

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

**IN RE: REQUEST FOR DECLARATORY)
RULING BY RENAL TREATMENT)
CENTERS MID-ATLANTIC, INC.) DECLARATORY RULING
)
)
Project I.D. No. G-8555-10)**

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.

Renal Treatment Centers Mid-Atlantic, Inc. (“RTC”) has requested a declaratory ruling for Project I.D. No. G-8555-10 (“Project”) that would allow it to develop and operate a 10-station dialysis facility at a new location. RTC requests this change on the grounds that it does not constitute either (1) a material change in scope or physical location or (2) a failure to materially comply with the representations made by RTC in its certificate of need application for its project or the conditions imposed upon the certificate of need. 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 RTC and has provided the material facts upon which this ruling is based.

STATEMENT OF THE FACTS

In November 2010, the CON Section issued a certificate of need for Project I.D. No. G-8555-10 authorizing RTC to develop a 10-station dialysis facility in North Burlington, Alamance County, by relocating 10 stations from Burlington Dialysis Center (also in Alamance County). The primary site approved for the facility is 1738 W. Webb Avenue in Burlington; the secondary site is located at 215 North Church Street in Burlington.

In this request, RTC seeks a change from these previously approved sites to a site located at 2019 North Church Street in Burlington. RTC states that the newly proposed site is in a safer area of town, is more centrally located to the proposed patient population, and will provide better patient access overall than either of the approved sites. The new site is 3.76 miles away from the originally approved primary site and is approximately the same distance to most support services as that original site.

The proposed site is in an existing building and is currently zoned to permit the use of the property for medical offices including a kidney dialysis facility. Power and water are available at the site. RTC represents that its developer will purchase the existing building, the building will be upfitted with all the necessary dialysis-specific renovation described in the application, and the upfit costs will not exceed 115% of the approved capital expenditure amount. RTC expects to complete development of the facility and have it ready for certification by the end of 2011. RTC represents that access, cost of the project and scope of services will not change.

ANALYSIS

The CON law would require a full review of RTC's proposed change if it were to represent a material change in the physical location or scope of the project. N.C.G.S. § 131E-181(a). The proposed change does not constitute a material change in the physical location or

the scope of the proposed project. RTC will operate the same size facility and offer the same services at the new site as those proposed in the application. Costs for development will not exceed 115% of the amount shown on the certificate of need. The new site is approximately the same distance to key support services identified in the application as the original primary site in RTC's application.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw RTC's certificate of need if RTC 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 certificate of need. RTC 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 certificate of need.

CONCLUSION

For the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the substitution of 2019 North Church Street, Burlington, North Carolina, as the site for RTC's dialysis center, Project I.D. No. G-8555-10, 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 certificate of need in violation of N.C.G.S. § 131E-189(b).

This the _____ day of _____, 2011.

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 a first-class, postage pre-paid envelope addressed as follows:

CERTIFIED MAIL

William R. Shenton
Poyner Spruill LLP
301 Fayetteville Street, Suite 1900
Raleigh, NC 27602-1801

This the _____ day of _____, 2011.

Jeff Horton
Chief Operating Officer