

**STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
ADJUDICATIVE SERVICE UNIT**

In re Certificate of Need Application	)	
of:	)	Docket No. 04-08-C-2001CN
	)	
NORTHWEST KIDNEY CENTER,	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW
Applicant.	)	AND FINAL ORDER
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**APPEARANCES:**

Applicant, Northwest Kidney Center, by  
Riddell Williams P.S., per  
Barbara Allan Shickich, Attorney at Law

Department of Health Certificate of Need Program, by  
The Office of the Attorney General, per  
Richard A. McCartan, Assistant Attorney General

**PRESIDING OFFICER:** John F. Kuntz, Health Law Judge

Northwest Kidney Centers appealed the Program's decision denying a certificate of need to add five dialysis stations to the Northwest Kidney Centers' Totem Lake facility located in Kirkland, Washington. Program decision affirmed.

**ISSUES**

What is the correct end stage renal dialysis service area for determining whether Northwest Kidney Centers may add five kidney dialysis stations to its Totem Lake Kidney Center?

Does the Certificate of Need Program have the authority to designate a different end stage renal dialysis service area than the one proposed by Northwest Kidney Centers in its application?

FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND FINAL ORDER

Are all kidney disease treatment centers that would stand to lose market share by approval of the Northwest Kidney Center facility operating at 748.8 dialyses per nontraining station per year as required under WAC 246-310-280(4)?

Does the Certificate of Need Program have the authority to find additional kidney dialysis stations are needed to be located reasonably close to the people they serve (people in northeast King County service area identified by Northwest Kidney Centers) pursuant to WAC 246-310-280(6)?

### **SUMMARY OF EVIDENCE**

Karen Nidermayer testified for the Certificate of Need Program. Palmer Pollack and Robert Sahm testified for Northwest Kidney Centers. The following exhibits were admitted:

- Exhibit 1: The Northwest Kidney Centers Certificate of Need Application Record.<sup>1</sup>
- Exhibit 2: Excerpts from the Certificate of Need Application record.
- Exhibit 3: December 6, 1995 Program decision granting a certificate of need to establish a new ten station kidney dialysis facility known as the Totem Lake Kidney Center.
- Exhibit 4: October 31, 2000 Program decision granting a certificate of need authorizing the Totem Lake Kidney Center to add five additional stations to its kidney dialysis facility.
- Exhibit 5: January 15, 2004 Program decision granting a certificate of need to establish a seven station kidney dialysis facility in southwest King County.
- Exhibit 6: Withdrawn.

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<sup>1</sup> Reference to Exhibit 1 will use the application record (AR) page number.

- Exhibit 7: Declaration of John C. Stivelman, M.D., Chief Medical Officer of Northwest Kidney Centers.
- Exhibit 8: Map of Bellevue Dialysis Center service area zip codes.
- Exhibit 9: Service Area Review.
- Exhibit 10: Map showing the location of the Totem Lake Kidney Center, Lake Washington Kidney Center and Bellevue Dialysis Center facilities, and their respective service areas.
- Exhibit 11: Chart comparing outcome of applications of DaVita Bellevue Dialysis Center, Northwest Kidney Centers Lake Washington Kidney Center, Kirkland Dialysis LLC and Northwest Kidney Centers Lake Washington Kidney Center, for applications filed during the period 2003 – 2004.

### **PROCEDURAL HISTORY**

In February 2004, Northwest Kidney Centers (Northwest Kidney) applied for a certificate of need to increase the number of kidney dialysis stations in the Totem Lake Kidney Center facility by five stations (from 15 to 20 stations). In July 2004, the Certificate of Need Program (the Program) denied the Northwest Kidney application on the grounds that the application did not show need existed for the additional stations.

On August 10, 2004, Northwest Kidney appealed the Program's decision denying the certificate of need. In November 2004, the parties entered a stipulation for an order to stay the proceedings and remand the application to the Program for reconsideration. After considering the documentation submitted by Northwest Kidney, the Program concluded the application was not consistent with the certificate of need review criteria and denied the Northwest Kidney application. The stay order was lifted and the adjudicative proceeding was reopened effective June 20, 2005.

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FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND FINAL ORDER

An adjudicative hearing was convened on November 29, 2005. The parties were permitted to file posthearing briefs in lieu of closing argument. The hearing record closed on January 3, 2006.

## **FINDINGS OF FACT**

1.1 In 1996 Northwest Kidney applied for a certificate of need to establish a ten station kidney dialysis center in Kirkland, Washington. Northwest Kidney identified the primary service area to encompass northeast King County. At the time of this application, there was no kidney dialysis facility in the Kirkland area. The Program granted the Northwest Kidney's application to establish Certificate of Need #1136, for the Totem Lake Kidney Center facility (Totem Lake). In granting Certificate of Need #1136, the Program considered another Northwest Kidney owned facility, Lake Washington Kidney Center (Lake Washington), which was located in Bellevue, Washington, in determining whether need existed for another (Totem Lake) kidney dialysis facility. Exhibit No. 3 (page 1 of the analysis). In deciding to grant the Totem Lake certificate of need the Program took into consideration that the Lake Washington facility would be operating at near capacity by the time the Totem Lake facility was operational.

1.2 In 2000, Northwest Kidney applied for a certificate of need to expand the Totem Lake facility by five kidney dialysis stations. It identified the primary service area as northeast King County. In deciding whether to grant Northwest Kidney's request to expand the Totem Lake facility, the Program again considered that the Lake Washington facility was located adjacent to or within the proposed project service area.

Exhibit No. 4 (pages 2 – 3 of the analysis). The Program noted both the Totem Lake and Lake Washington facilities were operating at or above 90% capacity. The Program found need existed for additional stations in northeast King County and granted Certificate of Need #1216 to allow Totem Lake's five kidney station expansion.

1.3 In February 26, 2003, DaVita applied for a certificate of need to establish a ten station kidney dialysis facility, Bellevue Dialysis Center, in east King County, Washington. DaVita identified the location of its proposed kidney dialysis facility as Bellevue, Washington, but the actual location was located southwest of the intersection of Interstate 405 and Interstate 90. See *In re Kirkland Dialysis*, Docket No. 03-09-C-2002CN, page 6 (September 15, 2005).<sup>2</sup> In issuing Certificate of Need #1269, the Program took into consideration the four Northwest Kidney facilities in or near DaVita's defined service area.<sup>3</sup> *In re Kirkland Dialysis*, Docket No. 03-09-C-2000CN, page 6 (September 15, 2005).

1.4 In February 2004, Northwest Kidney filed a certificate of need application to add five kidney dialysis stations to its Totem Lake facility in Kirkland, Washington. The Program began the application review process on March 23, 2004. As the Program did not receive any public hearing request regarding the application, it did not conduct a public hearing. The Program accepted written public comment on the application up to May 3, 2004. No public comments were received regarding the application. As no public comment was received, Northwest Kidney did not provide any rebuttal comments.

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<sup>2</sup> The September 15, 2005 order was the Findings of Fact, Conclusions of Law and Final Order on Reconsideration.

<sup>3</sup> Totem Lake, Lake Washington, Snoqualmie Ridge and Mount Ranier.

1.5 In its 2004 application, Northwest Kidney identified the Totem Lake primary service area as northeast King County. This primary service area was consistent with the service area Northwest Kidney previously identified in the 1996 and 2000 certificate of need applications.<sup>4</sup> While it identified northeast King County as its primary service area, Northwest Kidney expected to serve patients in other identified geographic regions such as Fall City and Carnation.<sup>5</sup> It chose to exclude future Redmond patients from its methodology calculations, even though that city fell within the northeast King County service area. Northwest Kidney reasoned that Redmond sits almost midpoint between Kirkland (in the northeast King County region) and Bellevue (in the east King County region). In other words, Northwest Kidney expected to continue providing services to its current Redmond based patients, and would accept any future based Redmond based kidney dialysis patients, but did not presume that all future Redmond based kidney dialysis patients would choose the Totem Lake facility for services when calculating need for purposes of the application. AR at 145; Transcript of Proceedings (RP) at 66. Northwest Kidney did not include any other kidney dialysis facilities in performing its need methodology calculations.

1.6 Northwest Kidney contended eighty-six percent (74 of 86 patients) of its patients identified in the patient origin analysis resided in Kirkland, Washington or communities north of Kirkland as of December 31, 2003. AR 147. For that reason

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<sup>4</sup> In its application, Northwest Kidney identified the northeast King County region to include Bothell (98011), Mill Creek (98012), Duvall (98019), Kirkland (98033 and 98034), Juanita (98034), Redmond (98052 and 98053), and Woodinville (98072). AR 44.

<sup>5</sup> In its application, Northwest Kidney identified the Interstate 90 region to include Fall City (98024 and Carnation (98014). AR 44.

Northwest Kidney did not see dialysis centers in Bellevue providing a reasonable alternative destination for Kirkland residents, or residents north of Kirkland. Id.

1.7 On July 13, 2004, the Program denied the Northwest Kidney application to expand the Totem Lake facility. The Program concluded there were three facilities operating in east King County that were adjacent to or within the Totem Lake service area.<sup>6</sup> The Program concluded that:

- On March 26, 2003, Northwest Kidney submitted an application to add stations to its Lake Washington facility and identified Totem Lake as an existing provider in the sub-service area. The Program concluded that the reverse was true, that is the Lake Washington facility was located in the Totem Lake sub-service area.
- On August 11, 2003, the Program issued Certificate of Need #1269 approving the establishment of the ten-station Bellevue Dialysis facility located within eleven miles of Totem Lake facility. In its application DaVita recognized the service area for its facility and Totem Lake overlapped. The Program recognized the overlapping service area for the two facilities and included the kidney dialysis station count in its need methodology.
- Further, the numbers of facilities and patients within King County had substantially grown since the establishment of Lake Washington and Totem Lake, and the identification of the sub-service areas within the county are more refined. In recent dialysis evaluations, the Program counted the number of kidney dialysis stations at both Kirkland and Bellevue facilities when evaluating projects in the east or northeast King County sub-service areas.

Application Record (AR) at 160 – 161. Northwest Kidney appealed this Program denial decision.

1.8 The application was remanded back to the Program to allow Northwest Kidney to provide clarifying information related to significant changes in factors or circumstances relied upon by the Program in making its findings and decisions.

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<sup>6</sup> Northwest Kidney owned Lake Washington and Snoqualmie Ridge, and DaVita owned Bellevue Dialysis.

Northwest Kidney argued a refined analysis of the travel time and distance demonstrated the need for expansion of Totem Lake. AR 203A – 205A.<sup>7</sup> Based on calculations showing average time and distance and weighted average travel time, Northwest Kidney showed the Totem Lake facility was the only facility in east King County that offered an average travel time to the defined population of twenty minutes or less. AR 204A-205A, AR 208A.

1.9 On May 20, 2005, the Program denied the Northwest Kidney application to expand the Totem Lake facility. Based on the proposed zip code data provided by DaVita in its Bellevue Dialysis application, and mapping data from the Department's Geographic Information System office within the Division of Resource Management, there was an overlap in the zip code data for the Totem Lake, Lake Washington and Bellevue Dialysis service areas. AR 228, AR 234.<sup>8</sup> Because of this overlap, the service area includes the Lake Washington, Bellevue Dialysis and Totem Lake facilities. AR 228. The recalculation of the need methodology using the Totem Lake, Lake Washington and Bellevue Dialysis kidney dialysis stations shows there is no need for a Totem Lake facility. AR 228 – 229.<sup>9</sup>

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<sup>7</sup> The Program inadvertently stamped the remand record beginning with page 200 – 219, even though those page numbers were used in the original application record. To avoid confusion, the remand pages 200 – 219 were renumbered as 200A – 219A. The remainder of the remand record was stamped sequentially.

<sup>8</sup> At hearing the Program acknowledged the map provided at AR 234 was incorrect, and provided a corrected map regarding the overlap See Exhibit 10.

<sup>9</sup> At hearing the parties agreed that if need for additional kidney dialysis stations were proven on appeal, that Northwest Kidney would meet the certificate of need requirements under WAC 246-310-220(financial feasibility), WAC 246-310-230 (structure and process of care) and WAC 246-310-240 (cost containment).



## II. CONCLUSIONS OF LAW

2.1 The Program implements the certificate of need program under requirements set forth in chapter 70.38 RCW and chapter 246-310 WAC. RCW 70.38.105(1). The development of health services and resources should be accomplished in a planned orderly fashion consistent with identified priorities and without unnecessary duplication or fragmentation. RCW 70.38.015(2).

2.2 The applicant bears the burden to establish that the application meets all applicable criteria. WAC 246-10-606.<sup>10</sup> The Program then decides whether to grant a certificate of need. In the event the Program does not adopt the applicant's analysis, the Program's written analysis must contain sufficient information to support its decision. In so doing, the Program must rely on information contained in the application record or reach conclusions from information contained in the application record.

WAC 246-310-090(1)(a); WAC 246-310-200(2)(a); see also *In re Auburn Regional Medical Center*, Docket No. 01-05-C-1052CN (February 20, 2003). The person challenging the decision bears the burden of showing the Program's decision is incorrect. The burden of proof is by a preponderance of the evidence.

WAC 246-10-606. Evidence is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. RCW 34.05.452(1).

2.3 Certificate of need administrative proceedings do not supplant the certificate of review process. Rather the administrative proceeding assures that the procedural and substantive rights of the parties have been observed, and that the

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<sup>10</sup> Chapter 246-10 WAC procedural rules supplement the hearing process statutes and rules in chapter 70.38 RCW and chapter 246-310 WAC.

factual record supports the Program's analysis and decision. *Ear, Nose, Throat & Plastic Surgery Assoc.*, Docket No. 00-09-C-1037CN, Order No. 6, page 8 (April 2001).

2.4 While a certificate of need administrative proceeding does not supplant the review process, certificate of need appeals are intra-agency appeals.

RCW 34.05.464(4). A reviewing officer shall exercise all of the decision making power that the reviewing officer would have had to decide and enter the final order had the reviewing officer presided over the hearing. RCW 34.05.464(4); see *Tapper v.*

*Employment Security Dept.*, 122 Wn.2d 397, 404 (1993); see Andersen, *The 1988 Washington Administrative Procedure Act – An Introduction*, 64 Wash. L. Rev., 781, 816 (1989).

#### Kidney Dialysis Treatment Center Requirements

2.5 A kidney disease treatment center is defined to include any place providing outpatient dialysis and/or kidney transplantation services to a person having end stage renal disease. WAC 246-310-010. An applicant seeking to operate a kidney disease treatment center must meet the standards set forth in WAC 246-310-280, and the general certificate of need review criteria set forth in WAC 246-310-210 through WAC 246-310-240. WAC 246-310-280(1); see also WAC 246-310-200(1) and (2). To calculate need pursuant to WAC 246-310-280, the applicant must identify the end stage renal dialysis (ESRD) service area (the service area), which is defined to mean each individual county or *other service area documented by patient origin*.

WAC 246-310-010 (emphasis added).<sup>11</sup>

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<sup>11</sup> The parties agree that need exists in King County as a whole.

## Identifying Service Area to Calculate Need

2.6 Neither chapter 70.38 RCW nor chapter 246-310 WAC defines the phrase “other service area documented by patient origin”. In past applications, the Program and applicants have traditionally interpreted the phrase “other service area documented by patient origin” to include the use of zip code information (patient zip code information obtained from the facility, regarding those patients that dialyze at the facility, and collected by the Northwest Renal Network) and/or geographic descriptors (such as east King County or northeast King County) to identify where all, or a substantial portion, of their patients reside. The geographic descriptors traditionally represent a collection of zip codes for specific cities. In determining whether zip code information or geographic descriptors describe the relevant service area, it is not uncommon for applicants and the Program to rely on recent similar applications for guidance. No matter whether zip code information and/or geographic descriptors are used, the goal is to ensure that services are provided to the relevant population without any unnecessary duplication or fragmentation of those services. See RCW 70.38.015(2).

2.7 Of the two methods of identification (zip code information and geographic descriptors), zip code information more accurately reflects what the relevant service area is.<sup>12</sup> Zip code information, based on patient information received from Northwest Renal Network, documents the location of the patients who have used a specific facility. Absent a specific statutory or regulatory definition for what constitutes a geographic descriptor, or which cities must be included within that geographic descriptor, such

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<sup>12</sup> Northwest Kidney’s argument for using geographic descriptors would carry more weight if the geographic areas were described or provided for in statute or regulation. See WAC 246-310-270 (which describes secondary health service planning areas for ambulatory surgery centers).

boundaries may be subject to change from one application to another. In other words, geographic descriptors provide an imprecise basis for measuring or identifying patient origin unless a statute or rule clearly provides what constitutes the boundary of the geographic region.<sup>13</sup>

2.8 Even if a service area could be documented by use of a geographic descriptor, a review of the 1996 and 2000 Northwest Kidney applications shows the Program considered the relevant Totem Lake service area to be larger than the one described by Northwest Kidney. This is clear, given the Program's consideration of Lake Washington as within or adjacent to the Totem Lake service area.<sup>14</sup> While the Program granted Northwest Kidney the 1996 and 2000 certificates of need for the Totem Lake facility, the Program's decision to grant the certificate was based less on the service area described by Northwest Kidney and more on other factors. In 1996, the Program noted that Lake Washington was projected to operating near capacity by the time the Totem Lake facility was operational. In 2000, the Program noted both the Totem Lake and Lake Washington facilities were operating at or above 90% capacity. In both instances, the Program considered the relevant service area to be larger than the one described by Northwest Kidney (that is, a service area containing only Totem Lake). The Program may adopt the proposed service area or identify a different service area pursuant to WAC 246-310-010. See *In re Kirkland Dialysis*, Docket No. 03-09-C-2000CN, Findings of Fact, Conclusions of Law and Final Order Upon Reconsideration (September 16, 2005), page 17, paragraph 2.7.

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<sup>13</sup> See WAC 246-310-270.

<sup>14</sup> Bellevue Dialysis Center was not in existence in 1996 or 2000.

2.9 Logic requires that the Program possesses the authority to adopt a service area different than the one described by the applicant. Otherwise it would be unable to meet its statutory obligations as set forth by the Legislature. “Our primary duty in interpreting any statute is to discern and implement the intent of the legislature”. *State v. J.P.*, 149 Wn.2d 444, 450 (2003) (citation omitted); see *City of Redmond v. Central Puget Sound Growth Management Hearings Board*, 136 Wn.2d 38, 53 (1998). Under RCW 70.38.015 the Legislature provides:

That the development of health services and resources, including the construction, modernization, and conversion of health care facilities, should be accomplished in a planned, orderly fashion, consistent with identified priorities and without unnecessary duplication or fragmentation.

RCW 70.38.015(2). The Program previously considered a service area larger than the one described by Northwest Kidney. Even if it had accepted Northwest Kidney’s defined service area for Totem Lake in 1996 and 2000, the Program could now reach a different decision to avoid unnecessary duplication or fragmentation of services at the time of the 2003 application under consideration. The Program’s authority includes identifying a service area for calculating need, even if that service area differs from the one identified by the applicant.

#### Calculation of Need

2.10 Once the correct service area is identified, the need methodology can be calculated to determine whether there is need for additional kidney dialysis stations pursuant to WAC 246-310-280. The relevant subsections of WAC 246-310-280 state:

- (2) The number of dialysis stations needed in an ESRD [end stage renal dialysis] service area shall be determined using the following data of the Northwest Renal Network:

- (a) The ESRD service area's total number of in-center dialyses provided for the previous five years.
  - (b) The number of end of year in-center patients for the ESRD service area for the previous five years.
  - (c) The number of patients trained for home hemo and peritoneal dialysis for the ESRD service area for the previous five years.
- (3) The number of dialysis stations projected as needed in an ESRD service area shall be determined using the following methodology:
- (a) Project the number of dialysis stations projected as needed in an ESRD service area through a three-year future regression analysis of the previous five years' data.
  - (b) Project the number of in-center dialyses needed to serve the residents of the ESRD service area by projecting the number of end of year in-center patients through a three-year future regression analysis of patient origin adjusted data through the previous five years. Multiply this result by one hundred fifty-six dialyses per year.
  - (c) Project the number of patients to be trained for home hemo and peritoneal dialysis in the service area through a three-year regression analysis of the previous five years' data.
  - (d) Determine the number of dialysis stations needed for in-center dialysis by dividing the result of (a) of this subsection by 748.8 (equivalent to eighty percent of a three-patient shift schedule).
  - (e) Determine the number of dialysis stations needed for in-center dialysis to serve residents of the service area by dividing the result of (b) of this subsection by 748.8 (equivalent to eighty percent of a three-patient shift schedule).
  - (f) Determine the number of stations needed for home hemo and peritoneal training in the service area by dividing the projected number of home hemo patients to be trained by six and peritoneal patients to be trained by twenty.
  - (g) Determine the number of dialysis stations needed in a service area by the projection year as a total of:

- (i) The result of (e) of this subsection, designated as the number of resident stations.
- (ii) The result of (d) of this subsection, minus the result of (e) of this subsection, designated as visitor stations;
- (iii) The result of (f) of this subsection, designated as the number of training stations.
- (h) To determine the net station need for an ESRD service area, subtract the number calculated in (g) of this subsection from the total number of certificate of need approved stations.

To correctly calculate the existing kidney dialysis station capacity, the Lake Washington and Bellevue Dialysis facilities must be included, as those facilities were within the relevant ESRD service area. The methodology calculation reveals there is a surplus of need in the identified service area. Northwest Kidney did not provide any evidence to show that the Program's methodology was calculated incorrectly. The Program properly denied the Northwest Kidney application because a kidney dialysis station surplus exists in the identified service area.

Market Share Determination Pursuant to WAC 246-310-280(4).

2.11 Even if the Program decided need existed for additional kidney dialysis stations, that decision would not guarantee the granting of the Northwest Kidney application. After identifying the appropriate service area, and performing the necessary need calculations, an applicant must address the market share issue pursuant to WAC 246-310-280(4). That subsection states:

All kidney disease treatment centers that would stand to lose market share by approval of the applicant's facility must be operating at 748.8 dialyses per nontraining station per year before additional nontraining stations are approved.

The 748.8 figure translates to a facility or treatment center operating at 80% capacity before the approval of additional stations. Lake Washington (72%) and Bellevue Dialysis (20%) were operating under this 80% capacity figure. Even if Northwest Kidney could prove need existed for additional kidney dialysis stations at its Totem Lake facility, those additional stations could not be authorized because neither Lake Washington nor Bellevue Dialysis was operating at the necessary 80% capacity pursuant to WAC 246-310-280(4).<sup>15</sup>

Approval of More than the Number of Stations Identified as being Needed.

2.12 Northwest Kidney argues the Program has the authority to allow for additional kidney dialysis stations pursuant to WAC 246-310-280(6) because: (1) the majority of the identified patients in the northwest King County area live north of Kirkland, Washington; and (2) using the twenty minute drive time guideline, driving to Bellevue is not a realistic alternative to the patients residing north of Kirkland.

WAC 246-310-280(6) states:

The department shall not issue certificates of need approving *more than the number of stations identified as being needed* in a given ESRD service area unless:

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<sup>15</sup> Both the Program and Northwest Kidney point out an apparent inconsistency of the Bellevue Dialysis Reconsideration Decision. See Northwest Kidney Post Hearing Brief, page 13, footnote 4; Certificate of Need Program Post-Hearing Reply Brief, page 3. There is language in that decision which suggests that a facility in the same service area, under the right circumstances, would not stand to lose market share by approval of a facility. What the Program's brief does not make clear is that it raised a position at hearing that it could not prove it had considered in completing its written analysis decision. Additionally, the text of the Program's decision adopted DaVita's described service area in the written analysis, but calculated the need methodology using a different service area. The Program did not prove the position it argued at hearing was considered as part of its original decision, so the Presiding Officer was precluded from considering it in his final decision. Part of the confusion was corrected between the issuance of the initial and reconsideration decision. The Reconsideration Decisions did not completely clarify that point. No new interpretation regarding WAC 246-310-280(4) is being created by the Bellevue Dialysis Reconsideration Decision and any Northwest Kidney reliance on the holding in the Bellevue Dialysis Reconsideration Decision cannot be sustained here.



- (a) The department finds such additional stations are needed to be located reasonably close to the people they serve; or
- (b) Existing nontraining dialysis stations in the treatment facility are operating at nine hundred thirty-six dialyses per year (three patient shifts); or
- (c) The applicant can document a significant change in ESRD treatment practice has occurred, affecting dialysis stations utilization in the service area; and

The department finds that an exceptional need exists and explains such approval in writing.

(Emphasis added). The rules of statutory construction provide:

In determining the meaning of a statute, the court's fundamental objective is to ascertain and carry out the meaning of the legislature's intent. If the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent.

*Transfer of Territory*, 130 Wn. App. 806, 811 (2005) (citing *Dep't of Ecology v. Campbell & Gwinn L.L.C.*, 146 Wn.2d 1 (2002)). A reading of the plain language shows the Program can issue certificates approving *more* than the number of stations identified as being needed.<sup>16</sup> If there are no stations identified as being needed, then the Program cannot approve additional stations and the WAC 246-310-280(6) authority to approve *more* than the number needed does not arise. Since the methodology calculations show no need exists, the Program has no authority to approve additional stations to be located reasonably close to the people they serve.

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<sup>16</sup> "More" defined as greater in number; a greater number of persons or things. Websters's II New Riverside Dictionary, the Riverside Publishing Company (1988).

### III. ORDER

Based on the Procedural History, Findings of Fact and Conclusions of Law, the Program's decision denying the Northwest Kidney Centers certificate of need application to expand the Totem Lake facility by five stations is AFFIRMED.

Dated this 24<sup>th</sup> day of February, 2006.

\_\_\_\_\_/s/\_\_\_\_\_  
JOHN F. KUNTZ, Health Law Judge  
Presiding Officer

### NOTICE TO PARTIES

This order is subject to the reporting requirements of RCW 18.130.110, Section 1128E of the Social Security Act, and any other applicable interstate/national reporting requirements. If adverse action is taken, it must be reported to the Healthcare Integrity Protection Data Bank.

Either party may file a **petition for reconsideration**. RCW 34.05.461(3); RCW 34.05.470. The petition must be filed within 10 days of service of this Order with:

The Adjudicative Service Unit  
P.O. Box 47879  
Olympia, Washington 98504-7879

and a copy must be sent to:

Certificate of Need Program  
P.O. Box 47852  
Olympia, Washington 98504-7852

The request must state the specific grounds upon which reconsideration is requested and the relief requested. The petition for reconsideration is considered denied 20 days after the petition is filed if the Adjudicative Service Unit has not responded to the petition or served written notice of the date by which action will be taken on the petition.

A petition for judicial review must be filed and served within 30 days after service of this Order. RCW 34.05.542. The procedures are identified in chapter 34.05

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RCW, Part V., Judicial Review and Civil Enforcement. If a petition for reconsideration is filed, however, the 30-day period will begin to run upon the resolution of that petition. RCW 34.05.470(3).

The Order remains in effect even if a petition for reconsideration or petition for review is filed. "Filing" means actual receipt of the document by the Adjudicative Service Unit. RCW 34.05.010(6). This Order was "served" upon you on the day it was deposited in the United States mail. RCW 34.05.010(19).