

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY ALLIANCE IMAGING, INC.) DECLARATORY RULING
Project I.D. F-6550-02)**

I, Robert J. Fitzgerald, as Director of the Division of Facility Services, North Carolina Department of Health and Human Services (“Department”), 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 Imaging, Inc. (“Alliance”) has requested a declaratory ruling allowing for an additional host site for Project I.D. No. F-6550-02 on the grounds that the change does not constitute a material change in 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). 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. Terrill Johnson Harris of Smith Moore LLP has requested this ruling on behalf of Alliance and has 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. No. F-6650-02. The proposed host sites named in the application include High Point Regional Medical Center, High Point; NorthEast Medical Center, Concord; Rowan Regional Medical Center, Salisbury; Alamance Regional Medical Center, Burlington; Cleveland Regional Medical Center, Shelby; Grace Hospital, Morganton; Valdese General Hospital, Rutherford College; and Watauga Medical Center, Boone.

Alliance represents that it currently provides mobile PET services to each of the host sites listed above with the exception of NorthEast Medical Center and High Point Regional Medical Center, both of which have acquired a fixed PET scanners. Through previous Declaratory Rulings, Alliance has received approval to add the following sites to the service route for this project: Hugh Chatham Memorial Hospital, Harris Regional Hospital, Northern Hospital of Surry County, Margaret R. Pardee Memorial Hospital, Park Ridge Hospital and Carolinas Medical Center – Union. Alliance represents that because of a decrease in the number of patients requiring mobile PET services at Valdese General Hospital and Grace Hospital, it is able to serve an additional site. It represents that Lake Norman Medical Center (“Lake Norman”) in Mooresville, Iredale County, North Carolina, has expressed an interest in obtaining mobile PET services from Alliance on a regular schedule.

Alliance represents that Lake Norman has requested one day of service every other week. Alliance further represents that Lake Norman satisfies all of the requirements for a mobile PET host site and that its request to add this site complies with the representations it made in its application regarding proposed host sites. Lake Norman is located in PET scanner planning

region 1, the area to be served by the CON that was granted. Alliance further represents that Lake Norman will sign a service agreement substantially similar to those signed by other host sites.

Alliance seeks a declaration that a modification of its approved host sites to include Lake Norman on alternate Mondays would not constitute a material change in the scope of Project I.D. No. F-6550-02.

ANALYSIS

The CON law would require a full review of Alliance's proposed change of host sites 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). However, the proposed addition of this host site for Alliance's project does not constitute a material change in the physical location or the scope of the proposed project for the following reasons:

Rule 10A N.C.A.C. 14C.3702 provides as follows:

- (b) An applicant proposing to acquire a PET scanner, including a mobile PET scanner, shall provide the following information for each facility where the PET scanner will be operated:

- (2) Documentation that all of the following services were provided, at each facility where the PET scanner will be operated, continuously throughout the 12 months immediately prior to the date on which the application is filed:
 - (A) nuclear medicine imaging services;
 - (B) single photon emission computed tomography (including brain, bone, liver, gallium and thallium stress);
 - (C) magnetic resonance imaging scans;
 - (D) computerized tomography scans;
 - (E) cardiac angiography;
 - (F) cardiac ultrasound; and
 - (G) neuroangiography.

- (d) An applicant proposing to acquire a mobile PET scanner shall

demonstrate that each host facility offers or contracts with a hospital that offers comprehensive cancer services including radiation oncology, medical oncology, and surgical oncology.

Alliance submitted documentation demonstrating that the proposed new host site, Lake Norman, complies with the requirements of 10A N.C.A.C. 14C.3702. Alliance has represented in its request that this hospital satisfies all the requirements for a mobile PET scanner host site. Consequently, there would not be any violation of the CON Statute by permitting the proposed addition of this host site.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the change of the host sites for Alliance's western mobile PET scanner, Project I.D. No. F6650-02, 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 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 September, 2006.

Robert J. Fitzgerald, Director
Division of Facility Services
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

Terrill J. Harris
William R. Forstner
Smith Moore LLP
Post Office Box 21927
Greensboro, NC 27612

This ____ day of September, 2006.

Jeff Horton
Chief Operating Officer