



DaVita submits the following comments in response to the Department's invitation to comment on the following topics:

Topic # 1 – Release valve for facilities at or over capacity

Topic # 2 – Out of state exemption proposal to address the Tri-State Dialysis situation in Clarkston, WA and Lewiston, ID.

**Topic # 1 – Release valve for facilities at or over capacity**

The problem we see is that delays encountered under current dialysis rules can deny patients access to reasonably convenient dialysis services. The CON rules should allow providers to meet the increasing need for dialysis services so that patients are able to treat at the facility of their choice within waking hours. The current rules lead to long delays between when need arises and when it can be met. As a result, patients often have no option except to dialyze at inconvenient times or places. We believe there are many possible solutions to this problem and we've outlined a few below. They could be used independently or in conjunction with each other:

**Use planning area utilization instead of facility utilization or use both together.** Examples:

- Stations can be awarded if the planning area utilization is above 60% and each facility is above 40%. or
- Stations can be awarded if planning area utilization is above 70%, regardless of facility utilization.

**Lower the utilization threshold.**

- The current length of the CON process means we need to start applications sooner in order to prevent over-filled centers; lowering the utilization threshold will allow earlier applications.

**For high utilization planning areas allow additional stations even if the need methodology projects no need.**

- Sometimes planning area boundaries create distortions in need projection/utilization patterns. To compensate for this, CON rules should allow for additional station awards in planning areas that show high overall utilization (90%) even if the need methodology projects no need.

**Automatic +2 Expansion.**

- When an existing facility is operating above 90% utilization for 2 consecutive quarters, the facility should be allowed to add 2 stations to its existing station count, if it is able to do so without construction costs. Adding stations to an existing facility is the least costly, fastest, easiest way to serve the state’s dialysis patients.
- A small, low-cost and automatic expansion would allow successful facilities to continue to accept patients without blocking new entrants from the planning area. The automatic expansion approach could be adopted in conjunction with a lower utilization threshold to ensure the small expansions would not block other entrants from a growing planning area.
- Why 90% instead of 100%? Because we want to solve problems for the patients before they become problems. Even the fastest process is going to have a 6-12 month lag time. A 90% utilization threshold applied in two consecutive quarters would allow providers to respond more quickly to capacity shortages than a 100% threshold would allow.
- Applications and approvals for these could be simple and fast since any facility operating at 90% capacity already is hitting all of the CON guidelines.
- Applications could be simple and short. The necessary information would be limited to: Planning area, NW Renal Network Data for the last 2 quarters, existing floor plan with indications for where the new stations would be added, and a declaration of no construction costs. The review for each application would take 5 minutes.
- Practically, it could work like this:

<b>Steps in the Application Sequence</b>	<b>Example Dates</b>
NW Renal Network Date Published	Feb 15 <sup>th</sup>
Applications for “Auto +2” Due	March 1
Applications For Auto +2 Reviewed and Approved	March 15 <sup>th</sup>
LOI for regular applications	April 1
Applications for regular applications	May 1

**Topic # 2 – Out of state exemption proposal to address the Tri-State  
Dialysis situation in Clarkston, WA and Lewiston, ID**

Tri-State Memorial Hospital (“Tri-State”) has requested an amendment to the general rule regarding relocation of dialysis facilities in order to accommodate its current station surplus. We agree that Tri-State should be free to structure its dialysis services to match the local need. We question whether the proposed amendment is needed and instead would suggest a more modest approach that would give Tri-State latitude to relocate and expand its Clarkston, WA, facility under current rules so that it could comfortably close its Lewiston, ID, facility.

We believe Tri-State’s proposed amendment is not justified because it is based upon an inaccurate premise. Tri-State says: “the methodology does not have a provision for including an out-of-state facility’s dialysis patient census.” In fact, the methodology specifically *includes* the Idaho patients Tri-State says are not included. Because Idaho patients are counted to project need in Clarkston, Asotin County, Tri-State already enjoys the benefit it says the amendment would provide.

The Department has defined the term "Resident in-center patients" to *include* out-of-state patients “[i]f more than fifty percent of a facility's patients resides outside Washington state.” WAC 246-310-280(11). Under the rule, “the facility may include these out-of-state patients in the resident count for the planning area.”

The Program has followed the rule and included patients residing in Nez Perce County, ID, in its 2013 Asotin County need projection. The worksheet posted on the Department website expressly includes the Idaho patients Tri-State says are not included.

Planning Area	6 Year [Population] Data – Resident Incenter Patients					
	2007	2008	2009	2010	2011	2012
Asotin						
Asotin County	20	20	18	26	23	26
Nez Perce, Idaho	50	53	36	40	41	41
<b>TOTALS</b>	70	73	54	66	64	57

Over the 6-year period reported by the Department, an average of 68% of Tri-State’s total patients resided in Nez Perce County, ID, and the Department’s need projection for Asotin County reflects the Idaho patients. Northwest Renal Network facility census data confirm the large majority of Tri-State’s patients obtained dialysis treatment at its Asotin facility. For

example, at year end 2012 approximately 56% of the Asotin facility's patients probably resided in Idaho. During the 2007 – 2012 period, the percentage of Idaho patients treating at the Asotin facility has ranged from approximately 70% to 56%. We see no reason to doubt that the current rule would allow Tri-State to project Asotin County need using patient counts from both Asotin, WA, and Nez Perce, ID, counties.

Tri-State correctly notes current Network data indicates its Asotin facility would approach or exceed 100% capacity if Tri-State closed its Nez Perce facility. At the same time, Department data show the overall need is declining in Tri-State's service area. The 2013 need projection shows a 2016 surplus of 2 stations, counting only Asotin's 13 stations. We do not yet have 2014 need projections, but the latest Network patient counts for Asotin and Nez Perce counties show a substantial drop in total patients, indicating the 2014 projection probably will continue to show a station surplus. We believe the data indicate the main challenge Tri-State confronts is a one-time dislocation stations serving a declining patient population. Based upon a misreading of the current rules, Tri-State proposes a special rule change that would allow it to relocate stations and create a 14 or 15-station surplus in an area with declining need.

We believe a more modest approach, using current rules, would provide the expansion flexibility Tri-State seeks. Under the unusual circumstances presented, the Department could reasonably take the position that Tri-State's relocation of its Nez Perce stations to a new Asotin facility could be characterized as an "entire facility" relocation "within the same planning area" under WAC 246-310-289(3). As shown above, the Department already considers Nez Perce County to be included in the Asotin County planning area for need projection purposes. As a condition to its approval for the entire-facility relocation, the Department could require Tri-State to immediately phase out use of any relocated Idaho stations beyond the one or two stations needed to address immediate capacity concerns. Following the expansion needed to address immediate capacity concerns, Tri-State could benefit in the future from the automatic expansion rules we propose above.