

REQUIRED STATE AGENCY FINDINGS

FINDINGS

C = Conforming

CA = Conforming as Conditioned

NC = Nonconforming

NA = Not Applicable

Decision Date: June 23, 2023

Findings Date: June 23, 2023

Project Analyst: Cynthia Bradford

Team Leader: Lisa Pittman

Project ID #: J-12350-23

Facility: FMC Dialysis Services of Briggs Avenue

FID #: 990969

County: Durham

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

Project: Add no more than 5 dialysis stations pursuant to Condition 2 of the facility need methodology for a total of no more than 29 stations upon completion of this project and Project ID# J-12311-23 (relocate 5 stations)

REVIEW CRITERIA

G.S. 131E-183(a): The Agency 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. (hereinafter “BMA” or “the applicant”) proposes to add five stations to FMC Dialysis Services of Briggs Avenue (FMC Briggs Avenue) pursuant to Condition 2 of the facility need methodology for a total of 29 stations upon project completion.

Need Determination

Chapter 9 of the 2023 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 9C, page 135, the county need methodology shows there is no county need determination for additional dialysis stations in Durham County.

However, the applicant is eligible to apply for additional dialysis stations in an existing facility pursuant to Condition 2 of the facility need methodology in the 2023 SMFP, if the utilization rate for the dialysis center as reported in the 2023 SMFP is at least 75 percent or 3.0 patients per station per week, as stated in Condition 2.a. Table 9A on page 121 of the 2023 SMFP shows the utilization rate reported for FMC Briggs Avenue is 86.21 percent or patients per station per week based on 100 in-center dialysis patients and 29 certified dialysis stations (100 patients / 29 stations = 3.44; $3.44 / 4 = 86.21\%$).

As shown in Table 9D on page 136 of the 2023 SMFP, based on the facility need methodology for dialysis stations, the potential number of stations needed at FMC Briggs Avenue is up to five additional stations; thus, the applicant is eligible to apply to add up to five stations during the 2023 SMFP review cycle pursuant to Condition 2 of the facility need methodology.

The applicant proposes to add no more than five new stations to FMC Briggs Avenue, which is consistent with the 2023 SMFP calculated facility need determination for up to five dialysis stations; therefore, the application is consistent with Condition 2 of the facility need determination for dialysis stations.

Policies

There is one policy in the 2023 SMFP which is applicable to this review. *Policy GEN-3: Basic Principles*, on page 30 of the 2023 SMFP, 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.”

In Section B, pages 21-23, the applicant explains why it believes its application is consistent with Policy GEN-3. On page 21, the applicant states:

Promote Safety and Quality

The applicant describes how it believes the proposed project will promote safety and quality in Section B, page 21-22; Section N, page 72; Section O, page 75-78; and referenced exhibits. The information provided by the applicant is reasonable and supports the determination that the applicant’s proposal will promote safety and quality.

Promote Equitable Access

The applicant describes how it believes the proposed project will promote equitable access in Section B, page 22; Section C, page 30-31; Section L, pages 64-70; Section N, page 73; and referenced exhibits. The information provided by the applicant is reasonable and supports the determination that the applicant's proposal will promote equitable access.

Maximize Healthcare Value

The applicant describes how it believes the proposed project will maximize healthcare value in Section B, pages 22-23; Section N, pages 72-74; and referenced exhibits. The information provided by the applicant is reasonable and supports the determination that the applicant's proposal will maximize healthcare value.

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

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application
- 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 based on the following:

- The applicant adequately demonstrates that the application is consistent with Condition 2 of the facility need methodology as applied from the 2023 SMFP.
- The applicant adequately demonstrates how FMC Briggs Avenue's projected volumes incorporate the concepts of safety and quality, equitable access, and maximum value for resources expended in meeting the facility need and is consistent with policy GEN-3.

- (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, ... persons [with disabilities], the elderly, and other underserved groups are likely to have access to the services proposed.

C

The applicant proposes to add no more than 5 dialysis stations pursuant to the Condition 2 of the facility need methodology for a total of no more than 29 stations upon completion of this project and Project ID# J-12311-23 (relocate 5 stations).

In Section C, pages 25-26, the applicant documents that FMC Briggs Avenue currently does not provide home hemodialysis (HH) and home peritoneal dialysis (PD) training and support.

Patient Origin

On page 113, the 2023 SMFP defines the service area for dialysis stations as “...the service area is the county in which the dialysis station is located. Each county comprises a service area except for two multicounty service areas: Cherokee, Clay and Graham counties and Avery, Mitchell, and Yancey counties.” Thus, the service area for this facility consists of Durham County. Facilities may serve residents of counties not included in their service area.

The following table illustrates current and projected patient origin.

| FMC Briggs Avenue Current & Projected Patient Origin | | | | | | | | | | | | |
|--|----------------|---------------|-------------|-------------|-------------|-------------|---------------------|---------------|-------------|-------------|-------------|-------------|
| | Last – CY 2022 | | | | | | Projected – CY 2025 | | | | | |
| | IC* Patients | | HH Patients | | PD Patients | | IC* Patients | | HH Patients | | PD Patients | |
| | # | % | # | % | # | % | # | % | # | % | # | % |
| Durham | 83.0 | 90.2% | 0 | 0.0% | 0 | 0.0% | 83.7 | 91.3% | 0 | 0.0% | 0 | 0.0% |
| Johnston | 1.0 | 1.1% | 0 | 0.0% | 0 | 0.0% | 0.0 | 0.0% | 0 | 0.0% | 0 | 0.0% |
| Orange | 1.0 | 1.1% | 0 | 0.0% | 0 | 0.0% | 1.0 | 1.1% | 0 | 0.0% | 0 | 0.0% |
| Wake | 7.0 | 7.6% | 0 | 0.0% | 0 | 0.0% | 7.0 | 7.6% | 0 | 0.0% | 0 | 0.0% |
| Total | 92.0 | 100.0% | 0 | 0.0% | 0 | 0.0% | | 100.0% | 0 | 0.0% | 0 | 0.0% |

*IC = In-Center

Note: Table may not foot due to rounding.

Source: Section C, pages 25-26

In Section C, pages 26-27, and the Form C Utilization subsection of Section Q, the applicant provides the assumptions and methodology used to project patient origin. The applicant’s assumptions are reasonable and adequately supported based on the following:

- The applicant’s projections are based on the historical patient origin at FMC Briggs Avenue.
- The applicant did not project growth in the number of patients at FMC Briggs Avenue who do not live in Durham County.

Analysis of Need

In Section C, page 28, the applicant explains why it believes the population projected to utilize the proposed services needs the proposed services. The applicant states:

“Patients with End Stage Renal Disease require dialysis treatment on a regular and consistent basis in order to maintain life. Patients will normally receive three treatments per week. The NC SMFP recognizes that this patient population requires frequent and regular treatment. The need methodology for dialysis stations is focused on four patient shifts per week and recognizes that patients will generally dialyze on a Monday-Wednesday-Friday, morning or afternoon shift schedule, or on a Tuesday-

Thursday-Saturday, morning or afternoon shift schedule. Failure to receive dialysis care will ultimately lead to the patient's demise.

The need that this population has for the proposed services is a function of the individual patient need for dialysis care and treatment."

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

- According to the 2023 SMFP, as of December 31, 2020, FMC Briggs Avenue was operating at a rate of 3.44 patients per station per week, or 86.21 percent of capacity.
- According to the December 2022 Data Collection Form for ESRD facilities, the patient population at FMC Briggs Avenue decreased by four patients to a total of 100 patients.
- The decrease of four patients during 2022 still calculated a utilization rate of 86.21 percent, thus meeting the requirement to add five certified stations to the facility.
- The applicant demonstrates the need for the additional five stations even while using a lower growth rate than the historical growth rate for the facility.

Projected Utilization

In Section C, page 29, and in the Form C Utilization subsection of Section Q, the applicant provides the assumptions and methodology used to project patient utilization, which are summarized below.

- The applicant begins its utilization projections with the patient census on December 31, 2022. The applicant states that on December 31, 2022, its in-center patient census was comprised of 83 Durham County patients and nine patients from other areas.
- The Durham County Average Annual Change Rate (AACR) as published in the 2023 SMFP is 3.0 percent. The applicant states that the in-center patient population in Durham County was down by four patients since December 31, 2022 census.
- The applicant assumes no population growth for the patients residing outside of Durham County who are dialyzing at FMC Briggs Avenue but assumes the patients from the contiguous counties of Wake and Orange will continue to dialyze at FMC Briggs Avenue and adds them to the calculations when appropriate.
- The new stations are projected to be certified by December 31, 2023. OY1 is CY 2024. OY2 is CY 2025.

In Section Q, on Form C Utilization, the applicant provides the calculations used to project the patient census for OY1 and OY2, as summarized in the table below.

| FMC Briggs Avenue In-Center Projected Utilization* | |
|---|----------------------------|
| Starting point of calculations is Durham County in-center patients dialyzing at FMC Briggs Avenue on December 31, 2022. | 83 |
| Durham County patient population is projected forward by one year to December 31, 2023, using the Durham County Five Year Average Annual Change Rate. | $83.0 \times 1.003 = 83.2$ |
| Add the 8 patients from other counties. This is the projected ending census for interim Year 1 | $83.2 + 8 = 91.2$ |
| Project the Durham County patient population forward for one year to December 31, 2024, using the Durham County Five Year Average Annual Change Rate. | $83.2 \times 1.003 = 83.5$ |
| Add the 8 patients from other counties. This is the projected ending census for Operating Year 1 | $83.5 + 8 = 91.5$ |
| Project the Durham County patient population forward for one year to December 31, 2024, using the Durham County Five Year Average Annual Change Rate. | $83.5 \times 1.003 = 83.7$ |
| Add the 8 patients from other counties. This is the projected ending census for Operating Year 2 | $83.7 + 8 = 91.7$ |

*On pages 26-27, the applicant's narrative states it uses the Durham County Five Year AACR of .3% as published in the 2023 SMFP.

The applicant projects to serve 91.5 patients on 29 stations, which is 3.15 patients per station per week ($91.5 \text{ patients} / 29 \text{ stations} = 3.16$), by the end of OY1 and 91.7 patients on 29 stations, which is 3.16 patients per station per week ($91.7 \text{ patients} / 29 \text{ stations} = 3.16$), by the end of OY2. This meets the minimum of 2.8 patients per station per week as of the end of the first operating year as required by 10A NCAC 14C .2203(b).

Access to Medically Underserved Groups

In Section C, pages 30-31, the applicant states:

“.... Each of our facilities has a patient population which includes low-income persons, racial and ethnic minorities, women, [people with disabilities], elderly, or other traditionally underserved persons.

It is corporate policy to provide all services to all patients regardless of income, racial/ethnic origin, gender, physical or mental conditions, age, or health insurer.

Fresenius Medical Care and its related facilities in North Carolina have historically provided substantial care and services to all persons in need of dialysis services, regardless of income, racial or ethnic background, gender, [disability], age or any other grouping/category or basis for being an underserved person.”

The applicant provides the estimated percentage of total patients for each medically underserved group during the second full fiscal year, as shown in the following table.

| Medically Underserved Groups | Estimated % of Total Patients in FY 2 |
|------------------------------|---------------------------------------|
| Low-income persons | 38.0% |
| Racial and ethnic minorities | 81.5% |
| Women | 37.0% |
| Persons with disabilities | 34.8% |
| Persons 65 and older | 62.0% |
| Medicare beneficiaries | 95.7% |
| Medicaid recipients | 38.0% |

Source: Section C, page 31

The applicant adequately describes the extent to which all residents of the service area, including underserved groups, are likely to have access to the proposed services based on the following:

- Fresenius' corporate policy commits to provide service to all residents of the service area, including underserved groups, without regard for anything other than the need for dialysis services.
- The applicant states the percentages of patients for each group listed above are based on recent facility experience.

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application
- 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 all the reasons described above.

- (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, ... persons [with disabilities], and other underserved groups and the elderly to obtain needed health care.

NA

The applicant does not propose to reduce a service, eliminate a service or relocate a facility or 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 proposes to add no more than 5 dialysis stations pursuant to the Condition 2 of the facility need methodology for a total of no more than 29 stations upon completion of this project and Project ID# J-12311-23 (relocate 5 stations)

In Section E, page 40, the applicant describes the alternatives it considered and explains why each alternative is either more costly or less effective than the alternative proposed in this application to meet the need. The alternatives considered were:

- Maintain the Status Quo: the applicant states maintaining the status quo, or not applying for new stations, would lead to higher utilization rates and would potentially interrupt patient admissions to the facility; therefore, this is not an effective alternative.
- Apply for Fewer than Five Stations: the applicant states applying for fewer stations would have the same effect as not applying for any stations – higher utilization rates and potentially interrupted patient admissions; therefore, this is not an effective alternative.

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 application is conforming to all statutory and regulatory review criteria.
- The applicant provides credible information to explain why it believes the proposed project is the most effective alternative.

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application
- 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. Therefore, the application is approved subject to the following conditions:

- 1. Bio-Medical Facilities of North Carolina, Inc. (hereinafter certificate holder) shall materially comply with all representations made in the certificate of need application.**
- 2. Pursuant to Condition 2 of the facility need determination in the 2023 SMFP, the certificate holder shall develop no more than 5 additional in-center (and home hemodialysis) dialysis stations for a total of no more than 29 in-center (and home**

hemodialysis) dialysis stations at FMC Briggs Avenue upon completion of this project.

3. Progress Reports:

- a. Pursuant to G.S. 131E-189(a), the certificate holder shall submit periodic reports on the progress being made to develop the project consistent with the timetable and representations made in the application on the Progress Report form provided by the Healthcare Planning and Certificate of Need Section. The form is available online at: <https://info.ncdhhs.gov/dhsr/coneed/progressreport.html>.
- b. The certificate holder shall complete all sections of the Progress Report form.
- c. The certificate holder shall describe in detail all steps taken to develop the project since the last progress report and should include documentation to substantiate each step taken as available.
- d. The first progress report shall be due on October 1, 2023.

4. The certificate holder 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 no more than 5 dialysis stations pursuant to Condition 2 of the facility need methodology for a total of no more than 29 stations upon completion of this project and Project ID# J-12311-23 (relocate 5 stations)

Capital and Working Capital Costs

In Section F, page 42, the applicant states there are no projected capital or working capital costs because it is an existing facility that is already operational.

Financial Feasibility

The applicant provides pro forma financial statements for the first two full fiscal years of operation following completion of the project. On Form F.2 in Section Q, the applicant projects that revenues will exceed operating expenses in the first two full fiscal years following completion of the project, as shown in the table below.

| Projected Revenues and Operating Expenses | | |
|--|---|---|
| FMC Briggs Avenue | Full Fiscal Year 1 CY 2024 | Full Fiscal Year 2 CY 2025 |
| Total Treatments | 13,523 | 13,560 |
| Total Gross Revenues (Charges) | \$85,075,290 | \$85,308,170 |
| Total Net Revenue | \$4,704,784 | \$4,717,662 |
| Average Net Revenue per Treatment | \$347.90 | \$347.90 |
| Total Operating Expenses (Costs) | 3,653,370 | \$3,694,381 |
| Average Operating Expense per Treatment | \$270.16 | \$272.45 |
| Net Income/Profit | \$1,051,414 | \$1,023,281 |

The assumptions used by the applicant in preparation of the pro forma financial statements are provided in Forms F.2, F.3 and F.4 in Section Q. The applicant adequately demonstrates that the financial feasibility of the proposal is reasonable and adequately supported based on the following:

- The applicant adequately explains the assumptions used to project revenue, such as projected reimbursement rates, and operating costs, such as salaries.
- Projected utilization is based on reasonable and adequately supported assumptions. See the discussion regarding projected utilization in Criterion (3) which is incorporated herein by reference.

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application

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

- The applicant did not propose any capital costs to complete this project.
 - The applicant adequately demonstrates sufficient funds for the operating needs of the proposal and that the financial feasibility of the proposal is based upon reasonable projections of revenues and operating expenses for all the reasons described above.
- (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 no more than 5 dialysis stations pursuant to the Condition 2 of the facility need methodology for a total of no more than 29 stations upon completion of this project and Project ID# J-12311-23 (relocate 5 stations)

On page 113, the 2023 SMFP defines the service area for dialysis stations as “...the service area is the county in which the dialysis station is located. Each county comprises a service area except for two multicounty service areas: Cherokee, Clay and Graham counties and Avery, Mitchell, and Yancey counties.” Thus, the service area for this facility consists of Durham County. Facilities may serve residents of counties not included in their service area.

There are 13 existing and approved facilities which provide dialysis and/or dialysis home training and support in Durham County. Information on all 13 of these dialysis facilities is provided in the table below.

| Durham County Dialysis Facilities Certified Stations and Utilization as of December 31, 2021 | | | | |
|---|--------------|-----------------|--------------------------------|--------------------|
| Dialysis Facility | Owner | Location | # of Certified Stations | Utilization |
| Bull City Dialysis | DVA | Durham | 20 | 85.94% |
| Downtown Durham Dialysis | DVA | Durham | 10 | 25.00% |
| Durham Dialysis | DVA | Durham | 29 | 78.45% |
| Durham Regional Dialysis | DVA | Durham | 10 | 45.00% |
| Durham West Dialysis | DVA | Durham | 27 | 68.52% |
| Hope Valley Dialysis | DVA | Durham | 10 | 47.50% |
| Research Triangle Dialysis | DVA | Durham | 10 | 47.50% |
| Southpoint Dialysis | DVA | Durham | 16 | 90.63% |
| Fresenius Medical Care West Pettigrew | BMA | Durham | 24 | 60.42% |
| Freedom Lake Dialysis Center | BMA | Durham | 26 | 58.65% |
| Fresenius Medical Care Briggs Avenue | BMA | Durham | 29 | 86.21% |
| Fresenius Kidney Care Eno River | BMA | Durham | 14 | 64.29% |
| Fresenius Medical Care South Durham | BMA | Durham | 20 | 78.75% |

Source: Table 9A, Chapter 9, 2023 SMFP: page 121-122

In Section G, page 48, the applicant explains why it believes its proposal would not result in the unnecessary duplication of existing or approved dialysis services in Durham County. The applicant states:

“This is an application based upon facility performance and demonstrated need at the FMC Briggs Avenue facility. The need addressed by this application is not specific to Durham County as a whole... These stations support the growing patient census at the FMC Briggs Avenue facility.”

The applicant further states that no other BMA owned dialysis facility is proximate FMC Briggs Avenue, and traffic congestion is a factor when addressing patient access to the facility for dialysis services.

“It is not uncommon for one facility to have lower utilization while another facility in the same county is well utilized... While some capacity does exist at other BMA facilities in Durham County, these facilities are not proximate to the FMC Briggs Avenue location. Within Durham County, traffic congestion is also a concern. Congestion leads to longer commute times, even when the distance may be relatively short.”

The applicant adequately demonstrates that the proposal will not result in an unnecessary duplication of existing or approved services in the service area based on the following:

- The applicant proposes to increase the number of dialysis stations in Durham County based on Condition 2 of the facility need determination in the 2023 SMFP.
- The applicant adequately demonstrates that the proposed dialysis stations are needed in addition to the existing or approved dialysis stations in Durham County.

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application
- 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 all the reasons described 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

The applicant proposes to add no more than 5 dialysis stations pursuant to Condition 2 of the facility need methodology for a total of no more than 29 stations upon completion of this project and Project ID# J-12311-23 (relocate 5 stations)

On Form H in Section Q, the applicant provides current and projected staffing for the proposed services, as illustrated in the following table.

| FMC Briggs Avenue Current and Projected Staffing | | |
|---|-----------------------------|--|
| | As of 12/14/2022 | Projected – OYs 1-2 (CYs 2024-2025) |
| Administrator | 1.00 | 1.00 |
| Registered Nurses | 5.00 | 5.00 |
| Patient Care Technicians | 12.00 | 12.00 |
| Dietician | 1.00 | 1.00 |
| Social Worker | 1.00 | 1.00 |
| Maintenance | .75 | .75 |
| Admin/Business Office | 1.00 | 1.00 |
| Director of Operations | 0.14 | 0.14 |
| Chief Technician | 0.15 | 0.15 |
| FMC In-service | 0.15 | 0.15 |
| TOTAL | 22.19 | 22.19 |

The assumptions and methodology used to project staffing are provided immediately following Form H in Section Q. Adequate operating expenses for the health manpower and management positions proposed by the applicant are budgeted in Form F.4 in Section Q. In Section H, pages 50-51, the applicant describes the methods used to recruit or fill new positions and its existing training and continuing education programs.

The applicant adequately demonstrates the availability of sufficient health manpower and management personnel to provide the proposed services based on the following:

- The applicant projects sufficient operating expenses for the staff proposed by the applicant.
- The applicant describes the required qualifications for staff, continuing education, and other training programs.

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application

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

The applicant proposes to add no more than 5 dialysis stations pursuant to Condition 2 of the facility need methodology for a total of no more than 29 stations upon completion of this project and Project ID# J-12311-23 (relocate 5 stations)

Ancillary and Support Services

In Section I, page 52, the applicant identifies the necessary ancillary and support services for the proposed services. In Section I, pages 52-57, the applicant explains how each ancillary and support service is or will be made available. The applicant adequately demonstrates that the necessary ancillary and support services will be made available based on the following:

- The facility is an existing facility already providing the necessary ancillary and support services.
- The applicant describes the structure in place at both the corporate level and the facility level for providing the necessary ancillary and support services.

Coordination

In Section I, page 57, the applicant describes its existing and proposed relationships with other local health care and social service providers and provides supporting documentation in Exhibit H-4. The applicant adequately demonstrates that the proposed services will be coordinated with the existing health care system based on the following:

- The facility is an existing facility that has existing relationships with local health care and social service providers.
- The applicant provides a letter from the medical director of the facility attesting to the relationship between the medical director's physician practice and the facility.

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application

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

- (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.

The applicant proposes to add no more than 5 dialysis stations pursuant to Condition 2 of the facility need methodology for a total of no more than 29 stations upon completion of this project and Project ID# J-12311-23 (relocate 5 stations)

In Section K, page 60, the applicant states that the project does not involve renovation of existing space. The space to be utilized is already existing. Line drawings are provided in Exhibit K-2.

In Section K, page 61, the applicant adequately explains why the proposal will not unduly increase the costs to the applicant of providing the proposed services or the costs and charges to the public for the proposed services.

In Section K, pages 61-62, the applicant identifies any applicable energy saving features that will be incorporated into the construction plans.

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application
- 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.

- (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 ... persons [with disabilities], 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, page 64, the applicant provides the historical payor mix during CY 2022 for its existing services, as shown in the table below.

| FMC Briggs Avenue Historical Payor Mix CY 2022 | | | | | | |
|---|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| | In-Center | | HH | | PD | |
| Payment Source | # Patients | % Patients | # Patients | % Patients | # Patients | % Patients |
| Self-Pay | 4.1 | 4.51% | 0 | 0.0% | 0 | 0.0% |
| Commercial Insurance* | 5.9 | 6.44% | 0 | 0.0% | 0 | 0.0% |
| Medicare* | 76.1 | 82.73% | 0 | 0.0% | 0 | 0.0% |
| Medicaid* | 3.3 | 3.55% | 0 | 0.0% | 0 | 0.0% |
| Misc. (including VA, Med. Adv.) | 2.6 | 2.77% | 0 | 0.0% | 0 | 0.0% |
| Total | 92.0 | 100.00% | 0 | 0.0% | 0 | 0.0% |

*Including any managed care plans

In Section L, page 66, the applicant provides the following population comparison of the service area.

| FMC Briggs Avenue | Percentage of Total Patients Served by during CY 2022 | Percentage of the Population of Durham County |
|-------------------------------------|--|--|
| Female | 37.0% | 52.2% |
| Male | 63.0% | 47.8% |
| Unknown | | |
| 64 and Younger | 38.0% | 85.7% |
| 65 and Older | 62.0% | 14.3% |
| American Indian | 0.0% | 1.0% |
| Asian | 0.0% | 5.6% |
| Black or African-American | 77.2% | 35.9% |
| Native Hawaiian or Pacific Islander | 0.0% | 0.1% |
| White or Caucasian | 18.5% | 43.4% |
| Other Race | 4.3% | 16.6% |
| Declined / Unavailable | 0.0% | |

Sources: BMA Internal Data, US Census Bureau

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application
- Information which was 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 ... persons [with disabilities] to programs receiving federal assistance, including the existence of any civil rights access complaints against the applicant.

C

Regarding any obligation to provide uncompensated care, community service or access by minorities and persons with disabilities, in Section L, page 67, the applicant states it has no such obligation.

In Section L, page 67, the applicant states that during the 18 months immediately preceding the application deadline no patient civil rights access complaints have been filed against FMC Briggs Avenue.

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application

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, page 67, the applicant projects the following payor mix during the second full fiscal year of operation following completion of the project, as illustrated in the following table.

| FMC Briggs Avenue Projected Payor Mix CY 2025 | | | | | | |
|--|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| Payment Source | In-Center | | HH | | PD | |
| | # Patients | % Patients | # Patients | % Patients | # Patients | % Patients |
| Self-Pay | 4.1 | 4.51% | | | | |
| Commercial Insurance* | 5.9 | 6.44% | | | | |
| Medicare* | 75.9 | 82.73% | | | | |
| Medicaid* | 3.3 | 3.55% | | | | |
| Misc. (including VA, Med. Adv.) | 2.5 | 2.77% | | | | |
| Total | 91.7 | 100.00% | | | | |

*Including any managed care plans

As shown in the table above, during the second full fiscal year of operation, the applicant projects that 4.51 percent of in-center services will be self-pay; 82.73 percent of in-center services will be covered by Medicare, and 3.55 percent of in-center services will be covered by Medicaid.

On page 68, the applicant provides the assumptions and methodology it uses to project payor mix during the second full fiscal year of operation following completion of the project. The projected payor mix is reasonable and adequately supported because it is based on the historical payor mix at FMC Briggs Avenue.

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application

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, page 69, the applicant adequately describes the range of means by which patients will have access to the proposed services.

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application

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

The applicant proposes to add no more than 5 dialysis stations pursuant to Condition 2 of the facility need methodology for a total of no more than 29 stations upon completion of this project and Project ID# J-12311-23 (relocate 5 stations)

In Section M, page 71, 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-2. The applicant adequately demonstrates that health professional training programs in the area have access to the facility for training purposes based on the following:

- The applicant provides a copy of a letter sent to Durham Technical College offering the facility as a training site for nursing students.
- The applicant states it often receives calls to utilize the facility for health professional training programs and discusses the process for intake when it receives such an inquiry.

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application

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

- (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 no more than 5 dialysis stations pursuant to Condition 2 of the facility need methodology for a total of no more than 29 stations upon completion of this project and Project ID# J-12311-23 (relocate 5 stations)

On page 113, the 2023 SMFP defines the service area for dialysis stations as “...the service area is the county in which the dialysis station is located. Each county comprises a service area except for two multicounty service areas: Cherokee, Clay and Graham counties and Avery, Mitchell, and Yancey counties.” Thus, the service area for this facility consists of Durham County. Facilities may serve residents of counties not included in their service area.

There are 13 existing and approved facilities which provide dialysis and/or dialysis home training and support in Durham County. Information on all 13 of these dialysis facilities is provided in the table below.

| Durham County Dialysis Facilities Certified Stations and Utilization as of December 31, 2021 | | | | |
|---|--------------|-----------------|--------------------------------|--------------------|
| Dialysis Facility | Owner | Location | # of Certified Stations | Utilization |
| Bull City Dialysis | DVA | Durham | 20 | 85.94% |
| Downtown Durham Dialysis | DVA | Durham | 10 | 25.00% |
| Durham Dialysis | DVA | Durham | 29 | 78.45% |
| Durham Regional Dialysis | DVA | Durham | 10 | 45.00% |
| Durham West Dialysis | DVA | Durham | 27 | 68.52% |
| Hope Valley Dialysis | DVA | Durham | 10 | 47.50% |
| Research Triangle Dialysis | DVA | Durham | 10 | 47.50% |
| Southpoint Dialysis | DVA | Durham | 16 | 90.63% |
| Fresenius Medical Care West Pettigrew | BMA | Durham | 24 | 60.42% |
| Freedom Lake Dialysis Center | BMA | Durham | 26 | 58.65% |
| Fresenius Medical Care Briggs Avenue | BMA | Durham | 29 | 86.21% |
| Fresenius Kidney Care Eno River | BMA | Durham | 14 | 64.29% |
| Fresenius Medical Care South Durham | BMA | Durham | 20 | 78.75% |

Source: Table 9A, Chapter 9, 2023 SMFP: page 121-122

Regarding the expected effects of the proposal on competition in the service area, in Section N, page 72, the applicant states:

“The applicant does not expect this proposal to have any effect on the competitive climate in Durham County. The applicant does not project to serve dialysis patients currently being served by another provider.”

Regarding the impact of the proposal on cost effectiveness, in Section N, page 73, the applicant states:

“This is a proposal to add five stations to the FMC Briggs Avenue facility. The applicant is serving a significant number of dialysis patients residing in the area of the facility. Approval of this application will allow the facility to continue serving patients who reside in the area. Consequently, these patients will have a shorter commute to and from dialysis treatment. This is an immediate and significantly positive impact to the patients of the area.”

See also Sections C, F, and Q of the application and any exhibits.

Regarding the impact of the proposal on quality, in Section N, page 73, the applicant states:

“Quality of care is always in the forefront at Fresenius Medical Care related facilities. Quality care is not negotiable. Fresenius Medical Care, parent organization for this facility, expects every facility to provide high quality care to every patient at every treatment.”

See also Sections C and O of the application and any exhibits.

Regarding the impact of the proposal on access by medically underserved groups, in Section N, page 73, the applicant states:

“All Fresenius Medical Care related facilities in North Carolina have a history of providing dialysis services to the underserved populations of North Carolina. Each of those facilities has a patient population which includes low-income persons, racial and ethnic minorities, women, [people with disabilities], elderly, or other traditionally underserved persons.

It is corporate policy to provide all services to all patients regardless of income, racial/ethnic origin, gender, physical or mental conditions, age, or any other factor that would classify a patient as underserved.

Fresenius related facilities in North Carolina have historically provided substantial care and services to all persons in need of dialysis services, regardless of income, racial or ethnic background, gender, [disability], age or any other grouping/category or basis for being an underserved person. Low income and medically underinsured persons will continue to have access to all services provided by Fresenius related facilities.”

See also Sections C and L of the application and any exhibits.

The applicant adequately describes the expected effects of the proposed services on competition in the service area and adequately demonstrates the proposal would have a positive impact on cost-effectiveness, quality, and access because the applicant adequately demonstrates that:

- 1) The proposal is cost effective because the applicant adequately demonstrated: a) the need the population to be served has for the proposal; b) that the proposal would not result in an unnecessary duplication of existing and approved health services; and c) that projected revenues and operating costs are reasonable.
- 2) Quality care would be provided based on the applicant's representations about how it will ensure the quality of the proposed services and the applicant's record of providing quality care in the past.
- 3) Medically underserved groups will have access to the proposed services based on the applicant's representations about access by medically underserved groups and the projected payor mix.

Conclusion

The Agency reviewed the:

- Application
- Exhibits to the application
- 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 based on all the reasons described 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

The applicant proposes to add no more than 5 dialysis stations pursuant to Condition 2 of the facility need methodology for a total of no more than 29 stations upon completion of this project and Project ID# J-12311-23 (relocate 5 stations)

On Form O in Section Q, the applicant identifies the kidney disease treatment centers located in North Carolina owned, operated, or managed by the applicant or a related entity. The applicant identifies a total of 132 existing or approved kidney disease treatment facilities located in North Carolina.

In Section O, page 78, the applicant states that, during the 18 months immediately preceding the submittal of the application, there were no incidents resulting in an Immediate Jeopardy violation that occurred in any of these facilities. After reviewing and considering information provided by the applicant and publicly available data and considering the quality of care provided at all 132 facilities, the applicant provides sufficient evidence that quality care has been provided in the past. Therefore, the application is conforming to this criterion.

- (21) Repealed effective July 1, 1987.

G.S. 131E-183 (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 application is conforming to all applicable criteria, as discussed below.

10 NCAC 14C .2203 PERFORMANCE STANDARDS

(a) *An applicant proposing to establish a new kidney disease treatment center or dialysis facility shall document the need for at least 10 dialysis stations based on utilization of 2.8 in-center patients per station per week as of the end of the first 12 months of operation following certification of the facility. An applicant may document the need for less than 10 stations if the application is submitted in response to an adjusted need determination in the State Medical Facilities Plan for less than 10 stations.*

-NA- FMC Briggs Avenue is an existing facility. Therefore, this Rule is not applicable to this review.

(b) *An applicant proposing to increase the number of dialysis stations in:*

- (1) *an existing dialysis facility; or*
- (2) *a dialysis facility that is not operational as of the date the certificate of need application is submitted but has been issued a certificate of need;*

shall document the need for the total number of dialysis stations in the facility based on 2.8 in-center patients per station per week as of the end of the first 12 months of operation following certification of the additional stations.

-C- In Section C, page 26, and on Form C in Section Q, the applicant projects to serve 91.5 patients on 29 stations, which is 3.15 patients per station per week ($91.5 \text{ patients} / 29 \text{ stations} = 3.15$), by the end of OY1 and 91.7 patients on 29 stations, which is 3.16 patients per station per week ($91.7 \text{ patients} / 29 \text{ stations} = 3.16$), by the end of OY2. In the corrected data, the applicant projects to serve 99.5 patients on 29 stations, which is 3.43 patients per station per week ($99.5 \text{ patients} / 29 \text{ stations} = 3.43$), by the end of OY1 and 107.8 patients on 29 stations, which is 3.71 patients per station per week by the end of project completion. The discussion regarding projected utilization found in Criterion (3) is incorporated herein by reference.

- (c) *An applicant shall provide all assumptions, including the methodology by which patient utilization is projected.*
- C- In Section C, pages 26-27, and in the Form C Utilization subsection of Section Q, the applicant provides the assumptions and methodology it used to project utilization of the facility. The discussion regarding projected utilization found in Criterion (3) is incorporated herein by reference.