

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY ALLIANCEHEALTHCARE) DECLARATORY RULING
SERVICES, INC.)
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 HealthCare Services, Inc. (“Alliance”) has requested a declaratory ruling allowing for the addition of three new host sites to the route of one of its existing mobile positron emission tomography (“PET”) scanners (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). The addition of Presbyterian Hospital Huntersville, Presbyterian Hospital Matthews, and Thomasville Medical Center as host sites for the PET scanner will not violate N. C. Gen. Stat. § 131E-181, and will not constitute a failure to satisfy a condition of the CON in violation of N. C. Gen. Stat. § 131E-189(b) or any of the Rules of the Department.

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. Franklin Scott Templeton and Wallace C. Hollowell, III of Nelson Mullins Riley & Scarborough, LLP have requested this ruling on behalf of Alliance and have provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Alliance was awarded a CON on October 13, 2003 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, High Point Regional Medical Center, and Alamance Regional Medical Center each 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 and Park Ridge Hospital to Alliance's service route do 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.

On August, 12, 2008, Jeff Horton, Acting Director of the Division of Health Service Regulation (formerly the Division of Facility Services) issued a seventh Declaratory Ruling stating that the addition of Rutherford Hospital in Rutherfordton to Alliance's service route does not constitute a material change in the physical location or the scope of the Project.

Because of reduced demand for services at three of its existing host sites, the PET scanner has available time with which it could provide services to other host sites. Presbyterian Hospital Huntersville, Presbyterian Hospital Matthews, and Thomasville Medical Center have requested mobile PET services from Alliance. Each proposed site is a licensed hospital, located in the western PET Planning Region 1 (HSAs I, II and III).

ANALYSIS

The CON law would require a full review of Alliance's proposed additions of Presbyterian Hospital Huntersville, Presbyterian Hospital Matthews, and Thomasville Medical Center as host sites 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 additions of Presbyterian Hospital Huntersville, Presbyterian Hospital Matthews, and Thomasville Medical Center as host sites 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:

Presbyterian Hospital Huntersville, Presbyterian Hospital Matthews, and Thomasville Medical Center will enter into a substantially similar service agreement as that executed by the original host sites previously mentioned. The new proposed sites 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 Presbyterian Hospital Huntersville, Presbyterian Hospital Matthews, and Thomasville Medical Center will not affect the scope of services offered by Alliance or the costs and charges to the public, but will allow Alliance to serve additional host sites with the same equipment.

As a result of a decreased demand at Hugh Chatham Memorial Hospital, Margaret R. Pardee Memorial Hospital and Rutherford Hospital, Alliance is able to modify its route to include Presbyterian Hospital Huntersville, Presbyterian Hospital Matthews, and Thomasville Medical Center to better serve the population in Planning Region 1 (HSA I, II, and III).

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 include Presbyterian Hospital Huntersville, Presbyterian Hospital Matthews, and Thomasville Medical Center as host sites 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 September, 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

Franklin Scott Templeton
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 September, 2009.

Jesse Goodman
Acting Chief Operating Officer