



North Carolina Department of Health and Human Services
Division of Health Service Regulation
Certificate of Need Section

2704 Mail Service Center ■ Raleigh, North Carolina 27699-2704

Beverly Eaves Perdue, Governor
Lanier M. Cansler, Secretary

www.ncdhhs.gov/dhsr

Craig R. Smith, Section Chief
Phone: 919-855-3875
Fax: 919-733-8139

RESPONSE REQUIRED

January 25, 2012

Jim Swann, Director
Market Development and Certificate of Need
3725 National Drive, Suite 130
Raleigh, NC 27612

RE: Conditional Approval/ Project I.D. #J-8749-11/Bio-Medical Applications of North Carolina, Inc. (BMA) d/b/a FMS-Apex/ Relocate 2 stations from BMA-Cary to FMS-Apex for a total of 16 stations at FMS-Apex/ Wake County
FID #981041

Dear Mr. Swann:

The Certificate of Need (CON) Section, Division of Health Service Regulation, Department of Health and Human Services has conditionally approved the above referenced certificate of need application. This decision was made after a review of the applications submitted for this cycle and after consideration of the Certificate of Need Law, G.S. 131E-175 et. seq., and regulations promulgated thereunder, the State Medical Facilities Plan, and other applicable information. Attached to this letter are the required findings made with respect to your application. The applicant shall not proceed with the construction, offering or development of this project until the certificate of need is issued. Further, the Department shall not issue the certificate of need until all applicable conditions of approval that can be satisfied before issuance of the certificate of need have been met pursuant to G.S. 131E-187(a). The conditions are as follows:

1. Bio-Medical Applications of North Carolina, Inc., (BMA) d/b/a FMS-Apex shall materially comply with all representations made in its certificate of need application.
2. Bio-Medical Applications of North Carolina, Inc., (BMA) d/b/a FMS-Apex shall be certified for no more than 16 dialysis stations, which shall include any home hemodialysis or isolation stations.



3. Bio-Medical Applications of North Carolina, Inc., (BMA) d/b/a FMS-Apex shall not develop or offer home dialysis services as a part of this project.
4. After certification of 2 stations relocated to FMS-Apex, BMA-Cary shall take the steps necessary to decertify 2 dialysis stations for a total of no more than 18 stations at BMA-Cary.
5. Bio-Medical Applications of North Carolina, Inc., (BMA) d/b/a FMS-Apex shall acknowledge acceptance of and agree to comply with all conditions stated herein to the Certificate of Need Section in writing prior to issuance of the certificate of need.

Response to the above conditions should be submitted to the CON Section no later than 35 days from the date of the decision. Failure to respond within this time period may result in the CON Section making a determination not to issue a certificate of need for the project referenced above.

The conditional approval is valid only for a capital expenditure of \$4,750. If a cost overrun occurs that exceeds the approved capital expenditure amount, a new certificate of need may be required as determined by G.S. 131E-176(16)(e).

The applicant should be aware that according to the Certificate of Need Law any affected person shall have thirty (30) days after the date of decision to file a petition for a contested case on this approval. Further, if you are aggrieved by the conditions of the decision you may file a petition for a contested case hearing in accordance with G.S. 150B, Article 3, as amended. This petition must be filed with the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, North Carolina 27699-6714 within thirty (30) days of the date of this decision. [Note: Effective October 1, 2009, OAH requires a filing fee with submittal of petitions for contested cases. Please direct all questions regarding this fee to OAH Clerk's Office (919-431-3000).]

G.S. 150B-23 provides that a party filing a petition must also serve a copy of the petition on all parties to the petition. Therefore, if you file a petition for a contested case hearing, you must serve a copy of the petition on the Department of Health and Human Services by mailing a copy of your petition to:

Emery Milliken
Department of Health and Human Services,
Office of Legal Affairs,
Adams Building – Room 154
2001 Mail Service Center
Raleigh, North Carolina, 27699-2001

It is requested that a copy of the petition also be served on the Certificate of Need Section.

Jim Swann
January 25, 2012
Page 3

The certificate of need will not be issued before the completion of this 30 day period ending February 24, 2012. If a contested case request is received within the thirty (30) day period, the certificate will not be issued until the appeal is resolved (10A NCAC 14C .0208).

The timetable for completion of the project is the timetable outlined in the certificate of need application, unless an adjustment has been made by the CON Section because the review period was extended.

The timetable for this project is as follows:

Ordering of Equipment	_____	November 1, 2012
Operation of Equipment	_____	December 23, 2012
Completion of Construction	_____	December 23, 2012
Certification of Stations	_____	December 31, 2012

If the decision is appealed, the timetable set forth in this letter will be adjusted accordingly before the Certificate of Need is issued. Please contact us if any clarification of this decision is required.

Please refer to the Project I.D.# and Facility I.D.# (FID) in all correspondence.

Sincerely,



F. Gene DePorter, Project Analyst
Certificate of Need Section



Craig R. Smith, Chief
Certificate of Need Section

FGD:CRS:vlw

Attachment

cc: Medical Facilities Planning Section, DHSR
Construction Section, DHSR
Acute and Home Care Licensure and Certification Section, DHSR

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing notice of conditional approval on the following person by placing a copy in an official depository of the United States Postal Service in a postage-paid, first class envelope addressed as follows:

Jim Swann, Director
Market Development and Certificate of Need
3725 National Drive, Suite 130
Raleigh, NC 27612

Project I.D. #J-8749-11

FID #981041

This the 25th day of January, 2012



F. Gene DePorter, Project Analyst