

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

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| IN RE: REQUEST FOR DECLARATORY |) | |
| RULING BY ALLIANCE HEALTHCARE |) | |
| SERVICES, INC. (f/k/a ALLIANCE |) | DECLARATORY RULING |
| IMAGING, INC.) |) | |
| Project I.D. No. F-7001-04 |) | |

I, Jeff Horton, as Acting 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 me by the Secretary of the Department of Health and Human Services.

Alliance Healthcare Services, Inc. (hereinafter “Alliance”) has requested a declaratory ruling allowing for a change in locations for Project I.D. No. F-7001-04 on the grounds that the change does not constitute a material change in scope or 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. Franklin Scott Templeton and Wallace C. Hollowell, III of Nelson Mullins Riley & Scarborough, LLP have requested this ruling on behalf of Alliance and have provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Alliance was issued a CON on March 8, 2005 to acquire a mobile MRI scanner as proposed in Project I.D. F-7001-04 (“CON Mobile MRI Scanner”). The initial host sites named in the CON application were Doshier Hospital in Southport, Pender Hospital in Burgaw, and Delaney Radiology at 8115 Market Street (“Delaney-Market Street”) in Wilmington.

As a result of two declaratory rulings subsequently requested by Alliance, the CON mobile MRI scanner currently provides services at Doshier Hospital, Delaney-Market Street, and Wilmington Orthopaedic in Wilmington.

The CON mobile MRI scanner also serves Delaney at its 1025 Medical Center Drive (“Delaney-Medical Center”) site and 2800 Ashton Drive (“Delaney-Ashton”) site, both in Wilmington. Declaratory Rulings authorizing the addition of Delaney-Ashton and Delaney-Medical Center as host sites were not obtained prior to adding them to the new CON mobile MRI scanner’s route.

Originally, Alliance and Delaney had entered into an MRI Services Agreement in May 2004 to provide MRI services at Delaney-Market Street on a grandfathered mobile MRI scanner. Under that same agreement, Delaney-Ashton was added as a host site to the grandfathered MRI scanner in February 2005. Thus, when the CON was issued in March 2005 for the new mobile MRI scanner, Alliance was already serving the Delaney-Market Street and Delaney-Ashton sites. After issuance of the CON for the new mobile MRI scanner, the new CON mobile MRI scanner began serving the two existing Delaney sites that had been served by the grandfathered MRI scanner since they were both covered under the same MRI Services Agreement with Alliance.

Delaney-Medical Center was added as a host site to the new CON mobile MRI scanner in July 2007.

On February 12, 2009, the Department issued a declaratory ruling allowing Alliance to place an existing grandfathered mobile MRI scanner used in another area of the State with a fixed MRI scanner to be located at Doshier Hospital which received two days of service on the CON mobile MRI scanner. As a result of this prior declaratory ruling, Alliance would discontinue providing services to Doshier with the CON mobile MRI scanner and consequently free up two days per week for it to serve other host sites.

Alliance seeks to add two host sites operated by Atlantic Diagnostic Center, P.A. (“ADC”) to the CON mobile MRI scanner’s route, 1135 Military Cutoff (“ADC-Landfall”) and 2208 South 17th Street (“ADC-17th Street”).

Alliance also seeks approval to continue serving the Delaney-Medical Center and Delaney-Ashton Drive sites with the same CON mobile MRI scanner.

ANALYSIS

N.C.G.S. § 131E-181(a) states:

A certificate of need shall be valid only for the defined scope, physical location, and person named in the application.

N.C.G.S. § 131E-181(b) further provides that:

A recipient of a certificate of need, or any person who may subsequently acquire, in any manner whatsoever permitted by law, the service for which that certificate of need was issued, is required to materially comply with the representations made in its application for that certificate of need. The Department shall require any recipient of a certificate of need, or its successor, whose service is in operation to submit to the Department evidence that the recipient, or its successor, is in material compliance with the representations made in its application for the certificate of need which granted the recipient the right to operate that service.

Thus, the CON law requires a full review of Petitioners' proposal when it represents a material change in the physical location, scope of the project or person named in the application. The proposed changes in location of the CON mobile MRI scanner do not constitute material changes in the physical location or the scope of the proposed project for the following reasons.

ADC currently receives services on two of Alliance's grandfathered mobile MRI scanners at the two proposed host sites. Thus, the two ADC host sites already have the required mobile MRI pad and utility connections and an existing MRI Services Agreement with Alliance. Changing the two ADC host sites from the grandfathered mobile MRI scanners to the CON mobile MRI scanner will allow Alliance to more efficiently manage the routes of its scanners.

The addition of the two ADC sites to the CON mobile MRI scanner's route will not affect the scope of services offered or the costs and charges to Alliance or to the public for the provision of mobile MRI services. Except for the deletion of Doshier Hospital and the addition of the two ADC sites, the CON mobile MRI scanner's route will otherwise not change. As a result of the addition of the ADC host sites, the route for the CON mobile MRI scanner will be entirely located in Wilmington, which will enable Alliance to maximize utilization and minimize travel times for this equipment.

With regard to the Delaney sites, Alliance had an MRI Services Agreement with Delaney and served the Delaney-Ashton site on grandfathered MRI scanners before the CON for the new mobile MRI scanner was issued in March 2005. The Delaney-Medical Center site was added to the MRI services agreement in 2007 and also to the route of the CON mobile MRI scanner because the other two Delaney sites in the same MRI Services Agreement were served by this MRI scanner. Alliance's provision of services at Delaney-Ashton and Delaney-Medical Center has been routinely reported on the periodic inventory reports provided to the Department.

Delaney-Ashton and Delaney-Medical Center sites which are currently being served on the CON mobile MRI scanner already have the required mobile MRI pad and utility connections. The addition of the two Delaney sites already in use will not affect the scope of services offered, or the costs or charges to Alliance or to the public for the provision of mobile MRI services.

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 substitution of the ADC-Landfall and the ADC-17th Street host sites for Doshier Hospital, and the addition of the Delaney-Ashton and Delaney-Medical Center host sites, for Project I.D. No. F-7001-04 will not and do 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 and do not constitute a failure to satisfy a condition of the CON in violation of N.C.G.S. § 131E-189(b).

This the _____ day of June, 2009.

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 pre-paid envelope addressed as follows:

CERTIFIED MAIL

Franklin Scott Templeton
Wallace C. Hollowell, III
Nelson Mullins Riley & Scarborough, LLP
Glen Lake One, Suite 200
4140 Parklake Avenue
Raleigh, North Carolina 27612

This the 15th day of June, 2009.

Jesse Goodman
Acting Chief Operating Officer