

**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. F-6650-02)	

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. F-6650-02 (“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 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 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

Effective October 13, 2003, the CON Section issued a Certificate of Need for Project I.D. No. F-6650-02 authorizing Alliance to acquire the Scanner. The Certificate of Need identified eight initial host sites to be served by the Scanner in western North Carolina (HSAs I, II and III). Of the original host sites, three acquired their own fixed PET scanners and terminated their agreements for service with Alliance. Between September 2004 and May 2010, Alliance added additional host sites to its western route. Currently, Alliance serves the following host sites with the Scanner: Rowan Regional Medical Center, Cleveland Regional Medical Center, Grace Hospital, Valdese General Hospital, Watauga Medical Center, Hugh Chatham, WestCare Harris Regional, Northern Hospital of Surry, Pardee Hospital, Park Ridge Hospital, Caldwell Memorial Hospital, Lake Norman Medical Center, CMC-Union, Rutherford Hospital, Presbyterian Hospital Huntersville, Presbyterian Hospital Matthews, Thomasville Medical Center and Randolph Hospital.

In April 2009, CMC-Union was issued a certificate of need to obtain its own fixed PET scanner (Project I.D. No. F-8247-08), and CMC-Union intends to lease a scanner temporarily until the fixed scanner is operational. Therefore, CMC-Union will no longer require services from the Scanner.

Alliance proposes to add one hospital, Stanly Regional Medical Center, as a host site once its services at CNC-Union are discontinued. Stanly is located in the western Planning Region I (HSAs I, II and III). Alliance represents that the provision of PET services to Stanly Regional Medical Center “would not require any new equipment, would not affect the scope of services offered, and would not affect the costs and charges to Alliance or to the public for the provision of mobile PET services.”

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. Stanly Regional Medical Center is in the mobile service area of the Scanner. 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. Furthermore, the addition will improve patient access to imaging services.

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 Stanly Regional Medical Center as a host site for the mobile PET Scanner for Project I.D. No. F-6650-02 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 February, 2011.

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, Suite 530
Winston-Salem, NC 27103

This the _____ day of February, 2011.

Jeff Horton
Chief Operating Officer