In accordance with NCGS 131E-185(a1)(1), Rex Healthcare, Inc. ("Rex") submits the following comments related to applications to convert nursing facility beds to acute care beds and relocate them. Rex's comments include "discussion and argument regarding whether, in light of the material contained in the application and other relevant factual material, the application complies with the relevant review criteria, plans and standards" [NCGS 131E-185(a1)(1)(c)]. As such, Rex's comments include a reference to some of the applicable review criteria that relate to each of the issues identified with the following application:

J-10166-13 WAKEMED: CONVERT 16 NF BEDS TO ACUTE – RELOCATE TO NORTH

1. The application proposes to convert beds improperly and impermissibly and should not be approved.

   In Section II.1, WakeMed refers to Policy AC-4, under which it proposes to re-convert hospital-based skilled nursing beds that were previously converted from acute care beds. The original conversion of acute care to skilled nursing beds was accomplished in the late 1980s and early 1990s through Policy C.1 (now called Policy NH-1). While Policy C.1/NH-1 and AC-4 permit the reconversion of beds to acute care, WakeMed's application to reconvert beds and relocate them to WakeMed North is improper and should not be approved, for the following reasons.

   a. The language of Policy C.1/NH-1 is clearly intended to allow small hospitals in rural areas to convert beds for short-term nursing care as needed, and then back to acute care if no longer needed as nursing beds. The facilities that convert the beds are the facilities that can reconvert the beds; there are no provisions in the policy that allow the beds to be reconverted and transferred to another facility. Notwithstanding the facts presented in (b) below, the facilities that converted the beds from acute care to skilled nursing are Southern Wake Hospital and Eastern Wake Hospital, as shown in Exhibit 6 of the application. As such, only Southern Wake Hospital or Eastern Wake Hospital can reconvert the beds; however, those facilities no longer exist as acute care facilities.

      Although one might argue that Southern and Eastern Wake Hospitals were absorbed into WakeMed or WakeMed Cary, this issue is more than just semantics. The application discusses the evolution of the WakeMed system hospitals since the 1960s, including the retraction of acute care beds from their original deployment in Fuquay-Varina and Zebulon/Wendell, and while such changes may have been prudent or necessary, they resulted in

permanent changes to former acute care hospitals, including Southern and Eastern Wake Hospitals. The clear intent of Policy C.1/NH-1 based on the plain language of the policy is to allow small, rural hospitals to convert unneeded acute care beds to skilled nursing beds and, if the needs change, convert those beds back to acute care at that hospital. The beds cannot be "reconverted" by another facility, given that they were never converted at the other facility, but at now-defunct acute care facilities.

The language of Policy AC-4 also confirms the importance of the "facility" in allowing the reconversion of beds, by stating *"[f]acilities that have redistributed beds from acute care bed capacity...shall obtain a certificate of need to convert this capacity back to acute care."* The C.1 beds involved in this application were never converted by WakeMed North; thus, they cannot be reconverted at WakeMed North. Given that WakeMed North does not even exist yet and has never had beds, it seems clear that it cannot "reconvert" beds.

b. As of the filing of this application, WakeMed did not meet the required provisions of Policy NH-1/C.1 and therefore no longer operated "convertible" skilled nursing beds. Specifically, Policy NH-1 provides the conditions under which a CON can be issued for the conversion of acute care beds to hospital-based nursing care beds, including that the hospital *"is located in a county which was designated as non-metropolitan"* and *"had a licensed acute care bed capacity of 150 beds or less."* Each of these conditions is contained in both Policy C.1 and NH-1, and both have been updated annually with each *SMFP*. The policy continues by stating that the CON *"shall remain in force as long as the North Carolina Department of Health and Human Services determines that the hospital is meeting the conditions outlined in this policy."* However, neither of the conditions exists for WakeMed Cary, which is located in the Raleigh-Cary metropolitan statistical area and which, since 2008 has been licensed for more than 150 beds. In addition, it appears that WakeMed has not been meeting the second set of conditions listed in Policy NH-1. In particular, the second condition requires facilities with converted nursing beds to discharge residents to facilities with capacity when appropriate and permissible. Given the extensive discussion in the application regarding the expected ease with which WakeMed believes its current residents can be placed in other facilities, it appears that WakeMed could have been discharging patients to other facilities more than it has been. This fact is confirmed when examining the license renewal application for WakeMed Cary, which contains the

data for WakeMed Fuquay-Varina. On page 6, the LRA lists 9,235 patient days and 32 admissions from FY 2012, which equates to an average length of stay of 289 days, clearly not the short length of stay envisioned by Policy C.1/NH-1. Even assuming that the 12 non-C.1 beds were 100 percent occupied, and no patients were admitted to those beds during the year, subtracting those 4,380 days (12 x 365 = 4,380) from the 9,235 patient days equates to 4,855 days. If 4,855 days were provided in the 24 C.1 beds, the ALOS for those patients would be 152 days (4,855 ÷ 32 = 152), indicating that these are also not short-stay patients and that they could likely have been transferred to other facilities within their long length of stay.

There is also a clear difference between the language of Policy NH-1 regarding the intended use of the beds and the discussion provided in the application about the patients currently served at the facilities. The policy states that the "*[n]ursing care beds developed under this policy are intended to provide placement for residents only when placement in other nursing care beds is unavailable in the geographic area.*" [emphasis added] According to WakeMed, however, there is plenty of available capacity for its displaced patients, which clearly indicates that the intentions of the policy have not been upheld by WakeMed. On page 100 of the application, Section III.7.(d), WakeMed states that it "*does not anticipate that this project will have a negative impact on patients in the service area. Larger, freestanding nursing facilities can provide the same level of care to patients, often at lower costs than hospital-based facilities. By suspending operations of its own nursing facilities, WakeMed is directing patients eligible for nursing facility care to facilities owned and operated by companies specializing in long-term care. Further, the 37 hospital-based nursing facility beds slated for conversion to acute care represent only 1.5 percent of the Wake County planning inventory. According to the Proposed 2014 SMFP, existing nursing facilities in Wake County were utilized at approximately 85 percent in 2012, suggesting that there is excess capacity in the market.*" On the next page, WakeMed continues by stating "*[w]ith 40 percent more nursing facility beds in Wake County, there are more choices than ever for patients in need of long term care.* These statements provide ample evidence that the skilled nursing beds converted by WakeMed under Policy C.1/NH-1 have not been operated as intended by the policy. Specifically, WakeMed's contention that freestanding nursing care facilities "specializing in long-term care" are at least comparable if not superior to its hospital-based facility indicates that it was not utilizing the converted skilled nursing beds for patients that "cannot be immediately placed in a licensed nursing

facility because of the unavailability of a bed appropriate for the individual's needs," as defined by Policy C.1/NH-1.

Thus, even assuming that WakeMed Cary could have at one time re-converted these beds to its existing facility (an assumption that is not reasonable, as explained above), since the facility no longer meets the required conditions of Policy NH-1, the certificate of need should not "remain in force," and WakeMed should not be allowed to reconvert these beds to acute care beds.

c. The skilled nursing beds at the Fuquay-Varina facility operate under the license of WakeMed Cary, not WakeMed Raleigh. Thus, even assuming the discussion under (a) and (b) above is incorrect, they could only be re-converted at WakeMed Cary, not WakeMed Raleigh or WakeMed North, which are (or will be) licensed separately from WakeMed Cary.

   The separation of these facilities into their own licensed entities occurred at WakeMed's own request in 2002. As noted in the declaratory ruling from DHSR (DFS) that enabled the separate licensing of those facilities, "*[WakeMed Cary] has a separate Medicare provider number from the Main Campus, has a separate medical staff from the Main Campus, and is separately surveyed and accredited by the Joint Commission on Accreditation of Healthcare Organizations ("JCAHO").*" As further noted in the declaratory ruling on page 8, "*...other than the common licensure, these two hospitals [WakeMed and Western Wake Medical Center] were organized and have historically functioned as separate facilities.*" The separation between WakeMed and WakeMed Cary are clear, and WakeMed's attempt to reconvert beds to WakeMed North (which will be under WakeMed's license) is improper, given that, under the broadest interpretation, they can only be reconverted at the facility to which they are licensed. Please see Attachment 1 for a copy of the declaratory ruling.

Based on the issues described above, WakeMed should be found non-conforming with Criterion 1.

2. The utilization projections are based on unreasonable assumptions and therefore its projections are also unreasonable, as discussed below.

   a. WakeMed presents a utilization methodology in Section II.8 of the application with projections for the inpatient utilization at WakeMed North. The inpatient portion of the facility has yet to open; thus,

WakeMed projects its utilization based on use rate and market share projections in a similar fashion to its previous applications for that facility. The projections assume that use rates will be unchanged from current rates; thus, the growth factored into WakeMed's utilization from years one to three is based primarily on population growth and some increase in market share. These assumptions are unreasonable, however, for several reasons. First, WakeMed fails to support the reasonableness of its assumption that use rates by age group for these services will remain constant. For example, it is clear by comparing this application with the previous application to add 41 beds at WakeMed North (Project ID # H-8180-08) that use rates for OB services have declined since that time. In the 2008 application, page 49, WakeMed shows a use rate of 79.79 in the primary service area for OB services; in this application, page 51 shows only a 62.19 use rate for 2012, which has also declined over the most recent three year historical period. Similarly, the non-OB use rate for 15-44 is shown as 22.99 in the 2008 application; the rate in this application for 2012 is only 18.92, a decline since even 2010. Only in the 45-64 and 65+ total categories do the use rates appear to have increased; however, this application bases the use rate for those categories on cases from additional MDC's that were not in the previous applications, particularly orthopedic joint procedures, which is a high volume category. The application does not provide sufficient information to adequately compare the use rates without these additional cases, but it is clear that WakeMed has not supported its assumption that the use rates will remain constant in the future for all age groups and services. See pages 46 of the 2008 application and 48 of this application for comparison of the excluded services.

Next, WakeMed also appears to have failed to exclude neonatal services from its use rate calculations. In 2008, WakeMed excluded these services since it was not proposing to offer neonatal services; however, no such exclusion was noted on page 48 of the application. As a result, it appears that neonatal volume was double-counted, by including it in both the use rate/market share utilization projections, and separately as an assumed 10 percent of OB cases (see page 55). Since WakeMed did exclude normal newborns from the calculation, it seems that it was concerned that its use rate methodology would otherwise include these patients if not for the specific exclusion on page 48; thus, neonatal patients should have been excluded as well.

Finally, despite projections of future growth that the application states is based on the "shift of patient volume from WakeMed

Raleigh Campus to WakeMed North, as well as some new business directed to WakeMed North as the market continues to grow and evolve," and that is not expected to shift from other hospitals (see page 54), the historical volume for WakeMed Raleigh has not grown historically, but has declined over the past five years. As shown in the following table, WakeMed Raleigh has experienced a compound annual growth rate (CAGR) of -1.1 percent since 2008.

Year	*Patient Days*
2008	177,318
2009	175,814
2010	167,712
2011	167,782
2012	169,524
CAGR	-1.1%

Source: 2010-Proposed 2014 SMFPs

Thus, the patient days from which WakeMed North is projecting to shift volume have been declining over the past several years, not growing as projected in its application.

In summary, WakeMed's projected utilization states that it assumes no shift from other providers for the primary service area patients, shifts from WakeMed Raleigh Campus, and flat use rates through the forecast period. In contrast, the facts are that:

- use rates for most (and perhaps all) of the services proposed at WakeMed North have declined since the 2008 application;
- WakeMed Raleigh Campus inpatient days have declined since 2008;
- the increase in market share projected for WakeMed North, though modest, must by definition come from other providers.

Thus, WakeMed's utilization projections are not based on credible assumptions.

As a result of these issues, WakeMed should be found non-conforming with Criterion 3.

3. WakeMed fails to adequately demonstrate that the needs of its patients currently being served in its skilled nursing beds will be adequately met. Although the application discusses WakeMed's willingness to transfer patients to UHS-Pruitt or other facilities, as well as the applicant's belief that the project will not have a detrimental impact on access to skilled nursing care in Wake County, its statements are insufficient to be conforming with the applicable review criteria. In particular, as discussed above, although the application states that it foresees no difficulties transferring patients to other facilities, other information provided in the application regarding the patients at WakeMed's Fuquay-Varina facility contradicts this notion. On page 72 of the application, WakeMed describes the patients as "heavy skilled" or "sub-acute," with "complex diagnoses" which require "significantly greater care than traditional nursing facility patients." The application continues by discussing that many of the current patients are ventilator dependent, and that some have VRE or MRSA, serious infections that require special precautions and treatment. It seems unlikely then, if not impossible, that these patients can suitably be transferred to another facility, particularly without undue burden. This is particularly true given that Wake County's nursing facilities do not have ventilator beds to accommodate these patients, as noted on the DHSR website[1], which shows that the closest nursing home with ventilator beds is in Greensboro. While the abysmal conditions of WakeMed's facility described in the application are concerning, the fact that many of these patients require specialized care does not provide sufficient evidence that their needs will be adequately served.

   The application also fails to adequately demonstrate sufficient capacity exists in the area for its displaced patients, based on the Agency's analysis in a similar circumstance. In 2007, Davis Regional Medical Center (DRMC) applied to add inpatient psychiatric beds to its hospital through a transfer from the state's inventory (Project ID # F-7869-07). The medical center proposed to locate those psychiatric beds in space that was used for hospital-based skilled nursing beds (like those at WakeMed's Fuquay-Varina and Zebulon/Wendell facilities), which would be closed and no longer available to patients for nursing care (just as WakeMed proposes with its C.1 beds). In its application, DRMC included a letter from four providers in the county offering to take up to as many patients as DRMC had beds (i.e. to fully absorb the highest potential impact of all the beds

[1] http://www.ncdhhs.gov/dhsr/nhlcs/pdf/ventbedslist.pdf

being delicensed as SNF beds), even though DRMC's beds were operating at less than full occupancy. It should also be noted that DRMC's closure of its SNF beds did not otherwise require a CON. Nonetheless, the CON Section disapproved DRMC's application because it failed to adequately demonstrate that the needs of its existing SNF patients would be adequately met.

In the Agency findings, the following analysis was provided:

- *"The 2007 SMFP indicated that Iredell County has a planning inventory of 653 nursing facility beds and is projected to have a deficit of 46 nursing facility beds in 2010. The projected Deficit Index is 7%. Addition of the 13 skilled nursing beds from DRMC will result in a Deficit Index of 9%."*

    - Comparatively, the *2013 SMFP* indicates that Wake County has a planning inventory of 2,445 nursing facility beds and is projected to have a deficit of 565 nursing facility beds in 2016. The projected Deficit Index is 19%. Addition of the 37 skilled nursing beds from WakeMed [including those proposed to be relocated to the Raleigh campus] will result in a Deficit Index of 20%. Clearly, the deficit in Wake County is greater than that in Iredell County, both in number and percentage.

- *"Although existing skilled nursing facilities have offered to take patients from DRMC, it is unreasonable to expect the facilities to absorb more patients in a county with a deficit of 46, which is expected to increase 64 beds by 2011 without the addition of DRMC's 13 beds (Total 2011 deficit with the addition of DRMC's 13 beds equals a deficit of 77 skilled nursing home beds."*

    - Comparatively, it is similarly unreasonable to expect the facilities in Wake County to absorb more patients in a county with a deficit of 565, which will be even greater with the proposed reconversion of WakeMed's 37 C.1 beds.

- *"Furthermore, there is no indication that the patients presently served willingness [sic] to transfer to another skilled facility."*

    - The WakeMed application contains no letters or other documentation that patients presently served at its skilled nursing facilities are willing to be transferred to another facility. Moreover, given the "heavy skilled" and "sub-acute" nature of many of the patients at the Fuquay-Varina facility as described in

the application, the willingness or capability of these facilities to accept these patients is questionable.

As stated above, it is important to note that DRMC was not proposing to convert its SNF beds to acute care, which requires a certificate of need, but to close its SNF unit, which is not a new institutional health service. The CON Section's analysis, summarized above, found that the current and projected deficit of skilled nursing beds in the county, along with the lack of demonstration that the current patients were willing and able to be transferred to other facilities was sufficient to find the DRMC application non-conforming with Criterion 3a. In this instance, not only is the deficit of beds greater than it was in Iredell County, but the actual utilization rate in Wake County is also greater than the 85 percent rate stated on page 100 of the application. Although the utilization rate used for planning purposes may be helpful in determining the need for more beds, WakeMed's analysis is incorrect and understates the utilization rate, for several reasons. First, it fails to consider that CCRC nursing beds, while appropriately used at one-half their total number for planning purposes, should not be considered as available capacity for WakeMed's displaced patients. With the exception of a few beds at Glenaire (which is at 94 percent occupancy), CCRC's do not take Medicaid patients, nor would they be appropriate for patients currently being housed at WakeMed's SNF's, nor would they typically accept short-term post-acute patients. Second, two facilities included in the SMFP calculation of occupancy are not yet open, including Britthaven of Holly Springs and Universal Fuquay-Varina; thus, while their future capacity is needed for planning purposes, they are not currently available to accept patients. Third, since the occupancy rate stated in the application includes the two WakeMed facilities; clearly they, or at a minimum, their C.1 beds should not be included in an analysis to determine whether there are sufficient beds to accommodate their patients. Finally, the non-CCRC with the lowest utilization, Crabtree Valley Rehab Center (formerly Blue Ridge Health Care Center), was decertified in 2012[2] and thus was unable to take Medicare and Medicaid patients. While it is under new ownership and may have been recertified, its ability and capacity to accept WakeMed's patients is still questionable given its recent history. In addition, before its decertification, Blue Ridge was the sole Wake County SNF that accepted ventilator patients; however, since its decertification, it no longer cares for those patients that WakeMed states comprise a portion of its patient population.

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2 http://abclocal.go.com/wtvd/story?section=news/local&id=8713816

When these factors are considered, the average occupancy of the available facilities in Wake County is 89 percent—comparable to the 90 percent that the Agency used in its denial of the DRMC application, as shown in the table below.

Facility	Planning Beds	Total Beds	Patient Days	Occupancy Rate
Capital Nursing and Rehab	125	125	36,939	81%
Cary Health and Rehab	120	120	41,099	94%
Hillside Nursing Center of Wake Forest	130	130	41,864	88%
Kindred Nursing and Rehab - Zebulon	60	60	21,039	96%
Kindred Transitional Care and Rehab - Raleigh	157	157	54,332	95%
Kindred Transitional Care and Rehab - Sunnybrook	95	95	32,564	94%
Litchford Falls Health Care and Rehab	90	90	31,152	95%
Rex Rehab and Nursing Apex	107	107	36,036	92%
Rex Rehab and Nursing Care	120	120	39,479	90%
The Laurels of Forest Glenn	120	120	41,383	94%
The Oaks at Mayview	139	139	38,364	76%
Tower Nursing and Rehab Center	90	180	40,614	62%
Unihealth Post-Acute Care Raleigh	150	150	51,623	94%
Universal Health North Raleigh	112	112	34,760	85%
Wellington Rehab and Healthcare	80	80	27,627	95%
Average				**89%**

Further, the largest facility in Wake County, Tower Nursing, has additional issues that should be considered. First, 90 of the 180 beds at Tower Nursing are being relocated to Holly Springs, due in part to the fact that the Tower Nursing facility is too large and oddly configured for all of its beds to be fully utilized. Second, the owners of Britthaven of Holly Springs (which also own Tower Nursing) projected the new facility to be utilized at more than 90 percent in 2010, long before the prospect of the loss of WakeMed's nursing beds in the inventory[3]. Thus, when these additional factors are considered, the average occupancy of Tower Nursing and Britthaven of Holly Spring's 180 beds is projected to be at least 90 percent, which would raise the total occupancy rate in Wake County to 91 percent, greater than the 90 percent cited by the Agency in its denial of the DRMC application to close only 13 SNF beds.

Finally, on page 100 of the application, WakeMed states that the 37 beds represent only 1.5 percent of the total number of SNF beds in Wake County, using that statistic as a metric of the small impact it expected to have by reconverting its beds. However, DRMC operated only 13 of the 721 beds in

[3] These facts were stated by Max Mason, development coordinator for Britthaven's management company, during deposition and hearing testimony in the contested case for nursing care beds allocated in Wake County in the *2012 SMFP*.

Iredell County, or a comparable 1.8 percent of the total beds, yet still the Agency determined that the closing of its beds would not adequately address the needs of the population being served.

As a result of these issues, WakeMed should be found non-conforming with Criterion 3a.

In summary, Rex believes that numerous issues within the WakeMed application should result minimally in a finding of non-conformity with Criteria 1, 3, and 3a.

Attachment 1

NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF FACILITY SERVICES
RALEIGH, NORTH CAROLINA

IN RE: REQUEST FOR DECLARATORY RULING BY WAKEMED	)	DECLARATORY RULING

I, Robert J. Fitzgerald, Director of the Division of Facility Services ("Agency"), do hereby issue this Declaratory Ruling pursuant to G.S. §150B-4 and 10 NCAC 3B .0310, and the authority delegated to me by the Secretary of the Department of Health and Human Services. WakeMed asked the Agency to issue a ruling as to the applicability of the Certificate of Need Statute contained in G.S. §131E-176(16)(a) and G.S. §131E-178(a) to the facts described below. For the reasons given below I conclude that these portions of the Statute are not applicable with regard to WakeMed's intent to separately license its New Bern Avenue Campus ("Main Campus") and Western Wake Medical Center ("WWMC") facilities. Furthermore, I conclude that historical acute care utilization data for the last five years for the two hospitals be separately included in the *State Medical Facilities Plan* ("SMFP").

STATEMENT OF THE FACTS

(1) WakeMed is licensed by the Department of Health and Human Services, Division of Facility Services, Licensure and Certification Section, Acute Care and Home Care Branch, as one facility with multiple sites.

(2) WakeMed is licensed for a total of 629 acute care beds. These beds are contained on two separate locations – the Main Campus in Raleigh, with 515 acute care beds, and WWMC in Cary, with 114 acute care beds. Both facilities are located in Wake County.

(3) WakeMed operates 55 nursing facility beds, licensed as part of the hospital. These beds are contained in two separate locations: WakeMed Fuquay-Varina, with 37 total nursing facility beds, and WakeMed Zebulon/Wendell, with 19 total nursing facility beds. Both facilities are located in Wake County.

(4) A total of 37 of WakeMed's 55 nursing facility beds were applied for and awarded under Policy C.1 of the 1988, 1990 and 1992 *State Medical Facilities Plans* ("SMFPs"). Twenty-four of the 37 Policy C.1 beds are located at WakeMed Fuquay-Varina, with the remaining 13 beds located at WakeMed Zebulon/Wendell. These beds are compliant with current Policy NH-1 in the 2002 SMFP, in that:

(a) they are certified for participation in the Medicare and Medicaid programs;

(b) residents in these beds are discharged to other nursing facilities in the geographic area with available beds when such discharge is appropriate and permissible under applicable law; and,

(c) patients admitted to these beds have been acutely ill inpatients of an acute hospital or its satellites immediately preceding placement.

The other 18 nursing facility beds were awarded as part of a Settlement Agreement following the 1997 Wake County nursing facility review.

(5) WakeMed operates 68 inpatient rehabilitation beds at its Main Campus, located in Wake County. These beds are licensed as part of the hospital.

(6) WakeMed operates WakeMed North, an outpatient facility with 4 ambulatory surgery operating rooms and 2 endoscopy rooms, which are included in the WakeMed systemwide hospital license. This facility is located in Wake County.

(7) Effective January 1, 1989, the Agency granted WakeMed's request for a single, systemwide hospital license for the reporting of its acute care, rehabilitation and nursing facility beds. Utilization data for WakeMed's facilities by location and type of beds are provided each year to the Agency during the annual license renewal application process.

(8) WakeMed filed a Certificate of Need application to develop WWMC in 1981; the Agency issued the first CON for WWMC in 1984. WWMC opened in December 1991 as an 80-bed acute care hospital. Since opening, WWMC's acute care bed complement has been expanded via several CON Section-approved projects. WWMC is currently licensed for 114 acute care beds – beds have been added at WWMC by relocating them from other WakeMed campuses. The beds have been permanently closed at their original locations, so that the total number of beds systemwide has not changed. Table 1 provides the project numbers and CON issue dates for each of these projects.

Table 1 – CON Projects Involving Licensed Acute Care Beds at WWMC Since 1981

CON Project No.	Description	CON Issue Date(s)	Licensed Acute Beds at WWMC
J-1621-81	Develop an 80-bed acute care hospital in Cary	Mar. 17, 1984 Apr. 26, 1985 (reissued) Feb. 16, 1988 (reissued)	80
J-4115-90	Cost overrun on Project No. J-1621-81	Feb. 26, 1991	80
J-5884-98	Relocate 12 acute care beds to WWMC from Northern Wake Hospital in Wake Forest and 6 acute care beds to WWMC from WakeMed Zebulon/Wendell.	Feb. 9, 1999	98
J-6073-99	Relocate 8 acute care beds to WWMC from WakeMed Fuquay-Varina	Nov. 13, 1999	106
J-6398-01	Change in scope for Project No. J-5884-98, to relocate 8 neonatal Level II beds to WWMC from Main Campus.	Aug. 23, 2001	114

(9) Since opening, WWMC has been included under the WakeMed systemwide hospital license (No. H0199). However, WWMC has a separate Medicare provider number from the Main Campus, has a separate medical staff from the Main Campus, and is separately surveyed and accredited by the Joint Commission on Accreditation of Healthcare Organizations ("JCAHO").

(10) WWMC's annual acute care utilization is combined with acute care utilization data from the Main Campus and is reported in each annual SMFP under the name "WakeMed". WakeMed is part of the Wake County Multi-Hospital Service System. Table 2 below illustrates WWMC's utilization since December 1991.

Table 2 – Acute Care Utilization at WWMC Since December 1991

Fiscal Year	Patient Days	Percent Utilization
1992 (10 months)	6,078	20.8%
1993	10,511	36.0%
1994	11,508	39.4%
1995	13,352	45.7%
1996	13,030	44.6%
1997	13,640	46.7%
1998	16,492	56.5%
1999	18,161	62.2%
2000	20,432	59.6%
2001	24,945	72.7%
2002 (6 months prorated)	25,910	75.5%

(Source of FYs 1992-2001 data: Annual License Renewal Applications on file with the Agency; Source of FY 2002 data: WakeMed. Please note that WakeMed's fiscal year is October 1-September 30.)

(11) WakeMed wishes to license the Main Campus and WWMC under separate hospital licenses for reporting and other internal administrative purposes. No changes in services, staffing, administration or other aspect of management, costs or charges would result from licensing these two hospitals separately. However, doing so might technically be interpreted as the offering of a new institutional health service, via provisions in the Certificate of Need Statute contained in G.S. §131E-178(a), as follows:

> *(a) No person shall offer or develop a new institutional health service without first obtaining a certificate of need from the Department; provided, however, no hospital licensed pursuant to Article 5 of this chapter that would serve a minority population that would not otherwise have been served and that continues to serve a minority population may be required to obtain a certificate of need for transferring up to 65 beds to nursing care facility beds.*

G.S. §131E-176(16) defines a "new institutional health service", in part, as follows:

> *a. The construction, development or other establishment of a new health service facility.*

(12) In this request, WakeMed maintains that separate licensure of WWMC would not constitute a "change in bed capacity", as defined by G.S. §131E-176(5). No licensed beds would be relocated, nor would this proposal result in any change in the number of health service facility beds in the WakeMed system or in the Wake County Multi-Hospital Service System.

ANALYSIS

WakeMed's request that the Agency issue a Declaratory Ruling described above is based upon the following:

(1) Neither the WakeMed Main Campus nor WWMC are new health service facilities for Certificate of Need law purposes The Main Campus opened in 1961; WWMC opened in 1991. At the time of the opening of WWMC, it could have been separately licensed from the Main Campus without further certificate of need review.

(2) Separate licensure of the Main Campus and WWMC would not affect government reimbursement, because both facilities currently maintain, and will continue to maintain, separate Medicare and Medicaid provider numbers.

(3) Separate licensure of the Main Campus and WWMC would not impact medical staff organization and composition at either facility, because these facilities have, and have always had, separate medical staffs.

(4) Separate licensure of the Main Campus and WWMC would not impact accreditation, because both facilities are separately surveyed and accredited by the JCAHO.

(5) Separate licensure of the Main Campus and WWMC would not affect the governance of either facility, because there would be no resultant change in ownership from this proposal.

(6) Separate licensure of the Main Campus and WWMC would not change the inventory of licensed acute care beds, either in the WakeMed system or in the Wake County Multi-Hospital Service System.

(7) Separate licensure of the Main Campus and WWMC would not impact the reporting of acute care bed utilization data, as this data would continue to be reported to the Agency annually.

(8) Any future capital expenditures and/or services requiring a CON pursuant to G.S. §131E-175 *et seq*, at either the Main Campus or WWMC would continue to be obtained through the CON process.

CONCLUSION

For the reasons stated above and specific facts presented, I conclude that the separate licensure of Western Wake Medical Center from the WakeMed Main Campus does not constitute a new institutional health service or otherwise require a certificate of need under the applicable portions of the Certificate of Need Statute, specifically G.S. §131E-176(16)(a) and

G.S. §131E-178(a). In particular, I find persuasive the facts and circumstance that, other than the common licensure, these two hospitals were organized and have historically functioned as separate facilities. Moreover, since the only change resulting from this separate licensure status is the separation of utilization data and operating statistics on the annual License Renewal Application submitted to the Agency, I have determined that requiring a certificate of need in this instance would be an overly technical interpretation of the Certificate of Need law and not in furtherance of any statutory purpose. Furthermore, I conclude that the Agency should recognize the historical utilization data for the past five years by licensed hospital in the SMFP; i.e., recognize utilization data for the Main Campus and for WWMC as separate hospitals under common ownership.

WakeMed's acute care, rehabilitation, outpatient and skilled nursing facilities shall be licensed as follows:

Table 3: Licensure of WakeMed Facilities

Licensed Under Main Campus:	Location	Licensed Under WWMC:	Location
WakeMed New Bern Avenue Campus	3000 New Bern Ave. Raleigh, NC 27610	WakeMed Western Wake Medical Center	1900 Kildaire Farm Rd. Cary, NC 27511
WakeMed Rehab	3000 New Bern Ave. Raleigh, NC 27610	WakeMed Fuquay-Varina	400 W. Ransom St. Fuquay-Varina, NC 27526
WakeMed Zebulon/Wendell	535 W. Gannon Ave. Zebulon, NC 27597		
WakeMed North	10000 Falls of Neuse Rd. Raleigh, NC 27614		

This is the 15th day of July, 2002.

Robert J. Fitzgerald, Director
Division of Facility Services