

# **Petition for Amendment to State Medical Facilities Plan to Eliminate Dialysis Patients served by Veteran's Administration Dialysis Facilities from the ESRD Need Methodology**

## **I. Name, Address, Email Address, and Phone Number of Petitioner:**

Bio-Medical Applications of North Carolina, Inc.  
Attn: Jim Swann, Director, Market Development and Certificate of Need  
3725 National Drive, Suite 130  
Raleigh, North Carolina 27612  
Telephone: 919-896-7230  
[Jim.Swann@fmc-na.com](mailto:Jim.Swann@fmc-na.com)

## **II. Statement for the Proposed Adjustment**

Petitioner requests that the 2013 State Medical Facilities Plan ("SMFP") and Semiannual Dialysis Report ("SDR") County Need methodology, as well as all future versions of the SMFP and SDR, be amended through revision to eliminate all VA dialysis patients from the list of dialysis patients in a particular county to the extent such patients are included in the patient census used in need methodology calculations.<sup>1</sup>

This change will allow the SDR to more accurately reflect whether the existing stations in a county are meeting the need, or whether more stations are needed.

## **III. Background Information Regarding Petitioner**

Bio-Medical Applications of North Carolina, Inc. ("BMA") is a wholly owned subsidiary of Fresenius Medical Holdings, Inc. BMA operates 82 dialysis facilities in 41 North Carolina Counties. BMA provides both in-center hemodialysis and training and support for patients performing peritoneal dialysis or hemodialysis at home.

## **IV. Reasons for the Proposed Adjustment**

The Veterans Administration has recently begun to open dialysis clinics in North Carolina to serve patients covered by VA benefits. Facilities are open in Cumberland and Wake Counties, and plans for other facilities are being developed in other counties. Because these facilities are operated by the VA, the Certificate of Need ("CON") Section does not consider

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<sup>1</sup> This revision likely will also result in a need to adjust the affected counties' average annual change rate ("AACR") from December 31, 2011 forward in Table B of the SDR, which is used to develop the county station need determination. Such adjustment will prevent inaccurate reporting of declines in patient growth in the AACR.

them subject to the State regulations under the CON Law. Thus, they are being developed irrespective of any need determinations in the annual SMFP and the Semiannual Dialysis Report (“SDR”).

While the SMFP does not include VA facilities in its inventory of dialysis facilities and stations, the facility census data acquired from the Southeastern Kidney Council (“SEKC”) and published in the SDR includes VA dialysis patient populations within the total number of patients by county. VA dialysis patients are mandated to utilize VA dialysis facilities where and when those facilities become available. Failure to identify VA dialysis patients directly corresponding to the VA dialysis facilities and eliminate their numbers from their corresponding counties of origin could result in a projected CON county need where no real need exists. The use of the VA data under the existing arrangement allows for a false inflation of need for CON-regulated dialysis facilities.

It is our understanding that the Southeastern Kidney Council (“SEKC”) collects and maintains data identifying VA dialysis patients by county in North Carolina, and if asked, they could provide this information to the SHCC for use in the annual SMFP and the SDR, so that VA patients could be eliminated from the data used to identify existing dialysis patients in a particular county.

#### **V. Statement of the Adverse Effects on the Population**

There will be no adverse effects on the population if the SMFP and SDR County Need methodology are revised to eliminate the census numbers of VA patients from the data used to identify existing dialysis patients in a particular county.

#### **VI. Statement of the Alternatives Considered**

Retaining the status quo is the only alternative that was considered since the Certificate of Need Section is not using data that makes any distinction between patients being treated at CON approved facilities and those patients being treated at VA facilities. This alternative was rejected because it allows the SDR county ESRD census to be artificially inflated.

#### **VII. The Project Would Not Result in an Unnecessary Duplication of Services**

The Petitioner is not requesting additional resources or services. They are requesting that the SHCC amend the 2013 SMFP and SDR, as well as all future versions, to ensure that the SDR contains the most accurate number of both dialysis patients and dialysis stations to be used when calculating need methodologies.

### **VIII. The Project is Consistent with the Three Basic Principles Governing the Development of the SMFP**

The three basic principles governing the development of the SMFP are Safety and Quality, Access, and Value. This petition is consistent with these provisions of the Basic Principles because it requests policies and/or rules and regulations relating to the correct reporting of patients in the SDR. The requested amendment will ensure that there will be the proper number of dialysis stations for the population being served, which will allow those facilities to be operated safely and more efficiently and will provide better access to dialysis patients being served at those facilities.

### **IX. Conclusion**

The Petitioner requests that the SHCC appropriately amend the 2013 SMFP and SDR, and all future versions of the SMFP and SDR, to exclude patients being treated at VA facilities from the calculations of county need for dialysis stations so that the SDR will correctly reflect patient need for CON-regulated services.