



March 4, 2020

Petition

Petition to Change the CON Application Review Schedule

Petitioner: Fresenius Medical Care and its related dialysis facilities in North Carolina  
Bio-Medical Applications of North Carolina, Inc.  
Bio-Medical Applications of Fayetteville, Inc.  
Bio-Medical Applications of Clinton, Inc.  
RAI Care Centers of North Carolina II, LLC  
Renal Care Group of the South, Inc.  
FMC Morrisville, LLC  
FMC Rock Quarry, LLC  
FMC White Oak, LLC  
FMS ENA Home Dialysis, LLC  
Independent Nephrology Services, Inc.  
Carolina Dialysis, LLC

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**Statement of the proposed change:**

Fresenius Medical Care and its related dialysis facilities in North Carolina respectfully petitions the State Health Coordinating Council (SHCC) to amend the ESRD CON Application Review Schedule as currently published in the 2020 SMFP.

The current review schedule interferes with effective planning, relocation of existing dialysis stations and development of new dialysis stations.

**Background:**

Throughout 2019, Fresenius Medical Care and other dialysis providers worked collaboratively with the SHCC and Division of Health Service Regulation staff to arrive at major changes directly related to planning for ESRD facilities and dialysis stations. The DRAFT 2020 SMFP reflected these changes, and also included a proposed CON application schedule. This new schedule included three categories of CON applications for dialysis stations. At some point in the final stages of development for the 2020 SMFP the CON application scheduled was changed.

The original DRAFT plan included an opportunity for providers to file CON applications to relocate dialysis stations in September, for the review to commence on October 1. At the

same time, the DRAFT plan included an opportunity for dialysis providers to apply for new stations in November for the review to commence on December 1.

That DRAFT plan was changed, and the September and November application schedules for dialysis stations was reversed.

Dialysis providers were not consulted or informed of this change. Dialysis providers did not have the opportunity to express any public comment on the CON application schedule.

**Reasons for the proposed adjustment:**

Fresenius is aware that the SHCC generally leaves the scheduling for CON application to be determined by the CON Agency. In fact, Agency Chief Ms. Frisone very clearly expressed last year that the schedule was not the responsibility of the SHCC, and that scheduling was the responsibility of the CON Agency.

Dialysis providers will frequently apply to relocate dialysis stations between existing facilities. These relocation applications will in essence create capacity within the existing facility which would be relocating, or losing, stations.

Dialysis providers will also frequently file an application to create new stations, or replacement stations, in the facility which has been planned to relocate stations.

This pattern of CON applications has been well established over many years.

The current schedule for CON applications does not allow for effective planning. Essentially, providers have two, back-to-back application cycles to file for relocations: the December review and the February review. Based on this schedule, providers do not have an interim opportunity to apply for new stations.

It is much more effective to allow a provider to apply to relocate stations and have the opportunity to follow-up with an application for new stations, twice per year, much as the DRAFT 2020 plan was published.

Many of the dialysis facilities in our state are already at physical plant capacity. A facility at physical plant capacity cannot add new stations without significant capital expenditure. Often times, facilities simply don't have the space for physical plant expansion.

Relocating stations from a facility at physical plant capacity, in essence creates space. As new stations are needed, the facility which is planned to relocate stations, can follow-up in a subsequent application cycle to add stations back to the facility. Applications of this nature do not require significant capital outlay.

**Alternatives considered:**

There is no suitable alternative to this petition. We are not asking for additional review cycles. We are not asking to change the methodology. We are simply asking for a realignment of the CON application cycle for dialysis applications.

**Adverse effects if the petition is not approved:**

Failure to amend the CON application schedule will ultimately have an adverse impact on access to care, and the capital expenditures required of dialysis providers. Relocating stations to a facility with space, from a facility which is full, is a cost effective approach and does not require any significant capital outlay. Following the relocation of stations, a provider may apply to replace those stations, and plan to install stations in existing available space. This is a very cost effect way to manage the constantly increasing need for dialysis stations.

**Unnecessary duplication:**

**Summary:**

We respectfully ask this SHCC and the CON Agency to amend the CON application schedule and return to the schedule as was included in the DRAFT 2020 SMFP.