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September 26, 2013

Bart Eggen  
Janis Sigman  
John Hilger  
Department of Health  
Certificate of Need Program  
P.O. Box 47851  
Olympia, WA 98501-7851

Re: *WSR 13-15-005—Department of Health Rule Making—CN Kidney Dialysis Rules: WAC 246-310-280, 246-310-282, 246-310-284, 246-310-286, 246-310-287, 246-310-288 and 246-310-289*

Dear Mr. Eggen, Ms. Sigman and Mr. Hilger,

DaVita appreciates the opportunity to submit comments in the pending rule making proceeding to address certificate of need (CN) rules for kidney dialysis facilities. We are among the most frequent filers in the CN process and have a great appreciation for the challenges the Department faces in deciding the many dialysis applications it receives each year.

We participated actively in the rule making process that led to the 2007 dialysis rules. I believe we share with others some frustration that the 2007 rules have not reduced the length, cost, complexity and unpredictability of the dialysis CN process, as was intended. We are committed to working with the Department and other stakeholders to address the areas where the rules are not working as intended.

Kidney dialysis facility development is a complex undertaking and dialysis providers are not required to adhere to standardized facility development practices that would support meaningful comparisons of competing proposals. One option to avoid the lack-of-standardization problem is to conduct the comparison at a very high level, essentially comparing the quality of applications and not the quality of the projects themselves. The Department's "exact match" requirement is an example of this approach. The approach can lead to decisions having nothing to do with the relative merits of the competing proposals.

Another option is to conduct the comparison at a more detailed level, attempting to compare the quality of the projects. The open-ended "superior alternatives" analysis favored by the Department's Health Law Judges is an example of this approach. Because generally-accepted standards for comparing the quality of dialysis projects do not exist, other than the Department's dialysis tiebreakers, the approach can lead to subjective and inconsistent decisions.

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We believe the framework adopted during the 2007 rule making process retains utility and the solution to current problems probably can be obtained by modifications to the framework and will not require a completely different approach. In the spirit of a collaborative process and expecting a diversity of ideas from other stakeholders, DaVita offers the following initial comments for the dialysis rule making process.

1. The rule revisions should be drafted in a way that simplifies the evaluation process and establish as much objectivity in the process as possible.
2. Rule revisions should be drafted in a manner that reduces delay in addressing emerging need, lowers the administrative burden on the department, and reduces the incentive for pursuing costly appeals. The appeals process is costly for both taxpayers and patients. The Department and providers spend too much time and money in the inconsistent appeals process, and that time and money would better be spent caring for patients.
3. Rule making should fix problems with the existing process that result in delay and increased cost for providers.
4. The ESRD evaluation cycle should be changed to a semi-annual process.

We appreciate the opportunity to participate in this important process and look forward to collaborating with the Department and other stakeholders to improve the CN process for dialysis facilities.

A handwritten signature in black ink that reads "Anthony Halbeisen".

Anthony Halbeisen  
Director of Business Development /Certificate of Need Initiatives