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MAY 31 2017

STATE HEALTH PLANNING
AND DEVELOPMENT AGENCY

May 31, 2017

Via Electronic Filing
(shpda.online@shpda.alabama.gov)

Mr. Alva Lambert
Executive Director
State Health Planning and Development Agency
100 North Union Street, Suite 870
Montgomery, AL 36104

RE: Request for Reviewability Determination
Fresenius Medical Care Tuscaloosa Foothills, LLC

Dear Mr. Lambert:

The purpose of this letter is to request your determination, pursuant to Section 401-1-7-.02 of the Alabama Certificate of Need Program Rules & Regulations ("Regulations"), that the proposed establishment of a new kidney disease treatment center and operation of ten (10) stations in Tuscaloosa County, Alabama, does not require our client, Fresenius Medical Care Tuscaloosa Foothills, LLC ("Fresenius"), to obtain a Certificate of Need ("CON") from the State Health Planning and Development Agency. In order to assist with this determination, we offer the following information:

Pursuant to Ala. Code § 22-21-278, a kidney disease treatment center located in a Class 3, 4, 5, 6, 7, or 8 municipality, as defined by Ala. Code § 11-40-12(a), which contains no more than ten (10) freestanding hemodialysis stations is not subject to CON review. However, this exemption from the CON program does not apply to a kidney disease treatment center located in a Class 4, 5, 6, 7, or 8 municipality if such municipality, or any part of such municipality, is located in a county in which a Class 1, 2, or 3 municipality, or any part thereof, is located. Pursuant to this statute, the State Health Plan indicates that "kidney disease treatment centers with ten stations or less [are allowed to] operate in 61 of 67 counties without Certificate of Need approval. Centers in Jefferson, Limestone, Madison, Mobile, Montgomery and Shelby counties are required to receive certificate of need approval for any dialysis stations." Ala. Admin. Code r. 410-2-3-.05(1)(b).

The proposed location of the clinic to be developed by Fresenius is in Tuscaloosa County, Alabama, with the kidney disease treatment center to be located in Tuscaloosa. Tuscaloosa County does not contain a Class 1, 2, or 3 municipality¹ and, accordingly, this Tuscaloosa County proposal

¹ As defined by Section 11-40-12(a), a Class 1 municipality is a city with a population of 300,000 inhabitants or more; a Class 2 municipality is a city with a population of not less than 175,000, and not more than 299,999 inhabitants; and a Class 3 municipality is a city with a population of not less than 100,000, and not more than 174,999 inhabitants.

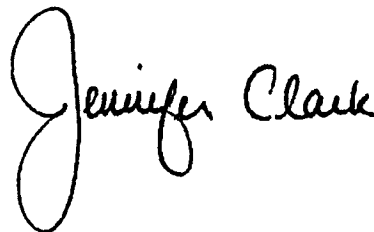
meets the exemption criteria set forth in Ala. Code § 22-21-278, which provides, in pertinent part, as follows:

- (b) Notwithstanding any existing law to the contrary, **any kidney disease treatment center that contains no more than ten freestanding hemodialysis units and that is located in a Class 3, 4, 5, 6, 7 or 8 municipality** (as such classes are defined in Sections 11-40-12 and 11-40-13 or any successor provision of law) **shall not be subject to or governed by the provisions of Article 9 of Chapter 21 of Title 22** (including, without limitation, the provision of said articles which require that a certificate of need be obtained from the State Health Planning and Development Agency as a condition precedent to the offering or development of new institutional health services).
- (c) The provisions of subsection (b) shall not apply to a kidney disease treatment center located in a Class 4, 5, 6, 7 or 8 municipality if such municipality or any part thereof is located in a county in which a Class 1, 2 or 3 municipality or any part thereof is located. [emphasis added]

Therefore, pursuant to Ala. Code § 22-21-278 and Ala. Admin. Code r. 410-2-3-.05(1)(b), the proposed clinic is not subject to CON review. Due to this exemption, a CON is not required for the proposed project.

Based upon the above, we respectfully request your determination that Fresenius Medical Care Tuscaloosa Foothills, LLC is exempt from CON review and is not required to obtain a CON in order to complete the project as described in this letter. We appreciate your consideration of this request, and welcome the opportunity to address any questions regarding this matter. A check for \$1,000.00 in payment for the applicable fee will be delivered to your office. Thank you very much.

With Best Regards,

A handwritten signature in black ink that reads "Jennifer Clark". The signature is written in a cursive style with a large, looping initial "J".

Jennifer Clark

Affirmation of Requesting Party:

The undersigned, being first duly sworn, hereby makes oath or affirms that he, as the Director of Operations of Fresenius Kidney Care for the Central Alabama Area, has knowledge of the facts in the attached Reviewability Determination Request, and to the best of his information, knowledge and belief, such facts are true and correct.

Stephen M. Busenlehner

Stephen M. Busenlehner

Director of Operations, Fresenius Kidney Care

(SEAL)

SUBSCRIBED AND SWORN to before me this 30th day of May, 2017.

Vangelia Suttles

Notary Public

MY COMMISSION EXPIRES OCTOBER 14, 2017

My commission expires: _____