



STATE OF ILLINOIS
HEALTH FACILITIES AND SERVICES REVIEW BOARD

525 WEST JEFFERSON ST. • SPRINGFIELD, ILLINOIS 62761 • (217) 782-3516 FAX: (217) 785-4111

DOCKET NO: I-3	BOARD MEETING: May 10, 2011	PROJECT NO: 11-010	PROJECT COST: Original: \$2,494,432
FACILITY NAME: Barrington Creek Dialysis		CITY: Lake Barrington	
TYPE OF PROJECT: Substantive			HSA: VIII

EXECUTIVE SUMMARY

PROJECT DESCRIPTION:

- The applicants (DaVita, Inc., Total Renal Care, Inc., and Camino Dialysis, LLC) are proposing to establish a 12-station End Stage Renal Dialysis (ESRD) facility located 7,000 GSF of leased space in Lake Barrington. The cost of the project is \$2,494,432.

WHY THE PROJECT IS BEFORE THE STATE BOARD:

- This project is before the State Board because the project proposes to establish a health care facility as defined by Illinois Health Facilities Planning Act.

PURPOSE OF THE PROJECT:

- The purpose of the project is to ensure timely access to life-sustaining dialysis to patients identified by 21 physicians within the physician group Nephrology Associates of Northern Illinois (NANI). The applicants state the service area consists of Lake, Cook, Kane, McHenry, and DuPage counties in Northern Illinois.

REASON FOR THE PROJECT:

- The State Agency identified **an excess of 35 ESRD stations** in HSA VIII, per the March 2011 State Inventory Update. The State Board approved this project as Project #09-036 in January 2010. Project #09-036 was abandoned due to foreclosure on the property/site of the initial facility January 22, 2011. This project proposes to establish a similar facility at a different site within the same planning area.

BACKGROUND/COMPLIANCE ISSUES:

- None of the applicants have compliance issues related to the State Board.

FINANCIAL AND ECONOMIC FEASIBILITY:

- The entirety of the project will be funded through internal sources (Cash and Securities/Fair Market Value of the Lease). A review of the financial statements indicates sufficient resources are available to fund the project.

CONCLUSIONS

- This project is being proposed as a replacement of a previously approved project that lost its facility site because the property was foreclosed. At the time the project was initially approved by the State Board there was a calculated excess of 14 stations in the HSAVIII planning area. While the project proposes a similar facility on a different site there is now a calculated excess of 35 stations in this ESRD planning area. The current facilities within 30 minutes have an average utilization of 65.26%. 22 additional patients can be accommodated before these facilities reach the State Board's target occupancy of 80%. This project proposes 1,000 more GSF and is approximately \$22,000 more expensive than Project #09-036 that was initially approved by the State Board.

State Board Standards Not Met	
Criteria	Reasons for Non-Compliance
1110.1430(b)(3) Planning Area Need	The State Agency notes an excess of 35 ESRD stations in HSA-08.
1120.1430(c)(2) Unnecessary Duplication/Maldistribution of Service	7 of the 10 facilities within 30 minutes are not at the State Board's target occupancy of 80%



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STATE AGENCY REPORT
Barrington Creek Dialysis, Lake Barrington
PROJECT #11-010

Applicants	Total Renal Care, Inc. DaVita, Inc. Camino Dialysis, LLC
Facility Name	Barrington Creek Dialysis
Location	Lake Barrington
Application Received	February 9, 2011
Application Deemed Complete	February 10, 2011
Review Period Ended	No
Review Period Extended by the State Agency	No
Public Hearing Requested	No
Applicants' Deferred Project	No
Can Applicants Request Another Deferral?	Yes
Applicants' Modified the Project	No

I. The Proposed Project

The State Board is being asked to consider the establishment of a 12-station ESRD facility located in Lake Barrington. The facility will be located in 6,000 GSF of leased space. The cost of the project is \$2,494,432.

II. Summary of Findings

- A. The State Agency finds the proposed project does **not** appear to be in conformance with the provisions of Part 1110.
- B. The State Agency finds the proposed project appears to be in conformance with the provisions of Part 1120.

III. General Information

The proposed facility will be located at 28160 W. Northwest Highway, Lake Barrington (Lake County) in HSA-08. The applicants are Total Renal Care, Inc., DaVita, Inc., and Camino Dialysis, LLC. DaVita, Inc is the parent organization for all the entities. Flint Creek BB&T, LLC owns the site, and Camino Dialysis LLC is the operating entity/licensee. The proposed facility will be located in Lake Barrington in the HSA-08 hospital planning area. HSA-08 is comprised of

the Illinois Counties of Kane, Lake, and McHenry. According to the December 2010 Inventory of Renal Care Facilities, there are 22 providers of ESRD services in HSA-08. According to the February 2011 update to the IDPH Inventory of Health Care Facilities (“Inventory”), HSA-08 shows a computed excess of 35 ESRD stations.

Table One depicts the ESRD facilities in HSA-08 and their utilization.

TABLE ONE ⁽¹⁾					
Utilization Data for Facilities in HSA-08					
Facility	Ownership	City	Stations	Utilization	Met Standard
Cobblestone Dialysis	DaVita	Elgin	14	75%	No
Highland Park Hospital		Highland Park	20	75%	No
Aurora Dialysis Center	Fresenius	Aurora	24	75.6%	No
Neomedica Gurnee	Fresenius	Gurnee	14	101.9%	Yes
Lake County Dialysis Ctr.	DaVita	Libertyville	16	66.6%	No
Fox Valley Dialysis Ctr.		Aurora	26	86.5%	Yes
Dialysis Ctrs. Of America	DSI	Waukegan	22	72.7%	No
Quality Renal Care-Dundee		Carpentersville	13	92.3%	Yes
Delnor Community Hospital		Geneva	18	68.5%	No
Neomedica Dialysis Ctr. Round Lake	Fresenius	Round Lake	16	90.6%	Yes
Quality Renal Care		Marengo	10	43.3%	No
ARA Crystal Lake Dialysis		Crystal Lake	16	54.1%	No
Lake Villa Dialysis	DaVita	Lake Villa	12	38.8%	No
FMC Lake Bluff	Fresenius	Lake Bluff	16	75%	No
FMC of McHenry	Fresenius	McHenry	12	65.2%	No
FMC of Antioch	Fresenius	Antioch	12	69.4%	No
Crystal Springs Dialysis	DaVita	Crystal Lake	12	22.2%	No
FMC-Elgin	Fresenius	Elgin	12	0.0%*	No
FMC West Batavia	Fresenius	Batavia	12	0.0%*	No
FMC Mundelein	Fresenius	Mundelein	12	0.0%*	No
FMC Waukegan Harbor	Fresenius	Waukegan	21	0.0%*	No
HSA III Total Stations/Avg. Utilization			330	55.8%	

1. Information taken from December 2010 Renal Network Data

There is no land acquisition cost for this project. This is a substantive project subject to both a Part 1110 and Part 1120 review. Project obligation will occur after permit issuance, and the anticipated project completion date is December 31, 2012.

Summary of Support and Opposition Comments

A public hearing was offered on this project; however, no hearing was requested. A letter of opposition was received by the State Agency from

Fresenius Medical Care. Fresenius stated that there since the original approval of this application the State Board has approved an additional 40 stations at facilities within 30 minutes of the proposed site. Fresenius also questioned the pre-ESRD data provided in the application for permit. The physician group supporting this project also supported the CON applications for 3 other facilities within a 10 mile radius of the proposed facility. According to Fresenius *“overlapping patient referral zip codes from one group supporting four CON applications within a 10 mile radius, creates uncertainty as to where the group will ultimately refer those patients, and where those patients will ultimately choose to dialyze.”*

IV. The Proposed Project - Details

The applicants propose to establish a 12 station ESRD facility housed in 7,000 Gross Square Feet (“GSF”) of leased space in Lake Barrington. The total estimated project cost is \$2,494,432. The applicants note that Camino Dialysis, LLC is a newly established company. Its sole member is Total Renal Care, Inc., a wholly owned subsidiary of DaVita, Inc.

V. Project Costs and Sources of Funds

The total estimated project cost is \$2,494,432. The proposed project is being funded with cash and securities of \$1,339,432, and a lease with a Fair Market Value of \$1,155,000. Table Two outlines the project’s costs and uses of funds.

TABLE TWO	
Project Uses and Sources of Funds	
Uses of Funds	Clinical
Preplanning Costs	\$5,500
Modernization Contracts	\$624,680
Contingencies	\$93,701
A & E Fees	\$48,000
Consulting & Other Fees	\$43,500
Moveable Equipment	\$455,751
Fair Market Value of Leased Space & Equipment	\$1,155,000
Other Costs to be Capitalized	\$68,300
Total Uses of Funds	\$2,494,432

TABLE TWO Project Uses and Sources of Funds	
Uses of Funds	Clinical
Sources of Funds	Clinical
Cash and Securities	\$1,339,432
Leases (fair market value)	\$1,155,000
Total Sources of Funds	\$2,494,432

VI. Cost/Space Requirements

Table Three displays the project’s cost/space requirements for the project. The clinical portion comprises approximately 100% of the cost and GSF.

TABLE THREE Barrington Creek Dialysis Cost/Space Allocation							
Clinical Department	Cost	Existing GSF	Proposed GSF	New	Modernized	Vacated	As Is
ESRD	\$2,494,432	7,000	0	0	7,000	0	0
Total	\$2,494,432	7,000	0	0	7,000	0	0

VI I. Section 1110.230 - Project Purpose, Background and Alternatives

A. Criterion 1110.230(a) - Background of Applicant

The Criterion states:

- “1) An applicant must demonstrate that it is fit, willing and able, and has the qualifications, background and character, to adequately provide a proper standard of health care service for the community. [20 ILCS 3960/6] In evaluating the qualifications, background and character of the applicant, HFPB shall consider whether adverse action has been taken against the applicant, or against any health care facility owned or operated by the applicant, directly or indirectly, within three years preceding the filing of the application. A health care facility is considered "owned or operated" by every person or entity that owns, directly or indirectly, an ownership interest. If any person or entity owns any option to acquire stock, the stock shall be considered to be owned by such person or entity (refer to 77 Ill. Adm. Code 1100

- and 1130 for definitions of terms such as "adverse action", "ownership interest" and "principal shareholder").
- 2) **Examples of facilities owned or operated by an applicant include:**
 - A) **The applicant, Partnership ABC, owns 60% of the shares of Corporation XYZ, which manages the Good Care Nursing Home under a management agreement. The applicant, Partnership ABC, owns or operates Good Care Nursing Home.**
 - B) **The applicant, Healthy Hospital, a corporation, is a subsidiary of Universal Health, the parent corporation of Healthcenter Ambulatory Surgical Treatment Center (ASTC), its wholly-owned subsidiary. The applicant, Healthy Hospital, owns and operates Healthcenter ASTC.**
 - C) **Dr. Wellcare is the applicant. His wife is the director of a corporation that owns a hospital. The applicant, Dr. Wellcare, owns or operates the hospital.**
 - D) **Drs. Faith, Hope and Charity own 40%, 35% and 10%, respectively, of the shares of Healthfair, Inc., a corporation, that is the applicant. Dr. Charity owns 45% and Drs. Well and Care each own 25% of the shares of XYZ Nursing Home, Inc. The applicant, Healthfair, Inc., owns and operates XYZ Nursing Home, Inc.**
 - 3) **The applicant shall submit the following information:**
 - A) **A listing of all health care facilities currently owned and/or operated by the applicant, including licensing, certification and accreditation identification numbers, as applicable;**
 - B) **A certified listing from the applicant of any adverse action taken against any facility owned and/or operated by the applicant during the three years prior to the filing of the application;**
 - C) **Authorization permitting HFPB and Illinois Department of Public Health (IDPH) access to any documents necessary to verify the information submitted, including, but not limited to: official records of IDPH or other State agencies; the licensing or certification records of other states, when applicable; and the records of nationally recognized accreditation organizations. Failure to provide the authorization shall constitute an abandonment or withdrawal of the application without any further action by HFPB.**
 - 4) **If, during a given calendar year, an applicant submits more than**

one application for permit, the documentation provided with the prior applications may be utilized to fulfill the information requirements of this criterion. In such instances, the applicant shall attest that the information has been previously provided, cite the project number of the prior application, and certify that no changes have occurred regarding the information that has been previously provided. The applicant is able to submit amendments to previously submitted information, as needed to update and/or clarify data.

The applicants provided a list of all health care facilities currently owned and/or operated by the applicants. The applicants supplied a certified statement that no adverse action has been taken against any facility owned and/or operated by the applicant during the three years prior to the filing of the application, and authorization permitting HFPB and Illinois Department of Public Health (IDPH) access to any documents necessary to verify the information submitted. The applicants appear fit, willing and able and have the qualifications, background and character to adequately provide a proper standard of healthcare service for the community.

B. Safety Net Impact Statement/Charity Care

The applicants provided a Safety Net Impact Statement stating the proposed facility will not have a negative impact on current safety net services in the community (Application, p. 200). Table Four shows the amount of Charity Care and Medicaid patients for the fiscal years 2008, 2009, and 2010.

TABLE FOUR				
DAVITA INC.				
Illinois Facilities				
<u>Safety Net Information</u>				
CHARITY CARE	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Charity (# of Self-Pay Patients)	8	10	19	30
Charity (Self-Pay Cost)	\$250,518	\$297,508	\$575,803	\$957,867
MEDICAID				
Medicaid (Patients)	204	214	220	270

Medicaid (Revenue)	\$8,929,985	\$9,073,985	\$9,212,781	\$10,883,486
SOURCE: DaVita Inc.				
NOTE: Illinois includes Skyline Division + Illinois Star Catchers Division				

C. Criterion 1110.230(b) - Purpose of the Project

The Criterion states:

The applicant shall document that the project will provide health services that improve the health care or well-being of the market area population to be served. The applicant shall define the planning area or market area, or other, per the applicant's definition.

- 1) The applicant shall address the purpose of the project, i.e., identify the issues or problems that the project is proposing to address or solve. Information to be provided shall include, but is not limited to, identification of existing problems or issues that need to be addressed, as applicable and appropriate for the project. Examples of such information include:
 - A) The area's demographics or characteristics (e.g., rapid area growth rate, increased aging population, higher or lower fertility rates) that may affect the need for services in the future;
 - B) The population's morbidity or mortality rates;
 - C) The incidence of various diseases in the area;
 - D) The population's financial ability to access health care (e.g., financial hardship, increased number of charity care patients, changes in the area population's insurance or managed care status);
 - E) The physical accessibility to necessary health care (e.g., new highways, other changes in roadways, changes in bus/train routes or changes in housing developments).
- 2) The applicant shall cite the source of the information (e.g., local health department Illinois Project for Local Assessment of Need (IPLAN) documents, Public Health Futures, local mental health plans, or other health assessment studies from governmental or academic and/or other independent sources).
- 3) The applicant shall detail how the project will address or improve the previously referenced issues, as well as the population's health status and well-being. Further, the applicant shall provide goals with quantified and measurable objectives with specific time frames that relate to achieving the stated goals.

- 4) For projects involving modernization, the applicant shall describe the conditions being upgraded. For facility projects, the applicant shall include statements of age and condition and any regulatory citations. For equipment being replaced, the applicant shall also include repair and maintenance records.

The applicants propose to establish a 12-station ESRD facility in 7,000 gross square feet of leased space in Lake Barrington, Illinois.

The applicants state the purpose of the project is to ensure timely access to life-sustaining dialysis to patients identified by 21 physicians within the physician group Nephrology Associates of Northern Illinois (NANI). The applicants state the service area consists of Lake, Cook, Kane, McHenry, and DuPage counties in Northern Illinois. The proposed service area comprises a 30-minute drive radius, 62 zip codes, and has a total population of 1,216,599. The applicants note 11 of these zip codes serve as patient origin for the 143 pre-ESRD patients that will be referred to the proposed facility (application, p. 75).

Table Five identifies facilities within a 30-minute timeframe and their utilization as supplied by the applicants. As seen in Table Five, seven (70%) of the ten facilities within a 30-minute travel time do not meet the State standard for utilization. The applicants assembled a comparative table (application, p. 71), identifying 9 facilities in a 30-minute drive radius, while the data contained in Table 5 was gathered by the State Agency. Utilization data in Table 5 was obtained from the December 2010 Renal Network report, and travel times/distances were gathered through Mapquest.

TABLE FIVE
 Facilities within 30 minutes of the proposed site ⁽¹⁾

Facility	City	Minutes	Miles	Stations	Occupancy	Met Standard
Crystal Springs Dialysis	Crystal Lake	13	6.8	12	33.3%	No
ARA-Crystal Lake Dialysis	Crystal Lake	17	8.2	16	54.1%	No
FMC Palatine	Palatine	18	9.5	12	0.0%#	No
ARA South Barrington Dialysis	Barrington	20	11.2	11	59.5%	No
FMC Hoffman Estates	Schaumburg	21	10.6	17	110.7%	Yes
DSI Buffalo Grove	Buffalo Grove	23	13	16	63.5%	No
FMC Rolling Meadows	Rolling Meadows	24	11.3	24	73.6%	No
FMC Round Lake	Round Lake	26	16.7	16	90.6%	Yes
Cobblestone Dialysis Center	Elgin	29	13.1	14	75.0%	No
Quality Renal Care-Dundee	Carpentersville	29	17.2	13	92.3%	Yes

1. Travel times/distances supplied via MapQuest

2. Information supplied by the December 2010 Renal Network Data
3. # Project 09-058, completion date:9/30/11
4. *Project 10-058, completion date: 12/31/12

The applicants cited quantifiable goals similar to patient outcomes at DaVita's 20 Chicago-area facilities, which note an average 95.7% of patients having a Kt/V greater than or equal to 1.2, and 92.4% of patients having a URR greater than 65%.

D. Criterion 1110.230(c) - Alternatives to the Proposed Project

The Criterion states:

"The applicant shall document that the proposed project is the most effective or least costly alternative for meeting the health care needs of the population to be served by the project.

- 1) Alternative options shall be addressed. Examples of alternative options include:
 - A) Proposing a project of greater or lesser scope and cost;**
 - B) Pursuing a joint venture or similar arrangement with one or more providers or entities to meet all or a portion of the project's intended purposes; developing alternative settings to meet all or a portion of the project's intended purposes;**
 - C) Utilizing other health care resources that are available to serve all or a portion of the population proposed to be served by the project; and**
 - D) Other considerations.****
- 2) Documentation shall consist of a comparison of the project to alternative options. The comparison shall address issues of cost, patient access, quality and financial benefits in both the short term (within one to three years after project completion) and long term. This may vary by project or situation.**
- 3) The applicant shall provide empirical evidence, including quantified outcome data, that verifies improved quality of care, as available."**

The applicants propose a 12-station ESRD facility. The applicants considered the following alternatives:

1. Project of Lesser Scope/Cost

When considering this alternative, the applicants studied the following options:

- Do Nothing
- Establish a Smaller Facility
- Utilize Existing Facilities

The applicants rejected each of these reported options, based on a large projected patient population consisting of 143 pre-renal patients referred through NANI, a physicians group comprised of 21 area physicians. The applicants also identified high occupancy of dialysis stations in the service area, which the State Agency was unable to verify. The applicants also cited a need to provide the proposed service to HSA-08/Kane, Lake, and McHenry Counties, and a high ratio of population/dialysis station in the service area, and notes the area has 7,329 people per station, when the Illinois average has 3,565 people per station. The applicants rejected this alternative based on these findings, and reported no associated costs with this alternative.

2. Pursue a Joint Venture/Develop Alternative Settings to Meet Project's Intended Purposes

The applicants state that while this alternative was not considered, they are open to joint venture relationships. The applicants also note Camino Dialysis, LLC is a new company that will enable minority partnership with physicians. The applicants identified no costs with this alternative.

3. Establish a New Facility

The applicants realized this option as the only feasible alternative for serving the large patient population, and to continue providing a quality of care measurable to DaVita's standard. The applicants report having investigated other facilities, but rejected each of these based on deficiencies related to patient service and care. The applicants report the proposed property as being the only alternative that supplied ample, adjacent parking and enough space to accommodate 12 stations. The cost identified with this alternative: \$2,494,432.

VI. Section 1110.234 - Project Scope and Size, Utilization and Unfinished/Shell Space - Review Criteria

A) Size of Project

The Criterion states:

“The applicant shall document that the amount of physical space proposed for the project is necessary and not excessive. The proposed gross square footage (GSF) cannot exceed the GSF standards of Appendix B, unless the additional GSF can be justified by documenting one of the following:

- 1) Additional space is needed due to the scope of services provided, justified by clinical or operational needs, as supported by published data or studies;
- 2) The existing facility's physical configuration has constraints or impediments and requires an architectural design that results in a size exceeding the standards of Appendix B;
- 3) The project involves the conversion of existing bed space that results in excess square footage.”

The applicants propose to establish a 12 station ESRD facility in 7,000 GSF of leased space. Of this space, 6,000 department GSF will be used solely for the 12-station hemodialysis clinic. The applicants note the remaining 1,000 GSF will be used for public lobbies and common areas. The State board standard is 360 - 520 DGSF per station. The proposed project is allocating 500 GSF per station, which is in conformance with the standard.

TABLE SIX SIZE OF PROJECT 11-010 Barrington Creek Dialysis, Lake Barrington				
Department/ Service	Proposed BGSF/DGSF	State Standard	Difference	Met Standard?
ESRD Facility	6,000 GSF (500 GSF/Station)	360-520 DGSF	20 DGSF Under	Yes

THE STATE AGENCY FINDS THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE SIZE OF PROJECT CRITERION (77 IAC 1110.234(a)).

B. Criterion 1110.234 (b) - Project Services Utilization

The applicant shall document that, by the end of the second year of operation, the annual utilization of the clinical service areas or equipment shall meet or exceed the utilization standards specified in

Appendix B. The number of years projected shall not exceed the number of historical years documented. If the applicant does not meet the utilization standards in Appendix B, or if service areas do not have utilization standards in 77 Ill. Adm. Code 1100, the applicant shall justify its own utilization standard by providing published data or studies, as applicable and available from a recognized source, that minimally include the following:

The applicants have documented by the second year after project completion they will serve approximately 61 patients. This number results in an operational capacity of 84.7% by the 24th month of operation, which is above the State Board's target occupancy of 80% (Application, p. 92a).

THE STATE AGENCY FINDS THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE PROJECTED SERVICES UTILIZATION CRITERION (77 IAC 1110.234(b)).

IX. Section 1110.1430 - In-Center Hemodialysis Projects - Review Criteria

The criterion for establishing an ESRD facility reads as follows:

- 1) 77 Ill. Adm. Code 1100 (formula calculation)
 - A) The number of stations to be established for in-center hemodialysis is in conformance with the projected station deficit specified in 77 Ill. Adm. Code 1100, as reflected in the latest updates to the Inventory.
 - B) The number of stations proposed shall not exceed the number of the projected deficit, to meet the health care needs of the population served, in compliance with the utilization standard specified in 77 Ill. Adm. Code 1100.
- 2) Service to Planning Area Residents
 - A) Applicants proposing to establish or add stations shall document that the primary purpose of the project will be to provide necessary health care to the residents of the area in which the proposed project will be physically located (i.e., the planning or geographical service area, as

applicable), for each category of service included in the project.

- B) Applicants proposing to add stations to an existing in-center hemodialysis service shall provide patient origin information for all admissions for the last 12-month period, verifying that at least 50% of admissions were residents of the area. For all other projects, applicants shall document that at least 50% of the projected patient volume will be from residents of the area.
 - C) Applicants proposing to expand an existing in-center hemodialysis service shall submit patient origin information by zip code, based upon the patient's legal residence (other than a health care facility).
- 3) **Service Demand - Establishment of In-Center Hemodialysis Service**

The number of stations proposed to establish a new in-center hemodialysis service is necessary to accommodate the service demand experienced annually by the existing applicant facility over the latest two-year period, as evidenced by historical and projected referrals, or, if the applicant proposes to establish a new facility, the applicant shall submit projected referrals. The applicant shall document subsection (b)(3)(A) and either subsection (b)(3)(B) or (C).

- A) **Historical Referrals**
 - i) If the applicant is an existing facility, the applicant shall document the number of referrals to other facilities, for each proposed category of service, for each of the latest two years.
 - ii) Documentation of the referrals shall include: patient origin by zip code; name and specialty of referring physician; name and location of the recipient facility.

B) Projected Referrals

The applicant shall provide physician referral letters that attest to:

- i) The physician's total number of patients (by facility and zip code of residence) who have received care at existing facilities located in the area, as reported to The Renal Network at the end of the year for the most recent three years and the end of the most recent quarter;
- ii) The number of new patients (by facility and zip code of residence) located in the area, as reported to The Renal Network, that the physician referred for in-center hemodialysis for the most recent year;
- iii) An estimated number of patients (transfers from existing facilities and pre-ESRD, as well as respective zip codes of residence) that the physician will refer annually to the applicant's facility within a 24-month period after project completion, based upon the physician's practice experience. The anticipated number of referrals cannot exceed the physician's documented historical caseload;
- iv) An estimated number of existing patients who are not expected to continue requiring in-center hemodialysis services due to a change in health status (e.g., the patients received kidney transplants or expired);
- v) The physician's notarized signature, the typed or printed name of the physician, the physician's office address and the physician's specialty;
- VI) Verification by the physician that the patient referrals have not been used to support another pending or approved CON application for the subject services; and

VI i) Each referral letter shall contain a statement attesting that the information submitted is true and correct, to the best of the physician's belief.

5) Service Accessibility

The number of stations being established or added for the subject category of service is necessary to improve access for planning area residents. The applicant shall document the following:

A) Service Restrictions

The applicant shall document that at least one of the following factors exists in the planning area:

- i) The absence of the proposed service within the planning area;**
- ii) Access limitations due to payor status of patients, including, but not limited to, individuals with health care coverage through Medicare, Medicaid, managed care or charity care;**
- iii) Restrictive admission policies of existing providers;**
- iv) The area population and existing care system exhibit indicators of medical care problems, such as an average family income level below the State average poverty level, high infant mortality, or designation by the Secretary of Health and Human Services as a Health Professional Shortage Area, a Medically Underserved Area, or a Medically Underserved Population;**
- v) For purposes of this subsection (b)(5) only, all services within the 30-minute normal travel time meet or exceed the utilization standard specified in 77 Ill. Adm. Code 1100.**

b) Planning Area Need Review Criterion

The applicant shall document that the number of stations to be established or added is necessary to serve the planning area's population, based on the following:

1) 77 Ill. Adm. Code 1100 (formula calculation)

According to the February 2011 update to the IDPH Inventory of Health Care Facilities ("Inventory"), HSA-08 shows a computed excess of 35 ESRD stations. This project is requesting 12 stations, and note the large projected patient population based on referrals emanating from Nephrology Associates of Northern Illinois (NANI). NANI is a group of 21 physicians committed to referring 143 pre-ESRD patients to the proposed facility upon project completion (in 2012). The applicants note these patients have not been used to support any other approved or pending CON applications, and in 2009, NANI referred 126 new patients who lived within the defined 30-minute service area for hemodialysis service.

2) Service to Planning Area Residents

The primary purpose of this project is to provide in-center ESRD services to the residents of HSA-08, and the Chicago metropolitan counties of Kane, Lake, and McHenry Counties. Analysis of the projected referrals indicate that 89 (62%) of the proposed 143 per-ESRD patients live in the three counties mentioned above.

3) Service Demand

The applicants propose to establish a 12-station ESRD facility in Lake Barrington (HSA-08). The applicants attempted a similar project in Lake Barrington (Project #09-036), but had to surrender the permit, due to lost negotiations due to a foreclosure on the property. The applicants report having commitments from 21 area physicians to refer 143 pre-ESRD patients to the new facility, and anticipate reaching an operational capacity of 84.7% by 2014, the second year of operation.

4) Service Accessibility

The applicant's state *that the issue of access is imminent, based on referrals from 21 area physicians from the physicians group NANI, who have identified*

143 pre-ESRD patients who will more than likely require dialysis services by 2012, the year of project completion. The applicants note the projected utilization percentage of 84.7% is discounted for mortality and transplantation, and still exceeds the State operational standard for the second year of project completion.

Although the applicants have provided evidence which supports an operational capacity in excess of the State Standard of 80% at the 24th months after project completion (2014), the State Agency cannot rule in favor of this criterion, based on an existing excess of 35 ESRD stations in HSA-08.

THE STATE AGENCY FINDS THE PROPOSED PROJECT DOES NOT APPEAR TO BE IN CONFORMANCE WITH THE PLANNING AREA NEED CRITERION (77 IAC 1110.1430(b)).

c) Unnecessary Duplication / Maldistribution Review Criterion

- 1) The applicant shall document that the project will not result in an unnecessary duplication. The applicant shall provide the following information:**
 - A) A list of all zip code areas that are located, in total or in part, within 30 minutes normal travel time of the project's site;**
 - B) The total population of the identified zip code areas (based upon the most recent population numbers available for the State of Illinois population); and**
 - C) The names and locations of all existing or approved health care facilities located within 30 minutes normal travel time from the project site that provide the categories of station service that are proposed by the project.**
- 2) The applicant shall document that the project will not result in maldistribution of services. Maldistribution exists when the identified area (within the planning area) has an excess supply of facilities, stations and services characterized by such factors as, but not limited to:**

- A) **A ratio of stations to population that exceeds one and one-half times the State average;**
 - B) **Historical utilization (for the latest 12-month period prior to submission of the application) for existing facilities and services that is below the utilization standard established pursuant to 77 Ill. Adm. Code 1100; or**
 - C) **Insufficient population to provide the volume or caseload necessary to utilize the services proposed by the project at or above utilization standards.**
- 3) **The applicant shall document that, within 24 months after project completion, the proposed project:**
- A) **Will not lower the utilization of other area providers below the occupancy standards specified in 77 Ill. Adm. Code 1100; and**
 - B) **Will not lower, to a further extent, the utilization of other area hospitals that are currently (during the latest 12-month period) operating below the occupancy standards.**

The applicant provided a list of all zip code areas that are located within 30 minutes of the proposed site as required (application, p. 75), and the applicants state that the current ratio of ESRD stations to population is 1 per 7,329 in the defined service area. With a current station count of 330 stations in the service area, and a need for only 295 ESRD stations, and excess of .5 ESRD stations exist in HSA-08, and the establishment of 12 additional stations will contribute to an existing maldistribution of services in the service area.

The applicants state that the project will not have an adverse impact on area providers due to the 143 new pre-ESRD patients referred to the proposed facility through NANI physicians, and that no patients will be transferred from another facility. The applicants also contend that the proposed facility will improve distribution of ESRD services within HSA-08. However, the State Inventory shows a current excess of 35 stations, and the addition of 12 more ESRD stations will increase this overage to 47 ESRD stations in the HSA. A positive finding cannot be made for this criterion.

THE STATE AGENCY FINDS THE PROPOSED PROJECT DOES NOT APPEAR TO BE IN CONFORMANCE WITH THE UNNECESSARY DUPLICATION/MALDISTRIBUTION CRITERION (77 IAC 1110.1430 (c)(2)).

C) Staffing - Availability

The Criterion states:

“The applicant shall document that relevant clinical and professional staffing needs for the proposed project were considered and that licensure and JCAHO staffing requirements can be met. In addition, the applicant shall document that necessary staffing is available by providing letters of interest from prospective staff members, completed applications for employment, or a narrative explanation of how the proposed staffing will be achieved.

1) Qualifications

- A) Medical Director - Medical direction of the facility shall be vested in a physician who has completed a board-approved training program in nephrology and has at least 12 months experience providing care to patients receiving dialysis.**
- B) Registered Nurse - The nurse responsible for nursing services in the unit shall be a registered nurse (RN) who meets the practice requirements of the State of Illinois and has at least 12 months experience in providing nursing care to patients on maintenance dialysis.**
- C) Dialysis Technician - This individual shall meet all applicable State of Illinois requirements (see 210 ILCS 62, the End Stage Renal Disease Facility Act). In addition, the applicant shall document its requirements for training and continuing education.**
- D) Dietitian - This individual shall be a registered dietitian with the Commission on Dietetic Registration, meet the practice requirements of the State of Illinois (see the Dietetic and Nutrition Services Practice Act [225 ILCS 30]) and have a minimum of one year of professional work experience in clinical nutrition as a registered dietitian.**
- E) Social Worker - The individual responsible for social services shall have a Master's of Social Work and meet the**

State of Illinois requirements (see 225 ILCS 20, the Clinical Social Work and Social Work Practice Act)."

The applicants are proposing to establish a 12-station ESRD facility and have provided the necessary information as required by this criterion on pages 149-153 of the application for permit.

THE STATE AGENCY FINDS THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE STAFFING CRITERION (77 IAC 1110.1430 (c)).

D) Support Services

The Criteria states:

"An applicant proposing to establish an in-center hemodialysis category of service must submit a certification from an authorized representative that attests to each of the following:

- 1) Participation in a dialysis data system;**
- 2) Availability of support services consisting of clinical laboratory service, blood bank, nutrition, rehabilitation, psychiatric and social services; and**
- 3) Provision of training for self-care dialysis, self-care instruction, home and home-assisted dialysis, and home training provided at the proposed facility, or the existence of a signed, written agreement for provision of these services with another facility."**

The applicants are proposing to establish a 12-station ESRD facility and have provided the necessary documentation as required by this criterion at page s 153 of the application for permit.

THE STATE AGENCY FINDS THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE SUPPORT SERVICES CRITERION (77 IAC 1110.1430 (d)).

E) Assurances

The Criterion states:

"The applicant representative who signs the CON application shall submit a signed and dated statement attesting to the applicant's

understanding that:

- 1) **By the second year of operation after the project completion, the applicant will achieve and maintain the utilization standards specified in 77 Ill. Adm. Code 1100 for each category of service involved in the proposal; and**
- 2) **An applicant proposing to expand or relocate in-center hemodialysis stations will achieve and maintain compliance with the following adequacy of hemodialysis outcome measures for the latest 12-month period for which data are available:
≥ 85% of hemodialysis patient population achieves area reduction ratio (URR) ≥ 65% and ≥ 85% of hemodialysis patient population achieves Kt/V Daugirdas .1.2."**

The applicants provided the certification information at page 167 of the application for permit as required of the criterion.

THE STATE AGENCY FINDS THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE ASSURANCES CRITERION (77 IAC 1110.1430 (j)).

- g) Minimum Number of Stations**
The minimum number of in-center hemodialysis stations for an End Stage Renal Disease (ESRD) facility is:

- 1) **Four dialysis stations for facilities outside an MSA;**
- 2) **Eight dialysis stations for a facility within an MSA.**

The proposed 12 station ESRD facility will be located in an MSA. The applicants have met the requirements of this criterion

THE STATE AGENCY FINDS THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE MINIMUM NUMBER OF STATIONS CRITERION (77 IAC 1110.1430 (g)).

- h) Continuity of Care**
An applicant proposing to establish an in-center hemodialysis category of service shall document that a signed, written affiliation agreement or arrangement is in effect for the provision of inpatient care and other hospital services. Documentation shall consist of copies of all such agreements.

The applicants have provided the required affiliation agreements on pages 157-166 of the application for permit. The transfer agreement is with Northwest Community Hospital, Arlington Heights. The applicants have met the requirements of this criterion.

THE STATE AGENCY FINDS THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE CONTINUITY OF CARE CRITERION (77 IAC 1110.1430 (h)).

Section 1120 - Financial Feasibility - Review Criteria

X. 1120.120 - Availability of Funds

The applicant shall document that financial resources shall be available and be equal to or exceed the estimated total project cost plus any related project costs by providing evidence of sufficient financial resources.

The applicants are funding the project with cash and securities of \$1,339,432 and the FMV of the lease of \$1,155,000. A review of the applicants' financial statements indicates that sufficient cash is available to fund the project.

THE STATE AGENCY FINDS THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE AVAILABILITY OF FUNDS CRITERION (77 IAC 1120.120 (a)).

XI. 1120.130 - Financial Feasibility

A) Criterion 1120.130 - Financial Viability

Financial Viability Waiver

The applicant is NOT required to submit financial viability ratios if:

- 1) all project capital expenditures, including capital expended through a lease, are completely funded through internal resources (cash, securities or received pledges); or**

HFSRB NOTE: Documentation of internal resources availability shall be available as of the date the application is deemed complete.

- 2) **the applicant's current debt financing or projected debt financing is insured or anticipated to be insured by Municipal Bond Insurance Association Inc. (MBIA), or its equivalent; or**

HFSRB NOTE: MBIA Inc is a holding company whose subsidiaries provide financial guarantee insurance for municipal bonds and structured financial projects. MBIA coverage is used to promote credit enhancement as MBIA would pay the debt (both principal and interest) in case of the bond issuer's default.

- 3) **the applicant provides a third-party surety bond or performance bond letter of credit from an A rated guarantor (insurance company, bank or investing firm) guaranteeing project completion within the approved financial and project criteria.**

The applicants have qualified for the financial waiver because the project is being funded with internal sources including capital expended through a lease. The applicants are funding the project with cash and securities of \$1,339,432 and the FMV of the lease of \$1,155,000. A review of the applicants’ audited financial statements indicates that sufficient cash is available to fund the project.

The applicants have indicated the entire funding balance for the proposed project will originate from cash and securities and the fair market value of leases, (internal funding sources). Table Seven documents DaVita credit rating.

TABLE SEVEN DaVita Credit Ratings			
	Standard & Poor's	Moody's	Fitch
Davita Corporate Credit Rating	BB-	Ba3	BB-1
BB – Less vulnerable in the near-term but faces major ongoing uncertainties to adverse business, financial and economic conditions. Ba1 -Speculative investment. Occurs often in deteriorated circumstances, usually problematic to predict future development BB - ratings indicate an elevated vulnerability to default risk, particularly in the event of adverse changes in business or economic conditions over time; however,			

business or financial flexibility exists which supports the servicing of financial commitments
Ba3 - Questionable credit quality
BB-1 - Prone to changes in the economy
A minus sign (-) signifies an intermediate rating in each category

THE STATE AGENCY FINDS THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE FINANCIAL FEASIBILITY CRITERION (77 IAC 1120.130 (a)).

XII. Section 1120.140 - Economic Feasibility

A. Criterion 1120.140(a) - Reasonableness of Financing Arrangements

The applicant shall document the reasonableness of financing arrangements by submitting a notarized statement signed by an authorized representative that attests to one of the following:

- 1) That the total estimated project costs and related costs will be funded in total with cash and equivalents, including investment securities, unrestricted funds, received pledge receipts and funded depreciation; or
- 2) That the total estimated project costs and related costs will be funded in total or in part by borrowing because:
 - A) A portion or all of the cash and equivalents must be retained in the balance sheet asset accounts in order to maintain a current ratio of at least 2.0 times for hospitals and 1.5 times for all other facilities; or
 - B) Borrowing is less costly than the liquidation of existing investments, and the existing investments being retained may be converted to cash or used to retire debt within a 60-day period.

The applicants are funding the project with cash and securities of \$1,339,432 and the FMV of the lease of \$1,155,000. The applicants have supplied information making the requirements of this criterion inapplicable.

THE STATE AGENCY FINDS THE REASONABLENESS OF FINANCING ARRANGEMENTS CRITERION IS INAPPLICABLE (77 IAC 1120.140(a)).

B. Criterion 1120.140(b) - Terms of Debt Financing

This criterion is applicable only to projects that involve debt financing. The applicant shall document that the conditions of debt financing are reasonable by submitting a notarized statement signed by an authorized representative that attests to the following, as applicable:

- 1) That the selected form of debt financing for the project will be at the lowest net cost available;**
- 2) That the selected form of debt financing will not be at the lowest net cost available, but is more advantageous due to such terms as prepayment privileges, no required mortgage, access to additional indebtedness, term (years), financing costs and other factors;**
- 3) That the project involves (in total or in part) the leasing of equipment or facilities and that the expenses incurred with leasing a facility or equipment are less costly than constructing a new facility or purchasing new equipment.**

The applicants are funding the project with cash and securities of \$1,339,432 and the FMV of the lease of \$1,155,000. Based on the supplied information, this criterion is not applicable.

THE STATE AGENCY FINDS THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE TERMS OF DEBT FINANCING CRITERION (77 IAC 1120.140(b)).

C. Criterion 1120.140(c) - Reasonableness of Project Cost

The applicant shall document that the estimated project costs are reasonable and shall document compliance with the State Board's standards as detailed in 77 IAC 1120.

Preplanning Costs - These costs total \$5,500 and are .4% of construction, modernization, contingencies and movable or other equipment. This appears reasonable when compared to the State Board standard of 1.8%.

Modernization Contracts and Contingencies - These costs total \$718,381 or \$119.73 per gross square feet. ($\$718,381 / 6,000 \text{ GSF} = \$119.73 / \text{GSF}$) This

appears reasonable when compared to the State Board standard of \$149.35/GSF.

Contingencies - These costs total \$93,701. These costs are 14.9% of modernization costs. This appears reasonable when compared to the State Board standard of 10%-15% of modernization costs.

Architect and Engineering Fees - These costs total \$48,000 or 6.6% of modernization and contingency costs. This appears reasonable when compared to the State Board standard of 9.92% to 14.88% of modernization and contingency costs.

Moveable Equipment - These costs total \$455,751 or \$37,979 per station. This appears reasonable when compared to the State Board standard of \$39,945.

Fair Market Value of Leased Space - These costs are \$1,155,000. The State Board does not have a standard for these costs.

THE STATE AGENCY FINDS THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE REASONABLENESS OF PROJECT COST CRITERION (77 IAC 1120.140 (c)).

D) Criterion 1120.140 (d) - Projected Operating Costs

The applicant shall provide the projected direct annual operating costs (in current dollars per equivalent patient day or unit of service) for the first full fiscal year at target utilization but no more than two years following project completion. Direct cost means the fully allocated costs of salaries, benefits and supplies for the service.

The applicants anticipate the direct operating costs per treatment to be \$130.02. The State Board does not have a standard for these costs.

THE STATE AGENCY FINDS THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE PROJECT DIRECT OPERATING COSTS CRITERION (77 IAC 1120.140 (d)).

E) Criterion 1120.140 (e) - Total Effect of the Project on Capital Costs

The applicant shall provide the total projected annual capital costs (in current dollars per equivalent patient day) for the first full fiscal year at target utilization but no more than two years following project completion.

The applicants anticipate the total effect of the Project on Capital Costs per treatment to be \$11.53. The State Board does not have a standard for these costs.

THE STATE AGENCY FINDS THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE TOTAL EFFECT OF THE PROJECT ON CAPITAL COSTS CRITERION (77 IAC 1120.140 (e)).

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