POLSINELLI

161 N. Clark Street, Suite 4200, Chicago, IL 60601-3316 • 312.819.1900

July 10, 2013

Charles P. Sheets
(312) 873-3603
(312) 819-1910
csheets@polsinelli.com

**FEDERAL EXPRESS**



Courtney Avery
Administrator
Illinois Health Facilities and Services Review Board
525 West Jefferson
Springfield, Illinois 62761

**Re: West Side Dialysis (Proj. No. 12-102)**
**Additional Information in Response to Intent-to-Deny**

Dear Ms. Avery:

Polsinelli PC represents DaVita HealthCare Partners Inc. and Total Renal Care, Inc. (collectively, the "Applicants"). We are writing in response to the issuance by the Illinois Health Facilities and Services Review Board (the "Board") of an intent-to-deny the Applicants' CON permit application for West Side Dialysis, Project No. 12-102. The Applicants seek to establish a 12-station in-center hemodialysis facility to be located at 1600 West 13th Street, Chicago, Illinois. With this letter, the Applicants submit additional information in support of their proposal and also modify the Certificate of Need application to reduce the proposed project's construction costs which brings the project into conformance with the Board's Part 1120 requirements.

***Planning Area Need***

There is a documented need for 15 dialysis stations in the City of Chicago based upon the Board's need calculation and inventory. The reason that need projections are made is to ensure that necessary services are available in the future as the demand for a service increases. Dialysis utilization has consistently increased over the last decade. The Board's need figure is a projection made as part of the State's planning process. Given the growth in utilization, it is not inconsistent that a need for services exists notwithstanding some capacity based on a look back at historical utilization.

Access to dialysis services in the City of Chicago is not comparable to access in the adjacent suburbs. As discussed below Chicago is disproportionately poor with a significant African American and Hispanic population. ESRD patient numbers between these HSAs are virtually the same, with Chicago having slightly more, 4685 patients as of December 31, 2011 versus 4674 patients in the near suburbs. However, the suburban patients have better access to treatment with 990 stations for Chicago residents and 1065 stations for suburban Cook and DuPage counties. This data also shows that of the patients treated in the City of Chicago, 21% were Hispanic and 71% were people of African American or non-White. By contrast, of the

patients treated in suburban Cook and DuPage counties, approximately 12% were Hispanic and 54% African American or non-white. This disparity in access is troubling given the racial disparity between the two areas for health care services. Inadequate access to dialysis treatment could lead to higher rates of non-compliance, thereby increasing mortality rates along with the increased cost of dialysis treatments in the emergency room.

There have been relatively few new dialysis units in the City of Chicago. Despite a significant Board-calculated need for dialysis stations in recent years, the only new facilities that have been established in the last three years in Chicago are one in Streeterville, one in Lawndale, one near Cicero, one on the far South Side and one in Logan Square. All these facilities address the needs of different patient bases.

Further, the most recently approved project was for a large facility in Streeterville. As a location for chronic disease management requiring treatments three times a week, Streeterville is nearly as inaccessible as any other area in the City of Chicago. Streeterville is an affluent neighborhood bounded by water on three sides and the Magnificent Mile shopping district to the west. Parking costs alone will discourage the very people who need these services to utilize this location. A recent article in the Tribune mentioned that fewer parents are visiting their children in the NICU at Lurie Children's due to the high cost of parking at the Northwestern campus. In contrast, the proposed facility is located in an accessible location that is well positioned to serve an underprivileged patient population. It was very difficult to find a viable piece of real estate in this Lower West Side Chicago and this ideal location should be approved.

***Urban Poverty, Health Care Disparities and Kidney Care as a Safety Net Service***

The proposed facility will be located in a community which has a disproportionate Hispanic and African American population compared to the State of Illinois as a whole. The residents of Chicago are also poorer than the population as a whole in the State.

- Thirty-three percent of Chicagoans are African American and 29% are Hispanic. These figures compare to 15% and 16% respectively in the State of Illinois as a whole. The demographics of the communities immediately surrounding the proposed site have different but similarly disparate ethnic populations with a 60% Hispanic and 25% African American population.

- The median household income in Chicago is $47,371 compared to $56,576 in the State of Illinois.

- 21.4% of Chicagoans live below the poverty level compared to 13.1% in the State of Illinois.

- The death rate from all causes is 60% higher in Chicago's poorest neighborhoods compared to Chicago's most affluent neighborhoods.

Residents in Chicago's poorer neighborhoods have the lowest educational attainment, the lowest access to food and are not expected to live past 70. Poor neighborhoods have a profound

need for commercial enterprises. Because of poverty, market forces do not drive the development of medical and retail services. The neighborhoods have trouble attracting high-quality health care providers; offer less access to primary care for children; have fewer specialists available; and have longer wait times for kidney transplants. Further, pharmacies in segregated neighborhoods are less likely to stock sufficient medicines.[1]

Due to race demographics and socioeconomic conditions in the City of Chicago's Lower West Side, the communities surrounding the proposed location exhibit a higher prevalence of obesity, diabetes and hypertension (high blood pressure). Diabetes and hypertension are the two leading causes of kidney failure. In fact, the end stage renal disease (ESRD) incident rate among the Hispanic population is 1.5 times greater than the incident rate in the non-Hispanic population. Among African Americans, this incident rate is 3 times greater than the rate among whites. Further, the adjusted incident rate for ESRD due to diabetes nationally is higher amongst Hispanics and African Americans compared to non-Hispanic whites. In addition, 2011 data on the number of kidney patients in Illinois ranks this community near the top of this list. Not only is Chicago a high-demand community for dialysis currently, decreasing mortality rates among DaVita's dialysis patients throughout the years coupled with future demand for dialysis make the Lower West Side community an appropriate location for additional services.

Many of the patients Dr. Hollandsworth, the planned medical director at West Side Dialysis, anticipates referring to the facility are uninsured and receive chronic kidney disease (CKD) treatment overseen by him and his partner, Dr. Cook, at a clinic in Cook County Health System's Provident Hospital. Provident Hospital is responsible for providing a wide array of health care services to the low-income residents of Cook County, including pre-ESRD care. While most patients who suffer from ESRD are eligible for Medicare or Medicaid coverage, they do not receive coverage during the earlier stages of CKD before they require dialysis. As a result, these patients often do not have access to the care necessary to treat their disease and delay the onset of ESRD.

Once these patients kidneys fail, these individuals must either receive a transplant or start renal replacement therapy, which is also known as dialysis. While some facilities near the proposed facility have capacity for new patients, Dr. Hollandsworth and his partner do not round at many of these facilities, as they need to see patients at facilities relatively close to their CKD clinic at Provident Hospital. Dr. Hollandsworth refers many of his patients to Emerald Dialysis, where he serves as a medical director, but this facility is operating at 90% utilization, as of March 31, 2013, and can no longer accommodate his large patient-base. Further, they have historically referred many patients to John H. Stroger Hospital of Cook County, but this is no longer a viable option because the hospital must utilize its dialysis stations for inpatients.

In the absence of the proposed facility, patients will have to go to a facility where Drs. Hollandsworth and Cook do not round. These doctors often work with their patients for years during the early stages of CKD and patients have entrusted them with the management of their

---

[1] *See More Ills Affecting Chicago's Poor*, CRAIN'S BLOGS (Aug. 23, 2012), http://www.chicagobusiness.com/article/20120823/BLOGS08/120829878/more-ills-affecting-chicagos-poor#ixzz2XuFWnu6g.

care. When they tell their patients that they will not be overseeing their dialysis, it makes the transition to dialysis, which is difficult in and of itself, much more difficult because they feel that their physician has abandoned them. This is particularly true for these patients who have difficulty finding affordable options for care, but have been able to develop a relationship with their physician at Provident's CKD clinic.

If patients were placed in a limited number of facilities near their clinic and where Drs. Hollandsworth Cook have privileges, it would limit the time spent traveling between facilities and would allow the physician to not only round on each of his patients but to spend more time with them to ensure he is available to educate and address any issues related to their dialysis or disease management, in short, to be there for his patients.

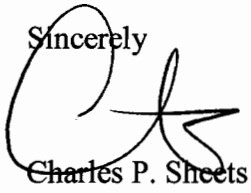
***Construction Cost Reduction***

Enclosed with this letter is a modification to the Applicants' CON application reducing the project costs by approximately $75,000. As a result, the proposed project is now in compliance with Section 1120 of the Board's rules.

***

Thank you for your time and consideration. If you need any additional information regarding the proposed project, feel free to contact me at 312-873-3605 or csheets@polsinelli.com.

Sincerely



Charles P. Sheets

cc: Mike Constantino, HFSRB
Penny D. Davis, DaVita HealthCare Partners Inc.
Tim Tincknell, DaVita HealthCare Partners Inc.

## Project Costs and Sources of Funds

Complete the following table listing all costs (refer to Part 1120.110) associated with the project. When a project or any component of a project is to be accomplished by lease, donation, gift, or other means, the fair market or dollar value (refer to Part 1130.140) of the component must be included in the estimated project cost. If the project contains non-reviewable components that are not related to the provision of health care, complete the second column of the table below. Note, the use and sources of funds must equal.

| Project Costs and Sources of Funds | | | |
|---|---|---|---|
| **USE OF FUNDS** | **CLINICAL** | **NONCLINICAL** | **TOTAL** |
| Preplanning Costs | | | |
| Site Survey and Soil Investigation | | | |
| Site Preparation | | | |
| Off Site Work | | | |
| New Construction Contracts | | | |
| Modernization Contracts | $1,104,350 | | $1,104,350 |
| Contingencies | $110,652 | | $110,652 |
| Architectural/Engineering Fees | $87,650 | | $87,650 |
| Consulting and Other Fees | $87,500 | | $87,500 |
| Movable or Other Equipment (not in construction contracts) | $458,833 | | $458,833 |
| Bond Issuance Expense (project related) | | | |
| Net Interest Expense During Construction (project related) | | | |
| Fair Market Value of Leased Space or Equipment | $809,365 | | $809,365 |
| Other Costs To Be Capitalized | | | |
| Acquisition of Building or Other Property (excluding land) | | | |
| **TOTAL USES OF FUNDS** | $2,658,350 | | $2,658,350 |
| **SOURCE OF FUNDS** | **CLINICAL** | **NONCLINICAL** | **TOTAL** |
| Cash and Securities | $1,848,985 | | $1,848,985 |
| Pledges | | | |
| Gifts and Bequests | | | |
| Bond Issues (project related) | | | |
| Mortgages | | | |
| Leases (fair market value) | $809,365 | | $809,365 |
| Governmental Appropriations | | | |
| Grants | | | |
| Other Funds and Sources | | | |
| **TOTAL SOURCES OF FUNDS** | $2,658,350 | | $2,658,350 |

**NOTE: ITEMIZATION OF EACH LINE ITEM MUST BE PROVIDED AT ATTACHMENT-7, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.**

**The following Sections DO NOT need to be addressed by the applicants or co-applicants responsible for funding or guaranteeing the funding of the project if the applicant has a bond rating of A- or better from Fitch's or Standard and Poor's rating agencies, or A3 or better from Moody's (the rating shall be affirmed within the latest 18 month period prior to the submittal of the application):**

- **Section 1120.120 Availability of Funds – Review Criteria**
- **Section 1120.130 Financial Viability – Review Criteria**
- **Section 1120.140 Economic Feasibility – Review Criteria, subsection (a)**

**VIII. - 1120.120 - Availability of Funds**

The applicant shall document that financial resources shall be available and be equal to or exceed the estimated total project cost plus any related project costs by providing evidence of sufficient financial resources from the following sources, as applicable: **Indicate the dollar amount to be provided from the following sources:**

| | | |
|---|---|---|
| $1,848,985 | a) | Cash and Securities – statements (e.g., audited financial statements, letters from financial institutions, board resolutions) as to:<br>1) the amount of cash and securities available for the project, including the identification of any security, its value and availability of such funds; and<br>2) interest to be earned on depreciation account funds or to be earned on any asset from the date of applicant's submission through project completion; |
| _____ | b) | Pledges – for anticipated pledges, a summary of the anticipated pledges showing anticipated receipts and discounted value, estimated time table of gross receipts and related fundraising expenses, and a discussion of past fundraising experience. |
| _____ | c) | Gifts and Bequests – verification of the dollar amount, identification of any conditions of use, and the estimated time table of receipts; |
| $809,365 (FMV of Lease) | d) | Debt – a statement of the estimated terms and conditions (including the debt time period, variable or permanent interest rates over the debt time period, and the anticipated repayment schedule) for any interim and for the permanent financing proposed to fund the project, including:<br>1) For general obligation bonds, proof of passage of the required referendum or evidence that the governmental unit has the authority to issue the bonds and evidence of the dollar amount of the issue, including any discounting anticipated;<br>2) For revenue bonds, proof of the feasibility of securing the specified amount and interest rate;<br>3) For mortgages, a letter from the prospective lender attesting to the expectation of making the loan in the amount and time indicated, including the anticipated interest rate and any conditions associated with the mortgage, such as, but not limited to, adjustable interest rates, balloon payments, etc.;<br>4) For any lease, a copy of the lease, including all the terms and conditions, including any purchase options, any capital improvements to the property and provision of capital equipment;<br>5) For any option to lease, a copy of the option, including all terms and conditions. |
| _____ | e) | Governmental Appropriations – a copy of the appropriation Act or ordinance accompanied by a statement of funding availability from an official of the governmental unit. If funds are to be made available from subsequent fiscal years, a copy of a resolution or other action of the governmental unit attesting to this intent; |
| _____ | f) | Grants – a letter from the granting agency as to the availability of funds in terms of the amount and time of receipt; |
| _____ | g) | All Other Funds and Sources – verification of the amount and type of any other funds that will be used for the project. |
| **$2,658,350** | | **TOTAL FUNDS AVAILABLE** |

**APPEND DOCUMENTATION AS ATTACHMENT-39, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.**

**Section I, Identification, General Information, and Certification**
**Project Costs and Sources of Funds**

| Table 1120.110 | | | |
|---|---|---|---|
| **Project Cost** | **Clinical** | **Non-Clinical** | **Total** |
| Modernization Contracts | $1,104,350 | | $1,104,350 |
| | | | |
| Contingencies | $110,652 | | $110,652 |
| | | | |
| Architectural/Engineering Fees | $87,650 | | $87,650 |
| | | | |
| Consulting and Other Fees | $87,500 | | $87,500 |
| | | | |
| Moveable and Other Equipment | | | |
| Communications | $57,725 | | $57,725 |
| Water Treatment | $111,230 | | $111,230 |
| Bio-Medical Equipment | $8,885 | | $8,885 |
| Clinical Equipment | $198,435 | | $198,435 |
| Clinical Furniture/Fixtures | $15,504 | | $15,504 |
| Lounge Furniture/Fixtures | $2,815 | | $2,815 |
| Storage Furniture/Fixtures | $5,359 | | $5,359 |
| Business Office Fixtures | $24,925 | | $24,925 |
| General Furniture/Fixtures | $21,455 | | $21,455 |
| Signage | $12,500 | | $12,500 |
| Total Moveable and Other Equipment | $458,833 | | $458,833 |
| | | | |
| Fair Market Value of Leased Space | $809,365 | | $809,365 |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| **Total Project Costs** | **$2,658,350** | | **$2,658,350** |

**Section I, Identification, General Information, and Certification**
**Cost Space Requirements**

| Cost Space Table | | | | | | | |
|---|---|---|---|---|---|---|---|
| | | Gross Square Feet | | Amount of Proposed Total Gross Square Feet That Is: | | | |
| Dept. / Area | Cost | Existing | Proposed | New Const. | Modernized | As Is | Vacated Space |
| CLINICAL | | | | | | | |
| ESRD | $2,658,350 | | 6,700 | | 6,700 | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| Total Clinical | $2,658,350 | | 6,700 | | 6,700 | | |
| | | | | | | | |
| NON REVIEWABLE | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| Total Non-Reviewable | | | | | | | |
| TOTAL | $2,658,350 | | 6,700 | | 6,700 | | |

**Section X, Economic Feasibility Review Criteria**
**Criterion 1120.140(c), Reasonableness of Project and Related Costs**

1. The Cost and Gross Square Feet by Department is provided in the table below.

| COST AND GROSS SQUARE FEET BY DEPARTMENT OR SERVICE | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| Department (list below) | A | B | C | D | E | F | G | H | Total Cost (G + H) |
| | Cost/Square Foot New | Cost/Square Foot Mod. | Gross Sq. Ft. New Circ.* | | Gross Sq. Ft. Mod. Circ.* | | Const. $ (A x C) | Mod. $ (B x E) | |
| ESRD | | $164.83 | | | 6,700 | | | $1,104,350 | $1,104,350 |
| Contingency | | $16.51 | | | 6,700 | | | $110,652 | $110,652 |
| TOTALS | | $181.34 | | | 6,700 | | | $1,215,002 | $1,215,002 |
| * Include the percentage (%) of space for circulation | | | | | | | | | |

2. As shown in Table 1120.310(c) below, the project costs are below the State Standard.

| Table 1120.310(c) | | | |
|---|---|---|---|
| | **Proposed Project** | **State Standard** | **Above/Below State Standard** |
| Modernization Contracts | $1,104,350 | $183.14 per gsf x 6,700 gsf = $183.14 x 6,700 = $1,227,038 | Below State Standard |
| Contingencies | $110,652 | 10-15% of Modernization Contracts = 10-15% x $1,104,350 = $110,435 - $165,652 | Meets State Standard |
| Architectural/Engineering Fees | $87,650 | 6.90% - 10.36% x (Modernization Costs + Contingencies) = 6.90% - 10.36% x ($1,104,350 + $110,652) = 6.90% - 10.36% x $1,215,002 = $83,835 - $125,874 | Meets State Standard |
| Consulting and Other Fees | $87,500 | No State Standard | No State Standard |
| Moveable Equipment | $458,833 | $39,945 per station x 12 stations $39,945 x 12 = $479,340 | Below State Standard |