STATE OF WASHINGTON

DEPARTMENT OF HEALTH

Olympia, Washington 98504

June 6, 2019

CERTIFIED MAIL # 7018 2290 0001 8591 8551

Austin Ross, Vice President of Planning Administration
Northwest kidney Centers
700 Broadway
Seattle, WA 98122

RE: CN Application #18-50 – Northwest Kidney Center Everett

Dear Mr. Ross:

CORRECTED CONDITIONAL APPROVAL LETTER

It has been brought to my attention that the project description in the conclusion section[1] of our recently released evaluation incorrectly stated that exempt isolation station would be available at the facility. The correct project description is stated below and shows the changes made.

For the reasons stated in this evaluation, the application submitted by Northwest Kidney Centers proposing to establish a 9-station dialysis center in Snohomish County planning area #2 is consistent with applicable criteria of the Certificate of Need Program, provided Northwest Kidney Centers agrees to the following in its entirety.

Project Description

This certificate approves the establishment of a new nine-station dialysis center to be located at 1010 SE Everett Mall Way, Suite 100, 102, and 104 in Everett [98208] within Snohomish County planning area #2. At project completion, the dialysis center is approved to certify and operate 9 dialysis stations.

The table below provides a breakdown of the total number of stations at Northwest Kidney Center Everett.

	CMS Certified Stations	Stations Counted in Methodology
General Use In-Center Stations	7	7
Permanent Bed Station	1	1
Isolation Station	1	1
Total Stations	**9**	**9**

[1] Evaluation, pages 9 and 10.

Services to be provided at Northwest Kidney Center Everett includes in-center hemodialysis, home peritoneal and home hemodialysis training, backup support for home peritoneal and home hemodialysis dialysis, a permanent bed station, and ~~dedicated isolation/private room,~~ an isolation room[2] and treatment shifts beginning after 5:00 p.m. NKC's isolation station is counted in the methodology station count because it does not meet the kidney disease treatment centers definition of "exemption isolation station" under WAC 246-310-800(9).

The department's decision does not change by making this correction. The two pages in the evaluation containing the incorrect project description have also been corrected. Copies of the pages are enclosed.

Conditions:

1. Northwest Kidney Centers agrees with the project description as stated above. Northwest Kidney Centers further agrees that any change to the project as described in the project description is a new project that requires a new Certificate of Need.

2. Prior to providing services, Northwest Kidney Centers will provide an executed copy of the medical director agreement for the department's review and approval. The executed medical director agreement must be consistent with the draft provided in the application.

3. Prior to providing services at Northwest Kidney Center Everett, Northwest Kidney Centers will provide an executed copy of the patient transfer agreement for the department's review and approval. The executed patient transfer agreement must be consistent with the draft provided in the application.

4. Northwest Kidney Centers shall finance this project consistent with the financing described in the application.

Approved Costs:

The approved capital expenditure for this project is $3,825,918.

Please notify the Department of Health within 20 days of the date of this letter whether you accept the above project description, conditions, and capital costs for your project. If you accept these in their entirety, your application will be approved and a Certificate of Need sent to you.

If you reject any of the above provisions, your application will be denied. The department will send you a letter denying your application and provide you information about your appeal rights.

[2] NKC's isolation station is counted in the methodology station count because it does not meet the kidney disease treatment centers definition of "exemption isolation station" under WAC 246-310-800(9).

Send your written response to the Certificate of Need Program, at one of the following addresses.

Mailing Address:	Physical Address:
Department of Health	Department of Health
Certificate of Need Program	Certificate of Need Program
Mail Stop 47852	111 Israel Road SE
Olympia, WA 98504-7852	Tumwater, WA 98501

If you have any questions, or would like to arrange for a meeting to discuss our decision, please contact the Certificate of Need Program at (360) 236-2955.

Sincerely,

Nancy Tyson, Executive Director
Health Facilities and Certificate of Need
Enclosure

REVISED EVALUATION DATED JUNE 6, 2019

2018 CYCLE 1 NON-SPECIAL CIRCUMSTANCE EVALUATION DATED MAY 3, 2019, FOR THE FOLLOWING TWO CERTIFICATE OF NEED APPLICATIONS PROPOSING TO ADD KIDENY DIALYSIS CAPACITY IN SNOHOMISH COUNTY PLANNING AREA #2.

- **DAVITA HEALTHCARE PARTNERS, INC. IS PROPOSING TO RELOCATE THE 13-STATION DAVITA EVERETT DIALYSIS CENTER TO MUKILTEO AND EXPAND IT BY NINE STATIONS IN SNOHOMISH COUNTY PLANNING AREA #2.**
- **NORTHWEST KIDNEY CENTERS IS PROPOSING TO ESTABLISH A NINE STATION DIALYSIS FACILITY IN EVERETT WITHIN IN SNOHOMISH COUNTY PLANNING AREA #2.**

APPLICANT DESCRIPTIONS

Total Renal Inc.

Total Renal Care, Inc. is a subsidiary of DaVita Inc. a publically held for-profit corporation. DaVita, Inc. owns 100% of Total Renal Care, Inc. and this entity is 100% owner of Refuge Dialysis, LLC. Refuge Dialysis, LLC is a wholly owned subsidiary of Total Renal Care, Inc. Total Renal Care Inc.'s UBI number is 601-134-681. [Source: Application pages 3-4] DaVita Inc. is a Fortune 500® company and it is the parent company of DaVita Kidney Care and DaVita Medical Group. DaVita Kidney Care is a leading provider of kidney care in the United States, delivering dialysis services to patients with chronic kidney failure and end stage renal disease. DaVita Medical Group is a division of DaVita Inc. and it operates and manages medical groups and affiliated physician networks in California, Colorado, Florida, Nevada, New Mexico, Pennsylvania, and Washington. In Washington State, DaVita Inc. is affiliated with both the Everett Clinic and Northwest Physicians Network. [Source: DaVita, Inc. website and DaVita Medical Group website]

DaVita, Inc. is a national provider of dialysis services operating in 45 states and the District of Columbia.[1] [Source: Applications, page 3] In Washington State, DaVita is approved to own and operate a total of 42 dialysis centers in 19 separate counties.[2] Listed below are the names of the facilities owned or operated by DaVita in Washington State. [Source: CN historical files and Application, pages 5-8]

Benton
Chinook Dialysis Center
Kennewick Dialysis Center

Clark
Vancouver Dialysis Center
Battle Ground Dialysis Center

Chelan
Wenatchee Valley Dialysis Center

Pacific
Seaview Dialysis Center

Pierce
Graham Dialysis Center
Lakewood Community Dialysis Center
Parkland Dialysis Center
Puyallup Community Dialysis Center
Rainier View Dialysis Center
Tacoma Dialysis Center

[1] DaVita operates in 45 states and the District of Columbia. The five states where DaVita is not located are: Alaska, Delaware, Mississippi, Vermont, and Wyoming.

[2] The department acknowledges that DaVita has submitted applications to establish additional dialysis centers in the counties of Cowlitz (#19-37), King (#18-59 & #19-39), Kitsap (#19-38), Snohomish (#18-63), Spokane (#18-62), and Thurston (#18-60). As of the writing of this evaluation, decisions on these projects have not been released.

Douglas
East Wenatchee Dialysis Center

Franklin
Mid-Columbia Kidney Center

Island
Whidbey Island Dialysis Center

King
Bellevue Dialysis Center
Federal Way Dialysis Center
Kent Dialysis Center
Olympic View Dialysis Center
Renton Dialysis Center
Redondo Heights Dialysis Center
Westwood Dialysis Center

Kittitas
Ellensburg Dialysis Center

Lewis
Cooks Hill Dialysis Center

Mason
Belfair Dialysis Center

Skagit
Cascade Dialysis Center

Snohomish
Everett Dialysis Center
Lynnwood Dialysis Center
Mill Creek Dialysis Center
Pilchuck Dialysis Center

Spokane
Downtown Spokane Renal Center
North Spokane Renal Center
Spokane Valley Renal Center

Stevens
Echo Valley Dialysis Center

Thurston
Olympia Dialysis Center
Tumwater Dialysis Center

Whatcom
Mount Baker Kidney Center

Yakima
Mt. Adams Dialysis Center
Union Gap Dialysis Center
Wapato Dialysis Center
Yakima Dialysis Center
Zillah Dialysis Center

Northwest Kidney Center

Northwest Kidney Center is a private, not-for-profit corporation in the state of Washington. Northwest Kidney Center provides dialysis services through its facilities located in King, Clallam, and Pierce counties. Established in 1962, Northwest Kidney Center operates as community based dialysis program working to meet the needs of dialysis patients and their physicians. A volunteer board of trustees governs Northwest Kidney Center. The board is comprised of medical, civic and business leaders from the community. An appointed Executive Committee of the Board oversees operating policies, performance and approves capital expenditures for all of its facilities. [Source: CN historical file and Application, page 2 and Exhibits 2 and 3]

NKC does not own or operate any healthcare facilities outside of Washington State. In Washington State, NKC is approved to own and operated 17 kidney dialysis facilities. Of the 17 facilities, 15 are located within King County; one in Pierce County; and one in Clallam.[3] Northwest Kidney Centers facilities in Washington are listed on the next page. [Source: Application Exhibit 3] and CN historical files]

[3] Of the 17 Northwest Kidney Center facilities two are recently CN approved and not yet operational. The two facilities are Federal Way Kidney Center and Fife Kidney Center.

King County
Auburn Kidney Center
Broadway Kidney Center
Elliot Bay Kidney Center
Enumclaw Kidney Center
Federal Way Kidney Center
Kent Kidney Center
Kirkland Kidney Center
Lake City Kidney Center

King County
Lake Washington Kidney Center
Renton Kidney Center
Scribner Kidney Center
Seattle Kidney Center
SeaTac Kidney Center
Snoqualmie Ridge Kidney Center
West Seattle Kidney Center

Clallam County
Port Angeles Kidney Center

Pierce County
NKC Fife Kidney Center

PROJECT DESCRIPTION

Note – each application refers to a 9-station need in Snohomish County planning area #2. Per WAC 246-310-800(9), exempt isolation stations are not counted in the methodology. Shortly following the department's first screening of the applications, the department sent out supplemental screening letters asking all applicants to clarify whether their isolation stations would meet the definition under WAC 246-310-800(9). Though this evaluation will consistently refer to a 9-station need, the approved project(s) would reflect one additional exempt isolation station, if identified by the applicant in response to screening.

Total Renal Care, Inc.

This application proposes to relocate DaVita Everett Dialysis Center located at 8130 Evergreen Way in Everett [98203] within Snohomish County ESRD planning area #2 to Mukilteo. Currently DaVita Everett Dialysis Center is a thirteen station kidney dialysis facility. Upon relocating of the 13-station DaVita Everett Dialysis Center to Mukilteo, the applicant anticipates it will add another nine new stations to DaVita Everett Dialysis Center resulting in a twenty two station dialysis center. The twenty-two station DaVita Everett Dialysis Center will be located at 8225 – 44th Avenue W, Suite B in Mukilteo [98275]. [Source: DaVita Application, pages 8-9]

Services to be provided at DaVita Everett Dialysis Center include in-center hemodialysis, home hemodialysis, peritoneal dialysis, training and support for peritoneal dialysis, emergency backup, permanent bed station, a dedicated isolation/private room, and treatment shifts beginning after 5:00 p.m. [Source: DaVita Application, page 10] The total capital expenditure associated with the 22-station kidney dialysis center is $3,544,081. Of that amount 62% or $2,198,957, is related to building construction improvement; 27% or $970,265 is for fixed and moveable equipment, 11% or $374,859; is for taxes and consulting fees. [Source: Application Page 20]

If this project is approved, the 22-station facility would be operational by February 2021. Under this timeline, year 2022 would be DaVita Everett Dialysis Center first full calendar year of operation and year 2024 the third year of operation. [Source: Screening response received February 4, 2021]

For ease of reference in this evaluation, Total Renal Care, Inc., will be referred to as ("DaVita") and the 22-station DaVita Everett Dialysis Center will be referred to as ("DaVita Everett").

The department received public comments from NKC in response to DaVita's project. NKC questioned the reliability of DaVita's timeline to open its new facility in Snohomish County planning area #2. NKC's comments are restated below.

Public Comments
DaVita Lynnwood Still Awaiting Certification
"DaVita's application indicates that its Lynnwood facility is still awaiting survey despite having met the definition of 'operational' last year. A delay of this magnitude is unprecedented. For example, NKC Federal Way East Kidney Center surveyed within 7 days of being operational (the facility became operational in March 2018). Note that effective August 10th, 2018 CMS published a memo outlining that all new centers will be surveyed within 90 days. See Exhibit 5". [Source: NKC's Public comments received on September 5, 2018, page 6]

In response to NKC's public comments, DaVita provided rebuttal comments. Those comments are restated below.

"NKC criticizes DaVita for the timing of its Lynnwood facility. However, as the Department knows that facility is simply waiting for CMS inspection and certification - it is operational, but not yet certified by CMS. DaVita has requested CMS initial certification but has no control over the CMS's inspection schedule. Obviously there is no benefit to DaVita of a delay in certification. DaVita would like its facility to be certified as soon as possible.

After giving the Department of Investigations and Inspections forewarning of Lynnwood's impending opening, DaVita contacted the Department on 10/26/2017 with Lynnwood's water validations and a notice that the facility was ready for survey (the first patient treated, and the center became operational, on 10/24/2017). DaVita repeated this request formally on 1/18/2018, 4/9/2018, and 7/31/2018, as well as numerous telephonic and in-person follow-up requests.

DaVita made its Lynnwood facility operational consistent with the timeline in its original application, and has made repeated attempts to elevate initial survey on the Department of Investigations Inspections priority list." [Source: DaVita's rebuttal comment received October 5, 2018, page 13]

Department Evaluation of Public Comment
NKC asserted that the department should deny DaVita's application because it did not meet its timeline to open its Lynnwood Dialysis Center. NKC asserted that DaVita's Lynnwood Dialysis Center has yet to open its approved facility. In turn, DaVita states Lynnwood Dialysis Center's four stations have been ready for survey since late October 2017 and DaVita notified DOH three times since October 2017 that it was ready for survey.

The department's internal files show that Lynnwood Dialysis Center's CMS survey was completed November 2018 more than 12 months from the time it was ready. [Source: December 2018, progress report for CN #1588]

While the department agrees that DaVita's Lynnwood Dialysis Center did not become operational within the timeline identified by DaVita in the application, the current kidney dialysis rules do not contemplate any penalty or praise for meeting, or not meeting, an operational timeline. The 'penalty' or 'praise' is recognized in WAC 246-310-812(5)(b) for 4.8 planning areas and (6)(b) for 3.2 planning areas.

WAC 246-310-812(5)(b) states:
"Before the department approves new in-center kidney dialysis stations in a 4.8 planning area, all certificate of need counted stations at each facility in the planning area must be operating at 4.5 in-center patients per station. However, when a planning area has one or more facilities with stations not meeting the in-center patients per stations standard, the department will consider the 4.5 in-center patients per station standard met for those facilities when: …(b) Certificate of need approved stations for a facility have not become operational within the timeline as represented in the approved application. For example, an applicant states the stations will be operational within eight months following the date of the certificate of need approval. The eight months would start from the date of an uncontested certificate of need approval. If the certificate of need approval is contested, the eight months would start from the date of the final department or judicial order. However, the department, at its sole discretion, may approve a one-time modification of the timeline for purposes of this subsection upon submission of documentation that the applicant was prevented from meeting the initial timeline due to circumstances beyond its control.

Both resident and nonresident patients using the kidney dialysis facility are included in this calculation. Data used to make this calculation must be from the most recent quarterly modality report from the Northwest Renal Network as of the letter of intent submission date."

The department disagrees with NKC's assertions that DaVita's application should be denied because it did not meet its operational timeline stated in its Lynnwood Dialysis Center application.

Northwest Kidney Centers

Northwest Kidney Centers proposes to establish a nine-station kidney dialysis facility in Everett within Snohomish County planning area #2. The new nine-station dialysis center will be known as Northwest Kidney Center Everett. The proposed Northwest Everett Kidney Center would be located at 1010 SE Everett Mall Way, Suite 100, 102, and 104 within the City of Everett [98208]. The Snohomish County assessor's parcel identification number for the property is 28051800306600. Services to be provided at Northwest Kidney Centers Everett includes in-center hemodialysis, home peritoneal and home hemodialysis training, backup support for home peritoneal and home hemodialysis dialysis, a permanent bed station, an isolation room and treatment shifts beginning after 5:00 p.m. NKC's isolation station is counted in the methodology station count because it does not meet the kidney disease treatment centers definition of "exemption isolation station" under WAC 246-310-800(9). [Source: Application, page 5]

The total capital expenditure associated with the establishment of the nine-station kidney dialysis center is $3,825,918. Of that amount 60% or $2,278,389, is related to building construction improvement; 25% or $946,402 is for fixed and moveable equipment, 16% or $601,127; is for taxes and consulting fees. [Source: Application Page 16]

If this project is approved, Northwest Kidney Centers anticipates the nine-station facility would be operational by the end of August 2020. Under this timeline, FYE year 2021 would be the facility's first full year of operation and FYE 2023-2024 would be year three. [Source: Application, Page 4]

For ease of reference in this evaluation Northwest Kidney Centers would be referred to as ("NKC") and the proposed nine station Northwest Everett Kidney Center would be referred to as ("NKC Everett").

Department Information on Timelines for Completion of the Projects

Each of the applicants identified a timeline for completion of their respective projects based on a December 2018 evaluation release date. Due to delays in releasing this evaluation, each applicant's

timeline may not be achievable or accurate. Regardless of which applicant is approved in this review, the department will adjust the operational timeline to account for the additional days of delay in the release of this evaluation.

APPLICABILITY OF CERTIFICATE OF NEED LAW

For DaVita and NKC the two projects are subject to Certificate of Need review as the construction, development, or other establishment of a new health care facility under the provisions of RCW 70.38.105(4)(a) and WAC 246-310-020(1)(a).

EVALUATION CRITERIA

WAC 246-310-200(1)(a)-(d) identifies the four determinations that the department must make for each application. WAC 246-310-200(2) provides additional direction on how the department is to make its determination. It states:

"Criteria contained in this section and in WAC 246-310-210, 246-310-220, 246-310-230, and 246-310-240 shall be used by the department in making the required determinations.

(a) In the use of criteria for making the required determinations, the department shall consider:

(i) The consistency of the proposed project with services or facility standards contained in this chapter;

(ii) In the event the standards contained in this chapter do not address in sufficient detail for a required determination the service or facilities for health services proposed, the department may consider standards not in conflict with those standards in accordance with subsection (2)(b) of this section; and

(iii) The relationship of the proposed project to the long-range plan (if any) of the person proposing the project."

In the event WAC 246-310 does not contain service or facility standards in sufficient detail to make the required determinations, WAC 246-310-200(2)(b) identifies the types of standards the department may consider in making its required determinations. Specifically WAC 246-310-200(2)(b) states:

(b) The department may consider any of the following in its use of criteria for making the required determinations:

(i) Nationally recognized standards from professional organizations;

(ii) Standards developed by professional organizations in Washington State;

(iii) Federal Medicare and Medicaid certification requirements;

(iv) State licensing requirements

(v) Applicable standards developed by other individuals, groups, or organizations with recognized expertise related to a proposed undertaking; and

(vi) The written findings and recommendations of individuals, groups, or organizations with recognized expertise related to a proposed undertaking, with whom the department consults during the review of an application.

To obtain Certificate of Need approval, an applicant 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); and 246-310-240 (cost containment).

DaVita and Northwest Kidney Centers applications must also demonstrate compliance with applicable kidney disease treatment center criteria outlined in WAC 246-310-800 through 833. For ESRD applications submitted under WAC 246-310-806 'Nonspecial Circumstance Cycle 1,' the following review criteria do not apply and will not be discussed in this evaluation.

WAC 246-310-809	One-time exempt isolation station reconciliation
WAC 246-310-818	Special circumstances one- or two-station expansion—Eligibility criteria and application process
WAC 246-310-821	Kidney disease treatment facilities—Standards for planning areas without an existing facility
WAC 246-310-824	Kidney disease treatment centers—Exceptions
WAC 246-310-833	One-time state border kidney dialysis facility station relocation

WAC 246-310-803

WAC 246-310-803 requires an applicant to submit specific data elements to the Certificate of Need Program. For the 2018 concurrent review cycle, the data must be received before February 16, 2018. Each applicant submitted the data elements on February 15, 2018. This data is used to calculate superiority in the event that more than one application meets the applicable review criteria. Consistent with WAC 246-310-827, these data elements are the only means by which two or more applications may be compared to one another.

WAC 246-310-803 and 246-310-827 allow for public review and correction to data submissions prior to any concurrent review cycle. Therefore, if the department receives public comments related to WAC 246-310-803 or 246-310-827 during a review, the comments will not be considered and discussed.

TYPE OF REVIEW

As directed under WAC 246-310-806, the department accepted these applications under the Kidney Disease Treatment Centers-Nonspecial circumstances Concurrent Review Cycle #1 for calendar year 2018. Below is the chronological summary of the two applications review timelines.

APPLICATION CHRONOLOGY

Action	DaVita	NKC
Letter of Intent Submitted	May 1, 2018	May 1, 2018
Application Submitted	June 1, 2018	June 1, 2018
Department's pre-review activities • DOH Screening Letter • Applicant's Responses Received	 June 29, 2018 July 31, 2018	 June 29, 2018 July 31, 2018
Beginning of Review	August 6, 2018	
Public Hearing Conducted	None Requested or Conducted	
• Public Comments accepted through the end of public comment • No public hearing requested or conducted	September 5, 2018	
Rebuttal Comments Submitted	October 5, 2018	
Department's Anticipated Decision Date	December 19, 2018	
Department's Anticipated Decision Date with 150-day extension[4]	May 20, 2019	
Department's Actual Decision Date	May 3, 2019	
Department's Decision Date	June 6, 2019	

[4] Thirty-day extension letters sent to the applicants on December 20, 2018, January 18, 2019, February 20, 2019; March 20, 2019; and April 26, 2019.

AFFECTED PERSONS

Washington Administrative Code 246-310-010(2) defines "affected" person as:

"…an "interested person" who:

(a) Is located or resides in the applicant's health service area;
(b) Testified at a public hearing or submitted written evidence; and
(c) Requested in writing to be informed of the department's decision."

As noted above, WAC 246-310-010(2) requires an affected person to first meet the definition of an 'interested person.' WAC 246-310(34) defines "interested person" as:

(a) The applicant;
(b) Health care facilities and health maintenance organizations providing services similar to the services under review and located in the health service area;
(c) Third-party payers reimbursing health care facilities in the health service area;
(d) Any agency establishing rates for health care facilities and health maintenance organizations in the health service area where the proposed project is to be located;
(e) Health care facilities and health maintenance organizations which, in the twelve months prior to receipt of the application, have submitted a letter of intent to provide similar services in the same planning area;
(f) Any person residing within the geographic area to be served by the applicant; and
(g) Any person regularly using health care facilities within the geographic area to be served by the applicant.

For these two projects, each applicant is an affected person to the competing application. The followings persons or entity sought interested person status to these projects.

Health Facilities Planning & Development

Health Facilities Planning & Development (HFPD) located in King County, is a consultation firm hired by applicants to prepare and submit Certificate of Need applications on their behalf. Health Facilities Planning & Development requested interested person status to the two applications, and to be informed of the department's decision. Health Facilities Planning & Development does meet the definition of an "interested person" under WAC 246-310-010(34). HFPD did not provide independent written or oral comment on this application. Therefore, it does not meet the definition of an "affected person" under WAC 246-310-010(2).

Puget Sound Kidney Centers

Puget Sound Kidney Centers is an end stage kidney dialysis provider and it owns and operates dialysis facilities in Snohomish County. Puget Sound Kidney Centers sought and received interested person status under WAC 246-310-010(34) to the application submitted by DaVita. However, Puget Sound Kidney Centers did not submit written comments to the department so it cannot qualify as an "affected person" under WAC 246-310-010(2).

Holly Clarke.

Holly Clarke, is a representative of Royal Commercial Corp a real estate brokerage firm located in Kirkland, King County. Holly Clarke requested interested person status regarding DaVita application and to be informed of the department's decision about the application. Under the definition of an "interested person" in WAC 246-310-010(34) Holly Clarke may or may not qualify as an interested person depending on her place of residence. However, she did not provide independent written or oral comment on the applications. Therefore, she does not meet the definition of an "affected person" under WAC 246-310-010(2).

SOURCE INFORMATION REVIEWED

- DaVita, Inc. Certificate of Need application received June 1, 2018
- DaVita, Inc. screening response received July 31, 2018
- Northwest Kidney Centers Certificate of Need application received June 1, 2018
- Northwest Kidney Centers screening response received July 31. 2018
- Public comments accepted through September 5, 2018
- Rebuttal comments received on October 5, 2018
- Years 2012 through 2017 historical kidney dialysis data obtained from the Northwest Renal Network
- Department of Health's ESRD Need Projection Methodology for Snohomish County planning area #2 posted to its website March 2018
- Licensing data provided by the Medical Quality Assurance Commission, Nursing Quality Assurance Commission, and Health Systems Quality Assurance Office of Customer Service
- Compliance history obtained from the Washington State Department of Health Office of Health Systems and Oversight
- DaVita, Inc. website at www.davita.com
- DaVita Medical Group website at www.davitamedicalgroup.com
- Northwest Renal Network website at www.nwrn.org
- Northwest Renal Network modality data
- Centers for Medicare and Medicaid website at www.medicare.gov/dialysisfacilitycompare
- Certificate of Need historical files

CONCLUSIONS

Northwest Kidney Centers

For the reasons stated in this evaluation, the application submitted by Northwest Kidney Centers proposing to establish a new nine-station kidney dialysis center in Everett within Snohomish County planning area #2 is consistent with applicable criteria of the Certificate of Need Program, provided Northwest Kidney Centers agrees to the following in its entirety.

Project Description:

This certificate approves the establishment of a new nine-station dialysis center to be located at 1010 SE Everett Mall Way, Suite 100, 102, and 104 in Everett [98208] within Snohomish County planning area #2. At project completion, the dialysis center is approved to certify and operate 9 dialysis stations.

The table below provides a breakdown of the total number of stations at Northwest Everett Kidney Centers.

	CMS Certified Stations	Stations Counted in Methodology
General Use In-Center Stations	7	7
Permanent Bed Station	1	1
Isolation Station	1	1
Total Stations	**9**	**9**

Services to be provided at Northwest Everett Kidney Center includes in-center hemodialysis, home peritoneal and home hemodialysis training, backup support for home peritoneal and home hemodialysis dialysis, a permanent bed station, and ~~dedicated isolation/private room,~~ an isolation room[5] and treatment shifts beginning after 5:00 p.m. NKC's isolation station is counted in the methodology station count because it does not meet the kidney disease treatment centers definition of "exemption isolation station" under WAC 246-310-800(9).

Conditions:

1. Northwest Kidney Centers agrees with the project description as stated above. Northwest Kidney Centers further agrees that any change to the project as described in the project description is a new project that requires a new Certificate of Need.

2. Prior to providing services, Northwest Kidney Centers will provide an executed copy of the medical director agreement for the department's review and approval. The executed medical director agreement must be consistent with the draft provided in the application.

3. Prior to providing services at Northwest Everett Kidney Center, Northwest Kidney Centers will provide an executed copy of the patient transfer agreement for the department's review and approval. The executed patient transfer agreement must be consistent with the draft provided in the application.

4. Northwest Kidney Centers shall finance this project consistent with the financing described in the application.

Approved Costs:

The approved capital expenditure for this project is $3,549,081.

DaVita, Inc.

CONCLUSIONS

DaVita, Inc. submitted this application proposing to relocate the 13-station DaVita Everett Dialysis Center within the same planning area and expand the dialysis center by nine new stations.

For the reasons stated in this evaluation, the application as submitted is not consistent with the applicable review criteria, and a Certificate of Need is denied for the station addition.

Although DaVita, Inc. is not approved to add nine new stations to the 13-station DaVita Everett Dialysis Center, DaVita, Inc. provided documentation to support an approval to relocate the facility. Therefore, the department concludes that DaVita, Inc. is approved to relocate the 13-station dialysis center to the new site within Snohomish County ESRD planning area #2.

[5] NKC's isolation station is counted in the methodology station count because it does not meet the kidney disease treatment centers definition of "exemption isolation station" under WAC 246-310-800(9).

Project Description:
DaVita, Inc. is approved to relocate DaVita Everett Dialysis Center in its entirety to 8225 – 44th Avenue W, Suite B in Mukilteo [98275] within Snohomish County planning area #2. Once relocated DaVita Everett Dialysis Center is approved to certify and operate 14 dialysis stations. The station breakdown is below.

	CMS Certified Stations	Stations Counted in Methodology
General Use In-Center Stations	12	12
Permanent Bed Station	1	1
Private Isolation Station[6]	1	0
Total Stations	**14**	**13**

Services to be provided at DaVita Everett Dialysis Center include in-center hemodialysis, home hemodialysis, peritoneal dialysis, Training and support for peritoneal dialysis, emergency backup, permanent bed station, a dedicated isolation/private room, and treatment shifts beginning after 5:00 p.m.

Conditions:
1. DaVita, Inc. agrees with the project description as stated above. DaVita, Inc. further agrees that any change to the project as described in the project description is a new project that requires a new Certificate of Need.

2. DaVita, Inc. shall finance this project consistent with the financing described in the application.

Approved Costs:
The approved capital expenditure for this project is $3,544,081.

[6] DaVita has not yet completed the administrative station adjustment as allowed under Washington Administrative Code 246-310-809.

CRITERIA DETERMINATIONS

A. Need (WAC 246-310-210)

DaVita, Inc.

Based on the source information reviewed and agreement to the conditions identified in the "conclusion" section of this evaluation, the department concludes that DaVita, Inc. has met the need criteria in WAC 246-310-210. The kidney disease treatment center specific numeric methodology applied is detailed under WAC 246-310-812(4). WAC 246-310-210(1) criteria is also identified in WAC 246-310-812(5) and (6).

Northwest Kidney Centers

Based on the source information reviewed the department concludes that Northwest Kidney Centers has met the need criteria in WAC 246-310-210. The kidney disease treatment center specific numeric methodology applied is detailed under WAC 246-310-812(4). WAC 246-310-210(1) criteria is also identified in WAC 246-310-812(5) and (6).

(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 246-310-812 requires the department to evaluate kidney disease treatment centers applications based on the population's need for the service and determine whether other services and facilities of the type proposed are not, or will not, be sufficiently available or accessible to meet that need as required in WAC 246-310-210. The kidney disease treatment center specific numeric methodology is applied and detailed under WAC 246-310-812(4). WAC 246-310-210(1) criteria and also identified in WAC 246-310-812(5) and (6).

WAC 246-310-812 Kidney Disease Treatment Center Numeric Methodology

WAC 246-310-812 contains the methodology for projecting numeric need for dialysis stations within a planning area. This methodology 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 (NWRN).[7]

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 246-310-812(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.[8]

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 method 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.

[7] NWRN 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]

[8] WAC 246-310-280 defines base year as the most recent calendar year for which December 31 data is available as of the first day of the application submission period from the *Northwest Renal Network's Modality Report* or successor report." For this project, the base year is 2017.

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 NWRN data, again concluding with the base year. [WAC 246-310-812(4)(b) and (c)]

[WAC 246-310-812(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.

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 246-310-812(4)(d)] The department calculates the numeric methodology for each of the 57 planning areas and posts the results to its website. Below is the discussion of the two applicant's numeric methodology.

DaVita

DaVita proposes to relocate DaVita Everett Dialysis Center located at 8130 Evergreen Way in Everett [98203] within Snohomish County ESRD planning area #2 to Mukilteo. Currently DaVita Everett Dialysis Center is a thirteen station kidney dialysis facility. Upon relocating the 13-station DaVita Everett Dialysis Center to Mukilteo, DaVita will add another nine new stations to the facility resulting in a twenty two station dialysis center. DaVita submitted the numeric methodology posted to the department's website for Snohomish County ESRD planning area #2. The methodology projected need for nine new stations in year 2018.

Public Comment
None

Rebuttal Comment
None

NKC

NKC proposes to establish a nine-station kidney dialysis facility in Everett within Snohomish County planning area #2. NKC relied on the numeric methodology posted to the department's website for Snohomish County planning area #2. The methodology projected need for nine stations in year 2018.

Public Comment
None

Rebuttal Comment
None

Department Evaluation of the Numeric Methodology for Snohomish County planning area #2

The department calculates the numeric methodology for each of the 57 ESRD planning areas in Washington and posts each of the results to its website. The department's year 2018 numeric methodology was posted in March 2018 and it will be used for evaluating these two projects. Based on the calculation of the annual growth rate in the planning area, the department used the linear regression to determine numeric need. The number of projected patients was divided by 4.5 to determine the number of stations needed in Snohomish County planning area #2. A summary of the department's numeric methodology is shown in Table 1 below.

Department's Table 1
Snohomish County Planning area #2 Numeric Methodology Summary

	4.5 in-center patients per station		
	2022 Projected # of stations	**Minus Current # of stations**	**2022 Net Need or (Surplus)**
DOH Methodology Post to Website	67	58	9

As shown in the table above, once the 67 existing stations are subtracted from the projected need, the result is a net need of nine stations. The department's methodology is included in this evaluation as Appendix A. The department concludes that both DaVita and NKC **meet the numeric methodology standard**.

In addition to the numeric need, the department must determine whether other services and facilities of the type proposed are not or will not be sufficiently available or accessible to meet the dialysis station need.[9] For this review, the department uses the standards in WAC 246-310-812(5) and WAC 246-310-812(6).

WAC 246-310-812(5)

Before the department approves new in-center kidney dialysis stations in a 4.8 planning area, all certificate of need counted stations at each facility in the planning area must be operating at 4.5 in-center patients per station. However, when a planning area has one or more facilities with stations not meeting the in-center patients per stations standard, the department will consider the 4.5 in-center patients per station standard met for those facilities when:

(a) All stations for a facility have been in operation for at least three years; or

(b) Certificate of need approved stations for a facility have not become operational within the timeline as represented in the approved application.

...Both resident and nonresident patients using the kidney dialysis facility are included in this calculation. Data used to make this calculation must be from the most recent quarterly modality report from the Northwest Renal Network as of the letter of intent submission date.

For Snohomish County planning area #2, WAC 246-310-812(5) requires all CN approved stations in the planning area be operating at 4.5 in-center patients per station. Below is a discussion of the information submitted by each applicant for this standard.

DaVita

Currently there are four kidney dialysis facilities operational in Snohomish County ESRD planning area #2 DaVita provided a table showing that the two of the four facilities are operating above the

[9] WAC 246-310-210(1)(b).

4.5 standard. PSKC Everett and PSKC Monroe are operating below the standard. DaVita provided this statement:

"…WAC 246-310-812(5)(a) provides that the department will consider the 4.5 in-center patients per station standard met for facilities whose census is not at least 4.5 patients per station if "all stations for a facility have been in operation for at least three years." PSKC Monroe was initially Medicare certified on 9/8/2014, and all chairs have been open for more than three years". [Source: Application Page 14]

Public Comment
None

Rebuttal Comment
None

NKC
Currently there are four kidney dialysis facilities operational in Snohomish County ESRD planning area #2 NKC provided a table showing that the two of the four facilities are operating above the 4.5 standard. PSKC Everett and PSKC Monroe are operating below the standard.

NKC provided this statements, *"Table 4 details the current utilization of the existing Snohomish 2 dialysis facilities. As detailed in Table 4, two of the existing facilities are operating above 4.5 patients per station. As noted in Table 3, the other two facilities have been in operation for more than three years. Therefore, the standards in WAC 246-310-812(5) have been met*". [Source: Application Page 9]

Public Comment
None

Rebuttal Comment
None

Department Evaluation
WAC 246-310-812(5) states that the "*data used to make this calculation must be from the most recent quarterly modality report from the Northwest Renal Network as of the letter of intent submission date."* The date of the letter of intent is May 1, 2018. The data available as of May 1, 2018, is December 31, 2017, end of year data that was available on February 15, 2018. The utilization of the four existing dialysis centers located in Snohomish County ESRD planning area #2 is shown below.

Department's Table 2
December 31, 2017, Utilization Data Snohomish County ESRD planning area #2

Facility	# of Stations	# of Patient	Patients/Station
DaVita Everett Dialysis Center	13	70	5.38
DaVita Pilchuck Dialysis Center	8	42	5.25
Puget Sound Kidney Centers Everett	25	106	4.24
Puget Sound Kidney Centers Monroe	12	35	2.92

As shown in the table above, there are four kidney dialysis facilities operational in Snohomish County planning area #2. As shown in the table above, two of the facilities are owned by DaVita, Inc. The information in the table above shows that DaVita Everett Dialysis Center and DaVita

Pilchuck Dialysis Center both meet this standard. The other two facilities in the planning area, PSKC Monroe is operating at 4.24 and PSKC Everett is operating at 2.92. As shown in the table, the two facilities are operating below the standard.

However, WAC 246-310-812(5)(a) provides that the department will consider the 4.5 in-center patients per station standard met for facilities if all stations in a facility have been in operation for at least three years. PSKC Monroe initial Medicare certification was in 2014, and PSKC Everett initial Medicare certification was in 1981. Therefore, all approved stations in the planning area have been operational for more than three years. The department concludes that both **DaVita and NKC meet this sub-criterion.**

WAC 246-310-830 – Kidney Disease Treatment Facilities – Relocation of Facilities

(1) When an existing facility proposes to relocate any of its stations to another planning area, a new health care facility is considered to be established under WAC 246-310-020 (1)(a).

(2) When an existing kidney dialysis facility proposes to relocate a portion but not all of its stations within the same planning area, a new health care facility is considered to be established under WAC 246-310-020 (1)(a).

(3) When an existing kidney dialysis facility proposes to relocate a portion but not all of its stations to an existing facility, it will be considered a station addition under WAC 246-310-020(1)(e).

(4) When an entire existing kidney dialysis facility proposes to relocate all of its stations within the same planning area, a new health care facility is not considered to be established under WAC 246-310-020 (1)(a) if:

(a) The existing kidney dialysis facility ceases operation after the relocation;

(b) No new stations are added to the replacement kidney dialysis facility. The maximum treatment floor area square footage as defined in WAC 246-310-800(11)(a) is limited to the number of certificate of need stations that were approved at the existing facility;

(c) There is no break in service between the closure of the existing kidney dialysis facility and the operation of the replacement facility;

(d) The existing facility has been in operation for at least five years at its present location; and

(e) The existing kidney dialysis facility has not been purchased, sold, or leased within the past five years.

DaVita

In response to this sub-criterion, DaVita provided the following statements:

"The current DaVita Everett Dialysis Center site is limited in its ability to provide dialysis services to all residents of the service area. While it is highly trafficked and currently provides care for Medicare, Medicaid, and charity care patients (as shown in the historical financial statements in Appendix 8), the facility is limited in its size, and constrained by capacity to caring for fewer patients than could otherwise utilize its services. Furthermore, the current DaVita Everett Dialysis Center site is located on a pad in a now-vacant shopping center, which has increased crime risk for both employees and patients, particularly given the early and late hours the facility runs to provide access given its size limitations

The new DaVita Everett Dialysis Center site is also highly trafficked, and will provide Medicare, Medicaid, and charity care consistent with the pro forma operating statement and projected payor mix. It is in a location in which patients of all types, including the underserved groups noted in WAC 246-310-210(2), as well as DaVita teammates, may feel safe dialyzing at all times. Furthermore, additional access will provide access to all patients, including underserved groups, in more desirable shift times". [Source: Application Page 18]

Public Comment
None

Rebuttal Comment
None

Department Evaluation
DaVita is proposing to relocate the existing 13-station DaVita Everett and it would add nine new station. DaVita Everett initial Medicare certification was on 11/23/2009 and it has never be sold. Based on the Medicare certification date, the facility has been operating more than five years. DaVita states that upon completion of relocating the facility it will continue to operate it.

Based on the information provided in the application, DaVita Everett is operating at capacity. DaVita states the reason for relocating the 13-station kidney dialysis facility is because the current location is not safe for both staff and patients and relocating the facility to a new safer location will be beneficial for both its staff and patients. Based on the statements, the department agrees that by relocating the facility to a safer environment maybe beneficial to DaVita's staff and patients. The department concludes **this standard is meet.**

In compliance with this sub-criterion, NKC provided the following statement.

NKC
"This project does not propose any (partial or full) relocation. This question is not applicable".
[Source: Application Page 18]

Public Comment
None

Rebuttal Comment
None

Department Evaluation
NKC does not currently operate a facility in Snohomish County planning area #2 and this application does not propose to relocate any facility. Based on the information provided in the application, the department concludes **this standard is meet**

(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
To evaluate this sub-criterion, the department evaluates an applicant's admission policies, willingness to serve Medicare and Medicaid patients, and to serve patients that cannot afford to pay for services.

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 assurances regarding access to treatment. The admission policy must also include language to ensure all residents of the planning area would have access to the proposed services. This is accomplished by providing an admission policy that states

patients would be admitted without regard to race, ethnicity, national origin, age, sex, pre-existing condition, physical, or mental status.

Medicare certification is a measure of an agency's willingness to serve the elderly. With limited exceptions, Medicare is coverage for individuals age 65 and over. It is also well recognized that women live longer than men and therefore more likely to be on Medicare longer. One of the exceptions is Medicare coverage for patients with permanent kidney failure. Patients of any age with permanent kidney failure are eligible for Medicare coverage.

Medicaid certification is a measure of an agency's willingness to serve low income persons and may include individuals with disabilities.

A facility's charity care policy should show a willingness of a provider to provide services to patients who have exhausted any third-party sources, including Medicare and Medicaid, and whose income is equal to or below 200% of the federal poverty standards, adjusted for family size or is otherwise not sufficient to enable them to pay for the care or to pay deductibles or coinsurance amounts required by a third-party payer.[10] With the passage of the Affordable Care Act (ACA), the amount of charity care is expected to decrease, but not disappear. The policy should also include the process one must use to access charity care at the facility.

DaVita

In response to this sub-criterion, DaVita provided the following statement:

"Copies of these policies are provided in Appendix 14. Additionally, DaVita's history of providing dialysis services at numerous locations throughout Washington State shows that all persons, including the underserved groups identified in WAC 246-310-210(2), have adequate access to DaVita's facilities, as required by the regulation." [Source: Application page 18]

DaVita provided copies of the following policies used at all DaVita dialysis centers in Washington, including the existing DaVita Everett. [Source: Application page 18, Appendix 14]

- Admission policy/ Accepting End Stage Renal Disease Patients for Treatment
- Patient Behavior Agreements Involuntary Discharge or Involuntary Transfer
- Patient Financial Evaluation Policy

The department received public comments from NKC related to DaVita's compliance with this sub-criterion. The comments are restated below.

DaVita Everett Cannot Assure that All Residents have Dialysis Access

"WAC 246-310-210 (2) requires the Program to find that:

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… Such consideration shall include an assessment of the following: ***(a) The extent to which medically underserved populations currently use the applicant's services in comparison to the percentage of the population in the applicant's service area which is medically underserved, and the extent to which medically underserved populations are expected to use the proposed services if approved.*** *(bold added)*

[10] WAC 246-453-010(4).

Historically to measure conformance to this WAC, for any CN reviewable project type, the Program has evaluated whether the facility maintains a Medicare and Medicaid contract and then considers how the facility performs in terms of serving such patients compared to other providers serving the Planning Area. While DaVita Everett does have existing Medicare and Medicaid contracts, by virtue of how different its existing and proposed payer mix is to the other existing dialysis provider in Snohomish County as well as statewide, it fails to demonstrate access.

Medicare began coverage for persons, regardless of age who have ESRD in 1972. Today, Medicare coverage generally starts on the first day of the fourth month of a patient's dialysis treatments. If an ESRD patient has coverage under an employer or individual plan, that plan is typically the only payer for the first 3 months of dialysis, and the patient experiences some out of-pocket costs. Once the patient with employer coverage becomes eligible for Medicare, there is still a period of time, called a "coordination period," when the employer plan continues to pay. If the employer plan does not pay 100%, Medicare will pay up to the Medicare allowable amounts (this is referred to as "coordination of benefits," the Plan pays "first" and Medicare "pays second"). If the patient is indigent and does not have an employer-sponsored plan, Medicaid pays for dialysis for the first 90 days and then the patient is covered by Medicare. At the end of 33 months, nearly all patients are on Medicare. In fact, and according to the Northwest Renal Network's Annual Reports, in Washington State, 84% of all dialysis patients in 2015 were covered by Medicare. In 2016, 81% of patients were covered by Medicare.

Anecdotally, over the years, and during the course of review on numerous dialysis CN applications, existing dialysis providers suggested that DaVita prioritizes admission to commercial pay patients. The new data collected under WAC 246-310-827 and the payer mix information provided in each DaVita application helps to provide clarity.

On February 15, 2018, consistent with the requirements of WAC 246-310-803, DaVita filed data with the Program for its 38 facilities currently in operation in Washington, and for which data was available1. This data shows that DaVita's facilities have some of the highest net revenue per treatment in Washington State (of the 20 facilities with the highest net revenue per treatment in the State, 10 were DaVita facilities). Of note, none of the highest net revenue facilities were not for-profit providers. ***Exhibit 1*** *provides a comparison of DaVita Net Revenue per treatment with Puget Sound Kidney Centers in similar markets, highlighting the differences between providers.*

As Medicare and Medicaid pay cost, or less than the cost, the driver of high net revenue is commercial payers. ***Exhibit 2*** *compares DaVita's payer mix to the other Non-Special Circumstances applications in Cycle 1 and* ***Table 1*** *compares DaVita Everett's payer mix to the other Snohomish County applications.*

Northwest Kidney Centers Table 1
Snohomish County Payer Mix, Cycle 1 Non Special Circumstances Applications

Facility	Medicare (% of Patients)	Medicaid (% of Patients)	Commercial (% of Patients)
DaVita Everett	*51.2%*	*4.4%*	*44.4%*
NKC Everett	*80.1%*	*8.3%*	*11.6%*
PSKC Arlington (Snohomish 1)	*77.2%*	*11.9%*	*10.8%*
DaVita Stillaguamish (Snohomish 1)	*52.0%*	*3.4%*	*44.6%*

*As depicted in **Exhibit 2**, of the eight applications DaVita filed on June 1, the percent of Medicare patients ranged from a low of 35% to a high of 69%, and its Medicaid ranged from 2% to 4%. This compares to 74% to 85% for Medicare and 4% to 12% for Medicaid for the 10 applications filed by all other providers. The pattern of significantly higher commercial or significantly lower Medicare and Medicaid rates is pervasive in the CN applications DaVita has submitted in 2018…*

*Most relevant in Washington State was the Office of the Insurance Commissioner's (OIC) May 5, 2017 order to DaVita to cease and desist in insurance activities for which it was not licensed. The OIC issued the cease and desist after receiving complaints that DaVita was directing Medicaid patients to enroll in a Plan that paid higher insurance benefits than did Medicaid. DaVita and the OIC ultimately entered into a Settlement Agreement, dated November 8, 2017. (See **Exhibit 3**). While DaVita did not acknowledge any wrongdoing in the Settlement, the data collected by the Program, and the data that per WAC must be used in the review of Cycle 1 Non- Special Circumstance CN applications demonstrates that DaVita has exponentially higher commercial rates and its applications demonstrate that is has exponentially lower percentages of Medicaid patients than other dialysis providers in the State.*

DaVita itself, in its Green Lake (King 1) acknowledges its high rate of commercial patients:
…. we note that DaVita's other Seattle-area facilities treat a high percentage of commercial, HMO, and other government patients, as evidenced in Table 11A, meaning Olympic View is not an extreme outlier in that regard. (question 3, screening response)

In the above cited screening response, DaVita revised its payer mix for the three closest facilities in King 1 to include Mill Creek instead of Olympic View. Mill Creek is one of the three comparable cited in this application for WAC 246-310-827. Including Mill Creek actually increased the percentage of commercial patients.

In a competitive review, DaVita not only fails WAC 246-310-210 (2), it also fails WAC 246-310-220 (2), which states:

> *The determination of financial feasibility of a project shall be based on the following criteria. 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**.*

The higher payments paid by insurance companies for services that Medicare and Medicaid otherwise pay for at cost or less increases costs to the health care system. Further, out of pocket costs borne by commercial patients that are other eligible for government programs increases costs

to these patients. These costs are unnecessary". [Source: NKC's public comments received September 4, 2018, pages 2- 4]

In response to NKC's public comments, DaVita provided its rebuttal comments which are restated below.

DaVita's Payor Mix is Consistent with Other Providers

"Although DaVita accepts all patients, NKC attempts to make the case that DaVita has an inordinate number of commercially-insured patients, by asserting that the identified payer mix at DaVita's facility "is 51% Medicare, 4% Medicaid and 44% commercial". But this is inaccurate. Table 12 in DaVita's application identifies 44% "Commercial, HMO, Other Government, and Other". NKC has conveniently omitted everything after the word "commercial".

NKC's attempt to compare these figures with its own projected payer mix is a classic apples vs. oranges situation. The "Commercial, HMO, Other Government, and Other" identified in DaVita's Table 12 includes, among other things, Medicare Advantage and managed Medicaid. NKC apparently bundles Medicare Advantage with Medicare and managed Medicaid with fee –for service Medicaid in its own payer mix categories. But this does not mean that DaVita is obligated to do so.

To make something closer to an apples-to-apples comparison, although still not exact, the Department could use the company-wide figures reported in DaVita's Form 10-K, which as a public company DaVita is required to file with the U.S. Securities and Exchange Commission and that is attached as an appendix to DaVita's application. In its annual report for 2017, DaVita disclosed that approximately 89.5% of its total dialysis patients are covered by government-based programs. This is almost identical to NKC's 88.4% projection for its proposed facility. The remaining 10.5% of DaVita's total dialysis patients are associated with commercial payors. Again, this is almost identical to NKC's 11.6% projection

But it is not even necessary to look at DaVita's company-wide payor-mix figures. In response to NKC's criticism, we have gone back to the data for the Everett facility specifically, to determine how much of the "Commercial, HMO, Other Government, and Other" category is attributable to Medicare Advantage, managed Medicaid, and one other important "Other Government" payor the Veterans Administration. VA-insured patients are a particularly important category to consider because NKC apparently does not accept them. Here is a payor mix with the categories adjusted to be more similar to NKC's categories:

DaVita's Reallocated Table 12

Table 12 –Reallocated DaVita Everett Dialysis Center Projected Payor Mix	**Percentage by Revenue**	**Percentage by Patient**
Medicare (including Medicare Advantage)	43.03%	72.25%
Medicaid (including Managed Medicaid)	3.49%	6.94%
Commercial, HMO, Other Government, and Other	53.48%	19.81%
Total	100.00%	100.00%
Note: VA (included in Other Government)	3.27%	4.80%

As can be seen in the above table, the percentage of DaVita's patients covered by Medicare (including Medicare Advantage), Medicaid (including managed Medicaid), and the VA adds up to 85%--which is quite close to NKC's 88.4% figure. The remaining 15% of DaVita's patients within

"Commercial, HMO, Other Government, and Other," excluding the VA (19.8% - 4.8%), is similar to 11.6% "Commercial" figure. Again, this is not an exact comparison because NKC's figure appears to be strictly for commercially-insured patients. Furthermore, these figures vary by location for all providers - in Enumclaw, NKC has attested to a commercial patient total of 18.5% in its Special Circumstances application filed in Cycle 1, 2018.

NKC attempts to create an issue where none exists, by making misleading comparisons between different statistics. NKC goes so far as to edit DaVita's "Commercial, HMO, Other Government, and Other" category to read "Commercial," which is a blatant misrepresentation of the application record. The fact of the matter is that overall payor mix is pretty consistent across dialysis providers, given how dialysis treatment is reimbursed. Although it certainly can vary between individual facilities for particular periods of time, the fact that DaVita's company-wide figures for government and commercially-insured patients (89.5% and 10.5%) are nearly identical to the corresponding percentages at NKC's proposed facility (88.4% and 11.6%) illustrates this neatly. And when the payor mix categories for DaVita's Everett facility are adjusted to bring them as close as possible to NKC's definitions, DaVita's percentages for Medicare/Medicaid/VA and Commercial/HMO/Other Government/Other (85% and 15%) are comparable to NKC's percentages for Medicare/Medicaid and Commercial (88.4% and 11.6%)". [Source: DaVita's rebuttal comment received October 5, 2018, pages 2-4]

<u>DaVita Provides Insurance Counselling to Patients</u>

"DaVita's dialysis facilities are Medicare-certified and accept Medicare and Medicaid patients. As a result, they are required to comply with federal conditions for coverage. Based on these conditions of coverage, DaVita employs multidisciplinary teams to assess and address its patients' medical requirements and-because ESRD is a tremendous psychological and financial burden on patients-their psychosocial needs, including financial concerns.

Among the team members who help meet patient's needs are insurance counselors. The insurance counselors serve DaVita's patients by, among other things, helping them navigate the healthcare payment labyrinth so that they understand their options and may make an informed choice about insurance. The insurance counselor's present patients with information about both public and private insurance options and provide assistance to patients during the enrollment process, when needed, after a patient has chosen an insurer. For patients who elect to proceed with private insurance and need assistance with their premiums, the insurance counselors may help the patients apply for premium support from third-party entities, such as the American Kidney Fund or the Washington State Health Care Authority's Premium Payment Program, which subsidizes the cost of private insurance for Washington residents enrolled in Apple Health, Washington's Medicaid program.

The decision on an insurance option is the patient's choice. DaVita's insurance counselors do not choose plans for patients, and they do not urge patients to choose private insurance or to choose a particular carrier. The patient alone makes the choice whether to obtain a commercial plan or a government plan. Similarly, if the patient prefers private insurance, the insurance counselors do not choose a particular commercial plan. The decisions about private or government insurance, and

about which particular plan to choose, are made by the patient alone". [Source: DaVita's rebuttal comment received October 5, 2018, page 6]

DaVita Insurance Counseling is Consistent with CMS requirements and Guidance

The Centers for Medicare and Medicaid Services ("CMS"), the federal agency that administers both Medicare and Medicaid, mandates that dialysis facilities inform patients of their rights and account for patients' psychosocial needs. Among other things, CMS specifies certain "patient's rights" for dialysis facilities, including that "I have the right to be told about any financial help available to me."

CMS regulations further require that dialysis facilities have an interdisciplinary team that provides each patient with "an individualized and comprehensive assessment of his or her needs" that "must be used to develop the patient's treatment plan and expectations for care." 42 C.F.R. § 494.80. That assessment must include, among other things, an "evaluation of psychosocial needs by a social worker." 42 C.F.R. § 494.80(a)(7). The CMS manual for certification of dialysis facilities makes clear that the evaluation of psychosocial needs should address, among other things, the patient's "financial capabilities and resources," "access to available community resources," and "eligibility for Federal, State or local resources." [Source: DaVita's rebuttal comment received October 5, 2018, pages 6-7]

Department Evaluation

NKC provided public comment that questioned the appropriateness of DaVita's payer mix for DaVita Everett. In NKC's comments. It introduced several applications submitted by DaVita in 2018 to show why its assertions are true. NKC introduced data from other facilities in Snohomish and King Counties to suggest that DaVita has an organization-wide history in which Medicaid patients are inappropriately steered into commercial insurance plans.

The two articles provided by NKC, while full of information regarding steps that are being taken to request action from the Department of Health and Human Services, does not include or point to conclusive evidence that DaVita denied access to any patients based on payer source. The payer mix table above identifies that approximately 3.49% of revenue is from Medicaid, representing approximately 6.94% of patients. There were approximately 801,633 Snohomish County residents in 2018, of which approximately 109,022 were enrolled in some form of Medicaid program – approximately 13.6% of the population. While 13.6% is more than the 6.94% identified in the application, this has not been adjusted for age or any other factors and is not concerning to the CN program.

NKC did not provide sufficient evidence for the department to conclude that DaVita patients on Medicaid have been inappropriately steered into commercial plans. The department found no evidence to support that DaVita is not accessible to Medicaid patients. Insofar as the reimbursement is concerned, this issue is addressed under WAC 246-310-827 – superiority. This analysis can be found under WAC 246-310-240 towards the conclusion of this evaluation.

DaVita provided copies of the necessary policies used at DaVita Everett and at all DaVita dialysis centers in Washington.

Medicare and Medicaid Programs

DaVita Everett is currently Medicare and Medicaid certified and DaVita provided the facility's Medicare and Medicaid provider numbers listed on the next page.

Medicare Provider Number: 502544
Medicaid Provider Number: 1194048702

DaVita also included a table showing the current percentages of revenues by payer source and revenues by patient for the facility. The information is summarized below. [Source: Application page 22 and page 12-13]

DaVita's Tables 12 and 13—Payor Mix

Projected DaVita Everett Dialysis Center		
Source	**Percentage of Revenue by Payer**	**Percentage of Patients by Payer**
Medicare	26.26%	51.21%
Medicaid	1.89%	4.36%
Insurance/HMO	71.85%	44.43%
Total	**100.00%**	**100.00%**

Current DaVita Everett Dialysis Center Payor Mix		
Source	**Percentage by Revenue**	**Percentage of Patients**
Medicare	22.79%	51.21%
Medicaid	1.32%	3.57%
Insurance/HMO	71.89%	44.91%
Total	**100.0%**	**100.0%**

DaVita did not provide a policy specifically entitled "Charity Care." However, the policy provided by DaVita titled Patient Financial Evaluation Policy provides the necessary information and process a patient would use to obtain charity care at a DaVita facility. Furthermore, DaVita demonstrated its intent to provide charity care for patients treating at DaVita Everett by including a 'charity' line item as a deduction from revenue within its pro forma financial statement.

Given that DaVita currently operates dialysis centers in Washington State and uses the same policies and procedures provided in the application at dialysis centers, including DaVita Everett no draft policies were provided by in this application. Based on the information, the department concludes DaVita's project **meets this sub-criterion**.

NKC

In compliance with this sub-criterion, NKC provided the following statements.

"NKC has a long established history of developing and providing services that meet the healthcare needs of the communities it serves. NKC Kent, as with all other facilities, is committed to providing services to all patients regardless of race, color, religious belief, sex, age or lack of ability to pay. Copies of the requested policies are included in Exhibit 6". [Source: Application Page 13]

NKC provided copies of the following policies used at all NKC's dialysis centers. [Source: Application page 13, Exhibit 6]

- Admission policy
- Charity care/ Patient Account/Patient Funding Source
- Patient Right Compliance

The department received public comments from DaVita related to NKC's compliance with this sub-criterion. The comments are restated below.

NKC will not accept all planning area residents as patients
DaVita provided public comments stating that NKC is not available to all residents of the services area. DaVita's public comments are restated below.

"NKC's application should be denied because its facility will not accept all planning-area residents as patients. WAC 246-310-210(2) requires that "all residents of the service area ... are likely to have adequate access to the proposed health service or services." (Emphasis added.) As of October 2017, NKC did not accept all planning-area residents as new patients. NKC informed physicians at that time as follows:

> *Therefore, we have made the following admissions policy decisions:*
>
> *We will accept new in-center patients with ESRD and AKI who reside in King or Clallam counties and are covered by Medicare, Medicaid and commercial insurance with whom we have a contract. (We do not have contracts with Kaiser Permanente, Veterans Administration or Humana outside of Washington.)*
> *We will not accept new in-center patients who reside in Pierce or Snohomish County.*
> *We will accept PD and home hemodialysis patients from all counties.*
> *We will place a mobile in-center patient in a bed, if that is where a slot is available.*
> *We will not accept visitors to whom we have not yet made a commitment, including pre-transplant patients.*
>
> *Source: NKC's newsletter.*

If this is still NKC's policy, NKC does not accept (1) uninsured patients, (2) patients covered by insurers with which NKC does not have contracts, or (3) patients who reside in Pierce or Snohomish Counties. Even if NKC responds that it has since changed this policy, that NKC placed these restrictions in effect at least for a period of time (presumably without informing the Department of Health) should cause concern that it may do so again in the future.

We fully understand that a particular dialysis facility may be unable to accept new patients if it is full and there are no spaces available for anyone, but this is not what NKC is doing. In its new policy, NKC states that it will continue to accept new patients who (1) have certain insurance and (2) do not reside in Pierce or Snohomish Counties, but will not accept new patients who (1) are uninsured altogether or are not insured by insurers with which NKC has a contract or (2) reside in Pierce or Snohomish Counties.

So that there is no confusion, DaVita confirms that all of its Washington facilities will accept all patients regardless of insurance status or ability to pay if they have a space available, and will work to accept a patient in a nearby facility with space and waitlist the patient at his or her preferred facility if not. Unlike NKC, DaVita does not turn away ESRD patients based on where they live or what insurance they have.

NKC's new policies do not comport with the access requirement set forth in 210(2), which states that a CON application will not be approved unless all residents of a service area will have adequate access to the proposed facility. Accordingly, NKC's application should be denied because all residents of the service area will not have adequate access to NKC's proposed facility. Indeed, if they have the "wrong" address or insurance, or no insurance at all, they apparently will be automatically excluded pursuant to NKC's stated new policies". [Source: DaVita's comments received September 5, 2018, pages 4-5]

In response to DaVita's public comment, NKC provided its rebuttal comments. NKC's rebuttal comments are restated below.

NKC Does not discriminate and will accept all planning area residents

*"DaVita cites WAC 246-310-210(2) which requires that all residents **of the service area** (emphasis added) are likely to have adequate access, and then concludes that NKC should be denied because of an October 2017 article in the NKC Physician newsletter about the influx of patients from outlying counties. DaVita has cherry-picked and purposefully misconstrued the position in the newsletter. NKC is a community-based provider and accepts all patients. The entire article is included in Attachment 2 and the purpose of the newsletter is restated below:*

From Physician Update, Oct. 20, 2017

Regional shortage of dialysis capacity prompts new admitting policies

> *We recently surveyed dialysis facilities in King, south Snohomish and Pierce counties. We found many have waiting lists and none other than Northwest Kidney Centers state they are accepting new patients.*

We have open slots, although our South and North End units are quite full. In a recent two-week period, we received almost as many referrals as in a typical month.

Specifically, the article was NKC's response to an extraordinary circumstance occurring in several adjacent planning areas. The entire purpose of the notification was to assure providers that patients (ESRD and AKI) residing in the NKC primary planning areas would continue to be well served.

DaVita neglected to provide in its public comment the context for the change in practice. Further, it neglected to explain that the extraordinary circumstance was in large part, prompted by the fact that DaVita had closed to new patients in some of its own facilities in adjacent planning areas in Pierce County and Snohomish County even though it had capacity. The patients needed a facility and were overflowing into our King County facilities; our article was in response to this fact.

NKC does not have a "new policy" and continues to provide access to ALL patients regardless of payer, sex, handicap, etc. within our Planning Areas. NKC currently operates 16 units in two Counties-King and Clallam Counties.

In addition, we are preparing to open the NKC-Federal Way West Campus unit in the King Five planning area and are currently awaiting survey4. Neve1theless, NKC accepts all ESRD patients from King Five planning area and serves them at NKC facilities in other King County planning areas. Our NKC Port Angeles unit in Clallam County accepts all patients from that county.

NKC does not operate units in Pierce and Snohomish County or any other counties in the State today. Of course, dialysis patients seek care close to home, so it makes sense they would seek care from providers in their own communities". [Source: NKC's rebuttal comments received October 5, 2018, pages 7 and 8]

Department Evaluation

In its public comment, DaVita asserted that the information used by NKC to mitigate its overcrowding at its facilities in King and Clallam counties is limiting access to dialysis services in at NKC's facilities. DaVita's statement appears to be correct however, what DaVita does not acknowledge is that NKC did not operate any dialysis facilities in Pierce or Snohomish County when that notice was released. With that information in mind, NKC is correct in its rebuttal that the notice was simply a reminder that its King and Clallam facilities were reaching capacity and its intent to ensure that the residents of King and Clallam counties had access to dialysis services in a facility within the planning area.

Additionally, DaVita does not factor in that the numeric methodology identified need based on planning area residents. The numeric methodology did not contemplate patients in-migration at the level that NKC has experienced at it King and Clallam County facilities. If NKC is experiencing a large number of patients travelling from Pierce or Snohomish counties to its King or Clallam counties dialysis centers, this could impact the availability of dialysis stations for the planning area's residents

Furthermore, the submission of the October 20, 2017, NKC's notification by DaVita without providing context could be misconstrued as an access to care issue by NKC. In this instance, it is not a proof of an access to care issue at NKC's facilities and is not grounds for denial of NKC's application for Snohomish County ESRD planning area #2.

NKC provided copies of the necessary policies used at all existing NKC's facilities. Within this application, the Admission Policy provided by NKC outlines the current process/criteria used to admit patients for treatment and ensures that patients will receive appropriate care at any of its dialysis centers. NKC's Admission Policy also states that any patient with end stage renal disease needing in-center hemodialysis, peritoneal dialysis or home hemodialysis therapy will be accepted for treatment at the facility without regard to race, color religion, sex, national origin, or age. This Admission Policy is currently in use at all NKC's facilities in Washington.

Medicare and Medicaid Programs

NKC currently participates in Medicare and Medicaid programs for its operational dialysis centers. As directed by WAC 246-310-815, NKC based its payer mix on its three closest facilities. All three facilities are in King County and they are Scribner Kidney Center located in Seattle, Lake City Kidney Center located in Seattle; and Kirkland Kidney Center located in Kirkland. For the proposed NKC Everett, NKC provided the facility projected percentages of revenues by payer and revenues by patient. That information is summarized below. [Source: Application, page 17]

NKC's Table 10
NKC Everett Kidney Center Projected Payer Mix

Payer Mix	Percentage by Payer	Percentage by Patient
Medicare	53.5%	80.1%
Medicaid	4.9%	8.3%
Commercial	41.6%	11.6%
Total	**100.0%**	**100.0%**

NKC Everett is not existing facility. However, all NKC's facilities currently operational in Washington provides Medicare and Medicaid. In the application, the applicant states, *"NKC Everett will seek Medicare and Medicaid certification"*. [Source: Application page 7]

NKC currently provides dialysis services to Medicare and Medicaid eligible patients at its dialysis centers. NKC intends to provide Medicare and Medicaid to patients receiving treatment at the proposed facility. NKC projects that 88.4% of the patients receiving treatments at the facility will be on Medicare or Medicaid. A review of the anticipated revenue shows the facility expects to receive 58.4% of its revenue will be from Medicare and Medicaid reimbursements. [Source: Application page 17]

NKC submitted its "Financial Services-Patient Funding Sources Policy" or charity care policy used by all of the dialysis centers owned, operated, or managed by NKC. This same policy would be used at the NKC Everett. The policy outlines the process a patient would use to access services when they do not have the financial resources to pay for required treatments. In addition, the pro forma operating statement for NKC Everett includes a 'charity care' line item.

Based on the source information reviewed, the department concludes that all residents of the service area would have access to the healthcare services to be provided at NKC Everett. **This sub-criterion is met.**

(3) The applicant has substantiated any of the following special needs and circumstances the proposed project is to serve.

(a) The special needs and circumstances of entities such as medical and other health professions schools, multidisciplinary clinics and specialty centers providing a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas.

(b) The special needs and circumstances of biomedical and behavioral research projects designed to meet a national need and for which local conditions offer special advantages.

(c) The special needs and circumstances of osteopathic hospitals and non-allopathic services.

(4) The project will not have an adverse effect on health professional schools and training programs. The assessment of the conformance of a project with this criterion shall include consideration of:

(a) The effect of the means proposed for the delivery of health services on the clinical needs of health professional training programs in the area in which the services are to be provided.

(b) If proposed health services are to be available in a limited number of facilities, the extent to which the health professions schools serving the area will have access to the services for training purposes.

(5) The project is needed to meet the special needs and circumstances of enrolled members or reasonably anticipated new members of a health maintenance organization or proposed health maintenance organization and the services proposed are not available from nonhealth maintenance organization providers or other health maintenance organizations in a reasonable and cost-effective manner consistent with the basic method of operation of the health maintenance organization or proposed health maintenance organization.

Department Evaluation

WAC 246-310-210(3), (4), and (5) do not apply to any of the two dialysis projects under review.

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

DaVita, Inc.

Based on the source information reviewed and agreement to the conditions identified in the "conclusion" section of this evaluation, the department concludes that DaVita, Inc. has the financial feasibility criteria in WAC 246-310-220 and WAC 246-310-815.

Northwest Kidney Centers

Based on the source information reviewed and agreement to the conditions identified in the "conclusion" section of this evaluation, the department concludes that Northwest Kidney Centers has the financial feasibility criteria in WAC 246-310-220 and WAC 246-310-815.

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

WAC 246-310-815 outlines the financial feasibility review requirements for dialysis projects. For the two projects, DaVita and NKC must demonstrate compliance with the following sub-sections of WAC 246-310-815(1). Using its experience and expertise the department evaluates if the applicant's pro forma income statements reasonably project the proposed project is meeting its immediate and long-range capital and operating costs by the end of the third complete year of operation.

WAC 246-310-815(1)

(1) The kidney dialysis facility must demonstrate positive net income by the third full year of operation.

(a) The calculation of net income is subtraction of all operating and non-operating expenses, including appropriate allocated and overhead expenses, amortization and depreciation of capital expenditures from total revenue generated by the kidney dialysis facility.

(b) Existing facilities. Revenue and expense projections for existing facilities must be based on that facility's current payer mix and current expenses.

(c) New facilities.

(i) Revenue projections must be based on the net revenue per treatment of the applicant's three closest dialysis facilities.

(ii) Known expenses must be used in the pro forma income statement. Known expenses may include, but are not limited to, rent, medical director agreement, and other types of contracted services.

(iii) All other expenses not known must be based on the applicant's three closest dialysis facilities.

(iv) If an applicant has no experience operating kidney dialysis facilities, the department will use its experience in determining the reasonableness of the pro forma financial statements provided in the application.

(v) If an applicant has one or two kidney dialysis facilities, revenue projections and unknown expenses must be based on the applicant's operational facilities.

DaVita

Given that DaVita Everett is currently operational, sub-sections (1)(a) and (b) above apply to this project. As previously stated, DaVita proposes it will relocate the existing 13-station DaVita Everett and expand it by adding nine new stations for a total of twenty two stations. The twenty two station kidney dialysis facility would be operational in February 2021. Under this timeline, calendar year one of the project is 2022 and calendar year three is 2024. [Source: Screening response received July 31, 2018, page 4]

DaVita provided the assumptions used to project in-center patients and home patients treatments for partial calendar years 2021, and full calendar years 2022 through 2024. The assumptions are restated below. [Source: Screening response received July 31, 2018, page 4, Appendix 9A]

- ***First Full Year:*** *2022, based on a first patient date in February 2021.*
- ***Partial Year:*** *2021. Shown from February 1 – December 31, 2021. Medical Director, Depreciation, and Lease expense are shown for 11 months in the new facility. All other expense and revenue categories are allocated on a per-treatment basis. Treatments are adjusted to account for the 47.71 weeks remaining in 2021 from the operational date.*
- ***Total Stations:*** *CON Approved stations. Excludes CON-exempt isolation station.*
- ***Total Chronic Capacity:*** *6 shift capacity is assumed to be 100% utilization.*
- ***Patient Census Projections:*** *Census projections are based on a 5-year projection of planning area patients using a regression of 5 years historical data and DaVita's own experience and expertise. Patients are assumed to transfer with DaVita Everett Dialysis Center given the improved location, ready access, and newly available shifts in an expansion.*
- ***Total Treatments:*** *Total Treatment Volume is assumed to be based on average yearly census, a 5% missed treatment rate consistent with DaVita's own experience and expertise, and three treatments weekly for 52 weeks per year, except as previously noted for partial year 2021.*

"Table 12 provides expected payor mix for the DaVita Everett Dialysis Center, projected using DaVita's market knowledge, experience, and expertise". [Source: Application page 22]

DaVita's Tables 12— Projected Payor Mix

Table 12 DaVita Everett Dialysis Center Projected Payor Mix	Percentage of Revenue by Payer	Percentage of Patients by Payer
Medicare	26.26%	51.21%
Medicaid	1.89%	4.36%
Commercial, HMO, Other Government and Other	71.85%	44.43%
Total	**100.00%**	**100.00%**

Using the assumptions stated above, DaVita's projected the end-of-year number of in-center and dialyses and patients for the 22-station DaVita Everett in years 2021 through 2024 are shown in Table 3. [Source: Screening response received July 31, 2018, Appendix 9A]

Department's Table 3
DaVita Everett Dialysis Center
Projected Patients and Dialyses for Years 2021 – 2024

	Partial Year 2021	Full Year 1-2022	Full Year 2-2023	Full Year 3-2024
Number of Stations	22	22	22	22
Total In center Patients	85	91	105	118
Total In center Treatments	11,156	13,087	14,510	16,486
Total Home Patients	36	38	41	43
Total Home Treatments	4,760	5,483	5,854	6,224
Total All Patients	121	129	146	161
Total All Treatments	15,916	18,570	20,364	22,710

DaVita also provided the assumptions used to project revenue, expenses, and net income for the 22-station DaVita Everett. [Source: Screening response received July 31, 2018, Appendix 9A]

- ***Revenue per treatment:*** *No inflation is applied to revenue per treatment, which is based on the last full year of operation, 2017 and its blended revenue per treatment for Everett Dialysis Center.*
- ***Expenses:*** *Based on an average of comparable facilities (Everett only) for the last full calendar year (2017), and allocated on a per-treatment basis, except as where noted for the medical director, lease, and depreciation expense (which is based on calculated depreciation for the capex expenditure for the project).*
- ***Cost inflation:*** *DaVita's experience and expertise leads to an assumption that non-medical director or lease costs (which are previously contracted and based on actual contract costs) are likely to inflate at ~2% per year, and each category is assumed as such.*
- ***Medical Director Expense:*** *based on contracted, known expenses in latest medical director agreements that run through the extent of the three year projection window. This includes post-certification ICHD and PD compensation consistent with planned (existing) services.*
- ***Lease Expense:*** *base rent is directly pulled from the lease contract for each calendar year, per the rent table. The payment term is projected to start in May 2019, 120 days from possession date. Tax and CAM are calculated based on a ceiling of $3.90 contractually established in the first year, and inflated at 2% annually thereafter.*
- ***Labor Assumptions:*** *Based on safe, fair, and efficient staffing ratios for projected census and required staff type. Benefits are assumed at a rate of 57% of wages based on historical precedent. Salaries and wages are projected to inflate at 2% annually.*

Specific to the base rent reference under the lease expense category, DaVita provided the following clarification. *"…In the new facility, base rent is based on a contractually agreed rate of $15.00 per square foot, inflating at 3% annually. Due to clause 8.5, total operating expense (Tax and CAM) is held to no more than $3.90 per square foot in the first year. This number is assumed to increase at 2% annually thereafter based on DaVita's experience".* [Source: Screening response received July 31, 2018, page 8 and Appendix 26]

DaVita's Lease Expenses and Base Rent Table

Lease Years				***Monthly Amounts***	
From		***To***		***Rent***	***Tax + CAM***
Year	***Month***	***Year***	***Month***		
2019	*5*	*2020*	*4*	*$16,503*	*$4,291*
2020	*5*	*2021*	*4*	*$16,998*	*$4,376*
2021	*5*	*2022*	*4*	*$17,508*	*$4,464*
2022	*5*	*2023*	*4*	*$18,033*	*$4,553*
2023	*5*	*2024*	*4*	*$18,574*	*$4,644*
2024	*5*	*2025*	*4*	*$19,131*	*$4,737*

	FY19	***FY20***	***FY21***	***FY22***	***FY23***	***FY24***
Base Rent	*$224,157*	*$226,719*	*$19,109*	-	-	-
Base Rent New	*$132,020*	*$201,991*	*$208,050*	*$214,292*	*$220,721*	*$227,342*
Tax & CAM	*$57,341*	*$75,190*	*$55,136*	*$54,282*	*$55,368*	*$56,475*
Total	***$413,518***	***$503,900***	***$282,295***	***$268,574***	***$276,088***	***$283,817***

Based on the assumptions above, DaVita projected the revenue, expenses, and net income for years 2021 through 2024. A summary of the projections are shown in Table 4. [Source: Screening response received July 31, 2018, Appendix 9A]

Department's Table 4
DaVita Everett Dialysis Center Projected Revenue and Expenses for Years 2021 - 2024

	Partial Year 2021	Full Year 1- 2022	Full Year 2- 2023	Full Year 3- 2024
Net Revenue	$7,909,182	$9,228,657	$10,119,799	$11,286,017
Total Expenses	$5,249,385	$5,98,562	$6,556,562	$7,250,603
Net Profit / (Loss)	$2,659,797	$3,245,095	$3,563,237	$4,035,414

The 'Net Revenue' line item is gross in-center treatments and home treatments minus deductions for bad debt and charity care. The 'Total Expenses' line item includes all expenses related to the projected operation of the projected 22-station facility in years 2021 through 2024. The expenses also include allocated costs per treatment which is multiplied by the projected number of treatments. Medical director costs are $145,600 annually and is consistent with the executed medical director agreement provided in the application.

The department received public comments from NKC related to DaVita's compliance with this sub-criterion. Below are summaries of the public comments.

DaVita Everett Pro forma Contain Errors and Questionable Assumptions

Table 13 of DaVita's application provided the proposed payer mix for its the expanded Everett facility. The application states that the payer mix Table 13 is a three-year average of the historical payer mix at DaVita Everett. The dialysis rules at WAC 246-310-815(1) state that existing facilities are required to use current experience, not a three-year average:

> *b) Existing facilities. Revenue and expense projections for existing facilities must be based on that facility's **current payor mix** (emphasis added) and current expenses.*

DaVita provided the current payer mix for Everett in Table 12. Table 12 and 13 do not match. Table 12 indicates that Medicare revenue is 26% vs. 23% and commercial revenue is 72% vs. 76%.

*In addition, the assumptions provided in Appendix 9 state that the revenue per treatment …"is based on the last full year of operation, 2017 and its payor mix, **as an average of comparable facilities."***

*DaVita also provided historical financial information for Everett. Using this information, NKC calculated the net revenue per treatment for each year. As seen in **Table 2**, with the exception of 2017 (which was used in the pro forma), every other year has net revenue per treatment that is 13-40% higher than 2017. Assuming DaVita Everett is able to achieve the projected volumes, and assuming that the actual net revenue per treatment is closer to even the 2016 average; an additional $1.3 million will be added to DaVita's bottom line without any commiserate increase in services to patients.*

DaVita's Table 2
DaVita Everett, Net Revenue per Treatment

	Net Revenue/Treatment
2015	$679.27
2016	$561.50
2017	$496.97
Year to Date 2018	$571.67
DOH Superiority (2016) Cost Report Data)	$613.59
Pro forma	$496.94

[Source: NKC's public comments received September 4, 2018, page 5]

Inflation in DaVita's pro forma

Inflation is included in DaVita's pro forma despite specific instructions in the new ESRD CN application form published by the Program in March 20182. Specifically, page 2 of the guidelines state:

*Use **non-inflated** dollars for **all** cost projections*
***Do not** include a general inflation rate for these dollar amounts.*

DaVita's pro forma assumptions, included in Appendix 9 and Appendix 9A, specifically state:

i. *Cost Inflation: DaVita's experience and expertise leads it to an assumption that non-medical director or lease costs (which are previously contracted and based on actual costs) are likely to inflate at ~2% per year, and each category is assumed as such.*
ii. *Labor Assumptions: Based on safe, fair, and efficient staffing ratios for projected census and required staff type. Benefits are assumed at a rate of 57% of wages based on historical precedent. Salaries and wages are projected to inflate at 2% annually.* [Source: NKC's public comments received September 4, 2018, page 6]

Benefits rate is likely an error

"*DaVita states that benefits are assumed at rate of 57% of wages. NKC questions this assumption. The average benefit rate of other Non-Special Circumstance CN applications is approximately 26%. DaVita offers no explanation as to why its benefit rate is so high".* [Source: NKC's public comments received September 4, 2018, page 6]

In response to NKC's public comments above, DaVita provided its rebuttal comments which are restated below.

DaVita's pro forma is accurate

"WAC 246-310-815(1) ("Section 815(1)") requires that "[r]evenue and expense projections for existing facilities must be based on that facility's current payor mix and current expenses". The regulation does not define the word "current". As DaVita explained in the assumption accompanying its pro forma, it used "the last full year of operation, 2017". This was reasonable, particularly given the lack of any suggestion and NKC offers none that currently should mean something other than the most recent year of operation.

If the Program would like CON applicants to use something other than the most recent full year of historical data (e.g., the most recent quarter), it should give this guidance. However, it would be

deeply unfair for the Department to penalize DaVita for using the most recent full year of data, given that this is a perfectly reasonable understanding of the Section 815(1) requirement.

NKC suggests that because DaVita also disclosed in its application its three-year average payor mix, it must have used that in its pro forma instead. NKC is wrong. DaVita explained in its pro forma assumptions that it was using "the last full year of operation, 2017" which is perfectly clear. Moreover, this can be verified by comparing the revenue per treatment in DaVita's 2017 actual financials with its pro forma.

The 2017 financial data is presented in Appendix 8. Dividing $7,356,077 net revenue by 14,802 total treatments results in net revenue per treatment of $497. The pro-forma projection is presented in Appendix 9A. Dividing $10,119,800 net revenue in Year 3 by 20,364 total treatments in Year 3 results in net revenue per treatment of $497 a perfect match. NKC then appears to argue that DaVita's 2016 revenue per treatment figure should be used instead. This makes no sense. Section 815(1) requires use of "current" facility data. NKC's suggestion that DaVita somehow should have looked past 2017 to the 2016 data is both illogical and inconsistent with the regulations". [Source: DaVita rebuttal comments received October 5, 2018, page 9]

<u>Inflation is permitted in cost projections and if omitted, it improves DaVita's projected financial performance</u>

"The Department's regulations require an applicant to project costs. They say nothing about whether inflation should be included or not included.

As NKC notes, the Program's application form contains guidance stating that an applicant should not include inflation in cost projections. But omitting inflation makes the cost projections less accurate. Therefore, DaVita asked the Program whether it would be permissible to include inflation, and the Program confirmed that it would be permissible if it were a reasonable estimate.

If the Program tells DaVita in a future application cycle that it is forbidden to include inflation in cost projections, even though it makes those projections more accurate, DaVita of course will abide by the Program's instructions. However, the Program told DaVita during this application cycle that adjusting cost projections for inflation was permissible. It would be deeply unfair if the Program were to penalize DaVita for using a more accurate methodology to project costs than is required, a methodology that the Program told DaVita was acceptable.

In any event, if inflation is removed from the cost projections, it improves the financial feasibility of DaVita's facility. This is shown in the following table:" [Source: DaVita rebuttal comments received October 5, 2018, page 10]

<u>DaVita's projected staffing costs are accurate</u>

"…when DaVita breaks down its total staffing costs into the two line-items in its pro forma, "Salaries & Wages" and "Employee Benefits & Taxes," a greater share of staffing costs are in the second category than when NKC breaks down its total staffing costs into the two corresponding line-items in NKC's pro forma.

This can be illustrated by comparing projected Year-3 in each pro forma. In the projected Year-3 for DaVita's proposed 22-station facility, salaries & wages account for 63.5% of total staffing costs ($1,284,011/ $2,021,459) and employee benefits & taxes account for the remaining 36.5% ($737,448 / $2,021,459). By comparison, in the projected Year-3 for NKC's proposed 9-station facility, salaries

& wages account for 81.3% of total staffing costs ($757,815/$944,412) and employee benefits account for the remaining 18.7% ($176,597/$944,412).

The reason for the difference in the line-item breakdowns appears to be that DaVita and NKC defined "benefits" differently for purposes of their pro forma line-item breakdowns. One likely difference is that NKC may have included overtime pay and shift-differential pay (i.e., additional pay for less desirable shifts, such as Saturday evenings) in wages, whereas DaVita included these in benefits. Another possible difference is that NKC may have included PTO in wages, whereas DaVita included PTO in benefits. These types of decisions about what to include in each category would account for why DaVita's line-item breakdown is weighted more heavily towards benefits whereas NKC's line-item break down is weighed more heavily towards wages.

In the case of DaVita Everett, shift differential, overtime, and PTO comprise a combined 38% of the total taxes and benefits category, or well over one-third of the total (the remainder being medical insurance, taxes, and various other benefits). [Source: DaVita rebuttal comments received October 5, 2018, pages 12-13]

Department Evaluation

DaVita proposes to relocate the existing13-station DaVita Everett to new location within Snohomish County planning area #2 and nine new stations. At project completion, DaVita Everett will be certify to operate twenty stations. DaVita based its projected utilization of DaVita Everett consistent with WAC 246-310-815(1)(b). Based on a review of the assumptions used for projecting utilization of the 22 station dialysis center, the department concludes they are reasonable. DaVita including inflation in its pro forma revenue and expense statements. Specifically, DaVita provides an assumption description called "cost inflation" and includes the following description:

"Cost inflation*: DaVita's experience and expertise leads to an assumption that non-medical director or lease costs (which are previously contracted) are likely to inflate at ~2% per year, and each category is assumed as such."*

NKC states that DaVita used 2% inflation in its pro forma. DaVita is referring to this 2% as "inflation," but this doesn't accurately capture what DaVita is doing and is not consistent with the type of inflations that the department precludes in CN applications. DaVita's application states that the 2% is based on its past experience in those categories.

The application form specifies that non-inflated **dollars** should be used. If a general inflation rate had been applied to all dollars in all line items (including revenues, deductions and contracted costs), this would be problematic and contrary to application instructions. However, DaVita is not applying a general inflation rate to their pro forma. Rather, DaVita is using its past experience operating dialysis centers to predict that expenses not tied to agreements/contracts have historically gone up at approximately that rate.

The department regularly provides technical assistance to applicants and advises that when known, known expenses should be included. Again, consistent with WAC 246-310-815 DaVita based its revenue and expense projections on performance at the existing facility. Because this 2% is consistent with DaVita's experience operating dialysis facilities in Washington, this is a reasonable approach. Since DaVita Everett is currently operational, the facility has both an existing lease agreement and an existing medical director agreement. This project also involves relocation therefore, DaVita provided an executed lease between Total Renal Care, Inc., (Tenant) and Sterling

Realty Organization Co (Landlord). The lease agreement was executed in May 2018 and is valid for 180 months or 15 years. The costs identified in the lease agreement can be substantiated in the revenue and expense statement.

DaVita provided a copy of the current Medical Director Agreement between Refuge Dialysis, LLC, The Everett Clinic, PLLC and the four nephrologists associated with the Everett Clinic, PLLC. The Medical Director Agreement and a joinder agreement was executed with the Everett Clinic, PLLC on May 31, 2018 and is valid through May 31, 2023. The costs identified in the medical director agreement can be substantiated in the revenue and expense statement.

Based on the above information provided in the application, the department concludes that DaVita's projected revenue and expense statement is reasonable. **This sub-criterion is met.**

NKC.

Given that NKC Everett is not an existing facility sub-sections (1)(a) and (c) apply to this project. As previously stated, NKC proposes to establish a nine station kidney facility the facility would be operational in February 2021. Under this timeline, calendar year one of the project is 2022 and calendar year three is 2024. [Source: Screening response received July 31, 2018, page 1]

NKC provided the assumptions used to project in-center patients treatments and home patients treatments for fiscal years 2021 through 2024. The assumptions are restated below. [Source: Screening response received July 31, 2018, page 1]

- *Volumes*
    a. *Patient In-Center Census: Census is expected to reach 44 by June 30, 2024. Growth is assumed to meet the projected need in the area.*
    b. *b. Treatments are calculated based on 13 treatments per month and a 5% no-show rate.*

"NKC Everett's proposed payer mix is detailed in Table 10. The payer mix, as required by WAC 246-310-815 was based on NKC's three closest facilities. The three closest include Scribner Kidney Center, Lake City Kidney Center and Kirkland Kidney Center".

NKC's Table 10
NKC Everett Kidney Center Projected Payer Mix

Payer Mix	Percentage by Payer	Percentage by Patient
Medicare	53.5%	80.1%
Medicaid	4.9%	8.3%
Commercial	41.6%	11.6%
Total	**100.0%**	**100.0%**

Using the assumptions stated above, NKC projected the end-of-year number of in-center and dialyses and patients for the nine station NKC Everett in fiscal years 2020 through 2024 are shown in Table 10. [Source: Application Exhibit 8]

Department's Table 5
NKC Everett Kidney Center Projected Utilization, FYE 2021-FYE2024

	Partial Year 2020	Implementation FYE 1-2021	FYE 2-2023	FYE 3-2024
Total in-center station last day of year	9	9	9	9
Total in-center patients last day of year	27	35	39	44
Total In center Treatments	1,834	4,594	5,483	6,150
Total in-center home patients last day of year	5	6	7	8
Total home Treatments	316	790	943	1,058

NKC also provided the following assumptions used to project revenue, expenses, and net income for the nine station kidney dialysis center. [Source: Application Exhibit 8]

1. *The Pro forma is completed based on a June 30 fiscal year. The implementation year is assumed to be the 12 months ending June 30, 2021.*
2. *The three closest facilities used to create the basis for average costs per treatment are NKC Scribner Kidney Center, NKC Lake City Kidney Center and NKC Kirkland Kidney Center.*
3. *Gross Revenue*
   a. *Medicare: The modeled weighted average charge per treatment for all billable services is reflective of the actual average amount for the three closest facilities for the first 9 months of fiscal year 2018.*
   b. *Medicaid: The modeled weighted average charge per treatment for all billable services is reflective of the actual average amount for the existing facility for the first 9 months of fiscal year 2018.*
   c. *Medicaid: The modeled weighted average charge per treatment for all billable services is reflective of the actual average amount for the three closest facilities for the first 9 months of fiscal year 2018.*
   d. *Total Gross Revenue is the weighted average of the above gross revenue relative to the patient payer mix which is reflective of the actual average payer mix for the three closest facilities for the first 9 months of the fiscal year 2018.*

4. *Deductions from Gross Revenue*
   a. *Total Contractual Deductions is the weighted average is reflective of the actual average payer mix for the three closest facilities for the first 9 months of fiscal year 2018.*
   b. *Bad Debt is reflective of the actual average bad debt write-off for the three closest facilities per treatment for the first 9 months of fiscal year 2018.*
   c. *Charity is reflective of the actual average bad debt write-off for the three closest facilities per treatment for the first 9 months of fiscal year 2018.*

Direct Expenses: All direct expenses are modeled based on the actual average amount per treatment for the three closest facilities for the first 9 months of fiscal year 2018.

a. No inflation has been assumed in the forecast period
b. Medical Director is based on draft contract
c. Rent is based on rent schedule from draft lease
d. Building Operating costs (NNN) is based on averages from similar properties.

e. Depreciation is based on amortization over the life of the leased space for cost incurred to construct and equip the center.
f. Other Supplies refers to office supplies, janitorial supplies, building and plant supplies

5. *Other Purchased Services refers to language interpretation services, freight, landscaping, window washing and pest control.*
6. *Overhead: is based on the organization-wide operating budget for fiscal year 2018. Overhead included administrative and support services.*

Based on the assumptions above, NKC projected the revenue, expenses, and net income for years FYE2021 through 2024. A summary of the projections are shown in Table 6 below. [Source: Screening response received July 31, 2018, Attachment 3]

Department's Table 6
NKC Everett Kidney Center Projected Revenue and Expenses for FYE 2021-FYE2024

STATISTICS	Partial Year 8/30/2020	Project Year 1 Ending 6/30/2021	Project Year 2 Ending 6/30/2023	Project Year 3 Ending 6/30/2024
Total Gross Revenues	$3,744,813	$9,380,947	$11,196,163	$12,558,363
Total Deductions	($2,896,381)	($7,255,581)	($8,659,581)	($9,713,116)
Net Revenues	$848,432	$2,125,366	$2,536,727	$2,845,247
Total Direct Expenses	$1,530,876	$1,770,701	$1,996,486	$2,167,712
Excess of Direct/Direct Expenses	($682,444)	$354,665	$540,241	$677,535
Overhead	$194,229	$486,552	$580,724	$651,352
Net Profit or Loss	($876,673)	($131,887)	($40,483)	$26,183

The 'Net Revenue' line item is gross in-center treatments and home treatments minus deductions for bad debt and charity care. The 'Total Direct Expenses' line item includes all expenses related to the projected operation of the projected nine station facility in FYE2021 through FYE2024. The expenses also include allocated costs for administrative and support services. Medical director costs is $70,000 annually and is consistent with the draft medical director agreement provided in the application.

The department received public comments from DaVita related to NKC's compliance with this sub-criterion. The comments are restated below.

<u>NKC does not have site control</u>
"In Exhibit 10 of its original application, submitted on May 30, 2018, NKC provides a draft lease for its proposed site in Everett, WA. The lease contains no signatures, is not effective per its own definition of "Effective Date" in Clause 2(A), makes no reference to any other extant agreement involving holding fees, and in general provides no reliable documentation that NKC has done anything other than presumably talk to the landlord in question and discuss lease terms.

As NKC later proved, it did not have site control at the time it submitted its application. In its screening responses submitted July 30, 2018, it provided a signed copy of the draft lease agreement in question. That lease was signed, and became effective under Clause 2(A), on June 14, 2018 (see

Attachment 2, Executed Lease Agreement, in the Screening Responses)". [Source: DaVita's comments received September 5, 2018, pages 3]

NKC's financial projections are unreliable

NKC signed its lease on June 14, 2018, after the filing of its application. Per the terms of clause 2(A) of the lease (under the heading TERM), the effective date of the lease is the date of lease execution. It is indisputable that this was June 14, 2018. On the effective date, per the terms of Clause 4(A) (under the heading RENT), Pre-Occupation Rent begins.

In its Rent Schedule in Attachment 3 of the Screening Responses (the last page of the Screening Responses), NKC outlines the rent that goes into its "Pre-Operation Rent" in the pro forma. Specifically, NKC attests that it will owe $9,146 in rent during June 2018, which is $9,146 of rent in its "Pre-Operation Rent" line item in the pro forma (this amounts to $7.00 annually per square foot, the "Pre-Occupation" rent in Clause 4(A), times 15,678 square feet, divided by 12 months).

But this is simply not true. If NKC had indeed executed its lease on time for its Certificate of Need application, it likely would have owed $9,146 in rent for June 2018 (and it would have also owed rent for May 2018, not shown in its Rent Schedule). But NKC did not execute its lease on time. It executed its lease on June 14, 2018, at which time rent payments would presumably have begun. Per the Terms of Clause 4(A), rent payment of pre-occupation period rent would have begun on the date of execution, June 14, not before, and certainly not on June 1.

"As the end of the pre-occupation period is, per Clause 2(A), the hypothetical date of NKC's receipt of a Certificate of Need, the amount of rent paid is materially shortened by beginning the lease halfway through June as opposed to at the beginning of June. Specifically, the number in "Pre-Operation Rent" in NKC's pro forma should not be the $293,838 listed. It should be $289,875. The difference is $3,963, the amount of rent not paid by NKC from June 1, 2018 to June 13, 2018". [Source: DaVita's comments received September 5, 2018, pages 3-4]

NKC will not be profitable by the third full year of operation

"Per WAC 246-310-815(1), a "kidney dialysis facility must demonstrate positive net income by the third full year of operation." NKC claims in its Revised Pro Forma Financials (Attachment 3, Screening Responses) that it expects $26,185 of net income in the third full year of operation, 6/30/2024. In effect, this is almost the fourth full year of operation, as NKC plans to operate for 11 out of 12 months in the twelve months ended 6/30/2021. If NKC were forced to meet profitability in the year prior, it would fail, with a loss of $40,583.

Regardless, if the twelve months ended 6/30/2024 are NKC's third full year in operation, $26,185 is equal to a margin of 0.92% on $2,845,248 in revenue. Moreover, NKC does not include inflation estimates in its expense projections outside of the contracted rent expense. As all dialysis providers know, revenue inflation per treatment, particularly in Centers for Medicare and Medicaid Services ("CMS") payments that NKC projects will constitute 58.5% of patients at NKC Everett (see Application, Table 10) has not kept up with expense inflation per treatment. In NKC's case, this may be expected to result in a net negative margin in the third (/quasi-fourth) full year of operation. Inflation of non-contracted expenses (excludes medical director and base rent) by 1.05% or greater in excess of revenues ($26,185/$2,510,846) (by 2024!) would result in a negative margin.

NKC's own experience should show this ought to be expected. In its contemporaneous application in King County Planning Area #1, 18-49, NKC gives historical financials for its Lake City facility.

That facility has experienced a decline over the past year (through March 31, 2018) of -14% in its revenues, and an increase by 21% of its expenses. That is just one year. Over the past three years (2016-March 31, 2018), NKC Lake City has experienced a 14% drop in revenue per treatment and a 9.3% increase in expense per treatment. Based on historical comparison with inflation at a nearby facility in King County, NKC should expect to be in negative net margin territory in its third (quasi-fourth) year of operation at its proposed Everett facility, which would not result in meeting the WAC 246-310-815(1) threshold." [Source: DaVita's comments received September 5, 2018, pages 4-5]

In response to DaVita's public comments, NKC provided its rebuttal comments. NKC's rebuttal comments are restated below.

NKC has site control

"DaVita suggests that NKC did not have site control at the time of submittal because the draft agreement was not signed and was not effective per the definition of "effective date" in the draft lease. Related to site control, Question 2 in the Financial Feasibility section of the CN Kidney Disease Treatment Facility Application packet, used by all applicants and posted to the Program's website with a date of March 2018 states:

> *Provide documentation of site control. This could include either a deed to the site or a lease agreement for the site. If a lease agreement is provided, the terms must be for at least five years following project completion.*

NKC complied with these requirements. Specifically, NKC submitted, with its initial application, an unsigned draft lease agreement for the Snohomish Two site that identified all entities, outlined all roles and responsibilities, identified all costs and included all exhibits. In screening, and prior to the application being deemed complete, NKC provided a signed agreement-though we did not need to.

The Program's guidelines are explicit that a draft is ***acceptable throughout the course of review*** *(meaning that NKC did not need to submit the executed lease that it did). The Program's consistent operating practice also demonstrates that the Program accepts such drafts.*

There is no requirement for an executed lease as DaVita suggests. DaVita's criticisms of site control are unfounded". [Source: NKC's rebuttal comments received October 5, 2018, pages 3-4]

NKC's financial projections are reliable

"NKC's financial projections are both reliable and accurate. DaVita's public comment attempted to confound and confuse by comparing NKC's Everett treatment of its lease application to what DaVita did in its Grant County 2017 application. These issues are not the same. As required by the Program, NKC's pro forma financials reflect an ***exact match*** *with the lease agreement. In Da Vita's Grant County application, despite a specific request from the Program in screening, DaVita did not, or was unable to exactly match its lease agreement and its pro forma, and its denial was based on this lack of match. DaVita has appealed its denial and an adjudicative hearing was held in August 2018. A final decision has not yet been rendered".* [Source: NKC's rebuttal comments received October 5, 2018, page 5]

Department Evaluation

NKC Everett is currently not operational so the applicant based its projected utilization for the proposed nine station facility on its three closest facilities located in King County. They are NKC Scribner Kidney Center, NKC Lake City Kidney Center and NKC Kirkland Kidney Center.

The department considers this approach reasonable. WAC 246-310-815(1)(b) requires a new facility to base its revenue projections on the net revenue per treatment of the applicant's three closest dialysis facilities. NKC provided both revenue and expense projections based on the three facilities mentioned above.

DaVita stated that NKC did not have site control and presumed that NKC's financial projections are not reliable. However the department noted that NKC provided an executed lease agreement in response to the department screening questions. The executed lease provided by NKC meet the department's policy related to the submission of support documentation. In its screening responses, NKC states that it identified an error in the number of square footage in the lease agreement and provided an updated pro forma financial statement correcting the error.

Within the application, NKC stated that it is leasing three office suites because the landlord would not allow it to lease one suite. NKC states that it intend to use one suite and would sublease the other two suites. The costs for all three suites were identified in the pro forma financial statement. DaVita stated that NKC's project is not financially feasible in the third year of operation. It appears that DaVita based its comments on NKC's first year of offering services to patients. It appears that DaVita may have mistakenly identified NKC's partial year (8/30/2020) as its first year of operation. In the application, NKC stated its facility will open in August 2020. That year represented a partial year because it is not a full year. The department is aware that NKC operates its dialysis facilities using the fiscal year model. In this application, NKC's first fiscal year of operation as shown in Table 6 is FYE 6/30/21 and the third year of operation is FYE 6/30/2024.

The department's review of NKC's pro forma financial statement show that it is financially feasible in FYE 6/30/2024. Therefore, the department disagreed with DaVita's comment that NKC is not financially feasible during its third year of operation. NKC provided a lease agreement and a draft medical director agreement. The executed lease agreement is between Everett Mall Office Building, LLC ("Lessor") and Northwest Kidney Centers ("Tenant").

The costs identified in the executed lease agreement can be substantiated in the revenue and expense statement. Additionally, NKC also provided a copy of a draft medical director agreement between Northwest Kidney Centers a Washington corporation ("NKC") and Michael Brendan Shannon, MD ("Doctor"). The costs identified in the draft medical director agreement can be substantiated in the revenue and expense statement. If this application is approved, a condition would be attached to the approval requiring NKC to provide its executed medical director consistent with the draft provided in the application.

Based on the information reviewed and with NKC's agreement to the condition above, the department concludes that the immediate and long-range operating costs of the project can be met. **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.

WAC 246-310-815 outlines the financial feasibility review requirements for dialysis projects. For this project, DaVita and NKC must demonstrate compliance with the following sub-sections of WAC 246-310-815(2). Using its experience and expertise the department compared the proposed project's costs with those previously considered by the department.

WAC 246-310-815(2)

An applicant proposing to construct a finished treatment floor area square footage that exceeds the maximum treatment floor area square footage defined in WAC 246-310-800(11) will be determined to have an unreasonable impact on costs and charges and the application will be denied. This does not preclude an applicant from constructing shelled space.

DaVita

DaVita also provided the following statements.

"WAC 246-310-815(2) requires that applicants limit the costs of facility projects by creating a test of reasonableness in the construction of finished treatment floor area square footage. The treatment floor area must not exceed the maximum treatment floor area square footage defined in WAC 246-310-800(11). As outlined in response to Question Eleven under the Project Description, DaVita does not propose to construct treatment floor space in excess of the maximum treatment floor area square footage, and thus, under the WAC 246-310-815(2) test, this project does not have an unreasonable impact on costs and charges." [Source: Application, page 21]

DaVita provided a copy of its line drawing for the relocation project. [Source: Application, page 11]

Consistent with WAC 246-310-800(11), DaVita Everett maximum treatment floor are square footage for 22 twenty stations and one isolation station is 13,202. DaVita will use 6,737 square feet. [Source: Application, page 11]

Specific to the costs and charges for health services, DaVita provided the statements below.

"Construction cost is estimated based on the non-binding contractor estimate presented in response to Question 6. Construction cost number includes sales tax. Sales tax is assumed at the Mukilteo, Snohomish County rate of 10.4%". [Source: Application, page 20]

Public Comment

None

Rebuttal Comment

None

Department Evaluation

The costs for relocating and expanding the existing 13 station DaVita Everett to a 22 station facility is $3,544,081. The costs are similar to those reviewed in past applications relocating and expanding similar size facilities. The department does not consider the capital expenditure to be excessive for this project. DaVita Everett current Medicare and Medicaid reimbursements is 24.11% of revenue and for commercial insurance/HMO it is 75.89%. The projected Medicare and Medicaid reimbursements is 25.15% of revenue and for commercial insurance/HMO it is 71.85%. Given that

majority of dialysis, payments are by Medicare and Medicaid reimbursement, DaVita Everett expectation that 71.85% of its revenue would come from commercial/HMO is unusual.

Regardless of the number of patients projected, under the new ESRD PPS payment system, Medicare pays dialysis facilities a bundled rate per treatment and that rate is not the same for each facility. Each facility, within a given geographic area, may receive the same base rate. However, there are a number of adjustments both at the facility and at patient-specific level that affects the final reimbursement rate each facility will receive. What a dialysis facility receives from its commercial payors will also vary.

Even if two different dialysis providers billed the same commercial payer the same amount, the actual payment to each facility will depend on the negotiated discount rate obtained by the commercial payer from each individual provider. The department does not have an adopted standard on what constitutes an unreasonable impact on charges for health services. Based on the department's understanding of how dialysis patients may qualify for Medicare payments, the department concludes that the information presented by DaVita about its revenue indicate that this project would not have an unreasonable impact on charges for Medicare and Medicaid, since that revenue is dependent upon cost based reimbursement.

To be compliant with WAC 246-310-800(11), DaVita Everett maximum floor space for a 22 station facility is 13,202. DaVita calculated that its actual floor space will be 6,373. However, the department notes above that DaVita did not take into consideration the one isolation station that is not counted at the center.[11] Rather DaVita calculated its floor plans using 22 in-center stations instead of 23. When recalculated, DaVita's floor space does not exceed the maximum treatment floor area square footage.

Based on the above information provided in the application, the department concludes that DaVita's projected costs associated with the relocation of the existing 13-station dialysis center and expansion by nine new stations would probably not have an unreasonable impact on the costs and charges for healthcare services in Snohomish County planning area #2. **This sub-criterion is met.**

NKC

NKC provided the following information under this sub-criterion. *"This project will have no impact on the costs and charges for services. NKC's charges for services are not determined by capital expenditures. The pro forma operating assumptions and statement, which include the impact of the depreciation expense on operations, is included in Exhibit 9."* [Source: Application, page 19]

NKC provided a copy of the proposed line drawing for NKC Everett. [Source: Application, page 6 and Exhibit 5]

Consistent with WAC 246-310-800(11), NKC Everett maximum treatment floor are square footage for the proposed 9 stations and one isolation station is 15,678. NKC will use 9,360 square feet. [Source: Application, page 6]

Public Comment

None

[11] Consistent with WAC 246-310-809, if a new dialysis center will be established and it will provide isolation services, the isolation is not counted in the numeric need methodology, but is counted in the floor plan space for calculations.

Rebuttal Comment
None

Department Evaluation
The costs to establishment the nine station NKC Everett is $3,825,918. The costs are similar to those reviewed in past applications submitted to establish similar size facilities. For this project, NKC states that it used its experience purchasing dialysis equipment over the past.

The department does not have an adopted standard on what constitutes an unreasonable impact on charges for health services. Medicare and Medicaid patients typically make up the largest percentage of patients served by a dialysis facility. For the proposed NKC Everett, the applicant projected that 58.4% of its patients would be Medicare and Medicaid. Revenue from these two sources are projected to equal 88.4%. The remaining 11.6% of revenue will come from a variety of sources including private insurance.

Regardless of the number of patients projected, under the new ESRD PPS payment system, Medicare pays dialysis facilities a bundled rate per treatment and that rate is not the same for each facility. Each facility, within a given geographic area, may receive the same base rate. However, there are a number of adjustments both at the facility and at patient-specific level that affects the final reimbursement rate each facility will receive. What a dialysis facility receives from its commercial payors will also vary.

Even if two different dialysis providers billed the same commercial payer the same amount, the actual payment to each facility will depend on the negotiated discount rate obtained by the commercial payer from each individual provider. The department does not have an adopted standard on what constitutes an unreasonable impact on charges for health services. Based on department's understanding of how dialysis patients may qualify for Medicare payments, the department concludes that the information presented by NKC about its revenue indicates this project may not have an unreasonable impact on charges for Medicare and Medicaid, since that revenue is dependent upon cost based reimbursement. The remaining 11.6% of revenue is combined commercial and other revenues.

Based on the above information provided in the application, the department concludes that NKC's projected costs associated with the establishment of nine-station dialysis center would probably not have an unreasonable impact on the costs and charges for healthcare services in Snohomish County planning area #2. **This sub-criterion is met.**

(3) The project can be appropriately financed.
WAC 246-310 does not contain specific source of financing criteria as identified in WAC 246-310-200(2)(a)(i). There are also no known recognized standards as identified in WAC 246-310-200(2)(a)(ii) and (b) that directs how a project of this type and size should be financed. Therefore, using its experience and expertise the department compared the DaVita and NKC's projected source of financing to those previously considered by the department.

DaVita
DaVita provided the following information about financing the $3,544,081 costs for this project.

"DaVita Inc. via its subsidiary Total Renal Care, Inc., is solely responsible for the capital costs identified above." [Source: Application, page 19]

"The DaVita Everett Dialysis Center executed lease for relocation is included in Appendix 15. [Source: Application, page 19]

Zoning & county assessor documentation for the proposed relocation site of DaVita Everett Dialysis Center is provided in Appendix 15. [Source: Application, page 19]

Construction cost is estimated based on the non-binding contractor estimate presented in response to Question 6. Construction cost number includes sales tax. Sales tax is assumed at the Mukilteo, Snohomish County rate of 10.4%" [Source: Application, page 20]

Department's Table 7
DaVita Everett Dialysis Center Estimated Capital Costs

Item	Total
Building Construction	$2,198,957
Fixed & moveable equipment	$970,265
Washington State sales taxes and fees	$374,859
Total Estimated Capital Costs	**$3,544,081**

Public Comment
None

Rebuttal Comment
None

Department Evaluation
DaVita intends to finance the project with reserves and demonstrated the funds are available. If this project is approved, the department would attach a condition requiring DaVita to finance the project consistent with the financing description provided in the application. With a financing condition, the department concludes the DaVita project **meets this sub-criterion**.

NKC
NKC provided the following information about financing the $3,825,918 costs for this project.

"NKC proposes to use existing reserves to fund the project's costs. Included in Exhibit 7 is a letter from NKC's CFO confirming the intent to use reserves for this project.

Included in Exhibit 10 is a draft lease agreement for the proposed site. As the draft lease indicates, the initial term is for 12.5 years with three options to renew (five years each). As such, NKC has demonstrated that it has site control for at least five years following project completion. The draft lease agreement is with Everett Mall Office Building, LLC, the owner of the property. Information from the Snohomish County Assessor's office regarding ownership is included in Exhibit 11. This demonstrates that the owner of the property and the landlord are one and the same". [Source: Application, page 14]

"The construction costs and architectural and engineering fees cost estimates were provided by NKC's contractor Aldrich and Associates. The equipment (fixed and moveable) costs were based on NKC's experience purchasing dialysis equipment over the past decades". [Source: Application, page 16]

Department's Table 8
NKC Everett Kidney Center Estimated Capital Costs

Item	Total
Building Construction	$2,278,389
Fixed & moveable equipment	$946,402
Washington State sales taxes and fees	$601,127
Total Estimated Capital Costs	**$3,825,918**

Public Comment
None

Rebuttal Comment
None

Department Evaluation
NKC intends to finance the project with reserves and demonstrated the funds are available. If this project is approved, the department would attach a condition requiring NKC to finance the project consistent with the financing description provided in the application. With a financing condition, the department concludes the NKC's project **meets this sub-criterion**.

C. Structure and Process (Quality) of Care (WAC 246-310-230)
Based on the source information reviewed and agreement to the conditions identified in the conclusion section of this evaluation, the department concludes that the DaVita, Inc. project has met the structure and process of care criteria in WAC 246-310-230.

Based on the source information reviewed and agreement to the conditions identified in the conclusion section of this evaluation, the department concludes that the Northwest Kidney Centers project has met the structure and process of care criteria in WAC 246-310-230.

(1) A sufficient supply of qualified staff for the project, including both health personnel and management personnel, are available or can be recruited.
WAC 246-310 does not contain specific WAC 246-310-230(1) criteria as identified in WAC 246-310-200(2)(a)(i). There are also no known recognized standards as identified in WAC 246-310-200(2)(a)(ii) and (b) that directs what specific staffing patterns or numbers of full time equivalents (FTEs) that should be employed for projects of this type or size. Therefore, using its experience and expertise the department determined whether the proposed staffing would allow for the required coverage.

DaVita
DaVita provided the table below showing current and projected FTE's. DaVita also provided the statements below as screening response to clarify its FTEs.

"DaVita discovered that there was an error in assignment of FTEs to roles in the staffing grid. It therefore includes an amended staffing grid (Table 15A) below, in lieu of the grid provided in the application. The projections included account for both standard staffing ratios and DaVita's

management expertise. It also provides an amended Appendix 9A Detailed Operating Statement, attached to the end of these responses that takes into account the impact on projected category FTE counts". [Source: Screening responses received July 31, 2018, pages 3-4]

Department's Table 9
DaVita Everett Dialysis Center Current Year 2018, 2019 and Projected Years 2020 – 2024

FTE by Type	2018	2019 Current	2020	2021	2022	2023	2024
Administrator	1.41	1.41	1.41	1.41	1.41	1.41	1.41
Administrative Assistant	1.00	1.00	1.00	1.00	1.00	1.00	1.00
Medical Social Worker	0.81	0.86	0.91	0.98	1.04	1.15	1.28
Dietician	0.81	0.86	0.91	0.98	1.04	1.15	1.28
RN-In-Center	2.97	3.08	3.21	3.42	3.68	4.08	4.64
PCT	7.56	7.84	8.17	8.70	9.37	10.39	11.80
RN- PD	1.19	1.36	1.53	1.67	1.78	1.89	2.00
RN- HHD	0.73	0.73	0.73	0.84	0.84	0.84	0.84
Biomed Tech	0.54	0.33	0.58	0.58	0.58	0.58	0.58
Other	2.70	2.85	3.02	3.23	3.46	3.79	4.23
Total FTEs	**19.72**	**20.32**	**21.47**	**22.81**	**24.20**	**26.28**	**29.36**

DaVita also provided the following clarification regarding the staffing table above.

"DaVita does not expect any significant barriers to recruiting staff for a relocated and expanded Everett Dialysis Center. First, existing Everett Dialysis Center staff would be expected to continue as teammates in a relocated and expanded Everett Dialysis Center, significantly lessening recruitment needs. Additionally, as outlined in its application, DaVita has been repeatedly recognized as a Top Employer and a Military Friendly Employer and offers a competitive wage and benefit package to employees, and posts openings nationally. However, in the unlikely event a relocated and expanded Everett Dialysis Center faces any barriers to recruiting staff, DaVita would take a multi-faceted approach, utilizing those methods necessary to ensure timely patient care. These methods may include, but are not limited to, selective use of signing bonuses and incentives for select staff recruitments, cross-staffing with nearby DaVita facilities where possible, and if absolutely essential, limited use of agency temporary staff, with a continued focus on recruitment and retention of permanent teammates as soon as possible. As mentioned, however, DaVita does not expect any significant barriers to recruiting staff, especially given its existing expertise with operating dialysis facilities in the Snohomish County area (including the existing Everett Dialysis Center)". [Source: screening response July 31, 2018, page 3]

Public Comment
None

Rebuttal Comment
None

Department Evaluation
Information provided in the application demonstrates that DaVita is a well-established provider of dialysis services in Washington State. DaVita Everett is currently an existing dialysis facility in Snohomish County planning area #2. As an existing provider with at least two facilities located in Snohomish County, the department does not expect that DaVita will have difficulty recruiting FTE's

based on its experience operating facilities in the planning area. Currently DaVita Everett has 20.32 FTEs this number is projected to increase to 29.36 FTEs.

A review of DaVita's historic, current and projected FTE increase shows that most of the increase is expected to occur by year 2024. By that year, DaVita anticipate it will add 9.04 new FTEs. DaVita expects the PCT category to increase by 3.96 and the in-center RN would increase by 1.56, and for the other category consisting of FTEs who provide patient education, inventory management roles, and training hours this category would increase by 1.38 FTE. To demonstrate that staff would be available DaVita provided these statements.

DaVita's medical director is under contract at $145,600 per annual, and is not an employee and is not included in the table above. DaVita provided a copy of the current Facility and Associate Medical Director Agreement ("Agreement"), between Refuge Dialysis, LLC ("Company") and The Everett Clinic, PLLC, ("Contractor"). DaVita Everett current medical director is Thao Pascual an employee of Contractor. The Facility and Associate Medical Director Agreement states that Oliver Tai, MD, Katrina G. Carli, MD., Noemie Juaire, MD., and Thao Pascual MD are preapproved physicians who can provide services at DaVita Everett. The agreement was signed by Refuge Dialysis, LLC, Total Renal Care, Inc., and The Everett Clinic, PLLC on May 31, 2018. The agreement is effective for five years and allows for automatic one year renewals. [Source: Application, Appendix 3]

The department notes that DaVita has a history of recruiting staff for its dialysis facilities in Washington therefore, it does did not expect the addition of 9.04 FTE's to DaVita Everett to be any different from previous applications submitted by DaVita to add or relocate dialysis stations. Based on the information reviewed, the department concludes **this sub-criterion is met.**

NKC

To comply with this sub-criterion, the applicant states, *"NKC Everett will open in August 2020, one month into FYE June 30, 2021. A revised Table 11 with the requested information is as follows:*

NKC's Table 11
Proposed Total Staffing for NKC Everett

	11 Months Ending June 2021 Projected	FYE June 2022 Projected	FYE June 2023 Projected	FYE June 2024 Projected
Clinical Director	0.20	0.20	0.20	0.20
Nurse Manager/Care Manager	1.00	1.00	1.00	1.00
Tech	1.72	4.31	5.14	5.77
RN-In Center	0.93	2.32	2.77	3.10
RN-Home Training (PD and HD)	0.50	0.50	0.50	0.50
Facility System -Specialist	0.50	0.50	0.50	0.50
MSW	0.29	0.37	0.42	0.47
Dietician	0.26	0.34	0.38	0.43
Receptionist	1.00	1.00	1.00	1.00
Total	**6.40**	**10.54**	**11.91**	**12.97**

NKC is proactive in its efforts to assure quality staffing at all time. NKC offers a competitive wage and benefit package as well as numerous other recruitment and retention strategies. Specific strategies include:

- *NKC offers competitive wage and benefit packages. To ensure that its wages and benefits remain competitive, NKC conducts an annual market survey to benchmark its compensation package.*

- *NKC remains active on various job boards including but not limited to indeed.com, nursing association, Health e-careers, and other local resources.*

- *NKC also has contacts with colleges and universities throughout the Puget Sound area to both recruit staff as well as to serve as a clinical rotation site.*

- *NKC staff participate, at least monthly, in job fairs in and around the Puget Sound area.*

- *NKC also offers a substantial tuition reimbursement program for existing staff. Typically, in an average year, 15-20 employees take advantage of this program. Primarily, dialysis technician staff use this program to become registered nurses.*

- *NKC human resources staff are active in various boards and councils that focus on sharing of recruitment and retention strategies.*

- *NKC human resources staff also work with agency personnel as needed for the use of temporary filling of staff positions.*

- *NKC has a highly successful employee referral program that incentivizes current employees to refer colleagues from outside the organization for open positions.*

- *NKC will, as needed, work with outside recruiters if a position has been challenging to fill".* [Source: screening response July 31, 2018, pages 1-2]

The department received public comments from DaVita related to NKC's compliance with this sub-criterion. Below is a summary of the public comments.

<u>NKC care model violates CMS regulation</u>
"NKC's single line drawing shows a facility design that clearly contemplates a care model that would violate CMS policy. In the below drawing, excerpted from NKC's Exhibit 5 of the Application, see the spot labeled "post-dialysis recovery" indicated by the green arrow. DaVita can only presume this refers to patients who, post-dialysis, have conditions such as low blood pressure or continued bleeding. CMS has made very clear that patients must recover post-dialysis in the dialysis chair in which they treated in the same location, so that providers are not moving a vulnerable patient around post-treatment in order to improve throughput. There is absolutely no justification for NKC proposing to do otherwise, contrary to current patient care standards. WAC 246-310-230(3) requires reasonable assurance that a dialysis facility will be in conformance with CMS requirements; 230(5) requires reasonable assurance that the facility will be operated in accordance with all applicable federal and state laws, rules, and regulations. NKC has now proposed a facility at which it would violate CMS policy regarding care of post-dialysis patients. If the 230 standards are to be enforced, NKC's application must be denied". [Source: DaVita's comments received September 5, 2018, pages 2-3]

In response to DaVita's comment, NKC provide rebuttal comments summarized below.

NKC's operates in conformance with CMS regulations

DaVita suggests that NKC's care model "violates CMS regulation". DaVita wrongly presumes that the post-dialysis area outlined on the line drawings included in our application (Exhibit 5) will be used "for patients, who, post dialysis, have conditions such as low blood pressure ..." DaVita states that patients must recover post-dialysis in the dialysis chair in which they were treated in the same location ..." NKC is fully aware of this CMS requirement and operates each and every one of our facilities in full compliance with it. NKC Everett will operate in compliance as well.

The area labeled "Post Dialysis Recovery" in the Exhibit 5 drawings, meets applicable code and will enhance care to patients. The space is designed for a patient needing extra time to recover before departing the unit. In conformance with CMS regulations, the "post dialysis recovery" area is exactly that-a recovery area-not a "recovery chair" as DaVita is implying. NKC locates this space close to the nursing station and staff. The patient is wheeled in the very same chair in which they were dialyzed (our chairs have wheels) to the space. No transfer of the patient occurs at any time. [Source: NKC's rebuttal comments received October 5, 2018, page 2]

This practice is fully consistent with CMS regulations. Included in Attachment I is an email in which CMS responded to the question "Would it be acceptable if at the end of the treatment, the patient in the chair was rolled away from the station into a staffed holding area to stabilize the patient ...?" CMS response is: "There is no prohibition from moving a patient as noted below to a clean, staffed area for additional monitoring until stabilized". [Source: NKC's rebuttal comments received October 5, 2018, page 3]

Department Evaluation

DaVita commented that because NKC's line drawing shows a post dialysis recovery area, that this is a violation of CMS policy. DaVita states that CMS has made it clear that patients must recover post-dialysis in the dialysis chair in which they were treated and in the same location. In its rebuttal statements, NKC states the area labeled "Post Dialysis Recovery" in its Exhibit 5, meets CMS applicable code because the area would be used to enhance patients care. NKC stated its intent to use the space for patient needing extra time to recover after dialyzing before departing the facility. NKC provided an email correspondence with CMS. In the email correspondence CMS states there is no prohibition from moving a patient to a clean staff area for additional monitoring until stabilized. Given the email correspondence between NKC with CMS, the department is satisfied that NKC's reasoning for proposing to have a post dialysis recovery area at NKC Everett is reasonable.

As stated previously, if this project is approved, NKC anticipates that the nine-station NKC Everett would be operational by the end of August 2020. Under this timeline, FYE year 2020-2021 would be the facility's first full year of operation and FYE 2023-2024 would be year three. [Source: Application, Page 4] NKC projected that it will have 6.40 FTEs in FYE 2021 and this would increase to 12.97 FTEs by FYE 2024. Majority of NKC FTEs increase will be in center RN which is projected to increase from 0.93 to 3.10. The other significant category of FTEs is techs NKC projected that it will start with 1.72 during the project implementation year and this category would increase to 5.77 FTEs in FYE 2024.

To demonstrate that staff would be available NKC provided these statements.

"*Recent history demonstrates that NKC has been successful in staffing its new facilities. The most recent examples include the Federal Way East and Federal Way West Campus facilities. These*

new units were staffed with a combination of individuals that chose to transfer from other locations and new hires to the organization. In the case of Everett, NKC has staff that reside in the Everett area and currently travel into King County daily. Some of these staff have already expressed interest in transferring to a location closer to home". [Source: screening response July 31, 2018, pages 1-2]

The proposed medical director for NKC Everett is Michael Brendan, MD. NKC provided a draft medical director agreement. The medical director will be under contract and will reimbursed $70,000 per annual, because the medical director is not an employee; that position is not included in the table above. The draft medical director agreement ("Agreement"), when finalized will be between Northwest Kidney Centers ("NKC") and Michael Brendan Shannon, ("Doctor"). [Source: Application, Exhibit 9] The department notes that NKC has a history of recruiting staff for its dialysis facilities in Washington therefore, it does did not expect that if this project approved, NKC will have difficulty recruiting the necessary FTE's to NKC Everett. Base on the information reviewed, the department concludes **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.

WAC 246-310 does not contain specific WAC 246-310-230(2) as identified in WAC 246-310-200(2)(a)(i). There are also no known recognized standards as identified in WAC 246-310-200(2)(a)(ii) and (b) that directs what relationships, ancillary and support services should be for a project of this type and size. Therefore, using its experience and expertise the department assessed the materials contained in the application.

DaVita

To comply with this sub-criterion the applicant states, *"DaVita Everett Dialysis Center has a number of strong working relationships that tie it to its community, including a Patient Transfer Agreement with Providence Everett Medical Center. Please find a listing of these relationships in Table 16 below".* [Source: Application, page 26]

DaVita also provided the following statements

"The proposed relocation and expansion of DaVita Everett Dialysis Center will have an appropriate relationship to the service area's existing health care system. DaVita Everett Dialysis Center is a key component of the existing health care system in the service area, and the project will enable enhanced patient access in an already highly utilized facility with a census of more than 5.0 patients per station. Furthermore, DaVita Everett Dialysis Center has a long track record of working with area providers to provide the highest possible quality of care to patients, as evidenced by its CQI process outlined in Appendix 17". [Source: Application page 28]

Public Comment
None

Rebuttal Comment
None

Department Evaluation

The table 16 referenced in DaVita's statement provides a listing of the hospitals and other healthcare facilities who has relationships with DaVita. As an establish provider of dialysis services in Washington, including the existing DaVita Everett; DaVita has an appropriate relationship with the service area existing health care system. If this project is approved DaVita proposes to relocate DaVita Everett and add nine new stations to the facility. Upon project completion, DaVita Everett will be operating 22 kidney dialysis stations.

For ancillary and support services at DaVita Everett, DaVita states that it will provide social services, nutrition, financial counseling, pharmacy access, patient and staff education, human resources, material management, administration and biomedical technical services on site. Additional services are coordinated through DaVita's corporate offices in Denver, Colorado and support offices in Federal Way and Tacoma, Washington; El Segundo, California; Nashville, Tennessee; Berwyn, Pennsylvania; and Deland, Florida. [Source: Application, page 26]

Based on the information reviewed, the department concludes that all required ancillary and support agreements and relationships are already in place. **This sub-criterion is met.**

NKC

To comply with this sub-criterion, NKC states, *"Table 14 details the health care entities that NKC has current working relationships with. NKC expects to retain these relationships and potentially establish new relationships to best serve Snohomish 2"*. [Source: Application page 22]

"Table 14 has been amended to include a brief description of its existing relationship with the health care entities noted in column 1 and a description of how this relationship will be expanded for NKC Everett". [Source: screening response July 31, 2018, page 4]

NKC's Revised Table 14
NKC's Working Relationship with Healthcare Facilities

Category	Examples/Providers	Status of Existing Relationship	How existing relationship will be expanded to support continuity
Hospitals	▪ MHS Auburn Regional Medical Center ▪ CHI/Highline Medical Center ▪ CHI/St. Francis Hospital ▪ Evergreen Medical Center ▪ Harborview Medical Center ▪ MultiCare Tacoma General ▪ Overlake Hospital Medical Center ▪ Swedish Edmonds ▪ Swedish Issaquah ▪ Swedish Cherry Hill ▪ Swedish Medical Center ▪ University of Washington ▪ Valley Medical Center ▪ Virginia Mason Medical Center	NKC has existing referral relationships With all of the hospitals listed	NKC will expand its relationships to include Providence Everett Regional Medical Center

Category	Examples/Providers	Status of Existing Relationship	How existing relationship will be expanded to support continuity
Clinics/Nephrology Groups (Sample)	▪ Cascade Kidney Specialists ▪ CHI Franciscan Nephrology Associates ▪ Eastside Nephrology ▪ Harborview Medical Center ▪ MultiCare Nephrology ▪ Polyclinic , The (and the Polyclinic Madison Center) ▪ Rainier Nephrology ▪ Seattle Nephrology ▪ South Seattle Nephrology Associates ▪ Transplant and Nephrology NW ▪ University of Washington Medical Center ▪ Valley Medical Center Nephrology Services ▪ Virginia Mason Federal Way	NKC has existing relationship with all of the physician group listed as well as other groups located in King, Clallam and Snohomish Counties. We recently added North Sound Kidney Physicians	NKC anticipates working will all Nephrology groups in Snohomish and Everett markets. NKC already has existing close relationship with physicians practicing in this market (Seattle Nephrology, North Sound Kidney Physicians and indep. Physicians). We will work with Western Washington Med and The Everett Clinic in the future.
Community partners working to cure kidney disease, slow the onset of kidney disease, which collaborate to help educate and support our patients or help support our system	▪ American Diabetes Associates—Washington Chapter ▪ Kidney Research Institute ▪ National Kidney Foundation—Washington Chapter ▪ Navos ▪ Washington Dental Society Access to Dental ▪ Northwest Health Response Network (King/Pierce County Healthcare Emergency Services Coalition)	NKC has existing relationships the entities listed to collaborate and education patients, staff and clinicians.	NKC will, as needed, expand this education network to include Snohomish County entities not currently on the list.
Other not for profit dialysis providers	▪ Puget Sound Kidney Centers ▪ Olympic Peninsula Kidney Centers ▪ Skagit Valley Kidney Centers ▪ Seattle Children's Hospital	NKC has exiting relationship with the other not for profit dialysis providers	PSKC is the only not for profit dialysis provider in Snohomish County. No change in the relationship is anticipated with this project.

In addition to the table above – NKC provides:

- *NKC provides over 1,000 acute dialysis treatments to patients in Snohomish County at Swedish Edmonds hospital.*
- *NKC has credentialed medical staff who practice in Snohomish County. Recently, we added two physicians from North Sound Kidney and we have Dr. Jung Joh and Dr. Win Kyaw who practice in the Snohomish market today.*
- *NKC also works collaboratively with Northwest Healthcare Response Network (NWHRN) for emergency preparedness. NWHRN provides oversight for Snohomish County as of 7/1/18. This*

will benefit dialysis patients in Snohomish County who may need services during an emergency. NKC also has a mutual aid plan for emergent dialysis services with Puget Sound Kidney Center, Olympic Peninsula Kidney Center, and Seattle Children's". [Source: screening response July 31, 2018, page 4]

"Recent history demonstrates that NKC has been successful in staffing its new facilities. The most recent examples include the Federal Way East and Federal Way West Campus facilities. These new units were staffed with a combination of individuals that chose to transfer from other locations and new hires to the organization. In the case of Everett, NKC has staff that reside in the Everett area and currently travel into King County daily. Some of these staff have already expressed interest in transferring to a location closer to home.

The record will further demonstrate that in those rare circumstances in which we have faced staffing shortages (due to extended leave of absences or other issues), we have successfully used our roster of per diem staff or staff from other facilities nearby to supplement. The proximity of Everett to our north Seattle and Eastside units would allow for sharing with those facilities in the event we have a situation that requires additional staffing". [Source: screening response July 31, 2018, page 3]

"A copy of NKC's existing transfer agreement is included in Exhibit 15; this agreement will be modified to include NKC Everett". [Source: Application page 23]

"No change to any existing working relationships will result from this project. However, as noted above, new working relationships are likely to be established". [Source: Application page 24]

Public Comment
None

Rebuttal Comment
None

Department Evaluation

NKC's statements above provides a listing of the hospitals and other healthcare facilities that it has established relationships. Although NKC does not currently operate a dialysis facility in Snohomish County planning area #2, the services listed are currently available at one of several NKC's support offices in adjacent King County. Furthermore, NKC stated it has existing relationship with Puget Sound Kidney Centers a not for profit dialysis provider located in Snohomish County. [Source: Application, page 26]

Within its application NKC provided a copy of its current patients transfer agreement and states that the agreement will be modified to include NKC Everett. If this application is approved, the department would attach a condition requiring that prior to providing services, NKC must submit to the department for review and approval an executed patient transfer agreement that is consistent with the draft provided in the application. The department concludes there is reasonable assurance that NKC Everett would have the necessary ancillary and support services**. This sub-criterion is met.**

(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.

WAC 246-310 does not contain specific WAC 246-310-230(3) criteria as identified in WAC 246-310-200(2)(a)(i). There are no known recognized standards as identified in WAC 246-310-200(2)(a)(ii) and (b) that a facility must meet when it is to be Medicare certified and Medicaid eligible. Therefore, using its experience and expertise the department assessed the applicant's history in meeting these standards at other facilities owned or operated by the applicant.

The evaluation of WAC 246-310-230(5) is also evaluated under this sub-criterion, as it relates to facility compliance history. Compliance history is factored into the department's determination that an applicant's project would be operated in compliance with WAC 246-310-230(3).

DaVita

DaVita provided the following statement in response to this sub-criterion.

"DaVita and the United States Department of Health and Human Services, Office of Inspector General entered into a Corporate Integrity Agreement ("CIA") to promote compliance with the statutes, regulations, and written directives of Medicare, Medicaid, and all other Federal health care programs and, in particular, included the appointment of an Independent Monitor to prospectively review DaVita's arrangements with nephrologists and other health care providers for compliance with the Anti-Kickback Statute (collectively, "Federal Health Care Programs and Laws"). That Independent Monitor completed the prospective review process in the fall of 2017. Each arrangement is now reviewed by the Risk Rating team to ensure that it is compliant with these Federal Health Care Programs and Laws. A full copy of the Corporate Integrity Agreement is included with this application in Appendix 20.

The applicant has no adverse history of license revocation or decertification in Washington State. DaVita has no criminal convictions related to DaVita's competency to exercise responsibility for the ownership or operation of its facilities. As previously reported, a DaVita facility in Tennessee was decertified and closed ten years ago (2007) and DaVita voluntarily temporarily shut down a facility in Texas nine years ago (2008). DaVita has also supplied, in Appendix 13, a list of all state regulatory agencies with which it interacts." [Source: Application pages 27 and 28]

Public Comment

None

Rebuttal Comment

None

Department Evaluation

The department reviews two different areas when evaluating this sub-criterion. One is the conformance with Medicare and Medicaid standards and the other is conformance with state standards. To accomplish this task for these projects, the department first reviewed the quality of care compliance history for all healthcare facilities operated outside of Washington State using the 'star rating' assigned by Centers for Medicare & Medicaid Services (CMS). Then the department focused on the CMS 'star ratings' for Washington State facilities.

CMS Star Rating for Out-of-State Centers

In the application, DaVita states that it provides outpatient dialysis centers and services approximately 185,000 patients in 45 states and the District of Columbia. DaVita reports dialysis services to CMS for approximately 2,728 facilities in 46 states and the District of Columbia. Of the 2,728 facilities reporting to CMS by DaVita, 371 do not have the necessary amount of data to compile a star rating. For the remaining 2,357 facilities with a star rating, the national average rating is 3.71.

CMS Star Rating for Washington State Centers

For Washington State, DaVita owns, operates, or manages 42 facilities in 19 separate counties. All of the 42 centers are operational, however, three do not have the necessary amount of data to compile a star rating.[12] For the remaining 39 centers with a star rating, the Washington State average rating is 4.08

The department also focused on its own state survey data performed by the Department of Health's Office of Health Systems Oversight.

CMS Star Rating for Washington State Centers

DaVita owns, operates, or manages 42 facilities in 19 separate counties. All of the 42 centers are operational, however, five do not have the necessary amount of data to compile a star rating.[13] The department reviewed the star rating for the remaining 37 centers. All of DaVita's Washington State dialysis facilities show a three or better star rating.

Finally, the department focused on its own state survey data performed by the Department of Health's Investigations and Inspections Office.

Washington State Survey Data

While all 42 facilities are operational, two have not yet been surveyed.[14] The department reviewed the compliance history for the remaining 40 dialysis centers. The department has conducted and completed more than 40 surveys in the most recent three years. All surveys resulted in no significant non-compliance issues. [Source: DOH OHSO survey data]

In this application, DaVita provided its Medical Director Agreement with Thao Pascual an employee of the Everett Clinic and the four physicians who are preapproved to provide services at DaVita Everett. Using data from the Medical Quality Assurance Commission, the department found that all physicians are compliant with state licensure and have no enforcement actions on their license.

In a review of this sub-criterion, the department considered the total compliance history of the dialysis facilities owned and operated by DaVita. The department also considered the compliance history of the medical directors associated with the facility. The department concludes that DaVita Everett has been operating in compliance with applicable state and federal licensing and certification requirements. The department also conclude there is reasonable assurance that the relocation of DaVita Everett and its expansion by nine new stations would not cause a negative effect on the

[12] The three centers are: Belfair Dialysis Center in Mason County, Cooks Hill Dialysis Center in Lewis County, and Renton Dialysis Center in King County.
[13] The five centers are: Belfair Dialysis Center in Mason County, Cooks Hill Dialysis Center in Lewis County, Lynnwood Dialysis Center in Snohomish County, Renton Dialysis Center in King County, and Wapato Dialysis Center in Yakima County.
[14] The two centers are Lynnwood Dialysis Center in Snohomish County and Wapato Dialysis Center in Yakima County.

facility's compliance history. The department concludes that DaVita's project **meets this sub-criterion.**

NKC

NKC provided the following statements related to this sub-criterion.

"NKC has no history with respect to the actions noted in CN regulation WAC 248-19-390(5)(a), now codified at WAC 246-310-230(5)(a)". [Source: Application, page 24]

"NKC is committed to ensuring continuity in the provision of health care services and works daily to prevent unwarranted fragmentation of services". [Source: Application, page 24]

"NKC operates all existing programs in conformance with applicable federal and state laws, rules and regulations". [Source: Application, page 25]

Department Evaluation

The department reviews two different areas when evaluating this sub-criterion. One is the conformance with Medicare and Medicaid standards and the other is conformance with state standards. To accomplish this task for these projects, the department first reviewed the quality of care compliance history for all healthcare facilities operated outside of Washington State using the 'star rating' assigned by Centers for Medicare & Medicaid Services (CMS). Then the department focused on the CMS 'star ratings' for Washington State facilities.

Centers for Medicare & Medicaid Services (CMS) Star Ratings

CMS provides the following overview regarding its star rating for dialysis centers.

"The star ratings are part of Medicare's efforts to make data on dialysis centers easier to understand and use. The star ratings show whether your dialysis center provides quality dialysis care - that is, care known to get the best results for most dialysis patients. The rating ranges from 1 to 5 stars. A facility with a 5-star rating has quality of care that is considered 'much above average' compared to other dialysis facilities. A 1- or 2- star rating does not mean that you will receive poor care from a facility. It only indicates that measured outcomes were below average compared to those for other facilities. Star ratings on Dialysis Facility Compare are updated annually to align with the annual updates of the standardized measures."
[Source: CMS website]

CMS Star Rating for Out-of-State Centers

NKC does not operate any out of state facilities.

CMS Star Rating for Washington State Centers

NKC owns, operates, or manages 17 facilities, and of those, 16 are currently operational. Of the 16 facilities reporting to CMS by NKC, one facility does not have the necessary amount of data to compile a star rating. For the remaining 15 facilities with a star rating, the average rating is 4.47.

The department also focused on its own state survey data performed by the Department of Health's Office of Health Systems Oversight.

CMS Star Rating for Washington State Centers

NKC owns, operates, or manages 17 facilities in three separate counties. NKC provides dialysis services in Clallam, Pierce and King Counties within Washington State. All of the dialysis facilities owned, operated, or managed by NKC are Medicare certified. Those facilities quality of care enforcement were reviewed by the department. OHSO acting as the contractor for the centers for Medicare and Medicaid Services, completed compliance surveys for the facilities own or managed by NKC in King County.[15] These surveys revealed minor non-compliance issues typical of a dialysis facility. NKC submitted and implemented acceptable plans of correction. [Source: DOH OHSO survey data]

In this application, NKC identified Michael Brendan, MD as the medical director of NKC Everett and provided a draft medical director agreement. Using data from the Medical Quality Assurance Commission, the department found that the physician is compliant with state licensure and have no enforcement actions on their license.

In a review of this sub-criterion, the department considered the total compliance history of the dialysis facilities owned and operated by NKC and the compliance history of Michael Brendan, MD. The department concludes that NKC Everett will be operated in compliance with applicable state and federal licensing and certification requirements **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.

WAC 246-310 does not contain specific WAC 246-310-230(4) criteria as identified in WAC 246-310-200(2)(a)(i). There are also no known recognized standards as identified in WAC 246-310-200(2)(a)(ii) and (b) that directs how to measure unwarranted fragmentation of services or what types of relationships with a services area's existing health care system should be for a project of this type and size. Therefore, using its experience and expertise the department assessed the materials in the application.

DaVita

To comply with this sub-criterion DaVita provided supporting documentation to demonstrate compliance with this sub-criterion. The documents focuses on DaVita's Continuous Quality Improvement (CQI) program and the April 2018 press release for Top Clinical Outcomes. [Source: Application, page 27 & Appendix 17]

Specifically DaVita states, "*Appendix 17 provides a summary of quality and continuity of care indicators used in DaVita's quality improvement program. The DaVita Continuous Quality Improvement (CQI) program incorporates all areas of the dialysis program. The program monitors and evaluates all activities related to clinical outcomes, operations management, and process flow. Dialysis-specific statistical tools (developed by DaVita) are used for measurement, analysis, communication, and feedback. Continuing employee and patient education are integral parts of this program. Appendix 17 includes an example of DaVita Quality Index (DQI) data.*

[15] Most recent quality of care surveys conducted for NKC Federal Way, year 2018, for NKC Federal Way East Kidney Center, year 2018, for NKC Snoqualmie Ridge Kidney Center, year 2017; for NKC SeaTac, year 2017; for NKC Kirkland Kidney Center 2017; year 2017 for Kent Kidney Center, year 2017 for NKC Seattle, year 2017 for NKC Renton; year 2017 for NKC Auburn, year 2017; NKC Enumclaw year 2017; for NKC Broadway, year 2017; and for Renton Kidney Center, year 2018; and West Seattle Kidney Center, year 2017.

Appendix 18 includes an example of DaVita's Physician, Community and Patient Services offered through DaVita's Kidney Smart Education Program. Appendix 12 includes a copy of the transfer agreement between DaVita Everett Dialysis Center and Providence Everett Medical Center. DaVita has been honored as one of the World's Most Admired Companies® by FORTUNE® magazine since 2006, confirming its excellence in working effectively with the communities it serves (davita.com/about/awards).

The proposed relocation and expansion of DaVita Everett Dialysis Center will have an appropriate relationship to the service area's existing health care system. DaVita Everett Dialysis Center is a key component of the existing health care system in the service area, and the project will enable enhanced patient access in an already highly utilized facility with a census of more than 5.0 patients per station. Furthermore, DaVita Everett Dialysis Center has a long track record of working with area providers to provide the highest possible quality of care to patients, as evidenced by its CQI process outlined in Appendix 17". [Source: Application pages 27 and 28]

Public Comment
None

Rebuttal Comment
None

Department Evaluation
DaVita has been a provider of dialysis services in Washington State for many years. DaVita also has a history of establishing relationships with existing healthcare networks in Snohomish County planning area #2 for its DaVita Everett. Additionally, DaVita's project would promote continuity in the provision of healthcare services in the planning area by relocating the existing facility to where staff and patients can easily reach by public transportation and it's safer.

DaVita provided documentation in the application to demonstrate that the project would promote continuity in the provision of health care services in the community and not result in unwarranted fragmentation. Based on the information above, the department concludes that DaVita's project **meets this sub-criterion**.

NKC
To comply with this sub-criterion NKC states it is committed to ensuring continuity in the provision of health care services and provided the following statements.

"NKC has operated outpatient dialysis services since 1962; growing from 9 patients to over 1,700 today. NKC has, and continues to be, committed to providing optimal health, quality of life and independence for people with kidney disease. Further, NKC has experienced firsthand, and to the direct benefit of our patients that fragmentation is reduced or eliminated, when services are highly coordinated.

NKC strives to provide services that deliver dialysis care that is coordinated via multiple entities including, but not limited to, physicians, other health care providers (nursing homes, assisted living facilities), home health care, hospitals, etc. as dialysis patients frequently have multiple providers and entities from which they receive services. For example, for nursing home or assisted living patients, NKC will report any care needs or issues identified during dialysis (as well as inform the patient's physician, if appropriate). In addition, as patients are admitted and discharged from the

hospital, NKC staff follow their care needs to ensure that the facility is prepared to provide dialysis to these patients upon discharge from the hospital". [Source: screening response July 31, 2018, page 3]

"Outside vendor ancillary and support services that will be made available to NKC Everett are detailed in Table 12.

NKC Everett Table 12
Ancillary and Support Services Provided by Outside Vendors

Service
IT/Network Engineering
Copier leases and support
Janitorial Services
Lab Services

NKC operates four Support Centers (located in Seattle, Lake Forest Park, SeaTac and Bellevue) that provide ancillary and support services to each of our dialysis facilities. These Support Centers are staffed with NKC employees and are not outside contractors". [Source: Application pages 20-21]

Public Comment
None

Rebuttal Comment
None

Department Evaluation
NKC does not currently operate a kidney dialysis facility in Snohomish County planning area #2, but it has been providing services in Washington for many years and has maintained appropriate relationships with existing healthcare providers where it operates. Nothing in the materials reviewed by the department suggests that approval of NKC Everett will change the relationships NKC has with existing service providers in Washington, nor would it have a negative impact on the existing providers in Snohomish County planning area #2. The department concludes **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.

Department Evaluation for DaVita
This sub-criterion was evaluated in conjunction with WAC 246-310-230(3) above and is considered met.

Department Evaluation for NKC
This sub-criterion was evaluated in conjunction with WAC 246-310-230(3) above and is considered met.

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

Based on the source information reviewed and agreement to the conditions identified in the conclusion section of this evaluation, the department concludes that the DaVita, Inc. project did not met the cost containment criteria in WAC 246-310-240.

Based on the source information reviewed and agreement to the conditions identified in the conclusion section of this evaluation, the department concludes that the Northwest Kidney Centers project has met the cost containment criteria in WAC 246-310-240.

(1) Superior alternatives, in terms of cost, efficiency, or effectiveness, are not available or practicable.
To determine if a proposed project is the best alternative, the department takes a multi-step approach. Step one determines if the application has met the other criteria of WAC 246-310-210 thru 230. If it has failed to meet one or more of these criteria, then the project is determined not to be the best alternative, and would fail this sub-criterion.

If the project has met the applicable criteria in WAC 246-310-210 through 230 criteria, in step two, the department assesses the other options considered by the applicant. If the department determines the proposed project is better or equal to other options considered by the applicant and the department has not identified any other better options this criterion is determined to be met unless there are multiple applications.

If there are multiple applications, the department's assessment is to apply any service or facility superiority criteria contained throughout WAC 246-310 related to the specific project type in Step three. The department completes step three under WAC 246-310-827.

Step One
DaVita
For this project, DaVita met the applicable review criteria under WAC 246-310-210, 220, and 230.

NKC
For this project, NKC met the applicable review criteria under WAC 246-310-210, 220, and 230.

Step Two
DaVita
For this sub-criterion, DaVita considered three options before submitting this application. Below is DaVita's discussion related to the do nothing option.

Do nothing
"It has been established that Snohomish 2 is growing in ESRD population. Currently, DaVita Everett Dialysis Center is a very busy facility, with utilization of 5.38 patients per station as of December 31, 2017, and thus little additional capacity to provide access to Snohomish 2 patients. The Department's methodology shows substantial patient demand for dialysis services in Snohomish 2, beyond that which could be provided for by Everett's current configuration. With PSKC Everett and Monroe's status as officially meeting 4.5 patient per station threshold, and the ability for an expanded DaVita Everett to thrive while PSKC Monroe and PSKC Everett continue to grow, and the clear need for additional DaVita Everett Dialysis Center capacity, without expansion patients will be forced to dialyze at less convenient times, locations, or even out of the planning area entirely. This alternative was rejected." [Source: Application, pages 28 and 29]

Expand DaVita Everett by nine Stations

"The existing DaVita Everett Dialysis facility is operating at 5.38 patients per station as of December 31, 2017. Expansion would make sense, but after a thorough architectural review and assessment of the DaVita Everett Dialysis Center site, it became clear expansion would provide better service to patients in a new location without many of the existing site challenges and extensive capital investment to repair the existing facility. This alternative was rejected". [Source: Application, page 29]

Relocate and Expand DaVita Everett from thirteen stations to twenty two stations

"Given the clear need for additional capacity at DaVita Everett Dialysis Center in Snohomish 2 and existing site challenges with expansion, this was the clear alternative from a cost, efficiency, and patient service and access perspective. ***This alternative was selected".*** [Source: Application, page 29]

Public Comment

None

Rebuttal Comment

None

Department Evaluation

DaVita provided a comprehensive discussion of the alternatives it considered before submitting this application. Although, two other facilities in the planning area are currently operating below 4.5 patients per stations, the department record shows that all approved stations in the planning area have been operational for more than three years. Specifically DaVita Everett and DaVita Pilchuck Dialysis Center owned and operated by DaVita are currently operating above the standard. Therefore, the department concludes that DaVita appropriately rejected the do nothing or expansion only alternatives before accepting the relocation and expansion alternative.

NKC

For this sub-criterion, NKC considered one option before submitting this application. Below is NKC's discussion related to the do nothing option.

Do nothing

"Given the need for new dialysis station capacity in Snohomish 2, NKC rejected the 'do nothing' option, as we are confident that we can offer a new, quality choice in the Planning Area. In addition, NKC has more than 25 patients dialyzing in King County that reside in Snohomish County and many of these patients have expressed interest in dialyzing closer to home, in a Snohomish-based location. If NKC can benefit these patients by a closer NKC option, it also has the benefit of freeing-up capacity in our high utilization King County facilities, and hence many King ESRD patients will enjoy better access (more convenient dialysis times) in NKC units closer to their homes.

Once NKC was able to identify a suitable site for a proposed new facility and confirmed that it could support 9 stations, plus future expansion for 2 additional stations, we opted to develop the project detailed in this application". [Source: Application, page 28]

Public comment

None

Rebuttal
None

Department Evaluation
NKC does not currently operate a dialysis facility in Snohomish County planning area #2. However the applicant comprehensive discussion of the 'do nothing' alternative it considered before submitting this application, is reasonable. Given that all existing approved stations in the planning area have been in operation for more than three years. The department concludes that NKC appropriately rejected the do nothing alternative before submitting its application.

Step Three
WAC 246-310-827 states: *For purposes of determining which of the competing applications should be approved, the criteria in this section will be used as the only means for comparing two or more applications to each other. No other criteria or measures will be used in comparing two or more applications to each other under any of the applicable sub-criteria within WAC 246-310-210, 246-310-220, 246-310-230 or 246-310-240.*

WAC 246-310-827(3)-(10) outline the process for identifying a superior project if more than one application met the applicable review criteria discussed above. As stated in the introduction section of this evaluation, the data submitted under WAC 246-310-803 is collected and scores are calculated prior to the submission of any applications. Per WAC 246-310-827(5), providers had the opportunity to comment and submit corrections during the development of the scores. The superiority scores are attached to this evaluation as Appendix B. The dataset was final as of the first working day of April in 2018. Public comment or rebuttal to update or correct this data during the review of these projects is not accepted

Using the superiority workbook posted April 2, 2018, the department identified the final scoring of each applicant, below:

Department's Superiority Table 10

Data Element	DaVita Everett	DaVita Pilchuck	DaVita Mill Creek	Average
Home Training	1.00	0.00	1.00	0.67
Shift after 5:00	1.00	1.00	1.00	1.00
Nursing Home Score	3.75	2.50	1.25	2.50
Comorbidity Score	2.00	2.00	2.00	2.00
SMR	2.00	2.00	2.00	2.00
SHR	2.00	2.00	2.00	2.00
Total Performance Score	4.00	10.0	6.00	6.67
Net Revenue Per Treatment	1.00	1.00	1.00	1.00
Total				**17.83**

Department's Superiority Table 11

Data Element	NKC Kirkland	NKC Lake City	NKC Scribner	Average
Home Training	1.00	1.00	0.00	0.67
Shift after 5:00	1.00	1.00	1.00	1.00
Nursing Home Score	1.00	5.00	4.00	3.33
Comorbidity Score	2.75	3.75	5.00	3.83
SMR	2.00	2.00	4.00	2.67
SHR	2.00	2.00	2.00	2.00
Total Performance Score	6.00	8.00	8.00	7.33
Net Revenue Per Treatment	2.00	4.00	4.00	3.33
Total				**24.17**

Department Evaluation

As shown above, DaVita had a score of 18.16 and NKC had a score of 24.50. As shown in the table, NKC score is higher than DaVita. Per WAC 246-310-827(9) "*The application with the highest total score will be the superior alternative for the purpose of meeting WAC 246-310-240(1)."*

As shown by the average score in Tables 10 and 11 above, NKC's application is the superior project. DaVita's application is the least superior project and therefore, it does not meet this sub-criterion and would not be discussed further in this evaluation.

Based on the information, the department concludes that the project submitted by DaVita is not the best available alternative for the community. **This sub-criterion is not met**

Based on the information, the department concludes that the project submitted by NKC is the best available alternative for the community. **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;

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

Department Evaluation for DaVita

This sub-criterion was evaluated in conjunction with WAC 246-310-220 above and **is considered met.**

Department Evaluation for NKC

This sub-criterion was evaluated in conjunction with WAC 246-310-220 above and **is considered met.**

(3) The project will involve appropriate improvements or innovations in the financing and delivery of health services which foster cost containment and which promote quality assurance and cost effectiveness.

NKC

In compliance with this sub-criterion the applicant states, *"NKC is leasing existing space. We intend to upgrades various systems to be as energy efficient as possible within the constraints of existing space, but do not intend to apply for LEED certification"*. [Source: Application page 30]

Public Comment

None

Rebuttal Comment

None

Department Evaluation

NKC's project could have the potential to improve delivery of dialysis services to the residents of Snohomish County planning area #2 with the establishment of nine station kidney dialysis stations in the planning area. **This sub-criterion is met**