Constantino, Mike

From: Anne Cooper [ACooper@Polsinelli.com]
Sent: Thursday, March 29, 2012 11:01 AM
To: Constantino, Mike
Cc: Kara Friedman; Penny Davis
Subject: Lawndale Dialysis (Proj. No. 11-103)
Attachments: Lawndale Supplemental Information (03-29-2012).pdf¤.pdf

Mike,

Attach please find the supplemental information for the Lawndale Dialysis CON application. If you have any questions regarding the supplemental information, please feel free to contact me.

Anne

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March 29, 2012

ELECTRONIC MAIL

Mike Constantino
Supervisor, Project Review Section
Illinois Health Facilities and Services Review Board
525 West Jefferson Street, 2nd Floor
Springfield, Illinois 62761

Re: Lawndale Dialysis (Proj. No. 11-103) Supplemental Information

Dear Mr. Constantino:

This office represents DaVita Inc., Total Renal Care, Inc., and Cowell Dialysis, LLC (collectively, "DaVita"). In this capacity, we are writing in response to the Illinois Health Facilities and Services Review Board's (the "Board") issuance of an intent to deny DaVita's proposal to establish a 16-station dialysis facility located at 3934 West 24th Street, Chicago, Illinois 60623. We appreciate the four votes in favor of this project and believe that it merits the full support of the Board.

Pursuant to Section 1130.635 of the Board's Procedural Rules, DaVita is submitting supplemental information in support of the proposed project. During initial consideration of the project, the Board raised concerns regarding underutilization at certain facilities within 30 minutes normal travel time of the proposed site and potentially negative impact on existing providers. DaVita appreciates these concerns, but stands behind its commitment to this project due to its positive impact on the Lawndale community. The scope of the project remains unchanged. This submission focuses on the community need for this project and DaVita's commitment to improve the health status of a needy community.

Lawndale Demographics

DaVita proposes to establish a dialysis facility to provide life-saving dialysis services for the City of Chicago's North and South Lawndale communities (collectively, "Lawndale"). The Lawndale community is comprised primarily of a Hispanic and African American population.

South Lawndale is 83% Hispanic and 13% African American. North Lawndale is 94% African American and 5% Hispanic. The median household income is $26,090, which is barely above the poverty threshold for a family of four. Low-income, disabled, elderly, and members of minority groups are more likely to suffer from chronic kidney disease.[1]

North Lawndale saw considerable growth in the 1950s with an influx of African Americans stemming from the Great Migration.[2] South Lawndale, also known as Little Village, has served as a point of entry for Latino immigrants to Chicago, and is sometimes known by its residents as the "Mexico of the Midwest." Despite the community's cultural assets, it faced and continues to face adversity in many ways. In 1968, more than 70% of the businesses in the Lawndale community closed after the riots following the assassination of Martin Luther King, Jr. This was considered an economic and social disaster that led to an increasingly segregated and disadvantaged community.[3]

The segregation and isolation of the community remains today. The isolation of neighborhoods, like Lawndale, has been identified as one of the primary challenges to accelerating economic growth.[4] In addition to needed upgrades to Chicago's traditional transportation infrastructure to better connect isolated neighborhoods and unemployed workers to jobs, business development directly in the community is essential to Lawndale's revitalization.

Despite recent advancements, the community still requires significant economic investment.[5] DaVita's proposed project will revitalize a vacant lot, create jobs, and help meet the well documented needs in a medically underserved community. In fact, portions of Lawndale have been designated as a Medically Underserved Area and Health Professional Shortage Area.[6] With few businesses willing to contribute to the community's revitalization, we ask that the Board support such development.

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[1] U.S. RENAL DATA SYSTEM, USRDS 2012 ANNUAL DATA REPORT: ATLAS OF CHRONIC KIDNEY DISEASE AND END-STAGE RENAL DISEASE IN THE UNITED STATES 183 (Nat'l Inst. of Health, & Nat'l Inst. of Diabetes & Digestive & Kidney Diseases 2011), *available at* http://www.usrds.org/2011/pdf/v2_ch01_11.pdf.

[2] *North Lawndale History*, LAWNDALE CHRISTIAN HEALTH CENTER, http://www.lawndale.org/about_nhist.html (last visited Mar. 28, 2012).

[3] *North Lawndale History*, STEANS FAMILY FOUND., http://www.steansfamilyfoundation.org/lawndale_history.shtml (last visited Mar. 28, 2012).

[4] WORLD BUSINESS CHICAGO, A PLAN FOR ECONOMIC GROWTH AND JOBS (Mar. 2012), *available at* http://www.worldbusinesschicago.com/files/downloads/Plan-for-Economic-Growth-and-Jobs.pdf.

[5] *See, e.g., North Lawndale Today*, STEANS FAMILY FOUND., http://www.steansfamilyfoundation.org/lawndale_today.shtml (last visited Mar. 28, 2011).

[6] U.S. DEP'T OF HEALTH & HUMAN SERVS., HEALTH RESOURCES AND SERVICES ADMINISTRATION http://bhpr.hrsa.gov/shortage/shortageareas/index.html (last visited Mar. 28, 2011).

Health Disparities and Need in the Lawndale Community

As a heavily Hispanic and African American community, Lawndale faces many challenges from a health disparities perspective. It is considered a "food desert."[7] There is a direct correlation between the lack of food choices and increases in obesity. In a 2008 survey conducted by Mt. Sinai, the North and South Lawndale communities were reported to have the highest obesity rates in the City of Chicago.[8] In fact, Sinai Urban Health Institute ("SUHI") found that the diabetes mortality rate in Lawndale is 62% higher than national levels and 37% higher than the City of Chicago.[9] It is estimated that the direct medical care costs per person per year with diabetes is 2.3 times higher than for the person without diabetes.

SUHI was awarded a highly-competitive major grant by the National Institutes of Health to undertake the Block by Block North Lawndale Diabetes Community Action Program.[10] The primary aim of the program is the reduction in diabetes through community engagement of those in Lawndale, a "medically underserved urban neighborhood."[11]

Despite the program's laudable goals and potential long term successes, the need for dialysis services is immediate. Obesity is a risk factor for diabetes, heart disease, and many other serious health conditions.[12] Diabetes and hypertension (high blood pressure) are the two leading causes of Chronic Kidney Disease ("CKD") and End Stage Renal Disease ("ESRD").[13] Hispanics and African Americans are at an increased risk of ESRD compared to the general population due to the higher prevalence of these conditions in their communities.

DaVita's Contribution to the Community

DaVita contributes directly to improving patients' lives, both locally and nationally. For example, DaVita's EMPOWER program helps to improve intervention and education for pre-

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[7] MARI GALLAGHER RESEARCH & CONSULTING GROUP, EXAMINING THE IMPACT OF FOOD DESERTS ON PUBLIC HEALTH IN CHICAGO (2006), *available at* http://www.marigallagher.com/site_media/dynamic/project_files/Chicago_Food_Desert_Report.pdf.

[8] ROBERT WOOD JOHNSON FOUNDATION, SURVEY IDENTIFIES HEALTH ISSUES IN SIX CHICAGO COMMUNITIES, LEADS TO TARGETED INTERVENTIONS (2008), available at http://www.rwjf.org/reports/grr/043026.htm#THEPROBLEM.

[9] JOSEPH F. WEST, SCD AND STEPHEN WHITMAN, PHD, BLOCK BY BLOCK NORTH LAWNDALE DIABETES COMMUNITY ACTION PLAN, COMMUNITY PROGRESS REPORT 2011, *available at* http://www.suhichicago.org/files/block%20by%20block%20community%20report%20nov%202011.pdf.

[10] SINAI URBAN HEALTH INSTITUTE, BLOCK BY BLOCK NORTH LAWNDALE DIABETES COMMUNITY ACTION PROGRAM, http://www.suhichicago.org/research-evaluation/block-by-block-north-lawndale-diabetes-community-action-program (last visited Mar. 26, 2012).

[11] *Id.*

[12] Carmine Zoccali, *The Obesity Epidemics in ESRD: From Wasting to Waist?*, 24 NEPHROLOGY DIALYSIS TRANSPLANTATION 376-380 (Oct. 2008), *available at* http://ndt.oxfordjournals.org/content/24/2/376.full.

[13] *Id.*

ESRD patients. Through the EMPOWER program, DaVita offers educational services to CKD patients that can help patients reduce, delay, and prevent adverse outcomes of untreated CKD. DaVita's EMPOWER program encourages CKD patients to take control of their health and make informed decisions about their dialysis care. This program is particularly well suited for the Lawndale community, which exhibits the highest obesity rates in Chicago.

DaVita has demonstrated its commitment to the City of Chicago in many ways. DaVita has accounted for approximately $1.5 million in charitable work in and around the City of Chicago. Its facilities hire locally, and even provide scholarships for staff to enhance their skills and rise throughout the organization. This commitment will benefit the Lawndale community.

Interestingly, although some not-for-profit providers may argue that DaVita does not contribute to the safety-net, these providers fail to acknowledge the unique nature of dialysis care. Because of the life sustaining nature of dialysis, federal government guidelines define renal failure as a condition that qualifies an individual for Medicare benefits eligibility regardless of their age and subject to having met certain minimum eligibility requirements including having earned the necessary number of work credits. In fact, approximately 89% of DaVita patients receive benefits from government-based programs.

Indigent ESRD patients who are not eligible for Medicare and who are not covered by commercial insurance are eligible for Medicaid benefits. If there are gaps in coverage under these programs during coordination of benefits periods or prior to having qualified for program benefits, grants are available to these patients from both the American Kidney Fund and the National Kidney Foundation. If none of these reimbursement mechanisms are available for a period of dialysis, financially needy patients may qualify for assistance from DaVita.

DaVita's transplant referral and tracking program ensures every dialysis patient is informed of transplant as a modality option and promotes access to transplantation for every patient who is interested and eligible for transplant. The social worker or designee obtains transplant center guidelines and criteria for selection of appropriate candidates and assists transplant candidates with factors that may affect their eligibility, such as severe obesity, adherence to prescribed medicine or therapy, and social/emotional/ financial factors related to post-transplant functioning.

Unlike not-for-profit corporations, DaVita is not required to provide a community benefit; however, they must pay taxes. In 2010, DaVita paid $207 million in federal and state taxes. Nevertheless, DaVita continues to meet its social responsibilities as a corporate citizen although it does not benefit from the significant financial advantages given to not-for-profit healthcare providers. As documented in its Community Care Report, in 2010 DaVita raised

more than $3.4 million for the Kidney TRUST, prevented 40% fewer hospitalizations through DaVita Rx, and generated $507 million in healthcare savings through care innovations.

Need for Dialysis Services

As discussed above, Lawndale is a heavily Hispanic and African American community. Notably, African Americans and Hispanics are at an increased risk of ESRD compared to the general population. In fact, the ESRD incident rate among African Americans is 3.6 times greater than whites and the incident rate among the Hispanic population is 1.5 times greater than the non-Hispanic population. Dr. Ogbonnaya Aneziokoro's, the planned medical director of Lawndale Dialysis, patient-base confirms this.

Dr. Aneziokoro is currently treating 148 CKD patients whose conditions are advancing to ESRD and who will likely require dialysis within the next 12 to 18 months. Conservatively, he projects that 74 of this subset of patients will initiate dialysis within 12 to 18 months. Dr. Aneziokoro is also currently treating 25 patients at Little Village Dialysis, which is a local facility operating at 96% utilization, far above the state standard. He anticipates 14 of these patients will transfer to the proposed facility.[14] Thus, approximately 88 patients of Dr. Aneziokoro will be referred to the proposed facility within 12 to 18 months.

Other physicians document this need as well. In support of Fresenius' Medical Care's (Fresenius) application to establish a 12-station dialysis facility in Cicero (near Lawndale), Dr. Lohmann recently identified 203 CKD patients treated by his practice. He anticipated 103 patients would require dialysis within 24 months of project completion. Although Fresenius' Cicero project was not approved by the Board, there is still well documented need in the community.

It is essential that we not lose sight of the immediate needs in this community by placing too much emphasis on the underutilization of some facilities located outside of the Lawndale community. Many of Dr. Aneziokoro's patients rely on public transportation, family or friends, or costly taxi-cab service for transportation to and from treatments. Requiring these patients to travel outside their community causes them substantial, and unnecessary, inconvenience at a time in their lives when they could use as much assistance as possible.

DaVita's proposal to establish a 16-station dialysis facility in the Lawndale community will not only contribute to meeting the Board's own need estimate of 92-stations in the City of Chicago, but will also improve access and assist in the revitalization of a medically underserved community.

[14] Little Village Dialysis' utilization will remain above the State's 80% standard.

Patient Choice

As the Board knows, the Illinois Health Facilities Planning Act tasks the Board with establishing an orderly and comprehensive health care delivery system that will guarantee the availability of quality health care to the general public; maintain and improve the provision of essential health care services; and increase the accessibility of those services to the medically underserved and indigent.[15] The proposed project will further these goals.

Fresenius dominates the Chicago marketplace. Despite DaVita's national presence, Fresenius controls the market in the City of Chicago. Fresenius possesses nearly 50% of the market in HSA 6 (operational facilities) and has a market penetration of nearly 60% (operational stations). DaVita lags significantly behind Fresenius in terms of market share (27%) and market penetration (28%) in HSA 6.

On a national basis, the market for dialysis services is highly concentrated. This fact is largely a product of integration over the last 20 years. Much of this integration has been due to changing reimbursement mechanisms which transfer risk for efficiency and effective care to the provider. Many smaller providers simply cannot realize the necessary economies of scale to survive, which is why smaller providers are divesting their facilities.

Chicago is not much different, except that one company, Fresenius, dominates the market by operating 60% of the stations. Their grasp on the market continues to grow. It is widely accepted that competition encourages efficiency and innovation, widens consumer choice, and delivers lower prices. In fact, vigorous competition promotes the delivery of high quality, cost-effective health care. Also, it is widely considered that competition benefits consumers and the economy because it leads to lower healthcare costs.

Only 3 Certificate of Need permits for DaVita's establishment projects have been approved by the Board over the past 2 years. By contrast, 15 Fresenius establishment projects have been approved in the past 2 years. Although we recognize the Board's contribution to controlling costs in health care, it is essential that this goal not supercede the ultimate priority of ensuring adequate access to high quality care. Consumers are the only losers if DaVita is not permitted to establish and expand facilities to meet existing demand and to effectively compete with Fresenius. The addition of a facility in the Lawndale community will not only offer an alternate choice for consumers, but it will enhance access and assist in meeting the 92 station need in the HSA.

The Board's charge is to control costs and ensure access. Although the average cost for projects in 2011 was approximately $44 million, the average cost for dialysis projects is

[15] 20 ILCS 3960/2 (2012).

approximately $3.5 million. Unlike other types of providers, capital costs for dialysis providers are not passed on to government payors. We believe the Board should err on the side of ensuring access to care while verifying that patients are not double-counted particularly in light of the fact that only patients in renal failure receive dialysis services and the costs of capital projects are not passed on to government payors. Approval of this project furthers the Board's charge by ensuring an indigent and medically underserved community obtains access to life-saving care. Furthermore, increased patient choice and competition improves innovation and lowers healthcare costs.

Thus, we respectfully request the Board approve the Proposed Project. Thank you for your time and consideration of our request. If you need any additional information regarding the Proposed Project, feel free to contact me at 312-873-3606 or acooper@polsinelli.com.

Sincerely,

Anne M. Cooper

cc: Penny D. Davis, DaVita
Kara Friedman