

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY BIO-MEDICAL)
APPLICATIONS OF NORTH CAROLINA) **DECLARATORY RULING**
INC. D/B/A FMC BLADEN HOME DIALYSIS)
Project ID No. N-10153-13)**

I, Drexdal Pratt, 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 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.

Bio-Medical Applications of North Carolina Inc. d/b/a FMC Bladen Home Dialysis (BMA) has requested a declaratory ruling allowing a change in site for Project I.D. No. N-10153-13 on the grounds that the change does not constitute a material change in scope or physical location or a failure to materially comply with the representations made by BMA in its Certificate of Need (“CON”) application for its project. N.C.G.S. §§ 131E-181(a). 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. Jim Swann has requested this ruling on behalf of BMA and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Effective December 3, 2013 the Certificate of Need Section issued a certificate of need to BMA to develop a freestanding kidney disease treatment center in Elizabethtown.

BMA is requesting a change of site from 507 Doctors Drive, Elizabethtown to 101 S. Craig Street, Elizabethtown.

The address of the secondary site in the application was identified as 505 W. Broad Street, Elizabethtown, however, this address and 101 Craig Street both identify the same building, just different parts of the building which fronts on two different streets.

ANALYSIS

The CON law would require a full review of BMA's change in site if that change was to represent a material change in the physical location or scope of the project. N.C.G.S. § 131E-181(a). The proposed site change does not constitute a material change in the physical location or the scope of the proposed project for the following reasons:

The physical location of the new site was identified as the secondary site in the application. The two locations are less than one mile apart and both located within Elizabethtown.

BMA has identified the new location as the more cost effective alternative since it could be leased at a significantly lower rate.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw BMA's CON if BMA 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. BMA 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 BMA’s proposal to change the approved site for Project ID N-10153-13 from 507 Doctors Drive, Elizabethtown to 101 Craig Street, Elizabethtown, does not constitute a material change in the physical location or scope of the project, does not violate N.C.G.S. § 131E-181, and does not constitute a failure to satisfy a condition of the CON in violation of N.C.G.S. § 131E-189(b).

This the _____ day of April, 2014.

Drexdal Pratt, Director
Division of Health Service Regulation
N.C. Department of Health and Human Services

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Declaratory Ruling upon the nonagency party by certified mail, return receipt requested, by causing a copy of same to be placed in the United States Mail, first-class, postage pre-paid envelope addressed as follows:

CERTIFIED MAIL

Jim Swann, Director of Operations, CON
3717 National Drive, Suite 206
Raleigh, North Carolina 27612

This the _____ day of April, 2014.

Cheryl Ouimet
Chief Operating Officer