

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

**IN RE: REQUEST FOR) DECISION TO DECLINE TO ISSUE
DECLARATORY RULING BY) DECLARATORY RULING
WAKEMED)**

WakeMed has requested the North Carolina Department of Health and Human Services, Division of Facility Services (the “Department”) to issue a declaratory ruling that a Level I trauma center which reported more than 1500 trauma patients in the most recent 12 month reporting period meets the conditions of the Certificate of Need Regulation entitled Criteria and Standards for Air Ambulance contained in 10A NCAC 14C.3303(5), regardless of its trauma center designation during that 12-month period. 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 WakeMed.

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.

WakeMed filed its Request for Declaratory Ruling (the “Request”) on 16 May 2006. On 15 June 2006, WakeMed filed an application for a certificate of need to establish a new air ambulance service. The Certificate of Need Section of the Department began review of WakeMed’s application 1 July 2006.

The ruling sought by WakeMed does not serve the public interest for several reasons. First, the Certificate of Need Section’s interpretation of its review criteria should not be changed in the middle of a review. Second, the issuance of a ruling could lead to judicial review of the ruling in Superior Court at the same time that the Certificate of Need Section’s decision on the application is under review in OAH. This would violate the principle of judicial economy and would deprive the Department of the opportunity to decide the matter administratively before the Courts are involved.

CONCLUSION

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

This the _____ day of July, 2006.

Robert J. Fitzgerald, Director
Division of Facility Services
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 a first class, postage prepaid envelope addressed as follows:

CERTIFIED MAIL

Mr. W. Stan Taylor, Vice-President
Corporate Planning and Managed Care
WakeMed
3000 New Bern Ave.
Raleigh, NC 27610

This the 11th day of July, 2006.

Jeff Horton
Chief Operating Officer