



STATE OF ILLINOIS  
**HEALTH FACILITIES AND SERVICES REVIEW BOARD**

525 WEST JEFFERSON ST. • SPRINGFIELD, ILLINOIS 62761 • (217) 782-3516 FAX: (217) 785-4111

<b>DOCKET ITEM NUMBER:</b> E-01	<b>BOARD MEETING:</b> August 6, 2019	<b>PROJECT NUMBER:</b> NA
<b>BUSINESS ITEM:</b> Declaratory Ruling Request		
<b>SUBJECT:</b> Final Cost Report/DaVita Inc.		

**STATE BOARD STAFF REPORT**  
**DECLARATORY RULING REQUEST**

**I. Request for Declaratory Ruling**

The State Board Staff is requesting guidance from the State Board regarding issuing completion letters for projects approved and completed by DaVita Inc.

DaVita Inc. has informed the State Board the general contractor for the four projects listed below has failed to pay the subcontractors for the work the subcontractors have performed. The subcontractors will not perform any additional work on any project until payment is made to them for the work performed. For projects for which construction is complete, subcontractors are placing liens on the property which violate DaVita’s lease agreement. DaVita Inc. has committed to pay the subcontractors and pursue the general contractor for payment thru legal means.

The failure of the general contractor to pay the subcontractors involves these four permits.

Springfield Central Dialysis (Permit #16-036) was approved in January of 2017 to relocate a 21-station ESRD facility in Springfield, Illinois at a cost of approximately \$5.1 million. The project is complete, the facility Medicare certified, and patients are being provided dialysis. A final cost report has not been filed.

Illini Renal (Permit #17-032) was approved in November of 2017 to relocate a 12-station ESRD facility and add 6 stations for a total of 18-stations in Champaign, Illinois at a cost of approximately \$4.2 million. The project is complete, the facility Medicare certified, and patients are being provided dialysis. A final cost report has been filed without Form G-702.

Edgemont Dialysis (#17-040) was approved in January of 2018 to establish a 12-station ESRD facility in East St. Louis, Illinois at a cost of approximately \$2.7 million. The project is complete, Medicare Certified, operating and has filed their final cost report without the G-702 Form that is required by Board rules.

Northgrove Dialysis has submitted a permit renewal (#17-049) that is scheduled to be heard at the August 6, 2019 State Board Meeting.

**TABLE ONE  
DAVITA PROJECTS**

Project Name		Permit #	CON Approval	Project Completion Date	Medicare Certification	Notice of Project Completion Submitted	Final Project Cost Report Submitted
Springfield Central Dialysis	Springfield	16-036	1/24/2017	3/31/2019	2/19/2018	2/23/2018	
Illini Renal	Champaign	17-032	11/14/2017	5/31/2019	3/6/2019	5/22/2019	5/22/2019
Edgemont Dialysis	East St. Louis	17-040	1/9/2018	5/31/2019	3/19/2019	5/22/2019	5/22/2019
Northgrove Dialysis	Highland	17-049	4/17/2018	7/31/2019	Permit Renewal Request Filed June 13, 2019 extends the completion date to February 2020.		

### **III. Reason for the Request**

The State Board Staff is looking for guidance on how to proceed with the three projects (Springfield, Central Dialysis, Illini Renal, Edgemont Dialysis) that have been completed, Medicare Certified, operating and a final cost report has been submitted or will be submitted to the Board.

The fourth project, Northgrove Dialysis (Permit #17-049) has requested a permit renewal. According to that request the facility has two components left: begin treating patients and Medicare Certification. The final cost report for this project if it remains on schedule would be filed in the second quarter of 2020.

With DaVita Inc. agreeing to pay the subcontractors for the work already paid to the general contractor DaVita Inc. will be “paying for the same services twice.” Additionally, the Board rules require that Form G-702<sup>1</sup> be submitted with the final cost report from DaVita Inc. That form has not been filed and most likely will not be submitted for the projects listed in Table One above.

The statute defines a capital expenditure as an expenditure: (A) made by or on behalf of a health care facility (as such a facility is defined in this Act); and (B) which under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance, or is made to obtain by lease or comparable arrangement any facility or part thereof or any equipment for a facility or part; and which exceeds the capital expenditure minimum.

---

<sup>1</sup>Form G702 is the American Institute of Architects form that contractors use to request payment from an architect. It can accompany or replace form G703. Forms G702 and G703 are forms that ask for very specific information such as a summary of change orders, current payment requested and the total dollar amount of work completed. These forms allow architects to verify that payment is due, and they help reduce the chances of error either on the part of the contractor or on the part of the architect. After the contractor fills out the form, it is sent to the architect, who reviews it and then signs it when satisfied with its accuracy. A signature verifies that payment is due to the contractor.

**IV. Possible State Board Action**

1. Require DaVita Inc. to request permit renewals until the dispute is settled and all the documentation required by the State Board is filed.
2. For Springfield Central Dialysis, Illini Renal and Edgemont Dialysis accept the final cost report as filed without the Form G-702 and accept DaVita Inc.'s attestation "*that the Pursuant to 77 Ill. Admin. Code §1130.770, DaVita certifies the final realized costs, as itemized, are the total costs required to complete the project and that there are no additional associated costs or capital expenditures related to the project. I further certify DaVita has complied with all of the terms of the permit to date and all information submitted in this cost report for the facility is true and correct.*"
3. Should the State Board desire Permit #17-049 could be considered as part of this declaratory ruling request or the State Board could delay action until all the final cost report information has been submitted and revisit this issue at that time.
4. Consider the payment to the subcontractors as a cost in excess of the approved permit amount and refer the matter to the General Counsel.

As noted in the Table above Permits #16-036, #17-032 and #17-040 are completed, Medicare Certified, and are providing dialysis services to patients. No patient is in jeopardy of being denied service at these facilities because of the failure of the general contractor to pay the subcontractors.

**V. Applicable Statute and Rules**

The statute requires a permit holder to *submit the final completion and cost report for the project within 90 days after the approved project completion date or extension date.*"

**77 ILAC 1130.770 - Project Completion, Final Realized Costs and Cost Overruns**

Board rules (77 ILAC 1130.770) require the permit holder to submit a notice that the project has been brought to a conclusion and submit a report of final realized costs containing the following:

- 1) a detailed itemization of all project costs and sources of funds;
- 2) a certification that the final realized costs, as itemized, are the total costs required to complete the project and that there are no additional associated costs or capital expenditures related to the project;
- 3) certification attesting to compliance with the requirements of this Section shall be in the form of a notarized statement signed by an authorized representative of the permit holder; and;
- 4) for major construction projects, the final Application and Certification for Payment for the construction contract, as per form G702 published by the American Institute of Architects or equivalent.

**77 IAC 1130.810 Declaratory Rulings**

HFSRB shall render determinations on various matters relating to permits and the applicability

of the statute and regulations. Requests for determination shall be made in writing. Pursuant to Section 5-150 of the Illinois Administrative Procedure Act, such determinations are declaratory rulings and are not subject to appeal. The following matters shall be subject to declaratory rulings by HFSRB includes, but are not limited, to:

- a) whether a proposed project requires a permit or exemption;
- b) corrections to the facility inventories utilized by HFSRB;
- c) recognition that a service was in existence prior to permit requirements;
- d) amount of fees required;
- e) project classification as substantive or non-substantive; and
- f) applicability of rules.

BOARD NOTE: Declaratory ruling requests pertaining to an application for permit or exemption during the review period may be submitted only by the applicant and by IDPH.

V. **Other Information**

Appended to this report is the permit letters for the four projects.