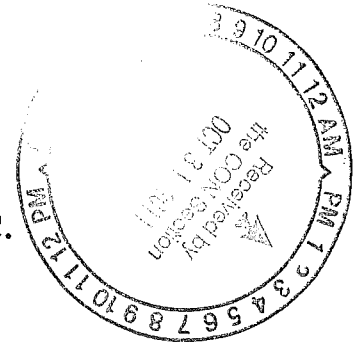


**COMMENTS BY RENAL ADVANTAGE, INC.  
REGARDING PROJECT I.D. NO. P-8741-11  
FILED BY DVA HEALTHCARE RENAL CARE, INC.  
D/B/A GOLDSBORO DIALYSIS CENTER  
ADD ONE STATION**



Renal Advantage, Inc. ("RAI"), an existing provider of dialysis services in Wayne County, submits the following comments against DVA Healthcare Renal Care, Inc.'s ("DaVita") CON application proposing to add one dialysis station to Goldsboro Dialysis Center. This is based on Goldsboro's 91% occupancy and the application of the ESRD Facility Need Methodology. But this does not automatically entitle DaVita to any additional stations. Rather, DaVita must demonstrate the need for the stations. DaVita must also demonstrate that it is not unnecessarily duplicating existing resources. The burden is on DaVita to do these things. The burden is the same regardless of whether DaVita is proposing to expand by one station or one hundred stations. DaVita cannot meet its burden and its application should be disapproved.

**I. DaVita Does Not Demonstrate the Need for More Stations at Goldsboro Dialysis Center.**

As DaVita acknowledges on page 12 of the application, the average annual change rate in Wayne County is -.004%. Thus, the number of dialysis patients in Wayne County is going down. The July 2011 SDR shows a surplus of 14 stations. Goldsboro Dialysis Center has only added 4 patients over 5 years, or less than 1 patient per year. DaVita assumes that it will add one patient in each of the first two operating years but provides no substantiation whatsoever for this assumption. There are no letters of support from patients. There is only one letter from the medical director, who does not commit to refer any additional patients. There is no information in the application indicating that the dialysis population in Wayne County is likely to grow. There is no information in the application indicating that patients are having trouble dialyzing at their preferred times at Goldsboro Dialysis. All that DaVita provides is numbers; it does not provide a need methodology, and there is simply no way the Agency can assume that DaVita will add one additional patient in each of the first two years, when the history over the last five years is that this facility has added *less* than one patient per year. Accordingly, the application is non-conforming with Criterion 3 and must be disapproved.

**II. DaVita's Proposal Unnecessarily Duplicates Existing Services.**

DaVita operates three dialysis clinics in Wayne County: Goldsboro, Goldsboro South and Mount Olive. While utilization at these clinics ranges between 81% and 91%, each has capacity to take on additional patients. DaVita's application does not discuss any capacity constraints it faces in Wayne County, and does not mention whether capacity at its two other Wayne County facilities could be utilized to the extent it does face capacity constraints at its

Goldsboro clinic. The Agency cannot assume that simply because Goldsboro's utilization is at 91% that it is in fact capacity constrained; there is simply no information from which the Agency could discern this, especially since the average annual change rate in Wayne County is going down and Goldsboro itself has only added 4 patients over 5 years. DaVita could add two more patients (the expected new additions according to Section III of the DaVita application) without adding any additional stations. Dialysis clinics are not like acute care hospitals, which need to have capacity available to handle emergencies and epidemics.

In addition, RAI's Goldsboro facility is significantly underutilized at 38%. DaVita does not discuss this issue at all, or whether RAI's existing capacity could be utilized. It is important to note that the same nephrology group covers both the DaVita Goldsboro and RAI Goldsboro clinics, so a patient would not need to switch physicians in order to transfer from DaVita Goldsboro to RAI Goldsboro.

According to the July 2011 SDR, Wayne County has a significant surplus of dialysis stations and it does not need any more stations. ". . . [T]he proliferation of unnecessary health service facilities results in costly duplication and underuse of facilities, with the availability of excess capacity leading to unnecessary use of expensive resources and overutilization of health care services." N.C. Gen. Stat. § 131E-175(4).

Accordingly, the DaVita application is non-conforming with Criterion 6.

### **III. DaVita is proposing to add a station, but projects no capital costs.**

Section VIII indicates that this project will not cost DaVita anything. This is not believable because one would expect, at a minimum, that there would be expense associated with the dialysis machine, the recliner and a television. According to another recently-filed DaVita application to expand DaVita's North Charlotte facility, costs for these items total \$14,100. See page 37 of the CON Application for Project I.D. No. F-8747-11, attached as Exhibit A. DaVita does not explain how it will add capacity for free. DaVita provides no documentation regarding funding for this project. Accordingly, this application is non-conforming with Criterion 5.

### **IV. The Agency Should Carefully Analyze the Application Under Criterion 20.**

Criterion 20 requires an applicant already involved in providing health care services to demonstrate that quality care has been provided in the past. DaVita is no stranger to Criterion 20 problems. See, e.g., Findings in Cabarrus County, Davie County and New Hanover County, copies of which are attached as Exhibits B through D. DaVita has had several situations where state surveyors have found its facilities to be out of compliance with one or more Medicare Conditions for Coverage, and has also had situations, including one in January 2011, where patients were found to be in immediate jeopardy. See Exhibits E-H. A review of Licensure and Certification's records produced several citations for DaVita's Goldsboro South facility, which show that there have been several incidents in 2009-2011 involving infection control and other patient care issues. See Exhibits I and J. The records of the Acute

and Home Care Section of Licensure and Certification should be checked carefully for surveys involving DaVita Goldsboro, Goldsboro South and Mount Olive Dialysis, as well as the DaVita facilities in adjacent counties. Information that is available on Dialysis Facility Compare, [www.medicare.gov](http://www.medicare.gov), indicates that the patient survival rate at Goldsboro is worse than expected as compared to national and North Carolina statistics. Dialysis adequacy is also worse at Goldsboro as compared to the national and state statistics. The percent of Medicare patients who have an average hemoglobin value less than 10.0 g/dL is also worse than the national and state statistics. See Exhibit K.

#### **V. Conclusion**

The DaVita Goldsboro application should be denied.

