

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

IN RE: REQUEST FOR DECLARATORY)	
RULINGS BY ALLIANCE HEALTHCARE)	
SERVICES, INC. (f/k/a ALLIANCE)	DECLARATORY RULING
IMAGING, INC.))	
Project I.D. No. H-6706-02)	
Project I.D. No. H-6750-02)	

I, Jeff Horton, Acting Director of the Division of Health Service Regulation (the “Department” or the “Agency”), hereby issue this declaratory ruling to Alliance Healthcare Services, Inc. (f/k/a Alliance Imaging, Inc.) (“Alliance”) 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. Alliance has filed a Declaratory Ruling Request (the “Request”) asking the Department to issue a ruling as to the applicability of Chapter 131E, Article 9 of the North Carolina General Statutes to the facts described below. For the reasons given below, I conclude that I must deny Alliance’s requested ruling.

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 and Franklin Scott Templeton of Nelson Mullins Riley and Scarborough, LLP have requested this ruling on behalf of Alliance and have provided the statement of facts upon which this ruling is based. Certain other facts are based on the Department’s files. The material facts are set out below.

STATEMENT OF THE FACTS

The 2002 State Medical Facilities Plan (“SMFP”) included an adjusted need determination for two mobile positron emission tomography (“PET”) scanners, one to serve host sites in the western PET Planning Region 1 which includes HSAs I, II, and III and one to serve host sites in the eastern PET Planning Region 2 which includes HSAs IV, V, and VI. The adjusted need determination specified that “an applicant may propose to provide services at host sites located anywhere within the specified region”.

A. The Eastern Scanner

Effective 1 May 2003, the CON Section issued a CON to Alliance for Project I.D. No. H-6706-02 to acquire a PET scanner to provide PET services at host sites in the eastern part of the State (the “Eastern Scanner”). The original approved host sites were Albemarle Hospital in Elizabeth City, Nash Healthcare System in Rocky Mount, Wayne Memorial Hospital in Goldsboro, First Health Moore Regional Hospital in Pinehurst, and Southeastern Regional Medical Center in Lumberton.

As a result of three Declaratory Rulings issued by the Department, Alliance was allowed to add Raleigh Community Hospital in Raleigh, Durham Regional Hospital in Durham, Wilson Medical Center in Wilson, Scotland Memorial Hospital in Laurinburg, and Lenoir Memorial Hospital in Kinston as additional host sites for the Eastern Scanner.

Alliance represents that it currently provides mobile PET services at each of the above host sites except FirstHealth Moore Regional Hospital, which terminated its services agreement upon acquiring a fixed PET scanner, and Durham Regional Hospital, which ultimately elected not to become a host site.

B. The Western Scanner

Effective 13 October 2003, the CON Section issued a CON to Alliance for Project I.D. No. H-6650-02 to acquire a PET scanner to provide PET services at host sites located in HSAs I, II, and III in the western part of the State (the “Western Scanner”). The original approved host sites were, at a minimum, High Point Regional Medical Center in High Point, NorthEast Medical Center in Concord, and Rowan Regional Medical Center in Salisbury. The conditions of the CON allowed Alliance to add certain additional host sites without making a request to the Department. These additional host sites were limited to: Alamance Regional Medical Center in Burlington, Cleveland Regional Medical Center in Shelby, Grace Hospital in Morganton, Watauga Medical Center in Boone, and Valdese Hospital in Rutherford College.

As a result of multiple Declaratory Rulings issued by the Department, Alliance was allowed to add Hugh Chatham Memorial Hospital in Elkin, Harris Regional Hospital in Sylva, Northern Hospital of Surry County in Mount Airy, Margaret R. Pardee Memorial Hospital in Hendersonville, Park Ridge Hospital in Hendersonville, Carolinas Medical Center-Union in Monroe, Lake Norman Regional Medical Center in Mooresville, Caldwell Memorial Hospital in Lenoir, and Rutherford Hospital in Rutherfordton as additional host sites for the Western Scanner.

Alliance represents that it currently provides mobile PET services at each of the above host sites except Alamance Regional Medical Center, NorthEast Medical Center, and High Point Regional Medical Center, which have each acquired a fixed PET scanner.

In this request, Alliance submits two proposals: (1) to add Rowan Regional Medical Center in Salisbury (a host site already served by the Western Scanner) as a host site for the Eastern Scanner, and (2) to allow its two existing PET scanners (the Eastern Scanner and the Western Scanner) to “cross cover” for each other on an as-needed basis without requiring specific authorization from the Department, and to permit either scanner to serve any approved host site for either scanner when Alliance deems it appropriate. Alliance represents that the Western Scanner is currently operated at the Rowan Regional Medical Center site every Thursday. Alliance further represents that Rowan Regional has requested additional days of mobile PET services, but the Western Scanner is currently incapable of providing additional days of service at Rowan Regional.

ANALYSIS

The CON law requires a full review of Alliance’s proposals when they represent a material change in the physical locations or scopes of the projects. N.C.G.S. § 131E-181(a). The 2002 SMFP contained a need determination for one mobile PET scanner specifically to serve host sites in HSAs I, II, and III and one mobile PET scanner specifically to serve host sites in HSAs IV, V, and VI. Alliance’s CON application for Project I.D. No. H-6706-02 (the Eastern Scanner) proposed to serve only host sites in HSAs IV, V, and VI. Therefore, Alliance’s first proposal requesting the addition of Rowan Regional Medical Center as a host site for the Eastern Scanner constitutes a material change in the physical location and the scope of the proposed project because Rowan County is not in HSA IV, V, or VI as required by the need determination in the 2002 SMFP. Accordingly, Alliance’s first request to add a mobile PET host site for the Eastern Scanner at Rowan Regional does not materially comply with the representations made in

its application because it significantly changes the population to be served with the Eastern Scanner.

For similar reasons, Alliance's second proposal to permit its two mobile PET scanners (the Eastern Scanner and the Western Scanner) to cross cover for each other on an as-needed basis without requiring specific authorization from the Department, and to permit either scanner to serve any approved host site for either scanner when Alliance deems it appropriate would also constitute material changes in the physical locations and the scopes of the proposed projects. Just as Alliance's CON application for Project I.D. No. H-6706-02 (the Eastern Scanner) proposed to serve only host sites in HSAs IV, V, and VI, its CON application for Project I.D. No. F-6650-02 (the Western Scanner) proposed to serve only host sites in HSAs I, II, and III. While the Department has, in the past, allowed Alliance to temporarily substitute another scanner for the Eastern and Western scanners in instances of scheduled maintenance, to allow Alliance's current proposal for routine "cross coverage" at any approved site would not be consistent with the need determination pursuant to which these scanners were awarded. The need determination specifically states that, "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 I 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."

CONCLUSION

For all the foregoing reasons, I conclude that Alliance's first proposal to add Rowan Regional Medical Center as a host site for the Eastern Scanner (Project I.D. No. H-6706-02) would constitute a material change in the physical location and scope of the project. In

addition, I conclude that Alliance's second proposal to permit its two mobile PET scanners (the Eastern Scanner and the Western Scanner) to cross cover for each other on an as-needed basis without requiring specific authorization from the Department, and to permit either scanner to serve any approved host site for either scanner when Alliance deems it appropriate would constitute material changes in the locations and scopes of the projects, would violate N.C. Gen. Stat. § 131E-181, and would constitute a failure to satisfy a condition of the certificates of need in violation of N.C. Gen. Stat. § 131E-189(b). Alliance's requests, therefore, are denied.

This the _____ day of _____, 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 first-class, postage pre-paid envelope addressed as follows:

CERTIFIED MAIL

Wallace C. Hollowell, III
Franklin Scott Templeton
Nelson Mullins Riley & Scarborough, LLP
380 Knollwood-Suite 530
Winston-Salem, NC 27103

This the _____ day of _____, 2009.

Jesse Goodman
Acting Chief Operating Officer