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William L. Hyland
Director of Healthcare Planning

DaVita “ he/she that gives life”

October 31, 2013

Mr. Craig R. Smith, Chief
Certificate of Need Section
Division of Health Service Regulation
809 Ruggles Drive
Raleigh, North Carolina 27603

RE: Project #N-10189-13/Bio-Medical Applications of North Carolina, Inc. d/b/a FMC Scotland County/Add two dialysis stations for a total of fourteen stations/Scotland County

Dear Mr. Smith:

BMA indicates that they are offering a Certificate of Need application to add two dialysis stations at their FMC Scotland County dialysis facility in response to the 11-station deficit of stations in Scotland County.

The applicant indicates in their application that there will be no capital costs associated with the project as stated on the Invoice page of the application. However, the applicant states that there will be a \$5,300 in capital costs for the project throughout the application.

There are a number of issues with the financial assumptions in Section X. of the FMC Scotland County CON application. The applicant does not delete the 20% that Medicare does not reimburse for services. Medicare only pays 80% allowable charge. The other 20% has to be paid by either the patient or a secondary source of insurance. The applicant indicates that 78.6% of the in-center patients and 59.43% of the home-trained patients have Medicare. However, the applicant failed to delete the 20% from the \$234 Medicare reimbursement. The applicant provided no other source for the 20% copay.

The applicant indicates that all treatments provided to in-center patients with the exception of the Medicare patient treatments bring in an average additional reimbursement of well over \$300 per treatment. This includes the Medicaid patients with an applicant stated reimbursement rate of \$137.29, patients with commercial insurance with an applicant stated reimbursement rate of \$1,375, patients funded by the Veterans Administration with an applicant stated reimbursement rate of \$146.79 and patients self-funded with an applicant stated reimbursement rate of \$1,375.00. Those additional reimbursements are suspect.

In the Fresenius CON application for a four-station expansion at the BMA Laurinburg filed on September 16, 2013, the applicant stated on page 56, "BMA has projected a slight decrease in the commercial payor mix at FMC Laurinburg. BMA has proposed (in the CON application for FMC Scotland County, filed September 16, 2013, in response to the July 2013 SDR Scotland County Need Determination) that BMA would redirect one or two of the patients with commercial insurance to the FMC Scotland County facility." The applicant states, "BMA will be working with the admissions team to re-direct one or two new dialysis patients, who reside on the north side of Laurinburg or Scotland County, with commercial insurance, to the FMC Scotland County facility".

The applicant also provides this information in the FMC Scotland County CON application. The applicant states on page 50, "FMC Scotland County financial performance has been marginal due to the very low commercial mix at the facility. As is noted above, the most recent historical review indicates that 0.5% of revenue has been from commercial insurance. BMA will be working the admissions team to re-direct one or two new dialysis patients, who reside on the north side of Laurinburg or Scotland County, with commercial insurance, to the FMC Scotland County facility. In a small facility population such as in FMC Scotland County, one or two patients with commercial insurance can dramatically alter the financial performance of the facility. BMA will not mandate patient admission to one facility or another."

That is exactly what Fresenius is trying to do. Based on the current payor mix provided by FMC Scotland County, the current year, operating year one and operating year two will not be profitable. The applicant even used the adjusted payor mix to calculate the revenue for the current year.

Fresenius Medical Care touts that they operate 90 dialysis facilities in North Carolina. Fresenius Medical Care through Jim Swann, their Market Development and Certificate of Need Director in North Carolina, agreed to participate in the gathering of the patient data as of December 31, 2012 by county. That patient data was used in the development of the July 2013 Semiannual Dialysis Report. All of the dialysis providers in North Carolina agreed to provide this information. All of the providers were given the same amount of time to collect and submit this information to the Division of Health Service Regulation Planning Section. All of the providers were provided a spread sheet prior to the publication of the July 2013 Semiannual Dialysis Report so that they could review the data that they and all other providers had submitted. This was one last chance to correct any errors that the providers may have made in the collection of the data.

As soon as the July 2013 Semiannual Dialysis Report was published indicating a need determination in Nash and Scotland Counties, Fresenius stated that they had made mistakes in the county of residence in three facilities that caused the need determinations. Fresenius has not provided any indication that they made mistakes in reporting data from any of the other 87 facilities, but only facilities in counties where there was a declared need determination.

The applicant goes to great length at several places in the application to explain that the two counties in July 2013 Semiannual Dialysis Report that resulted in a need determination for new dialysis stations by county were a result of errors made by either a Clinical Manager or an Area Manager. In Scotland County, the BMA Laurinburg patient data was prepared by the Clinical

Manager and certified by the Area Manager, who is also identified in the BMA of Laurinburg as the Director of Operations for the facility. This indicates that two professional staff gathered and certified the data. On page 9 of the application the Director of Operations “provides management and oversight for the following facilities:

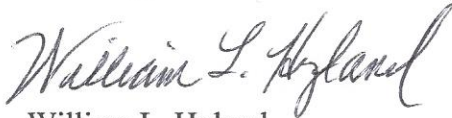
BMA Lumberton	BMA Laurinburg
FMC Robeson County	FMC Scotland County
BMA Red Springs	FMC Pembroke
FMC St. Pauls”	

The Area Manager/Director of Operations has responsibility for a total of seven facilities. If she reviewed all seven of the ESRD Data Collection documents and certified their accuracy, it seems reasonable to assume that if she saw data at one or more facilities that did not seem right or accurate that she would have asked some questions about the data.

It is apparent that the FMC Scotland County payor mix has been manipulated so that the facility will show a profit in operating year two. The application is fatally flawed and should be denied.

DaVita HealthCare Partners Inc. and Total Renal Care Inc. reserve the right to provide additional comments about the FMC Scotland County application at the public hearing.

Sincerely,



William L. Hyland
Director or Healthcare Planning