

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY WAKEMED) DECLARATORY RULING
Project ID No. J-7013-04)**

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.

WakeMed has requested a declaratory ruling allowing an additional site for Project I.D. No. J-7013-04 on the grounds that the change does not constitute a material change in scope or physical location or a failure to materially comply with the representations made by WakeMed in its Certificate of Need (“CON”) application for its project. N.C.G.S. §§ 131E-181(a). 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. Kathleen K. Gormley of WakeMed has requested this ruling on behalf of WakeMed and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Effective February 28, 2005, the Certificate of Need Section issued a certificate of need (Project I.D. No. J-7013-04) to WakeMed to acquire a mobile MRI scanner and trailer to provide MRI services at “two or more host sites.”

The host sites currently served by WakeMed's mobile MRI scanner are Central Regional Hospital-Butner (Granville County), WakeMed North Healthplex (Wake County), WakeMed Garner Healthplex (Wake County), and WakeMed Raleigh Medical Park (Wake County).

WakeMed proposes to add WakeMed Apex Healthplex, an outpatient facility located at 120 Healthplex Way in Apex (Wake County).

ANALYSIS

The CON law would require a full review of WakeMed's site addition if that addition were to represent a material change in the physical location or scope of the project. N.C.G.S. § 131E-181(a). The proposed site addition does not constitute a material change in the physical location or the scope of the proposed project for the following reasons:

The addition of the proposed host site will not affect the scope of services offered or the costs and charges to WakeMed or to the public for providing mobile MRI services.

WakeMed agrees to satisfy all the requirements and representations made regarding the host sites in its original CON application.

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.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that WakeMed's proposal to add WakeMed Apex Healthplex, located at 120

Healthplex Way in Apex (Wake County), does not constitute a material change in the physical location or scope of the project, does not violate N.C.G.S. § 131E-181, and does not constitute a failure to satisfy a condition of the CON in violation of N.C.G.S. § 131E-189(b).

This the _____ day of November, 2013.

Drexdal Pratt, Director
Division of Health Service Regulation
N.C. Department of Health and Human Services

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Declaratory Ruling upon the nonagency party by certified mail, return receipt requested, by causing a copy of same to be placed in the United States Mail, first-class, postage pre-paid envelope addressed as follows:

CERTIFIED MAIL

Kathleen K. Gormley
WakeMed
3000 New Bern Avenue
Raleigh, North Carolina 27610

This the _____ day of November, 2013.

Cheryl Ouimet
Chief Operating Officer