

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

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

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 a Declaratory Ruling Request (the “Request”) asking the Department to issue a ruling 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 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 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 Health Service Areas (“HSA”) IV, V, and VI (the “Project Unit”). These three HSAs constitute the service area for which the Project Unit was approved to serve based on the need determination in the 2002 State Medical Facilities Plan (“SMFP”). 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 four 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, Lenoir Memorial Hospital in Kinston, Johnston Medical Center in Smithfield, and The Outer Banks Hospital in Nags Head as additional host sites for the Project Unit.

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 this request, Alliance proposes to add Carteret General Hospital (“CGH”) in Morehead City, Carteret County, North Carolina as a host site for the Project Unit at least one-half day every other week. Alliance states the addition of CGH 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 CGH that is substantially similar to the agreements signed by its other host sites. Further, CGH is within the service area for the Project Unit.

### **ANALYSIS**

The CON law would require a full review of Alliance's proposed addition of a 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 addition of CGH as a host site does not constitute a material change in the physical location or the scope of the proposed project because the use of CGH 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 PET services. CGH is within the service area for the Project Unit. 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 addition of CGH as a host site for Alliance's mobile PET scanner, Project I.D. No. H-6706-02, (the Project Unit) 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 this addition of CGH as a host site, the Project Unit 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), The Outer Banks Hospital (Dare County), and Carteret General Hospital (Carteret 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 \_\_\_\_\_ day of November, 2009.

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

This the \_\_\_\_\_ day of November, 2009.

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Jesse Goodman  
Acting Chief Operating Officer