

**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) DECLARATORY RULING
SERVICES, INC.)**

I, Drexdal Pratt, 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. (hereinafter “Alliance”) has requested a declaratory ruling allowing for the replacement of one of its existing, grandfathered mobile MRI scanners with a new MRI scanner pursuant to an exemption in the CON Law. Following the acquisition of replacement equipment, Alliance proposes to place the new MRI scanner inside an existing diagnostic center owned by Raleigh Radiology Associates, Inc., a North Carolina professional corporation (“Raleigh Radiology”), in Cary, Wake County, and provide Raleigh Radiology with full-time MRI services pursuant to a services agreement. 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

Alliance owns and operates MRI scanner equipment throughout North Carolina, and contracts with host sites for MRI services that are provided on these scanners.

One of Alliance's grandfathered mobile MRI scanners is a GE Signa 1.5T Horizon ES + LX unit, identification number 1JJV482W51L679085 (the "Removed Unit").

Alliance currently provides services on the Removed Unit to Raleigh Radiology five days per week at its mobile host site in Cary (251 Keisler Drive, Cary, Wake County).

Raleigh Radiology has obtained Agency approval to relocate its Cary diagnostic center to new offices at Parkway Office Court (also in Cary), in early 2011.

Following the acquisition of the Replacement Unit, Alliance intends to install the Replacement Unit inside Raleigh Radiology's diagnostic center in its new location. Alliance will remain the owner of the Replacement Unit.

Alliance projects that the total costs for this project will be \$1,637,748. Raleigh Radiology's projected costs related to this project total \$240,324.

Raleigh Radiology will not be acquiring an MRI as a result of this project. Raleigh Radiology will continue to be a party to an MRI services agreement with Alliance.

ANALYSIS

Alliance intends to replace the Removed Unit with the Replacement Unit. Although the acquisition of the Replacement Unit would otherwise 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. Gen. Stat. § 131E-184(a)(7) because this is an acquisition of “replacement equipment.”

“Replacement equipment” means 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. Gen. Stat. § 131E-176 (22a). To qualify for this exemption, the replacement equipment must therefore (1) cost less than \$2,000,000, (2) be “comparable” to the equipment it replaces, and (3) replace equipment that is then “sold or otherwise disposed of.”

The total cost for this project is projected to be \$1,637,748, less than the \$2,000,000 threshold.

The Replacement Unit is comparable to the Removed Unit, in that they are used for the same diagnostic purposes, namely, to perform MRI scans.

Following acquisition of the Replacement Unit, Alliance will sell or otherwise dispose of the Removed Unit in a manner consistent with the CON Law. Alliance will remove the Removed Unit from North Carolina, and this equipment will not be thereafter used in North Carolina without first obtaining a CON.

Therefore, the acquisition of the Replacement Unit is exempt from CON review pursuant to N.C. Gen. Stat. § 131E-184(a)(7).

Alliance will continue to own and control the Replacement Unit and will provide services to Raleigh Radiology pursuant to a services agreement similar to those used for mobile MRI services, therefore the transaction does not constitute a change in ownership that would constitute an acquisition of a new institutional health service by Raleigh Radiology.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that Alliance's acquisition of the Replacement Unit is exempt from CON review, that this project does not constitute a "new institutional health service" as defined in N.C. Gen. Stat. § 131E-176(16), and therefore no party is required to obtain a CON in connection with the project.

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 a first-class, postage pre-paid envelope addressed as follows:

CERTIFIED MAIL

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

This the 25th day of February, 2011.

Jeff Horton
Chief Operating Officer