

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

**IN RE: REQUEST FOR)
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 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 filed a Declaratory Ruling Request (the “Request”) asking the Department to issue a declaratory ruling that Alliance may acquire all of the membership interests of Ahoskie Imaging, LLC (“Ahoskie Imaging”) 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 Ahoskie Imaging, LLC.

Ahoskie Imaging owns a 1991 Cascade/Huestis radiographic and fluoroscopic simulator. Ahoskie Imaging acquired its simulator in 2002.

Ahoskie Imaging does not own a linear accelerator or any other medical equipment.

Petitioner represents that Ahoskie Imaging will continue to exist as the same corporate entity and will continue to run the same simulator.

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 simulator by any person because ownership of the simulator here will not change. Ahoskie Imaging will continue to be the owner of this equipment, and Ahoskie Imaging’s legal status as a limited liability company will not change.

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 Ahoskie Imaging, LLC in the manner represented by Petitioner in the Request, is not subject to CON review.

This ruling is not intended to address and makes no findings as to whether the simulator currently owned by Ahoskie Imaging was lawfully acquired in 2002.

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

This ____ day of December, 2008.

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.

Jesse B. Goodman
Acting Chief Operating Officer