

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

RALEIGH, NORTH CAROLINA

IN RE: REQUEST FOR DECLARATORY)	
RULING BY WAKEMED & WAKEMED)	
PROPERTY SERVICES d/b/a WAKEMED)	DECLARATORY RULING
Project I.D. No. J-8018-07)	

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 to me by the Secretary of the Department of Health and Human Services.

WakeMed and WakeMed Property Services (“WakeMed”) has requested a declaratory ruling allowing for a change of site for Project I.D. No. J-8018-07 on grounds that it does not constitute a material change in physical location nor a failure to materially comply with the representation made by WakeMed in their Certificate of Need (“CON”) application. N.C.G.S. §§ 131E-181(a) and (b).

This ruling will be binding upon the Agency 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-5, the Agency expressly reserves the right to make a prospective change in interpretation of the statutes and regulations at issue in this Declaratory Ruling. WakeMed has requested this ruling and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

On August 6, 2009, WakMed and WakeMed Property Services (“WakeMed South Healthplex”) received a certificate of need to develop a satellite outpatient department, including an emergency department, CT Scanner, general radiology, ultrasound, mammography, and laboratory on a site located on Jones Sausage Road at U.S. Highway 70 (the “Original Site”) in Garner.

Since the issuance of the Certificate of Need for Project I.D. No. J-8018-07, WakeMed has learned that the Original Site is no longer available for development of the Project.

WakeMed now requests a declaratory ruling approving a change in site for Project I.D. No. J-8018-07 from Jones Sausage Road at Highway 70 in Garner to a site located at 406 U.S. Highway 70 (the “Proposed Site”) in Garner, on the grounds that doing so would not be a material change in location or scope of the project for purposes of N.C.G.S. § 131E-181(a) and would not affect the material compliance of WakeMed’s project with representations made in its CON application or the conditions on its CON.

ANALYSIS

The CON law would require a full review of WakeMed’s proposed changed of site, if the 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 change of site for WakeMed does not constitute a material change in the physical location or the scope of the proposed project for the following reasons:

The Proposed Site for the WakeMed South Healthplex is located approximately one half mile and 1 minute driving time from the site proposed in the Certificate of Need application.

Locating the project at the Proposed Site can be accomplished without compromise in service, changes in costs or charges to the public.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw WakeMed's CON if WakeMed 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. WakeMed 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, other than previously discussed.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that WakeMed's request to change the site for WakeMed South Healthplex from Jones Sausage Road at Highway 70 in Garner to a site located at 406 U.S. Highway 70 in Garner, 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).

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

This the _____ day of September, 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

W. Stan Taylor, Vice President, Corporate Planning
WakeMed
3100 New Bern Avenue
Raleigh, NC 27610

This the _____ day of September, 2011.

Jeff Horton
Chief Operating Officer