

**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. J-8290-09)**

I, Drexdal Pratt, 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. J-8290-09 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

DVA applied for and received a certificate of need to relocate twelve (12) dialysis stations from its Durham Dialysis Center in Durham in order to develop a new twelve (12) station dialysis facility in Durham, Durham County, to be known as the Durham South Dialysis Center.

In its application, DVA identified a primary site located at 202 West Woodcroft Parkway in Durham and a secondary site located at 117 East N.C. Highway 54, also in Durham. After receiving the certificate of need to build the Durham South facility, DVA determined that a new site, which is located at 415 West N.C. Highway 54 near the other end of Woodcroft Parkway, was available.

DVA's developer is positioned to purchase the building at the new site and lease it to DVA so that DVA can up-fit it as a dialysis facility.

The new site is approximately 1.5 miles from the primary site approved in the application.

Because the primary site would require substantial engineering and land preparation prior to construction, and the building on the new site is already in existence, developing the facility at the new site would be both less expensive and faster than developing the facility at the approved site or the secondary site, which also would be new construction.

ANALYSIS

The CON law would require a full review of DVA's proposed change in 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 does not constitute a material change in the physical location or the scope of the proposed project for the following reasons:

The new site is 1.5 miles away from the primary site identified in the original application by DVA.

The facility's proximity to other health services will not be materially different from the primary or secondary site, so the relocation would not entail any material change in the development or operation of the facility from what was originally proposed in the application.

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.

The change of name of the facility from Durham South Dialysis Center to Southpoint Dialysis is intended to more accurately identify the area where the facility will be located and will in no way affect the development or operation of the facility.

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 development and operation of the Durham South Dialysis Center under the name Southpoint Dialysis at 415 West N.C. Highway 54 in Durham, Project I.D. No. J-8290-09, 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 November, 2010.

Drexdal Pratt, 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 November, 2010.

Jeff Horton
Chief Operating Officer