

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY TOTAL RENAL CARE OF) DECLARATORY RULING
NORTH CAROLINA, LLC)
Project I.D. No. O-8252-08)**

I, Drexdal Pratt, Director of the Division of Health Service Regulation, North Carolina Department of Health and Human Services (“Department” or “Agency”), do hereby issue this Declaratory Ruling pursuant to North Carolina General Statute § 150B-4 and 10A NCAC 14A .0103 under the authority granted me by the Secretary of the Department of Health and Human Services.

Total Renal Care of North Carolina, LLC (“TRC”) has requested a declaratory ruling allowing for a change of site for Project I.D. No. O-8252-08 on the grounds that the change does not constitute a material change in physical location or a failure to materially comply with the representations made by TRC in its Certificate of Need (“CON”) application for its project. N.C.G.S. §§ 131E-189(b). This ruling will be binding upon the Department and the entity requesting it, as long as the material facts stated herein are accurate. This ruling pertains only to the matters referenced herein. Except as provided by N.C.G.S. § 150B-4, the Department expressly reserves the right to make a prospective change in the interpretation of the statutes and regulations at issue in this Declaratory Ruling. William R. Shenton of Poyner Spruill LLP has requested this ruling on behalf of TRC, and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

TRC applied for and received a certificate of need to relocate twenty-eight (28) dialysis stations from its Southeastern Dialysis Center facility in Wilmington to develop a new dialysis center consisting of twenty-eight (28) dialysis stations at a second location in Wilmington, New Hanover County, to be known as the Cape Fear Dialysis Center.

In its application, TRC identified a primary site located at 2722 Exchange Drive in Wilmington and a secondary site located at 2700 Northchase Parkway, SE, also in Wilmington.

After receiving the certificate of need to build the Cape Fear Dialysis Center, TRC determined that a new site was available and that the construction of a facility of the same size and overall configuration proposed in the application on the new site would result in a lease rate of \$13.50 per square foot of the facility, as compared with the lease rate of \$25.00 per square foot that was projected in the application.

The new site is located at 3005 Enterprise Drive in Wilmington, three-tenths of a mile from the primary site approved in the application.

The new site is located the same distance from most support services in the community as were the primary and secondary sites.

The new site is located adjacent to a nursing home which has indicated to TRC that it is willing to admit patients on dialysis since the cost of transporting those patients to their treatments will be negligible.

ANALYSIS

The CON law would require a full review of TRC's proposed change in site if that change were to represent a material change in the physical location or scope of the project.

N.C.G.S. § 131E-181(a). The proposed change does not constitute a material change in the physical location or the scope of the proposed project for the following reasons:

The new site is three-tenths of a mile away from the primary site identified in the original application by TRC.

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

TRC will operate the same size facility and offer the same services at the new site, and costs for the development of the facility should not exceed 115% of the amount shown on the certificate of need.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw TRC's CON if TRC fails to develop the service in a manner consistent with the representations made in the application or with any conditions that were placed on the CON. TRC will not be developing its project in a manner that is materially different from the representations made in its application, nor will it be developing its project in a manner that is inconsistent with any of the conditions that were placed on its CON.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that TRC should be permitted to locate the Cape Fear Dialysis Center at 3005 Enterprise Drive in Wilmington, New Hanover County, North Carolina, Project No. O-8252-08, and doing so will not constitute a material change in the physical location or scope of the project, will not violate N.C.G.S. § 131E-181, and will not constitute a failure to satisfy a condition of the CON in violation of N.C.G.S. § 131E-189(b).

This ruling is not intended, and should not be interpreted, to authorize any increases in the approved capital expenditure for this project, a change in the approved timetable, a change in the conditions placed on the certificate of need, or any other change in the approved project, except as expressly stated herein.

This the _____ day of November, 2010.

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

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Declaratory Ruling has been served upon the nonagency party by certified mail, return receipt requested, by depositing the copy in an official depository of the United States Postal Service in first-class, postage pre-paid envelope addressed as follows:

CERTIFIED MAIL

William R. Shenton
Poyner Spruill, LLP
301 Fayetteville Street, Suite 1900
Raleigh, North Carolina 27601

This the _____ day of November, 2010.

Jeff Horton
Chief Operating Officer