

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

**IN RE: REQUEST FOR ) AMENDED  
DECLARATORY RULING BY ALLIANCE ) DECLARATORY RULING  
ONCOLOGY, LLC )**

I, Jeff Horton, Acting Director of the Division of Health Service Regulation (the “Department”), hereby issue this amended declaratory ruling to Alliance Oncology, LLC (“Petitioner”) 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. Petitioner has requested by letter dated November 20, 2008 the Department to issue a declaratory ruling amending the ruling issued on November 12, 2008 that Alliance may acquire all of the membership interests of Radiation Services of North Carolina, LLC (“RSNC”) without certificate of need (“CON”) review.

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 of Nelson Mullins Riley & Scarborough LLP, counsel for Petitioner, has requested this ruling on behalf of Petitioner and has provided the statement of facts upon which this ruling is based. The material facts as provided by counsel for the Petitioner are set out below.

**STATEMENT OF THE FACTS**

Except as noted, the following statement of the facts is based on the representations of the Petitioner in the Request.

Petitioner Alliance Oncology is a North Carolina limited liability company. Petitioner states that Alliance will be acquiring all of the membership interests of RSNC. RSNC provides linear accelerator and radiation therapy services.

RSNC currently owns a Siemens 6700 linear accelerator, which it acquired in 1999. By letter dated July 29, 1999 the CON Section confirmed that RSNC's acquisition of this linear accelerator did not require a CON because the cost of acquiring the linear accelerator and making it operational was under the \$250,000 threshold for "oncology treatment centers."

Petitioner represents that ownership of RSNC's linear accelerator will be unaffected by the proposed transaction; it will continue to be owned by RSNC.

### **ANALYSIS**

N.C.G.S. § 131E-178 provides that no person shall offer or develop "a new institutional health service" without first obtaining a CON. N.G.C.S. § 131E-176(16) defines "new institutional health service" to include: (1) "The acquisition by purchase, donation, lease, transfer, or comparable arrangement" of a linear accelerator "by or on behalf of any person," N.G.C.S. § 131E-176(16)f1.5a, and (2) "The obligation by any person of a capital expenditure exceeding two million dollars (\$2,000,000) to develop or expand a health service or a health service facility, or which relates to the provision of a health service," N.C.G.S. § 131E-176(16)b.

The transaction described by the Petitioner does not constitute the acquisition of a linear accelerator by any person because ownership of the linear accelerator here will not change. RSNC will continue to be the owner of this equipment, and RSNC's legal status as a limited liability company will not change.

Similarly, the transaction is not an obligation to develop or expand a health service or a health service facility. In addition, pursuant to S.L. 2005-325, oncology treatment centers are not “health service facilities” for purposes of the CON law.

### **CONCLUSION**

For the foregoing reasons, assuming the statements of fact in the Request to be true, I conclude that the acquisition by Alliance Oncology, LLC of all of the membership interests of RSNC, in the manner represented by Petitioner in the Request, is not subject to CON review.

This ruling is not intended to address, expand or validate any activities or status of RSNC with respect to the requirements of the CON law as it relates to RSNC. The ruling is limited to the specific facts presented in the Request.

This ruling supersedes the declaratory ruling issued on November 12, 2008 to Alliance Oncology, LLC.

This \_\_\_\_ day of December, 2008.

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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 a first class, postage prepaid envelope addressed as follows:

**CERTIFIED MAIL**

Wallace C. Hollowell, III  
GlenLake One, Suite 200  
4140 Parklake Avenue  
Raleigh, North Carolina 27612

This \_\_\_\_\_ day of December, 2008.

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Jesse B. Goodman  
Acting Chief Operating Officer