

## ATTACHMENT - REQUIRED STATE AGENCY FINDINGS

### FINDINGS

C = Conforming

CA = Conditional

NC = Nonconforming

NA = Not Applicable

Decision Date: June 29, 2018

Findings Date: June 29, 2018

Project Analyst: Celia C. Inman

Assistant Chief: Lisa Pittman

Project ID #: G-11471-18

Facility: BMA of South Greensboro

FID #: 980838

County: Guilford

Applicant(s): Bio-Medical Applications of North Carolina, Inc.

Project: Add no more than five dialysis stations to BMA of South Greensboro for a total of no more than 40 dialysis stations upon completion of this project and Project I.D. #G-11303-17 (relocate 14 stations to the new FKC Garber-Olin facility)

### REVIEW CRITERIA FOR NEW INSTITUTIONAL HEALTH SERVICES

N.C. Gen. Stat. § 131E-183(a) The Department shall review all applications utilizing the criteria outlined in this subsection and shall determine that an application is either consistent with or not in conflict with these criteria before a certificate of need for the proposed project shall be issued.

- (1) The proposed project shall be consistent with applicable policies and need determinations in the State Medical Facilities Plan, the need determination of which constitutes a determinative limitation on the provision of any health service, health service facility, health service facility beds, dialysis stations, operating rooms, or home health offices that may be approved.

C

Bio-Medical Applications of North Carolina, Inc. (BMA), the applicant, currently operates a 49-station dialysis facility located at 622 Industrial Drive, Greensboro, Guilford County. The applicant proposes to add five dialysis stations to its existing facility for a total of 40 stations at BMA of South Greensboro (BMA South Greensboro) upon completion of this project and Project ID #G-11303-17 (relocate 14 stations to the new FKC Garber-Olin facility).

**Need Determination**

The 2018 State Medical Facilities Plan (SMFP) provides a county need methodology and a facility need methodology for determining the need for new dialysis stations. According to Table D in the January 2018 Semiannual Dialysis Report (SDR), there is a deficit of one dialysis station in Guilford County. The county need methodology, as discussed on page 365 of the 2018 SMFP, requires a deficit of 10 stations or greater and the utilization of all facilities in the county to be 80% or greater to identify a county need for an additional facility. Therefore, there is no county need determination for new dialysis stations for Guilford County.

However, the applicant is eligible to apply for additional stations based on the facility need methodology because the utilization rate reported for BMA South Greensboro in the January 2018 SDR is 3.27 patients per station. This utilization rate was calculated based on 193 in-center dialysis patients and 59 certified dialysis stations. (193 patients / 59 stations = 3.27 patients per station). The facility need methodology requires a facility’s utilization rate in the latest SDR to be at least 3.2 patients per station to be eligible to apply for additional stations based on facility need.

Application of the facility need methodology indicates that up to a maximum of five additional stations are needed for this facility, as illustrated in the following table.

**April 1 REVIEW-January 2018 SDR**

| Required SDR Utilization                   |   | 80.00%    |
|--|---|-----------|
| Center Utilization Rate as of 6/30/16      |   | 81.78%    |
| Certified Stations                         |   | 59        |
| Pending Stations                           |   | 0         |
| <b>Total Existing and Pending Stations</b> |   | <b>59</b> |
| In-Center Patients as of 6/30/17 (SDR2)    |   | 193       |
| In-Center Patients as of 12/31/16 (SDR1)   |   | 182       |
| Step                                       | Description   |           |
| (i)  | Difference (SDR2 - SDR1)  | 11        |
|  | Multiply the difference by 2 for the projected net in-center change   | 22        |
|  | Divide the projected net in-center change for 1 year by the number of in-center patients as of 12/31/16   | 0.1209    |
| (ii)                                       | Divide the result of Step (i) by 12   | 0.0101    |
| (iii)                                      | Multiply the result of Step (ii) by 6   | 0.0604    |
| (iv)                                       | Multiply the result of Step (iii) by the number of in-center patients reported in SDR2 and add the product to the number of in-center patients reported in SDR2 | 204.6648  |
| (v)  | Divide the result of Step (iv) by 3.2 patients per station  | 63.9578   |
|  | and subtract the number of certified and pending stations as recorded in SDR2 [59] to determine the number of stations needed                                   | <b>5</b>  |

As shown in the table above, based on the facility need methodology for dialysis stations, the potential number of stations needed is five stations. The applicant proposes to add five stations. Therefore, the facility need determination for dialysis stations is applicable to this review.

In summary, the application is consistent with the facility need determination for dialysis stations.

### **Policies**

There is one policy in the 2018 SMFP which is applicable to this review: Policy GEN-3: Basic Principles. Policy GEN-3 states:

*“A certificate of need applicant applying to develop or offer a new institutional health service for which there is a need determination in the North Carolina State Medical Facilities Plan shall demonstrate how the project will promote safety and quality in the delivery of health care services while promoting equitable access and maximizing healthcare value for resources expended. A certificate of need applicant shall document its plans for providing access to services for patients with limited financial resources and demonstrate the availability of capacity to provide these services. A certificate of need applicant shall also document how its projected volumes incorporate these concepts in meeting the need identified in the State Medical Facilities Plan as well as addressing the needs of all residents in the proposed service area.”*

**Promote Safety and Quality** – The applicant describes how it believes the proposed project would promote safety and quality in Section B.4(a), page 8, Section O, pages 56-59, and referenced exhibits. The information provided by the applicant is reasonable and adequately supports the determination that the applicant’s proposal would promote safety and quality.

**Promote Equitable Access** – The applicant describes how it believes the proposed project would promote equitable access in Section B.4(b), page 9, Section L, pages 47-50, and referenced exhibits. The information provided by the applicant is reasonable and adequately supports the determination that the applicant’s proposal would promote equitable access.

**Maximize Healthcare Value** – The applicant describes how it believes the proposed project would maximize healthcare value in Section B.4(c) and (d), page 10, and Section N, pages 53-54. The information provided by the applicant is reasonable and adequately supports the determination that the applicant’s proposal would maximize healthcare value.

The applicant adequately demonstrates how its projected volumes incorporate the concepts of quality, equitable access and maximum value for resources expended in meeting the facility need. Therefore, the application is consistent with Policy GEN-3.

## **Conclusion**

The Agency reviewed the:

- application,
- exhibits to the application, and
- information publicly available during the review and used by the Agency.

Based on that review, the Agency concludes that the application is conforming to this criterion for the reasons stated above.

- (2) Repealed effective July 1, 1987.
- (3) The applicant shall identify the population to be served by the proposed project, and shall demonstrate the need that this population has for the services proposed, and the extent to which all residents of the area, and, in particular, low income persons, racial and ethnic minorities, women, handicapped persons, the elderly, and other underserved groups are likely to have access to the services proposed.

## C

The applicant proposes to add five stations to its existing facility for a total of 40 stations at BMA South Greensboro upon completion of this project and Project ID #G-11303-17 (relocate 14 stations to the new FKC Garber-Olin facility).

The following table, summarizes the information provided by the applicant on page 4 of the application and illustrates the current and projected number of dialysis stations at BMA South Greensboro. The January 2018 SDR shows 59 certified dialysis stations at BMA South Greensboro, as of June 30, 2017. However, as discussed on page 4 of the application, the applicant relocated ten certified dialysis stations from BMA South Greensboro to FMC High Point (Project ID #G-11055-15). The relocated FMC High Point stations were certified effective September 18, 2017.

| <b>Stations</b> | <b>Description</b>  | <b>Project ID #</b> |
|-----------------|---|---------------------|
| 59              | Total existing certified stations as of the January 2018 SDR    |                     |
| -10             | Stations relocated to FMC High Point, effective 9/18/17         | G-11055-15          |
| -14             | Stations previously approved to be relocated to FKC Garber-Olin | G-11303-17          |
| +5              | Stations to be added at SKC as part of this project             | G-11471-18          |
| 40              | Total stations upon completion of proposed project              |                     |

**Patient Origin**

On page 365, the 2018 SMFP defines the service area for dialysis stations as “*the dialysis station planning area in which the dialysis station is located. Except for the Cherokee-Clay-Graham Multicounty Planning Area and the Avery-Mitchell-Yancey Multicounty Planning Area, each of the 94 remaining counties is a separate dialysis station planning area.*” BMA South Greensboro is located in Guilford County; thus, the service area for this facility consists of Guilford County. Facilities may also serve residents of counties not included in their service area.

In Section C.8, page 17, and Section C. 1, page 13, the applicant provides the historical and projected patient origin, respectively, for BMA South Greensboro patients for the first two operating years following completion of the project, as summarized in the following table.

| County         | Current In-Center Patients as a Percent of Total as of 12/31/17 |                  | OY1<br>1/1/19-12/31/19 |                  | OY2<br>1/1/20-12/31/20 |                  |
|----------------|---|------------------|------------------------|------------------|------------------------|------------------|
|                | In-Center Patients  | Percent of Total | In-Center Patients     | Percent of Total | In-Center Patients     | Percent of Total |
| Guilford       | 185   | 96.9%            | 177                    | 98.3%            | 186                    | 98.4%            |
| Bladen         | 1   | 0.5%             | 0                      | 0.0%             | 0                      | 0.0%             |
| Rockingham     | 3   | 1.6%             | 3                      | 1.7%             | 3                      | 1.6%             |
| South Carolina | 1   | 0.5%             | 0                      | 0.0%             | 0                      | 0.0%             |
| Other States   | 1   | 0.5%             | 0                      | 0.0%             | 0                      | 0.0%             |
| <b>Total</b>   | <b>191</b>  | <b>100.0%</b>    | <b>180</b>             | <b>100.0%</b>    | <b>189</b>             | <b>100.0%</b>    |

The applicant does not propose to serve home hemodialysis or peritoneal dialysis patients. Exhibit I-1 contains a Home Training agreement between BMA South Greensboro (formerly known as South Greensboro Kidney Center) and BMA of Greensboro.

In Section C, pages 13-14, the applicant provides the assumptions and methodology used to project patient origin. The applicant assumes that the three patients from Rockingham County are dialyzing at BMA South Greensboro by patient choice and will continue to do so. The applicant states that the patients from Bladen County, South Carolina and other states are assumed to be transient and therefore are not projected to receive future services at the facility. The applicant’s assumptions are reasonable and adequately supported.

**Analysis of Need**

In Section C, pages 13-15, the applicant explains why it believes the population projected to utilize the proposed services needs the proposed services. On page 15, applicant states:

*“The need of this population for the proposed services is a function of the individual patient need for dialysis care and treatment.”*

Section B.2, page 6, includes the ESRD facility need methodology table which shows a need for up to five additional dialysis stations at BMA South Greensboro.

The information is reasonable and adequately supported for the following reasons:

- the applicant begins its projections of the patient population to be served with the existing patients of BMA South Greensboro,
- the applicant grows the patient population by the January 2018 SDR Guilford County five-year average annual change rate (AACR), and
- the utilization rate of the patients projected to be dialyzing at BMA South Greensboro by the end of the first year is above 3.2 patients per station.

*Projected Utilization*

In Section C.1, page 14, the applicant provides the methodology used to project utilization, as summarized below:

| <b>BMA South Greensboro</b>   | <b>In-Center</b>             |
|---|------------------------------|
| Begin with 185 in-center Guilford County dialysis patients as of December 31, 2017.   | 185                          |
| The applicant projects the Guilford County patient population forward twelve months to December 31, 2018, using the AACR of 4.7%      | $185 \times 1.047 = 193.7$   |
| Subtract 24 Guilford County patients who expressed desire to transfer to FKC Garber-Olin. This is the Guilford County patient census. | $193.7 - 24 = 169.7$         |
| Add the three patients from Rockingham County. This is the starting census for the project at January 1, 2019.                        | $169.7 + 3 = 172.7$          |
| The applicant projects the Guilford County patient population forward twelve months to December 31, 2019.                             | $169.7 \times 1.047 = 177.7$ |
| Add the three patients from Rockingham County. This is the ending census for OY1.   | $177.7 + 3 = 180.7$          |
| The applicant projects the Guilford County patient population forward twelve months to December 31, 2020.                             | $177.7 \times 1.047 = 186.0$ |
| Add the patients from Rockingham County. This is the end of OY2 census.   | $186.0 + 3 = 189.0$          |

The applicant provides the assumptions for the projected utilization on pages 13-14, as summarized below:

- Beginning census, December 31, 2017, is as listed in the ESRD Data Collection Forms submitted to DHR Healthcare Planning in February 2018.
- OY1 is the period from January 1 through December 31, 2019.
- OY2 is the period from January 1 through December 31, 2020.

- The patients from Bladen County, South Carolina and other states are assumed to be transient and will not continue to dialyze at BMA South Greensboro.
- The 185 patients from Guilford County and the three patients from Rockingham County will continue to dialyze at BMA South Greensboro.
- 24 Guilford County patients will transfer to FKC Garber-Olin (Project ID #G-11303-17), as of December 31, 2018.
- The Guilford County patients will grow at the Guilford County AACR of 4.7%, as reported in the January 2018 SDR, and the utilization of Rockingham patients will be held constant.

Therefore, based on the methodology and assumptions above, the applicant projects that at the end of OY1, 180 patients will be dialyzing on 40 stations for a projected utilization rate of 4.5 patients per station per week (180 in-center patients / 40 stations = 4.50) which exceeds the minimum standard of 3.2 patients per station per week as required by 10A NCAC 14C.2203(b).

In Section C.2, page 15, the applicant states:

*“Within this application, BMA has projected a patient population of 180.7 rounded down to 180 in-center patients, to be dialyzing at the BMA South Greensboro facility at the end of the first year. Utilization by 180 patients on 40 dialysis stations is calculated to be 4.5175 [4.50] patients per station, or 112.5% utilization.”*

Projected utilization is reasonable and adequately supported for the following reasons:

- the applicant begins its utilization projection with the existing patients of BMA South Greensboro, excluding the patients considered to be transient,
- the applicant grows the Guilford County patient population by the January 2018 SDR Guilford County AACR and holds the patient population from Rockingham County constant, and
- the resulting utilization rate at BMA South Greensboro by the end of the first year exceeds the minimum standard of 3.2 patients per station per week.

### **Access**

In Section C.3, page 15, the applicant states:

*“BMA has a long history of providing dialysis services to the underserved populations of North Carolina. Fresenius Medical Care Holdings, Inc. parent company to BMA South Greensboro, currently operates 112 facilities in 48 North Carolina Counties (includes our affiliations with RRI facilities); in addition, there are several other Fresenius related facilities under development or pending CON approval. Each of our facilities has a patient population which includes low-income*

*persons, racial and ethnic minorities, women, handicapped persons, elderly, or other traditionally underserved persons.”*

The applicant projects the payor mix in Section L.1(b), page 48, as summarized below.

**Projected Payor Mix  
OY2 / CY2020**

| <b>Payor Source</b>   | <b>In-center Patients</b> |
|-----------------------|---------------------------|
| Private Pay           | 0.18%                     |
| Medicare              | 57.65%                    |
| Medicaid              | 5.33%                     |
| Commercial Insurance  | 6.43%                     |
| Medicare / Commercial | 25.96%                    |
| Medicare / Medicaid   | 0.00%                     |
| Misc. (including VA)  | 4.46%                     |
| Other                 | 0.00%                     |
| <b>Total</b>          | <b>100.00%</b>            |

Totals may not sum due to rounding

The applicant states that the projected payor mix is based on facility experience throughout 2017. The projected payor mix is reasonable and adequately supported.

**Conclusion**

The Agency reviewed the:

- application,
- exhibits to the application, and
- information publicly available during the review and used by the Agency.

Based on that review, the Agency concludes that the application is conforming to this criterion for the following reasons:

- The applicant adequately identifies the population to be served.
- The applicant adequately explains why the population to be served needs the services proposed in this application.
- Projected utilization is reasonable and adequately supported.
- The applicant projects the extent to which all residents, including underserved groups, will have access to the proposed services (payor mix) and adequately supports its assumptions.

- (3a) In the case of a reduction or elimination of a service, including the relocation of a facility or a service, the applicant shall demonstrate that the needs of the population presently served will be met adequately by the proposed relocation or by alternative arrangements, and the effect of the reduction, elimination or relocation of the service on the ability of low income persons,

racial and ethnic minorities, women, handicapped persons, and other underserved groups and the elderly to obtain needed health care.

NA

The proposed project does not involve the reduction or elimination of a service or the relocation of a facility or a service. Therefore, Criterion (3a) is not applicable to this review.

- (4) Where alternative methods of meeting the needs for the proposed project exist, the applicant shall demonstrate that the least costly or most effective alternative has been proposed.

CA

The applicant, Bio-Medical Applications of North Carolina, Inc., currently operates BMA South Greensboro, a 49-station dialysis facility located in Guilford County. The applicant proposes to add five dialysis stations to its existing facility for a total of 40 stations upon completion of this project and Project ID #G-11303-17 (relocate 14 stations to the new FKC Garber-Olin facility).

In Section E.1, page 21, the applicant describes the alternatives considered and explains why each alternative is either more costly or less effective than the alternative proposed in this application. The alternatives considered prior to the submission of this application are summarized as follows:

1. Maintain the status quo
2. Apply for fewer stations
3. Relocate stations from one of the existing BMA facilities in Guilford County

Thus, after considering the above alternatives, the applicant concludes that its proposal to add five dialysis stations at BMA South Greensboro through the facility need methodology, as proposed, is the most effective alternative because it meets the identified need for additional stations at the facility while incurring no capital costs.

The applicant adequately demonstrates that the alternative proposed in this application is the most effective alternative to meet the need for the following reasons:

- the facility is operating at above 80% capacity,
- the facility need methodology indicates a need for additional stations at the facility,
- maintaining the status quo does not address the need for additional stations at the facility,
- applying for fewer than five stations would result in a higher utilization per station, and
- relocation of stations from other BMA facilities in Guilford County would result in higher utilization levels at those facilities.

## **Conclusion**

The Agency reviewed the:

- application,
- exhibits to the application, and
- information which was publicly available during the review and used by the Agency.

Based on that review, the Agency concludes that the application is conforming to this criterion for the reasons stated above. Therefore, the application is approved subject to the following conditions:

- 1. Bio-Medical Applications of North Carolina, Inc. d/b/a BMA of South Greensboro shall materially comply with all representations made in the certificate of need application.**
  - 2. Pursuant to the facility need determination in the January 2018 SDR, Bio-Medical Applications of North Carolina, Inc. d/b/a BMA of South Greensboro shall develop no more than five additional dialysis stations for a total of no more than 40 certified stations at BMA of South Greensboro upon completion of this project and Project ID #G-11303-17 (relocate 14 stations), which shall include any home hemodialysis training or isolation stations.**
  - 3. Bio-Medical Applications of North Carolina, Inc. d/b/a BMA of South Greensboro shall acknowledge acceptance of and agree to comply with all conditions stated herein to the Agency in writing prior to issuance of the certificate of need.**
- (5) Financial and operational projections for the project shall demonstrate the availability of funds for capital and operating needs as well as the immediate and long-term financial feasibility of the proposal, based upon reasonable projections of the costs of and charges for providing health services by the person proposing the service.

C

The applicant proposes to add five dialysis stations to its existing facility for a total of 40 stations upon completion of this project and Project ID #G-11303-17 (relocate 14 stations to the new FKC Garber-Olin facility).

### **Capital and Working Capital Costs**

In Section F.1, page 22, the applicant states that BMA is not projecting any capital costs for this project. The proposed additional stations are intended to replace five of 14 dialysis stations planned for relocation to the FKC Garber-Olin facility. The space already exists and the dialysis equipment will be leased.

In Sections F.10 and F.11, page 25, the applicant states that BMA South Greensboro is an existing facility, thus the project will not involve start-up or initial operating expenses.

### **Financial Feasibility**

The applicant provides pro forma financial statements for the first two years of the project. In the Revenue and Expense Statement (Form B), the applicant projects that revenues will exceed operating expenses in the first two operating years of the project, as shown in the table below.

|   | <b>Operating Year 1</b> | <b>Operating Year 2</b> |
|---|-------------------------|-------------------------|
| Total Average Patients                  | 176                     | 184                     |
| Total Treatments                        | 26,083                  | 27,268                  |
| Total Gross Revenues (Charges)          | \$104,019,004           | \$108,744,784           |
| Total Net Revenue                       | \$8,035,366             | \$8,400,428             |
| Average Net Revenue per Treatment       | \$308                   | \$308                   |
| Total Operating Expenses (Costs)        | \$5,870,917             | \$6,076,801             |
| Average Operating Expense per Treatment | \$225.08                | \$222.86                |
| <b>Net Income</b>                       | <b>\$2,164,449</b>      | <b>\$2,323,627</b>      |

The assumptions used by the applicant in preparation of the pro forma financial statements are reasonable, including projected utilization, costs and charges. See Section R of the application for the assumptions used regarding costs and charges. The discussion regarding projected utilization found in Criterion (3) is incorporated herein by reference.

### **Conclusion**

The Agency reviewed the:

- application,
- exhibits to the application, and
- information which was publicly available during the review and used by the Agency.

Based on that review, the Agency concludes that the application is conforming to this criterion for the following reasons:

- the applicant adequately demonstrates sufficient operating funds for the operating needs of the proposal, and
  - the applicant adequately demonstrates that the financial feasibility of the proposal is based upon reasonable projections of costs and charges.
- (6) The applicant shall demonstrate that the proposed project will not result in unnecessary duplication of existing or approved health service capabilities or facilities.

C

The applicant proposes to add five dialysis stations to the existing BMA South Greensboro facility, for a total of 40 stations upon completion of this project and Project ID #G-11303-17 (relocate 14 stations).

On page 365, the 2018 SMFP defines the service area for dialysis stations as *“the dialysis station planning area in which the dialysis station is located. Except for the Cherokee-Clay-Graham Multicounty Planning Area and the Avery-Mitchell-Yancey Multicounty Planning Area, each of the 94 remaining counties is a separate dialysis station planning area.”* BMA South Greensboro is located in Guilford County; thus, the service area for this facility consists of Guilford County. Facilities may also serve residents of counties not included in their service area.

According to the January 2018 SDR, there are ten dialysis facilities in Guilford County, as follows:

**Guilford County Dialysis Facilities**

| <b>Dialysis Facility</b>                                  | <b>Certified Stations</b> | <b>Percent Utilization</b> | <b>Patients Per Station</b> |
|---|---------------------------|----------------------------|-----------------------------|
| BMA of Greensboro (FMC)                                   | 56                        | 81.70%                     | 3.2679                      |
| BMA of South Greensboro (FMC)                             | 49                        | 81.78%                     | 3.2712                      |
| BMA of Southwest Greensboro (FMC)                         | 33                        | 87.12%                     | 3.4848                      |
| FMC of East Greensboro (FMC)                              | 39                        | 83.97%                     | 3.3590                      |
| Fresenius Kidney Care Garber-Olin (FMC Proposed new site) | 0                         | 0.00%                      | 0.0000                      |
| FMC High Point (FMC Proposed Site)                        | 10                        | 0.00%                      | 0.0000                      |
| Guilford County Dialysis (TRCNC Proposed Site)*           | 0                         | 0.00%                      | 0.0000                      |
| High Point Kidney Center (WFUHS)                          | 41                        | 84.15%                     | 3.3659                      |
| Northwest Greensboro Kidney Center (FMC)                  | 33                        | 80.30%                     | 3.2121                      |
| Triad Dialysis Center (WFUHS)                             | 27                        | 79.63%                     | 3.1852                      |

Source: January 2018 SDR, Table B.

\* Project ID #G-11439-17 approved the relocation of stations from contiguous counties to establish Guilford County Dialysis. The decision has been appealed.

Fresenius related entities own and operate seven of the ten existing and proposed dialysis facilities in Guilford County. Wake Forest University Health Sciences owns and operates two facilities and Total Renal Care of North Carolina was approved to develop a new facility (Project ID #G-11439-17, currently in appeal). With the exception of the proposed and non-operational projects, each of the existing dialysis facilities is well-utilized, operating near or above 3.2 patients per station.

According to Table D in the January 2018 SDR, there is a deficit of one dialysis station in Guilford County. The county need methodology, as discussed on page 365 of the 2018 SMFP, requires a deficit of 10 stations or greater and the utilization of all facilities in the county to be 80% or greater to identify a county need for an additional facility. Therefore, there is no county need determination for new dialysis stations.

In Section G, the applicant explains why it believes the proposal would not result in the unnecessary duplication of existing or approved dialysis services in Guilford County. The applicant provides a map on page 31 and states on page 30:

*“The following map depicts the locations of the ESRD facilities in Guilford County. The facilities are widely dispersed across the county.*

*Each of the BMA facilities with certified stations as of June 30, 2017 was well utilized. The FMC High Point facility was certified in September 2017, with only 10 stations. . . .*

*Adding stations at BMA South Greensboro is not un-necessary duplication of services.”*

The applicant is proposing to add five stations based on facility need and demonstrates the facility was serving 193 patients weekly on 59 stations, which is 3.27 patients per station or 81.78% of capacity, as of June 30, 2017. The applicant does not propose to establish a new facility.

The applicant adequately demonstrates that the proposal would not result in an unnecessary duplication of existing or approved services in the service area for the following reasons:

- the applicant demonstrates the need for the stations based on the facility need methodology,
- the applicant demonstrates that all operational facilities are operating at or above 80% utilization, and
- the applicant adequately demonstrates that the proposed stations are needed in addition to the existing or approved stations in Guilford County.

**Conclusion**

The Agency reviewed the:

- application,
- exhibits to the application, and
- information publicly available during the review and used by the Agency.

Based on that review, the Agency concludes that the application is conforming to this criterion for the reasons stated above.

- (7) The applicant shall show evidence of the availability of resources, including health manpower and management personnel, for the provision of the services proposed to be provided.

C

In Section H.1, page 32, the applicant provides the current and projected OY2 staffing for BMA South Greensboro by full-time equivalent (FTE) positions, as summarized in the table below:

| <b>BMA of South Greensboro<br/>FTE Positions and Salaries</b> |                                  |                                    |
|---|----------------------------------|------------------------------------|
| <b>Position</b>   | <b>Current FTE<br/>Positions</b> | <b>Total OY2 FTE<br/>Positions</b> |
| Registered Nurse  | 7.00                             | 6.00                               |
| Patient Care Technician                                       | 14.00                            | 12.00                              |
| Dietitian   | 1.50                             | 1.50                               |
| Social Worker   | 1.50                             | 1.50                               |
| Clinical Manager  | 1.00                             | 1.00                               |
| Administrator   | 0.20                             | 0.20                               |
| In-Service  | 0.30                             | 0.30                               |
| Clerical  | 3.00                             | 3.00                               |
| Chief Tech  | 0.30                             | 0.30                               |
| Equipment Tech  | 1.00                             | 1.00                               |
| <b>Total FTEs</b>   | <b>29.80</b>                     | <b>26.80</b>                       |

Note: The Medical Director is not a salaried employee.

Projected staffing assumes the completion of Project ID #G-11303-17 (relocate 14 stations and transfer 24 Guilford County patients, reducing the need for staff. Three FTE positions will transfer to FKC Garber Olin.

The assumptions and methodology used to project staffing are provided in Sections H and R. Adequate costs for the health manpower and management positions proposed by the applicant are budgeted in the pro forma financials found in Section R. In Exhibit I.5, the applicant provides a letter from Joseph Coladonato, MD, dated February 13, 2018, indicating support for the project and a willingness to continue to serve as Medical Director of the facility. Dr. Coladonato’s curriculum vitae is included in Exhibit I-6. In Section H.3, pages

32-33, the applicant states it does not anticipate any difficulties in filling staff positions as it will use aggressive recruiting and advertising efforts, coupled with competitive salaries to attract qualified staff.

The applicant adequately demonstrates the availability of sufficient health manpower and management personnel to provide the proposed services.

### **Conclusion**

The Agency reviewed the:

- application,
- exhibits to the application, and
- information publicly available during the review and used by the Agency.

Based on that review, the Agency concludes that the application is conforming to this criterion for the reasons stated above.

- (8) The applicant shall demonstrate that the provider of the proposed services will make available, or otherwise make arrangements for, the provision of the necessary ancillary and support services. The applicant shall also demonstrate that the proposed service will be coordinated with the existing health care system.

### C

In Section I.1, the applicant identifies the necessary ancillary and support services and explains how they will be made available. The applicant provides a table on page 36, as summarized below.

**BMA of South Greensboro  
 Ancillary and Support Services**

| Services  | Provider   |
|---|--|
| (a) In-center dialysis/maintenance                  | On Premises  |
| (b) Self-care training (performed in-center)        | BMA Greensboro   |
| (c) Home training                                   |  |
| (1) Hemodialysis                                    | BMA Greensboro   |
| (2) Peritoneal dialysis                             | BMA Greensboro   |
| (3) Accessible follow-up program                    | BMA Greensboro   |
| (d) Psychological counseling                        | Presbyterian Crossroads Counseling   |
| (e) Isolation-hepatitis                             | On Premises  |
| (f) Nutritional counseling                          | On Premises  |
| (g) Social work services                            | On Premises  |
| (h) Acute dialysis in an acute care setting         | Cone Health  |
| (i) Emergency care                                  | On Premises/ Emergency Transport to Hospital   |
| (j) Blood bank services                             | Cone Health  |
| (k) Diagnostic and evaluation services              | Cone Health  |
| (l) X-ray services                                  | Cone Health  |
| (m) Laboratory services                             | Spectra  |
| (n) Pediatric nephrology                            | University of North Carolina Hospitals (UNC)   |
| (o) Vascular surgery                                | Carolina Kidney Vascular   |
| (p) Transplantation services                        | North Carolina Baptist Hospital (NCBH), Carolinas Medical Center (CMC), Duke and UNC |
| (q) Vocational rehabilitation counseling & services | Guilford County Vocational Rehabilitation  |
| (r) Transportation                                  | Greensboro Transit Authority, Guilford County Transportation                         |

In Section I, pages 37-38, the applicant describes its existing and proposed relationships with other local health care and social service providers.

The applicant adequately demonstrates that the necessary ancillary and support services will be available and that the proposed services will be coordinated with the existing health care system.

**Conclusion**

The Agency reviewed the:

- application,
- exhibits to the application, and
- information publicly available during the review and used by the Agency.

Based on that review, the Agency concludes that the application is conforming to this criterion.

- (9) An applicant proposing to provide a substantial portion of the project's services to individuals not residing in the health service area in which the project is located, or in adjacent health service areas, shall document the special needs and circumstances that warrant service to these individuals.

NA

The applicant does not project to provide the proposed services to a substantial number of persons residing in Health Service Areas (HSAs) that are not adjacent to the HSA in which the services will be offered. Furthermore, the applicant does not project to provide the proposed services to a substantial number of persons residing in other states that are not adjacent to the North Carolina county in which the services will be offered. Therefore Criterion (9) is not applicable to this review.

- (10) When applicable, the applicant shall show that the special needs of health maintenance organizations will be fulfilled by the project. Specifically, the applicant shall show that the project accommodates: (a) The needs of enrolled members and reasonably anticipated new members of the HMO for the health service to be provided by the organization; and (b) The availability of new health services from non-HMO providers or other HMOs in a reasonable and cost-effective manner which is consistent with the basic method of operation of the HMO. In assessing the availability of these health services from these providers, the applicant shall consider only whether the services from these providers:
- (i) would be available under a contract of at least 5 years duration;
  - (ii) would be available and conveniently accessible through physicians and other health professionals associated with the HMO;
  - (iii) would cost no more than if the services were provided by the HMO; and
  - (iv) would be available in a manner which is administratively feasible to the HMO.

NA

The applicant is not an HMO. Therefore, Criterion (10) is not applicable to this review.

- (11) Repealed effective July 1, 1987.
- (12) Applications involving construction shall demonstrate that the cost, design, and means of construction proposed represent the most reasonable alternative, and that the construction project will not unduly increase the costs of providing health services by the person proposing the construction project or the costs and charges to the public of providing health services by other persons, and that applicable energy saving features have been incorporated into the construction plans.

NA

The proposed project does not involve construction of new space or renovation. The estimated square footage in the facility will not change pursuant to this project. Therefore, Criterion (12) is not applicable to this review.

- (13) The applicant shall demonstrate the contribution of the proposed service in meeting the health-related needs of the elderly and of members of medically underserved groups, such as medically indigent or low income persons, Medicaid and Medicare recipients, racial and ethnic minorities, women, and handicapped persons, which have traditionally experienced difficulties in obtaining equal access to the proposed services, particularly those needs identified in the State Health Plan as deserving of priority. For the purpose of determining the extent to which the proposed service will be accessible, the applicant shall show:
- (a) The extent to which medically underserved populations currently use the applicant's existing services in comparison to the percentage of the population in the applicant's service area which is medically underserved;

C

In Section L.7, page 51, the applicant reports that 88.94% of the patients who received treatments at BMA South Greensboro had some or all of their services paid for by Medicare or Medicaid in CY2017. The table below shows the historical (CY2017) payment sources for the facility.

**Payor Mix, CY2017**

| <b>Payment Source</b>        | <b>Patients by Percent of Total</b> |
|------------------------------|-------------------------------------|
| Self Pay/Indigent/Charity    | 0.18%                               |
| Medicare                     | 57.65%                              |
| Medicaid                     | 5.33%                               |
| Commercial Insurance         | 6.43%                               |
| Medicare/Commercial          | 25.96%                              |
| Miscellaneous (including VA) | 4.46%                               |
| <b>Total</b>                 | <b>100.00%</b>                      |

Totals may not sum due to rounding

The United States Census Bureau provides demographic data for North Carolina and all counties in North Carolina. The following table contains relevant demographic statistics for the applicant's service area.

| Percent of Population |               |               |                               |                        |                              |                                       |
|-----------------------|---------------|---------------|-------------------------------|------------------------|------------------------------|---------------------------------------|
| County                | % 65+         | % Female      | % Racial and Ethnic Minority* | % Persons in Poverty** | % < Age 65 with a Disability | % < Age 65 without Health Insurance** |
| 2016 Estimate         | 2016 Estimate | 2016 Estimate | 2016 Estimate                 | 2015 Estimate          | 2011-2015                    | 2015 Estimate                         |
| Guilford              | 14%           | 52%           | 49%                           | 16%                    | 7%                           | 13%                                   |
| Statewide             | 16%           | 51%           | 37%                           | 16%                    | 10%                          | 13%                                   |

Source: <http://www.census.gov/quickfacts/table> Latest Data 7/1/16 as of 8/22/17

\*Excludes "White alone" who are "not Hispanic or Latino"

\*\*\*This geographic level of poverty and health estimates are not comparable to other geographic levels of these estimates. Some estimates presented here come from sample data, and thus have sampling errors that may render some apparent differences between geographies statistically indistinguishable...The vintage year (e.g., V2016) refers to the final year of the series (2010 thru 2016). Different vintage years of estimates are not comparable."

The IPRO ESRD Network of the South Atlantic (IPRO SA Network 6) consisting of North Carolina, South Carolina and Georgia, provides an Annual Report which includes aggregate ESRD patient data from all three states, and is representative of North Carolina patient profiles.

The IPRO SA Network 6 2016 Annual Report (pages 25-26<sup>1</sup>) provides the following prevalence data on dialysis patients by age, race, and gender. As of December 31, 2016, over 85% of dialysis patients in Network 6 were 45 years of age and older, over 66% were other than Caucasian and 45% were female.

### Conclusion

The Agency reviewed the:

- application,
- exhibits to the application, and
- information publicly available during the review and used by the Agency.

Based on that review, the Agency concludes that the applicant adequately documents the extent to which medically underserved populations currently use the applicant's existing services in comparison to the percentage of the population in the applicant's service area which is medically underserved. Therefore, the application is conforming to this criterion.

- (b) Its past performance in meeting its obligation, if any, under any applicable regulations requiring provision of uncompensated care, community service, or access by minorities and handicapped persons to programs receiving federal assistance, including the existence of any civil rights access complaints against the applicant;

<sup>1</sup><http://network6.esrd.ipro.org/wp-content/uploads/sites/4/2017/07/NW6-2016-Annual-Report-FINAL.pdf>

C

Regarding any obligation to provide uncompensated care, community service or access by minorities and persons with disabilities, in Section L.3(d), page 49, the applicant states:

*“BMA of North Carolina facilities do not have any obligation to provide uncompensated care or community service under any federal regulations. The facility will be responsible to provide care to both minorities and handicapped people. The applicant will treat all patients the same regardless of race or handicap status. In accepting payments from Medicare, Title XVIII of the Social Security Act, and Medicaid, Title XIX, all BMA North Carolina Facilities are obligated to meet federal requirements of the Civil Rights Act, Title VI and the Americans with Disabilities Act.”*

In Section L.6, page 50, the applicant states that no civil rights complaints have been lodged against any BMA North Carolina facilities in the past five years.

The applicant adequately demonstrates its past performance in meeting its obligations, if any, under any applicable regulations requiring provision of uncompensated care, community service, or access by minorities and handicapped persons to programs receiving federal assistance, including the existence of any civil rights access complaints against the applicant.

The Agency reviewed the:

- application,
- exhibits to the application, and
- information publicly available during the review and used by the Agency.

Based on that review, the Agency concludes that the application is conforming to this criterion.

- (c) That the elderly and the medically underserved groups identified in this subdivision will be served by the applicant's proposed services and the extent to which each of these groups is expected to utilize the proposed services; and

C

In Section L.1(b), page 48, the applicant provides the projected payor mix for the BMA South Greensboro facility as summarized in the table below:

**Projected Payor Mix  
Project Year 2**

| <b>Payment Source</b>        | <b>Patients by Percent of Total</b> |
|------------------------------|-------------------------------------|
| Self Pay/Indigent/Charity    | 0.18%                               |
| Medicare                     | 57.65%                              |
| Medicaid                     | 5.33%                               |
| Commercial Insurance         | 6.43%                               |
| Medicare/Commercial          | 25.96%                              |
| Miscellaneous (including VA) | 4.46%                               |
| <b>Total</b>                 | <b>100.00%</b>                      |

Totals may not sum due to rounding

As shown in the table above, the applicant projects that 0.18% of total services will be provided to self-pay/indigent/charity patients, 83.67% to Medicare patients, and 5.33% to Medicaid patients. The projected payor mix is comparable to the 2017 payor mix for BMA South Greensboro. The applicant states that the payor mix is based on the facility's experience throughout 2017. The projected payor mix is reasonable and adequately supported because the applicant based the projected payor mix on the facility's historical payor mix.

The Agency reviewed the:

- application,
- exhibits to the application, and
- information publicly available during the review and used by the Agency.

Based on that review, the Agency concludes that the application is conforming to this criterion.

- (d) That the applicant offers a range of means by which a person will have access to its services. Examples of a range of means are outpatient services, admission by house staff, and admission by personal physicians.

C

In Section L.4, page 50, the applicant adequately describes the range of means by which patients will have access to the proposed services.

The Agency reviewed the:

- application,
- exhibits to the application, and
- information publicly available during the review and used by the Agency.

Based on that review, the Agency concludes that the application is conforming to this criterion.

- (14) The applicant shall demonstrate that the proposed health services accommodate the clinical needs of health professional training programs in the area, as applicable.

C

In Section M.1, page 52, the applicant describes the extent to which health professional training programs in the area have access to the facility for training purposes and provides supporting documentation in Exhibit M-1.

The Agency reviewed the:

- application,
- exhibits to the application, and
- information publicly available during the review and used by the Agency.

Based on that review, the Agency concludes that the applicant adequately demonstrates that the proposed services will accommodate the clinical needs of area health professional training programs, and therefore, the application is conforming to this criterion.

- (15) Repealed effective July 1, 1987.  
(16) Repealed effective July 1, 1987.  
(17) Repealed effective July 1, 1987.  
(18) Repealed effective July 1, 1987.
- (18a) The applicant shall demonstrate the expected effects of the proposed services on competition in the proposed service area, including how any enhanced competition will have a positive impact upon the cost effectiveness, quality, and access to the services proposed; and in the case of applications for services where competition between providers will not have a favorable impact on cost-effectiveness, quality, and access to the services proposed, the applicant shall demonstrate that its application is for a service on which competition will not have a favorable impact.

C

The applicant proposes to add five dialysis stations to the existing BMA South Greensboro facility, for a total of 40 stations upon completion of this project and Project ID #G-11303-17 (relocate 14 stations).

On page 365, the 2018 SMFP defines the service area for dialysis stations as *“the dialysis station planning area in which the dialysis station is located. Except for the Cherokee-Clay-Graham Multicounty Planning Area and the Avery-Mitchell-Yancey Multicounty Planning Area, each of the 94 remaining counties is a separate dialysis station planning*

area.” BMA South Greensboro is located in Guilford County; thus, the service area for this facility consists of Guilford County. Facilities may also serve residents of counties not included in their service area.

According to the January 2018 SDR, there are ten dialysis facilities in Guilford County, as follows:

**Guilford County Dialysis Facilities**

| Dialysis Facility   | Certified Stations | Percent Utilization | Patients Per Station |
|---|--------------------|---------------------|----------------------|
| BMA of Greensboro (FMC)                                   | 56                 | 81.70%              | 3.2679               |
| BMA of South Greensboro (FMC)*                            | 49                 | 81.78%              | 3.2712               |
| BMA of Southwest Greensboro (FMC)                         | 33                 | 87.12%              | 3.4848               |
| FMC of East Greensboro (FMC)                              | 39                 | 83.97%              | 3.3590               |
| Fresenius Kidney Care Garber-Olin (FMC Proposed new site) | 0                  | 0.00%               | 0.0000               |
| FMC High Point (FMC Proposed Site)                        | 10                 | 0.00%               | 0.0000               |
| Guilford County Dialysis (TRCNC Proposed Site)*           | 0                  | 0.00%               | 0.0000               |
| High Point Kidney Center (WFUHS)                          | 41                 | 84.15%              | 3.3659               |
| Northwest Greensboro Kidney Center (FMC)                  | 33                 | 80.30%              | 3.2121               |
| Triad Dialysis Center (WFUHS)                             | 27                 | 79.63%              | 3.1852               |

Source: January 2018 SDR, Table B.

\* Project ID #G-11439-17 approved the relocation of stations from contiguous counties to establish Guilford County Dialysis. The decision has been appealed.

Fresenius related entities own and operate seven of the ten existing and proposed dialysis facilities in Guilford County. Wake Forest University Health Sciences (WFUHS) owns and operates two facilities and Total Renal Care of North Carolina was approved to develop a new facility (Project ID #G-11439-17, currently in appeal). With the exception of the proposed and non-operational projects, each of the existing dialysis facilities is well-utilized, operating near or above 3.2 patients per station.

According to Table D in the January 2018 SDR, there is a deficit of one dialysis station in Guilford County. The county need methodology, as discussed on page 365 of the 2018 SMFP, requires a deficit of 10 stations or greater and the utilization of all facilities in the county to be 80% or greater to identify a county need for an additional facility. Therefore, there is no county need determination for new dialysis stations.

In Section N.1, pages 53-54, the applicant discusses the expected effects of the proposed project on competition, including cost-effectiveness, quality and access, stating:

*“BMA does not expect this proposal to have effect on the competitive climate in Guilford County. According to the January 2018 SDR there are eight operational*

*dialysis facilities within Guilford County. Six facilities are operated by BMA and two facilities are operated by Wake Forest Baptist Hospital.”*

The applicant further states that the geographic location of this facility and the two WFUHS facilities do not make it probable that they would serve the same patient population. Moreover, the applicant states that WFUHS facilities are served by physicians from the Wake Forest NCBH, who do not have privileges in BMA facilities.

The applicant states that DaVita was recently approved to develop a facility in Greensboro (Project ID #G-11439-17, currently in appeal). The applicant further states that the identified Medical Director for the proposed facility does not have admitting and rounding privileges at the BMA facilities in Guilford County. Similarly, the Carolina Kidney Associates nephrologists serving BMA facilities do not have privileges in the WFUHS or DaVita facilities.

In addition, the applicant states that BMA facilities are compelled to operate efficiently as a result of fixed Medicare and Medicaid reimbursement rates. Moreover, the applicant states, on page 54, that its proposal will *“enhance the quality of the ESRD patients’ lives by offering another convenient venue for dialysis care and treatment.”*

The applicant adequately described the expected effects of the proposed services on competition in the service area and adequately demonstrates:

- the cost-effectiveness of the proposal (see Sections F and R of the application and any exhibits),
- quality services will be provided (see Section O of the application and any exhibits), and
- access will be provided to underserved groups (see Section L of the application and any exhibits).

### **Conclusion**

The Agency reviewed the:

- application,
- exhibits to the application, and
- information publicly available during the review and used by the Agency.

Based on that review, the Agency concludes that the application is conforming to this criterion for the reasons stated above.

(19) Repealed effective July 1, 1987.

- (20) An applicant already involved in the provision of health services shall provide evidence that quality care has been provided in the past.

C

In Section A.11, page 4, the applicant states that Bio-Medical Applications of North Carolina, Inc. is a wholly owned subsidiary of Fresenius Medical Care Holdings, Inc. Exhibit A-4 includes a listing of more than 100 Fresenius facilities in North Carolina. In Section O, page 58, the applicant states:

*“As of February 28, 2018, Fresenius related facilities were providing dialysis care and treatment for more than 9,800 dialysis patients receiving care in a North Carolina dialysis facility.”*

Of the more than 100 applicant-related Fresenius facilities in North Carolina, the applicant identifies East Rocky Mount as the only BMA facility cited for an immediate jeopardy citation within the most recent 18-month period. The applicant summarizes the deficiencies cited and the resolution in Section O.3, pages 58-59, and provides documentation in Exhibits O-3(a) and (b). On page 58, the applicant states that East Rocky Mount was back in full compliance with all CMS Guidelines upon the submittal of the application. After reviewing and considering information provided by the applicant and considering the quality of care provided at all Fresenius facilities, the applicant provided sufficient evidence that quality care has been provided in the past.

The Agency concludes the application is conforming to this criterion for the reasons stated above.

- (21) Repealed effective July 1, 1987.
- (b) The Department is authorized to adopt rules for the review of particular types of applications that will be used in addition to those criteria outlined in subsection (a) of this section and may vary according to the purpose for which a particular review is being conducted or the type of health service reviewed. No such rule adopted by the Department shall require an academic medical center teaching hospital, as defined by the State Medical Facilities Plan, to demonstrate that any facility or service at another hospital is being appropriately utilized in order for that academic medical center teaching hospital to be approved for the issuance of a certificate of need to develop any similar facility or service.

C

The Criteria and Standards for End Stage Renal Disease Services promulgated in 10A NCAC 14C.2200 are applicable to this review. The proposal is conforming to all applicable Criteria and Standards for End Stage Renal Disease Services in 10A NCAC 14C.2200. The specific findings are discussed below.

## **10 NCAC 14C .2203 PERFORMANCE STANDARDS**

*.2203(a) An applicant proposing to establish a new End Stage Renal Disease facility shall document the need for at least 10 stations based on utilization of 3.2 patients per station per week as of the end of the first operating year of the facility, with the exception that the performance standard shall be waived for a need in the State Medical Facilities Plan that is based on an adjusted need determination.*

-NA- The applicant is not proposing to establish a new ESRD facility.

*.2203(b) An applicant proposing to increase the number of dialysis stations in an existing End Stage Renal Disease facility or one that was not operational prior to the beginning of the review period but which had been issued a certificate of need shall document the need for the additional stations based on utilization of 3.2 patients per station per week as of the end of the first operating year of the additional stations.*

-C- In Section C.1, page 14, the applicant projects to serve 180 in-center patients by the end of Operating Year 1, which is 4.5 patients per station ( $180 / 40 = 4.5$ ), which documents “*the need for the additional stations based on utilization of 3.2 patients per station per week*” as stated above.

*.2203(c) An applicant shall provide all assumptions, including the methodology by which patient utilization is projected.*

-C- The applicant provides all assumptions, including the methodology by which patient utilization is projected, in Section C.1, pages 13-14.