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ARANT BOUT CUMMINGS

AUG 23 2016

STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

August 19, 2016

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 Kidney Care Cullman

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 end stage renal disease treatment center and operation of ten (10) stations in Cullman County, Alabama, does not require our client, Bio-Medical Applications of Alabama, Inc. d/b/a Fresenius Kidney Care Cullman (“Fresenius Kidney Care Cullman”), 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 dialysis facility 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.

The proposed location of Fresenius Kidney Care Cullman is in Cullman County, Alabama, with the end stage renal disease treatment center to be located in Cullman. Cullman County does **not** contain a Class 1, 2, or 3 municipality¹ and, accordingly, the Cullman County proposal 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

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.

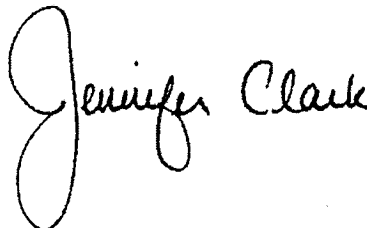
units and that is located in a Class 3, 4, 5, 6, 7 or 8 municipality (as such classes are defined in Section 11-40-12 and 11-40-13 or any successor provision of law) **shall not be subject to or governed by the provisions of Article 9 of Chapter 21 of Title 22** (including, without limitation, the provision 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 § 410-2-3-.05(1)(b), a CON is not required for the proposed project.

Based upon the above, we respectfully request your determination that Fresenius Kidney Care Cullman 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