

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

IN RE: REQUEST FOR DECLARATORY)	
RULING BY BIO-MEDICAL)	
APPLICATIONS OF NORTH CAROLINA,)	DECLARATORY RULING
INC., d/b/a FMC HICKORY)	
HOME PROGRAM)	
Project I.D. No. E-8760-11)	

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

Bio-Medical Applications of North Carolina, Inc., d/b/a FMC Hickory Home Program (“FMC”) has requested a declaratory ruling allowing for a change in location for Project I.D. No. E-8760-11 on the grounds that the change does not constitute a material change in scope or physical location or a failure to materially comply with the representations made by FMC in its Certificate of Need (“CON”) application for its project. N.C.G.S. §§ 131E-181(a) and (b). This ruling will be binding upon the Department and the entity requesting it, as long as the material facts stated herein are accurate. This ruling pertains only to the matters referenced herein. Except as provided by N.C.G.S. § 150B-4, the Department expressly reserves the right to make a prospective change in the interpretation of the statutes and regulations at issue in this Declaratory Ruling. Jim Swann, Director of Market Development and Certificate of Need for FMC has requested this ruling on behalf of FMC and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

FMC was granted a Certificate of Need on August 1, 2012 to establish a kidney disease treatment center to serve as a peritoneal dialysis home training facility in Hickory, in Catawba County. The approved location for the facility was 1985 Tate Boulevard SE, Hickory, in Catawba County. FMC seeks to change the approved location of the original site to a proposed new site at 1899 Tate Boulevard SE, Hickory, Catawba County. The proposed new site is in the same building as the BMA Hickory Dialysis Center. The original proposed location was leased to another party while during the time the plans for FMC were in development.

ANALYSIS

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

The proposed new location is required because the original location is no longer available. The proposed new site is two tenths (2/10) of one mile from the original proposed location. The proposed site is within the multi-tenant building. It is zoned for medical use, including dialysis, and all necessary utilities are available. The proposed new location is not a flood plain. The multi-tenant building at the proposed cite currently houses the BMA Hickory dialysis facility, which is the current home of the FMC program. By changing locations to the same building location as the BMA Hickory dialysis center FMC will offer more convenience and flexibility to its patients. The change in location will not increase capital costs, operating costs or charges proposed in the approved CON application. The proposed change is in material compliance with the CON for the project.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw FMC's CON if FMC 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. FMC 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, other than previously discussed.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the change of location for the facility from 1985 Tate Boulevard SE, Hickory, in Catawba County, Project I.D. No. E-8760-11 to a new location at 1899 Tate Boulevard SE, Hickory, Catawba County 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 the _____ day of June, 2013.

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:

Jim Swann, Director
Fresenius Medical Care
Market Development and Certificate of Need
3717 National Drive, Suite 206
Raleigh, NC 27612

This the _____ day of April, 2013.

Cheryl Ouimet
Chief Operating Officer