

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

**IN RE: REQUEST FOR DECLARATORY )  
RULING BY TOTAL RENAL CARE OF )  
NORTH CAROLINA, LLC d/b/a ) **DECLARATORY RULING**  
HENDERSONVILLE DIALYSIS CENTER )  
Project I.D. No. B-10274-14 )**

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 Statutes § 150B-4 and 10A NCAC 14A .0103, under the authority granted me by the Secretary of the Department of Health and Human Services.

Total Renal Care of North Carolina, LLC d/b/a Hendersonville Dialysis Center (“TRC”) has requested a declaratory ruling allowing for a change in location for Project I.D. No. B-10274-14 (“Project”) 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 TRC in its Certificate of Need (“CON”) application for this Project. N.C.G.S. §§ 131E-181(a) and (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. Lee M. Whitman and J. Blakely Kiefer of Wyrick Robbins Yates & Ponton, LLP, have requested this ruling on behalf of TRC and have provided the material facts upon which this ruling is based.

## **STATEMENT OF THE FACTS**

On July 28, 2014, TRC was issued a Certificate of Need to add five (5) dialysis stations to its existing 19-station dialysis facility in Henderson County, and, upon completion of that project, relocate the new 24-station facility to a new site in Henderson County. The approved location for the new facility was 146 Sugarloaf Road, Hendersonville, Henderson County, North Carolina (“Approved Site”). TRC now seeks to change the facility site to a new location at 1250 7<sup>th</sup> Avenue E, Hendersonville, Henderson County, North Carolina (“Proposed Site”).

## **ANALYSIS**

The CON law would require a full review of TRC’s relocation to the Proposed Site if that relocation were to represent a material change in the scope or physical location of the Project. N.C.G.S. § 131E-181(a). The relocation to the Proposed Site does not constitute a material change in the scope or physical location of the Project for the following reasons:

During the process of preparing the CON application, TRC considered both the Approved Site and the Proposed Site and determined that the Proposed Site was the more optimal site for development of the Project. However, because the Proposed Site was not available for development at the time of the application, TRC moved forward with the Approved Site. Since receiving the CON, the Proposed Site has become available for leasing. TRC states that the Proposed Site is a better option than the Approved Site because the Proposed Site will allow TRC to reduce its operating costs and provide greater ease of access for its dialysis patients. Specifically, TRC states that its projected annual lease for the Approved Site is \$157,896, and \$161,054, for Operating Year 1 and Operating Year 2, respectively. However, the projected annual lease at the Proposed Site is \$86,991, and \$88,731, for Operating Year 1 and Operating Year 2, respectively. While TRC’s new projected capital cost of \$2,227,257 for development of the

Project at the Proposed Site is greater than the approved capital cost of \$2,120,257 for development at the Approved Site, this amount is still less than \$2,438,295, or a change of not more than fifteen percent (15%) of the approved capital expenditure amount. See N.C.G.S. § 131E-176(16)(e).

In addition, TRC states that the Proposed Site is (i) only one-tenth of a mile further from the existing facility than the Approved Site; (ii) less than one-tenth of a mile from the nearest bus stop; (iii) less than three-tenths of a mile from the nearest pharmacy; (iv) one and a half miles from Pardee Hospital; and (v) one mile from the nearest fire station. Further, TRC states that if the Proposed Site is approved, the timetable for development of the Project will be shorter than at the Approved Site, resulting in the facility being available to patients approximately two (2) months earlier than if developed at the Approved Site. TRC states that it will continue to materially comply with all of the representations made in its application and the conditions placed on its CON.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw TRC's CON if TRC 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. TRC will not develop this Project in a manner that is materially inconsistent with the representations made in its application or 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 location of the facility from 146 Sugarloaf Road, Hendersonville, Henderson County, North Carolina to a new location at 1250 7<sup>th</sup> Avenue E, Hendersonville, Henderson County, North Carolina, will not constitute a material change in the scope or physical location 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 the \_\_\_\_\_ day of February, 2015.

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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 PETITIONER 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**

Lee M. Whitman  
J. Blakely Kiefer  
WYRICK ROBBINS YATES & PONTON, LLP  
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ATTORNEYS FOR TOTAL RENAL CARE OF  
NORTH CAROLINA, LLC d/b/a  
HENDERSONVILLE DIALYSIS CENTER

This the \_\_\_\_\_ day of February, 2015.

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Cheryl Ouimet  
Chief Operating Officer