

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

**IN RE: REQUESTS FOR DECLARATORY)
RULINGS BY ALLIANCE HEALTHCARE)
SERVICES, INC. (f/k/a ALLIANCE) **DECLARATORY RULING**
IMAGING, INC.))
Project I.D. No. H-6706-02)**

I, Jeff Horton, Acting Director of the Division of Health Service Regulation (the “Department” or the “Agency”), hereby issue this declaratory ruling to Alliance Healthcare Services, Inc. (f/k/a Alliance Imaging, Inc.) (“Alliance”) 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. Alliance has filed two Declaratory Ruling Requests (the “Requests”) asking the Department to issue rulings as to the applicability of Chapter 131E, Article 9 of the North Carolina General Statutes to the facts described below.

This ruling is binding on the Department and the person requesting it if the material facts stated in the Requests are accurate and no material facts have been omitted from the Requests. The ruling applies only to these Requests. 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 and Franklin Scott Templeton of Nelson Mullins Riley and Scarborough, LLP have requested this ruling on behalf of Alliance and have provided the statement of facts upon which this ruling is based. Certain other facts are based on the Department’s files. The material facts are set out below.

STATEMENT OF THE FACTS

Effective 1 May 2003, the Certificate of Need (“CON”) Section issued a CON to Alliance for Project I.D. No. H-6706-02 to acquire a positron emission tomography (“PET”) scanner to provide mobile PET services at “two or more host sites” in HSAs IV, V, and VI. The original approved host sites were Albemarle Hospital in Elizabeth City, Nash Healthcare System in Rocky Mount, Wayne Memorial Hospital in Goldsboro, First Health Moore Regional Hospital in Pinehurst, and Southeastern Regional Medical Center in Lumberton.

As a result of three Declaratory Rulings issued by the Department, Alliance was allowed to add Raleigh Community Hospital in Raleigh, Durham Regional Hospital in Durham, Wilson Medical Center in Wilson, Scotland Memorial Hospital in Laurinburg, and Lenoir Memorial Hospital in Kinston as additional host sites for the PET scanner.

Alliance represents that it currently provides mobile PET services at each of the above host sites except FirstHealth Moore Regional Hospital and Nash Healthcare System, which both terminated their service agreements upon acquiring fixed PET scanners, and Durham Regional Hospital, which ultimately elected not to become a host site.

In its first request submitted May 27, 2009, Alliance proposes to add Johnston Medical Center-Smithfield (“JMC-S”) located at 509 North Brightleaf Boulevard, Smithfield, Johnston County, North Carolina as a host site for its mobile PET scanner one day every other week. Alliance states the addition of JMC-S as a host site will not affect the scope of services offered or the costs and charges to Alliance or to the public of providing mobile PET services. Alliance represents that it will satisfy all the requirements and representations made regarding the host sites in its original CON application and that it will sign a service agreement with JMC-S that is

substantially similar to the agreements signed by its other host sites. Further, JMC-S is within the HSAs for which the CON was issued to Alliance.

In a separate request submitted July 7, 2009, Alliance proposes to add The Outer Banks Hospital (“OBH”) located in Nags Head, Dare County, North Carolina as a host site for its mobile PET scanner one day every other week. Alliance proposes to provide mobile PET services at the JMC-S and OBH host sites on the same day on alternate weeks. Alliance represents that it will satisfy all the requirements and representations made regarding the host sites in its original CON application and that it will sign a service agreement with OBH that is substantially similar to the agreements signed by its other host sites. Alliance states that its provision of services to OBH would not require any new equipment, would not affect the scope of services offered, and would not affect the costs and charges to Alliance or to the public for the provision of mobile PET services. Further, OBH is within the HSAs for which the CON was issued to Alliance.

ANALYSIS

The CON law would require a full review of Alliance’s proposed additions of host sites if those changes were to represent a material change in the physical location or scope of the project. N.C.G.S. § 131E-181(a). The proposed additions of JCM-S and OBH as host sites do not constitute a material change in the physical location or the scope of the proposed project because the use of JMC-S and OBH as host sites will not affect the scope of services offered or the costs and charges to Alliance or to the public for the provision of mobile PET services. Both JMC-S and OBH are within the HSAs for which the CON was issued to Alliance. 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 Requests to be true, I conclude that the additions of JCM-S and OBH as host sites for Alliance's mobile PET 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). Following these additions of JCM-S and OBH as host sites, the Alliance mobile PET scanner will serve Albemarle Hospital (Pasquotank County), Wayne Memorial Hospital (Wayne County), Southeastern Regional Medical Center (Robeson County), Duke Raleigh Hospital (Wake County), Wilson Medical Center (Wilson County), Scotland Memorial Hospital (Scotland County), Lenoir Memorial Hospital (Lenoir County), Johnston Medical Center-Smithfield (Johnston County), and The Outer Banks Hospital (Dare County).

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 21st day of July, 2009.

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
Franklin Scott Templeton
Nelson Mullins Riley & Scarborough, LLP
380 Knollwood-Suite 530
Winston-Salem, NC 27103

This the _____ day of July, 2009.

Jesse Goodman
Acting Chief Operating Officer