

**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.)
Project I.D. No. G-6271-00)**

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. (hereinafter “Alliance”) has requested a declaratory ruling allowing for a change in location for Project I.D. No. G-6271-00 on the grounds that the change does not constitute a material change in scope or physical location or a failure to materially comply with the representations made by Alliance in its Certificate of Need (“CON”) application for its project. 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 has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Alliance was issued a CON effective October 4, 2001 to acquire a mobile MRI scanner (the “Scanner”), to serve mobile sites in MRI Planning Area 15 of the 2000 State Medical Facilities Plan.

The Scanner’s routing was changed as a result of a June 5, 2008 Settlement Agreement between Alliance and the Department, which resolved litigation over proposed changes in the Scanner’s route.

The Scanner continues to serve the three host sites identified in the Settlement Agreement, serving two or more sites each week. The Scanner is in use a total of four days per week, and therefore has time available with which it may serve other host sites.

Alliance seeks to add Burlington Imaging & Breast Center (“BIBC”), at 1225 Huffman Mill Road in Burlington to the Scanner’s route.

BIBC has received mobile MRI services from Alliance since 1999. BIBC and Alliance already have an MRI services agreement in place for these mobile services, substantially similar to the services agreements for the Scanner’s other sites, and under which services on the Scanner can be added.

Except for adding BIBC as a host site, the Scanner’s route will not change.

ANALYSIS

N.C.G.S. § 131E-181(a) states:

A certificate of need shall be valid only for the defined scope, physical location, and person named in the application.

N.C.G.S. § 131E-181(b) further provides that:

A recipient of a certificate of need, or any person who may

subsequently acquire, in any manner whatsoever permitted by law, the service for which that certificate of need was issued, is required to materially comply with the representations made in its application for that certificate of need. The Department shall require any recipient of a certificate of need, or its successor, whose service is in operation to submit to the Department evidence that the recipient, or its successor, is in material compliance with the representations made in its application for the certificate of need which granted the recipient the right to operate that service.

Thus, the CON law requires a full review of Petitioners' proposal when it represents a material change in the physical location, scope of the project or person named in the application. The proposed changes in location of the Scanner do not constitute material changes in the physical location or the scope of the proposed project for the following reasons.

The Scanner is in use four days per week, and has time available with which it may serve other host sites.

BIBC currently receives services on two of Alliance's grandfathered mobile MRI scanners at the proposed host site. Thus, the host site already has the required mobile MRI pad and utility connections and an existing MRI Services Agreement with Alliance.

The addition of the BIBC site to the Scanner's route will not affect the scope of services offered or the costs and charges to Alliance or to the public for the provision of mobile MRI services.

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

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the addition of the BIBC site, for Project I.D. No. G-6271-00 will not and does 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 and do not constitute a failure to satisfy a condition of the CON in violation of N.C.G.S. § 131E-189(b).

This the _____ day of March, 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
Wallace C. Hollowell, III
Nelson Mullins Riley & Scarborough, LLP
380 Knollwood Street – Suite 530
Winston-Salem, NC 27103

This the _____ day of March, 2011.

Jeff Horton
Chief Operating Officer