

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

**IN RE: REQUEST FOR DECLARATORY)
RULINGS BY ALLIANCE HEALTHCARE)
SERVICES, INC. (f/k/a ALLIANCE) **DECLARATORY RULING**
IMAGING, INC.))
Project I.D. No. F-6650-02)**

I, Jeff Horton, Director of the Division of Health Service Regulation (the “Department” or the “Agency”), hereby issue this declaratory ruling to Alliance Healthcare Services, Inc. (f/k/a Alliance Imaging, Inc.) (“Alliance”) pursuant to N.C.G.S. § 150B-4, 10A NCAC 14A.0103, and the authority delegated to me by the Secretary of the North Carolina Department of Health and Human Services. Alliance has filed a Declaratory Ruling Request (the “Request”) asking the Department to issue a ruling as to the applicability of Chapter 131E, Article 9 of the North Carolina General Statutes to the facts described below.

This ruling is binding on the Department and the person requesting it if the material facts stated in the Request are accurate and no material facts have been omitted from the request. The ruling applies only to this request. Except as provided by N.C.G.S. § 150B-4, the Department reserves the right to change the conclusions which are contained in this ruling. Wallace C. Hollowell, III and Franklin Scott Templeton of Nelson Mullins Riley and Scarborough, LLP have requested this ruling on behalf of Alliance and have provided the statement of facts upon which this ruling is based. Certain other facts are based on the Department’s files. The material facts are set out below.

STATEMENT OF THE FACTS

Effective 13 October 2003, the CON Section issued a CON to Alliance for Project I.D. No. F-6650-02 to acquire a mobile positron emission tomography (“PET”) scanner to provide PET services at host sites located in HSAs I, II, and III in the western part of the State (the “Project Unit”). The original approved host sites were, at a minimum, High Point Regional Medical Center in High Point, NorthEast Medical Center in Concord, and Rowan Regional Medical Center in Salisbury. The conditions of the CON allowed Alliance to add certain additional host sites without making a request to the Department. These additional host sites were limited to: Alamance Regional Medical Center in Burlington, Cleveland Regional Medical Center in Shelby, Grace Hospital in Morganton, Watauga Medical Center in Boone, and Valdese Hospital in Rutherford College.

As a result of multiple Declaratory Rulings issued by the Department, Alliance was allowed to add Hugh Chatham Memorial Hospital in Elkin, Harris Regional Hospital in Sylva, Northern Hospital of Surry County in Mount Airy, Margaret R. Pardee Memorial Hospital in Hendersonville, Park Ridge Hospital in Hendersonville, Carolinas Medical Center-Union in Monroe, Lake Norman Regional Medical Center in Mooresville, Caldwell Memorial Hospital in Lenoir, Rutherford Hospital in Rutherfordton, Presbyterian Hospital Huntersville, Presbyterian Hospital Matthews, and Thomasville Medical Center as additional host sites for the Project Unit.

Alliance represents that it currently provides mobile PET services at each of the above host sites except Alamance Regional Medical Center, NorthEast Medical Center, and High Point Regional Medical Center, which have each acquired a fixed PET scanner.

In this request, Alliance proposes to add Randolph Hospital in Asheboro, Randolph County, North Carolina as a host site for the Project Unit one-half day every other week.

Alliance states the addition of Randolph Hospital as a host site will not affect the scope of services offered or the costs and charges to Alliance or to the public of providing mobile PET services. Alliance represents that it will satisfy all the requirements and representations made regarding the host sites in its original CON application and that it has contingently executed a services agreement with Randolph Hospital that is substantially similar to the agreements signed by its other host sites. Further, Randolph Hospital is within the service area for the Project Unit.

ANALYSIS

The CON law would require a full review of Alliance's proposed addition of a host 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 Randolph Hospital as a host site does not constitute a material change in the physical location or the scope of the proposed project because the use of Randolph Hospital as a host site will not affect the scope of services offered or the costs and charges to Alliance or to the public for the provision of mobile PET services. Randolph Hospital is within the service area for the Project Unit. In addition, there is no proposed change in the person named in the application that would result in a violation of N.C.G.S. § 131E-181(a).

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 Randolph Hospital as a host site for Alliance's mobile PET scanner, Project I.D. No. F-6650-02, (the Project Unit) 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 CON in violation of N.C.G.S. § 131E-189(b). Following this addition of Randolph Hospital as a host site, the Project Unit will serve Rowan Regional Medical Center (Rowan County), Cleveland Regional Medical Center (Cleveland County), Valdese Hospital (Burke County), Watauga Medical Center (Watauga County), Grace Hospital (Burke County), Hugh Chatham Memorial Hospital (Surry County), Harris Regional Hospital (Jackson County), Northern Hospital of Surry County (Surry County), Margaret R. Pardee Memorial Hospital (Henderson County), Park Ridge Hospital (Henderson County), Carolinas Medical Center-Union (Union County), Lake Norman Regional Medical Center (Iredell County), Caldwell Memorial Hospital (Caldwell County), Rutherford Hospital (Rutherford County), Presbyterian Hospital Huntersville (Mecklenburg County), Presbyterian Hospital Matthews (Mecklenburg County), Thomasville Medical Center (Davidson County), and Randolph Hospital (Randolph County).

This ruling is not intended, and should not be interpreted, to authorize any increases in the approved capital expenditure for this project, a change in the approved timetable, a change in the conditions placed on the certificate of need, or any other change in the approved project.

This the _____ day of _____, 2010.

Jeff Horton, 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

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

This the _____ day of _____, 2010.

Jesse Goodman
Chief Operating Officer