

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

IN RE: REQUEST FOR DECLARATORY)	
RULING BY DVA HEALTHCARE)	
RENAL CARE, INC. CONCERNING THE)	DECLARATORY RULING
DEVELOPMENT AND OPERATION OF)	
WILSON DIALYSIS CENTER)	
Project I.D. No. L-8218-08)	

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.

DVA Healthcare Renal Care, Inc. (hereinafter “DVA”) has requested a declaratory ruling allowing for a change in location for Project I.D. No. L-8218-08 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 DVA 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 DVA and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

DVA applied for and received a certificate of need for Project Number L-8218-08, in which it proposed to replace its existing Wilson Dialysis Center in Wilson. In its application, DVA proposed to have a developer construct a new shell building at the same site where Wilson Dialysis Center has operated, located at 1605 Medical Park Drive in Wilson, and that DVA would lease and upfit the building.

DVA has since determined that it cannot work out a satisfactory agreement with the owners of that site for the project. It now has located an alternate site on Wooten Boulevard in Wilson, which is about one mile from the current site.

DVA proposes to lease a shell building from a developer that would purchase the site and build the shell building at the new site. DVA will upfit the shell building with all the necessary dialysis-specific features as described in the certificate of need application.

ANALYSIS

The CON law would require a full review of DVA'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 new site on Wooten Boulevard is about one mile from the current site.

DVA will operate the same size facility, same complement of dialysis stations, and offer the same services at the new site as were proposed in the application.

The capital costs associated with the development of the facility will not exceed 115% of the \$1,499,912.00 capital expenditure shown on the certificate of need.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw DVA's CON if DVA 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. DVA 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 DVA's development and operation of the Wilson Dialysis Center at the new site located on Wooten Boulevard in Wilson, North Carolina, Project I.D. No. L-8218-08, will not constitute a material change in the physical location or scope of the project, will not violate N.C.G.S. § 131E-181, and will 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 July, 2012.

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

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Declaratory Ruling has been served upon the nonagency party by certified mail, return receipt requested, by depositing the copy in an official depository of the United States Postal Service in first-class, postage pre-paid envelope addressed as follows:

CERTIFIED MAIL

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

This the _____ day of July, 2012.

Dr. Patsy Christian, Assistant Director
Healthcare, Quality and Safety