

**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. F-7861-07)**

I, Jeff Horton, 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 N.C.G.S. § 150B-4 and 10A NCAC 14A .0103 under the authority granted to 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 in site for Project I.D. No. F-7861-07 (“Project”) 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 the Project. N.C.G.S. §§ 131E-181(a) and (b). This ruling will be binding upon the Department and the entity requesting it, so 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 the law firm 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

Effective 11 September 2008, the CON Section issued DVA a CON for the Project to relocate six dialysis stations from Charlotte East Dialysis Center and four dialysis stations from South Charlotte Dialysis Center to develop a 10-station dialysis facility to be known as the Mint

Hill Dialysis Center. DVA identified the primary site for the Project in the Clear Creek Business Park, Blair Road, Mint Hill, Mecklenburg County.

DVA represents that the downturn in the economy has created uncertainty over the development of the business park identified as the primary site. DVA now seeks to develop the Project at an alternate site (the “new site”) located at 9030 Albemarle Road (also known as 9030 Dwightware Boulevard) in Charlotte.

DVA represents that the new site is suitable for the Project and is approximately the same distance to the key support services identified in its application for the Project. It is in the same municipality and will be in the same proximity to the population that DVA proposed to serve. DVA states that the Project’s development costs will not exceed 115% of the approved total capital cost of the Project.

ANALYSIS

The CON law would require a full review of DVA’s proposed change of site if that change were to represent a material change in the physical location or scope of the Project. N.C. G.S. § 131E-181(a). The proposed change of the site for the Project does not constitute a material change in the physical location because of the close proximity of the new site to the original site. The change will not affect the scope of services offered or the costs and charges to the public. In addition, there is no proposed change in the person named in the application such that a violation of N.C.G.S. § 131E-181(a) would occur.

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 upon the CON for the Project.

CONCLUSION

For the foregoing reasons, assuming the statements in the request to be true, I conclude that the substitution of the new site for the original site for the Project will not violate N.C.G.S. § 131E-181, and will not constitute a failure to satisfy a condition of the CON for Project I.D. No. F-7861-07 in violation of N.C.G.S. § 131E-189(b).

This the ____ day of June, 2010.

Jeff Horton, 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 a first-class, postage pre-paid envelope addressed as follows:

CERTIFIED MAIL

William R. Shenton
Poyner Spruill LLP
Post Office Box 1801
Raleigh, NC 27601-1801

This the ____ day of June, 2010.

Jesse Goodman
Chief Operating Officer