

**NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF HEALTH SERVICE REGULATION  
RALEIGH, NORTH CAROLINA**

<b>IN RE: REQUEST FOR DECLARATORY</b>	)	
<b>RULING BY ALLIANCE HEALTHCARE</b>	)	
<b>SERVICES, INC.</b>	)	<b>DECLARATORY RULING</b>
	)	
	)	
<b>Project I.D. No. G-6271-00</b>	)	

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 allowing it to add two additional host sites for Project I.D. No. G-6271-00 and to discontinue services at one of its current host sites on the grounds that these changes do 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 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, counsel for Alliance, 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 October 4, 2001, the CON Section issued a certificate of need to Alliance for Project I.D. No. G-6271-00 to acquire a mobile magnetic resonance imaging (“MRI”) scanner (“Scanner”) to provide MRI services in MRI Planning Area 15 of the 2000 State Medical Facilities Plan (“SFMP”). The Scanner’s route subsequently was changed as a result of a June 5, 2008 Settlement Agreement between Alliance and the Department in North Carolina Court of Appeals Case No. COA-08-193, which resolved litigation over proposed changes in the Scanner’s route. The settlement agreement allowed Alliance to use the Scanner to serve Davie County Hospital in Mocksville, Hoots Memorial Hospital in Yadkinville and Hickory Orthopaedic Group, P.A. (“Hickory Orthopaedic”) in Hickory. It also allowed Alliance to use the Scanner, starting one year from the date of the Settlement Agreement, to serve host sites in any of the thirty-seven counties that comprise HSA I and HSA II in the 2008 SMFP so long as Alliance first obtained a declaratory ruling from the Agency prior to adding a new host site for the Scanner.

The Scanner currently serves the three sites listed above. In addition, following a March 21, 2011 Declaratory Ruling, Alliance is in the process of adding services at Burlington Imaging and Breast Services in Alamance County.

In this request, Alliance seeks to add two sites – MRI Specialists of the Carolinas, LLC (“MRI Specialists”) and Vanguard Brain & Spine Specialists, P.A. (“Vanguard”) (collectively, “Proposed Sites”). MRI Specialists is a wholly owned subsidiary of CaroMont Health, Inc., which has been developing a new mobile MRI Host site at 520 North Decalb Street in Shelby, Cleveland County, in HSA I. The site is expected to be operational on or about May 1, 2011. Alliance proposes to begin serving the Shelby site one day per week once it is operational.

Vanguard is an existing mobile MRI host site located at 1130 North Church Street in Greensboro, Guilford County, in HSA II. Vanguard is an existing client of Alliance and is presently being served by one or more of Alliance's grandfathered mobile MRI units. Alliance proposes to begin serving Vanguard one day per week upon approval of the request. Because of demand for services at Vanguard, the day of service will be in addition to the services that Vanguard is already receiving from Alliance.

Because of increased demand for services at Hickory Orthopaedic and the request to add the Vanguard and MRI Specialist sites, Alliance further proposes to discontinue services on the Scanner at Hickory Orthopaedic and instead serve Hickory Orthopaedic with one of its grandfathered MRI scanners on a full time basis. Alliance represents that these changes will permit Alliance to provide the desired level of services at Hickory Orthopaedic and also serve the Proposed Sites.

Alliance represents that adding the Proposed Sites will not result in any changes in the scope of services offered or any increase in costs to patients for mobile MRI services. Alliance further represents that it will comply with all conditions of its CON and all applicable regulations.

### **ANALYSIS**

The CON law would require a full review of Alliance's proposed addition of the new host sites and the discontinuance of service at Hickory Orthopaedic if those changes were to represent a material change in the physical location or scope of the project. N.C.G.S. § 131E-181(a). The addition of the Proposed Sites and discontinuance of service at Hickory Orthopaedic do not constitute a material change in the physical location or the scope of the Project. The changes will allow Alliance to provide the desired level of services at Hickory Orthopaedic and

make two days available on the Scanner with which it may serve the Proposed Sites. The use of the Proposed Sites as host sites will not affect the scope of services offered or the costs and charges to the public for the provision of mobile MRI services. The defined service area for the Scanner includes HSAs I and II. Thus, the Proposed Sites are in the approved area for the Scanner.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw Alliance's certificate of need 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 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 the Proposed Sites as host sites for Alliance's mobile MRI scanner, Project I.D. No.G-6271-00 and the discontinuance of use of the Scanner at Hickory Orthopaedics, 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 \_\_\_\_\_, 2011.

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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, North Carolina 27103

This the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Jeff Horton  
Chief Operating Officer