

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

**IN RE: REQUEST FOR DECLARATORY )  
RULING BY DVA HEALTHCARE RENAL )     DECLARATORY RULING  
CARE, INC. )  
Project I.D. No. R-7130-04 )**

I, Jeff Horton, as Acting 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.

DVA Healthcare Renal Care, Inc. (“DVA”) has requested a declaratory ruling allowing for a change of site for Project I.D. No. R-7130-04 on the grounds that the change does not constitute a material change in physical location or a failure to materially comply with the representations made by DVA in its Certificate of Need (“CON”) application for its project. N.C.G.S. §§ 131E-189(b). 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. William R. Shenton of Poyner & Spruill LLP has requested this ruling on behalf of DVA, and has provided the material facts upon which this ruling is based.

## **STATEMENT OF THE FACTS**

On February 25, 2005, Gambro Healthcare, Inc. d/b/a Gambro Healthcare Gates County (Gambro) was conditionally approved to develop a new ten station dialysis facility in Gates County and the Certificate of Need was issued on March 28, 2005.

As a result of a transfer of the ownership of Gambro to DVA and based on the Agency's approval of it, DVA acquired a number of the Gambro dialysis facilities located in North Carolina and the certificate of need for the Gambro Healthcare Gates County facility.

The primary and secondary sites listed in the Certificate of Need Application have been determined to have inadequate acreage to accommodate the septic tank and drainage fields necessary for development of the facility, nor do either of the sites percolate.

## **ANALYSIS**

The new site is a 4-acre parcel located within a 40-acre tract that is located along US Highway 158 in Gatesville, NC State Road 1315, and NC State Road 1300.

The new site is less than one mile away from the primary site identified in the original application by Gambro.

The proposed site percolates and will accommodate the facility, septic tank and the necessary drainage fields.

DVA will operate the same size facility and offer the same services at the new site, and costs for the development of the facility should not exceed 115% of the amount shown on the certificate of need.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw DVA's CON if DVA 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. DVA 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 the change of site for Project I.D. No. R-7130-04 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 increases in the approved capital expenditure for this project, a change in the approved timetable, a change in the conditions placed on the certificate of need, or any other change in the approved project, except as expressly stated herein.

This the \_\_\_\_\_ day of February, 2009.

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Jeff Horton, Acting 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**

William R. Shenton  
Poyner & Spruill, LLP  
301 Fayetteville Street, Suite 1900  
Raleigh, North Carolina 27601

This the \_\_\_\_\_ day of February, 2009.

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Jesse Goodman  
Acting Chief Operating Officer