



DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF HEALTH SERVICE REGULATION

ROY COOPER  
GOVERNOR

MANDY COHEN, MD, MPH  
SECRETARY

MARK PAYNE  
DIRECTOR

**RESPONSE REQUIRED**

November 9, 2017

Jim Swann  
3390 Dunn Road  
Eastover, NC 28312

**Conditional Approval**

Project ID #: J-11373-17  
Facility: Fresenius Kidney Care Eno River  
Project Description: Develop a new 10-station dialysis facility by relocating six dialysis stations from Freedom Lake Dialysis Unit and four from FMC Dialysis Services West Pettigrow  
County: Durham  
FID #: 170324

Dear Mr. Swann:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) has conditionally approved the above referenced certificate of need application. This decision was made after a review of the applications submitted for this cycle and after consideration of the Certificate of Need Law, N.C. Gen. Stat. §131E-175 et. seq. and regulations promulgated there under, the State Medical Facilities Plan, and other applicable information. Attached to this letter are the required findings made with respect to your application. The applicant shall not proceed with the construction, offering or development of this project until the certificate of need is issued. Further, the Agency shall not issue the certificate of need until all applicable conditions of approval have been met pursuant to N.C. Gen. Stat. §131E-187(a). The conditions are as follows:

1. Bio-Medical Applications of North Carolina, Inc. d/b/a Fresenius Kidney Care Eno River shall materially comply with all representations made in the certificate of need application.
2. Pursuant to Policy ESRD 2, Bio-Medical Applications of North Carolina, Inc. shall develop a new kidney disease treatment center to be known as Fresenius Kidney Care Eno River by relocating six dialysis stations from Freedom Lake Dialysis Unit and four dialysis stations from FMC Dialysis Services West Pettigrew.

**HEALTHCARE PLANNING AND CERTIFICATE OF NEED SECTION**  
WWW.NCDHHS.GOV

TELEPHONE 919-855-3873

LOCATION: EDGERTON BUILDING • 809 RUGGLES DRIVE • RALEIGH, NC 27603

MAILING ADDRESS: 2704 MAIL SERVICE CENTER • RALEIGH, NC 27699-2704

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3. Bio-Medical Applications of North Carolina, Inc. d/b/a Fresenius Kidney Care Eno River shall install plumbing and electrical wiring through the walls for no more than 10 dialysis stations, which shall include any isolation or home hemodialysis stations.
4. Upon completion of this project, Bio-Medical Applications of North Carolina, Inc. shall take the necessary steps to decertify six dialysis stations at Freedom Lake Dialysis Unit for a total of no more than twenty dialysis stations at Freedom Lake Dialysis Unit and to decertify four dialysis stations from FMC Dialysis Services West Pettigrew for a total of twenty dialysis stations at FMC Dialysis Services West Pettigrew.
5. Bio-Medical Applications of North Carolina, Inc. d/b/a Fresenius Kidney Care Eno River shall acknowledge acceptance of and agree to comply with all conditions stated herein to the Agency in writing prior to issuance of the certificate of need.

**Response to the above conditions should be submitted to the Agency no later than 35 days from the date of the decision. Failure to respond within this time period may result in the Agency making a determination not to issue a certificate of need for the project referenced above.**

The conditional approval is valid only for a capital expenditure of **\$1,767,721**. If a cost overrun occurs that exceeds the approved capital expenditure amount, a new certificate of need may be required as determined by N.C. Gen. Stat. §131E-176(16)(e).

The applicant should be aware that according to the Certificate of Need law any affected person shall have thirty (30) days after the date of decision to file a petition for a contested case on this approval. Further, if you are aggrieved by the conditions of the decision you may file a petition for a contested case hearing in accordance with N.C. Gen. Stat. §150B, Article 3, as amended. This petition must be filed with the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, North Carolina 27699-6714 within thirty (30) days of the date of this decision. [Note: Effective October 1, 2009, OAH requires a filing fee with submittal of petitions for contested cases. Please direct all questions regarding this fee to OAH Clerk's Office (919-431-3000).]

N.C. Gen. Stat. §150B-23 provides that a party filing a petition must also serve a copy of the petition on all parties to the petition. Therefore, if you file a petition for a contested case hearing, you must serve a copy of the petition on the Department of Health and Human Services by mailing a copy of your petition to:

Lisa G. Corbett  
Department of Health and Human Services,  
Office of Legal Affairs,  
Adams Building – Room 154  
2001 Mail Service Center  
Raleigh, North Carolina, 27699-2001

It is requested that a copy of the petition also be served on the Agency.

The certificate of need will not be issued before the completion of this 30 day period ending **December 11, 2017**. If a contested case request is received within the thirty (30) day period, the certificate will not be issued until the appeal is resolved (10A NCAC 14C .0208).

The timetable for completion of the project is the timetable outlined in the certificate of need application, unless an adjustment has been made by the Agency because the review period was extended. The timetable for this project is as follows:

1. Financing Obtained	July 17, 2017
2. Drawings Completed	April 18, 2018
3. Construction/Renovation Contract(s) Executed	May 18, 2018
4. 25% of Construction/Renovation Completed (25% of the cost is in place)	July 2, 2018
5. 50% of Construction/Renovation Completed	August 16, 2018
6. 75% of Construction/Renovation Completed	September 30, 2018
7. Construction/Renovation Completed	November 14, 2018
8. Equipment Ordered	October 17, 2018
9. Equipment Operational	December 22, 2018
10. Building/Space Occupied	December 31, 2018
11. Services Offered	December 31, 2018
12. Medicare and/or Medicaid Certification Obtained	December 31, 2018

If the decision is appealed, the timetable set forth in this letter will be adjusted accordingly before the Certificate of Need is issued. Please contact this office if any clarification of this decision is required.

Please refer to the Project ID # and Facility ID # (FID) in all correspondence.

Sincerely,

Bernetta Thorne-Williams  
Project Analyst

Lisa Pittman  
Team Leader, Certificate of Need

Attachment

cc: Construction Section, DHSR  
Acute & Home Care Licensure & Certification Section, DHSR  
Sharetta Blackwell, Program Assistant Healthcare Planning, DHSR

**CERTIFICATE OF SERVICE**

I hereby certify that I have served the foregoing notice of **conditional approval** on the following person by placing a copy in an official depository of the United States Postal Service in a postage-paid, first class envelope addressed as follows:

Jim Swan  
3390 Dunn Road  
Eastover, NC 28312

This the 9<sup>th</sup> day of November, 2017.

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Bernetta Thorne-Williams  
Project Analyst, Certificate of Need