



STATE OF ILLINOIS
HEALTH FACILITIES AND SERVICES REVIEW BOARD

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DOCKET NO: H-03	BOARD MEETING: October 22, 2019	PROJECT NO: 19-027	PROJECT COST:
FACILITY NAME: DaVita Midway Dialysis		CITY: Chicago	Original: \$5,175,938
TYPE OF PROJECT: Substantive			HSA: VI

PROJECT DESCRIPTION: The Applicants (DaVita Inc. and Total Renal Care, Inc.) propose a 12-station ESRD facility in approximately 7,100 gross square feet of leased space at a cost of \$5,175,938. The expected completion date is December 31, 2021.

EXECUTIVE SUMMARY

PROJECT DESCRIPTION:

- The Applicants (DaVita Inc. and Total Renal Care, Inc.) propose a 12-station ESRD facility in approximately 7,100 gross square feet of leased space at a cost of \$5,175,938. The expected completion date is December 31, 2021.

WHY THE PROJECT IS BEFORE THE STATE BOARD:

- The Applicants propose to establish a health care facility as defined by the Illinois Health Facilities Planning Act (20 ILCS 3960/3).
- One of the objectives of the Health Facilities Planning Act is *“to assess the financial burden to patients caused by unnecessary health care construction and modification. Evidence-based assessments, projections and decisions will be applied regarding **capacity, quality, value and equity** in the delivery of health care services in Illinois. Cost containment and support for safety net services must continue to be central tenets of the Certificate of Need process.”* [20 ILCS 3960/2]

PUBLIC HEARING/COMMENT:

- A public hearing was offered on this project; however, no hearing was requested. No letters of support or opposition were received by the State Board.

SUMMARY:

- There is a calculated need for 80-ESRD stations in the City of Chicago (HSA VI ESRD Planning Area) as of September 2019. The geographical service area (“GSA”) for the proposed facility is a 5-mile radius with a population estimate of 578,973 residents (2017 est.). The Applicants have identified 140 pre-ESRD patients within this 5-mile GSA and are estimating 68 patients will require dialysis within 24 months after opening of the proposed facility.
- While there is a calculated need in the HSA VI ESRD planning area of 80 stations within the 5-mile GSA there is no need for additional stations currently. It appears that the 68 patients identified by the Applicants as needing dialysis within 12-24 months after April 2021 could utilize the existing facilities in the 5-mile GSA.
- There are 23 existing and approved ESRD facilities with 413 stations within this 5-mile GSA. Sixteen of these facilities have been in operation for two or more years and as of June 30, 2019 are averaging 72% utilization. There is currently a surplus of stations in this 5-mile GSA and based upon historical growth in the number of dialysis patients in the HSA VI planning area no new stations would be needed for several years at the 80% target occupancy.
- The Applicants addressed a total of 22 criteria and have failed to meet the following:

State Board Standards Not Met	
Criteria	Reasons for Non-Compliance
77 ILAC 1110.230 (c) (A) (B) (C) - Unnecessary Duplication /Mal distribution of Service	There is a surplus of stations in the 5-mile GSA and 10 of the 16 operating ESRD facilities are not at the 80% target utilization. [See pages 13-15 of this report]

STATE BOARD STAFF REPORT
Project 19-027
Midway Dialysis

APPLICATION/CHRONOLOGY/SUMMARY	
Applicants	DaVita Inc. and Total Renal Care, Inc.
Facility Name	Midway Dialysis
Location	3700 W. 63 rd Street, Chicago Illinois
Permit Holder	DaVita Inc. and Total Renal Care, Inc.
Operating Entity	Total Renal Care, Inc.
Owner of Site	Genesis KC Development, LLC
Total GSF	7,100 GSF
Application Received	June 11, 2019
Application Deemed Complete	June 11, 2019
Review Period Ends	10/10/2019
Financial Commitment Date	October 22, 2021
Project Completion Date	December 31, 2021
Review Period Extended by the State Board Staff?	No
Can the Applicants request a deferral?	Yes
Expedited Review?	No

I. Project Description

The Applicants (DaVita Inc. and Total Renal Care, Inc.) propose a 12-station ESRD¹ facility in approximately 7,100 gross square feet or leased space at a cost of \$5,175,938.

II. Summary of Findings

- A. State Board Staff finds the proposed project **not** in conformance with the provisions of 77 ILAC 1110 (Part 1110).
- B. State Board Staff finds the proposed project appears to be in conformance with the provisions of 77 ILAC 1120 (Part 1120).

III. General Information

The Applicants are DaVita Inc. and Total Renal Care, Inc. DaVita Inc., a Fortune 500 company, is the parent company of Total Renal Care, Inc. DaVita Inc. is a leading provider of kidney care in the United States, delivering dialysis services to patients with chronic kidney failure and end stage renal disease. DaVita operates in 45 states and the District of Columbia. The five states where DaVita is not located are: Alaska, Delaware, Mississippi, Vermont, and Wyoming. DaVita serves patients with low incomes, racial and ethnic minorities, women, handicapped persons, elderly, and other underserved persons in its facilities in the State of Illinois. The operating entity will be Total Renal Care, Inc. and the owner of the site is Genesis KC Development, LLC a wholly owned entity of Total Renal

¹ End-Stage Renal Disease (ESRD) is a medical condition in which a person's kidneys cease functioning on a permanent basis leading to the need for a regular course of long-term dialysis or a kidney transplant to maintain life. [Source: [CMS.gov](https://www.cms.gov)]

Care, Inc. This project is subject to a Part 1110 and Part 1120 review. Financial commitment will occur within 24-months after permit approval.

IV. **Health Planning Area**

The proposed facility will be located in the HSA VI Health Service Area. This planning area includes the City of Chicago. As of September 2019, the State Board is estimating a need for 80 ESRD stations. Since 2008 the number of ESRD patients in this planning area has increased on average of 3.10% per year.

Average Growth HSA VI	
Number of Patients 2017	5,149
Number of Patients 2008	4,127
Difference	1,022
Annual Growth	3.10%

The table below documents the stations needed in the HSA VI Planning Area.

TABLE ONE	
Need Methodology HSA VI ESRD Planning Area	
Planning Area Population – 2017	2,716,500
In Station ESRD patients -2017	5,149
Area Use Rate 2017 ⁽¹⁾	1895.454
Planning Area Population – 2022 (Est.)	2,721,500
Projected Patients – 2022 ⁽²⁾	5,185.5
Adjustment	1.33
Patients Adjusted	6,891
Projected Treatments – 2022 ⁽³⁾	1,070,281
Calculated Station Needed ⁽⁴⁾	1,429
Existing Stations	1,349
Stations Needed-2022	80

V. Project Uses and Sources of Funds

The Applicants are funding this project with cash in the amount of \$2,590,531 and the Fair Market Value of Leased Space of \$2,585,407. The estimated start-up costs and operating deficit is \$2,159,513. The cost of the land is \$975,000.

TABLE TWO		
Project Uses and Sources of Funds		
Uses of Funds	Total	% of Total
New Construction Contract	\$1,598,743	30.89%
Contingencies	\$159,874	3.09%
Architectural/Engineering Fees	\$92,300	1.78%
Consulting and Other Fees	\$56,591	1.09%
Movable or Other Equipment	\$683,023	13.20%
FMV of Leased Space	\$2,585,407	49.95%
Total Use of Funds	\$5,175,938	100.00%
Source of Funds		
Cash and Securities	\$2,590,531	50.05%
Leases (Fair Market Value)	\$2,585,407	49.95%
Total Sources of Funds	\$5,175,938	100.00%

VI. Background of the Applicants, Purpose of the Project, Safety Net Impact, Alternatives

A) Criterion 1110.110(a) - Background of the Applicant

To address this criterion the applicants must provide a list of all facilities currently owned in the State of Illinois and an attestation documenting that no adverse actions² have been taken against any applicant's facility by either Medicare or Medicaid, or any State or Federal regulatory authority during the 3 years prior to the filing of the Application with the Illinois Health Facilities and Services Review Board or a certified listing of adverse action taken against any applicant's facility; and authorization to the State Board and Agency access to information in order to verify any documentation or information submitted in response to the requirements of the application for permit.

1. A listing of DaVita Dialysis Facilities in Illinois has been provided at pages 96-100 of the Application for Permit. DaVita has 120 ESRD facilities in the State of Illinois. Average CMS Star Rating³ for the Illinois DaVita facilities that have the necessary data to compile a rating is 3.7. The national average is 3.71 for DaVita facilities.

² "Adverse action is defined as a disciplinary action taken by IDPH, CMMS, or any other State or federal agency against a person or entity that owns or operates or owns and operates a licensed or Medicare or Medicaid certified healthcare facility in the State of Illinois. These actions include, but are not limited to, all Type "A" and Type "AA" violations." (77 IAC 1130.140)

³ CMS Star Rating system is a rating system developed by Medicare that assigns 1 to 5 stars to dialysis facilities by comparing the health of the patients in their clinics to the patients in other dialysis facilities across the country. Each dialysis center is graded on nine separate health statistics. These include: mortality ratios (deaths), hospitalizations, blood transfusions, incidents of hypercalcemia (too much calcium in the blood), percentage of waste removed during hemodialysis in adults and children, percentage of waste removed in adults during peritoneal dialysis, percentage of AV fistulas, percentage of catheters in use over 90 days. Causes of death and reasons for hospitalization may not necessarily be related to the care at a dialysis facility. The statistics merely represent how many patients who attend that facility died or were hospitalized. Based on these nine statistics, each facility is given a summary rating of 1 to 5 stars. In addition, each facility is graded on a curve and ranked against one another nationwide. This results in clinics being rated in a bell-shaped curve where about 30% of facilities receive only one or two stars, 40% receive 3 stars,

2. The Applicants provided the necessary attestation that no adverse action has been taken against any facility owned or operated by the Applicants and authorization allowing the State Board and IDPH access to all information to verify information in the Application for Permit. DaVita has had no history of decertification of its facilities in Illinois. [Application for Permit pages 63-64]
3. Neither the Centers for Medicare and Medicaid Services nor the Illinois Department of Public Health ("IDPH") has taken any adverse action involving civil monetary penalties or restriction or termination of participation in the Medicare or Medicaid programs against any Illinois health care clinics owned or operated by the Applicants, directly or indirectly, within three years preceding the filing of this application. [Application for Permit page 68]
4. DaVita provided a copy of the Letter of Intent to Lease the Property for the site to demonstrate site control. Since DaVita will be leasing the site, rent/lease costs are considered an expense. (Copy of the Letter of Intent to Lease the Property at pages 33-48 of the Application for Permit). Organizational relationships can be found at pages 52 of the Application for Permit.
5. A Certificate of Good Standing has been provided as required for Total Renal Care, Inc., as a foreign entity with permission to transact business in the State of Illinois. An Illinois Certificate of Good Standing is evidence that an Illinois business franchise (i.e. Illinois Corporation, LLC or LP) is in existence, is authorized to transact business in the state of Illinois and complies with all state of Illinois business requirements and therefore is in "Good Standing" in the State of Illinois. [Application for Permit page 27-28]
6. The Applicants provided evidence that they were in compliance with Executive Order #2006-05 that requires *all State Agencies responsible for regulating or permitting development within Special Flood Hazard Areas shall take all steps within their authority to ensure that such development meets the requirements of this Order. State Agencies engaged in planning programs or programs for the promotion of development shall inform participants in their programs of the existence and location of Special Flood Hazard Areas and of any State or local floodplain requirements in effect in such areas. Such State Agencies shall ensure that proposed development within Special Flood Hazard Areas would meet the requirements of this Order.* [Application for Permit page 53-54]
7. The proposed location of the facility is in compliance with the Illinois State Agency Historic Resources Preservation Act which requires *all State Agencies in consultation with the Director of Historic Preservation, institute procedures to ensure that State projects consider the preservation and enhancement of both State owned and non-State-owned historic resources* (20 ILCS 3420/1). [Application for Permit page 56]

and 30% receive 4 or 5 stars. In theory, it's possible that every facility in a bell-shaped curve might deliver good or excellent care. [source: National Kidney Foundation]

B) Criterion 1110.110(b) - Purpose of the Project

To demonstrate compliance with this criterion the Applicants must document

- 1. That the project will provide health services that improve the health care or well-being of the market area population to be served.*
- 2. Define the planning area or market area, or other relevant area, per the applicant's definition.*
- 3. Identify the existing problems or issues that need to be addressed as applicable and appropriate for the project.*
- 4. Detail how the project will address or improve the previously referenced issues, as well as the population's health status and well-being.*
- 5. Provide goals with quantified and measurable objectives, with specific timeframes that relate to achieving the stated goals as appropriate.*

The Applicants stated the following in part:

“This project is intended to address the need for dialysis stations and will improve access to life sustaining dialysis services to the residents residing on the ethnically diverse Southwest Side of Chicago. The Midway geographic service area ("GSA") is a "melting pot" of sorts, due to its constant change of races moving in and out of the area, as well as the diversity that exists there. The Midway GSA population is 21% African-American and 54% Hispanic. These are two minority groups that have a higher incidence and prevalence of kidney disease than the general population. Further, the Midway GSA is an area with many low-income residents. Eighteen percent of the population lives below the Federal Poverty Level and 33% of the population lives below 150% of the Federal Poverty Level (138% of the Federal Poverty Level is the income eligibility limit for the Medicaid program in Illinois. Finally, due to barriers faced by members of this community, the Health Resources & Services Administration ("HRSA") has designated this area a primary care Health Professional Shortage Area and a Medically Underserved Population.”⁴ [Application for Permit pages 102-107 for complete discussion]

4 Medically Underserved Areas (MUAs) and Medically Underserved Populations (MUPs) identify geographic areas and populations with a lack of access to primary care services. MUAs have a shortage of primary care health services for residents within a geographic area such as:

- a whole county;
- a group of neighboring counties;
- a group of urban census tracts; or
- a group of county or civil divisions.

MUPs are specific sub-groups of people living in a defined geographic area with a shortage of primary care health services. These groups may face economic, cultural, or linguistic barriers to health care. Examples include, but are not limited to, those who are:

- homeless;
- low-income;
- Medicaid-eligible;
- Native American; or
- migrant farmworkers.

MUA/P designations are based on the Index of Medical Underservice (IMU). IMU is calculated based on four criteria:

- the population to provider ratio;
- the percent of the population below the federal poverty level;
- the percent of the population over age 65; and
- the infant mortality rates.

IMU can range from 0 to 100, where zero represents the completely underserved. Areas or populations with IMUs of 62.0 or less qualify for designation as an MUA/P. Source: Health Resources and Services Administration.

C) Criterion 1110.110(c) – Safety Net Impact Statement

To demonstrate compliance with this criterion the Applicants must document

- *The project's material impact, if any, on essential safety net services in the community, to the extent that it is feasible for an applicant to have such knowledge.*
- *The project's impact on the ability of another provider or health care system to cross-subsidize safety net services, if reasonably known to the applicant.*
- *How the discontinuation of a facility or service might impact the remaining safety net providers in a given community, if reasonably known by the applicant.*

A safety net impact statement is required for all applications establishing a health care facility (excluding nursing care facilities) and discontinuations. The Applicants provided a safety net impact statement as required at pages 168-170. The table below documents Charity and Medicaid Information for the DaVita Illinois Facilities.

TABLE THREE
DaVita, Inc. ⁽¹⁾
Net Revenue, Charity and Medicaid Information for the State of Illinois Facilities

	2014	2015	2016	2017	2018
Net Patient Revenue	\$266,319,949	\$311,351,089	\$353,226,322	\$357,821,315	\$394,665,498
Amt. of Charity Care (charges)	\$2,477,363	\$2,791,566	\$2,400,299	\$2,818,603	\$2,711,788
Cost of Charity Care	\$2,477,363	\$2,791,566	\$2,400,299	\$2,818,603	\$2,711,788
% of Charity Care/Net Patient Revenue	0.93%	0.90%	0.68%	.78%	.69%
Number of Charity Care Patients (self-pay)	146	109	110	98	128
Number of Medicaid Patients	708	422	297	407	298
Medicaid Revenue	\$8,603,971	\$7,361,390	\$4,692,716	\$9,493,634	\$7,951,548
% of Medicaid to Net Patient Revenue	3.23%	2.36%	1.33%	2.65%	2.01%

1. The Applicants do not define charity care per the Illinois Health Facilities Planning Act. "Charity Care" means care provided by a health care facility for which the provider does not expect to receive payment from the patient or a third party payer." [20 ILCS 3960/3] For profit entities do not have charity care. These costs are considered a bad debt expense.

Staff Note on Reimbursement: The majority of payments for dialysis is through Medicare and Medicaid. Under the new ESRD PPS payment system⁵, Medicare pays dialysis facilities a bundled rate per treatment and that rate is not the same for each facility. Each facility, within a given geographic area, may receive the same base rate. However, there are several adjustments both at the facility and at patient-specific level that affects the final reimbursement rate each facility will receive. What a dialysis facility receives from its commercial payors will also vary. Even if two different dialysis providers billed the same commercial payer the same amount, the actual payment to each facility will depend on the negotiated discount rate obtained by the commercial payer from each individual provider.

[Source: Center for Medicare and Medicaid]

⁵ The ESRD PPS provides a patient-level and facility-level adjusted per treatment (dialysis) payment to ESRD facilities for renal dialysis services provided in an ESRD facility or in a beneficiary's home. The bundled per treatment payment includes drugs, laboratory services, supplies and capital-related costs related to furnishing maintenance dialysis. [CMS.gov]

D) Criterion 1110.110(d) – Alternatives to the Proposed Project

To demonstrate compliance with this criterion the Applicants must identify all the alternatives considered to the proposed project.

The Applicants considered two alternatives to the proposed project; **do nothing or utilize existing clinics.** Both alternatives were rejected based in part on the following:

“The Midway GSA population is 21 % African-American and 54% Hispanic. These are two minority groups that have a higher incidence and prevalence of kidney disease than the general population. Further, the Midway GSA is an area with many low-income residents. Readily accessible dialysis services are imperative for the health of the residents living in the Midway GSA. Excluding dialysis clinics that were recently approved or in ramp up, average utilization of area dialysis Clinics is 73% as of March 31, 2019. Further, over the past four years, patient census at the existing clinics has increased 3.6% annually and is anticipated to increase for the foreseeable future due to the demographics of the community and disease incidence and prevalence trend. Average utilization of these clinics is projected to exceed 80% by December 2021, when the proposed Midway Dialysis is anticipated to come online.”

VII. Size of the Project, Projected Utilization and Assurances

A) Criterion 1110.120(a) - Size of the Project

To demonstrate compliance with this criterion the Applicants must document the size of the proposed facility is in compliance with the State Board Standards published in Part 77 ILAC 1110 Appendix B.

The Applicants are proposing 7,100 GSF for 12-stations. The State Board Standard is 650 GSF per station or 7,800 GSF. [7,800 GSF (State Standard) – 7,100 GSF (Proposed GSF) = (700 GSF). The Applicants have successfully addressed this criterion.

Staff Note: The United States Department of Veterans Affairs recommends a 12-station ESRD facility be approximately 7,410 GSF or 617.5 GSF per station.

TABLE FOUR		
US Department of Veteran Affairs Recommendation		
	GSF	% of GSF
Reception Area	720	10.00%
Patient Area	2,965	40.00%
Support Area	2,380	32.00%
Staff and Administrative Area	1,345	18.00%
Total	7,410	100.0%

Source: US Department of Veteran’s Affairs

STATE BOARD STAFF FINDS THE PROPOSED PROJECT TO BE IN CONFORMANCE WITH SIZE OF THE PROJECT CRITERION (77 ILAC 1110.120(a))

B) Criterion 1110.120(b) – Projected Utilization

To demonstrate compliance with this criterion the Applicants must document that the proposed facility will be in compliance with the State Board Standards published in Part 77 ILAC 1110 Appendix B two (2) years after project completion.

The Applicants are estimating 68 patients will require dialysis within 12-24 months of project completion.

68 patients x 156 treatment per year = 10,608

12 stations x 936 treatments per year per station = 11,232 treatments

$10,608 \div 11,232 = 94.4\%$

Staff Note: The referral letter provided by the Applicants included qualifying language by the Nephrologist who signed the letter. The language stated: “*I have been informed that these patient referrals have not been used to support another pending or approved certificate of need application.*” What the State Board is looking for positive assurance that the referrals have not been used to support any other project.

In follow-up to this issue the Applicants stated “*the legal counsel’s office at University of Chicago doesn’t have first-hand knowledge of its nephrologists’ CKD data and its associated use in the CON permit application process. Based on that, they modified the language in the referral letter to add a knowledge qualifier.*”

Included with the follow-up response to the Board’s Staff questions the Applicants provided all the previous referral letters used to support the four previous University of Chicago projects that have been approved by the Board:

- Permit #10-093-Woodlawn Dialysis,
- Permit #11-114- Lake Dialysis,
- Permit #12-008-Stony Island Dialysis
- Permit #15-048-Park Manor Dialysis.

A summary list of zip codes with the number of pre-ESRD patients from each zip code for all five (including Midway Dialysis) of the University of Chicago projects was also provided. Based upon that list only 3 patients of the 140 patients being used to justify the Midway Dialysis Project were from the same zip code. The Applicants go on further to state

“The CKD data for the Midway Dialysis application was provided by the University of Chicago, and as shown above, we (DaVita/Polsinelli) verified the data had not been used to support another approved or pending CON application. As noted in the referral letter, the University of Chicago did not independently verify the CKD data was not used in a prior application and relied on representations made by DaVita and Polsinelli regarding the data provided in the referral letter.”

Based upon the follow-up data that has been submitted the Board Staff accepted 137 of the 140 pre-ESRD patients that were submitted for this project. The Applicants have successfully addressed this criterion.

STATE BOARD STAFF FINDS THE PROPOSED PROJECT TO BE IN CONFORMANCE WITH PROJECTED UTILIZATION CRITERION (77 ILAC 1110.120(b))

C) Criterion 1110.120(e) – Assurance

To demonstrate compliance with this criterion the Applicants must document that the proposed facility will be in compliance with the State Board Standards published in Part 77 ILAC 1110 Appendix B two (2) years after project completion.

The Applicants have provided the necessary attestation as required at page 158 of the Application for Permit.

STATE BOARD STAFF FINDS THE PROPOSED PROJECT TO BE IN CONFORMANCE WITH ASSURANCE CRITERION (77 ILAC 1110.120(e))

VIII. In-Center Hemodialysis

A) Criterion 1110.230(b)(1)(A) & (B) - Planning Area Need

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

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.

The Applicants are proposing a 12-station facility. There is a calculated need in this ESRD Planning Area for 80 stations. The Applicants have met this sub-criterion.

2) Criterion 1110.230 (b) (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.

The 12-station dialysis facility will be located at 3700 W. 63rd Street, Chicago, Illinois 60629. The Applicants have identified 140 pre-ESRD patients that reside within 3.5 miles of the proposed facility. Within 12-24 months the Applicants expect to refer approximately 68 of these patients to the proposed facility if approved. Fifty-two of these 140 patients reside in the 60629-zip code (the location of the proposed facility) and 88 patients reside in 60636-zip code (approximately 2.3 miles from the proposed facility). The proposed facility will provide services to the residents of the area in which the facility will be located as required by this sub-criterion. [Application for Permit page 142].

3) Criterion 1110.230 (b) (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 2-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).

Historical patient information was provided for Dr. Stankus with The University of Chicago, Section of Nephrology and projected information was provided as required. The Applicants are projecting 68 patients will require dialysis within 12-24 months of the opening of the proposed facility [See 77 ILAC 1110.120 (b) above].

5) Criterion 1110.230 (b) (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 established radii outlined in subsection (b)(5)(C) meet or exceed the utilization standard specified in 77 Ill. Adm. Code 1110.*

- i) There is no absence of ESRD services in the HSA VI ESRD Planning Area-Chicago. There are 68-ESRD facilities within this planning area with 1,349 stations.
- ii) No Access limitations have been identified.
- iii) No restrictive admission policies of existing providers have been identified.
- iv) The proposed facility will be in an area that has been Federally designated as a Medically Underserved Area and Medically Underserved Population.
- v) There are 23 ESRD facilities within the 5-mile radius. Seven of these facilities are in ramp-up or are not fully operational. The average utilization of the 16 facilities is approximately 72%.

Summary

The Applicants are proposing a 12-station ESRD facility to address the calculated need of 80-stations in this planning area. Enough demand (68 patients) has been identified by the Applicants to justify the 12-stations. The proposed facility will serve the residents of the 5-mile GSA as evidenced by the 140 pre-ESRD patients identified by the Applicants within the 5-mile GSA. (See Application for Permit pages 172-179). The location of the proposed facility is in a Medically Underserved Area and Medically Underserved Population. The Applicants have met the requirements of this criterion.

STATE BOARD STAFF FINDS THE PROPOSED PROJECT IS IN CONFORMANCE WITH CRITERION PLANNING AREA NEED (77 ILAC 1110.230 (b) (1) (2) (3) (5))

C) Criterion 1110.230(c) - Unnecessary Duplication of Service/Maldistribution

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 the established radii outlined in subsection (c)(4) 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 the established radii outlined in subsection (c)(4) of the project site that provides the categories of station service that are proposed by the project.

A. The names and location of all ESRD facilities existing and approved within the 5-mile GSA (the established radii) was provided as required.

B. A list of zip codes was provided at page 119 of the Application for Permit. There are approximately 578,973 residents within this 5-mile radius. There are 23 ESRD facilities within this 5-mile radius with 413 stations. In this 5-mile GSA there is 1 station for every 1,402 residents.

The 2017 State of Illinois Estimated Population is 12,802,000⁶. As of September 2019, there is 4,962 ESRD stations. In the State of Illinois there is one station for every 2,580 residents.

TABLE FIVE			
Ratio of Stations to Population			
	Population	Stations	Ratio
5-mile GSA	578,973	413	1 station for every 1,402 residents
State of Illinois	12,802,000	4,962	1 station per every 2,580 residents

C. The Applicants stated the following:

“The proposed dialysis clinic will not have an adverse impact on existing clinics in the Midway GSA. University of Chicago, Department of Medicine is currently treating 140 CKD patients, who reside within 3.5 miles of the proposed Midway Dialysis. Conservatively, based upon attrition due to patient death, transplant, stable disease, or relocation away from the area and in consideration of other treatment modalities (HHD and peritoneal dialysis), Nicole Stankus, M.D. anticipates that at least 68 of these 140 patients will initiate in-center hemodialysis within 12 to 24 months following project completion. No patients are expected to transfer from existing dialysis clinics.

The proposed dialysis clinic will not lower the utilization of other area clinics that are currently operating below HFSRB standards. Excluding dialysis clinics that were recently approved or in ramp up, average utilization of area dialysis clinics is 73% as of March 31,

⁶ Illinois Department of Public Health Population Estimate for 2017 – Most recent estimate available.

2019. Further, over the past four years, patient census at the existing clinics has increased 3.6% annually and is anticipated to increase for the foreseeable future due to the demographics of the community and disease incidence and prevalence trend. Average utilization of these clinics is projected to exceed 80% by December 2021, when the proposed Midway Dialysis is anticipated to come online.”

Summary

There is a surplus of stations in this 5-mile GSA and based upon the June 30, 2019 census there is 135 stations in excess. Ten of the 16 facilities that have been in operation more than two years are not at the target utilization of 80%. There are 7 ESRD facilities with 90 stations in the 5-mile GSA not yet operational. It appears the proposed facility will result in unnecessary duplication and maldistribution of service in this 5-mile GSA. The Applicants have not successfully addressed this criterion.

TABLE SIX
Facilities within the 5-mile GSA

ESRD Name	City	Miles ⁽¹⁾	Stations	Patients	Utilization	Star Rating
			(2)	(3)	(4)	(5)
DaVita West Lawn Dialysis	Chicago	1.02	12	65	90.28%	5
Fresenius Kidney Care Marquette Park	Chicago	1.63	16	85	88.54%	3
Fresenius Kidney Care Burbank	Burbank	2.23	26	110	70.51%	4
US Renal Care Scottsdale	Chicago	2.36	36	119	55.09%	3
Fresenius Kidney Care Southside	Chicago	2.45	39	172	73.50%	2
DaVita Beverly	Chicago	2.83	16	84	87.50%	3
Fresenius Kidney Care Midway	Chicago	3.15	12	55	76.39%	4
Fresenius Kidney Care New City	Chicago	3.51	16	45	46.88%	NA
Fresenius Kidney Care Ross-Englewood	Chicago	3.6	24	59	40.97%	3
Dialysis Care Center of Oak Lawn	Oak Lawn	3.84	11	59	89.39%	NA
Fresenius Medical Care Cicero	Cicero	4.36	20	99	82.50%	5
Fresenius Kidney Care Garfield	Chicago	4.55	22	85	64.39%	5
SAH Dialysis Center at 26th Street	Chicago	4.58	15	48	53.33%	5
Fresenius Kidney Care Summit	Summit	4.68	12	48	66.67%	2
Fresenius Kidney Care Evergreen Park	Evergreen Park	4.73	30	96	53.33%	NA
DaVita Lawndale Dialysis	Chicago	4.79	16	99	103.13%	4
Total			323	1,330	71.15%	
DaVita Brighton Park Dialysis	Chicago	2.26	16	1	1.40%	
DaVita Auburn Park Dialysis	Chicago	2.68	12	0	0.00%	
DaVita Ford City Dialysis	Chicago	2.76	12	2	2.78%	

DaVita Oak Meadows Dialysis	Oak Lawn	4.36	12	0	0.00%
Dialysis Care Center Evergreen Park	Evergreen Park	4.56	14	0	0.00%
DaVita Marshall Square Dialysis	Chicago	4.62	12	0	0.00%
DaVita Cicero Dialysis	Cicero	4.88	12	0	0.00%
Total			90	3	

1. Miles determined by Map Quest
2. Number of Stations as of September 2019
3. Number of Patients as of June 30, 2019
4. Utilization as of June 30, 2019
5. Star Rating per Medicare Compare Website

TABLE SEVEN
Estimated Number of Stations Needed in this 5-mile GSA
At the historical annual growth in HSA VI Planning Area of 3.10%

Year	2019	2020	2021	2022	2023	2024	2025
Patients	1,333	1,375	1,418	1,462	1,508	1,555	1,604
# of Stations Needed at 80%	278	287	296	305	315	324	335
Year	2026	2027	2028	2029	2030	2031	2032
Patients	1,654	1,706	1,759	1,814	1,871	1,930	1,990
# of Stations Needed at 80%	345	356	367	378	390	403	415

**STATE BOARD STAFF FINDS THE PROPOSED PROJECT NOT IN
CONFORMANCE WITH CRITERION UNNECESSARY
DUPLICATION/MALDISTRIBUTION (77 ILAC 1110.230(c)(1)-(3))**

D) Criterion 1110.230(e) - Staffing

The applicant shall document that relevant clinical and professional staffing needs for the proposed project were considered and that licensure and The Joint Commission 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.

The proposed clinic will be staffed in accordance with all State and Medicare staffing requirements. The Medical Director is Nicole Stankus, M.D. A copy of Dr. Stankus's curriculum vitae has been provided as required. As patient volume increases, nursing and patient care technician staffing will increase accordingly to maintain a ratio of at least one direct patient care provider for every 4 ESRD patients. At least one registered nurse will be on duty while the clinic is in operation. All staff will be training under the direction of the proposed clinic's Governing Body, utilizing DaVita's comprehensive training program. A summary of the training program has been provided. Midway Dialysis will maintain an open medical staff. [Application for Permit pages 123-144]

STATE BOARD STAFF FINDS THE PROPOSED PROJECT IN CONFORMANCE WITH CRITERION STAFFING (77 ILAC 1110.230(e))

E) Criterion 1110.230 (f) - Support Services

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 have attested to the following:

- DaVita utilizes an electronic dialysis data system;
- Midway Dialysis will have available all needed support services required by CMS which may consist of clinical laboratory services, blood bank, nutrition, rehabilitation, psychiatric services, and social services; and
- Patients, either directly or through other area DaVita facilities, will have access to training for self-care dialysis, self-care instruction, and home hemodialysis and peritoneal dialysis. [Application for Permit pages 144-145]

STATE BOARD STAFF FINDS THE PROPOSED PROJECT IN CONFORMANCE WITH CRITERION SUPPORT SERVICES (77 ILAC 1110.230(f))

F) Criterion 1110.230(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 in the Chicago-Naperville-Elgin, IL-IN-WI MSA.⁷ The Applicants have successfully addressed this criterion.

STATE BOARD STAFF FINDS THE PROPOSED PROJECT IN CONFORMANCE WITH CRITERION MINIMUM NUMBER OF STATIONS (77 ILAC 1110.230(g))

G) Criterion 1110.230(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.

A signed transfer agreement with St. Anthony Hospital in Chicago has been provided as required. St. Anthony Hospital has agreed to provide Emergency, In-Patient and Backup Support Services to the dialysis patients. The Hospital is approximately 7.5 miles from the proposed facility. [See pages 149-155 of the Application for Permit]

STATE BOARD STAFF FINDS THE PROPOSED PROJECT IN CONFORMANCE WITH CRITERION CONTINUITY OF CARE (77 ILAC 1110.230(h))

H) Criterion 1110.230(i) - Relocation of Facilities

This criterion may only be used to justify the relocation of a facility from one location in the planning area to another in the same planning area and may not be used to justify any additional stations. A request for relocation of a facility requires the discontinuation of the current category of service at the existing site and the establishment of a new category of service at the proposed location. The applicant shall document the following:

- 1) That the existing facility has met the utilization targets detailed in 77 Ill. Adm. Code 1100.630 for the latest 12-month period for which data is available; and
- 2) That the proposed facility will improve access for care to the existing patient population.

The Applicants are proposing the establishment of a new facility and not relocating an existing facility. This criterion is not applicable to this project.

STATE BOARD STAFF FINDS THE PROPOSED PROJECT IN CONFORMANCE WITH CRITERION RELOCATION OF FACILITIES (77 ILAC 1110.230(i))

⁷The Chicago Metropolitan Statistical Area was originally designated by the United States Census Bureau in 1950. It comprised the Illinois counties of Cook, DuPage, Kane, Lake and Will, along with Lake County in Indiana. As surrounding counties saw an increase in their population densities and the number of their residents employed within Cook County, they met Census criteria to be added to the MSA. The Chicago MSA, now defined as the Chicago-Naperville-Elgin, IL-IN-WI Metropolitan Statistical Area, is the third largest MSA by population in the United States. The 2015 census estimate for the MSA was 9,532,569, a decline from 9,543,893 in the 2014 census estimate.^[6] This loss of population has been attributed to taxes, political issues, weather, and other factors. [Source US Census Bureau]

I) Criterion 1110.230 (j) - Assurances

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: $\geq 85\%$ of hemodialysis patient population achieves urea reduction ratio (URR) $\geq 65\%$ and $\geq 85\%$ of hemodialysis patient population achieves Kt/V Daugirdas II 1.2.*

The Applicants have provided the necessary attestation at pages 157-158 of the Application for Permit.

STATE BOARD STAFF FINDS THE PROPOSED PROJECT IN CONFORMANCE WITH CRITERION ASSURANCES (77 ILAC 1110.230(j))

IX. Financial Viability

A) Criterion 1120.120 – Availability of Funds

To demonstrate compliance with this criterion the Applicants must document that the resources are available to fund the project.

The Applicants are funding this project with cash in the amount of \$2,590,531 and a lease with an FMV of \$2,585,407. A summary of the financial statements of the Applicants is provided below. The Applicants have enough cash to fund this project.

TABLE EIGHT
DaVita Audited Financial Statements
Ending December 31st
(in thousands (000))

	2018	2017	2016	2015
Cash	\$323,038	\$508,234	\$674,776	\$1,499,116
Current Assets	\$8,424,159	\$8,744,358	\$3,994,748	\$4,503,280
Total Assets	\$19,110,252	\$18,948,193	\$18,755,776	\$18,514,875
Current Liabilities	\$4,891,161	\$3,041,177	\$2,710,964	\$2,399,138
LTD	\$8,172,847	\$9,158,018	\$8,944,676	\$9,001,308
Patient Service Revenue	\$10,709,981	\$9,608,272	\$9,269,052	\$9,480,279
Total Net Revenues	\$11,404,851	\$10,876,634	\$10,707,467	\$13,781,837
Total Operating Expenses	\$9,879,027	\$9,063,879	\$8,677,757	\$12,611,142
Operating Income	\$1,525,824	\$1,812,755	\$2,029,710	\$1,170,695
Net Income	\$333,040	\$830,555	\$1,033,082	\$427,440

STATE BOARD STAFF FINDS THE PROPOSED PROJECT IN CONFORMANCE WITH CRITERION AVAILABILITY OF FUNDS (77 ILAC 1120.120)

B) Criterion 1120.130 - Financial Viability

To demonstrate compliance with this criterion the Applicants must document that they have a Bond Rating of "A" or better, they meet the State Board's financial ratio standards for the past three (3) fiscal years or the project will be funded from internal resources.

The Applicants have qualified for the financial waiver⁸ by funding the project from internal sources.

STATE BOARD STAFF FINDS THE PROPOSED PROJECT IN CONFORMANCE WITH CRITERION FINANCIAL VIABILITY (77 ILAC 1120.130)

X. Economic Feasibility

A) Criterion 1120.140(a) – Reasonableness of Financing Arrangements

B) Criterion 1120.140(b) – Terms of Debt Financing

To demonstrate compliance with these criteria the Applicants must document that leasing of the space is reasonable. The State Board considers the leasing of space as debt financing.

The Applicants are funding this project with cash in the amount of \$2,590,531 and a lease with an FMV of \$2,585,407. The lease is for 15 years at \$36.57/GSF per year for the first 5 years with a 10% increase every 5 years. [Application for Permit pages 33-48]

**TABLE NINE
Terms of Lease Space**

Premises	Approximately 7,100 GSF, 3700 West 63 rd Street, Chicago, Illinois 60646
Landlord:	Genesis KC Development, LLC, a wholly owned subsidiary of Total Renal Care, Inc.
Tenant:	Total Renal Care, Inc. or related entity
Term:	15 Years with two five-year options
Base Rent:	\$36.57/psf with 10% increases every 5 years
Provisions:	Triple-net (NNN): Maintenance, real estate taxes/assessments, insurance premiums, utilities.

Total Renal Care will assign the ground lease to Genesis KC Development, LLC. Genesis will construct a shell building. Genesis will lease the space to Total Renal Care, taking possession as tenant, completing construction, and beginning to provide dialysis services.

⁸ 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 attest:

"I hereby certify under penalty of perjury as provided in § 1-109 of the Illinois Code of Civil Procedure, 735 ILCS 5/1-109 and pursuant to 77 Ill. Admin. Code§ 1120.140(a) that the total estimated project costs and related costs will be funded in total with cash and cash equivalents. Further, the project involves the leasing of a facility. The expenses incurred with leasing the facility are less costly than constructing a new facility." [Application for Permit page 131-132]

STATE BOARD STAFF FINDS THE PROPOSED PROJECT IN CONFORMANCE WITH CRITERIA REASONABLENESS OF FINANCING ARRANGEMENTS AND TERMS OF DEBT FINANCING (77 ILAC 1120.140(a) & (b))

C) Criterion 1120.140(c) – Reasonableness of Project Costs

To demonstrate compliance with this criterion the Applicants must document that the project costs are reasonable by the meeting the State Board Standards in Part 1120 Appendix A.

Table below details the ESRD cost per GSF for new construction based upon 2015 historical information and inflated by 3% to the midpoint of the construction. Additionally, the Table

TABLE TEN						
Calculation of ESRD Cost per GSF						
Year	2015	2016	2017	2018	2019	2020
ESRD Cost Per GSF	\$254.58	\$262.22	\$270.08	\$278.19	\$286.53	\$295.13
Calculation of Moveable Equipment Cost per ESRD Station						
Year	2015	2016	2017	2018	2019	2020
Cost per Station	\$49,127	\$50,601	\$52,119	\$53,683	\$55,293	\$56,952

details the cost per station based upon 2008 historical information and inflated by 3% to the midpoint of construction.

New Construction and Contingencies total \$1,758,617 or \$247.69 per GSF (\$1,758,617 ÷ 7,100 per GSF = \$247.69). This appears reasonable when compared to the State Standard of \$295.13 per GSF or \$2,095,423.

Contingencies total \$159,874 and are 10% of new construction costs of \$1,598,743. This appears reasonable when compared to the State Board Standard of 10% [\$159,874 ÷ \$1,598,743 = 10%].

Architectural and Engineering Fees total \$92,300 or 5.2% of new construction and contingencies [\$92,300 ÷ \$1,758,617 = 5.2%]. This appears reasonable when compared to the State Board standard of 9.34 % or \$164,255.

Consulting and Other Fees are \$56,591. The State Board does not have a standard for these costs.

Movable or Other Equipment totals \$683,023 or \$56,919 per station [\$683,023 ÷ 12 stations = \$56,919 per station]. This appears reasonable when compared to the State Board Standard of \$56,952 per station or \$683,424.

TABLE TEN Equipment Costs	
Communications	\$127,813
Water Treatment	\$178,539
Bio-Medical Equipment	\$15,940
Clinical Equipment	\$239,184
Clinical Furniture/Fixtures	\$21,885
Lounge Furniture/Fixtures	\$5,055
Storage Furniture/Fixtures	\$6,862
Business Office Fixtures	\$35,845
General Furniture/Fixtures	\$35,000
Signage	\$17,300

STATE BOARD STAFF FINDS THE PROPOSED PROJECT IN CONFORMANCE WITH CRITERION REASONABLENESS OF PROJECT COSTS (77 ILAC 1120.140(c))

D) Criterion 1120.140(d) – Projected Operating Costs

To demonstrate compliance with this criterion the Applicants must document that the projected direct annual operating costs for the first full fiscal year at target utilization but no more than two years following project completion. Direct costs mean the fully allocated costs of salaries, benefits and supplies for the service.

The Applicants are projecting \$138.98 operating expense per treatment. The Board does not have a standard for this criterion.

TABLE ELEVEN Operating Expenses	
Salaries	\$715,791
Benefits	\$279,158
Supplies	\$479,352
Total Operating Expenses	\$1,474,301
Treatments	\$10,608
Operating Expense per Treatment	\$138.98

THE STATE BOARD STAFF FINDS THE PROPOSED PROJECT IN CONFORMANCE WITH CRITERION PROJECTED OPERATING COSTS (77 ILAC 1120.140(d))

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

To demonstrate compliance with this criterion the Applicants must provide the total projected annual capital costs for the first full fiscal year at target utilization but no more than two years following project completion. Capital costs are defined as depreciation, amortization and interest expense.

The Applicants are projecting capital costs of \$20.32 per treatment. The Board does not have a standard for this criterion.

TABLE TWELVE	
Capital Costs	
Depreciation	\$205,726
Amortization	\$9,840
Total Capital Costs	\$215,566
Treatments	\$10,608
Capital Costs per Treatment	\$20.32

THE STATE BOARD STAFF FINDS THE PROPOSED PROJECT IN CONFORMANCE WITH CRITERION TOTAL EFFECT OF THE PROJECT ON CAPITAL COSTS (77 ILAC 1120.140 (e))

19-027 DaVita Midway Dialysis - Chicago



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