

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

**IN RE REQUEST FOR DECLARATORY)
RULING BY TOTAL RENAL CARE OF)
NORTH CAROLINA, LLC CONCERNING) DECLARATORY RULING
THE DEVELOPMENT AND OPERATION)
OF HAMPSTEAD DIALYSIS)
Project I.D. No. O-10125-13)**

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 10 NCAC 14A .0103 under the authority granted me by the Secretary of the Department.

Total Renal Care of North Carolina, LLC (“TRC”) has requested a declaratory ruling allowing a change in site and name for Project I.D. No. O-10125-13 (“Project”) on the grounds that the changes do not constitute a material change in scope or physical location or a failure to materially comply with the representations made by TRC in its Certificate of Need (“CON”) application for the Project. 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. Gen. Stat. § 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 as counsel for TRC has requested this ruling and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

Effective 23 August 2013, the CON Section issued a CON for the Project to TRC to develop a new ten-station dialysis center to be located in Hampstead, Pender County, North

Carolina and to be known as Hampstead Dialysis. In its CON application, TRC identified the primary site for the Project as 17160 US Highway 17 North (“Original Site”). TRC now seeks to change the site of the Project to a location along US Highway 17 near Longson Drive in Surf City, Pender County (“New Site”). The New Site is identified as Pender County PIN #4215-7875-86-0000 in an attachment to TRC’s request for this ruling. TRC states that it wants to change the sites because of an issue related to the cost of maintenance of a private sewer system.

TRC represents that the New Site is 7.8 miles from the Original Site. It states that the construction costs for the New Site will not exceed 115% of the capital expenditure authorized by the CON for the Project. TRC states that it will offer the same services at the New Site as it proposed at the Original Site.

TRC also wants to change the name of the Project facility from Total Renal Care of North Carolina, LLC d/b/a Hampstead Dialysis to Total Renal Care of North Carolina, LLC d/b/a Surf City Dialysis to more accurately identify the area where the facility will be located.

ANALYSIS

The CON law would require a full review of TRC’s change in site if that change were to represent a material change in the physical location or scope of the Project. N.C. Gen. Stat. § 131E-181(a). The proposed site change does not constitute a material change in the physical location or scope of the Project for the following reasons:

The two locations are approximately 7.8 miles apart and are both located within Pender County.

TRC has identified the new location as the more cost effective alternative because of the availability of water and sewer from the Town of Surf City.

The change in name will not affect services or the scope of the Project and will more accurately reflect the facility's location.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that TRC's proposal to change the approved site for the Project from the Original Site to the New Site, and the change in name from Hampstead Dialysis to Surf City Dialysis, does not constitute a material change in the physical location or scope of the Project, does not violate N.C. Gen. Stat. § 131E-181, and does not constitute a failure to satisfy a condition of the CON in violation of N.C. Gen. Stat. § 131E-189(b).

This ____ day of June, 2014.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Declaratory Ruling upon the PETITIONER by causing a copy of same to be placed in the United States mail, postage pre-paid envelope, certified mail, return receipt requested, addressed as follows:

CERTIFIED MAIL

William R. Shenton
Poyner Spruill LLP
301 Fayetteville Street, Suite 1900 (27601)
Post Office Box 1801
Raleigh, NC 27602-1801

This the ____ day of June, 2014.

Cheryl Ouimet
Chief Operating Officer