POLSINELLI

150 N. Riverside Plaza, Suite 3000, Chicago, IL 60606-1599 • 312.819.1900

July 15, 2019

Anne M. Cooper
(312) 873-3606
(312) 276-4317 Direct Fax
acooper@polsinelli.com

Via Federal Express

Courtney Avery
Administrator
IL Health Facilities & Services Review Board
525 West Jefferson Street, 2nd Floor
Springfield, Illinois 62761

Re: Opposition to Dialysis Care Center Chicago Heights (Proj. No. 19-015)

Dear Ms. Avery:

Polsinelli PC represents DaVita Inc. ("DaVita") and, on behalf of DaVita, writes this letter to document DaVita's strong objection to the above referenced Dialysis Care Center ("DCC") Chicago Heights facility proposal (the "Proposed Facility") based on the following key issues:

- There is no need for the Proposed Facility in the DCC Chicago Heights geographic service area or in the planning area as a whole. HSA 7 has an excess of 56 stations, the second largest excess in the State. Of the ten dialysis facilities within five miles of the proposed facility site, only one exceeds the Illinois Health Facilities and Services Review Board's ("State Board") target utilization of 80%.

- The referral letter supplied by Dr. Suresh Samson in support of DCC's application does not contain sufficient patient data from the geographic service area to justify the proposed facility site.

- DCC does not bring a different product to the market nor does it address a unique issue with the application for the Proposed Facility. Their attempts to differentiate themselves from existing quality dialysis providers are misleading and appear to be designed to divert the dialogue away from the key consideration - demand for the service.

It would be unwarranted to approve this facility with these defects combined with an excess of stations in the planning area.

1. No Need for an 11th Facility within Five Miles of the DCC Hazel Crest Facility in HSA 7

There is no need for the Proposed Facility in the DCC Chicago Heights geographic service area. Of the ten dialysis facilities located within that five mile area, only one facility exceeded the Board's target utilization of 80% as of March 31, 2019. See Table 1. Importantly, on October 30, 2018, the State Board approved DCC's application for a 12 station dialysis facility in Hazel Crest (approximately 3.5 miles from the proposed Chicago Heights dialysis facility). In dismissing utilization of existing dialysis facilities in the area, DCC states, "there are no physician-owned ESRD facilities in the area"[1] but failed to address why its own recently approved physician-owned dialysis facility is not an option. As noted above, of the eight operational dialysis facilities, seven were below target utilization, averaging 60.5% and creating an excess of 24 stations. Adding 14 stations will reduce utilization of existing facilities and increase the excess of stations in the geographic service area.

Table 1
March 31, 2019 Utilization of Existing Facilities within 5 Miles

Facility	Straight-Line Distance (Miles)	Number of Stations 03/31/2019	Number of Patients 03/31/19	Utilization % 03/31/19
Chicago Heights Renal Care	0.65	16	71	74.0%
Fresenius Medical Care South Suburban	1.87	27	111	68.5%
Fresenius Medical Care Chicago Heights	1.87	12	36	50.0%
Dialysis Care Center of Olympia Fields	2.08	11	67	101.5%
RCG Hazel Crest	3.04	20	0	0.0%
Fresenius Medical Care Hazel Crest	3.41	16	70	72.9%
Dialysis Care Center Hazel Crest	3.52	12	0	0.0%
Olympia Fields Dialysis Center	4.00	24	112	77.8%
Davita - Harvey Dialysis	4.24	18	57	52.8%
Fresenius Medical Care Steger	4.36	18	59	54.6%
Total		**174**	**583**	**55.8%**

[1] Dialysis Care Center Chicago Heights Certificate of Need Application 105 (Mar. 22, 2019) *available at* https://www2.illinois.gov/sites/hfsrb/Projects/ProjectDocuments/2019/19-015/2019-03-21%2019-015%20application.pdf (last visited Jul. 10, 2019).

2. **Insufficient Patient Demand in the Geographic Service Area to Justify a New Facility Site**

While Dr. Samson projects 77 patient referrals in his letter, 59% of the projected referrals are currently CKD Stage 3 patients. If these patients are properly managed, such patients can stay at Stage 3 indefinitely. The referral letter notably does not include any Stage 5 CKD patients, for which dialysis treatment would be imminent. Presumably there will not be sufficient patients to justify a new facility site absent poaching patients from other existing facility sites. The data in the referral letter simply does not support the position that a new dialysis facility is required to support patient needs within the specific market area.

Further, the growth in patient census over the past four years does not justify additional stations in this area at this time. Over the past four years, patient census has increased by 40 patients (or 1.6% annually). This does not justify the 14 station dialysis facility DCC proposes.

3. **Home Dialysis is a Viable Option for Many Patients on a Long Term Basis**

DCC has made multiple statements in hearings, most recently at the June 4, 2019 meeting, that it is primarily a home dialysis company, seeking unwarranted recognition for an emphasis on this care modality to the exclusion of other providers that place a strong emphasis on the home modalities.[2] Within the immediate geographic service area (five mile area), DCC operates home programs in Matteson and Flossmoor, which are among its 44 home programs

[2] DaVita is the largest provider of home dialysis in the United States. From 2017 to 2019, DaVita's home program has grown 10.3% in the Chicagoland area. DaVita works closely with patients to promote home dialysis modalities. Education is important to slow the progression of kidney disease. DaVita patients who attend Kidney Smart®, DaVita's kidney care education program, are six times more likely to choose home dialysis as a treatment option. Further, all DaVita dialysis clinics have a staff member designated as a "Home Champion," who meets with all new admissions to focus solely on home modalities and benefits. If patients express any interest or questions, DaVita proactively schedules a follow up visit with a home nurse within 10 days and can typically help patients transition to home peritoneal dialysis within the first month. It appropriately trains patients who select a home modality in order to maximize their long-term chance of success and to avoid the most significant issues patients have with continuing this modality.

across Chicago. Collectively, these programs can absorb at least 90 more patients for home dialysis training and support. Despite its assertion that DCC stands out as a home dialysis provider, over the past three years in Illinois, DCC has filed NINE in-center hemodialysis applications to provide dialysis services in the institutional setting, NOT in the home setting. Over this time, the DCC rationale for overlooking its non-compliance with the State Board's rules has morphed. Some months ago, its rationale was that it needed in-center services to provide a location for temporary dialysis for special circumstances (such as respite or a clinical, but not permanent issue with peritoneal dialysis) notwithstanding the fact other providers willingly accept the Kidney Care Center physicians' patients and maintain those physicians as members of their medical staff. DCC has also touted to the State Board a model of staff-assistance at home as unique. After DaVita refuted the facts relating to those assertions, DCC changed its rationale for shifting its focus to the in-center treatment modality rationalizing that patients on home dialysis were consistently failing on that modality after 30 months.[3] Although DCC stated in its June 4, 2019 presentation that patients "will look to going in center" after failing on a home modality, this does not have to be the case. With improvements in the home hemodialysis treatment modality to make it more safe and effective at home, DaVita has recently modified its care transition protocol to re-educate home peritoneal dialysis patients who fail on that modality to the home hemodialysis modality rather than automatically transitioning them to an in-center hemodialysis program.[4]

* * * * * * * * * * * * *

In sum, based on the foregoing DaVita opposes the Proposed Facility to establish a 14 station dialysis facility in Chicago Heights, Illinois, which is not needed as multiple other dialysis facilities within the service area are under-utilized. Current patient needs do not merit

[3] Ironically, good hygiene and nutrition and techniques to ensure adequacy of dialysis reinforced by effective training and monthly visits should significantly reduce home dialysis failure rates.

[4] DaVita delivers innovative technologies like home remote monitoring on a telehealth platform to make it easier for patients to be treated at home. Home remote monitoring allows clinicians to interact with their patients on a regular basis, particularly high risk patients and patients that are within the first 90 days of home dialysis. Vital signs, e.g., blood pressure and weight, are transmitted to clinicians who can supervise patients dialyzing at home. With this monitoring, if vital stats trigger an alert, the clinician will be notified and DaVita will implement interventions to reduce the likelihood of treatment complications or failure, thereby allowing patients to continue to do self-care at home. Further, a caregiver, which is a frequent barrier to home modalities, is no longer mandatory for patients who dialyze with HHD at home.

additional stations. Further, DCC Chicago Heights will not provide new or innovative care to the area.

Sincerely,

Anne M. Cooper