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August 10, 2011

*Via E-mail to DHSR.SMFP.Petitions-Comments@dhhs.nc.gov &
UPS Overnight Letter Tracking # 1Z 8T7 030 13 9205 2240*

North Carolina Division of Health Service Regulation
Medical Facilities Planning Section
809 Ruggles Dr
Raleigh, NC 27603-2025

RE: PETITION

Sirs:

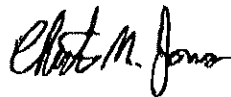
Enclosed herewith please find the Petition for Adjustment to Need Determinations; the Resolution of the Macon County Board of County Commissioners to File Petition for Adjustment of Needs Determination; and the letter of support from Jim Sawyer, DaVita Regional Operations Director.

Please accept the Petition of the Macon County Board of Commissioners for your consideration.

May I please request that you acknowledge receipt of this letter and these enclosures by return e-mail to cj@chesterjoneslaw.com ?

With kindest regards.

Very truly yours,



Chester M. Jones
Attorney at Law

CMJ:spj

Enclosures

cc: Mr. Jack Horton

COPY

DFS Health Planning
RECEIVED

AUG 11 2011

Medical Facilities
PLANNING SECTION

STATE OF NORTH CAROLINA
COUNTY OF MACON

CCF
DFS Health Planning
RECEIVED

AUG 11 2011

Medical Facilities
Planning Section

PETITION

PETITION FOR ADJUSTMENT TO NEED DETERMINATIONS

Petitioner, Macon County, North Carolina, a North Carolina County and Body Politic, acting by and through its Board of County Commissioners, does hereby respectfully Petition the Medical Facilities Planning Section and the North Carolina State Health Coordinating Council to make an adjustment to Chapter 14 End Stage Renal Disease Dialysis Facilities in the Proposed North Carolina State Medical Facilities Plan for 2012 where the same provides for the Method of Projecting New Dialysis Station Need and where the same effectively precludes Macon County from having an End Stage Renal Disease Dialysis Facility in Macon County so as to allow for the issuance of a Certificate of Need for a dialysis facility to be started and operated in Franklin, Macon County, North Carolina, and in support of such Petition does respectfully set forth the following:

1. The Board of County Commissioners of Macon County understands and appreciates the hard work that has been done in connection with the Proposed North Carolina State Medical Facilities Plan for 2012 and this Petition should in no way be received as criticism of the same;
2. However, Macon County, by and through its Board of Commissioners, has the responsibility to attempt to advance the best interests and welfare of the citizens of Macon County, North Carolina, including but not limited their interest in having good and reasonable access to necessary and essential health care services such as dialysis services;
3. Macon County, by and the through its Board of Commissioners, has received numerous first hand accounts of tremendous hardship encountered by citizens of Macon County who require periodic dialysis services in order to maintain life and who are required to travel from various points within Macon County to Sylva, North Carolina, or locations further away from Macon County in order to receive the life sustaining dialysis services which they require;
4. Macon County, by and through its Board of Commissioners, has been and is in the very good and unique position to receive significant information and feedback concerning the health care needs of its citizens and it has received substantial material and relevant information and it further has observations which it believes would be material, relevant and helpful in determining that there is in fact a great need for a dialysis facility to be started and operated in Franklin, Macon County, North Carolina;
5. Macon County does hereby respectfully make this Petition so as to allow for the issuance of

a Certificate of Need for a dialysis facility to be started and operated in Franklin, Macon County, North Carolina, in order to advance the general health, welfare and best interests of its citizens and so that access to life sustaining dialysis services can be provided within a reasonable and safe distance to those citizens of Macon County who require the same;

6. This Petition is specifically authorized by Resolution of the Board of County Commissioners for Macon County by the unanimous consent of its members;
7. The name, address and phone number of the Petitioner are:

Macon County
5 West Main Street
Franklin, NC 28734
(828) 349-2025;

8. The following proposed adjustment to the need determination given in the Proposed North Carolina State Medical Facilities Plan for 2012 is requested by Petitioner:

The Petitioner respectfully asserts that there needs to be an adjustment to Chapter 14 End Stage Renal Disease Dialysis Facilities, where the same provides for the Method of Projecting New Dialysis Station Need and where the same effectively precludes Macon County from having an End Stage Renal Disease Dialysis Facility in Macon County. Macon County respectfully asserts that there should be an adjustment to the same which would allow for the taking into consideration of the special circumstances, the climate, and the topography of Macon County as well as the the needs of the residents of Macon County and which would allow for the issuance of a Certificate of Need for a dialysis facility to be started and operated in Franklin, Macon County, North Carolina.

9. The following are the reasons for the proposed adjustment:
 - A. The adverse effects on the population of the affected area that are likely to ensue if the requested adjustment is not made and the adverse affects which are presently occurring include but are not limited to the following:
 - i. There are no dialysis facilities in Macon County, North Carolina, presently. It is one of a very few counties within the State of North Carolina which does not have a dialysis center;
 - ii. The people of Macon County, North Carolina, and those on extended visits to Macon County, North Carolina, in need of dialysis services must travel substantial times and distances to the dialysis facility in Sylva, Jackson County, North Carolina, to reach the closest dialysis facility in North Carolina for most of Macon County, North Carolina;

- iii. For example, any residents of Tipton, Macon County, North Carolina, have to travel approximately 45 miles and approximately one hour to the dialysis facility in Sylva, Jackson County, North Carolina. Residents of Nantahala, Macon County, North Carolina, have to travel approximately 43 miles and at least an hour to the dialysis facility in Sylva, Jackson County, North Carolina. Residents of Scaly Mountain, Macon County, North Carolina, have to travel approximately 45 miles and 55 minutes to the dialysis facility in Sylva, Jackson County, North Carolina. Residents of Highlands, Macon County, North Carolina, would have to travel approximately 40 miles and 47 minutes to the dialysis facility in Sylva, Jackson County, North Carolina. Residents of Otto, Macon County, North Carolina, would to travel approximately 34 miles and 45 minutes to the dialysis facility in Sylva, Jackson County, North Carolina. Residents of Franklin, North Carolina, have to travel approximately 24 miles and 33 minutes. Of course each of these trips also require a return trip of equal distance and time;
- iv. Macon County is a Mountain County in the Western end of the State of North Carolina. The long drives referenced above are not easy drives by any means. They are not like drives one might experience on Interstate 40 or other relatively flat roads. Distances which appear on maps to be but a few miles may often be traveled only by taking circuitous routes along roads filled with sharp curves and steep grades. The roads through Macon County run through rugged mountainous country and these same roads are extremely dangerous especially when wet or when snow and/or ice and/or foggy conditions are present;
- v. Winters can be relatively harsh in the mountains of Macon County, North Carolina. Snow and ice are not uncommon during the Winters of Macon County, North Carolina. When snow and ice falls in Macon County, the North Carolina Highway Patrol often advises drivers to stay off the roads. Of course, dialysis patients do not have the luxury of staying off the roads. When they need dialysis treatment, they need it. Exposing dialysis patients to the risk of driving mountain roads for 24 to 45 miles for as much as an hour each way and each time they need dialysis treatment in good weather conditions is at best less than ideal. Exposing dialysis patients to the risk of driving mountain roads for 24 to 45 miles for a period of time which could exceed two hours each way and each time they need dialysis treatment during snow and ice is unconscionable. Indeed most Macon County patients travel from Macon County by US Highway 441 over Cowee Mountain to get to the dialysis center in Sylva, Jackson County, North Carolina. Because of the high altitude of US Highway 441 on Cowee Mountain, that road can be one of the first to see snow and ice and it can be very dangerous when there is snow and ice due to the steep grades and sharp curves of the road on both

sides of the Mountain. Many accidents occur on this road. They are often fatal accidents. Attached are photocopies of two pictures taken just this last Winter on the Cowee Road while a dialysis patient was traveling from Macon County to Sylva, North Carolina, for dialysis treatment. This patient encountered dangerous snowy and icy conditions. Four wheel drive vehicles were sliding off the road. The pictures were made while the patient and her daughter were waiting in the dark morning hours for an ambulance and a wrecker to clear an accident which had just happened on the road ahead of them. They called the dialysis center to let them know they would be late and requested that they please save the patient a spot so as to avoid medical problems. If there were a dialysis center in Macon County, this situation and other like it could be avoided. Heavy fog conditions are also encountered in Macon County which makes such travel hazardous;

- vi. Not only do Maconians have to travel long distances and long times (and some times in very bad weather conditions) for dialysis services, they are also asked to come for appointments late in the evening and as early as 4:30 a.m. in the morning. Can anyone possibly feel good about asking an elderly person to travel for these distances and times over dangerous mountain roads in icy, snowy and/or foggy conditions both to and from a dialysis center at these hours of the day?
- vii. These types of hardship have material and negative impacts on quality of life issues for those in need of dialysis services who reside in Macon County as well as those who assist them in traveling to the dialysis center in Sylva, Jackson County, North Carolina. A large number of these patients have other serious medical conditions;
- viii. There are approximately 35,000 full time residents in Macon County, North Carolina. That number increases to approximately 53,000 in the warmer months.
- ix. It is believed that as many as 34 Maconians receive dialysis at this time. An exact number has not been ascertained by the Petitioner but it could be that the number is lower than the 32 required under the proposed guidelines. This estimate of 34 does not take into consideration the substantial number of part time residents which Macon County enjoys for part of each year who choose to maintain their official residences elsewhere due to favorable tax laws or other reasons. Further, it does not include residents of Macon County who reside near the Georgia-North Carolina State Line and who travel to Clayton, Georgia, for dialysis treatment;
- x. It should be noted that Macon County has a substantial retirement aged

population which spends roughly half or more of the year in Macon County and the other half of the year in Florida or other places. Indeed, 60 percent of the ad valorem tax bills generated by Macon County are mailed to addresses outside of Macon County and to 48 States other than North Carolina and to 14 different Countries;

- xi. It is believed that there may be a number of these part-time residents who need dialysis services when they are spending a portion of their year in Macon County which simply cannot be tracked to and attributed to being part of the Macon County need for dialysis services due to these individuals maintaining their permanent residences in places other than Macon County.
- xii. A local journalist who has been writing articles concerning the lack of a dialysis center in Macon County has received substantial feedback in support of a local dialysis center. Indeed, he advised that he had received a letter from one elderly couple who had spent part of their year in Florida and part of their year in Macon County, North Carolina. They had hoped to become full time residents in Macon County, North Carolina, but the lack of a dialysis facility in Macon County which was needed by them forced them to move back to Florida on a full time basis so that dialysis services would be readily available;
- xiii. Macon County's Public Transportation System cannot presently transport dialysis patients to Sylva, Jackson County, North Carolina, due to the extended trip lengths, travel time, the long service times required for dialysis treatment and the resulting waits which would be required by the transportation system during the treatment. This requires in many instances that another person must accompany a Macon County dialysis patient to Sylva, Jackson County, North Carolina in order for the patient to receive the life sustaining dialysis services. If a dialysis center could be located in Macon County, Macon County's Public Transportation System could then assist these patients and their families and their loved ones with the transportation needs of the dialysis patient to and from a Macon County Dialysis center. The barriers to the Macon County transportation system assisting with this need would be removed. This would materially increase access to services and materially assist in quality of life issues associated with dialysis treatment for Maconians. To say that the same would be helpful would be an understatement;
- xiv. Attached are a few letters and notes which have been received by Macon County from dialysis patients or their families or friends which further describe the material hardships encountered in accessing dialysis services. Perhaps these letters demonstrate the need best from personal experience. The

same are incorporated herein by reference;

- xv. Macon County's economy to a large extent is dependent upon a second home market and tourism;
 - xvi. In this time of economic hardship, opportunities for economic growth in Macon County are being lost by those who leave the County due to their being no dialysis facilities. The lack of a dialysis facility in Macon County also has a chilling effect on those who desire to move to Macon County, but require dialysis services;
- B. Alternatives to the proposed adjustment would be to continue doing what is being done by sending dialysis patients from Macon County, North Carolina, to Sylva, North Carolina. However, it is respectfully submitted that the same is not feasible due to the foregoing facts set forth hereinabove and which are incorporated herein by reference.
10. The health service development permitted by the proposed adjustment would not result in unnecessary duplication of health resources in the area given that:
- A. It appears that Macon County could use and sustain a dialysis center;
 - B. There is none in Macon County and so it would certainly not be a duplication of health services in Macon County;
11. The proposed adjustment is consistent with the three Basic Principles governing the development of the North Carolina State Medical Facilities Plan given that:
- A. Safety to the dialysis patients from Macon County and their families and loved ones would be greatly enhanced by a dialysis center being located in Macon County for the reasons set forth hereinabove;
 - B. Access to dialysis treatment would be greatly enhanced as well by there being a dialysis center in Macon County. Not only would access to dialysis treatment be much closer and less time consuming to attend, public transportation to the same for Macon County residents in need of dialysis would also become a reality; and
 - C. Leadership of Macon County has communicated with health care providers and it is believed that one or more providers would be ready, willing and able to provide dialysis services in Macon County, North Carolina, should a Certificate of Need be secured given that there is a significant need for the same in Macon County.
12. Petitioner is available to provide any additional information and/or opinions which are

required.

13. If a dialysis center was established in Macon County, North Carolina, it is possible that such a center would pick up additional patients from Eastern Clay County and Rabun County, Georgia.

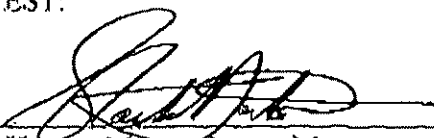
Respectfully submitted this the 9th day of August, 2011.

Macon County, North Carolina

By: 

Brian McClellan, Chairman of the Board of
County Commissioners for Macon County,
North Carolina

ATTEST:


Jack Horton, Macon County Manager and
Clerk to the Board of County Commissioners
for Macon County, North Carolina

(COUNTY SEAL)

