

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY ALLIANCE HEALTHCARE)
SERVICES, INC. d/b/a ALLIANCE) DECLARATORY RULING
IMAGING)**

I, Drexdal Pratt, as 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 to me by the Secretary of the Department of Health and Human Services.

Alliance Healthcare Services, Inc. d/b/a Alliance Imaging (hereinafter “Alliance”) has requested a declaratory ruling allowing for the replacement of one of its existing, grandfathered mobile MRI scanners with a new MRI scanner pursuant to N.C. Gen. Stat. § 131E-184(a)(7), which it proposes to place inside an existing diagnostic center owned by Wake Radiology Services, LLC (“Wake Radiology”), located at the Wake Radiology Services, LLC Garner Office, 300 Health Park, Garner, North Carolina 27529 (“Wake Radiology-Garner”). 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. Joy Heath of the Law Office of Joy Heath has requested this ruling on behalf of Alliance and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

By letter dated October 4, 2011, Alliance provided Written Notice of its intent to exchange SIGNA 224 with SIGNA 294 such that SIGNA 224 would become a replacement grandfathered MRI scanner.

Alliance now intends to replace its grandfathered MRI scanner SIGNA 224, Serial Number 1LH152UH011284 (the "Removed Unit") with a new MRI scanner (the "Replacement Unit"). The Removed Unit was acquired in October 2001, and currently serves various host sites in North Carolina.

Alliance currently provides MRI services to Wake Radiology. Wake Radiology has requested that Alliance provide MRI services with the Replacement Unit at Wake Radiology's diagnostic center in Garner.

Following the acquisition of the Replacement Unit, Alliance intends to install the Replacement Unit inside Wake Radiology-Garner. These MRI services will be provided pursuant to an addendum to the standard Alliance MRI services agreement between Alliance HealthCare Services, Inc. d/b/a Alliance Imaging and Wake Radiology Diagnostic Imaging, Inc. At all times, Alliance will remain the owner of the Replacement Unit and will provide MRI services to Wake Radiology using the new equipment.

Alliance projects that the total costs for this project will be \$1,376, 945. Alliance will be incurring costs related to the MRI equipment of \$1,084,820. Wake Radiology will be incurring costs related to upfitting existing space where the unit will be installed. Wake Radiology's projected costs related to this project are \$292,125.

ANALYSIS

Although the acquisition of the Replacement Unit would otherwise constitute a new institutional health service pursuant to N.C. G. S. §§ 131E-176(16)(f1)(7), this acquisition is exempt from CON review pursuant to N.C. Gen. Stat. § 131E-184(a)(7) because this is the acquisition of “replacement equipment.”

“Replacement equipment” means 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. Gen. Stat. § 131E-176(22a).

As described above, the total cost for this project is projected to be \$1,376,945. The Replacement Unit is functionally similar to, and will be used for the same diagnostic purposes as, the Removed Unit. Following acquisition of the Replacement Unit, Alliance will sell or otherwise dispose of the Removed Unit in a manner consistent with the CON law. Alliance will remove the Removed Unit from North Carolina, and this equipment will not be thereafter used in North Carolina without first obtaining a CON.

The proposed project also does not constitute a new institutional health service because Wake Radiology will not be acquiring an MRI as a result of this project. See N.C. Gen. Stat. § 131E-176(16)(f1)(7). Wake Radiology will be utilizing the MRI in Garner per the terms of a services agreement, similar to agreements used throughout the State by Alliance and other mobile providers. Since Wake Radiology-Garner is already an existing diagnostic center, there is no issue regarding whether installing the Replacement Unit inside that office would convert that location to a diagnostic center.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude Alliance's acquisition of the Replacement Unit is exempt from CON review, and that this project does not constitute a "new institutional health service" as defined in N.C. Gen. Stat. § 131E-176(16).

This the _____ day of December, 2011.

Drexdal Pratt, 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

Joy Heath, Esq.
Law Office of Joy Heath
514 Daniels Street, Suite 182
Raleigh, NC 27605

This the _____ day of December, 2011.

Jeff Horton
Chief Operating Officer