

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY TOTAL RENAL CARE OF)
NORTH CAROLINA, LLC)
CONCERNING THE DEVELOPMENT AND) **DECLARATORY RULING**
OPERATION OF MACON COUNTY)
DIALYSIS)
Project I.D. No. A-8799-12)**

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.

Total Renal Care of North Carolina, LLC (hereinafter “TRC”) has requested a declaratory ruling allowing for a change in location for Project I.D. No. A-8799-12 on the grounds that the change does not constitute a material change in scope or physical location or a failure to materially comply with the representations made by TRC in its Certificate of Need (“CON”) application for 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. 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 for Project Number A-8799-12, in which it proposed to develop a new seven-station dialysis facility in Franklin, Macon County, North Carolina.

In its application, TRC proposed to develop the facility on a site located at 161 Iotla Street in Franklin. Due to a change in circumstances regarding the owner's plans for the property and its suitability for a dialysis facility, TRC had to find a new site.

TRC has now located an alternate site for the development of the Macon County Dialysis facility. The new site is located at 80 Westgate Plaza, in Franklin, approximately one mile from the location proposed in the application.

The facility will be the same size, and offer the same services as proposed in the application. The capital costs associated with the development of the facility will not exceed 115% of the \$967,776 capital expenditure authorized by the certificate of need for Project I. D. No. A-8799-12.

TRC is also changing the name of the facility from Macon County Dialysis to Franklin Township Dialysis to more accurately identify the area where the facility will be located.

ANALYSIS

The CON law would require a full review of TRC'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 site is in close proximity to the original site and key support services, and TRC will be developing its project in a manner that is consistent with the conditions and cost limitations on its certificate of need.

TRC will not be developing its project in a manner that is materially different from the representations made in its application.

TRC will construct the same size facility, and offer the same services proposed in its application, with the same complement of dialysis stations that was authorized by the certificate of need.

The change in name will in no way affect the development or operation of the facility.

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's development and operation of the Macon County Dialysis facility under the name Franklin Township Dialysis at the new site located at 80 Westgate Plaza in Franklin does not constitute a material change in the physical location or scope of the project, does not violate N.C.G.S. § 131E-181, and does 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 May, 2013.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Declaratory Ruling upon the nonagency party by certified mail, return receipt requested, by causing a copy of same to be placed in the United States Mail, first-class, postage pre-paid envelope addressed as follows:

CERTIFIED MAIL

William R. Shenton
Poyner Spruill LLP
301 Fayetteville Street, Suite 1900 (27601)
Post Office Box 1801
Raleigh, North Carolina 27602-1801

This the _____ day of May, 2013.

Cheryl Ouimet
Chief Operating Officer