



RV2021-016

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STATE HEALTH PLANNING AND
DEVELOPMENT AGENCY

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April 9, 2021

VIA EMAIL (shpda.online@shpda.alabama.gov)

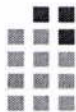
Emily T. Marsal
Executive Director
State Health Planning and Development Agency
RSA Union Building
100 North Union Street, Suite 870
Montgomery, Alabama 36104

**Re: *ISD Renal, Inc., d/b/a Marshall County Home Training
Request for Non-Reviewability Determination
Electronically Filed: April 9, 2021***

Dear Ms. Marsal:

On behalf of ISD Renal, Inc., d/b/a Marshall County Home Training ("Marshall County Home Training"), a subsidiary of DaVita, Inc. ("DaVita"), and pursuant to the Alabama Certificate of Need ("CON") Program Rules and Regulations ("CON Rules") § 410-1-7-.02 and § 410-1-3-.09, attached hereto as **Exhibit A** is a Request for your determination that the proposal to establish and operate a new DaVita home training program / facility comprised of three (3) home-training stations, to be used for peritoneal dialysis home training and treatment, but may in the future, subject to licensure, be used alternatively for home hemodialysis training/ treatment and peritoneal dialysis home training/ treatment in Marshall County, does **not** require a CON pursuant to Ala. Code § 22-21-278, because CON approval is not required for a dialysis facility located in a Class 3, 4, 5, 6, 7, or 8 municipality, as defined by Ala. Code § 11-40-12(a), which contains no more than ten (10) freestanding hemodialysis stations.

In accordance with CON Rule § 410-1-3-.09, a pdf text searchable copy of this Request is being submitted electronically on April 9, 2021, to shpda.online@shpda.alabama.gov; a paper original will be preserved in our files. Additionally, DaVita check No. 9905323 in the amount of \$1,000.00 is being sent to the State Health Planning and Development Agency at the address above by FedEx for delivery on Monday, April 12, 2021, as the filing fee for the above matter.



Emily T. Marsal
April 9, 2021
Page 2

Please give me a call if you have any questions.

With kindest personal regards,

Lenora W. Pate

Lenora W. Pate
Tom Ansley
FOR THE FIRM

LWP/ta

Enclosures

c: Karen McGuire
Rex Blair
Wally Turner
Brittain Sexton

EXHIBIT A

**BEFORE THE STATE HEALTH PLANNING
AND DEVELOPMENT AGENCY OF THE STATE OF ALABAMA**

IN THE MATTER OF:)	
)	
ISD RENAL, INC., D/B/A)	
MARSHALL COUNTY HOME TRAINING)	Request for Non-Reviewability
)	Determination
)	RV-_____

REQUEST FOR NON-REVIEWABILITY DETERMINATION

On behalf of ISD Renal, Inc., d/b/a Marshall County Home Training (“Marshall County Home Training”), a subsidiary of DaVita, Inc. (DaVita”), and pursuant to the Alabama Certificate of Need Program Rules and Regulations (“CON Rules”) § 410-1-7-.02 and § 410-1-3-.09, and Alabama Code § 22-21-260, *et.seq.*, this Request is hereby filed with the State Health Planning and Development Agency (“SHPDA”) for a determination that Marshall County Home Training’s proposal, more fully described herein, to establish and operate a new DaVita home training program / facility comprised of three (3) home-training stations, to be used for peritoneal dialysis home training and treatment, but may in the future, subject to licensure, be used alternatively for home hemodialysis training/ treatment and peritoneal dialysis home training/ treatment in Marshall County, is not subject to CON Review for the reasons stated below, and that no CON is required for this Proposal (“Proposal”).

The following factual and legal information is hereby included in support of this Request, and a check in the amount of \$1,000.00 made payable to the State Health Planning and Development Agency is being filed in accordance with CON Rule § 410-1-3-.09, simultaneously with SHPDA, as the required filing fee for this Request pursuant to CON Rule § 410-1-7-.02.

PROPOSAL

1. Facts:

1.1 ISD Renal, Inc. d/b/a Marshall County Home Training is a subsidiary of DVA Healthcare Renal Care, Inc., which is a subsidiary of DaVita, Inc., an owner and operator of end stage renal disease facilities.

1.2 Marshall County Home Training proposes to establish and operate a new DaVita home training program / facility comprised of three (3) home-training stations, to be used for peritoneal dialysis home training and treatment, but may in the future, subject to licensure, be used alternatively for home hemodialysis training/ treatment and peritoneal dialysis home training/ treatment in Marshall County.

1.3 The total cost of construction is estimated to be \$563,128.00; the total cost of equipment is estimated to be \$139,834.00; and the total cost of first year annual operating costs is estimated to be \$383,839.00.

1.4 This Proposal is necessary and appropriate to provide convenient renal dialysis services to the patients located in Marshall County.

2. Legal Analysis.

2.1 Pursuant to Ala. Code § 22-21-278, CON approval is not required for a dialysis facility located in a Class 3, 4, 5, 6, 7, or 8 municipality, as defined by Ala. Code § 11-40-12(a), which contains no more than ten (10) freestanding hemodialysis stations. However, this exemption from CON approval does not apply to a dialysis facility located in a Class 4, 5, 6, 7, or 8 municipality if such municipality, or any part of such municipality, is located in a county in which a Class 1, 2, or 3 municipality, or any part thereof, is located.

2.2 Section 410-2-3-.05(1)(b) of the State Health Plan further states that Ala. Code § 22-21-278 allows dialysis facilities with no more than ten (10) freestanding hemodialysis stations to operate in 61 of 67 counties without CON approval. Facilities in Jefferson, Limestone, Madison, Mobile, Montgomery, and Shelby counties are required to receive CON approval for any dialysis stations.

2.3 The proposed location for Marshall County Home Training is Marshall County. Marshall County does not contain a Class 1, 2, or 3 municipality.¹ There is no municipality, town, or unincorporated community in Marshall County that does not satisfy the requirements of Section 22-21-278 of the Alabama Code.

3. Conclusion and Request.

3.1 Pursuant to Ala. Code § 22-21-278 and Section 410-2-3-.05(1)(b) of the State Health Plan, a CON would not be required to open and operate a new DaVita home training program / facility comprised of three (3) home-training stations, to be used for peritoneal dialysis home training and treatment, but may in the future, subject to licensure, be used alternatively for home hemodialysis training/ treatment and peritoneal dialysis home training/ treatment in Marshall County.

3.2 Therefore, this Proposal is due to be determined as non-reviewable in accordance with the Alabama CON law, rules, and regulations.

Respectfully submitted this the 9th day of April, 2021,

Lenora W. Pate

Lenora W. Pate
Tom Ansley
Attorneys for Marshall County Home Training

¹ As defined by Ala. Code § 11-40-12(a), a Class 1 municipality is a city with a population of 300,000 inhabitants or more; a Class 2 municipality is a city with a population of not less than 175,000, and not more than 299,999 inhabitants; and a Class 3 municipality is a city with a population of not less than 100,000, and not more than 174,999 inhabitants.

OF COUNSEL:

Sirote & Permutt, P.C.
2311 Highland Avenue South
Birmingham, Alabama 35205
205.930.5162

CERTIFICATE OF SERVICE

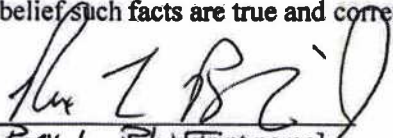
I hereby certify that a PDF copy of the above and foregoing Exhibit A was electronically filed this the 9th day of April, 2021, with the State Health Planning and Development Agency via shpda.online@shpda.alabama.gov in accordance with CON Rule § 410-1-3-.09.

Lenora W. Pate

Of Counsel

Affirmation of Requesting Party:

The Undersigned, being first duly sworn, hereby makes oath or affirms that he, Rex Blair, the Regional Operations Director, Southland Region / DaVita over ISD Renal, Inc., d/b/a Marshall County Home Training, has knowledge of the facts in this Request, and to the best of his information, knowledge and belief such facts are true and correct.

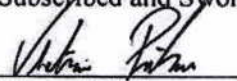

Rex L. Blair [Print name]

Victoria Pinkins

Seal

Notary Public
Alabama at Large
My Commission Expires 10/08/2023

Subscribed and Sworn to before me this the 8th day April 2021.



Notary Public

My Commission Expires: 10-08-2023