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Via Hand Delivery by 9:00 a.m.
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RECEIVED
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HEALTH FACILITIES &
SERVICES REVIEW BOARD

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

Re: Dialysis Care Center Rockford (Proj. No. 19-044) - Technical Comment to State Board Report

Dear Ms. Avery:

Polsinelli represents DaVita Inc. In this capacity, we are writing in response to the Illinois Health Facilities and Services Review Board's ("State Board") findings on the Dialysis Care Center Rockford ("DCC Rockford") project to establish an 8 station dialysis facility tin Rockford (the "Proposed Project"). Pursuant to Section 6(c-5) of the Illinois Health Facilities Planning Act, DaVita submits the following in response to the State Board's findings.

Our view of DCC Rockford's failure to comply with the projected utilization and impact of project on other area providers review criteria diverges with the State Board's, and the Proposed Project should receive negative findings on these two additional criteria.

1. Projected Utilization

Section 1110.120(b) of the State Board's regulations states, "[T]he applicant shall document that, by the end of the second year of operation, the annual utilization of the clinical service areas or equipment shall meet or exceed the utilization standards specified in Appendix B. ***The number of years projected shall not exceed the number of historical years documented.***"[1] Based on its historical referral volumes, DCC Rockford failed to demonstrate the 39 projected referrals will materialize within two years of project completion without adversely impacting other providers in the area.

[1] 77 Ill. Admin. Code § 1110.120(b) (emphasis added).

In his referral letter, Dr. Talal Mahmood claims he and his partner Dr. Krishna Manda anticipate referring 45 patients to DCC Rockford.[2] As previously noted, the historical data in Dr. Mahmood's referral letter does not support this projected number of referrals. In determining the projected referrals do not exceed historical referrals, State Board staff appears to have included referral data on pages 3-4 of the referral letter (App. pp 190-191) as well as referral data on pages 14-15 of the referral letter (App pp 201-202). There are several issues with the concept that historical referrals exist to support the projected referrals. First, on Table 5 of the State Board Report, State Board staff calculated 30 referrals in 2019. This seems to be based on the data on pages 3-4 of Dr. Mahmood's referral letter indicating Kidney Care Center Rockford referred 24 patients for in-center hemodialysis and the data on page 15 of the letter showing Dr. Mahmood referred 6 patients for in-center hemodialysis in 2019. Importantly, pages 3 and 4 of the letter do not indicate the year in which those referrals were made. Accordingly, that referral data likely reflects referrals made by Drs. Mahmood and Manda over the course of their tenure at Kidney Care Center, which goes back at least 5 years, and not within the last year. Secondly, it is important to note Drs. Mahmood and Manda are the only practicing nephrologists at Kidney Care Center Rockford.[3] By including the historical referral data for both Kidney Care Center Rockford (App pp 190-191) and Dr. Mahmood's historical referrals from 2015 to 2019 (App. pp 201-202), Dr. Mahmood's historical referrals were included twice in the State Board's calculation of historical referrals. At most, Kidney Care Center Rockford referred 27 patients for in-center hemodialysis over the past five years, which does not support the projected referrals for the Proposed Project. In analyzing Table 5 (State Board Report p 11), the 2019 historical data stands out as an outlier. It is hard to conceive Drs. Mahmood and Manda collectively averaged 2.25 referrals from 2015 to 2018 and then referred 30 patients in 2019 alone (an increase of 1,333%).

In light of the State Board's rule stating "[h]istorical data used to calculate projections shall be for a number of years no less than the number of years projected,"[4] only two years of historical data is required for the physician referral letter, as approved projects are to reach the State Board's standard of 80% utilization within two years of project completion.[5] To justify the 39 projected referrals, Dr. Mahmood included five years of "historical data". Given the issues with inclusion of the data on pages 3-4 of the referral letter and as well as the apparent duplicate counting of Dr. Mahmood's referrals on pages 14-15 of the referral letter, sufficient historical referrals do not exist to justify the projected referrals.

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[2] Dialysis Care Center, Notice of Project Updated Address – Dialysis Care Center Rockford, Rockford Project #19-044 (Dec. 18, 2019) (11-12).

[3] See Kidney Care Center Rockford Physician webpage *available at* https://kccrockford.com/physicians/.

[4] 77 Ill. Admin. Code § 1110.230(b)(4)(C)(iv).

[5] See 77 Ill. Admin. Code § 1110.230(j)(1).

2. Impact of Project on Other Area Providers

Given Drs. Mahmood and Manda may have only referred 15 patients for in-center hemodialysis over the past five years (only 9 of which were referred in the past two years),[6] it begs the question where will patients come from? The likely answer is transfers from DaVita's Rockford area in-center hemodialsyis facilities. Drs. Mahmood and Manda currently treat 17 patients at DaVita's Rockford area facilities. Based on historical referral data, the only way DCC Rockford will achieve 80% utilization is by transferring patients from Rockford area facilities, which will adversely affect these facilities, contrary to DCC Rockford's claim that the Proposed Project "will not have an adverse impact on existing facilities in the proposed geographic service area. . . ***No patients will be transferred from other existing dialysis facilities***."[7]

Through Dr. Mahmood's referral letter, DCC Rockford has not adequately demonstrated it has sufficient referrals to justify the establishment of an 8 station dialysis facility in Rockford. Further, given the lack of historical referrals, the Proposed Project will likely result in the transfer of patients and adversely affect existing dialysis facilities in Rockford.

Thank you for your consideration of this response to the State Board's findings for Dialysis Care Center Rockford certificate of need application.

Sincerely,

Anne M. Cooper

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[6] See Dr. Talal Mahmood Referral Letter (14-15).

[7] Dialysis Care Center Rockford, Application for Permit 111 (Sep. 20, 2019) *available at* https://www2.illinois.gov/sites/hfsrb/Projects/Pages/Dialysis-Care-Center-Rockford,-Rockford--19-044.aspx.