

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

**IN RE: REQUEST FOR)
DECLARATORY RULING BY) DECLARATORY RULING
ALLIANCE HEALTHCARE SERVICES,)
INC. AND SMT HEALTH SERVICES, INC.)**

I, Jeff Horton, Acting Director of the Division of Health Service Regulation (the “Department”), hereby issue this declaratory ruling to Alliance HealthCare Services, Inc. (“Alliance”) and SMT Health Services, Inc. (“SMT”) (collectively “Petitioners”) 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. Petitioners also style their Ruling as a “Notice of Exempt Acquisition of Replacement Equipment.” In addition, Petitioners by letter dated 22 April 2010 submitted a revised services agreement in support of the ruling sought by this Request. For the reasons given below, I conclude that Petitioners’ requested ruling should be granted.

This ruling is binding on the Department and the persons 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 that are contained in this ruling. Franklin Scott Templeton and Wallace C. Hollowell of Nelson Mullins Riley & Scarborough, LLP has requested this ruling on behalf of Petitioners and has provided the statement of facts upon which this ruling is based. The material facts as provided by counsel for Petitioners and as shown in records of the Department are set out below.

STATEMENT OF THE FACTS

Petitioners state that SMT is a wholly owned subsidiary of Alliance. Petitioners represent that prior to changes in the Certificate of Need (“CON”) law that were effective 18 March 1993, SMT owned and operated a mobile MRI scanner in North Carolina (the “Removed Unit”). The Removed Unit did not require a CON at the time it was acquired, and therefore, for the Removed Unit, Petitioners do not have a CON with which they are now required to materially comply. Petitioners state that the Removed Unit is I.D. No. 1JJV482W22L760837. In 1999, Alliance acquired SMT, a mobile diagnostic program and all MRI scanners owned by SMT.

Alliance states that it currently provides MRI scanner services to Atlantic Diagnostic Center in Burlington, Alamance County for four days per week and to Piedmont HealthCare in Mooresville, Iredell County one day per week with the Removed Unit.

Petitioners state that because of the age of the Removed Unit, they intend to replace it with a new fixed MRI scanner (the "Replacement Unit"). They intend that the Request serve as notice of the exempt acquisition of replacement equipment pursuant to N.C. Gen. Stat. § 131E-184(a)(7). They intend to install the Replacement Unit at Raleigh Neurology Associates, P.A. (“Raleigh Neurology”), an existing diagnostic center located at 1520 Sunday Drive in Raleigh, Wake County. Following the acquisition of the Replacement Unit, Petitioners intend to continue to provide mobile MRI services to Atlantic Diagnostic and Piedmont HealthCare via another one of Petitioners’ grandfathered scanners.

Petitioners state that the MRI services provided by the Replacement Unit will be subject to an MRI Services Agreement between Alliance and Raleigh Neurology, and technologists employed by Alliance will provide the services under that Agreement. At all times, Alliance will

remain the owner of this equipment and will simply provide MRI services to Raleigh Neurology using this equipment. Following acquisition of the Replacement Unit, Petitioners state that they will sell or otherwise dispose of the Removed Unit. Petitioners will remove the Removed Unit from North Carolina, and this equipment will not be used in North Carolina without first obtaining a CON.

Petitioners project that the total costs for this project will be \$1,655,951. Petitioners submitted a breakdown of these costs on a Proposed Capital Cost Form and the cost estimate was certified by Raleigh Neurology's architect. The costs include costs for both Petitioners and for Raleigh Neurology.

Petitioners represent that both the Replacement Unit and the Removed Unit are used for the exact same diagnostic purposes; namely, to perform MRI scans. Petitioners also represent that use of the Replacement Unit will not result in more than a 10% increase in per procedure operating expenses within the first twelve months after the replacement equipment is acquired. In addition, Petitioners state that Raleigh Neurology has confirmed that use of the Replacement Unit will not result in more than a 10% increase in patient charges within the first twelve months after the replacement equipment is acquired.

ANALYSIS

Unless otherwise exempt, the acquisition of the Replacement Unit by the Petitioners would constitute a new institutional health service pursuant to N.C.G.S. § 131E-176(16)(f)(7). This acquisition will be exempt from CON review pursuant to N.C.G.S. § 131E-184(a)(7) if it constitutes the acquisition of replacement equipment. “Replacement equipment” is defined as “equipment that costs less than two million dollars (\$2,000,000) and is purchased for the sole

purpose of replacing comparable medical equipment currently in use which will be sold or otherwise disposed of when replaced.” N.C.G.S. § 131E-176(22a).

As described in the Statement of Facts, Petitioners represent that the Replacement Unit will cost less than two million dollars. It is “comparable equipment” because it has the same technology as the Removed Unit, it is functionally similar to the Removed Unit and is to be used to for the same diagnostic purposes, and Petitioners represent that the acquisition will not result in more than a 10% increase in patient charges or per procedure operating expenses within the first twelve months after the replacement equipment will be acquired. 10A N.C.A.C. 14C.0303(c). In addition, Petitioners represent that the Removed Unit is currently in use and, after acquisition of the Replacement Unit, will be removed from North Carolina and will not be used in North Carolina without a CON.

Because Petitioners will continue to own and operate the Replacement Unit, and Petitioners will be providing services to Raleigh Neurology pursuant to a services agreement similar to those used for mobile MRI services, this transaction does not constitute a change in ownership that would constitute an acquisition of a new institutional health service by Raleigh Neurology. Under the terms of the services agreement, Petitioners will provide technologists for the operation of the equipment, will provide for maintenance of the equipment, and will be free to remove the Replacement Unit from Raleigh Neurology’s offices at the end of the services agreement to serve other host sites. No other provisions of the law require Petitioners to obtain a CON for their proposed transaction.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the Request to be true, I conclude that Petitioners do not require a CON to replace the Removed Unit with the

Replacement Unit, and to install the Replacement Unit in the Raleigh Neurology facility. This ruling is conditioned on the costs of the project remaining as represented by Petitioners, and upon Petitioners entering into a services agreement with Raleigh Neurology on the terms of the draft revised agreement submitted to the Department on 22 April 2010.

This ____ day of April, 2010.

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

Franklin Scott Templeton
Wallace C. Hollowell, III
Nelson Mullins Riley & Scarborough, LLP
380 Knollwood Street, Suite 530
Winston-Salem, North Carolina 27103

This _____ day of April, 2010.

Jesse B. Goodman
Chief Operating Officer