



STATE OF WASHINGTON
DEPARTMENT OF HEALTH
Olympia, Washington 98504

July 2, 2018

CERTIFIED MAIL # 7016 3010 0001 0575 0617

Casey Stowell, RVP Pacific Northwest
Fresenius Medical Care
7780 Southwest Mohawk Street
Tualatin, Oregon 97062

RE: Certificate of Need Dispute Resolution Agreement – March 12, 2013

Dear Ms. Stowell:

Enclosed is Certificate of Need (CN) #1484R issued consistent with the Dispute Resolution Agreement referenced above. The revised Certificate of Need reduces the total number of dialysis stations at PNRS Clark County Dialysis Clinic from 24 to 22.

The certificate has a table with the number of stations, by type, and includes the one approved exempt isolation station consistent with Washington Administrative Code (WAC) 246-310-809. The table also shows the number of stations at PNRS Clark County Dialysis Clinic that will be counted in the numeric need methodology outlined in WAC 246-310-812.

You will need to contact Centers for Medicare and Medicaid Services (CMS) for the reduction of certified stations at this facility.

If you have any questions regarding the enclosed Certificate of Need, please contact Janis Sigman, Manager of the Certificate of Need Program at (360) 236-2955.

Sincerely,

Nancy Tyson, Executive Director
Health Facilities and Certificate of Need
Washington State Department of Health

Enclosure



This Certificate is granted under the authority of RCW 70.38. Issuance of this Certificate does not constitute approval under any other local, federal or state statute, implementing rules and regulations. Examples where additional approval may be necessary include, but are not limited to, construction plan approval through the Construction Review Unit of the Department of Health, facility licensing/certification through the Department of Social and Health Services or Department of Health, and other federal or local jurisdiction permits.

Certificate of Need #1484R is issued to:

Legal Name of Applicant: Pacific Northwest Renal Services, LLC
Address of Applicant: 2121 Southwest Broadway, #111, Portland Oregon 97201
Type of Service: End Stage Renal Disease Facility
Facility Name: PNRS Clark County Dialysis Clinic
Facility Address: 3921 Southwest 13th Avenue, Battle Ground, Washington 98604

ISSUANCE OF THIS REVISED CERTIFICATE OF NEED IS BASED ON THE MARCH 12, 2013, CERTIFICATE OF NEED DISPUTE RESOLUTION AGREEMENT.

Project Description

This revised certificate reduces the approved number of dialysis stations from 24 to 22 at PNRS Clark County Dialysis Clinic as required under #6 of the Certificate of Need Dispute Resolution Agreement. With the reduction in stations, PNRS Clark County Dialysis Clinic is approved to operate the stations shown below.

Table with 3 columns: Station Type, CMS Certified Stations, Stations Counted for Station Use and Methodology. Rows include General Use In-Center Stations, Permanent Bed Station, Isolation Station, and Total Stations.

Service Area
Clark County

Condition

The project description and ongoing conditions attached to Certificate of Need #1484 remain in effect with this revised Certificate of Need.

Date Certificate Issued: July 2, 2018

Nancy Tyson signature
Nancy Tyson, Executive Director
Health Facilities and Certificate of Need
Washington State Department of Health

This Certificate is not transferable

CERTIFICATE OF NEED DISPUTE RESOLUTION AGREEMENT

This Certificate of Need Dispute Resolution Agreement (the "Agreement") is made by and between Pacific Northwest Renal Services, L.L.C. ("PNRS"), DaVita Healthcare Partners Inc. ("DaVita") and the State of Washington, Department of Health Certificate of Need Program (the "Department") effective this 12th day of March, 2013. PNRS, DaVita and the Department are collectively referred to as the Parties.

WHEREAS PNRS and DaVita each submitted applications to the Department for Certificates of Need to establish new kidney dialysis facilities in Clark County, Washington;

WHEREAS PNRS was awarded Certificate of Need No. 1484 to establish a twenty-four station dialysis facility in Battle Ground, Washington in the Clark County ESRD planning area, and DaVita is presently challenging the award in an adjudicative proceeding that is currently pending before the Department of Health under Case No. M2011-1683, such challenge being referred to herein as the "Clark County Litigation";

WHEREAS the Parties wish to settle and finally resolve the Clark County Litigation in order to avoid the further expense and the uncertainty of litigation, and to make competitive dialysis services available to the public as expeditiously as possible;

The Parties hereby agree to the following:

1. DaVita will discontinue its challenge to the issuance of Certificate of Need No. 1484 to PNRS, and the Clark County Litigation shall be dismissed with prejudice without an award of fees or costs to any party, and DaVita shall withdraw application CN#13-02A.
2. PNRS will continue to implement the project approved under Certificate of Need No. 1484 (hereinafter referred to as the "PNRS Battle Ground Facility"). The date that PNRS opens the PNRS Battle Ground Facility is referred to herein as the "PNRS Trigger Date."
3. The Department shall issue a certificate of need to DaVita approving DaVita's establishment of a ten (10) station dialysis facility to be located at 720 W. Main Street, Battle Ground, Washington 98604 (hereinafter referred to as the "DaVita Battle Ground Facility").
4. The Department shall condition DaVita's Certificate of Need to specify that DaVita shall not open the DaVita Battle Ground Facility to serve patients until the earlier of eighteen (18) months after the date the PNRS Battle Ground Facility is certified by the Centers for Medicare and Medicaid Services (CMS) or December 31, 2015; provided, however that if the PNRS Battle Ground Facility is operating at 4.8 in-center patients per station as demonstrated by the Northwest Renal Network Quarterly Modality Report, or successor report, then the foregoing restrictions on the opening date of the DaVita Battle Ground Facility shall no longer apply. The date that DaVita opens the DaVita Battle Ground Facility or December 31, 2015, whichever comes first, is referred to herein as the "DaVita Trigger Date."
5. The Department shall monitor the utilization of both the PNRS Battle Ground Facility and the DaVita Battle Ground Facility for the term of this Agreement.

6. If at the end of forty-two (42) months from the PNRS Trigger Date, the PNRS Battle Ground Facility is operating at less than 4.8 in-center patients per station as measured by the Northwest Renal Network Quarterly Modality Report, or successor report, issued for the first full quarter following the end of the forty-two (42) month period, then the Department shall issue an amended Certificate of Need to PNRS to reduce PNRS's authorized Battle Ground station award by up to two (2) stations in order for the PNRS Battle Ground Facility to achieve 4.8 in-center patients per station or closer thereto.

7. If at the end of forty-two (42) months from the DaVita Trigger Date, the DaVita Battle Ground Facility is operating at less than 4.8 in-center patients per station as measured by the Northwest Renal Network Quarterly Modality Report, or successor report, issued for the first full quarter following the end of the forty-two (42) month period, then the Department shall issue an amended Certificate of Need to DaVita to reduce DaVita's authorized Battle Ground station award by up to two (2) stations in order for the DaVita Battle Ground Facility to achieve 4.8 in-center patients per station or closer thereto.

8. If at the end of fifty-four (54) months from the PNRS Trigger Date, the PNRS Battle Ground Facility is operating at less than 4.8 in-center patients per station as measured by the Northwest Renal Network Quarterly Modality Report, or successor report, issued for the first full quarter following the end of the fifty-four (54) month period, then the Department shall issue an amended Certificate of Need to PNRS to reduce PNRS's authorized Battle Ground station award by up to two (2) stations in order for the PNRS Battle Ground Facility to achieve 4.8 in-center patients per station or closer thereto.

9. If at the end of fifty-four (54) months from the DaVita Trigger Date, the DaVita Battle Ground Facility is operating at less than 4.8 in-center patients per station as measured by the Northwest Renal Network Quarterly Modality Report, or successor report, issued for the first full quarter following the end of the fifty-four (54) month period, then the Department shall issue an amended Certificate of Need to DaVita to reduce DaVita's authorized Battle Ground station award by up to two (2) stations in order for the DaVita Battle Ground Facility to achieve 4.8 in-center patients per station or closer thereto.

10. Under no circumstance would either PNRS or DaVita lose more than four (4) stations total as a result of the Parties' respective performance under this Agreement.

11. The Parties agree they will accept the certificates of need as final and not subject to suspension, denial, or revocation, except as specifically set forth herein. The Parties will not interfere or attempt in any way to interfere with the efforts of another party to develop, open, and obtain CMS certification for the Battle Ground facilities identified in the Agreement. If the Department fails to issue a certificate of need to DaVita as required by this Agreement, this Agreement shall be null and void except with respect to paragraphs 1 and 2, which are effective upon the Parties' execution of this Agreement.

12. Except as expressly set forth in this Agreement, the Department will not permit PNRS or DaVita to relocate any stations covered by this Agreement (i.e., stations from either the PNRS Battle Ground Facility or the DaVita Battle Ground Facility) unless and until both the PNRS Battle Ground Facility and the DaVita Battle Ground Facility are operating at 4.8 in-

center patients per station; provided, however, that this restriction shall no longer apply to PNRs starting fifty-four (54) months and one day after the PNRs Trigger Date and shall no longer apply to DaVita starting fifty-four (54) months and one day after the DaVita Trigger Date.

13. The Parties acknowledge and agree that this Agreement pertains solely to settling the Clark County Litigation and shall not restrict or limit either PNRs or DaVita with respect to dialysis services anywhere else in the Clark County Planning Area or in the State of Washington.

14. The foregoing actions would fully and finally resolve the Clark County Litigation, and the Parties agree that they will not take further action to challenge the issuance of the certificates and will not challenge the Agreement or any part of the Agreement and will not encourage or assist others in challenging the Agreement or any part of the Agreement. The Parties agree to take all steps reasonably necessary and appropriate to accomplish such resolution and the actions described above in paragraphs 1-5 of the Agreement.

15. Each of the Parties has been advised by counsel with respect to this Agreement and has had an opportunity to request appropriate terms. The Agreement shall not be construed for or against any Party.

16. The Parties shall bear their own fees and costs in connection with this Agreement, as well as the Clark County Litigation.

17. Each of the Party signatories to this Agreement certifies that he or she has the authority to enter into this Agreement on behalf of such Party, and that no further consents or actions are necessary to the execution and enforcement of this Agreement.

18. The provisions of this Agreement are severable. If any portion, provision, or part of this Agreement is held, determined, or adjudicated to be invalid, unenforceable or void for any reason whatsoever, each such portion, provision or part shall be severed from the remaining portions, provisions or parts of this Agreement and shall not affect the validity or enforceability of any remaining portions, provisions or parts.

19. This Agreement shall be governed by the laws of the State of Washington.

20. In the event there is a dispute between the Parties as to the implementation or meaning of this Agreement, the Parties agree that any such dispute shall be resolved in the first instance by Thurston County Superior Court.

[SIGNATURES ON FOLLOWING PAGES]

Signature Page to Settlement Agreement

MADE EFFECTIVE THE 12th DAY OF MARCH, 2013.

PACIFIC NORTHWEST RENAL
SERVICES, L.L.C.


DAVITA INC.

By: Renal Care Group Northwest, Inc.
Its: Member

By: _____

Name: _____

Title: _____

By: 
Name: Paul J. Colantonio
Assistant Treasurer
Title: _____

WASHINGTON STATE
DEPARTMENT OF HEALTH
CERTIFICATE OF NEED PROGRAM

By: _____

Name: _____

Title: _____

Signature Page to Settlement Agreement

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SERVICES, L.L.C.

By: Renal Care Group Northwest, Inc.
Its: Member

By: _____

Name: _____

Title: _____

DAVITA INC.

By: _____

Name: _____

Title: _____

WASHINGTON STATE
DEPARTMENT OF HEALTH
CERTIFICATE OF NEED PROGRAM

By:  _____

Name: Richard A. McCartan

Title: Assistant Attorney General

Signature Page to Settlement Agreement

MADE EFFECTIVE THE 12th DAY OF MARCH, 2013.

PACIFIC NORTHWEST RENAL
SERVICES, L.L.C.

By: Renal Care Group Northwest, Inc.
Its: Member

By: _____

Name: _____

Title: _____

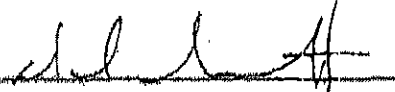
WASHINGTON STATE
DEPARTMENT OF HEALTH
CERTIFICATE OF NEED PROGRAM

By: _____

Name: _____

Title: _____

DAVITA ~~HE~~ HEALTHCARE PARTNERS, INC.

By: 

Name: MICHAEL STAFFIERI

Title: SENIOR VICE PRESIDENT

APPROVED AS TO FORM:

Davis Wright Tremaine
Attorneys for Pacific Northwest Renal
Services, LLC



Brad Fisher, WSBA No. 19895

Law Office of James M. Beaulaurier
Attorney for DaVita Inc.

James M. Beaulaurier, WSBA No. 7811

ROB MCKENNA
Attorney General
Attorney for State of Washington, Department
of Health Certificate of Need Program

Richard A. McCartan, WSBA No. 8323

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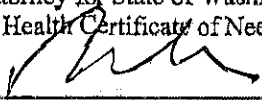
Davis Wright Tremaine
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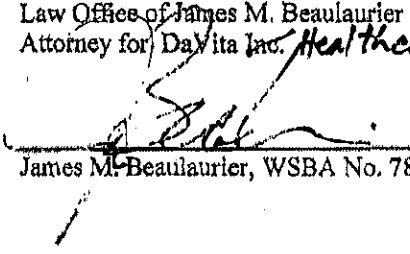
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Law Office of James M. Beaulaurier
Attorney for Dayita Inc. *Healthcare Partners Inc.*



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