



150 N. Riverside Plaza, Suite 3000, Chicago, IL 60606 • (312) 871-1900

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Anne M. Cooper

(312) 871-1900

HEALTH FACILITIES &
SERVICES REVIEW BOARD
(312) 276-4370 Direct Fax
acooper@polsinelli.com

February 14, 2020

Via Hand Delivery
Via Email

Ms. Courtney Avery
Illinois Health Facilities and Services Review
Board
525 West Jefferson Street, 2nd Floor
Springfield, Illinois 62761

**Re: DaVita Freeport Dialysis (Proj. No. 19-050) - Technical Comment to
State Board Report**

Dear Ms. Avery:

Polsinelli represents DaVita Inc. and Renal Treatment Centers – Illinois, Inc. (collectively, the “Applicants”). In this capacity, we are writing in response to the Illinois Health Facilities and Services Review Board’s (“State Board”) findings on the DaVita Freeport Dialysis application for permit to relocate DaVita Freeport Dialysis to Rockford (the “Proposed Project”). Pursuant to Section 6(c-5) of the Illinois Health Facilities Planning Act, the Applicants submit the following in response to the State Board’s findings.

Our view of the Applicant’s compliance with planning area need, unnecessary duplication/maldistribution and relocation criteria diverges with the State Board’s, and we believe the report should be fully positive with no negative findings. Based upon previous in-center hemodialysis relocation applications, the State Board did not make negative findings for planning area need or unnecessary duplication/maldistribution despite a calculated excess of stations and underutilized facilities within the geographic services area. Further, in the RCG Morris relocation from Morris to Plainfield, the State Board found RCG Morris met the relocation criteria despite the fact it did not operate at 80% for four quarters. In fact, the Proposed Project is substantially similar to the RCG Morris relocation, which received a wholly positive State Board Report.

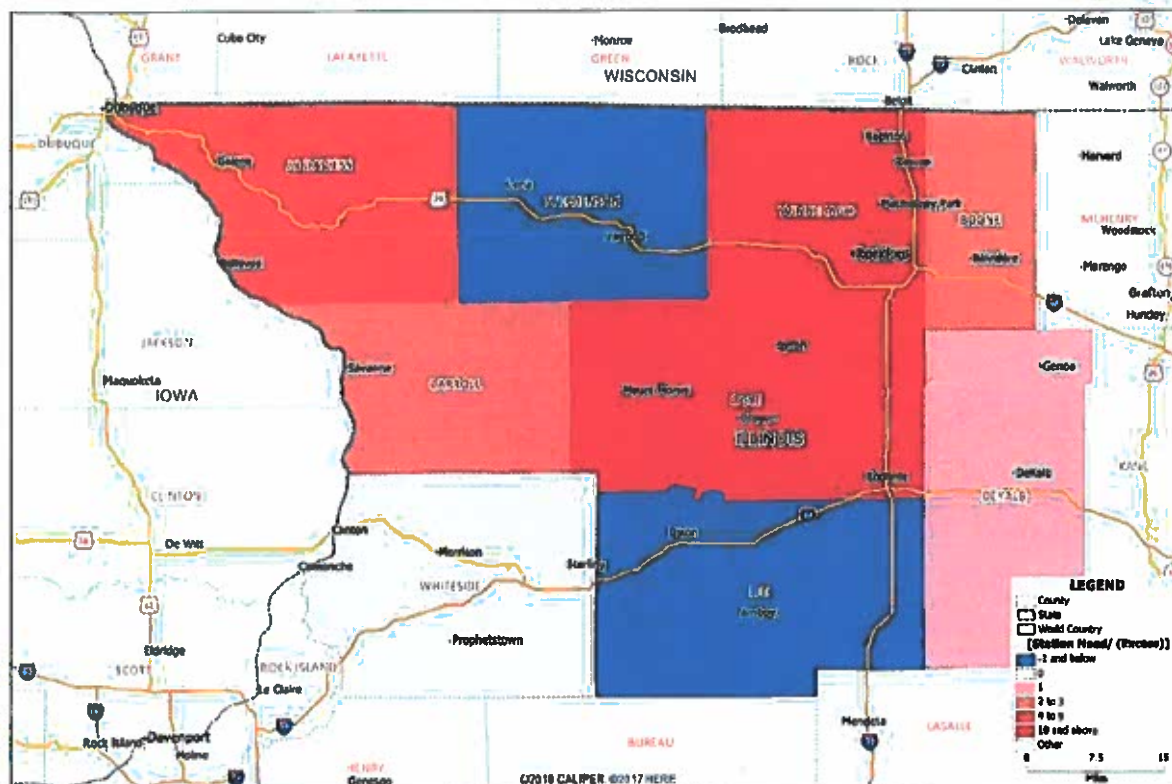
1. Planning Area Need

As of the December 11, 2019 Update to Inventory of Health Care Facilities, a need for 5 stations exists in HSA 1, where the Proposed Project will be located. Importantly, this project proposes the relocation of an existing underutilized facility to another area of HSA 1 where there is limited access. As shown in the map below, Stephenson County, where Freeport Dialysis is located has an excess of stations, and Winnebago County, where the proposed Alpine Dialysis

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will be located, has a need for stations in excess of the number requested for the Proposed Project. The Proposed Project will address this maldistribution by closing stations where there is an excess of stations (and a relatively low population) and establishing an 8 station dialysis clinic in Winnebago County, which has a much larger population, reducing the need to 10 stations.

HSA 1 Station Need/Excess



Importantly, in the RCG Morris State Board Report, the State Board Staff found the proposed project was in conformance with the planning area need criteria despite a calculated excess of 23 stations in HSA 9, acknowledging, “[w]hile there is a calculated excess of stations in this planning area the proposed project will not increase the number of stations in the planning area, allow for increased utilization at the DaVita facility in Morris and improve access in Plainfield.”¹ While this project is substantially similar to the RCG Morris relocation,

¹ Health Facilities and Services Review Board, RCG Morris State Board Report (14) (Mar. 10, 2015) available at <https://www2.illinois.gov/sites/hfsrb/Projects/ProjectDocuments/2014/14-065/12.%2014-065%20RCG%20Morris.pdf> (last visited Feb. 12, 2020) (emphasis added).

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it is differentiated in several ways that favor approval of the project. First, there is a need for stations in HSA 1 where there was no need in HSA 9. Second, the Proposed Project will return two stations to the State Board's inventory, where the RCG Morris project did not. Finally, it allows DaVita's Driftwood facility in Freeport to operate closer to the State Board's utilization standard and improve access in south Rockford, where there is currently no dialysis facility.

2. Unnecessary Duplication/Maldistribution

The Proposed Project received a negative finding for unnecessary duplication/maldistribution based the State Board's determination that the 45 patients identified in Dr. Syed Ahmed's referral letter could be accommodated by existing facilities within the geographic service area. Notably, previous relocation applications received a positive finding on this criterion despite underutilized dialysis facilities in their respective geographic service areas could accommodate the projected patients. In the case of RCG Morris, there were 17 dialysis facilities within the geographic service area with an average utilization of 65.9%. See Exhibit 1. Further, the underutilized clinics had capacity to accommodate the Dr. Alausa's 53 projected referrals. In making a positive finding on this criterion in the Morris application, the State Board staff noted:

[t]he relocated facility will in fact have a positive effect on the current Plainfield clinic by alleviating over utilization. It will also have a positive effect on patients by creating access to additional treatment times. . . . Any future patients from the Morris area will be referred to area facilities based on location of home residence.²

To put these two projects in perspective, when the RCG Morris project was approved, there were 16 dialysis facilities within 30 minutes of the proposed Plainfield North dialysis facility site.³ Three facilities were operating over 80% and average utilization of the 16 facilities was 65.9%. See Exhibit 1. As shown in Table Five of the DaVita Freeport Dialysis State Board Report, there are a total of 7 dialysis clinics within the 17-mile geographic service area. Two of the 7 facilities operated above 80%, and average utilization of the 7 dialysis facilities was 66.52% as of December 31, 2019.⁴ It appears an integral factor for the RCG Morris positive finding on this criterion was the high utilization of the existing Plainfield dialysis facility (83%). While it was the only dialysis clinic in Plainfield, there were other underutilized dialysis facilities in the geographic service area. Not only is the average utilization of facilities within the Proposed Project's geographic service area higher than the proposed FMC Plainfield North geographic service area, but the closest dialysis clinic (Stonecrest Dialysis) is operating at

² Id. at 15.

³ See 77 Ill. Admin. Code §1110.1430(d) (2014) defining the geographic service area as 30 minutes normal travel time of the project's site.

⁴ Health Facilities and Services Review Board, RCG Morris State Board Report (13).

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98.61%, significantly higher than the FMC Plainfield facility in the RCG Morris State Board Report. Accordingly, a similar conclusion should be made about the Proposed Project; *the relocated facility will in fact have a positive effect on Stonecrest Dialysis by alleviating over utilization. It will also have a positive effect on patients by creating access to treatment . . . Any future patients from the Freeport area will be referred to area facilities based on location of home residence.*

3. Relocation

Similar to DaVita Freeport, RCG Morris had not operated at target utilization for the most recent four quarters as required by the relocation criterion. While State Board staff acknowledged the Morris clinic did not meet this requirement, it nonetheless made a positive finding, stating, “[w]hile the proposed facility is not at target occupancy, it does appear that discontinuation of an underutilized facility and the relocation to a location that can improve access in Health Service Areas [sic] IX is warranted.”⁵ The Proposed Project aims to do the same thing as the RCG Morris project, relocate dialysis stations from an underutilized dialysis facility to an underserved area where there currently are no dialysis stations. Accordingly, the Proposed Project should receive a positive finding on this criterion.

The Proposed Project is substantially similar as the RCG Morris project, and in many respects the relocation of stations from Freeport to Rockford is more compelling than that presented in the RCG Morris project. Accordingly, as was the case for the RCG Morris project, the State Board Report for the Proposed Project should be wholly positive. References to other relocations including RCG Morris are not to suggest that the HFSRB must perform “comparative” review or “batch” projects.⁶ Rather, we put forward that treating similar facts and circumstances disparately results in the variable and inconsistent rule application of the same rules to different projects based on elements of the project that cannot be distinguished by an observer.

⁵ *Id.* at 17.

⁶ In the context of the Board’s regulations, the reference to comparative reviews refers to a practice of administering planning agency matters on a cyclical basis (e.g., twice a year or every quarter). Batching which is administered in three of the four states that health planning consultants at Governors State University studied at the State Board’s behest (Michigan, Florida and New Jersey), offers the possibility of comparing the relative merits of several comparable projects all seeking to address the same community need when the community’s need can be adequately filled by any one of the proposed projects. As an aside, despite the fact that these consultants recommended commencing a batching process to improve consistency in application review, batching has not been implemented in Illinois. See Governors State University, College of Health Professionals Health Administration Program, Certificate of Need Programs: A Comparative Assessment *available at* <https://www2.illinois.gov/sites/hfsrb/InventoriesData/Other/Documents/CON%20Programs%20A%20Comparative%20Assessment.pdf> (last visited Feb. 13, 2020).



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Thank you for your consideration of the Applicants' response to the State Board's findings for the DaVita Freeport Dialysis certificate of need application.

Sincerely,

A handwritten signature in black ink that reads 'Anne M. Cooper'.

Anne M. Cooper

Exhibit 1

Dialysis Clinics within 30 Minutes of the Proposed FMC Plainfield North 12/31/2014 ⁷						
Facility	City	Straight-Line Distance	Travel Time	Number of Stations	Number of Patients	Utilization %
Fresenius Medical Care of Plainfield	Plainfield	3.9	9.5	16	80	83.3%
USRC Bolingbrook	Bolingbrook	7.8	15.1	13	45	57.7%
Renal Center West Joliet	Joliet	5.9	15.1	29	124	71.3%
Fresenius Medical Care Naperville	Naperville	8.0	17.3	24	79	54.9%
Fox Valley Dialysis Center	Aurora	8.4	17.4	29	129	74.1%
Bolingbrook Dialysis Center	Bolingbrook	8.6	18.0	24	120	83.3%
DaVita Sun Health	Joliet	7.5	21.1	17	54	52.9%
Fresenius Medical Care of Oswego	Oswego	10.5	23.4	19	56	49.1%
FMC Dialysis Services of Willowbrook	Willowbrook	17.1	24.9	20	81	67.5%
Fresenius Medical Care Joliet	Joliet	9.6	25.6	18	66	61.1%
Fresenius Medical Care of Naperville North	Naperville	11.5	25.9	21	73	57.9%
Aurora Dialysis Center	Aurora	12.9	27.4	24	142	98.6%
USRC Oak Brook	Downers Grove	17.8	27.9	13	42	53.8%
Renal Center New Lenox	New Lenox	12.5	29.3	19	84	73.7%
Yorkville Dialysis Center	Yorkville	13.8	29.4	8	17	35.4%
Downers Grove Dialysis Center	Downers Grove	17.1	29.6	16	74	77.1%
Total				320	1266	65.9%

⁷ Illinois Health Facilities and Services Review Board, December 31, 2014 ESRD Quarterly Utilization.