



**STATE OF CONNECTICUT**  
OFFICE OF HEALTH CARE ACCESS

M. JODI RELL  
GOVERNOR

CRISTINE A. VOGEL  
COMMISSIONER

September 8, 2006

Dennis P. McConville  
Vice President, Strategic & Operational Planning  
Eastern Connecticut Health Network, Inc.  
71 Haynes Street  
Manchester, CT 06040

RE: Certificate of Need Determination; Report Number 06-30826-DTR  
Eastern Connecticut Health Network, Inc. and DaVita, Inc.  
Transfer of Ownership of ECHN's Dialysis Services

Dear Mr. McConville:

On September 7, 2006, the Office of Health Care Access ("OHCA") received your Certificate of Need ("CON") Determination request on behalf of Eastern Connecticut Health Network, Inc. ("Petitioner" or "ECHN") for a transfer of ownership of ECHN's dialysis services to Total Renal Care, Inc. Please be advised that OHCA has reviewed your request and makes the following findings:

1. ECHN is a not-for-profit health system which consists of Manchester Memorial Hospital ("MMH"), Rockville General Hospital ("RGH"), a nursing home, two wellness centers and two outpatient renal dialysis centers.
2. ECHN currently provides acute and chronic inpatient hemodialysis services at MMH and RGH, as well as chronic outpatient dialysis services at Vernon Dialysis Center located at 460 Hartford Turnpike, Vernon and Windham Dialysis Center located at 375c Tuckie Road, Windham ("Dialysis Centers").
3. Total Renal Care, Inc. is a subsidiary of DaVita, Inc. ("DaVita"). DaVita's headquarters are located at 601 Hawaii Street, EL Segundao, California.
4. ECHN is proposing to transfer the ownership of its dialysis services at MMH, RGH, and the Dialysis Centers from ECHN to DaVita.

*An Equal Opportunity Employer*  
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5. ECHN will enter into an Acute Services Agreement (“ASA”) with DaVita for acute dialysis services at MMH and RGH. Under this contractual agreement MMH and RGH will retain control over the dialysis services provided within the hospitals, as follows:
  - a. The ASA shall continue in effect for an initial term of three (3) years, at the end of the initial term of the ASA shall be automatically extended for additional one (1) year periods unless either party gives written notice, 90 days in advance;
  - b. DaVita is at all times acting and performing as an independent contractor;
  - c. DaVita will provide staff to treat hospital inpatients requiring hemodialysis as needed;
  - d. DaVita must comply with the policies and procedures and specific covenants of the hospitals regarding the provision of the dialysis service; and
  - e. MMH and RGH retain the right to terminate the Agreement and to require removal of staff.
6. Further, under the ASA:
  - a. MMH and RGH will continue to bill patients and third party payors for inpatient dialysis services and will pay DaVita a per treatment fee for such services; and
  - b. ECHN and the patient’s physician shall retain ultimate authority over and responsibility for each patient’s care and treatment.
7. Total Renal Care, Inc. will acquire the dialysis assets from ECHN and will provide the services at the Dialysis Centers. DaVita, through Total Renal Care, Inc., will continue to maintain and operate both Dialysis Centers as licensed Outpatient Dialysis Units. RGH owns and will lease to DaVita the Vernon Dialysis Center. ECHN will assign its lease for the Windham Dialysis Center, which is owned by T&S of CT, LLC, to DaVita in order for them to maintain operations in Windham.
8. According to the Asset Purchase Agreement (“Agreement”):
  - a. DaVita agrees that it shall continue to operate the Windham Dialysis Center for a period of no less than one (1) year, following the Effective Date of the Agreement;
  - b. ECHN will lease DaVita the location at which Vernon Dialysis Center is located, for an initial term of ten (10) years from the Closing Date and two (2) successive renewals options of five (5) years each;
  - c. DaVita will be responsible for all billing arrangements related to the outpatient dialysis service; and
9. The physicians of Northeastern Nephrology Associates will continue to provide Medical Director services for the inpatient dialysis service at MMH and RGH and at the Dialysis Centers.
10. The Petitioner stated that DaVita will continue to operate both Dialysis Centers and accommodate all patients currently being treated by ECHN at these locations. There will be no change in the services provided or the hours of operation at the Centers after the sale to DaVita.

11. The Petitioner stated that DaVita, as a national provider of dialysis services, has access to more dialysis related resources and has the ability to more quickly upgrade their facilities to include the latest advances in dialysis technology and treatment and to update and educate its staff regarding the latest treatments and technology. DaVita also has access to national contracts for dialysis equipment and supplies, allowing them to work within the limited reimbursement for dialysis services.
12. The current patient population served at the Dialysis Centers will continue to be the target population served after the sale of dialysis services to DaVita.

OHCA finds that the overall purpose of the *Acute Services Agreement* and the *Asset Purchase Agreement* between Eastern Connecticut Health Network, Inc and Total Renal Care, Inc., a subsidiary of DaVita, Inc. (“DaVita”) is to assure necessary full-time coverage and availability of renal dialysis services for ECHN patients. It appears that the governance of the ECHN Hospitals is not affected by the acute services agreement. Based on the information above, for these specific circumstances, the Office of Health Care Access hereby determines that the proposal of ECHN to participate in contractual arrangements with DaVita does not require a Certificate of Need.

Please note that if the contractual arrangements are modified or changed in the future, OHCA must be informed in writing of the changes and OHCA may reopen this inquiry or conduct a new inquiry related to the new or revised information if deemed pertinent. This CON Determination relates solely to the contractual arrangement reviewed and not to any other contractual arrangement that the ECHN has or may have related to any other health care service or function.

This report supersedes the CON Determination reported issued under 06-30761-DTR.

If you have any questions concerning this letter, please contact Steven W. Lazarus, Associate Health Care Analyst, at (860) 418-7012.

Sincerely,

Signed by Cristine A. Vogel  
Commissioner

CAV:swl

Copy: Rose McLellan License and Applications Supervisor, DPH, DHSR