

**CERTIFICATE OF NEED EVALUATION OF THE DAVITA, INC. APPLICATION  
PROPOSING ESTABLISH A TWELVE- STATION DIALYSIS CENTER IN TACOMA**

**PROJECT DESCRIPTION**

DaVita Inc. (DaVita) is a for-profit corporation that provides dialysis services in over 1,300 outpatient centers located in 42 states and the District of Columbia. DaVita also provides acute inpatient dialysis services in over 850 hospitals throughout the country. [source: DaVita Application, p4]

In Washington State, DaVita owns or operates a total of thirteen kidney dialysis facilities in six separate counties--Clark, Franklin, King, Kittitas, Pierce, and Yakima. Below is a listing of the thirteen DaVita facilities located in Washington. [source: CN historical files; & Application, p4]

**Clark**

Vancouver Dialysis Center

**Franklin**

Mid-Columbia Kidney Center

**Pierce**

Lakewood Community Dialysis Center  
Puyallup Community Dialysis Center

**Kittitas**

Ellensburg Dialysis Center

**Yakima**

Mt. Adams Kidney Center  
Union Gap Dialysis Center  
Yakima Dialysis Center

**King**

Bellevue Dialysis Center  
Federal Way Community Dialysis Center  
Kent Community Dialysis Center  
Olympic View Dialysis Center (management only)  
Westwood Dialysis Center

This application proposes to establish a third DaVita dialysis facility in Pierce County. The new facility, to be known as Tacoma Dialysis Center (hereinafter referred to as "TDC"), would have 12 stations and be located within a recently constructed building at 3401 South 19<sup>th</sup> Street in Tacoma. [source: Application, p3]

The capital expenditure associated with the establishment of the 12-station facility is \$1,392,924, of which approximately 55% is related to leasehold improvements at the site; 38% is related to both fixed and moveable equipment; and the remaining 6% is related to architect, engineering, application, consulting, and legal fees. [source: Application, p7]

DaVita has already constructed the building that would house the proposed facility. As a result, if this project is approved, DaVita anticipates all 12 stations would become operational within six months of approval. Under this timeline, year 2008 would be the facility's first full calendar year of operation. [source: Application, p11]

**APPLICABILITY OF CERTIFICATE OF NEED LAW**

This project is subject to Certificate of Need review as the establishment of a new healthcare facility under the provisions of Revised Code of Washington (RCW) 70.38.105(4)(a) and Washington Administrative Code (WAC) 246-310-020(1)(a).

## **CRITERIA EVALUATION**

To obtain Certificate of Need approval, DaVita, Inc. must demonstrate compliance with the applicable criteria found in WAC 246-310-210 (need); 246-310-220 (financial feasibility); 246-310-230 (structure and process of care); 246-310-240 (cost containment). Additionally, DaVita must demonstrate compliance with applicable kidney disease treatment center criteria outlined in WAC 246-310-280 through 284.<sup>1</sup>

## **CONCURRENT REVIEW CYCLE AND APPLICATION CHRONOLOGY**

As directed under WAC 246-310-282(1) the department accepted this project under the Kidney Disease Treatment Centers-Concurrent Review Cycle #1. No other kidney disease treatment center applications were submitted for the Pierce planning area #4 during Review Cycle #1; therefore, as allowed under WAC 246-310-282(5), this application was converted to a regular review.

January 30, 2007	Letter of Intent Submitted
February 28, 2007	Application Submitted
March 1, 2007	Department's Pre-Review Activities
through May 6, 2007	• 1 <sup>st</sup> screening activities and responses
May 7, 2007	Department Begins Review of the Application
	• public comments accepted throughout the review
June 1, 2007	End of Public Comment/No Public Hearing Conducted
June 29, 2007 <sup>2</sup>	Rebuttal Documents Received at Department
August 13, 2007	Department's Anticipated Decision Date
August 1, 2007	Department's Actual Decision Date

## **AFFECTED PERSONS**

Throughout the review of this project, one entity sought and received affected person status under WAC 246-310-010—Franciscan Health System's (FHS) St. Joseph Medical Center, a dialysis provider located in Tacoma, within Pierce planning area #4.

## **SOURCE INFORMATION REVIEWED**

- DaVita's Certificate of Need application submitted February 28, 2007
- DaVita's supplemental information dated April 27, 2007
- Franciscan Health System public comments received June 11, 2007
- DaVita's rebuttal comments received June 29, 2007
- Franciscan Health System's rebuttal comments received June 29, 2007
- Years 2001 through 2006 historical kidney dialysis data obtained from the Northwest Renal Network

---

<sup>1</sup> Each criterion contains certain sub-criteria. The following sub-criteria are not discussed in this evaluation because they are not relevant to this project: WAC 246-310-210(3), (4), (5), and (6); WAC 246-310-286; WAC 246-310-287; and WAC 246-310-288.

<sup>2</sup> The department granted an extension to the due date to provide rebuttal comments based on a request by DaVita.

### **SOURCE INFORMATION REVIEWED (continued)**

- Year 2006 Northwest Renal Network 4<sup>th</sup> Quarter Data
- Licensing and/or survey data provided by the Department of Health's Office of Health Care Survey
- Licensing and/or survey data provided by out of state health care survey programs
- Data obtained from DaVita, Inc.'s webpage ([davita.com](http://davita.com))
- Certificate of Need historical files

### **CONCLUSION**

For the reasons stated in this evaluation, the application submitted on behalf of DaVita, Inc. proposing to establish a twelve-station dialysis center in the city of Tacoma within Pierce County is not consistent with applicable criteria of the Certificate of Need Program. However, the establishment of a ten-station dialysis center in the city of Tacoma, within Pierce County is consistent with those criteria. With this reduction in the number of stations, the project meets the relevant criteria for the project.

Additionally, to ensure that appropriate ancillary and support agreements will be established at Tacoma Dialysis Center, DaVita must agree to the following term:

Prior to providing services at Tacoma Dialysis Center, DaVita, Inc. will provide an executed copy of the Patient Transfer Agreement for the department's review and approval.

Provided that DaVita, Inc. agree to the term identified above, a Certificate of Need should be issued for the establishment of a ten-station dialysis center to be located in Pierce planning area #4. The approved capital expenditure associated with the establishment of a ten-station dialysis center is \$1,392,924.

**A. Need (WAC 246-310-210)**

Based on the source information reviewed, the department determines that DaVita, Inc. has met the need criteria in WAC 246-310-210(1) and (2) and the applicable kidney disease treatment center standards and methodology in WAC 246-310- 284, provided that DaVita establish a ten-station dialysis facility.

- (1) The population served or to be served has need for the project and other services and facilities of the type proposed are not or will not be sufficiently available or accessible to meet that need.

WAC 246-310-284 contains the methodology for projecting numeric need for dialysis stations within a planning area. This methodology, adopted January 1, 2007, projects the need for kidney dialysis treatment stations through a regression analysis of the historical number of dialysis patients residing in the planning area using verified utilization information obtained from the Northwest Renal Network.<sup>3</sup>

The first step in the methodology calls for the determination of the type of regression analysis to be used to project resident in-center station need. [WAC 246-310-284(4)(a)] This is derived by calculating the annual growth rate in the planning area using the year-end number of resident in-center patients for each of the previous six consecutive years, concluding with the base year. In planning areas experiencing high rates of growth in the dialysis population (6% or greater growth in each of the last five annual change periods), the department uses exponential regression to project future need. In planning areas experiencing less than 6% growth in any of the last five annual change periods, linear regression is used to project need.

Once the type of regression is determined as described above, the next step in the methodology is to determine the projected number of resident in-center stations needed in the planning area based on the planning area's previous five consecutive years NRN data, again concluding with the base year. [WAC 246-310-284(4)(b) and (c)]

WAC 246-310-284(5) identifies that for all planning areas except Adams, Columbia, Douglas, Ferry, Garfield, Jefferson, Kittitas, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, San Juan, Skamania, Stevens, and Wahkiakum counties, the number of projected patients is divided by 4.8 to determine the number of stations needed in the planning area. For the specific counties listed above, the number of projected patients is divided by 3.2 to determine needed stations. Additionally, the number of stations projected as needed in the target year is rounded up to the nearest whole number.

---

<sup>3</sup> Northwest Renal Network was established in 1978 and is a private, not-for-profit corporation independent of any dialysis company, dialysis unit, or transplant center. It is funded by Centers for Medicare and Medicaid Services, Department of Health and Human Services. Northwest Renal Network collects and analyzes data on patients enrolled in the Medicare ESRD programs, serves as an information resource, and monitors the quality of care given to dialysis and transplant patients in the Pacific Northwest. [source: Northwest Renal Network website]

Finally, once station need has been calculated for the project years, the number of CN approved in-center stations are then subtracted from the total need, resulting in a net need for the planning area. [WAC 246-310-284(4)(d)]

DaVita’s Application of the Numeric Methodology

DaVita proposes to establish a 12-station dialysis center in Tacoma—Pierce Planning Area #4. Based on the calculation of the annual growth rate in the planning area as described above, linear regression is used to project need. Given that the facility would be located in Pierce County, the number of projected patients is divided by 4.8 to determine the number of stations needed in the planning area.

Table 1 below is a summary of DaVita’s application of the numeric methodology. [source: Application, pp16-19]

**Table 1  
Summary of DaVita’s Numeric Methodology**

	<b>Year 2007</b>	<b>Year 2008</b>	<b>Year 2009</b>	<b>Year 2010</b>
Incenter Patients	256.1	268	279.9	291.8
Patient: Station Conversion Factor	4.8	4.8	4.8	4.8
Total Station Need	53.35	55.83	58.31	60.79
Total Station Need Rounded Up	54	56	59	61
Minus # of CN Approved Stations	50	50	50	50
<b>Net Station Need / (Surplus)</b>	<b>4</b>	<b>6</b>	<b>9</b>	<b>11</b>

As shown in Table 1 above, DaVita projected a need for 11 dialysis stations in year 2010. Based on the results of the methodology, it is unclear why DaVita requested 12 dialysis stations, rather than the 11 calculated to be needed.

Department’s Application of the Numeric Methodology

Based on the calculation of the annual growth rate in the planning area as described above, the department also used linear regression to project need. Given that the facility would be located in Pierce County, the number of projected patients is divided by 4.8 to determine the number of stations needed in the planning area.

Table 2 below is a summary of the department’s application of the numeric methodology. [source: Appendix A attached to this evaluation]

**Table 2  
Summary of Department’s Numeric Methodology**

	<b>Year 2007</b>	<b>Year 2008</b>	<b>Year 2009</b>	<b>Year 2010</b>
Resident Incenter Patients	252.2	264	275.8	287.6
Patient: Station Conversion Factor	4.8	4.8	4.8	4.8
Total Station Need	52.54	55	57.45	59.91
Total Station Need Rounded Up	53	55	58	60
Minus # of CN Approved Stations	50	50	50	50
<b>Net Station Need / (Surplus)</b>	<b>3</b>	<b>5</b>	<b>8</b>	<b>10</b>

As shown in Table 1 on the previous page, the department projected a need for 10 dialysis stations in year 2010.

When comparing the results of Tables 1 and 2 above, it is noted that methodology results differ for all four projection years. A comparison of DaVita’s and the department’s numeric methodology reveals that the difference is attributed to the historical data used. For its methodology, DaVita counted 18 patients in a zip code (98401) that is not included in the Pierce Planning Area #4 zip codes identified in WAC 246-310-280(9)(b). When including patients from that one zip code, DaVita was able to calculate net need for 11 stations in year 2010, rather than 10. Given that 98401 is not identified as part of the Pierce Planning Area #4 zip codes in WAC 246-310-280(9)(b), the department will not count the patients from that zip code when calculating need for stations in Pierce Planning Area #4. As a result, the net station need for Pierce Planning Area #4 is 10 as shown in Table 2.

For this project, WAC 246-310-284(5) requires all CN approved stations in the planning area be operating at 4.8 in-center patients per station before new stations can be added. The most recent quarterly modality report, or successor report, from the Northwest Renal Network (NRN) as of the first day of the application submission period is to be used to calculate this standard. The first day of the application submission period is February 1, 2007. [source: WAC 246-310-282] The quarterly modality report from NRN available at that time is December 31, 2006, which became available on January 20, 2007. There are a total 50 CN approved stations in the Pierce planning area #4, and all 50 stations are at one facility—Franciscan Health’s Systems (FHS) St. Joseph Hospital Dialysis Center located in Tacoma. Table 3 below shows the December 31, 2006, utilization of St. Joseph Hospital Dialysis Center and demonstrates that this capacity requirement is met.

**Table 3  
December 31, 2006-Facility Utilization Data**

Facility Name	# of Stations	# of Pts	Pts/Station
FHS St. Joseph Hospital Dialysis Center	50	258	5.16

WAC 246-310-284(6) requires TDC be operating at 4.8 in-center patients per approved station by the end of year three (2010). DaVita provided its projected utilization as a 10-station facility. A summary of DaVita’s projected utilization for year 2010 is shown in Table 4 below. DaVita projects to be operating above the 4.8 standard by the end of the third year of operation, or year 2010. Based on the above information, this standard is met. [source: April 27, 2007 supplemental information, Attachment 2]

**Table 4  
Year 2010 Projected Facility Utilization**

Facility Name	# of Stations	# of Pts	Pts/Station
DaVita Tacoma Dialysis Center	10	56	5.6

Comments related to the need criterion provided by FHS focus on the two issues summarized below. [source: FHS June 11, 2007, public comment]

- 1) DaVita misapplied the numeric methodology resulting in an overstatement of numeric need; and
- 2) FHS's own 50-station dialysis center at St. Joseph Medical Center has been operating at a range of 78-85% during years 2004-2006, indicating that station capacity is available and accessible at the center.

FHS's first concern above was addressed when the department calculated the methodology for the service area and relied on those results for this review. FHS's second concern is addressed in the standard under WAC 246-310-284(5). That standard identifies the data to be used to calculate utilization of existing dialysis stations located in the planning area, which is the most recent quarterly modality report, or successor report, from the NRN as of the first day of the application submission period. As previously stated, the most recent data is 4<sup>th</sup> quarter year 2006 data from NRN. As a result, St. Joseph Medical Center's operating capacity range as described above is not relevant to this standard. The department concluded that this utilization capacity standard is met based on the data summarized in Table 3 of this evaluation.

Based on the above information, the application submitted on behalf of DaVita, Inc. proposing to establish a twelve-station dialysis center in the city of Tacoma within Pierce County is not consistent with applicable criteria of the Certificate of Need Program. However, the establishment of a ten-station dialysis center in the city of Tacoma, within Pierce County is consistent with those criteria. With this reduction in the number of stations, this sub-criterion is met.

- (2) All residents of the service area, including low-income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups and the elderly are likely to have adequate access to the proposed health service or services.

DaVita is currently a provider health care services to residents of Washington State, including low-income, racial and ethnic minorities, handicapped and other underserved groups. To determine whether all residents of the service area would continue to have access to an applicant's proposed services, the department requires applicants to provide a copy of its current or proposed admission policy. The admission policy provides the overall guiding principles of the facility as to the types of patients that are appropriate candidates to use the facility and any assurances regarding access to treatment.

To determine whether low income residents would have access to the proposed services, the department uses the facility's Medicaid eligibility or contracting with Medicaid as the measure to make that determination. To determine whether the elderly would have access or continue to have access to the proposed services, the department uses Medicare certification as the measure to make that determination.

A facility's charity care policy should confirm that all residents of the service area including low-income, racial and ethnic minorities, handicapped and other underserved groups have, or

would have, access to healthcare services of the applicant. The policy should also include the process one must use to access charity care at the facility.

To demonstrate compliance with this sub-criterion, DaVita provided a copy of its current admission and indigent care policies that would also be used at the new Tacoma facility. The Admission policy outlines the process/criteria that the TDC will use to admit patients for treatment, and ensures that patients will receive appropriate care at the dialysis center. The Admission Policy also states that any patient with end stage renal disease needing chronic hemodialysis will be accepted for treatment at TDC without regard to race, color, national origin, sex, age, religion, or disability. [source: Application, Appendix 14]

DaVita currently provides services to Medicare and Medicaid eligible patients at its existing thirteen dialysis centers and intends to maintain this status. A review of the Charity Care Policy provided for TDC identifies the proposed facility's financial resources as including both Medicare and Medicaid revenues. [source: Application, Appendix 14]

Additionally, DaVita demonstrated its intent to provide charity care to residents by submitting its charity care policy that outlines the process a patient would use to access this service. Further, DaVita included a 'charity care' line item as a deduction from revenue within the pro forma financial documents. [source: Application, Appendices 9 & 14 and April 27, 2007, supplemental information, Attachment 2]

Based on the above information, the department concludes that all residents of the service area would have reasonable access to the health services at the proposed Tacoma Dialysis Center. This sub-criterion is met.

## **B. Financial Feasibility (WAC 246-310-220)**

Based on the source information reviewed, the department determines that DaVita, Inc. has met the financial feasibility criteria in WAC 246-310-220, provided that DaVita establish a ten-station dialysis facility.

### *(1) The immediate and long-range capital and operating costs of the project can be met.*

If this project is approved, DaVita anticipates commencement immediately and the 12-station facility would be operational within six months of approval. Based on this timeline, year 2008 would be TDC's first full calendar year of operation.

In the need portion of this evaluation, the department concluded the project meets the need criteria only if DaVita reduces the number of stations at the facility from twelve to ten. In response to the department's request for supplemental information, DaVita provided its projected revenue, expenses, and net income for years 2007-2010 for TDC as a 10-station facility. A review of DaVita's financial data demonstrates that the reduction in stations does not affect the timeline for TDC to become operational. A summary of the financial data is shown in Table 5 on the next page. [source: April 27, 2007, supplemental information, Attachment 2]

**Table 5**  
**Tacoma Dialysis Center**  
**Projected Revenue and Expenses Calendar Years 2007 - 2010**

	Partial Year 2007	Full Year 1 2008	Full Year 2 2009	Full Year 3 2010
# of stations	10	10	10	10
# of Treatments <sup>[1]</sup>	4,499	6,602	8,705	9,610
# of Patients <sup>[1]</sup>	30	44	52	56
Utilization Rate <sup>[2]</sup>	2.8	4.0	5.2	5.6
Net Patient Revenue <sup>[1]</sup>	\$ 1,247,932	\$ 2,009,250	\$ 2,784,963	\$ 3,339,559
Total Operating Expense <sup>[1,3]</sup>	\$ 1,375,905	\$ 1,696,324	\$ 2,138,669	\$ 2,526,129
Net Profit or (Loss) <sup>[1]</sup>	(\$ 127,973)	\$ 312,926	\$ 646,294	\$ 813,430
Net Patient Revenue/Treatment <sup>[1]</sup>	\$ 277.38	\$ 304.34	\$ 319.93	\$ 347.51
Total Operating Exp./Treatment <sup>[1]</sup>	\$ 305.82	\$ 256.94	\$ 245.68	\$ 262.86
Net Profit per Treatment <sup>[1]</sup>	(\$ 28.44)	\$ 47.40	\$ 74.24	\$ 84.64

[1] includes both in-center and home dialysis patients; [2] in-center patients only; [3] includes bad debt, charity care and allocated costs

As shown in Table 5 above, at the projected volumes identified in the application, TDC would be operating at a loss in partial year 2007, and a profit in years 2008 through 2010 as a 10 station facility.

Comments related to the financial feasibility criterion provided by FHS focus on the pro forma revenue and expense statement provided by DaVita. FHS outlined 11 points of concern regarding the pro forma statement, and asserts that the extent and the potential magnitude of the concerns should result in a fail under this criterion. A summary of the 11 points, consolidated into three main issues, is shown below. [source: FHS June 11, 2007, public comment]

- DaVita's Depreciation Reporting

For leasehold improvements, DaVita used 13.9 years for depreciation. DaVita's lease agreement is for 13 years, and is almost 3 years old, leave 10 more years on the lease. GAAP's method of depreciation is the useful life or remaining term of the lease, whichever is shorter. For the combination of building and equipment, DaVita used 12.89 years, rather than 5-7 years for equipment. Assuming a 5-7 year average life, the pro forma annual depreciation increases to \$188,000 annually.

- DaVita's Projected Volume Increase Compared with other Line Items in Pro Forma Statement

When projecting volume increases for years 2007 through 2010, DaVita assumed a 43% increase between years one and two [for incenter patients], while the following line items in the pro forma statement either increased or decreased by different percentages in the same time-frame:

- Total revenues increase by 72%;
- The "Other" line item increases by 61%;
- Lab expenses increase 3%;
- EPO expenses increase from \$34/treatment in year one to \$48/treatment in year two;

- Rent costs decrease by 23%;
  - Repairs & maintenance costs decrease by 40%; and
  - Utility costs decrease 49%.
- DaVita Included an Inflation Factor in its Pro Forma Statements  
DaVita inaccurately included inflation. CN guidelines require that applicants depict their pro formas in constant dollars.

In response to the issues raised by FHS, DaVita provided the following statements summarized below. [source: DaVita June 29, 2007, rebuttal documents, pp2-7; Exhibits A & B]

- DaVita's Depreciation Reporting  
*The FHS criticism about lack of GAAP compliance is completely beside the point. A company is presumed to fairly and accurately project its depreciation expense in internal analyses the company itself relies upon for decision-making, such as the pro forma DaVita submitted to the department. DaVita does not normally budget depreciation by dialysis center. The CN pro forma is a product of a larger ...financial model for internal use by DaVita. ...the model uses a 29-year or 40-year schedule for leasehold improvements and a 7-year schedule for equipment. DaVita continuously evaluates this model for updating consistent with its own internal policies and CN policies. ...the December 2005 stakeholder report to the Department of Health rejected the notion of pursuing greater standardization in CN pro formas, potentially including standardized depreciation schedules. Instead, the report recommended that a new dialysis-facility-specific CN application form and instructions be prepared. ...DaVita believes the best approach for the department is to evaluate whether expenses are fairly and accurately reported. In that regard, FHS does not assert that DaVita has failed to fairly and accurately report its depreciation expenses.*
- DaVita's Projected Volume Increase Compared with other Line Items in Pro Forma Statement  
*In DaVita's experience, revenue does not vary in a linear relationship to volume in a new facility. The pro forma is based upon and reflects DaVita's actual experience with new facilities. The difference in volume increase (43%) and the revenue increase (72%) is based on the following factors:*
  - *The volume increase is generated not only by growth in chronic dialysis treatment but also home patient volume increases that are significantly greater than 43%.*
  - *Revenue per home patient encounter is greater than revenue per chronic treatment, so there is a growth in average revenue per treatment that compounds the increase in overall volume.*

Regarding the decreases between years one and two, DaVita provided the following responses summarized below.

- The financial model employed by DaVita and used in each new facility application in Washington includes 4 months of start up costs in the first year of operation. The decrease in utility costs, repairs & maintenance costs, and rent line items include 4 months of start up costs in the first year of operation ...leading the observed one-time

decline in the these line items. These three line items do not vary in a linear relationship with volume.

Regarding the increases between years one and two, DaVita provided the following responses summarized below.

- “Other” revenue is primarily made up of peritoneal dialysis revenue and is unrelated to chronic dialysis treatment volume growth. DaVita projects that home treatment volume will increase at a significantly higher rate than chronic treatment volume, leading to an “other” revenue increase that exceeds chronic treatment volume increases.
  - Lab expenses-are based on a percentage of “other fixed operating expense.” This category has been nominally assumed to increase 3% per year. The model does not assume a linear relationship between volume and laboratory expense since economies of scale would apply to lab expense, e.g. as volume goes up the cost per test goes down.
  - EPO expenses – in the pro forma EPO revenue is calculated as a percentage of overall medical supplies expense, which is based on overall volume, not just chronic treatment volume. As a result, EPO expenses increase more rapidly than chronic treatment volume.
- DaVita Included an Inflation Factor in its Pro Forma Statements
    - On the revenue side, DaVita includes an increase of \$4 per chronic dialysis treatment or approximately 1%, based upon DaVita’s experience in opening and operating new facilities. A projected 1% revenue increase is quite different than typical cost of living adjustment (COLA) factors applied to pro forma revenue statement of 3% or 4%. The model does adhere to constant revenue dollars because it is experience based and does not project inflation.
    - On the expense side, a number of the expense items, such as labor are calculated on a per treatment basis with modes annual changes in salary, which are merit-based and not related to a COLA. These adjustment factors typically are 2% or 3%. DaVita also adjusts for improved efficiency due to economies of scales, e.g. more treatments per hour of labor or lower cost for supplies as more efficient (higher volume) equipment is used.

After reviewing the comments provided by FHS and the responses provided by DaVita, the department concludes that the concerns raised by FHS demonstrate a detailed and in-depth review of the pro forma financial documents by FHS. The explanations provided by DaVita demonstrate a reasonable, sound, and consistent foundation used to prepare pro forma documents for this project. As a result, the department does not agree that the issues raised by FHS should result in either an unresolved issue under WAC 246-310-090 or a fail under this criterion.

Based on the above information, the department concludes that the project’s revenues are reasonable and this sub-criterion is met.

- (2) The costs of the project, including any construction costs, will probably not result in an unreasonable impact on the costs and charges for health services.

DaVita identified an estimated capital expenditure associated with the establishment of a 12-station facility of \$1,392,924. In the need portion of this evaluation, the department concluded that the number of stations should be reduced to ten, however, the department does not anticipate the two-station reduction would significantly affect the costs to establish the center. As a result, the department will evaluate this project’s capital costs using the estimate of \$1,392,924. The capital cost breakdown is shown below. [source: Application, p7 and Appendix 7]

<b>Item</b>	<b>Cost</b>	<b>% of Total</b>
Leasehold Improvements	\$ 770,590	55%
Fixed & Moveable Equipment (includes tax)	\$ 534,433	38%
Architect & Engineering & CN Fees	\$ 87,901	6%
<b>Total Estimated Capital Costs</b>	<b>\$ 1,392,924</b>	<b>100%</b>

To further demonstrate compliance with this sub-criterion, DaVita provided the following statements:

*“...Funding from previously allocated operations funds is the least costly approach. Debt financing for this project will not be required since there is sufficient cash on hand. Furthermore, the method of financing would have no impact on the amount charged for each unit of service.”* [source: Application, p21]

The department recognizes that the majority of reimbursements for dialysis services is through Medicare ESRD entitlements. To further demonstrate compliance with this sub-criterion, DaVita also provided the sources of patient revenue shown in the chart shown below. [source: Application, p22]

<b>Source of Revenue</b>	<b>Percentage of Revenue</b>
Medicare	72%
State (Medicaid)	8%
Insurance/HMO	20%
<b>Total</b>	<b>100%</b>

As shown above, the Medicare and State (Medicaid) entitlements are projected to equal 80% of the revenue at TDC. The department concludes that the majority of revenue is dependent upon entitlement sources that are not cost based reimbursement and are not expected to have an unreasonable impact on charges for services. Further, the cost per dialysis for the proposed project was compared to those of recent kidney dialysis proposals, the average cost per dialysis is reasonable.

Based on the information provided, the department concludes that the costs of this project would not result in an unreasonable impact to the costs and charges for health care services. This sub-criterion is met.

(3) The project can be appropriately financed.

To demonstrate compliance with this sub-criterion, DaVita provided a letter from the Chief Operating Officer of DaVita demonstrating financial and operational support for the Tacoma project. The letter assured financial support for the proposed 12-station dialysis center at a capital cost of \$1,392,924. [source: Application, p7 & Appendices 6 & 7] Additionally, DaVita provided its most recent historical financial statements for years 2003 through 2005. [source: Application, Appendix 10] A review of DaVita’s historical financial statements shows the funds necessary to finance the project are available at the higher cost of a 12-station facility.

Based on the information provided, the department concludes the establishment of a 10-station facility in Tacoma would not adversely affect the financial stability of DaVita as a whole. This sub-criterion is met.

**C. Structure and Process (Quality) of Care (WAC 246-310-230)**

Based on the source information reviewed, the department determines that DaVita, Inc. has met the structure and process (quality) of care criteria in WAC 246-310-230, provided that DaVita establish a ten-station dialysis center, and agree to the term identified on page 3 of this evaluation.

(1) A sufficient supply of qualified staff for the project, including both health personnel and management personnel, are available or can be recruited.

To staff its proposed 12-station facility, DaVita intends to recruit 5.6 FTEs in partial year 2007, which would increase to a total of 12.2 FTEs by the end of full calendar year three (2010). A breakdown of the proposed FTEs is shown in Table 6 below. [source: April 27, 2007, supplemental information, p1]

**Table 6  
Tacoma Dialysis Center 2007 – 2010 Projected FTEs**

Staff/FTEs	2007 Partial Year	2008 Increase	2009 Increase	2010 Increase	Total FTEs
Medical Director	Professional Services Contract				
Administrator	0.80	0.20	0.00	0.00	1.00
RN	1.10	1.10	0.60	0.60	3.40
Patient Care Techs	2.50	0.70	0.80	0.50	4.50
Biomedical Techs	0.30	0.00	0.00	0.00	0.30
Re-Use Techs	0.30	0.10	0.20	0.20	0.80
Administrative Assistant	0.0	0.30	0.20	0.50	1.00
MSW	0.30	0.20	0.00	0.10	0.60
Dietitian	0.30	0.20	0.00	0.10	0.60
<b>Total FTE’s</b>	<b>5.60</b>	<b>2.80</b>	<b>1.80</b>	<b>2.00</b>	<b>12.20</b>

As shown in Table 6 above, after the initial recruitment of FTEs, DaVita expects a minimal increase in FTEs for TDC through year 2010. DaVita states it expects no difficulty in recruiting staff for TDC because of its competitive wage and benefit package offered to employees. Further, DaVita posts staff openings nationally both internally and external to

DaVita. In addition, DaVita states that several employees have already expressed interest in working at its proposed Tacoma facility. [source: Application, p24]

Based on this information, the department concludes that adequate staffing for TDC is available or can be recruited. This sub criterion is met.

- (2) The proposed service(s) will have an appropriate relationship, including organizational relationship, to ancillary and support services, and ancillary and support services will be sufficient to support any health services included in the proposed project.

Documentation provided in the application confirms that DaVita maintains appropriate relationships with ancillary and support services for its existing thirteen dialysis centers. For TDC, ancillary and support services, such as social services, nutrition services, pharmacy, patient and staff education, financial counseling, human resources, material management, administration, and technical services would be provided on site. Additional services would be coordinated through DaVita's corporate offices in El Segundo, California and support offices in Tacoma, Washington; Denver, Colorado; Nashville, Tennessee; Berwyn, Pennsylvania; and Deland, Florida. [source: Application, p24]

DaVita acknowledges that since this would be a new facility in Pierce County, transfer agreements would have to be established. To further demonstrate compliance with this sub-criterion, DaVita provided examples of draft transfer agreements. [source: Application, p24 and Appendix 12]

Based on this information, the department concludes that DaVita currently has appropriate relationships with ancillary and support services. If this project is approved, the department would include a term requiring DaVita to provide a copy of the executed transfer agreement with a local hospital in Pierce County. Provided that DaVita would agree to the following term, this sub-criterion would be met.

To ensure that appropriate ancillary and support agreements will be established at Tacoma Dialysis Center, DaVita must agree to the following term:

Prior to providing services at Tacoma Dialysis Center, DaVita, Inc. will provide an executed copy of the Patient Transfer Agreement for the department's review and approval.

- (3) There is reasonable assurance that the project will be in conformance with applicable state licensing requirements and, if the applicant is or plans to be certified under the Medicaid or Medicare program, with the applicable conditions of participation related to those programs.

As stated earlier, DaVita, Inc. is a provider of dialysis services in over 1,300 outpatient centers located in 42 states (including Washington State) and the District of Columbia. [source: DaVita Webpage] Prior to the October 1, 2005, acquisition of the dialysis operations of Gambro Healthcare US, DaVita operated 665 centers in 37 states and the District of Columbia. Currently within Washington State, DaVita owns and operates twelve kidney dialysis treatment centers. As part of its review, the department must conclude that the proposed services would be provided in a manner that ensures safe and adequate care to the

public<sup>4</sup>. To accomplish this task, in January 2007 the department requested quality of care compliance history from the state licensing and/or surveying entities responsible for the 42 states and the District of Columbia where DaVita, Inc. or any subsidiaries of the parent company has health care facilities. Of the 43 entities, the department received responses from 28 states or 66% of the 42 entities.<sup>5</sup> The compliance history of the remaining 13 states and the District of Columbia is unknown.<sup>6</sup>

Ten of the 28 states responding to the survey indicated that significant non-compliance deficiencies had been cited at DaVita facilities in the past three years. Of those states, with the exception of one facility in Delaware, one in New York and one in Texas, none of the deficiencies were reported to have resulted in fines or enforcement action. All other facilities were reported as currently in compliance with applicable regulations. The Delaware facility had been scheduled for decertification in 2006 due to several condition-level citations, but was operating in compliance at the time of survey. The New York facility was cited with condition-level deficiencies because it was actually closed and not providing services and was voluntarily de-certified by DaVita. In Texas, DaVita's Houston Dialysis was fined \$16,500 for non-compliance issues in 2005, and no further fines were identified for this facility.

The department concludes that considering the 1,300 facilities owned/managed by DaVita, few out-of-state facilities listed above demonstrated substantial non-compliance issues, with only three reported as subject to fines or actually decertified. Therefore, the department concludes the out-of-state compliance surveys are acceptable.

For Washington State, since January 2000, the Department of Health's Office of Health Care Survey (OHCS) has completed more than 32 compliance surveys for the operational facilities that DaVita either owns or manages.<sup>7</sup> Of the compliance surveys completed, all revealed minor non-compliance issues related to the care and management at the DaVita facilities. These non-compliance issues were typical of a dialysis facility and DaVita submitted and implemented acceptable plans of correction. [source: facility survey data provided by the Office of Health Care Survey]

Catherine Richardson, MD has agreed to provide medical director services at the proposed dialysis center. DaVita provided a copy of the executed medical director agreement between itself and Dr. Richardson. The agreement outlines the roles and responsibilities of both entities and identifies the annual compensation for the medical director responsibilities. A review of Dr. Richardson's compliance history with the Department of Health's Medical Quality Assurance Commission reveals no recorded sanctions. [source: Medical Quality Assurance Commission compliance data]

---

<sup>4</sup> WAC 246-310-230(5).

<sup>5</sup> Alabama, Arizona, Connecticut, Delaware, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, New York, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin.

<sup>6</sup> Arkansas, California, Colorado, Georgia, Louisiana, Massachusetts, Nebraska, New Mexico, North Carolina, Ohio, Oklahoma, and South Carolina.

<sup>7</sup> DaVita's Ellensburg Dialysis Center is not yet operational. Olympic View Dialysis Center is owned by Group Health and managed by DaVita.

Based on DaVita's compliance history and the compliance history of the proposed medical director, the department concludes that there is reasonable assurance that the TDC would operate in conformance with state and federal regulations. This sub-criterion is met.

- (4) The proposed project will promote continuity in the provision of health care, not result in an unwarranted fragmentation of services, and have an appropriate relationship to the service area's existing health care system.

In response to this criterion, DaVita provided a summary of its quality and continuity of care indicators used in its quality improvement program. The quality of care program incorporates all areas of the dialysis program, and monitors and evaluates all activities related to clinical outcomes, operations management, and process flow. Further, continuing education for both employees and patients are integral factors in the quality of care program. DaVita also provided examples of its quality index data and its physician, community, and patient services education offered through its quality of care program. [source: Application, p24, Appendices 17 & 18]

The department also considered DaVita's history of providing care to residents in Washington State. The department concludes that the applicant has been providing dialysis services to the residents of Washington State for several years and has been appropriately participating in relationships with community facilities to provide a variety of medical services. Nothing in the materials reviewed by staff suggests that approval of this project would change these relationships. [source: CN historical files]

Additionally, the department considers the results of the kidney disease treatment center numeric methodology and standards outlined in WAC 246-310-284. Application of the numeric methodology shows a need for 10 additional dialysis stations in the Pierce planning area #4. Within the application, DaVita demonstrated it met the standards to receive approval to add the needed stations. Based on this information, the department concludes that approval of this project would promote continuity in the provision of health care for the planning area, and would not result in an unwarranted fragmentation of services. Further, DaVita demonstrated it has, and will continue to have, appropriate relationships to the service area's existing health care system within the planning area. This sub-criterion is met.

- (5) There is reasonable assurance that the services to be provided through the proposed project will be provided in a manner that ensures safe and adequate care to the public to be served and in accord with applicable federal and state laws, rules, and regulations.

This sub-criterion is addressed in sub-section (3) above and is considered met.

#### **D. Cost Containment (WAC 246-310-240)**

Based on the source information reviewed, the department determines that DaVita, Inc. has met the cost containment criteria in WAC 246-310-240, provided that DaVita establish a ten-station dialysis center, rather than the twelve station facility as requested.

(1) Superior alternatives, in terms of cost, efficiency, or effectiveness, are not available or practicable.

The only alternative to this project considered by DaVita is 'do nothing' or status quo. DaVita rejected this option by stating that delays and on-going litigation have caused substantial delays for any operator serving Pierce planning area #4 patients. Further, DaVita states its application of the numeric methodology demonstrated in a 12-station need in the planning area by the end of year 2010.

When applied correctly, the results of the numeric methodology shows a need for 10, rather than 12, stations for year 2010. On that basis, the department concludes adding station capacity to the planning area is the best option at this time.

Further, Table 3 on page 6 of this evaluation shows that the only existing provider in the planning area was operating at 5.16 patients per station at December 31, 2006. This patient per station utilization is greater than the utilization standard of 4.8 patients per station, which also demonstrates that do nothing is not a viable option.

Therefore, based on the information above, the department concurs with the applicant that adding stations to the planning area is the best available option for the community. Provided that DaVita add 10 stations, rather than 12, to the planning area, this sub-criterion is met.

(2) In the case of a project involving construction:

(a) The costs, scope, and methods of construction and energy conservation are reasonable;

As stated in the project description portion of this evaluation, this project involves construction. This sub-criterion is evaluated within the financial feasibility criterion under WAC 246-310-220(2). Based on that evaluation, the department concludes that this sub-criterion is met.

(b) The project will not have an unreasonable impact on the costs and charges to the public of providing health services by other persons.

This sub-criterion is also evaluated within the financial feasibility criterion under WAC 246-310-220(2). Based on that evaluation, the department concludes that this sub-criterion is met.

# APPENDIX

# A