

**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) DECLARATORY RULING
SERVICES, 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 it to add three additional host sites 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, counsel for Alliance, have requested this ruling on behalf of Alliance and have provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Effective March 8, 2005, the CON Section issued a CON to Alliance for Project I.D. No.F-7001-04 to acquire a mobile magnetic resonance imaging (“MRI”) scanner (the “Project Unit”) to provide MRI services at “at least two” host sites. The initial host sites named in the CON application were J. Arthur Doshier Hospital in Southport (“Doshier site”), Pender Memorial Hospital in Burgaw (“Pender site”), and Delaney Radiology at 8115 Market Street in Wilmington (“Delaney-Market Street site”).

As a result of four declaratory rulings subsequently requested by Alliance and issued by the Department, the Project Unit currently provides services at six host sites: (1) Atlantic Diagnostic Center, PA on Military Cutoff Road, (2) Atlantic Diagnostic Center, PA on 17th Street, (3) Delaney Radiologists Group, PLLC on Medical Center Drive, (4) Delaney Radiologists Group, PLLC on Ashton Drive, (5) Delaney Radiologists Group, PLLC on Market Street, and (6) Wilmington Orthopaedic Group, PA on Ashton Drive. All of the current host sites are located in Wilmington, New Hanover County.

In this request, Alliance seeks to add three additional host sites for its mobile MRI scanner. The proposed host sites are: (1) Duplin General Hospital in Duplin County, (2) Atlantic Radiology Associates-Chadbourn in Columbus County, and (3) New Hanover Regional Medical Center (“NHRMC”) Health and Diagnostics-Brunswick Forest in Leland, Brunswick County (collectively the “Proposed Sites”).

NHRMC acquired the two Atlantic Diagnostic Center, PA sites and the Delaney Radiologists Group site on Market Street currently served by the Project Unit. Those three sites now operate under the name “NHRMC Health and Diagnostics.” During the acquisition process,

Alliance temporarily suspended services to the NHRMC sites in Wilmington, but will be resuming services at those locations in the near future.

The NHRMC Health and Diagnostic-Brunswick Forest site in Leland is a new site which is expected to be certified for occupancy on or about March 29, 2010. In addition, Alliance represents that, as of February 28, 2010, it will no longer be providing mobile MRI services to the Delaney Radiologists Group, LLC sites on Medical Center Drive and Ashton Drive.

Alliance states that all of the Proposed Sites will have the required mobile pad and utility connections, and will comply with the mobile MRI host sites requirements in 10A N.C.A.C. 14C.2705. Alliance represents that adding the Proposed Sites will not result in any changes in the scope of services offered or any increase in costs to patients for its mobile MRI services. Alliance further represents that it will comply with all conditions of its CON and all applicable regulations.

ANALYSIS

The CON law would require a full review of Alliance's proposed addition of three new 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). The proposed addition of the Proposed Sites does not constitute a material change in the physical location or the scope of the proposed project because the use of the Proposed Sites as host sites 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. In its CON application, Alliance defined its service area as Bladen, Brunswick, New Hanover, Pender and Sampson Counties, all of which are in Health Service Area ("HSA") V. Columbus County is in HSA V and is contiguous with Bladen, Brunswick, and Pender Counties. Duplin County is in HSA VI and is contiguous with Pender and Sampson Counties. Thus, all of the Proposed

Sites are in Eastern North Carolina and are located in counties that are contiguous with one or more of the counties in Alliance's defined service area in its CON application. In addition, there is no proposed change in the person named in the application that would result in a violation of N.C.G.S. § 131E-181(a).

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 addition of the Proposed Sites as host sites for Alliance's mobile MRI scanner, Project I.D. No.F-7001-04, 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). Following this addition of the three Proposed Sites, the Alliance mobile MRI scanner will serve Duplin General Hospital (Duplin County), NHRMC Health and Diagnostics-Brunswick Forest (Brunswick County), Wilmington Orthopaedic Group, PA (New Hanover County), NHRMC Health and Diagnostics-17th Street (New Hanover County), and NHRMC Health and Diagnostics-Porters Neck on Market Street (New Hanover County).

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 _____, 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 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 _____ day of _____, 2010.

Jesse Goodman
Acting Chief Operating Officer