership interests of RSNC, in the manner represented by Petitioner in the Request, is not subject to CON review.

This ruling is subject to the condition that, after the transaction, RSNC continues to operate its radiation therapy center in the same manner in which it operated prior to the transaction in all material ways.

This ruling is not intended to address, expand or validate any activities or status of RSNC with respect to the requirements of the CON law as it relates to RSNC. The ruling is limited to the specific facts presented in the Request.

This \_\_\_\_ day of November, 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 a first class, postage prepaid envelope addressed as follows:

**CERTIFIED MAIL**

Wallace C. Hollowell, III  
GlenLake One, Suite 200  
4140 Parklake Avenue  
Raleigh, North Carolina 27612

This \_\_\_\_\_ day of November, 2008.

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Jeff Horton  
Acting Director