

**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 )  
SERVICES, INC. AND AMERICAN )     **DECLARATORY RULING**  
SHARED-CURACARE )**

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 to Alliance HealthCare Services, Inc. (“Alliance”) and American Shared-Curacare (“ASC”) (collectively “Petitioners”) 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. Petitioners have filed a Declaratory Ruling Request (the “Request”) asking the Department to issue a ruling as to the applicability of N.C.G.S. Chapter 131E, Article 9 to the facts described below. Petitioners also style their petition as a “Notice of Exempt Acquisition of Replacement Equipment.” For the reasons given below, I conclude that Petitioners’ requested ruling should be granted.

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 and Franklin Scott Templeton of Nelson Mullins Riley & Scarborough, LLP have requested this ruling on behalf of Petitioners and have provided the material facts upon which this ruling is based.

## STATEMENT OF THE FACTS

Petitioners state that ASC is a wholly owned subsidiary of Alliance. Petitioners represent that prior to changes in the Certificate of Need (“CON”) law that were effective 18 March 1993, Petitioners owned and operated certain MRI scanners in North Carolina. These MRI scanners did not require a CON at the time they were acquired, and therefore, for these MRI scanners and for the subsequent scanners lawfully obtained as replacement units for these scanners, Petitioners do not have CONs with which they are now required to materially comply.

Petitioners identify one of these “grandfathered” scanners as a GE 1.5T mobile MRI scanner owned by SMT, identification number 1S9FA482X21182525 (the “Removed Unit”). The Removed Unit currently serves Carolina Orthopaedic Specialists, PA at its mobile host sites in Morganton, Lenoir, Hickory, and Newton, North Carolina. Petitioners state that because of the age of the Removed Unit, they intend to replace it with a new fixed MRI scanner (the “Replacement Unit”). Petitioners intend that the Request serve as notice of the exempt acquisition of replacement equipment pursuant to N.C. Gen. Stat. § 131E-184(a)(7).

Petitioners state that Alliance also currently provides MRI scanning services to Wake Radiology Services, LLC (“Wake Radiology”) at its locations in Garner, Raleigh, and Wake Forest, with other of Alliance’s mobile MRI units. Petitioners represent that Wake Radiology has now requested that Alliance provide services to Wake Radiology’s existing diagnostic center at 300 Ashville Avenue in Cary (“Wake Radiology – Cary”), a location that Alliance does not currently serve.

Petitioners state that following the acquisition of the Replacement Unit, they intend to install the Replacement Unit inside Wake Radiology –Cary, and provide MRI services pursuant to an MRI services agreement between Alliance and Wake Radiology. Specifically, Alliance

will provide Wake Radiology with the services of Alliance's employed technologist for the operation of the equipment and will provide for maintenance for the equipment, including monitoring the necessary cryogenics for operation of the equipment. There will not be any change in the ownership of the Replacement Unit. Petitioners state that both the Replacement Unit and the Removed Unit are used for the exact same diagnostic purposes; namely, to perform MRI scans. Petitioners also represent that use of the Replacement Unit will not result in more than a 10% increase in per procedure patient charges or operating expenses within the first twelve months after the replacement equipment is acquired.

Petitioners state that following acquisition of the Replacement Unit, they will sell or otherwise dispose of the Removed Unit, and that Carolina Orthopaedic Specialists, PA will thereafter receive services from another of Alliance's grandfathered mobile MRI scanners.

Petitioners project that the total costs for the replacement equipment will be \$1,309,742, which includes costs for both Petitioners and for Wake Radiology.

### **ANALYSIS**

Unless otherwise exempt, the acquisition of the Replacement Unit by the Petitioners would constitute a new institutional health service pursuant to N.C.G.S. § 131E-176(16)(f1)(7). This acquisition is exempt from CON review pursuant to N.C.G.S. § 131E-184(a)(7) if it constitutes the acquisition of replacement equipment. "Replacement equipment" is defined as "equipment that costs less than two million dollars (\$ 2,000,000) and is purchased for the sole purpose of replacing comparable medical equipment currently in use which will be sold or otherwise disposed of when replaced." N.C.G.S. § 131E-176(22a).

As described in the Statement of Facts, Petitioners represent that the Replacement Unit will cost less than two million dollars. It is "comparable equipment" because it has the same

technology as the Removed Unit, it is functionally similar to the Removed Unit and is to be used for the same diagnostic purposes, and Petitioners represent that the acquisition will not result in more than a 10% increase in patient charges or per procedure operating expenses within the first twelve months after the replacement equipment will be acquired. 10A N.C.A.C. 14C.0303(c). In addition, Petitioners represent that the Removed Unit is currently in use and, after acquisition of the Replacement Unit, will be removed from North Carolina and will not be used in North Carolina without a CON.

Because Petitioners will continue to own and operate the Replacement Unit, and Petitioners will be providing services to Wake Radiology pursuant to a services agreement similar to those used for mobile MRI services, this transaction does not constitute a change in ownership that would constitute an acquisition of a new institutional health service by Wake Radiology. No other provisions of the law require Petitioners to obtain a CON for their proposed transaction.

### **CONCLUSION**

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that Petitioners do not require a CON to replace the Removed Unit with the Replacement Unit, and to install the Replacement Unit in the Wake Radiology-Cary facility. This ruling is conditioned on the costs of the project remaining as represented by Petitioners, and upon Petitioners entering into a services agreement with Wake Radiology on the terms of the proposed agreement attached to the Request.

This the \_\_\_\_\_ day of October, 2009.

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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  
Glen Lake One, Suite 200  
4140 Parklake Avenue  
Raleigh, North Carolina 27612

This the \_\_\_\_\_ day of October, 2009.

\_\_\_\_\_  
Jesse Goodman  
Acting Chief Operating Officer