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Date: March 13, 2023

TO: Hearing Attendees and Commenters – OAR chapter 333, division 275, "Standards for the Certification of Hemodialysis Technicians "

FROM: Brittany Hall, Hearing Officer and Administrative Rules Coordinator

cc: Dana Selover, MD, MPH; Section Manager Health Care Regulation and Quality Improvement

SUBJECT: Presiding Hearing Officer's Report on Rulemaking Hearing and Public Comment Period

Hearing Officer Report

Date of Hearing: December 16, 2022, via Microsoft Teams.

Purpose of Hearing: The purpose of this hearing was to receive testimony regarding the Oregon Health Authority (Authority), Public Health Division, Health Care Regulation and Quality Improvement's proposed permanent amendments to OAR chapter 333, division 275, related to standards for the certification of hemodialysis technicians.

Except for the emergency certification rules adopted in 2020 because of the COVID-19 pandemic, these administrative rules have not been amended since their initial adoption in 2001 and are being revised to align with other provider licensing processes regulated by the Health Care Regulation and Quality Improvement Section and changes to federal regulations. In addition, rules have been amended to update language and terms to reflect current processes, terminology, technology, and statutory references.

Hearing Officer: Brittany Hall

Testimony Received: Five individuals provided oral testimony at the hearing. This testimony is briefly summarized as follows:

Jason Scott, U.S. Renal Care

Jason Scott opined that requiring patient care technicians (PCTs) to retain their national certification is of little benefit other than to the large dialysis organizations (LDOs). The field of dialysis is already hurting for PCTs and imposing these rule changes as

currently written would only create additional barriers to maintaining staff when there are already staffing shortages. Pay for PCTs is poor and these decisions will disproportionately impact PCTs who are minorities, women, or of lower socioeconomic status. Jason Scott stated that he strongly encourages the implementation of these rules be delayed until these issues can be addressed without placing additional burden on PCTs, who are already struggling. He requested that the rules advisory committee (RAC) be reconvened to properly address the topics of equity and equality.

Agency response: The Authority thanks Jason Scott for their response and acknowledges that the costs associated with retaining national certification may create additional hardships for hemodialysis technicians. After careful reconsideration, the Authority has removed the requirement that hemodialysis technicians retain national certification at time of renewal and instead will require proof of employment and continuing education hours.

Phuong Nguyen, U.S. Renal Care, Portland

Phuong Nguyen testified that they have heard from their PCT with concern that the proposed changes would be a lot for them to manage with the wage they are currently making.

Agency response: The Authority thanks Phuong Nguyen for their remarks and directs them to the response to Jason Scott.

Liz Vang, RN, U.S. Renal Care, Gresham

Liz Vang testified that they echo what Jason Scott and Phuong Nguyen said, and that staff have voiced concerns that it would be a financial burden for them if this was to go into place.

Agency response: The Authority thanks Liz Vang for their comments and directs them to the response to Jason Scott.

Paula Long, Strive Health Kidney Care, Medford, Oregon

Paula Long testified that they are a PCT. Their concern is that maintaining national and Oregon certification would be a lot more money for a PCT to have to pay and would be a hardship on a lot of people.

Agency response: The Authority thanks Paula Long for their remarks and direct them to the response to Jason Scott.

Topanga Benthien, U.S. Renal Care, Tillamook

Topanga Benthien testified that they are a PCT at the very bottom of the threshold for pay and having these changes will bring up hardships. A lot of healthcare workers, including PCTs, are already underpaid and becoming burnt out. Adding additional certification requirements will not only drive many people out of this profession, but it will also add to an already broken economy where making patients a priority will no longer be an option.

Agency response: The Authority thanks Topanga Benthien for their comments and direct them to the response to Jason Scott.

Other Comments: Four individuals or organizations submitted written comments to the Authority within the period allotted for public comment, which closed at 5:00 PM on December 21, 2022. These comments are briefly summarized as follows:

Marco Noriega Ramirez

Marco Noriega Ramirez wrote that they have worked as a dialysis technician for two years. They wrote that "as a dialysis technician, I have notice [*sic*] a lack knowledge of medical field, lack of ethics and professionalism, lack of empathy for the patient when they receive their dialysis treatment." They further wrote that "what we need for the future technicians starting in 2023 is for them to receive training in: professional ethics, anatomy and physiology, complication in dialysis treatment, toxicology, and CPR," then 10 weeks of training by the dialysis companies and cannulation taught by an RN, not by another dialysis technician. They also addressed the issue of titles and compensation for technicians in their written comments.

Marco Noriega Ramirez's written comments are attached to this report as Exhibit 1.

Agency response: The Authority thanks Marco Noriega Ramirez for their work as a dialysis technician and sharing concerns that there is a lack of knowledge among newly trained dialysis technicians. With regard to the comment about recommended additional training, the Authority used national standards to develop core curriculum, and training requirements set forth in Oregon Administrative Rules, OAR 333-275-0110 Appendix A section 15 does have general social services training. In addition, the federal regulations for Renal Dialysis Facilities delineate that training include communication and interpersonal skills, including patient sensitivity training and care of difficult patients. (State Operations Manual Appendix H, pg. 140) That said, the Authority will take these comments into consideration during future rulemakings to revise Appendix A and align with federal regulations.

Sharon Maxwell

Sharon Maxwell wrote that the wage rate is too low for dialysis technicians. They wrote that "this position requires more soft skills and bed/chair side manners that help the patient and family of an end renal patient to cope, manage and show up for treatment" and suggested that along with an hourly rate increase technicians should have ongoing training to understand "the emotional and mental health side of facing death or life end of life care [*sic*]," and suggested that technicians have a holistic approach.

Sharon Maxwell's written comments are attached to this report as Exhibit 2.

Agency response: The Authority thanks Sharon Maxwell for taking the time to review the proposed rules and submitting comments. The Authority does not have the authority to set wage rates. With regards to the comment about ongoing training, the Authority directs Sharon to the response to Marco Noriega Ramirez.

Kimberly Martin, Director, Government Affairs, DaVita Inc.

Kimberly Martin submitted written comments on behalf of DaVita Inc. (DaVita) specific to two areas of the proposed rules.

Regarding **OAR 333-275-0060, Hemodialysis Technician Certification Renewal**, which will require a Certified Hemodialysis Technician (CHDT) to retain national certification in addition to certification by the state of Oregon, DaVita requests that "the Authority consider removing the proposed requirement for CHDTs to retain national certification." With this requirement, "many CHDT's that previously obtained initial national certification as required by CMS, will need to pay additional fees and retake the examination to reinstate their certification." "The requirement to retain national certification – in addition to maintaining state certification – may cause undue burden and financial hardship for CHDTs working for providers that do not cover certification fees. Compliance with the additional requirement would also create additional administrative requirements for facilities." Kimberly Martin's written comments suggest that "rather than requiring retention of national certification, providers should maintain the autonomy to decide whether to require CHDTs to retain national certification based upon the needs of providers and individual facilities." In addition, "placing additional financial and administrative requirements on facilities and CHDTs may also further impact the ability of providers to retain and hire crucial patient facing staff."

Regarding **OAR 333-275-0030, Application for Hemodialysis Technician Certificate**, which will require a fingerprint-based, national criminal records check for all initial applicants at the applicant's expense, DaVita requests that "the Authority consider removing the proposed requirement that an applicant must obtain a fingerprint-based

background check at the applicant's expense. DaVita, and many other providers already conduct robust background checks for patient facing roles – including CHDTs – as part of the initial hiring process. Requiring an applicant to undertake the process of obtaining a fingerprint-based background check may cause undue burden and financial hardship to the applicant and will create additional administrative requirements for facilities." As mentioned in the comments above, placing additional financial and administrative requirements on facilities may adversely impact their ability to adequately staff facilities.

Kimberly Martin's written comments, submitted on behalf of DaVita Inc., are attached to this report as Exhibit 3.

Agency response: The Authority thanks Kimberly Martin for their remarks. As indicated in the response to Jason Scott, the Authority has removed the requirement that a hemodialysis technician must retain national certification to be eligible for renewal.

With regard to fingerprint-based background checks, the Authority understands that many of the background checks conducted by private vendors are based on public records information which may not capture the most current, relevant information. Currently, the Authority conducts a background check using the Oregon State Police, Law Enforcement Data System (LEDS) on all initial and renewal applicants which captures Oregon warrants, protection orders, criminal histories, and other investigative files. To ascertain the criminal history of an applicant that lives out-of-state or has been out-of-state for an extended period of time, a nationwide, fingerprint-based criminal records check must be conducted. The Authority acknowledges the possible financial hardship on hemodialysis technicians and will remove the requirement that all initial applicants must have a fingerprint-based criminal records check and will instead require only those technicians that live out-of-state or who have been out-of-state for 60 or more consecutive days to have a fingerprint based criminal records check at their expense.

Nathaniel Brown, Director of Advocacy, Northwest Kidney Council

Nathaniel Brown submitted written comments on behalf of the Northwest Kidney Council (NWKC). They wrote with two concerns, "both of which represent avoidable barriers to recruiting and retaining qualified CDHTs [sic] in Oregon and could have negative impacts on patients that rely on these providers."

Nathaniel Brown wrote that "the NWKC urges OHA to reconsider the proposed requirement for an applicant to pay for a fingerprint-based background check." They further wrote that "providers in this field regularly obtain thorough background checks as part of the hiring process, and an additional financial expense for the application is a strong deterrent."

Nathaniel Brown wrote that "the NWKC encourages OHA to reevaluate the need for CDHTs [sic] to retain national certification in addition to their state certification" as "this is a duplicative requirement that could cause existing CDHTs [sic] to pay additional fees or spend time being recertified, despite current certification at the state level." They further wrote that this "represents another administrative and financial burden for applicants that could deter qualified providers from remaining in practice."

Nathaniel Brown's written comments, submitted on behalf of the Northwest Kidney Council, are attached to this report as Exhibit 4.

Agency response: The Authority thanks Nathaniel Brown for their remarks and refers Nathaniel to the response to Jason Scott and Kimberly Martin.

From: marcoantonio.noriega
To: [Public Health Rules](#)
Subject: My comment as a dialysis technician
Date: Tuesday, December 20, 2022 4:46:38 PM

You don't often get email from marcoantonio97002@hotmail.com. [Learn why this is important](#)

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Good afternoon. I wish I could attend that meeting but I'm not in Oregon at this moment. But, I can give you a comment too.

I have been working as a dialysis technician for two years and I enjoy this job very very much. Even though that I walk more than 6000 steps in my 12 hrs shift it is satisfying for me to know that I actually help people to have a better quality of life and I am contributing for that person to have a more fulfilling life.

I worked as a CNA 2 for 20 years and I learned a lot from the nurses I had worked with how to show professionalism, hospitality in the medical field. However as a dialysis technician, I have noticed a lack of knowledge of the medical field, lack of ethics and professionalism, lack of empathy for the patient when they receive their dialysis treatment. As a result I have also noticed a lack of these qualities toward co-workers. Specially toward the new ones. This lack may be due to the fact that persons with only High school or GED and the 10 weeks of training are considered suitable (according with the dialysis company and the state). To perform an invasive treatment on a person and apply medication such as heparin, saline water, and lidocaine subcutaneous respectively.

What exactly do I mean by what I have written above?

That what we need for the future technicians starting in 2023 is for them to receive training in: professional ethics, anatomy and physiology, complication in dialysis treatment, toxicology, and CPR. Then the 10 weeks of training are given by the dialysis companies. And the cannulation needs to be taught by a RN not by another tech.

All of this will contribute for the patient to get a much better treatment and the dialysis companies and the OHA consider us as good as LPN due to all the meds we administer in a person. And to change us from dialysis tech to a Professional Licensed Dialysis Technician. And to receive \$20.00 dollars per hr to start. Not a joke of \$17.00 per hr for practicing a very invasive treatment to a human being and having their very life in our hands.

If I am being disrespectful to OHA I apologize, but I also wish to be heard.

Respectfully

Marco A Noriega Ramirez.

503 459 1936

Sent from Surface Duo

From: [Sharon Maxwell](#)
To: [Public Health Rules](#)
Subject: OHA-PHD End-Stage Renal Disease Treatment Facilities/Outpatient Renal Dialysis Facilities
Date: Monday, December 19, 2022 2:56:51 PM

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I would like to say [REDACTED] that the wage rate is too low for the technicians rate and should be raised to get more experienced people so that they don't have to work multiple jobs to make it.

This position requires more soft skills and bed/chair side manners that help the patient and family of an end renal patient to cope, manage and show up for treatment. It seems like the technicians have to work so many hours and that there aren't enough so that [REDACTED] patients who need to get in have been able to even get in for treatment. Hourly rate increased better training ongoing for understanding the emotional and mental health side of facing death or life end of life care. I personally witnessed 20 or more patients die because they just couldn't take being on dialysis without enough support. It's hard and we need social workers and technicians to have a holistic approach. I'm thankful to God for the strong faith that kept me and helped me make it [REDACTED].

[REDACTED]
Sincerely,

Sharon Maxwell | CEO BRATTON CONSTRUCTION, LLC

DBE, WBE, MBE, WOSB

Office: (503)281-0226 | **Mobile:** (971)225-2835

Email: sharonmaxwell@brattonconstruction.co

Website: <https://www.brattonconstruction.net/>



DaVita, Inc.
2000 16th Street
Denver, CO 80202

December 21, 2022
Ms. Mellony Bernal
Oregon Health Authority
Public Health Division
800 NE Oregon St., Suite 465
Portland, OR 97232

Re: Proposed Amendments to OAR 333-275

Dear Ms. Bernal:

DaVita Inc. (DaVita) appreciates the opportunity to provide input on the Oregon Health Authority's (the Authority) proposed administrative regulations governing requirements for certified hemodialysis technicians (CHDTs). As a provider of dialysis services, DaVita employs approximately 560 individuals in Oregon (including CHDTs) who, in turn, provide critical clinical care to the approximately 2,000 Oregon residents. We are committed to ensuring that our certified hemodialysis technicians – as well all other clinical staff – provide high quality care while fully complying with the Authority's certification requirements.

DaVita has two comment to submit for the Authority's consideration on the proposed revisions to the certification requirements for hemodialysis technicians. Specifically, at 333-275-0060 – Hemodialysis Technician Certification Renewal and OAR 333-275-0030 – Application for Hemodialysis Technician Certificate.

I. 333-275-0060 – Hemodialysis Technician Certification Renewal.

This section of the proposed amendments will require a CHDT to retain national certification in addition to certification by the state of Oregon.

Comment: We request that the Authority consider removing the proposed requirement for CHDTs to retain national certification. If the Authority moves forward with this requirement, many CHDTs that previously obtained initial national certification as required by CMS, will need to pay additional fees and retake the examination to reinstate their certification. While DaVita generally covers the cost of



certifications for CHDTs, the requirement to retain national certification – in addition to maintaining state certification – may cause undue burden and financial hardship for CHDTs working for providers that do not cover certification fees. Compliance with the additional requirement would also create additional administrative requirements for facilities. The Authority's current state required certification for CHDTs is already comprehensive and beyond satisfactory. Rather than requiring retention of national certification, providers should maintain the autonomy to decide whether to require CHDTs to retain national certification based upon the needs of providers and individual facilities. Additionally, DaVita and many other healthcare providers have been adversely impacted by national staffing shortages – placing additional financial and administrative requirements on facilities and CHDTs may also further impact the ability of providers to retain and hire crucial patient facing staff.

II. OAR 333-275-0030 – Application for Hemodialysis Technician Certificate

This section of the proposed amendments will require a fingerprint-based, national criminal records check for all initial applicants at the applicant's expense.

Comment: We request that the Authority consider removing the proposed requirement that an applicant must obtain a fingerprint-based background check at the applicant's expense. DaVita, and many other providers already conduct robust background checks for patient facing roles – including CHDTs – as part of the initial hiring process. Requiring an applicant to undertake the process of obtaining a fingerprint-based background check may cause undue burden and financial hardship to the applicant and will create additional administrative requirements for facilities. As previously mentioned placing additional financial and administrative requirements on facilities and potential applicants may further impact the ability of providers to adequately staff facilities.

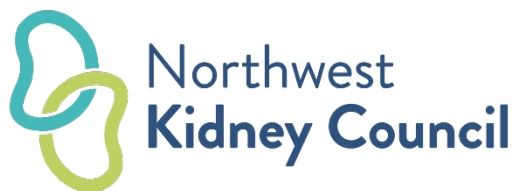
III. Conclusion

On behalf of our employees and patients we commend the Authority for its leadership in ensuring that Oregon patients receive a high-quality standard of care in a safe environment. We appreciate your consideration of our comments, and welcome the opportunity to work with you as you finalize and implement these standards for the certification of hemodialysis technicians

Sincerely,

A handwritten signature in black ink, appearing to read "Kimberly Martin".

Kimberly Martin
Director, Government Affairs
(360) 791-3778
Kimberly.Martin1@davita.com



12.21.2022

Mellony Bernal
Oregon Health Authority, Public Health Division
800 NE Oregon St., Suite 465
Portland, OR 97232

Dear Ms. Bernal,

The Northwest Kidney Council (NWKC) is grateful for the opportunity to comment on proposed amendments to OAR 333-275. With a few exceptions, the NWKC generally supports the proposed changes and appreciates the Oregon Health Authority's (OHA) approach to ensuring Oregon kidney patients have access to a qualified network of certified hemodialysis technicians (CHDTs).

The NWKC is a nonprofit organization dedicated to promoting safety and access to quality care for the kidney community in Oregon and Washington. Our organization was founded in 2019 as a coalition supporting patient advocates, health care professionals, care providers and researchers committed to shaping smart policy for individuals battling kidney disease in the Northwest.

Regarding the proposed rule changes, we would like to raise two concerns, both of which represent avoidable barriers to recruiting and retaining qualified CDHTs in Oregon and could have negative impacts on patients that rely on these providers.

1. The NWKC urges OHA to reconsider the proposed requirement for an applicant to pay for a fingerprint-based background check. We believe that this is duplicative in most, if not all, cases. Providers in this field regularly obtain thorough background checks as part of the hiring process, and an additional financial expense for the applicant is a strong deterrent.
2. Secondly, the NWKC encourages OHA to reevaluate the need for CDHTs to retain national certification in addition to their state certification. Again, this is a duplicative requirement that could cause existing CDHTs to pay additional fees or spend time being recertified, despite current certification at the state level. While we understand many providers cover the expenses associated with this credentialing process, it represents another administrative and financial burden for applicants that could deter qualified providers from remaining in practice.

Thank you for considering these comments in your decision-making process. Please be in touch with any questions.

Sincerely,

Nathaniel Brown, director of advocacy
nathaniel@nwkidneycouncil.org
(971) 219-5561