



DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF HEALTH SERVICE REGULATION

ROY COOPER  
GOVERNOR

MANDY COHEN, MD, MPH  
SECRETARY

MARK PAYNE  
DIRECTOR

**RESPONSE REQUIRED**

October 13, 2017

Jim Swann  
3390 Dunn Road  
Eastover, NC 28312

**Conditional Approval**

Project ID #: F-11375-17  
Facility: Fresenius Kidney Care Mallard Creek  
Project Description: Develop a new 12-station dialysis facility by relocating 12 stations from BMA North Charlotte  
County: Mecklenburg  
FID #: 170326

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 Mallard Creek 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. d/b/a Fresenius Kidney Care Mallard Creek shall develop a new kidney disease treatment center

**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

AN EQUAL OPPORTUNITY/ AFFIRMATIVE ACTION EMPLOYER



to be known as FKC Mallard Creek by relocating 12 dialysis stations from BMA North Charlotte.

3. Bio-Medical Applications of North Carolina, Inc. d/b/a Fresenius Kidney Care Mallard Creek shall install plumbing and electrical wiring through the walls for no more than 12 dialysis stations, which shall include any isolation stations.
4. Upon completion of this project, Bio-Medical Applications of North Carolina, Inc. shall take the necessary steps to decertify 12 dialysis stations at BMA North Charlotte for a total of no more than 28 dialysis stations at BMA North Charlotte upon completion of this project and Project I.D. #F-11243-16 (add 4 stations).
5. Bio-Medical Applications of North Carolina, Inc. d/b/a Fresenius Kidney Care Mallard Creek 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 **\$1,850,220**. 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 **November 13, 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. Construction/Renovation Contract(s) Executed                           | May 18, 2018       |
| 2. 25% of Construction/Renovation Completed (25% of the cost is in place) | July 2, 2018       |
| 3. 50% of Construction/Renovation Completed                               | June 1, 2018       |
| 4. 75% of Construction/Renovation Completed                               | September 30, 2018 |
| 5. Construction/Renovation Completed                                      | November 14, 2018  |
| 6. Services Offered   | December 31, 2018  |
| 7. Medicare and/or Medicaid Certification Obtained                        | December 31, 2018  |
| 8. Final Annual Report Due  | March 31, 2022     |

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,

Gloria C. Hale  
Project Analyst

Fatimah Wilson  
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 Swann  
3390 Dunn Road  
Eastover, NC 28312

This the 13<sup>th</sup> day of October, 2017.

---

Gloria C. Hale  
Project Analyst, Certificate of Need