

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

IN RE: REQUEST FOR DECLARATORY)	
RULING BY WAKE PET SERVICES, LLC)	
WAKEMED, WAKE RADIOLOGY)	DECISION TO DECLINE ISSUANCE
ONCOLOGY SERVICES, LLC, WAKE)	OF DECLARATORY RULING
RADIOLOGY SERVICES, LLC,)	
Project I.D. No. J-7103-04)	

Wake PET Services, LLC, WakeMed, Wake Radiology Oncology Services, LLC, and Wake Radiology Services, LLC (collectively “Wake”) have requested the issuance of a declaratory ruling allowing it to change the approved site for its combined position emission tomography/computed tomography scanner (“PET/CT”). Pursuant to N.C. Gen. Stat. § 150B-4, 10A NCAC 14A .0103, and the authority granted to me by the Secretary of the Department of Health and Human Services, and for the reasons given below, I hereby decline to issue any ruling to Wake.

The North Carolina Administrative Procedure Act (“APA”) provides that:

On request of a person aggrieved, an agency shall issue a declaratory ruling . . . as to the applicability to a given state of facts of a statute administered by the agency . . . except when the agency for good cause finds issuance of a ruling undesirable.

N.C. Gen. Stat. § 150B-4. The APA also provides that an agency “shall prescribe in its rules the circumstances in which rulings shall or shall not be issued. *Id.* Consequently, the Department has adopted a rule that provides that:

Whenever the Director [of the Division of Facility Services] believes for good cause that the issuance of a declaratory ruling will not serve the public interest, he may refuse to issue one. When good cause is deemed to exist, the Director will notify the petitioner of his decision in writing stating reasons for the denial of a declaratory ruling.

10A NCAC 14A .0103.

On November 18, 2005, Wake was issued a certificate of need (“CON”) for Project I.D. No. J-7103-04, which authorized Wake to acquire a combined PET/CT at the following location: 1900 Kildaire Farm Road, Cary, North Carolina. Wake seeks approval to change the site for the PET/CT scanner to 300 Ashville Avenue, Cary, North Carolina. I take administrative notice that Wake’s CON was issued pursuant to a settlement agreement executed by Wake in November, 2005. The express conditions contained in the settlement agreement and on the CON include the following condition: “The PET/CT scanner, shall be physically located in WakeMed’s licensed hospital space and the service shall be provided under WakeMed’s License and billed under WakeMed’s Provider Number.” See attached Settlement Agreement and CON issued November 18, 2005.

The ruling sought by Wake does not serve the public interest for several reasons. First, the condition at issue pertains not only to location, but to the provision of the service through a specified provider. Second, the issuance of a ruling is not ripe in that it appears on the face of the request that proposed new site is not currently licensed hospital space of WakeMed. Issuance of declaratory rulings which are unnecessary violate the principle of judicial economy and do not serve the public interest.

CONCLUSION

For the reasons given above, I decline to issue any ruling in response to the Request for Declaratory Ruling filed by Wake.

This the _____ day of February, 2006.

Robert J. Fitzgerald, Director
Division of Facility Services

