

**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.)	DECLARATORY RULING
)	
Project I.D. No. H-6706-02)	

I, Drexdal Pratt, as 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. (“Alliance”) has requested a declaratory ruling for Project I.D. No. H-6702-02 (“Project”) allowing it to add a new host site location to the route of an existing mobile PET (positron emission tomography) scanner (the “Scanner”). Alliance requests this change on the grounds that it does not constitute either (1) a material change in scope or physical location or (2) a failure to materially comply with the representations made by Alliance in its Certificate of Need (“CON”) application for its project or the conditions imposed upon the Certificate of Need. 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

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 May 1, 2003, the CON Section issued a Certificate of Need for Project I.D. No. H-6706-02 authorizing Alliance to acquire the Scanner. The Certificate of Need identified five initial host sites to be served by the Scanner; two of those sites since have terminated their service agreements with Alliance upon acquiring fixed PET scanners. Of the initial five host sites, Southeastern Regional Medical Center (in Lumberton), Wayne Memorial Hospital (in Goldsboro) and Albemarle Hospital (in Elizabeth City) continue to be served.

On December 3, 2003, the Department issued a Declaratory Ruling which concluded that Alliance could also provide mobile PET services on the Scanner to Raleigh Community Hospital (now Duke Raleigh Hospital), Durham Regional Hospital and Wilson Medical Center, and Alliance thereafter added Raleigh Community Hospital (in Raleigh) and Wilson Medical Center (in Wilson) as host sites. On July 14, 2004, the Department issued a second Declaratory Ruling approving the addition of Scotland Memorial Hospital (in Laurinburg) to Alliance's service route for the Scanner. On November 11, 2006, the Department issued a third Declaratory Ruling permitting Alliance to add Lenoir Memorial Hospital (in Kinston) as a host site for the Scanner. On July 21, 2009, the Department issued a Fourth Declaratory Ruling allowing the addition of Johnston Medical Center – Smithfield (in Smithfield) and The Outer Banks Hospital (in Nags Head) to the route. On November 23, 2009, the Department issued a Fifth Declaratory ruling permitting Alliance to add Carteret General Hospital (in Morehead City).

Alliance represents that it is currently providing PET services to its existing host sites as frequently as those sites need services but has available time on the Scanner. It seeks to add

Onslow Memorial Hospital, Inc. (“OMH”) in Jacksonville, North Carolina as a host site for the Scanner. It proposes to provide PET scanner services to OMH one half day every other week.

ANALYSIS

The CON law would require a full review of Alliance’s proposed change of site 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 a host site for Alliance’s Scanner does not constitute a material change in the physical location or the scope of the proposed project. Onslow County is in the mobile service area of the Scanner. No capital costs will be necessary to add OMH to the mobile sites. Furthermore, there will be no change in scope of services offered on the Scanner, and there will be no additional costs and charges to Alliance or to patients. The additional host site will not affect the scope of services offered at other sites.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw Alliance’s certificate of need if it fails to develop the project in a manner consistent with the representations made in the application or with any conditions that were placed on the certificate of need. 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 certificate of need.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the addition of Onslow Memorial Hospital, Inc. as a host site for the mobile PET Scanner for Project I.D. No. H-6706-02 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 certificate of need in violation of N.C.G.S. § 131E-189(b).

This the _____ day of September, 2010.

Drexdal Pratt, 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
Nelson Mullins Riley & Scarborough LLP
380 Knollwood Street, Suite 530
Winston-Salem, NC 27103

This the 29th day of September, 2010.

Jeff Horton
Chief Operating Officer