17-040

POLSINELLI

150 N. Riverside Plaza, Suite 3000, Chicago, IL 60606-1599 • 312.819.1900

August 21, 2017

Anne M. Cooper
(312) 873-3606
(312) 819-1910 fax
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FEDERAL EXPRESS

George Roate
Illinois Department of Public Health
Health Facilities and Services Review Board
525 West Jefferson Street, Second Floor
Springfield, Illinois 62761

RECEIVED
AUG 22 2017
HEALTH FACILITIES & SERVICES REVIEW BOARD

Re: Patient Transfer Agreement – Edgemont Dialysis

Dear Mr. Roate:

I am writing on behalf of DaVita Inc. and Total Renal Care, Inc. (collectively, "DaVita") to submit the attached patient transfer agreement for Edgemont Dialysis.

DaVita also requests expedited review of the Edgemont Dialysis certificate of need application. As noted in the attached request for expedited review, Edgemont Dialysis will be located in East St. Louis, Illinois, a Health Resources and Service Administration Health Professional Shortage Area and Medically Underserved Area. The proposed Edgemont Dialysis will help address the health care needs of the East St. Louis community.

Thank you for your time and consideration of DaVita's application for permit and request for expedited review. If you have any questions or need any additional information to complete your review of the DaVita's application for permit, please feel free to contact me.

Sincerely,

Anne M. Cooper

Attachments

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150 N. Riverside Plaza, Suite 3000, Chicago, IL 60606-1599 • 312.819.1900

August 21, 2017

Anne M. Cooper
(312) 873-3606
(312) 276-4317 Direct Fax
acooper@polsinelli.com

Via Federal Express
Via E-Mail

Ms. Courtney Avery
Administrator
Illinois Health Facilities and Services Review
Board
525 West Jefferson Street, 2nd Floor
Springfield, Illinois 62761

Re: Edgemont Dialysis – Request for Expedited Review

Dear Ms. Avery:

On behalf of DaVita Inc. and Total Renal Care, Inc. (collectively "DaVita"), we respectfully request the Illinois Health Facilities and Services Review Board ("State Board") grant expedited review of the above-referenced Edgemont Dialysis application for certificate of need permit (the "CON Application") and consider the CON Application at the November 14, 2017 State Board meeting. This project proposes to establish a 12 station facility to be located at 8 Vieux Carre Drive, East St. Louis, Illinois. It is critical the CON Application be heard at the November 14, 2017. East St. Louis is an economically disadvantaged African-American community that is a designated Health Professional Shortage Area and a Medically Underserved Area. Additional stations will address these access issues as well as the growing need for dialysis in East St. Louis. If the CON Application is approved, DaVita would hope the Edgemont Dialysis would be operational by the end of 2019.

In filing the CON Application, DaVita seeks authority from the State Board to establish a 12 station dialysis facility. As of June 30, 2017, 247 end-stage renal disease ("ESRD") patients reside within East St. Louis; however, there is no dialysis facility within the city limits. As noted above, this community lacks sufficient access to health care services. This project will ensure access to life sustaining dialysis services is available to patients in East St. Louis. Accordingly, DaVita respectfully requests the State Board consider the Edgemont Dialysis application at the November 14, 2017 State Board meeting.

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Thank you for your time and consideration of our request for expedited review of the Edgemont Dialysis CON Application. If you have any questions or need any additional information, please feel free to contact me.

Sincerely,

Anne M. Cooper

Section VII, Service Specific Review Criteria
In-Center Hemodialysis
Criterion 1110.1430(h), Continuity of Care

DaVita Inc. has an agreement with St. Elizabeth's Hospital of the Hospital Sisters of the Third Order of St. Francis to provide inpatient care and other hospital services. Attached at Attachment – 24F is a copy of the service agreement with this area hospital.

FOR COMPANY USE ONLY:
Clinic #: 11674

PATIENT TRANSFER AGREEMENT

This **PATIENT TRANSFER AGREEMENT** (the "Agreement") is made as of the last date of signature hereto (the "Effective Date"), by and between **St. Elizabeth's Hospital of the Hospital Sisters of the Third Order of St. Francis** (hereinafter "Hospital") and **Total Renal Care, Inc.**, a California corporation and subsidiary of DaVita Inc. ("Company").

RECITALS

WHEREAS, the parties hereto desire to enter into this Agreement governing the transfer of patients between Hospital and the following free-standing dialysis clinic owned and operated by Company:

Edgemont Dialysis
8 Vieux Carre Drive
East St. Louis, IL 62203

WHEREAS, the parties hereto desire to enter into this Agreement in order to specify the rights and duties of each of the parties and to specify the procedure for ensuring the timely transfer of patients between the facilities;

WHEREAS, the parties wish to facilitate the continuity of care and the timely transfer of patients and records between the facilities; and

WHEREAS, only a patient's attending physician (not Company or the Hospital) can refer such patient to Company for dialysis treatments.

NOW THEREFORE, in consideration of the premises herein contained and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **HOSPITAL OBLIGATIONS.** In accordance with the policies and procedures as hereinafter provided, and upon the recommendation of an attending physician, a patient of Company may be transferred to Hospital.

(a) Hospital agrees to exercise its best efforts to provide for prompt admission of patients provided that all usual, reasonable conditions of admission are met. All transfers between the facilities shall be made in accordance with applicable federal and state laws and regulations, the standards of The Joint Commission ("TJC") and any other applicable accrediting bodies, and reasonable policies and procedures of the facilities. Transfer record forms shall be completed in detail and signed by the physician or nurse in charge at Company and must accompany the patient to the receiving institution.

(b) Neither the decision to transfer a patient nor the decision to not accept a request to transfer a patient shall be predicated upon arbitrary, capricious or unreasonable discrimination or based upon the patient's inability to pay for services rendered by either facility.

2. COMPANY OBLIGATIONS.

(a) Upon transfer of a patient to Hospital, Company agrees:

i. That it shall transfer any needed personal effects of the patient, and information relating to the same, and shall be responsible therefore until signed for by a representative of Hospital;

ii. Original medical records kept by each of the parties shall remain the property of that institution; and

iii. That transfer procedures shall be made known to the patient care personnel of each of the parties.

(b) Company agrees to transmit with each patient at the time of transfer, or in case of an emergency, as promptly as possible thereafter, an abstract of pertinent medical and other records necessary to continue the patient's treatment without interruption and to provide identifying and other information, to include:

i. current medical findings;

ii. diagnosis;

iii. rehabilitation potential;

iv. discharge summary;

v. a brief summary of the course of treatment followed;

vi. nursing and dietary information;

vii. ambulating status; and

viii. administrative and pertinent social information.

(c) Company agrees to readmit to its facilities patients who have been transferred to Hospital for medical care as clinic capacity allows. Hospital agrees to keep the administrator or designee of Company advised of the condition of the patients that will affect the anticipated date of transfer back to Company and to provide as much notice of the transfer date as possible. Company shall assign readmission priority for its patients who have been treated at Hospital and who are ready to transfer back to Company.

(d) In emergent situations and in accordance will all applicable laws, regulations and Company's policies and procedures Company shall have responsibility for arranging

transportation of the patient to the Hospital and in return to the Center from Hospital, including the selection of the mode of transportation. The Hospital's responsibility for the patient's care shall begin when the patient is admitted to the Hospital and end upon patient's discharge from Hospital.

3. **BILLING, PAYMENT, AND FEES.** Hospital and Company each shall be responsible for billing the appropriate payor for the services it provides, respectively, hereunder. Company shall not act as guarantor for any charges incurred while the patient is a patient in Hospital.

4. **HIPAA.** Hospital and Company agree to comply with the provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). Hospital and Company acknowledge and agree that from time to time, HIPAA may require modification to this Agreement for compliance purposes. Hospital and Company further acknowledge and agree to comply with requests by the other party hereto related to HIPAA.

5. **STATUS AS INDEPENDENT CONTRACTORS.** The parties acknowledge and agree that their relationship is solely that of independent contractors. Governing bodies of Hospital and Company shall have exclusive control of the policies, management, assets, and affairs of their respective facilities. Nothing in this Agreement shall be construed as limiting the right of either to affiliate or contract with any other Hospital or facility on either a limited or general basis while this Agreement is in effect. Neither party shall use the name of the other in any promotional or advertising material unless review and approval of the intended use shall be obtained from the party whose name is to be used and its legal counsel.

6. **INSURANCE.** Each party shall secure and maintain, or cause to be secured and maintained during the term of this Agreement, commercial general liability, property damage, and workers compensation insurance in amounts generally acceptable in the industry, and professional liability insurance providing minimum limits of liability of $1,000,000 per occurrence and $3,000,000 in aggregate. Each party shall deliver to the other party certificate(s) of insurance evidencing such insurance coverage upon the request of the other party. Each party shall provide the other party with not less than thirty (30) days prior written notice of any change in or cancellation of any of such insurance policies. Said insurance shall survive the termination of this Agreement.

7. **INDEMNIFICATION.**

(a) Hospital Indemnity. Hospital hereby agrees to defend, indemnify and hold harmless Company and its shareholders, affiliates, officers, directors, employees, and agents for, from and against any claim, loss, liability, cost and expense (including, without limitation, costs of investigation and reasonable attorney's fees), directly or indirectly relating to, to the extent they result from or arise out of any negligent or willful action or failure to act arising out of this Agreement by Hospital and its agents or employees regardless of whether or not it is caused in part by Company or its officers, directors, agents, representatives, employees, successors and assigns. This indemnification provision shall not be effective as to any loss attributable, in whole or in part, to the negligence or willful act or omission of Company.

(b) Company Indemnity. Company hereby agrees to defend, indemnify and hold harmless Hospital and its shareholders, affiliates, officers, directors, employees, and agents for, from and against any claim, loss, liability, cost and expense (including, without limitation, costs of investigation and reasonable attorney's fees), directly or indirectly relating to, to the extent they result from or arise out of any negligent or willfurl action or failure to act arising out of this Agreement by Company and its agents or employees regardless of whether or not it is caused in part by or its officers, directors, agents, representatives, employees, successors and assigns. This indemnification provision shall not be effective as to any loss attributable, in whole or in part, to the negligence or willful act or omission of Hospital.

(c) Survival. The indemnification obligations of the parties shall continue in full force and effect notwithstanding the expiration or termination of this Agreement with respect to any such expenses, costs, damages, claims and liabilities which arise out of or are attributable to the performance of this Agreement prior to its expiration or termination.

8. **DISPUTE RESOLUTION.** Intentionally omitted.

9. **TERM AND TERMINATION.** This Agreement shall be effective for an initial period of one (1) year from the Effective Date and shall continue in effect indefinitely after such initial term, except that either party may terminate by giving at least sixty (60) days notice in writing to the other party of its intention to terminate this Agreement. If this Agreement is terminated for any reason within one (1) year of the Effective Date of this Agreement, then the parties hereto shall not enter into a similar agreement with each other for the services covered hereunder before the first anniversary of the Effective Date. Termination shall be effective at the expiration of the sixty (60) day notice period. However, if either party shall have its license to operate its facility revoked by the State or become ineligible as a provider of service under Medicare or Medicaid laws, this Agreement shall automatically terminate on the date such revocation or ineligibility becomes effective.

10. **AMENDMENT.** This Agreement may be modified or amended from time to time by mutual written agreement of the parties, signed by authorized representatives thereof, and any such modification or amendment shall be attached to and become part of this Agreement. No oral agreement or modification shall be binding unless reduced to writing and signed by both parties.

11. **ENFORCEABILITY/SEVERABILITY.** The provisions of this Agreement are severable. The invalidity or unenforceability of any term or provisions hereto in any jurisdiction shall in no way affect the validity or enforceability of any other terms or provisions in that jurisdiction, or of this entire Agreement in any other jurisdiction.

12. **COMPLIANCE RELATED MATTERS.** The parties agree and certify that this Agreement is not intended to generate referrals for services or supplies for which payment may be made in whole or in part under any federal health care program. The parties will comply with statutes, rules, and regulations as promulgated by federal and state regulatory agencies or legislative authorities having jurisdiction over the parties.

13. **EXCLUDED PROVIDER.** Each party represents that neither that party nor any entity owning or controlling that party has ever been excluded from any federal health care program including the Medicare/Medicaid program or from any state health care program. Each party further represents that it is eligible for Medicare/Medicaid participation. Each party agrees to disclose immediately any material federal, state, or local sanctions of any kind, imposed subsequent to the date of this Agreement, or any investigation which commences subsequent to the date of this Agreement, that would materially adversely impact Company's ability to perform its obligations hereunder.

14. **NOTICES.** All notices, requests, and other communications to any party hereto shall be in writing and shall be addressed to the receiving party's address set forth below or to any other address as a party may designate by notice hereunder, and shall either be (a) delivered by hand, (b) sent by recognized overnight courier, or (c) by certified mail, return receipt requested, postage prepaid.

If to Hospital:
HSHS St. Elizabeth's Hospital
211 S. 3rd Street
Belleville, Illinois 62220
Attention: President & CEO (until Nov. 4, 2017)

HSHS St. Elizabeth's Hospital
One St. Elizabeth's Blvd.
O'Fallon, IL 62269
Attention: President & CEO (after Nov. 4, 2017)

If to Company:
Total Renal Care, Inc.
c/o: DaVita Inc.
2000 16th Street
Denver, Colorado 80202
Attention: Group General Counsel

With copies to:
Edgemont Dialysis
c/o: DaVita Inc.
8 Vieux Carre Drive
East St. Louis, Illinois 62203
Attention: Facility Administrator

DaVita Inc.
2000 16th Street
Denver, Colorado 80202
Attention: General Counsel

All notices, requests, and other communication hereunder shall be deemed effective (a) if by hand, at the time of the delivery thereof to the receiving party at the address of such party set forth above, (b) if sent by overnight courier, on the next business day following the day such

notice is delivered to the courier service, or (c) if sent by certified mail, five (5) business days following the day such mailing is made.

15. **ASSIGNMENT.** This Agreement shall not be assigned in whole or in part by either party hereto without the express written consent of the other party, except that Company may assign this Agreement to one of its affiliates or subsidiaries without the consent of Hospital.

16. **COUNTERPARTS.** This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Copies of signatures sent by facsimile shall be deemed to be originals.

17. **NON-DISCRIMINATION.** All services provided by Hospital hereunder shall be in compliance with all federal and state laws prohibiting discrimination on the basis of race, color religion, sex national origin, handicap, or veteran status.

18. **WAIVER.** The failure of any party to insist in any one or more instances upon performance of any terms or conditions of this Agreement shall not be construed as a waiver of future performance of any such term, covenant, or condition, and the obligations of such party with respect thereto shall continue in full force and effect.

19. **GOVERNING LAW.** The laws of the State of Illinois shall govern this Agreement.

20. **HEADINGS.** The headings appearing in this Agreement are for convenience and reference only, and are not intended to, and shall not, define or limit the scope of the provisions to which they relate.

21. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all other agreements, either oral or written, between the parties (including, without limitation, any prior agreement between Hospital and Company or any of its subsidiaries or affiliates) with respect to the subject matter hereof.

22. **APPROVAL BY DAVITA INC. ("DAVITA") AS TO FORM.** The parties acknowledge and agree that this Agreement shall take effect and be legally binding upon the parties only upon full execution hereof by the parties and upon approval by DaVita Inc. as to the form hereof.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year last written below.

Hospital:

St. Elizabeth's Hospital of the Hospital Sisters of the Third Order of St. Francis

By: Peggy Sebastian

Name: Peggy Sebastian

Its: President & CEO

Date: 08/18/17

Company:

Total Renal Care, Inc.

DocuSigned by:

By: Mary J. Anderson

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Name: Mary J. Anderson

Its: Division Vice President

Date: August 16, 2017

APPROVED AS TO FORM ONLY:

DocuSigned by:

By: Dave Wolff

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Name: David G. Wolff

Its: Group General Counsel