

**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. No. H-6706-02         )**

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. H-6706-02 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). For the reasons stated below, I must deny this request.

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. Wallace C. Hollowell, III, of Nelson Mullins Riley & Scarborough, 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 May 1, 2003, to acquire a mobile PET/CT scanner to serve the eastern part of the State, as set forth in Project I.D. No. H-6706-02

(“Eastern PET Scanner”). The application for the Eastern PET Scanner was approved in accordance with the need determination in the 2002 State Medical Facilities Plan (“2002 SMFP”) for one mobile PET scanner in PET Planning Region 2, which includes Health Service Areas IV, V, and VI. The host sites named in that application are all located in PET Planning Region 2 and include Albemarle Hospital, Elizabeth City; Nash Healthcare System, Rocky Mount; Wayne Memorial Hospital, Goldsboro; FirstHealth Moore Regional, Pinehurst; and Southeastern Regional Medical Center, Lumberton. Through subsequent declaratory rulings, Alliance was permitted to extend services to the following sites: Raleigh Community Hospital, Raleigh; Durham Regional Hospital, Durham; Wilson Medical Center, Wilson; Scotland Memorial Hospital, Laurinburg; and Lenoir Memorial Hospital, Kinston. Alliance represents that it currently provides mobile PET/CT services to each of the host sites listed above except Durham Regional Hospital and FirstHealth Moore Regional Hospital.

Alliance states that Alamance Regional Medical Center (“Alamance”) in Burlington currently receives services from Alliance’s other mobile PET scanner, Project I.D. F-6650-02 (“Western PET Scanner”). According to Alliance, Alamance has expressed an interest in obtaining additional days of mobile PET service from Alliance. Alliance states it does not have available capacity on the Western PET Scanner, but represents that the Eastern PET Scanner has available capacity to provide services to Alamance one day every other week.

Alliance seeks a declaration that a modification of the approved host sites for the Eastern PET Scanner to include Alamance would not constitute a material change in the scope of Project I.D. No. H-6706-02.

## 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).

The 2002 SMFP states: *“there is a need for one (1) mobile dedicated PET scanner that would provide services at host sites located within Positron Emission Tomography (PET) Scanners Planning Region 1 consisting of HSAs I, II, and III and there is a need for one 1) mobile dedicated PET scanner that would provide services at host sites located within Positron Emission Tomography (PET) Scanners Planning Region 2 consisting of HSAs IV, V, and VI.”* 2002 SMFP, p. 116. The CON for the Eastern Scanner was issued to Alliance based on conformance of the application with the need determination for PET Planning Region 2 (HSAs IV, V and VI).

All of the current host sites for the Eastern PET Scanner are located in Health Service Areas IV, V and VI. The proposed host site is located in Alamance County which is in Health Service Area II. 2002 SMFP, Appendix A, p. 323. The proposed host site is located outside PET Planning Region 2 which is the geographic area for which the need for the Eastern PET scanner was determined. The proposed host site in Alamance would constitute a material change in the physical location of the project because it is not conforming with the provisions of the need determination for PET Planning Region 2, in the 2002 SMFP.

## CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the addition of Alamance as a new host site for Alliance's eastern mobile PET/CT

scanner, Project I.D. No. H-6706-02, would constitute a material change in the physical location named in the CON application. Alliance's request, therefore, is denied.

This the \_\_\_\_\_ day of May, 2007.

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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**

Wallace C. Hollowell, III  
Nelson Mullins Riley & Scarborough, LLP  
GlenLake One, Suite 200  
4140 Parklake Avenue  
Raleigh, NC 27612

This the 8<sup>th</sup> day of May, 2007.

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Jeff Horton  
Chief Operating Officer