

**Acute Care Services Committee  
Agency Report  
Petition to Create an ESRD Facility Need Policy to Adjust the Need  
Determinations in Five Facilities**

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***Petitioner:***

DaVita, Inc.

***Contact:***

Esther Fleming  
Director, Healthcare Planning  
2321 W. Morehead Street  
Charlotte, NC 28208  
703-323-8384  
[Esther.fleming@davita.com](mailto:Esther.fleming@davita.com)

***Request:***

DaVita requests creation of Policy ESRD-3.

***Background Information:***

Chapter Two of the State Medical Facilities Plan (SMFP) provides that “[a]nyone who finds that the North Carolina State Medical Facilities Plan policies or methodologies, or the results of their application, are inappropriate may petition for changes or revisions. Such petitions are of two general types: those requesting changes in basic policies and methodologies, and those requesting adjustments to the need projections.” The annual planning process and timeline allow for submission of petitions requesting adjustments to need projections in the summer.

The Proposed 2020 SMFP contained a revised need determination methodology for End Stage Renal Disease (ESRD) dialysis facilities. Normally, the SHCC would not review the current Petition during the Summer. However, because the revision to the methodology is new, the first opportunity for petitions is the Summer. Under these circumstances, the SHCC does review such petitions.

The Acute Care Services (ACS) Committee held a series of Interested Parties meetings beginning in April 2018. The impetus for the meetings was the need to incorporate the ESRD methodologies into the SMFP fully to ensure proper review by the SHCC, public comment, and review by the Governor. The Agency recognizes that although the dialysis providers prefer the status quo, it is not an option. Therefore, the Agency sought to make changes that would both maintain the ability of providers to serve patients well and comport with the requirements of the SMFP. The SHCC

held Interested Parties meetings on April 13, 2018, November 14, 2018, January 16, 2019, and February 13, 2019 to obtain input regarding the transition.

Two need methodologies exist for ESRD services, a county methodology and a facility-specific methodology. The meetings involved discussion of the facility need methodology and options for the transition. The Agency prepared a modeling tool to estimate how the facility need methodology could be adjusted to accommodate an annual data reporting period, as required for full incorporation into the SMFP. The county need methodology was not adjusted, except to facilitate annual data reporting.

The Agency prepared a report for the April 9, 2019 meeting of the ACS Committee. It discussed adjustments to the methodology as well as a policy approach. At this meeting, the Committee voted to adopt the methodology. The SHCC approved the Committee's action at its May 29, 2019 meeting, and the Proposed 2020 SMFP reflects these decisions.

### ***Analysis/Implications***

The Petitioner requests the creation of the following policy as a means to adjust the facility need determination for five facilities with specific characteristics.

#### Policy ESRD-3: Addition of Dialysis Stations Based on Facility Need for facilities in operation at least 21 months as of the data cut-off date for the current SMFP

A kidney disease treatment center (facility) may submit a certificate of need (CON) application no more than three times in one calendar year pursuant to the review schedule in Chapter 3 of the SMFP. A facility qualifies to add stations if:

1. Current facility utilization reported in the CON application is 80% or greater (i.e., 3.2 patients per station per week; "current" means in-center utilization as of a reporting date no more than 90 days before the date the certificate of need application is submitted); and
2. The facility's growth rate demonstrates a deficit of at least one station, based on the utilization data in Form C of the CON application.

The calculated station deficit is the maximum number of stations for which a facility can apply in a single application. No facility may be approved to add more than a total of 20 stations in any calendar year.

All of the facilities mentioned in the Petition showed high utilization in the Proposed 2020 SMFP, ranging from 80.15% to 101.56%. However, the annual utilization rate from 2017 to 2018 for all five facilities declined. The decline in utilization (negative growth rate) prevented these facilities from having a need determination in the Proposed 2020 SMFP.

Further analysis examined the six-month growth rate across the two most recent reporting dates, based on data received by Healthcare Planning for the July 1, 2019 and January 1, 2020 Semiannual Dialysis Reports (SDR), December 31, 2018 and June 30, 2019.<sup>1</sup> This analysis found

that four of the five facilities would not have had a need, but that Alamance County Dialysis would have had a need for four stations.

The SMFP does not include policies for specific facilities. Although the Petitioner requests a policy only for the five facilities mentioned, the wording of the proposed policy indicates that it would apply to all facilities statewide. The Agency has received several comments regarding replacing the methodology in the Proposed 2020 SMFP with a policy approach. The Agency has prepared a separate document to discuss this issue. The document will be presented to the ACS committee for discussion at the September 17, 2019 meeting.

***Agency Recommendation:***

The agency supports the standard methodologies for ESRD facilities. The ACS Committee and the SHCC have approved the changes to the reporting period and the revisions to the methodologies required to transition to an annual reporting period. As stated above, a separate document addresses comments regarding replacement of the ESRD methodology with a policy approach.

Therefore, given available information submitted by the deadline and in consideration of factors discussed above, the Agency recommends denial of the petition's request for a Policy ESRD-3. The Agency recommends approval of an adjusted facility need determination for four dialysis stations at Alamance County Dialysis (Alamance County) in the 2020 SMFP.

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<sup>1</sup> The Agency requested June 30, 2018 data for possible preparation of the January 2020 Semiannual Dialysis Report (SDR). Even though the SHCC has approved the changes to the ESRD methodology, the Governor has not given final approval. Therefore, it is possible that a January 2020 SDR will be necessary.