

Original

09-067

ILLINOIS HEALTH FACILITIES AND SERVICES REVIEW BOARD  
APPLICATION FOR PERMIT**RECEIVED**

## SECTION I. IDENTIFICATION, GENERAL INFORMATION, AND CERTIFICATION

NOV 19 2009

This Section must be completed for all projects.

HEALTH FACILITIES &  
SERVICES REVIEW BOARD**Facility/Project Identification**

|   |                     |          |                       |
|---|---------------------|----------|-----------------------|
| Facility Name: <i>Fresenius Medical Care Batavia</i>                          |                     |          |                       |
| Street Address: <i>Southeast corner of Fabyan Parkway &amp; Branson Drive</i> |                     |          |                       |
| City and Zip Code: <i>Batavia, IL</i>   |                     |          |                       |
| County: <i>Kane</i>   | Health Service Area | <i>8</i> | Health Planning Area: |

**Applicant Identification**

[Provide for each co-applicant [refer to Part 1130.220].]

|   |
|---|
| Exact Legal Name: <i>Fresenius Medical Care Batavia, LLC d/b/a Fresenius Medical Care Batavia</i> |
| Address: <i>920 Winter Street, Waltham, MA 02451</i>  |
| Name of Registered Agent: <i>CT Systems</i>   |
| Name of Chief Executive Officer: <i>Mats Wahlstrom</i>  |
| CEO Address: <i>920 Winter Street, Waltham, MA 02541</i>  |
| Telephone Number: <i>781-669-9000</i>   |

APPEND DOCUMENTATION AS ATTACHMENT-1 IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

**Type of Ownership**

|   |  |                                |
|---|--|--------------------------------|
| <input type="checkbox"/> Non-profit Corporation               | <input type="checkbox"/> Partnership         |                                |
| <input type="checkbox"/> For-profit Corporation               | <input type="checkbox"/> Governmental        |                                |
| <input checked="" type="checkbox"/> Limited Liability Company | <input type="checkbox"/> Sole Proprietorship | <input type="checkbox"/> Other |

- o Corporations and limited liability companies must provide an Illinois certificate of good standing.
- o Partnerships must provide the name of the state in which organized and the name and address of each partner specifying whether each is a general or limited partner.

**Primary Contact**

[Person to receive all correspondence or inquiries during the review period]

|  |
|--|
| Name: <i>Lori Wright</i>   |
| Title: <i>Senior CON Specialist</i>  |
| Company Name: <i>Fresenius Medical Care North America</i>                                    |
| Address: <i>One Westbrook Corporate Center, Tower One, Suite 1000, Westchester, IL 60154</i> |
| Telephone Number: <i>708-498-9121</i>  |
| E-mail Address: <i>lori.wright@fmc-na.com</i>  |
| Fax Number: <i>708-498-9334</i>  |

**Additional Contact**

[Person who is also authorized to discuss the application for permit]

|  |
|--|
| Name: <i>Coleen Muldoon</i>  |
| Title: <i>Regional Vice President</i>  |
| Company Name: <i>Fresenius Medical Care North America</i>                                    |
| Address: <i>One Westbrook Corporate Center, Tower One, Suite 1000, Westchester, IL 60154</i> |
| Telephone Number: <i>708-498-9118</i>  |
| E-mail Address: <i>coleen.muldoon@fmc-na.com</i>   |
| Fax Number: <i>708-498-9283</i>  |

**Additional Contact**

[Person who is also authorized to discuss the application for permit]

|   |
|---|
| Name: <i>Clare Ranalli</i>  |
| Title: <i>Attorney</i>  |
| Company Name: <i>Hinshaw &amp; Culbertson</i>                       |
| Address: <i>222 N. LaSalle Street, Suite 300, Chicago, IL 60601</i> |
| Telephone Number: <i>312-704-3253</i>                               |
| E-mail Address: <i>cranalli@hinshawlaw.com</i>                      |
| Fax Number: <i>312-704-3001</i>                                     |

**Post Permit Contact**

[Person to receive all correspondence subsequent to permit issuance]

Name: *Lori Wright*Title: *Senior CON Specialist*Company Name: *Fresenius Medical Care North America*Address: *One Westbrook Corporate Center, Tower One, Suite 1000, Westchester, IL 60154*Telephone Number: *708-498-9121*E-mail Address: *lori.wright@fmc-na.com*Fax Number: *708-498-9334***Site Ownership**

[Provide this information for each applicable site]

Exact Legal Name of Site Owner: *DBMC Associates, LLC*Address of Site Owner: *720 N. Franklin Street, #300, Chicago, IL 60654*Street Address or Legal Description of Site: *Southeast corner of Fabyan Parkway & Branson Drive, Batavia, IL 60510 (approximately 2550 West Fabyan Parkway in Campbell Subdivision)*APPEND DOCUMENTATION AS **ATTACHMENT-2**, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.**Operating Identity/Licensee**

[Provide this information for each applicable facility, and insert after this page.]

Exact Legal Name: *Fresenius Medical Care Batavia, LLC d/b/a Fresenius Medical Care Batavia*Address: *920 Winter Street, Waltham, MA 02541*

- |   |  |                                |
|---|--|--------------------------------|
| <input type="checkbox"/> Non-profit Corporation               | <input type="checkbox"/> Partnership         |                                |
| <input type="checkbox"/> For-profit Corporation               | <input type="checkbox"/> Governmental        |                                |
| <input checked="" type="checkbox"/> Limited Liability Company | <input type="checkbox"/> Sole Proprietorship | <input type="checkbox"/> Other |

- o Corporations and limited liability companies must provide an Illinois certificate of good standing.
- o Partnerships must provide the name of the state in which organized and the name and address of each partner specifying whether each is a general or limited partner.

**Organizational Relationships**

Provide (for each co-applicant) an organizational chart containing the name and relationship of any person who is related (as defined in Part 1130.140). If the related person is participating in the development or funding of the project, describe the interest and the amount and type of any financial contribution.

APPEND DOCUMENTATION AS **ATTACHMENT-3**, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.**Flood Plain Requirements**[Refer to application instructions.] **NOT APPLICABLE – PROJECT IS NOT NEW CONSTRUCTION**Provide documentation that the project complies with the requirements of Illinois Executive Order #2005-5 pertaining to construction activities in special flood hazard areas. As part of the flood plain requirements please provide a map of the proposed project location showing any identified floodplain areas. Floodplain maps can be printed at [www.FEMA.gov](http://www.FEMA.gov) or [www.illinoisfloodmaps.org](http://www.illinoisfloodmaps.org). **This map must be in a readable format.** In addition please provide a statement attesting that the project complies with the requirements of Illinois Executive Order #2005-5 (<http://www.idph.state.il.us/about/hfpb.htm>).APPEND DOCUMENTATION AS **ATTACHMENT 4**, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

**Historic Resources Preservation Act Requirements**

[Refer to application instructions.]

Provide documentation regarding compliance with the requirements of the Historic Resources Preservation Act.

APPEND DOCUMENTATION AS ATTACHMENT-5, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

**DESCRIPTION OF PROJECT**

**1. Project Classification**

[Check those applicable - refer to Part 1110.40 and Part 1120.20(b)]

|   |  |
|---|--|
| <p>Part 1110 Classification:</p> <p><input type="checkbox"/> Substantive</p> <p><input checked="" type="checkbox"/> Non-substantive</p> | <p>Part 1120 Applicability or Classification:<br/>[Check one only.]</p> <p><input type="checkbox"/> Part 1120 Not Applicable</p> <p><input type="checkbox"/> Category A Project</p> <p><input checked="" type="checkbox"/> Category B Project</p> <p><input type="checkbox"/> DHS or DVA Project</p> |
|---|--|

**2. Project Outline**

In the chart below, indicate the proposed action(s) for each clinical service area involved by writing the number of beds, stations or key rooms involved:

| Clinical Service Areas                                    | Establish | Expand | Modernize | Discontinue | No. of<br>Beds,<br>Stations or<br>Key Rooms |
|---|-----------|--------|-----------|-------------|---|
| Medical/Surgical, Obstetric, Pediatric and Intensive Care |           |        |           |             |   |
| Acute/Chronic Mental Illness                              |           |        |           |             |   |
| Neonatal Intensive Care                                   |           |        |           |             |   |
| Open Heart Surgery  |           |        |           |             |   |
| Cardiac Catheterization                                   |           |        |           |             |   |
| In-Center Hemodialysis                                    | X         |        |           |             | 12  |
| Non-Hospital Based Ambulatory Surgery                     |           |        |           |             |   |
| General Long Term Care                                    |           |        |           |             |   |
| Specialized Long Term Care                                |           |        |           |             |   |
| Selected Organ Transplantation                            |           |        |           |             |   |
| Kidney Transplantation                                    |           |        |           |             |   |
| Subacute Care Hospital Model                              |           |        |           |             |   |
| Post Surgical Recovery Care Center                        |           |        |           |             |   |
| Children's Community-Based Health Care Center             |           |        |           |             |   |
| Community-Based Residential Rehabilitation Center         |           |        |           |             |   |
| Long Term Acute Care Hospital Bed Projects                |           |        |           |             |   |
| Clinical Service Areas Other Than Categories of Service:  |           |        |           |             |   |
| • Surgery   |           |        |           |             |   |
| • Ambulatory Care Services (organized as a service)       |           |        |           |             |   |
| • Diagnostic & Interventional Radiology/Imaging           |           |        |           |             |   |
| • Therapeutic Radiology                                   |           |        |           |             |   |
| • Laboratory  |           |        |           |             |   |
| • Pharmacy  |           |        |           |             |   |
| • Occupational Therapy                                    |           |        |           |             |   |
| • Physical Therapy  |           |        |           |             |   |
| • Major Medical Equipment                                 |           |        |           |             |   |
| Freestanding Emergency Center Medical Services            |           |        |           |             |   |
| Master Design and Related Projects                        |           |        |           |             |   |
| Mergers, Consolidations and Acquisitions                  |           |        |           |             |   |

APPEND DOCUMENTATION AS ATTACHMENT-6, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

### 3. Narrative Description

Provide in the space below, a brief narrative description of the project. Explain **WHAT** is to be done in **State Board defined terms**, **NOT WHY** it is being done. If the project site does **NOT** have a street address, include a legal description of the site. Include the rationale regarding the project's classification as substantive or non-substantive.

*Fresenius Medical Care Batavia, LLC, proposes to establish a 12 station in-center hemodialysis facility at the southeast corner of Fabyan Parkway & Branson Drive, Batavia, Illinois. The facility will be in leased space on the campus of the Dryer Medical Clinic. The interior of the leased space will be built out by the applicant.*

*Fresenius Medical Care Batavia will be in HSA 8.*

*This project is "non-substantive" under Planning Board rule 1110.10(b) as it entails the establishment of a health care facility that will provide chronic renal dialysis services*

**Project Costs and Sources of Funds**

Complete the following table listing all costs (refer to Part 1120.110) associated with the project. When a project or any component of a project is to be accomplished by lease, donation, gift, or other means, the fair market or dollar value (refer to Part 1130.140) of the component must be included in the estimated project cost. If the project contains non-clinical components that are not related to the provision of health care, complete the second column of the table below. See 20 ILCS 3960 for definition of non-clinical. Note, the use and sources of funds must equal.

| <b>Project Costs and Sources of Funds</b>   |                  |                     |                  |
|---|------------------|---------------------|------------------|
| <b>USE OF FUNDS</b>   | <b>CLINICAL</b>  | <b>NON-CLINICAL</b> | <b>TOTAL</b>     |
| Preplanning Costs   | N/A              | N/A                 | N/A              |
| Site Survey and Soil Investigation  | N/A              | N/A                 | N/A              |
| Site Preparation  | N/A              | N/A                 | N/A              |
| Off Site Work   | N/A              | N/A                 | N/A              |
| New Construction Contracts  | N/A              | N/A                 | N/A              |
| Modernization Contracts   | 981,000          | N/A                 | 981,000          |
| Contingencies   | 98,000           | N/A                 | 98,000           |
| Architectural/Engineering Fees  | 107,500          | N/A                 | 107,500          |
| Consulting and Other Fees   | N/A              | N/A                 | N/A              |
| Movable or Other Equipment (not in construction contracts)  | 320,000          | N/A                 | 320,000          |
| Bond Issuance Expense (project related)   | N/A              | N/A                 | N/A              |
| Net Interest Expense During Construction (project related)  | N/A              | N/A                 | N/A              |
| Fair Market Value of Leased Space 2,199,636<br>Equipment 179,425  | 2,379,061        | N/A                 | 2,379,061        |
| Other Costs To Be Capitalized   | N/A              | N/A                 | N/A              |
| Acquisition of Building or Other Property (excluding land)  | N/A              | N/A                 | N/A              |
| <b>TOTAL USES OF FUNDS</b>  | <b>3,885,561</b> | <b>N/A</b>          | <b>3,885,561</b> |
| <b>SOURCE OF FUNDS</b>  | <b>CLINICAL</b>  | <b>NON-CLINICAL</b> | <b>TOTAL</b>     |
| Cash and Securities   | 1,206,500        | N/A                 | 1,206,500        |
| Pledges   | N/A              | N/A                 | N/A              |
| Gifts and Bequests  | N/A              | N/A                 | N/A              |
| Bond Issues (project related)   | N/A              | N/A                 | N/A              |
| Mortgages   | N/A              | N/A                 | N/A              |
| Leases (fair market value)  | 2,379,061        | N/A                 | 2,379,061        |
| Governmental Appropriations   | N/A              | N/A                 | N/A              |
| Grants  | N/A              | N/A                 | N/A              |
| Other Funds and Sources   | 300,000*         | N/A                 | 300,000*         |
| <b>TOTAL SOURCES OF FUNDS</b>   | <b>3,885,561</b> | <b>N/A</b>          | <b>3,885,561</b> |
| <b>NOTE: ITEMIZATION OF EACH LINE ITEM MUST BE PROVIDED AT ATTACHMENT-7, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.</b> |                  |                     |                  |

\*Total construction cost is \$1,079,000; however \$300,000 of this cost will be paid to the landlord over the term of the lease. Although this amount is paid per the lease term over time, it relates directly to the construction costs and not rent per GSF.

**Related Project Costs**

Provide the following information, as applicable, with respect to any land related to the project that will be or has been acquired during the last two calendar years:

Land acquisition is related to project  Yes  No  
 Purchase Price: \$ \_\_\_\_\_  
 Fair Market Value: \$ \_\_\_\_\_

The project involves the establishment of a new facility or a new category of service  
 Yes  No

If yes, provide the dollar amount of all non-capitalized operating start-up costs (including operating deficits) through the first full fiscal year when the project achieves or exceeds the target utilization specified in Part 1100.

Estimated start-up costs and operating deficit cost is \$ 52,606.

**Project Status and Completion Schedules**

Indicate the stage of the project's architectural drawings:

None or not applicable  Preliminary  
 Schematics  Final Working

Anticipated project completion date (refer to Part 1130.140): 12/01/2011

Indicate the following with respect to project expenditures or to obligation (refer to Part 1130.140):

- Purchase orders, leases or contracts pertaining to the project have been executed.  
 Project obligation is contingent upon permit issuance. Provide a copy of the contingent "certification of obligation" document, highlighting any language related to CON contingencies.  
 Project obligation will occur after permit issuance.

**State Agency Submittals**

Are the following submittals up to date as applicable:

- Cancer Registry  
 APORS  
 All formal document requests such as IDPH Questionnaires and Annual Bed Reports been submitted  
 All reports regarding outstanding permits

**Cost Space Requirements**

Provide in the following format, the department/area GSF and cost. The sum of the department costs **MUST** equal the total estimated project costs. Indicate if any space is being reallocated for a different purpose. Include outside wall measurements plus the department's or area's portion of the surrounding circulation space. **Explain the use of any vacated space.**

| Dept. / Area         | Cost      | Gross Square Feet |          | Amount of Proposed Total Gross Square Feet That Is: |            |       |               |
|----------------------|-----------|-------------------|----------|---|------------|-------|---------------|
|                      |           | Existing          | Proposed | New Const.  | Modernized | As Is | Vacated Space |
| <b>CLINICAL</b>      | 3,885,561 | 7,500             | 7,500    |   | 7,500      |       |               |
| Medical Surgical     |           |                   |          |   |            |       |               |
| Intensive Care       |           |                   |          |   |            |       |               |
| Diagnostic Radiology |           |                   |          |   |            |       |               |
| MRI                  |           |                   |          |   |            |       |               |
| Total Clinical       | 3,885,561 | 7,500             | 7,500    |   | 7,500      |       |               |
| <b>NON CLINICAL</b>  |           |                   |          |   |            |       |               |
| Administrative       |           |                   |          |   |            |       |               |
| Parking              |           |                   |          |   |            |       |               |
| Gift Shop            |           |                   |          |   |            |       |               |
| Total Non-clinical   |           |                   |          |   |            |       |               |
| <b>TOTAL</b>         | 3,885,561 | 7,500             | 7,500    |   | 7,500      |       |               |

APPEND DOCUMENTATION AS ATTACHMENT-8, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.




**CERTIFICATION**

The application must be signed by the authorized representative(s) of the applicant entity. The authorized representative(s) are:


- o in the case of a corporation, any two of its officers or members of its Board of Directors;
- o in the case of a limited liability company, any two of its managers or members (or the sole manger or member when two or more managers or members do not exist);
- o in the case of a partnership, two of its general partners (or the sole general partner, when two or more general partners do not exist);
- o in the case of estates and trusts, two of its beneficiaries (or the sole beneficiary when two or more beneficiaries do not exist); and
- o in the case of a sole proprietor, the individual that is the proprietor.

This Application for Permit is filed on the behalf of Fresenius Medical Care Batavia, LLC \* in accordance with the requirements and procedures of the Illinois Health Facilities Planning Act. The undersigned certifies that he or she has the authority to execute and file this application for permit on behalf of the applicant entity. The undersigned further certifies that the data and information provided herein, and appended hereto, are complete and correct to the best of his or her knowledge and belief. The undersigned also certifies that the permit application fee required for this application is sent herewith or will be paid upon request.

  
SIGNATURE

Marc Lieberman  
PRINTED NAME  
Asst. Treasurer  
PRINTED TITLE

Notarization:  
Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_

  
SIGNATURE

Mark Fawcett  
PRINTED NAME  
Vice President & Treasurer  
PRINTED TITLE

Notarization:  
Subscribed and sworn to before me  
this 9 day of Oct, 2009

C Wynelle Scenna  
Signature of Notary

Seal

Seal



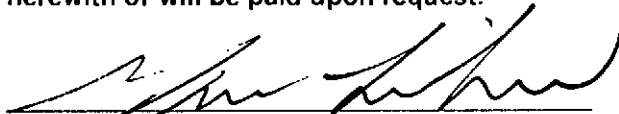
\*Insert EXACT legal name of the applicant

**CERTIFICATION**


The application must be signed by the authorized representative(s) of the applicant entity. The authorized representative(s) are:

- o in the case of a corporation, any two of its officers or members of its Board of Directors;
- o in the case of a limited liability company, any two of its managers or members (or the sole manger or member when two or more managers or members do not exist);
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- o in the case of estates and trusts, two of its beneficiaries (or the sole beneficiary when two or more beneficiaries do not exist); and
- o in the case of a sole proprietor, the individual that is the proprietor.

This Application for Permit is filed on the behalf of Fresenius Medical Care Ventures, LLC \* in accordance with the requirements and procedures of the Illinois Health Facilities Planning Act. The undersigned certifies that he or she has the authority to execute and file this application for permit on behalf of the applicant entity. The undersigned further certifies that the data and information provided herein, and appended hereto, are complete and correct to the best of his or her knowledge and belief. The undersigned also certifies that the permit application fee required for this application is sent herewith or will be paid upon request.



SIGNATURE



SIGNATURE

PRINTED NAME Marc Lieberman  
Asst. Treasurer

PRINTED TITLE

PRINTED NAME Mark Fawcett  
Vice President & Treasurer

PRINTED TITLE

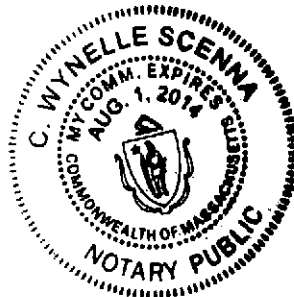
Notarization:  
Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_

Notarization:  
Subscribed and sworn to before me  
this 9 day of Oct, 2009

Signature of Notary C. Wynelle Scenna Signature of Notary

Seal

Seal



\*Insert EXACT legal name of the applicant

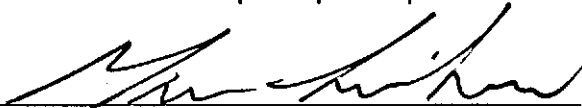
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- o in the case of a sole proprietor, the individual that is the proprietor.

This Application for Permit is filed on the behalf of Fresenius Medical Care Ventures Holding Company, Inc. \*

in accordance with the requirements and procedures of the Illinois Health Facilities Planning Act. The undersigned certifies that he or she has the authority to execute and file this application for permit on behalf of the applicant entity. The undersigned further certifies that the data and information provided herein, and appended hereto, are complete and correct to the best of his or her knowledge and belief. The undersigned also certifies that the permit application fee required for this application is sent herewith or will be paid upon request.



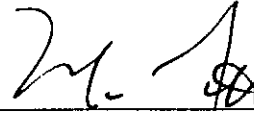
SIGNATURE

Marc Lieberman

PRINTED NAME

Asst. Treasurer

PRINTED TITLE



SIGNATURE

Mark Fawcett

PRINTED NAME

Vice President & Treasurer

PRINTED TITLE

Notarization:

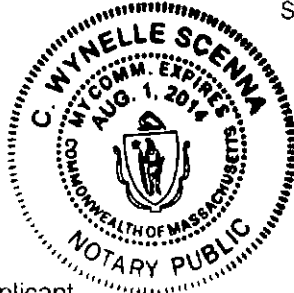
Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_

Notarization:

Subscribed and sworn to before me this 9 day of Oct, 2009

Signature of Notary C. Wynelle Scenna

Seal



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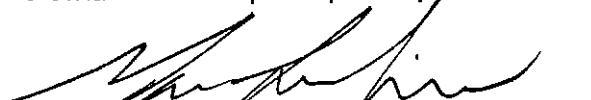
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- o in the case of estates and trusts, two of its beneficiaries (or the sole beneficiary when two or more beneficiaries do not exist); and
- o in the case of a sole proprietor, the individual that is the proprietor.

This Application for Permit is filed on the behalf of National Medical Care, Inc. \*  
 in accordance with the requirements and procedures of the Illinois Health Facilities Planning Act. The undersigned certifies that he or she has the authority to execute and file this application for permit on behalf of the applicant entity. The undersigned further certifies that the data and information provided herein, and appended hereto, are complete and correct to the best of his or her knowledge and belief. The undersigned also certifies that the permit application fee required for this application is sent herewith or will be paid upon request.



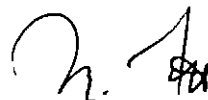
SIGNATURE

Marc Lieberman

PRINTED NAME

Asst. Treasurer

PRINTED TITLE



SIGNATURE

Mark Fawcett

PRINTED NAME

Vice President & Treasurer

PRINTED TITLE

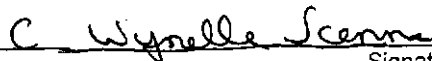
Notarization:

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_

Notarization:

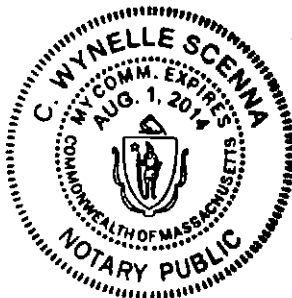
Subscribed and sworn to before me  
this 21 day of Sept 2009

Signature of Notary



Signature of Notary

Seal



Seal

\*Insert EXACT legal name of the applicant

**CERTIFICATION**

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- o in the case of estates and trusts, two of its beneficiaries (or the sole beneficiary when two or more beneficiaries do not exist); and
- o in the case of a sole proprietor, the individual that is the proprietor.

This Application for Permit is filed on the behalf of Fresenius Medical Care Holdings, Inc. \* in accordance with the requirements and procedures of the Illinois Health Facilities Planning Act. The undersigned certifies that he or she has the authority to execute and file this application for permit on behalf of the applicant entity. The undersigned further certifies that the data and information provided herein, and appended hereto, are complete and correct to the best of his or her knowledge and belief. The undersigned also certifies that the permit application fee required for this application is sent herewith or will be paid upon request.

[Signature]  
SIGNATURE

Marc Lieberman  
PRINTED NAME  
Asst. Treasurer

PRINTED TITLE

Notarization:  
Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_

[Signature]  
SIGNATURE

Mark Fawcett  
PRINTED NAME  
Vice President & Assistant Treasurer

PRINTED TITLE

Notarization:  
Subscribed and sworn to before me  
this 21 day of Sept 2009

[Signature]  
Signature of Notary

[Signature]  
Signature of Notary

Seal

Seal



\*Insert EXACT legal name of the applicant

### SECTION III. - PROJECT PURPOSE, BACKGROUND AND ALTERNATIVES - INFORMATION REQUIREMENTS

This Section is applicable to all projects except those that are solely for discontinuation with no project costs.

#### Criterion 1110.230 - Project Purpose, Background and Alternatives

READ THE REVIEW CRITERION and provide the following required information:

##### BACKGROUND OF APPLICANT

1. A listing of all health care facilities owned or operated by the applicant, including licensing, certification and accreditation identification numbers, if applicable.
2. A certified listing of any adverse action taken against any facility owned and/or operated by the applicant during the three years prior to the filing of the application.
3. Authorization permitting HFSRB and DPH access to any documents necessary to verify the information submitted, including, but not limited to: official records of DPH or other State agencies; the licensing or certification records of other states, when applicable; and the records of nationally recognized accreditation organizations. **Failure to provide such authorization shall constitute an abandonment or withdrawal of the application without any further action by HFSRB.**
4. If, during a given calendar year, an applicant submits more than one application for permit, the documentation provided with the prior applications may be utilized to fulfill the information requirements of this criterion. In such instances, the applicant shall attest the information has been previously provided, cite the project number of the prior application, and certify that no changes have occurred regarding the information that has been previously provided. The applicant is able to submit amendments to previously submitted information, as needed, to update and/or clarify data.

APPEND DOCUMENTATION AS ATTACHMENT-10, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

##### PURPOSE OF PROJECT

1. Document that the project will provide health services that improve the health care or well-being of the market area population to be served.
2. Define the planning area or market area, or other, per the applicant's definition.
3. Identify the existing problems or issues that need to be addressed, as applicable and appropriate for the project. [See 1110.230(b) for examples of documentation.]
4. Cite the sources of the information provided as documentation.
5. Detail how the project will address or improve the previously referenced issues, as well as the population's health status and well-being.
6. Provide goals with quantified and measurable objectives, with specific timeframes that relate to achieving the stated goals.

For projects involving modernization, describe the conditions being upgraded. For facility projects, include statements of age and condition and regulatory citations. For equipment being replaced, include repair and maintenance records.

**NOTE: The description of the "Purpose of the Project" should not exceed one page in length. Information regarding the "Purpose of the Project" will be included in the State Agency Report.**

APPEND DOCUMENTATION AS ATTACHMENT-11, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

## ALTERNATIVES

Document ALL of the alternatives to the proposed project:

Examples of alternative options include:

- A) Proposing a project of greater or lesser scope and cost;
  - B) Pursuing a joint venture or similar arrangement with one or more providers or entities to meet all or a portion of the project's intended purposes; developing alternative settings to meet all or a portion of the project's intended purposes;
  - C) Utilizing other health care resources that are available to serve all or a portion of the population proposed to be served by the project; and
- 2) Documentation shall consist of a comparison of the project to alternative options. The comparison shall address issues of cost, patient access, quality and financial benefits in both the short term (within one to three years after project completion) and long term. This may vary by project or situation.
  - 3) The applicant shall provide empirical evidence, including quantified outcome data, that verifies improved quality of care, as available.

APPEND DOCUMENTATION AS ATTACHMENT-12, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

**SECTION IV - PROJECT SCOPE, UTILIZATION, AND UNFINISHED/SHELL SPACE****Criterion 1110.234 - Project Scope, Utilization, and Unfinished/Shell Space**

READ THE REVIEW CRITERION and provide the following information:

**SIZE OF PROJECT:**

1. Document that the amount of physical space proposed for the proposed project is necessary and not excessive.
2. If the gross square footage exceeds the GSF standards in Appendix B, justify the discrepancy by documenting one of the following::
  - a. Additional space is needed due to the scope of services provided, justified by clinical or operational needs, as supported by published data or studies;
  - b. The existing facility's physical configuration has constraints or impediments and requires an architectural design that results in a size exceeding the standards of Appendix B;
  - c. The project involves the conversion of existing bed space that results in excess square footage.

APPEND DOCUMENTATION AS ATTACHMENT-13, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

**PROJECT SERVICES UTILIZATION: NOT APPLICABLE - UTILIZATION STANDARDS APPLY**

This criterion is applicable only to projects or portions of projects that involve services, functions or equipment for which HFSRB has established utilization standards or occupancy targets in 77 Ill. Adm. Code 1100.

Document that in the second year of operation, the annual utilization of the service or equipment shall meet or exceed the utilization standards specified in 1110.Appendix B.

APPEND DOCUMENTATION AS ATTACHMENT-14, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

**UNFINISHED OR SHELL SPACE: NOT APPLICABLE - THERE IS NO UNFINISHED SHELL SPACE**

Provide the following information:

1. Total gross square footage of the proposed shell space;
2. The anticipated use of the shell space, specifying the proposed GSF tot be allocated to each department, area or function;
3. Evidence that the shell space is being constructed due to
  - a. Requirements of governmental or certification agencies; or
  - b. Experienced increases in the historical occupancy or utilization of those areas proposed to occupy the shell space.
4. Provide:
  - a. Historical utilization for the area for the latest five-year period for which data are available; and



- b. Based upon the average annual percentage increase for that period, projections of future utilization of the area through the anticipated date when the shell space will be placed into operation.

APPEND DOCUMENTATION AS ATTACHMENT-15, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

**ASSURANCES: NOT APPLICABLE – THERE IS NO UNFINISHED SHELL SPACE**

Submit the following:

1. Verification that the applicant will submit to HFSRB a CON application to develop and utilize the shell space, regardless of the capital thresholds in effect at the time or the categories of service involved.
2. The estimated date by which the subsequent CON application (to develop and utilize the subject shell space) will be submitted; and
3. The anticipated date when the shell space will be completed and placed into operation.

APPEND DOCUMENTATION AS ATTACHMENT-16, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

**SECTION VII. - CATEGORY OF SERVICE - REVIEW CRITERIA**

1. This Section is applicable to all projects proposing establishment, expansion or modernization of **ALL categories of service that are subject to CON review**, as provided in the Illinois Health Facilities Planning Act [20 ILCS 3960], WITH THE EXCEPTION OF:
  - General Long Term Care;
  - Subacute Care Hospital Model;
  - Postsurgical Recovery Care Center Alternative Health Care Model;
  - Children's Community-Based Health Care Center Alternative Health Care Model; and
  - Community-Based Residential Rehabilitation Center Alternative Health Care Model.

If the project involves any of the above-referenced categories of service, refer to " SECTION VIII.- Service Specific Review Criteria" for applicable review criteria, and submit all necessary documentation for each service involved..

2. READ THE APPLICABLE REVIEW CRITERIA FOR EACH OF THE CATEGORIES OF SERVICE INVOLVED. [Refer to SECTION VIII regarding the applicable criteria for EACH action proposed, for EACH category of service involved.]
3. After identifying the applicable review criteria for each category of service involved (see the charts in Section VIII), provide the following information, AS APPLICABLE TO THE CRITERIA THAT MUST BE ADDRESSED:

**A. Planning Area Need - Formula Need Calculation:**

1. **Complete the requested information for each category of service involved:**  
Refer to 77 Ill. Adm. Code 1100 for information concerning planning areas, bed/station/key room deficits and occupancy/utilization standards.

Planning Area           HSA 8          

| Category of Service    | No. of Beds/Stations/Key Rooms Proposed | HFSRB Inventory Need or Excess | Part 1100 Occupancy/Utilization Standard |
|------------------------|---|--------------------------------|--|
| In-center Hemodialysis | 12                                      | +8                             | 80%                                      |
| (see attachment 19)    |   |                                |  |
|                        |   |                                |  |

Using the formatting above:

2. Indicate the number of beds/stations/key rooms proposed for each category of service.
3. Document that the proposed number of beds/stations/key rooms is in conformance with the projected deficit specified in 77 Ill. Adm. Code 1100.
4. Document that the proposed number of beds/stations/key rooms will be in conformance with the applicable occupancy/utilization standard(s) specified in Ill. Adm. Code 1100.

**B. Planning Area Need - Service to the Planning Area Residents:**

1. If establishing or expanding beds/stations/key rooms, document that the primary purpose of the project will be to provide necessary health care to the residents of the area in which the proposed project will be physically located (i.e., the planning or geographical service area, as applicable), for each category of service included in the project.
2. If expanding an existing category of service, provide patient origin information for all admissions for the last 12-month period, verifying that at least 50% of admissions were residents of the area. For all other projects, document that at least 50% of the projected patient volume will be from residents of the

area.

3. If expanding an existing category of service, submit patient origin information by zip code, based upon the patient's legal residence (other than a health care facility).

APPEND DOCUMENTATION AS **ATTACHMENT-19**, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

**C. Service Demand - Establishment of Category of Service**

Document "Historical Referrals" and either "Projected Referrals" or "Project Service Demand - Based on Rapid Population Growth" :

1. Historical Referrals **NOT APPLICABLE - APPLICANT IS NOT AN EXISTING FACILITY**  
If the applicant is an existing facility, document the number of referrals for the last two years for each category of service, as formatted below:

EXAMPLE:

| Year | CY or FY | Category of Service | Patient Origin by Zip Code | Name & Specialty of Referring Physician | Name & Location of Recipient Hospital |
|------|----------|---------------------|----------------------------|---|---------------------------------------|
| 2008 | CY       | Medical/Surgical    | 62761 (Patient Initials)   | Dr. Hyde                                | Wellness Hospital                     |
|      |          |                     |                            |   |                                       |
|      |          |                     |                            |   |                                       |
|      |          |                     |                            |   |                                       |
|      |          |                     |                            |   |                                       |

2. Projected Referrals  
An applicant proposing to establish a category of service or establish a new hospital shall submit physician referral letters containing ALL of the information outlined in Criterion 1110.530(b)(3)
3. Project Service Demand - Based on Rapid Population Growth

If a projected demand for service is based upon rapid population growth in the applicant facility's existing market area (as experienced annually within the latest 24-month period), the projected service demand must be determined, as specified in the Criterion titled "Project Service Demand - Based on Rapid Population Growth".

APPEND DOCUMENTATION AS **ATTACHMENT-20**, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

**D. Service Demand - Expansion of an Existing Category of Service NOT APPLICABLE - PROJECT IS FOR ESTABLISHMENT OF A CATEGORY OF SERVICE**

Document "Historical Service Demand" and either "Projected Referrals" or "Project Service Demand - Based on Rapid Population Growth" :

1. Historical Service Demand

| Category of Service | Board Occupancy/Utilization Standards       | Year One Indicate CY or FY | Year Two Indicate CY or FY |
|---------------------|---|----------------------------|----------------------------|
|                     | [Indicate standards for the planning area.] |                            |                            |
|                     |   |                            |                            |

|  |  |  |  |
|--|--|--|--|
|  |  |  |  |
|  |  |  |  |

- a. As formatted above, document that the average annual occupancy/utilization rate has equaled or exceeded occupancy standards for the category of service, as specified in 77 Ill. Adm. Code 1100, for each of the latest two years;
- b. If patients have been referred to other facilities in order to receive the subject services, provide documentation of the referrals, including: patient origin by zip code; name and specialty of referring physician; and name and location of the recipient hospital, for each of the latest two years

**2. Projected Referrals**

An applicant proposing to establish a category of service or establish a new hospital shall submit physician referral letters containing ALL of the information outlined in subsection(b)(4) of the criteria for the subject service(s).

**3. Projected Service Demand – Based on Rapid Population Growth**

If a projected demand for service is based upon rapid population growth in the applicant facility's existing market area (as experienced annually within the latest 24-month period), the projected service demand must be determined, as specified in the criterion titled "Projected Service Demand-Based on Rapid Population Growth" of the criteria for the subject service(s).

APPEND DOCUMENTATION AS ATTACHMENT-21, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

**E. Service Accessibility - Service Restrictions**

- 1. The applicant shall document that at least one of the factors listed in subsection (b)(5) of the criteria for subject service(s) exists in the planning area.
- 2. Provide documentation, as applicable, listed in subsection (b)(5) of the criteria for the subject service(s), concerning existing restrictions to service access:

APPEND DOCUMENTATION AS ATTACHMENT-22, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

**F. Unnecessary Duplication/Maldistribution**

- 1. Document that the project will not result in an unnecessary duplication, and provide the following information:
  - a. A list of all zip code areas that are located, in total or in part, within 30 minutes normal travel time of the project's site;
  - b. The total population of the identified zip code areas (based upon the most recent population numbers available for the State of Illinois); and
  - c. The names and locations of all existing or approved health care facilities located within 30 minutes normal travel time from the project site that provide the categories of bed service that are proposed by the project.

2. Document that the project will not result in maldistribution of services. Maldistribution exists when the identified area (within the planning area) has an excess supply of facilities, beds and services characterized by such factors as presented in subsection (c)(1) and (2) of the criteria for the subject service(s).
3. Document that, within 24 months after project completion, the proposed project:
  - A) Will not lower the utilization of other area providers below the occupancy standards specified in 77 Ill. Adm. Code 1100; and
  - B) Will not lower, to a further extent, the utilization of other area hospitals that are currently (during the latest 12-month period) operating below the occupancy standards.

APPEND DOCUMENTATION AS ATTACHMENT-23, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

**G. Category of Service Modernization NOT APPLICABLE – PROJECT IS FOR ESTABLISHMENT OF A CATEGORY OF SERVICE**

1. Document that the inpatient beds areas to be modernized are deteriorated or functionally obsolete and need to be replaced or modernized, citing factors, as listed in subsection (d)(1) of the criteria for the subject service(s), but not limited to the reasons cited in the rule.
2. Provide the following documentation of the need for modernization:
  - A. the most recent IDPH Centers for Medicare and Medicaid Services (CMMS) inspection reports;
  - B. the most recent Joint Commission on Accreditation of Healthcare Organizations (JCAHO) reports;
3. Include other documentation, as applicable to the factors cited above:
  - A. Copies of maintenance reports;
  - B. Copies of citations for life safety code violations; and
  - C. Other pertinent reports and data.
4. Provide the annual occupancy/utilization for each category of service to be modernized, for each of the last three years.

APPEND DOCUMENTATION AS ATTACHMENT-24, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

**H. Staffing Availability**

1. For each category of service, document that relevant clinical and professional staffing needs for the proposed project were considered and that licensure and JCAHO staffing requirements can be met.
2. Provide the following documentation:
  - a. The name and qualification of the person currently filling the position, if applicable; and
  - b. Letters of interest from potential employees; and
  - c. Applications filed for each position; and
  - d. Signed contracts with the required staff; or
  - e. A narrative explanation of how the proposed staffing will be achieved.

APPEND DOCUMENTATION AS ATTACHMENT-25, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE

APPLICATION FORM.

**I. Performance Requirements**

READ the subsection titled "Performance Requirements" for the subject service(s).

**K. Assurances**

Submit a signed and dated statement attesting to the applicant's understanding that, by the second year of operation after project completion, the applicant will achieve and maintain the occupancy/utilization standards specified in 77 Ill. Adm Code 1100 for each category of service involved in the proposal.

APPEND DOCUMENTATION AS ATTACHMENT-26, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

**SECTION VIII. - SERVICE SPECIFIC REVIEW CRITERIA**

This Section is applicable to all projects proposing establishment, expansion or modernization of categories of service that are subject to CON review, as provided in the Illinois Health Facilities Planning Act [20 ILCS 3960]. It is comprised of information requirements for each category of service, as well as charts for each service, indicating the review criteria that must be addressed for each action (establishment, expansion and modernization). After identifying the applicable review criteria for each category of service involved, read the criteria and provide the required information, AS APPLICABLE TO THE CRITERIA THAT MUST BE ADDRESSED:

**G. Criterion 1110.1430 - In-Center Hemodialysis**

1. In addition to addressing the Review Criteria for ALL category of service projects, applicants proposing to establish, expand and/or modernize In-Center Hemodialysis must submit the following information:

2. Indicate station capacity changes by Service: Indicate # of stations changed by action(s):

| Category of Service             | # Existing Stations | # Proposed Stations | # to Establish | # to Expand | # to Modernize |
|---------------------------------|---------------------|---------------------|----------------|-------------|----------------|
| <b>■ In-Center Hemodialysis</b> |                     | <b>12</b>           | <b>12</b>      |             |                |

3. READ the applicable review criteria outlined below and **submit required documentation for the criteria printed below in bold:**

| <b>APPLICABLE REVIEW CRITERIA</b>   | Establish | Expand | Modernize |
|---|-----------|--------|-----------|
| 1110.1430(b)(1) - Planning Area Need - 77 Ill. Adm. Code 1100 (formula calculation)               | X         |        |           |
| 1110.1430(b)(2) - Planning Area Need - Service to Planning Area Residents                         | X         | X      |           |
| 1110.1430(b)(3) - Planning Area Need - Service Demand - Establishment of Category of Service      | X         |        |           |
| 1110.1430(b)(4) - Planning Area Need - Service Demand - Expansion of Existing Category of Service |           | X      |           |
| 1110.1430(b)(5) - Planning Area Need - Service Accessibility                                      | X         |        |           |
| 1110.1430(c)(1) - Unnecessary Duplication of Services   | X         |        |           |
| 1110.1430(c)(2) - Maldistribution   | X         |        |           |
| 1110.1430(c)(3) - Impact of Project on Other Area Providers                                       | X         |        |           |
| 1110.1430(d)(1) - Deteriorated Facilities   |           |        | X         |
| 1110.1430(d)(2) - Documentation   |           |        | X         |
| 1110.1430(d)(3) - Documentation Related to Cited Problems   |           |        | X         |
| 1110.1430(e) - Staffing Availability  | X         | X      |           |
| 1110.1430(f) - <b>Support Services</b>  | X         | X      | X         |

|  |   |   |  |
|--|---|---|--|
| 1110.1430(g) - <b>Minimum Number of Stations</b> | X |   |  |
| 1110.1430(h) - <b>Continuity of Care</b>         | X |   |  |
| 1110.1430(j) - Assurances                        | X | X |  |

4. Projects for relocation of a facility from one location in a planning area to another in the same planning area must address the requirements listed in subsection (a)(1) for the "Establishment of Services or Facilities", as well as the requirements in Section 1110.130 - "Discontinuation" and subsection 1110.1430(i) - "Relocation of Facilities".

APPEND DOCUMENTATION for "Support Services", Minimum Number of Stations" and Continuity of Care", AS ATTACHMENT-31, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.



**T. Financial Feasibility**

This section is applicable to all projects subject to Part 1120.

**REVIEW CRITERIA RELATING TO FINANCIAL FEASIBILITY (FIN)**

Does the applicant (or the entity that is responsible for financing the project or is responsible for assuming applicant's debt obligations in case of default) have a bond rating of "A" or better?  
 Yes  No .

If yes is indicated, submit proof of the bond rating of "A" or better (that is less than two years old) from Fitch's, Moody's or Standard and Poor's rating agencies and go to Section XXVI. **If no is indicated, submit the most recent three years' audited financial statements including the following:**

- 1. Balance sheet
- 2. Income statement
- 3. Change in fund balance
- 4. Change in financial position

**A. Criterion 1120.210(a), Financial Viability**

1. Viability Ratios

If proof of an "A" or better bond rating has not been provided, read the criterion and complete the following table providing the viability ratios for the most recent three years for which audited financial statements are available. Category B projects must also provide the viability ratios for the first full fiscal year after project completion or for the first full fiscal year when the project achieves or exceeds target utilization (per Part 1100), whichever is later.

| Provide Data for Projects Classified as: | Category A or Category B (last three years) |       |       | Category B (Projected) |
|--|---|-------|-------|------------------------|
| Enter Historical and/or Projected Years: | 2008  | 2007  | 2006  | 2013                   |
| Current Ratio                            | 1.2   | 1.0   | 0.7   | 1.1                    |
| Net Margin Percentage                    | 7.6%  | 7.3%  | 5.8%  | 6.7%                   |
| Percent Debt to Total Capitalization     | 39.5%                                       | 41.9% | 41.8% | 34.9%                  |
| Projected Debt Service Coverage          | .01   | 0.02  | 0.02  | 0                      |
| Days Cash on Hand                        | 7.2   | 10    | 6.416 | 6.4                    |
| Cushion Ratio                            | .65   | 1.09  | 0.55  | 0.11                   |

Provide the methodology and worksheets utilized in determining the ratios detailing the calculation and applicable line item amounts from the financial statements. Complete a separate table for each co-applicant and provide worksheets for each. Insert the worksheets after this page.

2. Variance

Compare the viability ratios provided to the Part 1120 Appendix A review standards. If any of the standards for the applicant or for any co-applicant are not met, provide documentation that a person or organization will assume the legal responsibility to meet the debt obligations should the applicant default. The person or organization must demonstrate compliance with the ratios in Appendix A when proof of a bond rating of "A" or better has not been provided.

**REVIEW CRITERIA RELATING TO FINANCIAL FEASIBILITY (FIN)**  
(continued)

**B. Criterion 1120.210(b), Availability of Funds**

If proof of an "A" or better bond rating has not been provided, read the criterion and document that sufficient resources are available to fund the project and related costs including operating start-up costs and operating deficits. Indicate the dollar amount to be provided from the following sources:

\$1,206,500 Cash & Securities

Provide statements as to the amount of cash/securities available for the project. Identify any security, its value and availability of such funds. Interest to be earned or depreciation account funds to be earned on any asset from the date of application submission through project completion are also considered cash.

N/A Pledges

For anticipated pledges, provide a letter or report as to the dollar amount feasible showing the discounted value and any conditions or action the applicant would have to take to accomplish goal. The time period, historical fund raising experience and major contributors also must be specified.

N/A Gifts and Bequests

Provide verification of the dollar amount and identify any conditions of the source and timing of its use.

2,379,061 Debt Financing (indicate type(s) Letter of intent for lease, Equipment lease )

For general obligation bonds, provide amount, terms and conditions, including any anticipated discounting or shrinkage) and proof of passage of the required referendum or evidence of governmental authority to issue such bonds;

For revenue bonds, provide amount, terms and conditions and proof of securing the specified amount;

For mortgages, provide a letter from the prospective lender attesting to the expectation of making the loan in the amount and time indicated;

For leases, provide a copy of the lease including all terms and conditions of the lease including any purchase options.

N/A Governmental Appropriations

Provide a copy of the appropriation act or ordinance accompanied by a statement of funding availability from an official of the governmental unit. If funds are to be made available from subsequent fiscal years, provide a resolution or other action of the governmental unit attesting to such future funding.

N/A Grants

Provide a letter from the granting agency as to the availability of funds in terms of the amount, conditions, and time or receipt.

300,000 Other Funds and Sources

Provide verification of the amount, terms and conditions, and type of any other funds that will be used for the project. (See letter of intent for lease – Tenant Improvement Allowance)

\$3,885,561 TOTAL FUNDS AVAILABLE

**C. Criterion 1120.210(c), Operating Start-up Costs**

If proof of an "A" or better bond rating has not been provided, indicate if the project is classified as a Category B project that involves establishing a new facility or a new category of service? Yes  No . If yes is indicated, read the criterion and provide in the space below the amount of operating start-up costs (the same as reported in Section I of this application) and provide a description of the items or components that comprise the costs. Indicate the source and amount of the financial resources available to fund the operating start-up costs (including any initial operating deficit) and reference the documentation that verifies sufficient resources are available.

APPEND DOCUMENTATION AS ATTACHMENT 75, IN NUMERICAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

**U. Economic Feasibility**

This section is applicable to all projects subject to Part 1120.

**SECTION XXVI. REVIEW CRITERIA RELATING TO ECONOMIC FEASIBILITY (ECON)**

**A. Criterion 1120.310(a), Reasonableness of Financing Arrangements**

Is the project classified as a Category B project? Yes  No . If no is indicated this criterion is not applicable. If yes is indicated, has proof of a bond rating of "A" or better been provided? Yes  No . If yes is indicated this criterion is not applicable, go to item B. If no is indicated, read the criterion and address the following:

Are all available cash and equivalents being used for project funding prior to borrowing?  Yes  No

If no is checked, provide a notarized statement signed by two authorized representatives of the applicant entity (in the case of a corporation, one must be a member of the board of directors) that attests to the following:

1. a portion or all of the cash and equivalents must be retained in the balance sheet asset accounts in order that the current ratio does not fall below 2.0 times; or
2. borrowing is less costly than the liquidation of existing investments and the existing investments being retained may be converted to cash or used to retire debt within a 60-day period.

**B. Criterion 1120.310(b), Conditions of Debt Financing**

Read the criterion and provide a notarized statement signed by two authorized representatives of the applicant entity (in the case of a corporation, one must be a member of the board of directors) that attests to the following as applicable:

1. The selected form of debt financing the project will be at the lowest net cost available or if a more costly form of financing is selected, that form is more advantageous due to such terms as prepayment privileges, no required mortgage, access to additional debt, term (years) financing costs, and other factors;
2. All or part of the project involves the leasing of equipment or facilities and the expenses incurred with such leasing are less costly than constructing a new facility or purchasing new equipment.

**B. Criterion 1120.310(c), Reasonableness of Project and Related Costs**

Read the criterion and provide the following:

1. Identify each department or area impacted by the proposed project and provide a cost and square footage allocation for new construction and/or modernization using the following format (insert after this page).

| COST AND GROSS SQUARE FEET BY DEPARTMENT OR SERVICE |                         |        |                      |        |                       |        |                      |                    |                          |
|---|-------------------------|--------|----------------------|--------|-----------------------|--------|----------------------|--------------------|--------------------------|
| Department<br>(list below)                          | A                       | B      | C                    | D      | E                     | F      | G                    | H                  | Total<br>Cost<br>(G + H) |
|   | Cost/Square Foot<br>New | Mod.   | Gross Sq. Ft.<br>New | Circ.* | Gross Sq. Ft.<br>Mod. | Circ.* | Const. \$<br>(A x C) | Mod. \$<br>(B x E) |                          |
|   | -                       | 130.80 | -                    | -      | 7,500                 | -      | -                    | 981,000            | 981,000                  |
| Contingency   | -                       | 13.07  | -                    | -      | 7,500                 | -      | -                    | 98,000             | 98,000                   |
| <b>TOTALS</b>                                       | -                       | 143.87 | -                    | -      | 7,500                 | -      | -                    | 1,079,000          | 1,079,000                |

\* Include the percentage (%) of space for circulation

2. For each piece of major medical equipment included in the proposed project, the applicant must certify one of the following:

**REVIEW CRITERIA RELATING TO ECONOMIC FEASIBILITY (ECON)  
(continued)**

- a. that the lowest net cost available has been selected; or
  - b. that the choice of higher cost equipment is justified due to such factors as, but not limited to, maintenance agreements, options to purchase, or greater diagnostic or therapeutic capabilities.
3. List the items and costs included in preplanning, site survey, site preparation, off-site work, consulting, and other costs to be capitalized. If any project line item component includes costs attributable to extraordinary or unusual circumstances, explain the circumstances and provide the associated dollar amount. When fair market value has been provided for any component of project costs, submit documentation of the value in accordance with the requirements of Part 1190.40.

**D. Criterion 1120.310(d), Projected Operating Costs**

Read the criterion and provide in the space below the facility's projected direct annual operating costs (in current dollars per equivalent patient day or unit of service, as applicable) for the first full fiscal year of operation after project completion or for the first full fiscal year when the project achieves or exceeds target utilization pursuant to 77 Ill. Adm. Code 1100, whichever is later. If the project involves a new category of service, also provide the annual operating costs for the service. Direct costs are the fully allocated costs of salaries, benefits, and supplies. Indicate the year for which the projected operating costs are provided.

**E. Criterion 1120.310(e), Total Effect of the Project on Capital Costs**

Is the project classified as a category B project? Yes  No . If no is indicated, go to item F. If yes is indicated, provide in the space below the facility's total projected annual capital costs as defined in Part 1120.130(f) (in current dollars per equivalent patient day) for the first full fiscal year of operation after project completion or for the first full fiscal year when the project achieves or exceeds target utilization pursuant to 77 Ill. Adm. Code 1100, whichever is later. Indicate the year for which the projected capital costs are provided.

**F. Criterion 1120.310(f), Non-patient Related Services**

Is the project classified as a category B project and involve non-patient related services? Yes  No . If no is indicated, this criterion is not applicable. If yes is indicated, read the criterion and document that the project will be self-supporting and not result in increased charges to patients/residents or that increased charges are justified based upon such factors as, but not limited to, a cost benefit or other analysis that demonstrates the project will improve the applicant's financial viability.

APPEND DOCUMENTATION AS ATTACHMENT -76, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

**SAFETY NET IMPACT STATEMENT that describes all of the following: NOT APPLICABLE – PROJECT NON-SUBSTANTIVE**

1. The project's material impact, if any, on essential safety net services in the community, to the extent that it is feasible for an applicant to have such knowledge.
2. The project's impact on the ability of another provider or health care system to cross-subsidize safety net services, if reasonably known to the applicant.
3. How the discontinuation of a facility or service might impact the remaining safety net providers in a given community, if reasonably known by the applicant.

**Safety Net Impact Statements shall also include all of the following:**

1. For the 3 fiscal years prior to the application, a certification describing the amount of charity care provided by the applicant. The amount calculated by hospital applicants shall be in accordance with the reporting requirements for charity care reporting in the Illinois Community Benefits Act. Non-hospital applicants shall report charity care, at cost, in accordance with an appropriate methodology specified by the Board.
2. For the 3 fiscal years prior to the application, a certification of the amount of care provided to Medicaid patients. Hospital and non-hospital applicants shall provide Medicaid information in a manner consistent with the information reported each year to the Illinois Department of Public Health regarding "Inpatients and Outpatients Served by Payor Source" and "Inpatient and Outpatient Net Revenue by Payor Source" as required by the Board under Section 13 of this Act and published in the Annual Hospital Profile.
3. Any information the applicant believes is directly relevant to safety net services, including information regarding teaching, research, and any other service

APPEND DOCUMENTATION AS ATTACHMENT-77, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

After paginating the entire, completed application, indicate in the chart below, the page numbers for the attachments included as part of the project's application for permit:

| <b>INDEX OF ATTACHMENTS</b> |   |              |
|-----------------------------|---|--------------|
| <b>ATTACHMENT NO.</b>       |   | <b>PAGES</b> |
| 1                           | Applicant Identification  | 32-35        |
| 2                           | Site Ownership  | 36           |
| 3                           | Organizational Relationships (Organizational Chart) Certificate of Good Standing Etc. | 37-38        |
| 4                           | Flood Plain Requirements  |              |
| 5                           | Historic Preservation Act Requirements  | 39           |
| 6                           | Description of Project  | 40           |
| 7                           | Project and Sources of Funds Itemization  | 41-42        |
| 8                           | Cost Space Requirements   | 43           |
| 9                           | Discontinuation   |              |
| 10                          | Background of the Applicant   | 44-50        |
| 11                          | Purpose of the Project  | 51           |
| 12                          | Alternatives to the Project   | 52-53        |
| 13                          | Size of the Project   | 54           |
| 14                          | Project Service Utilization   |              |
| 15                          | Unfinished or Shell Space   |              |
| 16                          | Assurances for Unfinished/Shell Space   |              |
| 17                          | Master Design Project   |              |
| 18                          | Mergers, Consolidations and Acquisitions  |              |
|                             | <b>Categories of Service:</b>   |              |
| 19                          | Planning Area Need  | 55-57        |
| 20                          | Service Demand – Establishment of Category of Service                                 | 58-62        |
| 21                          | Service Demand – Expansion of Existing Category of Service                            |              |
| 22                          | Service Accessibility – Service Restrictions  | 63-66        |
| 22&23                       | MapQuest Travel Times   | 67-77        |
| 23                          | Unnecessary Duplication/Maldistribution   | 78-82        |
| 24                          | Category of Service Modernization   |              |
| 25                          | Staffing Availability   | 83-86        |
| 26                          | Assurances  | 87           |
|                             | <b>Service Specific:</b>  |              |
| 27                          | Comprehensive Physical Rehabilitation   |              |
| 28                          | Neonatal Intensive Care   |              |
| 29                          | Open Heart Surgery  |              |
| 30                          | Cardiac Catheterization   |              |
| 31                          | In-Center Hemodialysis  | 88-95        |
| 32                          | Non-Hospital Based Ambulatory Surgery   |              |
|                             | <b>General Long Term Care:</b>  |              |
| 33                          | Planning Area Need  |              |
| 34                          | Service to Planning Area Residents  |              |
| 35                          | Service Demand-Establishment of Category of Service                                   |              |
| 36                          | Service Demand-Expansion of Existing Category of Service                              |              |
| 37                          | Service Accessibility   |              |
| 38                          | Description of Continuum of Care  |              |
| 39                          | Components  |              |
| 40                          | Documentation   |              |

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|-----------------------------|---|--------------|
| <b>ATTACHMENT<br/>NO.</b>   |   | <b>PAGES</b> |
| 41                          | Description of Defined Population to be Served                  |              |
| 42                          | Documentation of Need   |              |
| 43                          | Documentation Related to Cited Problems                         |              |
| 44                          | Unnecessary Duplication of Service                              |              |
| 45                          | Maldistribution   |              |
| 46                          | Impact of Project on Other Area Providers                       |              |
| 47                          | Deteriorated Facilities   |              |
| 48                          | Documentation   |              |
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| 50                          | Staffing Availability   |              |
| 51                          | Facility Size   |              |
| 52                          | Community Related Functions                                     |              |
| 53                          | Zoning  |              |
| 54                          | Assurances  |              |
|                             | <b>Service Specific (continued...):</b>                         |              |
| 55                          | Specialized Long Term Care                                      |              |
| 56                          | Selected Organ Transplantation                                  |              |
| 57                          | Kidney Transplantation  |              |
| 58                          | Subacute Care Hospital Model                                    |              |
| 59                          | Post Surgical Recovery Care Center                              |              |
| 60                          | Children's Community-Based Health Care Center                   |              |
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| 62                          | Need Determination - Establishment                              |              |
| 63                          | Service Demand  |              |
| 64                          | Referrals from Inpatient Base                                   |              |
| 65                          | Physician Referrals   |              |
| 66                          | Historical Referrals to Other Providers                         |              |
| 67                          | Population Incidence  |              |
| 68                          | Impact of Project on Other Area Providers                       |              |
| 69                          | Utilization   |              |
| 70                          | Deteriorated Facilities   |              |
| 71                          | Necessary Expansion   |              |
| 72                          | Utilization- Major Medical Equipment                            |              |
| 73                          | Utilization-Service or Facility                                 |              |
|                             | <b>FEC:</b>   |              |
| 74                          | Freestanding Emergency Center Medical Services                  |              |
|                             | <b>Financial and Economic Feasibility:</b>                      |              |
| 75                          | Financial Feasibility   | 96-110       |
| 76                          | Economic Feasibility  | 111-122      |
| 77                          | Safety Net Impact Statement                                     |              |

**Co - Applicant Identification**

[Provide for each co-applicant [refer to Part 1130.220].

|  |
|--|
| Exact Legal Name: <i>Fresenius Medical Care Ventures, LLC.</i> |
| Address: <i>920 Winter Street, Waltham, MA 02451</i>           |
| Name of Registered Agent: <i>CT Systems</i>                    |
| Name of Chief Executive Officer: <i>Mats Wahlstrom</i>         |
| CEO Address: <i>920 Winter Street, Waltham, MA 02541</i>       |
| Telephone Number: <i>781-669-9000</i>                          |

APPEND DOCUMENTATION AS ATTACHMENT-1 IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

**Type of Ownership**

|   |  |                                |
|---|--|--------------------------------|
| <input type="checkbox"/> Non-profit Corporation               | <input type="checkbox"/> Partnership         |                                |
| <input type="checkbox"/> For-profit Corporation               | <input type="checkbox"/> Governmental        |                                |
| <input checked="" type="checkbox"/> Limited Liability Company | <input type="checkbox"/> Sole Proprietorship | <input type="checkbox"/> Other |

- o Corporations and limited liability companies must provide an Illinois certificate of good standing.
- o Partnerships must provide the name of the state in which organized and the name and address of each partner specifying whether each is a general or limited partner.



**Co - Applicant Identification**

[Provide for each co-applicant [refer to Part 1130.220].

|  |
|--|
| Exact Legal Name: <i>Fresenius Medical Care Ventures Holding Company, Inc.</i> |
| Address: <i>920 Winter Street, Waltham, MA 02451</i>                           |
| Name of Registered Agent: <i>CT Systems</i>                                    |
| Name of Chief Executive Officer: <i>Mats Wahlstrom</i>                         |
| CEO Address: <i>920 Winter Street, Waltham, MA 02541</i>                       |
| Telephone Number: <i>781-669-9000</i>  |

APPEND DOCUMENTATION AS ATTACHMENT-1 IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

**Type of Ownership**

|  |  |                                |
|--|--|--------------------------------|
| <input type="checkbox"/> Non-profit Corporation            | <input type="checkbox"/> Partnership         |                                |
| <input checked="" type="checkbox"/> For-profit Corporation | <input type="checkbox"/> Governmental        |                                |
| <input type="checkbox"/> Limited Liability Company         | <input type="checkbox"/> Sole Proprietorship | <input type="checkbox"/> Other |

- o Corporations and limited liability companies must provide an Illinois certificate of good standing.
- o Partnerships must provide the name of the state in which organized and the name and address of each partner specifying whether each is a general or limited partner.

**Co - Applicant Identification**

[Provide for each co-applicant [refer to Part 1130.220].

|  |
|--|
| Exact Legal Name: <i>National Medical Care, Inc.</i>     |
| Address: <i>920 Winter Street, Waltham, MA 02451</i>     |
| Name of Registered Agent: <i>CT Systems</i>              |
| Name of Chief Executive Officer: <i>Mats Wahlstrom</i>   |
| CEO Address: <i>920 Winter Street, Waltham, MA 02541</i> |
| Telephone Number: <i>781-669-9000</i>                    |

APPEND DOCUMENTATION AS ATTACHMENT-1 IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

**Type of Ownership**

|  |  |                                |
|--|--|--------------------------------|
| <input type="checkbox"/> Non-profit Corporation            | <input type="checkbox"/> Partnership         |                                |
| <input checked="" type="checkbox"/> For-profit Corporation | <input type="checkbox"/> Governmental        |                                |
| <input type="checkbox"/> Limited Liability Company         | <input type="checkbox"/> Sole Proprietorship | <input type="checkbox"/> Other |

- o Corporations and limited liability companies must provide an Illinois certificate of good standing.
- o Partnerships must provide the name of the state in which organized and the name and address of each partner specifying whether each is a general or limited partner.

**Co - Applicant Identification**

[Provide for each co-applicant [refer to Part 1130.220].

|  |
|--|
| Exact Legal Name: <i>Fresenius Medical Care Holdings, Inc.</i> |
| Address: <i>920 Winter Street, Waltham, MA 02451</i>           |
| Name of Registered Agent: <i>CT Systems</i>                    |
| Name of Chief Executive Officer: <i>Mats Wahlstrom</i>         |
| CEO Address: <i>920 Winter Street, Waltham, MA 02541</i>       |
| Telephone Number: <i>781-669-9000</i>                          |

APPEND DOCUMENTATION AS ATTACHMENT-1 IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

**Type of Ownership**

|  |  |                                |
|--|--|--------------------------------|
| <input type="checkbox"/> Non-profit Corporation            | <input type="checkbox"/> Partnership         |                                |
| <input checked="" type="checkbox"/> For-profit Corporation | <input type="checkbox"/> Governmental        |                                |
| <input type="checkbox"/> Limited Liability Company         | <input type="checkbox"/> Sole Proprietorship | <input type="checkbox"/> Other |

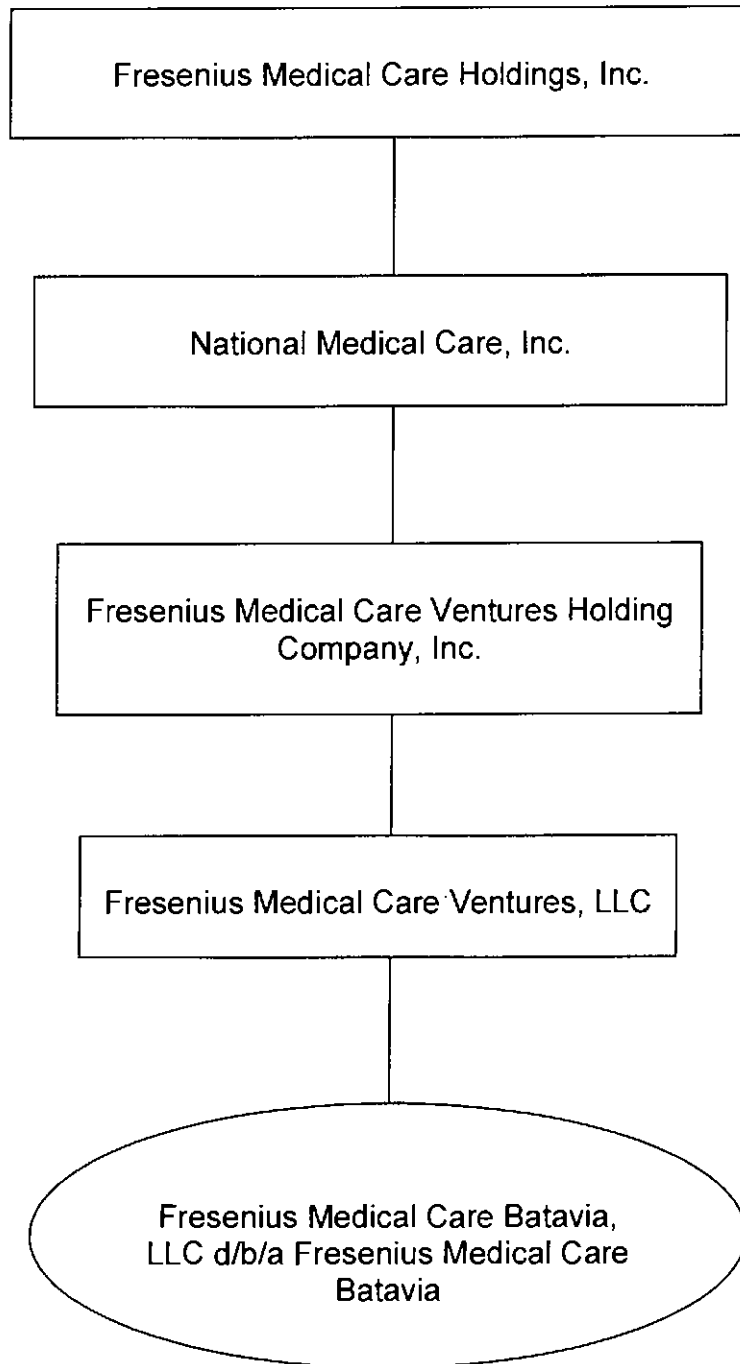
- o Corporations and limited liability companies must provide an Illinois certificate of good standing.
- o Partnerships must provide the name of the state in which organized and the name and address of each partner specifying whether each is a general or limited partner.

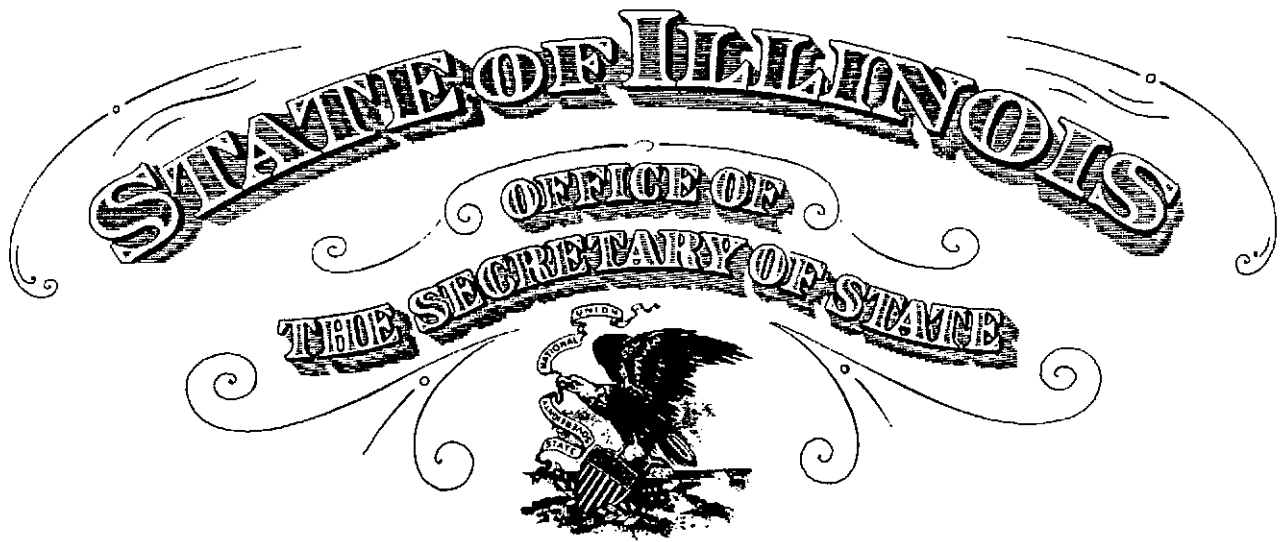
**Site Ownership**

[Provide this information for each applicable site]

|  |
|--|
| Exact Legal Name of Site Owner: <i>DBMC Associates, LLC</i>  |
| Address of Site Owner: <i>720 N. Franklin Street, #300, Chicago, IL 60654</i>  |
| Street Address or Legal Description of Site: <i>Southeast corner of Fabyan Parkway &amp; Branson Drive, Batavia, IL 60510 (approximately 2550 West Fabyan Parkway in Campbell Subdivision)</i> |

APPEND DOCUMENTATION AS ATTACHMENT-2, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.





**To all to whom these Presents Shall Come, Greeting:**

*I, Jesse White, Secretary of State of the State of Illinois, do hereby certify that*

FRESENIUS MEDICAL CARE BATAVIA, LLC, A DELAWARE LIMITED LIABILITY COMPANY HAVING OBTAINED ADMISSION TO TRANSACT BUSINESS IN ILLINOIS ON OCTOBER 16, 2009, APPEARS TO HAVE COMPLIED WITH ALL PROVISIONS OF THE LIMITED LIABILITY COMPANY ACT OF THIS STATE, AND AS OF THIS DATE IS IN GOOD STANDING AS A FOREIGN LIMITED LIABILITY COMPANY ADMITTED TO TRANSACT BUSINESS IN THE STATE OF ILLINOIS.

***In Testimony Whereof, I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois, this 19TH day of OCTOBER A.D. 2009 .***



Authentication #: 0929201110

Authenticate at: <http://www.cyberdriveillinois.com>

*Jesse White*

SECRETARY OF STATE



**Illinois Historic  
Preservation Agency**

FAX (217) 782-8161

1 Old State Capitol Plaza • Springfield, Illinois 62701-1512 • [www.illinois-history.gov](http://www.illinois-history.gov)

Kane County  
Batavia

CON - Establish a Dialysis Clinic  
SE Corner of Fabyan Parkway and Branson Dr.  
IHPA Log #008091509

September 28, 2009

Lori Wright  
Fresenius Medical Care  
One Westbrook Corporate Center, Suite 1000  
Westchester, IL 60154

Dear Ms. Wright:

This letter is to inform you that we have reviewed the information provided concerning the referenced project.

Our review of the records indicates that no historic, architectural or archaeological sites exist within the project area.

Please retain this letter in your files as evidence of compliance with Section 4 of the Illinois State Agency Historic Resources Preservation Act (20 ILCS 3420/1 et. seq.). This clearance remains in effect for two years from date of issuance. It does not pertain to any discovery during construction, nor is it a clearance for purposes of the Illinois Human Skeletal Remains Protection Act (20 ILCS 3440).

If you have any further questions, please contact me at 217/785-5027.

Sincerely,

Anne E. Haaker  
Deputy State Historic  
Preservation Officer

**ATTACHMENT - 5**

## 2. Project Outline

In the chart below, indicate the proposed action(s) for each clinical service area involved by writing the number of beds, stations or key rooms involved:

| Clinical Service Areas                                    | Establish | Expand | Modernize | Discontinue | No. of Beds, Stations or Key Rooms |
|---|-----------|--------|-----------|-------------|------------------------------------|
| Medical/Surgical, Obstetric, Pediatric and Intensive Care |           |        |           |             |                                    |
| Acute/Chronic Mental Illness                              |           |        |           |             |                                    |
| Neonatal Intensive Care                                   |           |        |           |             |                                    |
| Open Heart Surgery  |           |        |           |             |                                    |
| Cardiac Catheterization                                   |           |        |           |             |                                    |
| In-Center Hemodialysis                                    | X         |        |           |             | 12                                 |
| Non-Hospital Based Ambulatory Surgery                     |           |        |           |             |                                    |
| General Long Term Care                                    |           |        |           |             |                                    |
| Specialized Long Term Care                                |           |        |           |             |                                    |
| Selected Organ Transplantation                            |           |        |           |             |                                    |
| Kidney Transplantation                                    |           |        |           |             |                                    |
| Subacute Care Hospital Model                              |           |        |           |             |                                    |
| Post Surgical Recovery Care Center                        |           |        |           |             |                                    |
| Children's Community-Based Health Care Center             |           |        |           |             |                                    |
| Community-Based Residential Rehabilitation Center         |           |        |           |             |                                    |
| Long Term Acute Care Hospital Bed Projects                |           |        |           |             |                                    |
| Clinical Service Areas Other Than Categories of Service:  |           |        |           |             |                                    |
| • Surgery   |           |        |           |             |                                    |
| • Ambulatory Care Services (organized as a service)       |           |        |           |             |                                    |
| • Diagnostic & Interventional Radiology/Imaging           |           |        |           |             |                                    |
| • Therapeutic Radiology                                   |           |        |           |             |                                    |
| • Laboratory  |           |        |           |             |                                    |
| • Pharmacy  |           |        |           |             |                                    |
| • Occupational Therapy                                    |           |        |           |             |                                    |
| • Physical Therapy  |           |        |           |             |                                    |
| • Major Medical Equipment                                 |           |        |           |             |                                    |
| Freestanding Emergency Center Medical Services            |           |        |           |             |                                    |
| Master Design and Related Projects                        |           |        |           |             |                                    |
| Mergers, Consolidations and Acquisitions                  |           |        |           |             |                                    |



## SUMMARY OF PROJECT COSTS

### Modernization Contracts

|   |                   |
|---|-------------------|
| General Conditions  | 49,050.00         |
| Temp Facilities, Controls, Cleaning, Waste Management     | 2,452.50          |
| Concrete  | 12,556.80         |
| Masonry   | 14,911.20         |
| Metal Fabrications  | 7,357.50          |
| Carpentry   | 86,229.90         |
| Thermal, Moisture & Fire Protection                       | 17,461.80         |
| Doors, Frames, Hardware, Glass & Glazing                  | 67,198.50         |
| Walls, Ceilings, Floors, Painting                         | 158,431.50        |
| Specialities  | 12,262.50         |
| Casework, FI Mats & Window Treatments                     | 5,886.00          |
| Piping, Sanitary Waste, HVAC, Ductwork, Roof Penetrations | 313,920.00        |
| Wiring, Fire Alarm System, Lighting                       | 189,136.80        |
| Miscellaneous Construction Costs                          | 44,145.00         |
| <b>Total</b>  | <b>981,000.00</b> |

### Contingencies

|               |                 |
|---------------|-----------------|
| Contingencies | <b>\$98,000</b> |
|---------------|-----------------|

### Architectural/Engineering

|                               |                  |
|-------------------------------|------------------|
| Architecture/Engineering Fees | <b>\$107,500</b> |
|-------------------------------|------------------|

**Movable or Other Equipment**

|                                    |                  |
|------------------------------------|------------------|
| Dialysis Chairs                    | \$17,000         |
| Misc. Clinical Equipment           | 18,000           |
| Clinical Furniture & Equipment     | 27,000           |
| Office Equipment & Other Furniture | 35,000           |
| Water Treatment                    | 100,000          |
| TVs & Accessories                  | 50,000           |
| Telephones                         | 13,000           |
| Generator                          | 35,000           |
| Facility Automation                | 20,000           |
| Other miscellaneous                | 5,000            |
| <b>Total</b>                       | <b>\$320,000</b> |

**Fair Market Value Leased Space & Equipment**

|                              |                    |
|------------------------------|--------------------|
| FMV Leased Space (6,000 GSF) | \$2,199,636        |
| FMV Leased Dialysis Machines | 174,525            |
| FMV Leased Computers         | 4,900              |
| <b>Total</b>                 | <b>\$2,379,061</b> |

**Cost Space Requirements**

Provide in the following format, the department/area GSF and cost. The sum of the department costs **MUST** equal the total estimated project costs. Indicate if any space is being reallocated for a different purpose. Include outside wall measurements plus the department's or area's portion of the surrounding circulation space. **Explain the use of any vacated space.**

| Dept. / Area         | Cost      | Gross Square Feet |          | Amount of Proposed Total Gross Square Feet That Is: |            |       |               |
|----------------------|-----------|-------------------|----------|---|------------|-------|---------------|
|                      |           | Existing          | Proposed | New Const.  | Modernized | As Is | Vacated Space |
| <b>CLINICAL</b>      | 3,885,561 | 7,500             | 7,500    |   | 7,500      |       |               |
| Medical Surgical     |           |                   |          |   |            |       |               |
| Intensive Care       |           |                   |          |   |            |       |               |
| Diagnostic Radiology |           |                   |          |   |            |       |               |
| MRI                  |           |                   |          |   |            |       |               |
| Total Clinical       | 3,885,561 | 7,500             | 7,500    |   | 7,500      |       |               |
| <b>NON CLINICAL</b>  |           |                   |          |   |            |       |               |
| Administrative       |           |                   |          |   |            |       |               |
| Parking              |           |                   |          |   |            |       |               |
| Gift Shop            |           |                   |          |   |            |       |               |
| Total Non-clinical   |           |                   |          |   |            |       |               |
| <b>TOTAL</b>         | 3,885,561 | 7,500             | 7,500    |   | 7,500      |       |               |

Fresenius Medical Care Holdings, Inc. Clinics in Illinois

| Clinic                  | Provider # | Address                        | City             | Zip   |
|-------------------------|------------|--------------------------------|------------------|-------|
| Alsip                   | 14-2630    | 12250 S. Cicero Ave Ste. #105  | Alsip            | 60803 |
| Antioch                 | 14-2673    | 311 Depot St., Ste. H          | Antioch          | 60002 |
| Aurora                  | 14-2515    | 455 Mercy Lane                 | Aurora           | 60506 |
| Austin Community        | 14-2653    | 4800 W. Chicago Ave., 2nd Fl.  | Chicago          | 60651 |
| Berwyn                  | 14-2533    | 2601 S. Harlem Avenue, 1st Fl. | Berwyn           | 60402 |
| Blue Island             | 14-2539    | 12200 S. Western Avenue        | Blue Island      | 60406 |
| Boilingbrook            | 14-2605    | 538 E. Boughton Road           | Boilingbrook     | 60440 |
| Bridgeport              | 14-2524    | 825 W. 35th Street             | Chicago          | 60609 |
| Burbank                 | 14-2641    | 4811 W. 77th Street            | Burbank          | 60459 |
| Carbondale              | 14-2514    | 725 South Lewis Lane           | Carbondale       | 62901 |
| Champaign               | 14-2588    | 1405 W. Park Street            | Champaign        | 61801 |
| Chicago Dialysis        | 14-2506    | 820 West Jackson Blvd.         | Chicago          | 60607 |
| Chicago Westside        | 14-2681    | 1340 S. Damen                  | Chicago          | 60608 |
| Congress Parkway        | 14-2631    | 3410 W. Van Buren Street       | Chicago          | 60624 |
| Crestwood               | 14-2538    | 4861-73 W. Cal Sag Road        | Crestwood        | 60445 |
| Decatur East            | 14-2503    | 1830 S. 44th St.               | Decatur          | 62521 |
| Deerfield               |            | 405 Lake Cook Road             | Deerfield        | 60015 |
| Downers Grove           | 14-2503    | 3825 Highland Ave., Ste. 102   | Downers Grove    | 60515 |
| DuPage West             | 14-2509    | 450 E. Roosevelt Rd., Ste. 101 | West Chicago     | 60185 |
| DuQuoin                 | 14-2595    | #4 West Main Street            | DuQuoin          | 62832 |
| East Belmont            | 14-2531    | 1331 W. Belmont                | Chicago          | 60613 |
| East Peoria             | 14-2562    | 3300 North Main Street         | East Peoria      | 61611 |
| Elk Grove               | 14-2507    | 901 Biesterfeld Road           | Elk Grove        | 60007 |
| Evanston                | 14-2621    | 2953 Central Street            | Evanston         | 60201 |
| Evergreen Park          | 14-2545    | 9730 S. Western Avenue         | Evergreen Park   | 60805 |
| Garfield                | 14-2555    | 5401 S. Wentworth Ave.         | Chicago          | 60609 |
| Glendale Heights        | 14-2617    | 520 E. North Avenue            | Glendale Heights | 60139 |
| Glenview                | 14-2551    | 4248 Commercial Way            | Glenview         | 60025 |
| Greenwood               | 14-2601    | 1111 East 87th St., Ste. 700   | Chicago          | 60619 |
| Gurnee                  | 14-2549    | 101 Greenleaf                  | Gurnee           | 60031 |
| Hazel Crest             | 14-2607    | 17524 E. Carriageway Dr.       | Hazel Crest      | 60429 |
| Hoffman Estates         | 14-2547    | 3150 W. Higgins, Ste. 190      | Hoffman Estates  | 60195 |
| Jackson Park            | 14-2516    | 7531 South Stony Island Ave.   | Chicago          | 60649 |
| Kewanee                 | 14-2578    | 230 W. South Street            | Kewanee          | 61443 |
| Lake Bluff              | 14-2669    | 101 Waukegan Rd., Ste. 700     | Lake Bluff       | 60044 |
| Lakeview                | 14-2679    | 4008 N. Broadway, St. 1200     | Chicago          | 60613 |
| Lutheran General        | 14-2559    | 8565 West Dempster             | Niles            | 60714 |
| Macomb                  | 14-2591    | 523 E. Grant Street            | Macomb           | 61455 |
| Marquette Park          | 14-2566    | 6515 S. Western                | Chicago          | 60636 |
| McLean Co               | 14-2563    | 1505 Eastland Medical Plaza    | Bloomington      | 61704 |
| McHenry                 | 14-2672    | 4312 W. Elm St.                | McHenry          | 60050 |
| Melrose Park            | 14-2554    | 1111 Superior St., Ste. 204    | Melrose Park     | 60160 |
| Merrionette Park        | 14-2667    | 11630 S. Kedzie Ave.           | Merrionette Park | 60803 |
| Metropolis              |            | Hospital Drive                 | Metropolis       | 62960 |
| Midway                  |            | 6201 W. 63rd Street            | Chicago          | 60638 |
| Mokena                  | 14-2689    | 8910 W. 192nd Street           | Mokena           | 60448 |
| Morris                  | 14-2596    | 1401 Lakewood Dr., Ste. B      | Morris           | 60450 |
| Naperville              | 14-2543    | 100 Spalding Drive Ste. 108    | Naperville       | 60566 |
| Naperville North        | 14-2678    | 516 W. 5th Ave.                | Naperville       | 60563 |
| Niles                   | 14-2500    | 7332 N. Milwaukee Ave          | Niles            | 60714 |
| Norridge                | 14-2521    | 4701 N. Cumberland             | Norridge         | 60656 |
| North Avenue            | 14-2602    | 805 W. North Avenue            | Melrose Park     | 60160 |
| North Kilpatrick        | 14-2501    | 4800 N. Kilpatrick             | Chicago          | 60630 |
| Northwestern University | 14-2597    | 710 N. Fairbanks Court         | Chicago          | 60611 |
| Oak Park                | 14-2504    | 773 W. Madison Street          | Oak Park         | 60302 |
| Orland Park             | 14-2550    | 9160 W. 159th St.              | Orland Park      | 60462 |
| Oswego                  | 14-2677    | 1051 Station Drive             | Oswego           | 60543 |
| Ottawa                  | 14-2576    | 1601 Mercury Court             | Ottawa           | 61350 |
| Pekin                   | 14-2571    | 600 S. 13th Street             | Pekin            | 61554 |
| Peoria Downtown         | 14-2574    | 410 R.B. Garrett Ave.          | Peoria           | 61605 |
| Peoria North            | 14-2613    | 10405 N. Juliet Court          | Peoria           | 61615 |
| Plainfield              |            | 2300 Michas Drive              | Plainfield       | 60544 |
| Polk                    | 14-2502    | 557 W. Polk St.                | Chicago          | 60607 |

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|                       |         |                                      |                 |       |
|-----------------------|---------|--------------------------------------|-----------------|-------|
| Pontiac               | 14-2611 | 804 W. Madison St.                   | Pontiac         | 61764 |
| Prairie               | 14-2569 | 1717 S. Wabash                       | Chicago         | 60616 |
| Randolph County       | 14-2589 | 102 Memorial Drive                   | Chester         | 62233 |
| Rockford              | 14-2615 | 1302 E. State Street                 | Rockford        | 61104 |
| Rogers Park           | 14-2522 | 2277 W. Howard St.                   | Chicago         | 60645 |
| Rolling Meadows       | 14-2525 | 4180 Winnetka Avenue                 | Rolling Meadows | 60008 |
| Roseland              | 14-2690 | 135 W. 111th Street                  | Chicago         | 60628 |
| Ross-Englewood        | 14-2670 | 6333 S. Green Street                 | Chicago         | 60621 |
| Round Lake            | 14-2616 | 401 Nippersink                       | Round Lake      | 60073 |
| Sandwich              | 14-2700 | 1310 Main Street                     | Sandwich        | 60548 |
| Saline County         | 14-2573 | 275 Small Street, Ste. 200           | Harrisburg      | 62946 |
| Skokie                | 14-2618 | 9801 Wood Dr.                        | Skokie          | 60077 |
| South Chicago         | 14-2519 | 9200 S. Chicago Ave.                 | Chicago         | 60617 |
| South Holland         | 14-2542 | 17225 S. Paxton                      | South Holland   | 60473 |
| South Shore           | 14-2572 | 2420 E. 79th Street                  | Chicago         | 60649 |
| South Side            | 14-2508 | 3134 W. 76th St.                     | Chicago         | 60652 |
| South Suburban        | 14-2517 | 2609 W. Lincoln Highway              | Olympia Fields  | 60461 |
| Southwestern Illinois | 14-2535 | Illinois Rts 3&143, #7 Eastgate Plz. | East Alton      | 62024 |
| Spoon River           | 14-2565 | 210 W. Walnut Street                 | Canton          | 61520 |
| Spring Valley         | 14-2564 | 12 Wolfer Industrial Drive           | Spring Valley   | 61362 |
| Streator              | 14-2695 | 2356 N. Bloomington Street           | Streator        | 61364 |
| Uptown                | 14-2692 | 4720 N. Marine Dr.                   | Chicago         | 60640 |
| Villa Park            | 14-2612 | 200 E. North Ave.                    | Villa Park      | 60181 |
| West Belmont          | 14-2523 | 4848 W. Belmont                      | Chicago         | 60641 |
| West Chicago          | 14-2702 | 1855-1863 N. Neltnor                 | West Chicago    | 60185 |
| West Metro            | 14-2536 | 1044 North Mozart Street             | Chicago         | 60622 |
| West Suburban         | 14-2530 | 518 N. Austin Blvd., Ste. 5000       | Oak Park        | 60302 |
| Westchester           | 14-2520 | 2400 Wolf Road, STE 101A             | Westchester     | 60154 |
| Williamson County     | 14-2627 | 900 Skyline Drive, Ste. 200          | Marion          | 62959 |
| Willowbrook           | 14-2632 | 6300 S. Kingery Hwy, STE 408         | Willowbrook     | 60527 |

Certification & Authorization

Fresenius Medical Care Batavia, LLC

In accordance with Section III, A (2) of the Illinois Health Facilities Planning Board Application for Certificate of Need; I do hereby certify that no adverse actions have been taken against Fresenius Medical Care Batavia, LLC by either Medicare or Medicaid, or any State or Federal regulatory authority during the 3 years prior to the filing of the Application with the Illinois Health Facilities Planning Board; and

In regards to section III, A (3) of the Illinois Health Facilities Planning Board Application for Certificate of Need; I do hereby authorize the State Board and Agency access to information in order to verify any documentation or information submitted in response to the requirements of this subsection or to obtain any documentation or information that the State Board or Agency finds pertinent to this subsection.

By: [Signature]

ITS: Marc Lieberman  
Asst. Treasurer

By: [Signature]

ITS: Mark Fawcett  
Vice President & Treasurer

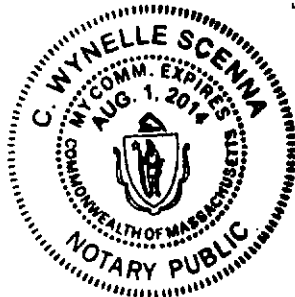
Notarization:  
Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2009

Notarization:  
Subscribed and sworn to before me  
this 9 day of Oct, 2009

Signature of Notary C Wynelle Scenna Signature of Notary

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Seal



Certification & Authorization

Fresenius Medical Care Ventures, LLC

In accordance with Section III, A (2) of the Illinois Health Facilities Planning Board Application for Certificate of Need; I do hereby certify that no adverse actions have been taken against Fresenius Medical Care Ventures, LLC by either Medicare or Medicaid, or any State or Federal regulatory authority during the 3 years prior to the filing of the Application with the Illinois Health Facilities Planning Board; and

In regards to section III, A (3) of the Illinois Health Facilities Planning Board Application for Certificate of Need; I do hereby authorize the State Board and Agency access to information in order to verify any documentation or information submitted in response to the requirements of this subsection or to obtain any documentation or information that the State Board or Agency finds pertinent to this subsection.

By: [Signature]  
ITS: Marc Lieberman  
Asst. Treasurer

By: [Signature]  
ITS: Mark Fawcett  
Vice President & Treasurer

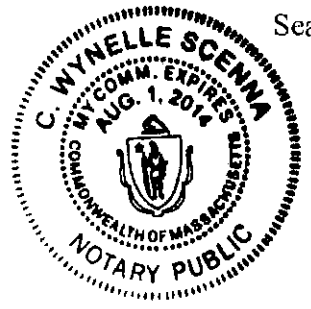
Notarization:  
Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2009

Notarization:  
Subscribed and sworn to before me  
this 9 day of Oct, 2009

Signature of Notary C Wynelle Scenna Signature of Notary

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Certification & Authorization

Fresenius Medical Care Ventures Holding Company, Inc.

In accordance with Section III, A (2) of the Illinois Health Facilities Planning Board Application for Certificate of Need; I do hereby certify that no adverse actions have been taken against Fresenius Medical Care Ventures Holding Company, Inc. by either Medicare or Medicaid, or any State or Federal regulatory authority during the 3 years prior to the filing of the Application with the Illinois Health Facilities Planning Board; and

In regards to section III, A (3) of the Illinois Health Facilities Planning Board Application for Certificate of Need; I do hereby authorize the State Board and Agency access to information in order to verify any documentation or information submitted in response to the requirements of this subsection or to obtain any documentation or information that the State Board or Agency finds pertinent to this subsection.

By: [Signature]  
ITS: Marc Lieberman  
Asst. Treasurer

By: [Signature]  
ITS: Mark Fawcett  
Vice President & Treasurer

Notarization:  
Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2009

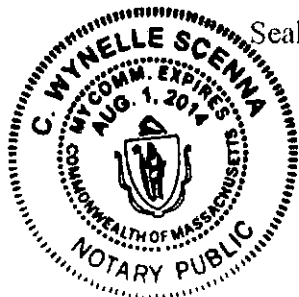
Notarization:  
Subscribed and sworn to before me  
this 9 day of Oct, 2009

Signature of Notary

C. Wynelle Scenna

Signature of Notary

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Certification & Authorization

National Medical Care, Inc.

In accordance with Section III, A (2) of the Illinois Health Facilities Planning Board Application for Certificate of Need; I do hereby certify that no adverse actions have been taken against National Medical Care, Inc. by either Medicare or Medicaid, or any State or Federal regulatory authority during the 3 years prior to the filing of the Application with the Illinois Health Facilities Planning Board; and

In regards to section III, A (3) of the Illinois Health Facilities Planning Board Application for Certificate of Need; I do hereby authorize the State Board and Agency access to information in order to verify any documentation or information submitted in response to the requirements of this subsection or to obtain any documentation or information that the State Board or Agency finds pertinent to this subsection.

By: [Signature]  
Marc Lieberman  
ITS: Asst. Treasurer

By: [Signature]  
Mark Fawcett  
ITS: Vice President & Treasurer

Notarization:  
Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2009

Notarization:  
Subscribed and sworn to before me  
this 21 day of Sept, 2009

C. Wynelle Scenna  
Signature of Notary

Signature of Notary

Seal

Seal



Certification & Authorization

Fresenius Medical Care Holdings, Inc.

In accordance with Section III, A (2) of the Illinois Health Facilities Planning Board Application for Certificate of Need; I do hereby certify that no adverse actions have been taken against Fresenius Medical Care Holdings, Inc. by either Medicare or Medicaid, or any State or Federal regulatory authority during the 3 years prior to the filing of the Application with the Illinois Health Facilities Planning Board; and

In regards to section III, A (3) of the Illinois Health Facilities Planning Board Application for Certificate of Need; I do hereby authorize the State Board and Agency access to information in order to verify any documentation or information submitted in response to the requirements of this subsection or to obtain any documentation or information that the State Board or Agency finds pertinent to this subsection.

By: [Signature]  
ITS: Marc Lieberman  
Asst. Treasurer

By: [Signature]  
ITS: Mark Fawcett  
Vice President & Assistant Treasurer

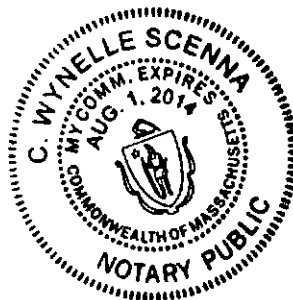
Notarization:  
Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2009

Notarization:  
Subscribed and sworn to before me  
this 21 day of Sept, 2009

Signature of Notary C Wynelle Scenna Signature of Notary

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**Criterion 1110.230 – Purpose of Project**

The purpose of this project is to keep dialysis services accessible to central Kane County (HSA 8) residents in an area where the population is rapidly growing and ESRD facilities are experiencing high growth and high utilizations. The area is comprised mainly of Batavia, North Aurora, and the Elburn and Sugar Grove areas. This facility will help to alleviate high the high utilization at Fresenius Medical Care in Aurora and will provide for ongoing growth.

There has been historic high utilization and/or growth of those facilities closest to Batavia over the past several years causing access issues with some facilities at capacity, scheduling of a fourth shift, difficulty scheduling a patient on a shift that is accommodating to their families, jobs or transportation and patients having to travel out of their home market area for dialysis. The closest facility, Fresenius Aurora, has recently transferred patients to Fresenius Oswego bringing that facility to 80% and has also just added 6 stations in an attempt to keep up with the growth of ESRD in the area. The facility is still at 82% utilization even with these efforts. Given Dr. Dodhia's pre-ESRD population, a new facility is necessary to provide access for these patients.

- **Historic Utilization and Growth of those facilities considered within 30 minutes travel time of Fresenius Medical Care Batavia**

| Facility               | City            | Adjusted Time | Stations   | 2005       |            | 2006       |            | 2007       |            | 2008       |            | Sep-09     |            |
|------------------------|-----------------|---------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|
|                        |                 |               |            | Pts        | Utl        | Pts        | Utl        | Pts        | Utl        | Pts        | Utl        | Pts        | Utl        |
| Tri Cities LLC         | Geneva          | 5             | 18         | 68         | 63%        | 61         | 56%        | 71         | 66%        | 81         | 75%        | 88         | 81%        |
| Fresenius Aurora       | Aurora          | 15            | 20         | 96         | 114%       | 99         | 118%       | 92         | 110%       | 100        | 119%       | 98         | 82%        |
| Fresenius DuPage West  | West Chicago    | 15            | 16         | 91         | 95%        | 82         | 85%        | 95         | 99%        | 91         | 95%        | 82         | 85%        |
| Fresenius Oswego*      | Oswego          | 22            | 10         | -          | -          | 1          | 2%         | 26         | 43%        | 41         | 68%        | 43         | 72%        |
| Fresenius West Chicago | West Chicago    | 23            | 12         | -          | -          | -          | -          | -          | -          | -          | -          | 14         | 19%        |
| Fresenius Elgin        | Elgin           | 26            | 12         | -          | -          | -          | -          | -          | -          | -          | -          | -          | -          |
| QRC Carpentersville    | Carpentersville | 29            | 13         | 74         | 95%        | 68         | 87%        | 68         | 87%        | 76         | 97%        | 76         | 97%        |
| Fox Valley             | Aurora          | 30            | 26         | 132        | 85%        | 142        | 91%        | 136        | 87%        | 143        | 92%        | 134        | 86%        |
| <b>TOTALS</b>          |                 |               | <b>115</b> | <b>461</b> | <b>88%</b> | <b>453</b> | <b>78%</b> | <b>488</b> | <b>84%</b> | <b>532</b> | <b>91%</b> | <b>535</b> | <b>78%</b> |

- (1) Fresenius Aurora was approved to expand from 14 to 20 stations in September 2009
- (2) Fresenius Elgin was approved in September 2009 and is not yet in operational
- (3) 115 stations does not include the 12 approved stations at Fresenius Elgin which are not yet operational. If these 12 stations were included in the count the September 2009 utilization would be 70%.

\* Fresenius Oswego is currently at 80% utilization according to the facilities patient data base. See certification at Attachment - 23.

The goal of Fresenius Medical Care is to keep dialysis access available to this patient population as we continue to monitor the growth in this area. There is no direct empirical evidence relating to this project other than that when chronic care patients have adequate access to services, it tends to reduce overall healthcare costs and results in less complications. It is expected that this facility would have the same quality outcomes as the other Fresenius facilities in Illinois as listed below.

- o 90.55% of patients had a URR  $\geq$  65%
- o 92.66% of patients had a Kt/V  $\geq$  1.2

## Alternatives

- The alternative of doing nothing was not considered. The Fresenius Aurora facility has been highly utilized for several years. Despite the establishment of Fresenius Oswego, currently at 80% and the addition of 6 stations at Aurora at 82%, utilization remains high and pre-ESRD patients are growing in numbers. These two additions alone added 16 stations to the area and still more are needed to account for this excessive growth of the Aurora facility. Doing nothing would simply leave the Aurora facility overcrowded and the possibility of once again operating a 4<sup>th</sup> shift, given the 83 pre-ESRD patients Dr. Dodhia has in his practice. These patients would likely be referred to the Aurora facility if the proposed Batavia facility is not established. There is no monetary cost associated with this alternative.
- The alternative of utilizing current ESRD facilities in the area was previously pursued. 23 patients were transferred to Fresenius Oswego from Fresenius Aurora and 10 patients were transferred from Fresenius DuPage West to Fresenius West Chicago (leaving both facilities still over 80%). This alternative of using other facilities was not pursued further due to the high utilization of area facilities and high numbers of pre-ESRD patients in the area.

### Facilities within 30 Minutes Travel Time

| Facility               | Address             | City            | Zip Code | Miles | Time | Adjusted Time | Sept 2009 Utilization |
|------------------------|---------------------|-----------------|----------|-------|------|---------------|-----------------------|
| Tri Cities LLC         | 306 Randall Rd      | Geneva          | 60134    | 2.31  | 4    | 4.6           | 81%                   |
| Fresenius Aurora       | 455 Mercy Ln        | Aurora          | 60506    | 8.02  | 13   | 14.95         | 82%                   |
| Fresenius DuPage West  | 450 E Roosevelt Rd  | West Chicago    | 60185    | 8.74  | 13   | 14.95         | 85%                   |
| Fresenius Oswego       | 1051 Station Drive  | Oswego          | 60543    | 13.92 | 19   | 21.85         | 72% (80%)*            |
| Fresenius West Chicago | 1859 N Neltnor Blvd | West Chicago    | 60185    | 11.13 | 20   | 23            | 19%                   |
| Fresenius Elgin        | 2130 Point Blvd     | Elgin           | 60123    | 16.54 | 23   | 26.45         | 0%                    |
| QRC Carpentersville    | 2203 Randall Rd     | Carpentersville | 60110    | 18.8  | 25   | 28.75         | 97%                   |
| Fox Valley             | 1300 Waterford Dr   | Aurora          | 60504    | 18.2  | 26   | 29.9          | 86%                   |

\*Fresenius Oswego is currently at 80% utilization according to the facilities patient data base. See certification at Attachment – 23.

- There is no monetary cost associated with the alternative of using area facilities. The cost to the healthcare system as far as Medicare and Medicaid are concerned remains the same regardless of where the patient dialyzes since the reimbursement does not change. The only cost is to the welfare of the ESRD patients who reside in this area as it pertains to access. With the high current high utilizations and numbers of pre-ESRD patients identified for Batavia as well as the new facilities, Elgin and West Chicago, it is responsible healthcare planning to propose the Batavia facility now.

- The alternative to expand an existing facility was considered and acted upon. Fresenius Medical Care Aurora was permitted in September 2009 to add 6 stations at a cost of \$80,000. Fresenius Medical Care Oswego, which is at 80%, is in the process of adding an isolation station and Fresenius Medical Care DuPage West is also in the process of adding two stations to alleviate high utilization at that facility. Tri-Cities Dialysis, Fox Valley Dialysis and QRC Carpentersville have all added stations in the last several years. The addition of stations at these facilities will only be a temporary fix for an area of high historic utilization and growth.
- Fresenius Medical Care has thoroughly explored all options available and even acted on some of those such as adding stations or using other facilities. This however, is only a partial solution. The establishment of Fresenius Medical Care Batavia appears to be the most cost effective option to maintain dialysis access to the residents of this area. Planning for future growth now is responsible healthcare planning. Although, the cost of this project, \$3,885,561, is higher than doing nothing, the cost is an issue only to Fresenius Medical Care and we are able to sustain this cost. There is no increase to healthcare costs to the patient since Medicare covers all dialysis patients and is a needed service that a patient cannot seek unless medically necessary.

\*All patient data obtained from The Renal Network annual statistical report

**Criterion 1110.234, Size of Project**

- The total space being leased is 7,500 GSF. The proposed in-center hemodialysis clinic will consist of 12 stations in 6,000 GSF. This is only 30 GSF per station over the state standard of 470 GSF per station or a total of 360 GSF for the project. The remaining 1,500 GSF will consist of a PD (home dialysis) department, administrative offices and staff training room.

**Planning Area Need – Formula Need Calculation:**

**A. Planning Area Need - Formula Need Calculation:**

- 1. Complete the requested information for each category of service involved:**  
Refer to 77 Ill. Adm. Code 1100 for information concerning planning areas, bed/station/key room deficits and occupancy/utilization standards.

Planning Area HSA 8

| Category of Service           | No. of Beds/Stations/Key Rooms Proposed | HFPB Inventory Need or Excess | Part 1100 Occupancy/Utilization Standard |
|-------------------------------|---|-------------------------------|--|
| <i>In-center Hemodialysis</i> | 12                                      | 14 Excess*                    | 80%                                      |
|                               |   |                               |  |
|                               |   |                               |  |
|                               |   |                               |  |

\*This Board has approved an amendment to 1100.630, which is the formula for need for dialysis stations in service areas. The current rule states that the target utilization rate is 80%, but then uses a mathematical formula which would result in a 100% utilization rate. The Board approved amendments to the rule to change the formula contained in the rule so that it is compatible with the 80% utilization target rate. The proposed amendment is pending before JCAR and there is no reason to think it will not pass, and obviously the Board supports it. **If and when the rule is changed Health Service Area 8, where the proposed Batavia clinic is located, would have a need for 31 ESRD stations based on the five year projection contained in the amendment to the proposed rule.**

5-year projection using 80% Utilization (750 Divisor)

| Planning Area | Number of Facilities | 2005 Population Estimates | 2010 Population Projections | Percent Change Population | 2005 Institutional Patients | 2010 Projected Institutional Patients | 2010 Projected Institutional Procedures | 2010 Projected Station Need | Existing Stations | Additional Stations Needed | Excess Stations |
|---------------|----------------------|---------------------------|-----------------------------|---------------------------|-----------------------------|---------------------------------------|---|-----------------------------|-------------------|----------------------------|-----------------|
| HSA 1         | 9                    | 669,100                   | 697,000                     | 4.17%                     | 465                         | 644                                   | 100,464                                 | 134                         | 131               | 3                          |                 |
| HSA 2         | 10                   | 670,900                   | 698,900                     | 4.17%                     | 516                         | 715                                   | 111,540                                 | 149                         | 143               | 6                          |                 |
| HSA 3         | 12                   | 580,100                   | 601,200                     | 3.64%                     | 494                         | 681                                   | 106,236                                 | 142                         | 143               |                            | 1               |
| HSA 4         | 10                   | 811,400                   | 838,750                     | 3.37%                     | 571                         | 785                                   | 122,460                                 | 163                         | 156               | 7                          |                 |
| HSA 5         | 14                   | 627,300                   | 649,200                     | 3.49%                     | 497                         | 684                                   | 106,704                                 | 142                         | 171               |                            | 29              |
| HSA 6         | 45                   | 2,884,800                 | 2,921,750                   | 1.28%                     | 3,859                       | 5,198                                 | 810,888                                 | 1,081                       | 963               | 118                        |                 |
| HSA 7         | 49                   | 3,348,500                 | 3,456,000                   | 3.21%                     | 3,736                       | 5,128                                 | 799,968                                 | 1,067                       | 986               | 81                         |                 |
| HSA 8         | 17                   | 1,500,000                 | 1,622,250                   | 8.15%                     | 985                         | 1,417                                 | 221,052                                 | 295                         | 250               | 45                         |                 |
| HSA 9         | 13                   | 866,200                   | 933,550                     | 10.08%                    | 530                         | 776                                   | 121,056                                 | 161                         | 192               |                            | 31              |
| HSA 10        | 6                    | 215,300                   | 219,000                     | 1.72%                     | 200                         | 271                                   | 42,276                                  | 56                          | 73                |                            | 17              |
| HSA 11        | 8                    | 590,300                   | 598,800                     | 1.44%                     | 550                         | 742                                   | 115,752                                 | 154                         | 151               | 3                          |                 |
| STATE TOTAL   | 193                  | 12,763,900                | 13,256,400                  | 3.86%                     | 12,403                      | 17,041                                | 2,658,996                               | 3,544                       | 3,359             | 263                        | 78              |



**Planning Area Need – Service To Planning Area Residents:**

**2. Planning Area Need – Service To Planning Area Residents:**

- A. The primary purpose of this project is to provide in-center hemodialysis services to the residents of Kane County in HSA 8, more specifically the Batavia, North Aurora, Sugar Grove, Elburn and St. Charles market area. The pre-ESRD patients identified for this facility all reside in Kane County, therefore this project will serve the residents of HSA 8, where it is located.

| <b>County</b> | <b>HSA</b> | <b># Pre-ESRD Patients</b> |
|---------------|------------|----------------------------|
| Kane          | 8          | 83                         |



# Fresenius Medical Care

November 4, 2009

Ms. Courtney Avery  
Illinois Health Facilities & Services Review Board  
525 W. Jefferson St., 2<sup>nd</sup> Floor  
Springfield, IL 62761

Dear Ms. Avery:

I am a nephrologist in the far west suburbs and serve as Medical Director of the Fresenius Aurora Dialysis Center. I currently refer patients to Fresenius Aurora, Oswego, Sandwich and to Fox Valley Dialysis. This area has seen significant ESRD growth over the past several years and I am seeing an increasing patient population coming from North Aurora and Batavia. For this reason, I am in full support of the proposed Fresenius Medical Care Batavia dialysis clinic. Although the Aurora facility was recently permitted by the Board to add six stations, this facility is still operating above the 80% target utilization evidencing the need for more stations in this area.

Over the past three years my practice was treating 88 hemodialysis patients at the end of 2006, 111 patients at the end of 2007 and 133 patients at the end of 2008, as reported to The Renal Network. Our practice patient load for the most recent quarter was 148. As well, over the past twelve months, my practice has admitted 105 hemodialysis patients to Fresenius Aurora, Fresenius Oswego, Fresenius Sandwich and Fox Valley Dialysis. I have 83 pre-ESRD patients in my practice that will be referred to the Batavia facility within 2 years after completion of the facility (see attached lists of patients by zip code).

I therefore urge the Board to approve the 12 station Fresenius Batavia clinic to keep access to dialysis treatment available to the patients in the Batavia area. Thank you for your consideration.

I attest that to the best of my knowledge, all the information contained in this letter is true and correct and that the projected patient referrals listed in this document have not been used to support any other CON application.

Sincerely,

Navinchandra Dodhia, M.D.

Notarization:

Subscribed and sworn to before me  
this 5<sup>th</sup> day of Nov, 2009

Signature of Notary

Seal



ATTACHMENT - 20

Fresenius Medical Care North America • Dialysis Services

Aurora Dialysis Center 455 Mercy Lane Aurora, IL 60506 630-892-7445 Fax: 630-892-0321

**PRE - ESRD PATIENTS DR. DODHIA EXPECTS TO REFER TO FRESENIUS  
MEDICAL CARE BATAVIA BY 2 YEARS (24 MONTHS)  
AFTER PROJECT COMPLETION**

| <b>Zip Code</b> | <b>Patients</b> |
|-----------------|-----------------|
| 60119           | 6               |
| 60134           | 1               |
| 60174           | 1               |
| 60175           | 3               |
| 60510           | 19              |
| 60542           | 29              |
| 60554           | 24              |
| <b>Total</b>    | <b>83</b>       |

**ADMISSSTIONS OF DR. DODHIA'S PRACTICE FOR THE PREVIOUS  
TWELVE MONTHS - 09/01/2008 THROUGH 08/31/2009**

| <b>ZIP CODE</b> | <b>FRESENIUS<br/>AURORA</b> | <b>FRESENIUS<br/>OSWEGO</b> | <b>FRESENIUS<br/>SANDWICH</b> | <b>FOX VALLEY<br/>DIALYSIS</b> | <b>TOTAL</b> |
|-----------------|-----------------------------|-----------------------------|-------------------------------|--------------------------------|--------------|
| 60018           | 1                           |                             |                               |                                | 1            |
| 60076           |                             | 1                           |                               |                                | 1            |
| 60119           | 1                           |                             |                               |                                | 1            |
| 60120           | 1                           |                             |                               |                                | 1            |
| 60134           |                             | 1                           |                               |                                | 1            |
| 60174           | 1                           |                             |                               |                                | 1            |
| 60187           |                             | 1                           |                               |                                | 1            |
| 60404           |                             | 1                           | 1                             |                                | 2            |
| 60431           |                             | 1                           |                               |                                | 1            |
| 60435           |                             | 1                           |                               |                                | 1            |
| 60453           | 1                           |                             |                               |                                | 1            |
| 60503           |                             | 1                           |                               |                                | 1            |
| 60504           |                             | 3                           |                               | 2                              | 5            |
| 60505           | 15                          | 5                           |                               | 1                              | 21           |
| 60506           | 13                          | 4                           |                               | 1                              | 18           |
| 60515           | 1                           |                             |                               |                                | 1            |
| 60531           |                             | 1                           |                               |                                | 1            |
| 60538           | 2                           | 3                           |                               |                                | 5            |
| 60542           | 3                           | 4                           |                               |                                | 7            |
| 60543           | 1                           | 4                           |                               |                                | 5            |
| 60545           |                             | 3                           | 2                             |                                | 5            |
| 60548           | 1                           | 2                           | 7                             |                                | 10           |
| 60551           |                             |                             | 1                             |                                | 1            |
| 60552           |                             | 1                           | 1                             |                                | 2            |
| 60554           | 1                           |                             |                               | 1                              | 2            |
| 60560           |                             | 3                           |                               | 1                              | 4            |
| 60586           |                             | 2                           |                               |                                | 2            |
| 60644           |                             | 1                           |                               |                                | 1            |
| 61364           |                             | 1                           |                               |                                | 1            |
| 61378           |                             |                             | 1                             |                                | 1            |
| <b>TOTAL</b>    | <b>42</b>                   | <b>44</b>                   | <b>13</b>                     | <b>6</b>                       | <b>105</b>   |

**PATIENTS OF DR. DODHIA'S PRACTICE AT YEAR END 2006**  
**BY FACILITY AND ZIP CODE**

| FRESENIUS AURORA |           | FRESENIUS OSWEGO |              | FOX VALLEY |          |
|------------------|-----------|------------------|--------------|------------|----------|
| Zip Code         | Patients  | Zip Code         | Patients     | Zip Code   | Patients |
| 60506            | 31        | 60538            | 1            | 60506      | 1        |
| 60505            | 16        |                  |              |            |          |
| 60538            | 6         |                  |              |            |          |
| 60545            | 6         |                  |              |            |          |
| 60542            | 4         |                  |              |            |          |
| 60543            | 4         |                  |              |            |          |
| 60554            | 4         |                  |              |            |          |
| 60548            | 3         |                  |              |            |          |
| 60178            | 2         |                  |              |            |          |
| 60504            | 2         |                  |              |            |          |
| 60560            | 2         |                  |              |            |          |
| 60510            | 1         |                  |              |            |          |
| 60042            | 1         |                  |              |            |          |
| 60123            | 1         |                  |              |            |          |
| 60174            | 1         |                  |              |            |          |
| 60177            | 1         |                  |              |            |          |
| 60550            | 1         |                  |              |            |          |
|                  | <u>86</u> |                  |              |            |          |
|                  |           |                  | <b>TOTAL</b> | <b>88</b>  |          |

**PATIENTS OF DR. DODHIA'S PRACTICE AT YEAR END 2007**  
**BY FACILITY AND ZIP CODE**

| FRESENIUS AURORA |           | FRESENIUS OSWEGO |              | FOX VALLEY |          |
|------------------|-----------|------------------|--------------|------------|----------|
| Zip Code         | Patients  | Zip Code         | Patients     | Zip Code   | Patients |
| 60506            | 31        | 60560            | 5            | 60505      | 2        |
| 60505            | 27        | 60543            | 5            | 60506      | <u>1</u> |
| 60542            | 6         | 60548            | 4            |            | 3        |
| 60504            | 3         | 60538            | 4            |            |          |
| 60538            | 3         | 60545            | 3            |            |          |
| 60510            | 2         | 60506            | 3            |            |          |
| 60543            | 2         | 60505            | <u>1</u>     |            |          |
| 60554            | 2         |                  | 25           |            |          |
| 60042            | 1         |                  |              |            |          |
| 60106            | 1         |                  |              |            |          |
| 60123            | 1         |                  |              |            |          |
| 60174            | 1         |                  |              |            |          |
| 60177            | 1         |                  |              |            |          |
| 60178            | 1         |                  |              |            |          |
| 60560            | <u>1</u>  |                  |              |            |          |
|                  | <b>83</b> |                  |              |            |          |
|                  |           |                  | <b>TOTAL</b> | <b>111</b> |          |

**PATIENTS OF DR. DODHIA'S PRACTICE AT YEAR END 2008**  
**BY FACILITY AND ZIP CODE**

| FRESENIUS AURORA |           | FRESENIUS OSWEGO |          | FOX VALLEY   |            |
|------------------|-----------|------------------|----------|--------------|------------|
| Zip Code         | Patients  | Zip Code         | Patients | Zip Code     | Patients   |
| 60506            | 30        | 60560            | 9        | 60505        | 2          |
| 60505            | 25        | 60543            | 8        | 60506        | 1          |
| 60542            | 6         | 60548            | 5        |              | 3          |
| 60510            | 3         | 60538            | 4        |              |            |
| 60554            | 3         | 60505            | 3        |              |            |
| 60174            | 2         | 60506            | 3        |              |            |
| 60543            | 2         | 60504            | 2        |              |            |
| 60042            | 1         | 60542            | 2        |              |            |
| 60119            | 1         | 60545            | 2        |              |            |
| 60120            | 1         | 60503            | 1        |              |            |
| 60177            | 1         | 60512            | 1        |              |            |
| 60504            | 1         | 60586            | 1        |              |            |
| 60538            | 1         | 60644            | 1        |              |            |
| 60540            | 1         |                  | 42       |              |            |
| 60605            | 1         |                  |          |              |            |
|                  | <u>79</u> |                  |          |              |            |
|                  |           |                  |          | <b>TOTAL</b> | <b>124</b> |

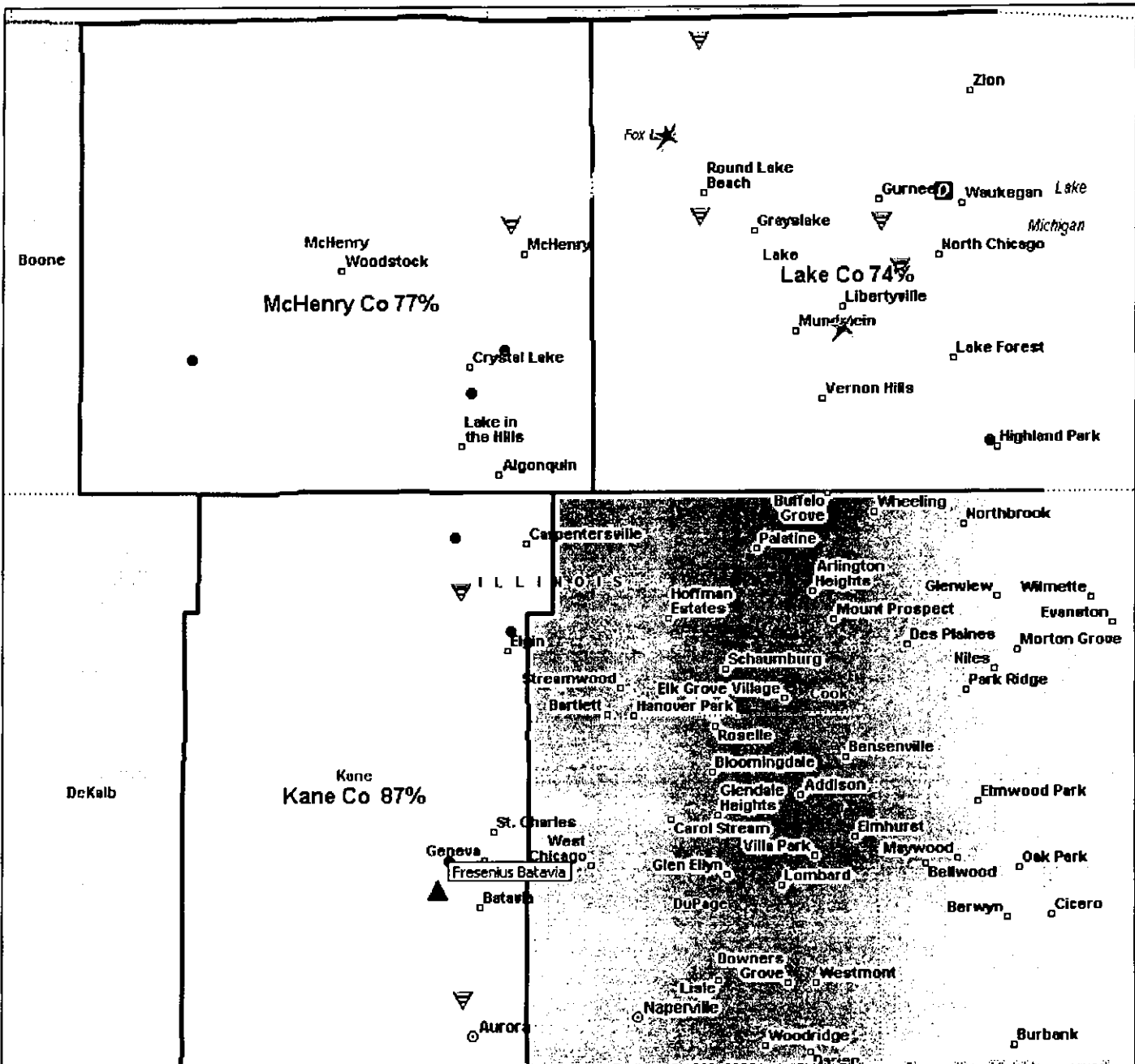
**PATIENTS OF DR. DODHIA'S PRACTICE AT END OF 3rd QUARTER 2009**  
**BY FACILITY AND ZIP CODE**

| ZIP CODE     | FRESENIUS AURORA | FRESENIUS OSWEGO | FRESENIUS SANDWICH | FOX VALLEY DIALYSIS | TOTAL      |
|--------------|------------------|------------------|--------------------|---------------------|------------|
| 49339        |                  | 1                |                    |                     | 1          |
| 60119        | 1                |                  |                    |                     | 1          |
| 60120        | 1                |                  |                    |                     | 1          |
| 60174        | 1                |                  |                    |                     | 1          |
| 60177        | 1                |                  |                    |                     | 1          |
| 60185        |                  |                  | 1                  |                     | 1          |
| 60404        |                  |                  | 1                  |                     | 1          |
| 60503        | 1                |                  |                    |                     | 1          |
| 60504        | 1                | 3                |                    |                     | 4          |
| 60505        | 26               | 5                |                    |                     | 31         |
| 60506        | 34               | 5                | 1                  | 1                   | 41         |
| 60512        | 1                |                  |                    |                     | 1          |
| 60515        |                  |                  |                    | 2                   | 2          |
| 60538        | 3                | 6                |                    |                     | 9          |
| 60540        | 1                |                  |                    |                     | 1          |
| 60542        | 7                | 2                |                    |                     | 9          |
| 60543        | 2                | 7                |                    |                     | 9          |
| 60545        |                  | 3                | 2                  |                     | 5          |
| 60548        |                  | 1                | 7                  |                     | 8          |
| 60552        |                  | 1                | 1                  |                     | 2          |
| 60554        | 3                |                  |                    |                     | 3          |
| 60560        | 2                | 10               |                    |                     | 12         |
| 60644        |                  | 1                |                    |                     | 1          |
| 61378        |                  |                  | 1                  |                     | 1          |
| 62629        |                  | 1                |                    |                     | 1          |
| <b>TOTAL</b> | <b>85</b>        | <b>46</b>        | <b>14</b>          | <b>3</b>            | <b>148</b> |

## Service Accessibility – Service Restrictions

Batavia is located in HSA 8 which consists of Lake, McHenry and Kane Counties. There are 4 ESRD facilities in McHenry County, 8 in Lake County and 6 in Kane County. The combined utilization of the facilities in HSA 8 is 79.17% according to the 3<sup>rd</sup> quarter Renal Network data. This means it would take only 14 more patients in the entire HSA to bring the combined utilization above 80%. While the proposed service, in-center hemodialysis, does exist in the HSA, it is on the verge of being at the State Standard of 80%, creating the need for more stations.

Looking more closely at Kane County, where Batavia is located, the overall utilization of the county is much higher at 86.57%. This figure includes Fresenius Medical Care Elgin, which is not yet open. If these 12 stations are removed from the count, the utilization would be 97.99% for Kane County and 82.88% for HSA 8 as a whole (see map below and chart on following page).



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**Utilization of HSA 8 – Kane, McHenry and Lake Counties**

| Facility                 | County | Stations   | Sep-09     |               |
|--------------------------|--------|------------|------------|---------------|
|                          |        |            | Patients   | Utl           |
| Tri Cities LLC           | Kane   | 18         | 88         | 81.48%        |
| Fresenius Aurora         | Kane   | 20         | 98         | 81.67%        |
| Fresenius Elgin          | Kane   | 12         | 0          | 0.00%         |
| QRC Carpentersville      | Kane   | 13         | 76         | 97.44%        |
| Fox Valley               | Kane   | 26         | 134        | 85.90%        |
| Sherman Hospital         | Kane   | 14         | 62         | 73.81%        |
| <b>TOTAL KANE COUNTY</b> |        | <b>103</b> | <b>535</b> | <b>86.57%</b> |

|                             |         |           |            |               |
|-----------------------------|---------|-----------|------------|---------------|
| QRC Marengo                 | McHenry | 10        | 29         | 48.33%        |
| ARA Crystal Lake            | McHenry | 9         | 45         | 83.33%        |
| Sherman Crystal Lake        | McHenry | 6         | 64         | 177.78%       |
| Fresenius McHenry           | McHenry | 12        | 33         | 45.83%        |
| <b>TOTAL MCHENRY COUNTY</b> |         | <b>37</b> | <b>171</b> | <b>77.03%</b> |

|                          |      |            |            |               |
|--------------------------|------|------------|------------|---------------|
| Fresenius Antioch        | Lake | 12         | 38         | 52.78%        |
| DaVita Lake Villa        | Lake | 12         | 26         | 36.11%        |
| Fresenius Round Lake     | Lake | 16         | 87         | 90.63%        |
| DSI Waukegan             | Lake | 22         | 96         | 72.73%        |
| Fresenius Gurnee         | Lake | 14         | 81         | 96.43%        |
| Fresenius Lake Bluff     | Lake | 16         | 69         | 71.88%        |
| DaVita Lake County       | Lake | 16         | 69         | 71.88%        |
| Highland Park Hospital   | Lake | 20         | 101        | 84.17%        |
| <b>TOTAL LAKE COUNTY</b> |      | <b>128</b> | <b>567</b> | <b>73.83%</b> |

|                    |  |            |              |               |
|--------------------|--|------------|--------------|---------------|
| <b>TOTAL HSA 8</b> |  | <b>268</b> | <b>1,273</b> | <b>79.17%</b> |
|--------------------|--|------------|--------------|---------------|

Data from The Renal Network 3<sup>rd</sup> Quarter Census Data



- There are eight other dialysis facilities operating within 30 minutes adjusted MapQuest time. of the proposed Batavia facility. Of these 8, 6 are operating above 80% utilization, and of the remaining 2, 1 has been open less than a year and the other is not yet open. Patients have been identified for both of these facilities in their prospective applications to bring those facilities to 80% utilization. These are separate patients from different service areas and different physician referring groups. Only one of which is in HSA 8, Fresenius Elgin. When this facility does become operational, it would not be a facility that patients from the Batavia area would choose to dialyze in due to its distance.

| Facility               | Address             | City            | Zip Code | Miles | Time | Adjusted Time | Sept 2009 Utilization |
|------------------------|---------------------|-----------------|----------|-------|------|---------------|-----------------------|
| Tri Cities LLC         | 306 Randall Rd      | Geneva          | 60134    | 2.31  | 4    | 4.6           | 81%                   |
| Fresenius Aurora       | 455 Mercy Ln        | Aurora          | 60506    | 8.02  | 13   | 14.95         | 82%                   |
| Fresenius DuPage West  | 450 E Roosevelt Rd  | West Chicago    | 60185    | 8.74  | 13   | 14.95         | 85%                   |
| Fresenius Oswego       | 1051 Station Drive  | Oswego          | 60543    | 13.92 | 19   | 21.85         | 72% (80%)*            |
| Fresenius West Chicago | 1859 N Neltnor Blvd | West Chicago    | 60185    | 11.13 | 20   | 23            | 19%                   |
| Fresenius Elgin        | 2130 Point Blvd     | Elgin           | 60123    | 16.54 | 23   | 26.45         | 0%                    |
| QRC Carpentersville    | 2203 Randall Rd     | Carpentersville | 60110    | 18.8  | 25   | 28.75         | 97%                   |
| Fox Valley             | 1300 Waterford Dr   | Aurora          | 60504    | 18.2  | 26   | 29.9          | 86%                   |

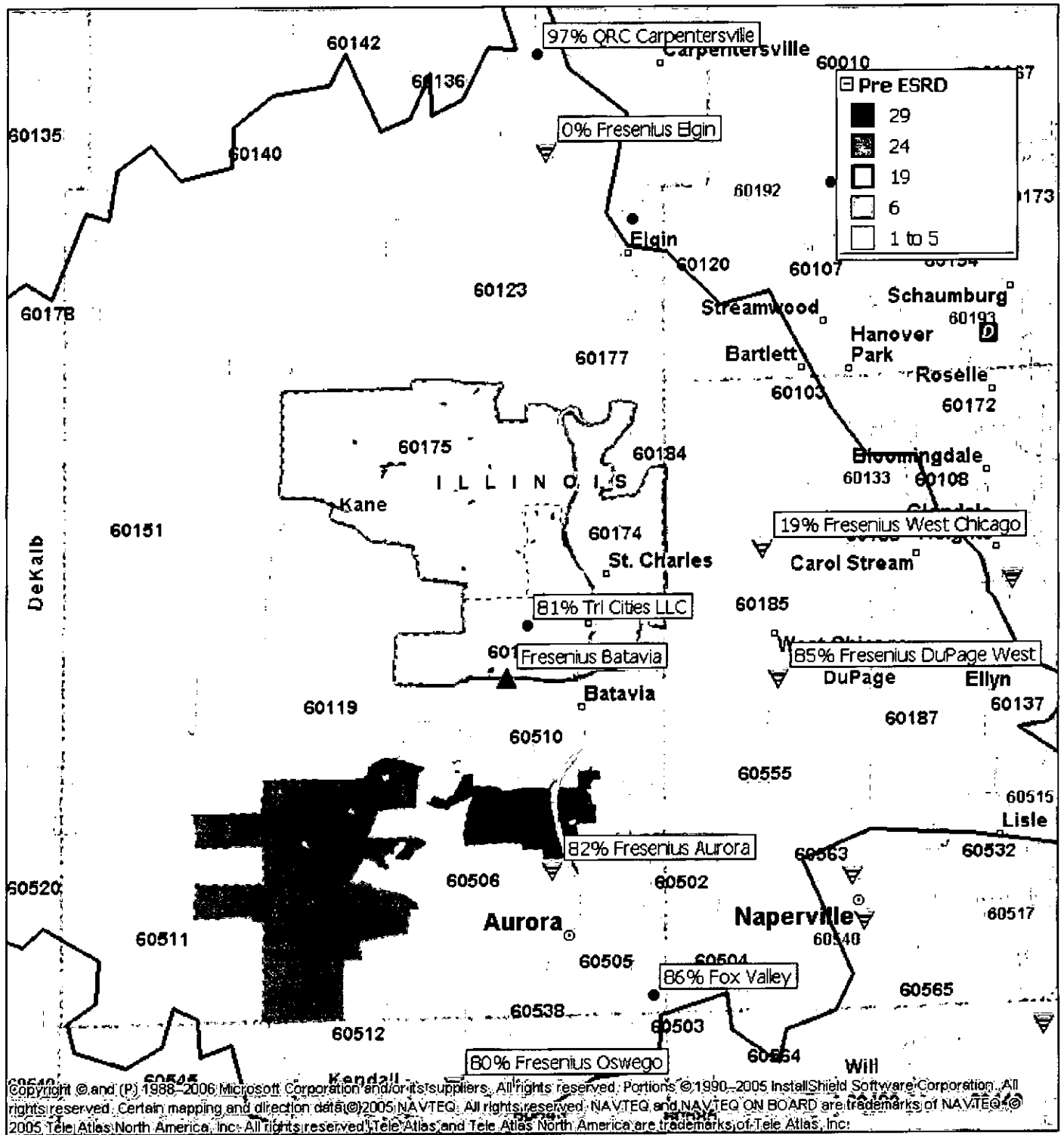
\*Fresenius Oswego is currently operating at 80% utilization according to the facilities patient data base. See certification at Attachment 23.

- The map on the following page shows the relationship of the demographics of the pre-ESRD patients identified for the Batavia facility and the utilization of area facilities. The majority of these facilities are operating near target utilization standards to near 100% utilization. The only two facilities that could accommodate any of Dr. Dodhia's patients would be Fresenius Elgin, which has its own patient base in a separate service area and Fresenius West Chicago which is also in a separate service area and has patients identified to bring that facility to 80%.

Pre-ESRD Patients Identified for Fresenius Medical Care Batavia

| Zip Code     | Patients  |
|--------------|-----------|
| 60119        | 6         |
| 60134        | 1         |
| 60174        | 1         |
| 60175        | 3         |
| 60510        | 19        |
| 60542        | 29        |
| 60554        | 24        |
| <b>Total</b> | <b>83</b> |

**PRE-ESRD PATIENT IDENTIFIED FOR FRESENIUS MEDICAL CARE BATAVIA & CLINIC UTILIZATIONS WITHIN A 30 MINUTE DRIVE TIME**



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# MAPQUEST.

Total Travel Estimates: 4 minutes / 2.31 miles

**A: 899 Branson Dr, Batavia, IL 60510-7704**



1: Start out going **NORTH** on **BRANSON DR** toward **SOUTH DR.** 0.2 mi



2: Turn **RIGHT** onto **FABYAN PKWY/CR-8 E.** 0.6 mi



3: Turn **LEFT** onto **CR-34 N/N RANDALL RD.** 1.5 mi



4: **306 RANDALL RD** is on the **LEFT.** 0.0 mi

**B: 306 Randall Rd, Geneva, IL 60134-4200**

*Tri-Cities, LLC*

Total Travel Estimates: 4 minutes / 2.31 miles

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**MapQuest Travel Times**  
**ATTACHMENT - 22 + 23**

# MAPQUEST.

Total Travel Estimates: 13 minutes / 8.02 miles

**A: 899 Branson Dr, Batavia, IL 60510-7704**

- 
1: Start out going **NORTH** on **BRANSON DR** toward **SOUTH DR**.
0.2 mi
- 
2: Turn **RIGHT** onto **FABYAN PKWY/CR-8 E**.
0.6 mi
- 
3: Turn **RIGHT** onto **N RANDALL RD/CR-34 S**.
5.9 mi
- 
4: Turn **LEFT** onto **W INDIAN TRL**.
1.2 mi
- 
5: Turn **LEFT** onto **MERCY LN**.
0.1 mi
- 
6: **455 MERCY LN** is on the **RIGHT**.
0.0 mi

**B: 455 Mercy Ln, Aurora, IL 60506-2462**

*Fresenius Aurora*

Total Travel Estimates: 13 minutes / 8.02 miles

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**MapQuest Travel Times**  
**ATTACHMENT - 22 + 23**

# MAPQUEST.

Total Travel Estimates: 13 minutes / 8.74 miles

**A: 899 Branson Dr, Batavia, IL 60510-7704**

- 
1: Start out going **NORTH** on **BRANSON DR** toward **SOUTH DR.**
0.2 mi
- 
2: Turn **RIGHT** onto **FABYAN PKWY/CR-8 E.**  
Continue to follow **CR-8 E.**
4.7 mi
- 
3: **CR-8 E** becomes **FABYAN PKWY/CR-21.**
1.7 mi
- 

4: Turn **RIGHT** onto **W ROOSEVELT RD/IL-38.**
2.2 mi
- 
5: **450 E ROOSEVELT RD** is on the **RIGHT.**
0.0 mi

**B: 450 E Roosevelt Rd, West Chicago, IL 60185-3905**

*Fresenius DuPage West  
(Central DuPage Dialysis)*


Total Travel Estimates: 13 minutes / 8.74 miles

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# MAPQUEST.

Total Travel Estimates: 19 minutes / 13.92 miles


**A: 899 Branson Dr, Batavia, IL 60510-7704**

-  **1: Start out going NORTH on BRANSON DR toward SOUTH DR.** 0.2 mi


---

-  **2: Turn RIGHT onto FABYAN PKWY/CR-8 E.** 0.6 mi


---

-  **3: Turn RIGHT onto N RANDALL RD/CR-34 S.** 3.3 mi


---

-  **4: Turn RIGHT onto ORCHARD RD.** 9.7 mi


---

-  **5: Turn RIGHT onto MILL RD.** 0.1 mi

---

-  **6: Turn RIGHT onto STATION DR.** 0.1 mi

---

-  **7: 1051 STATION DR is on the RIGHT.** 0.0 mi

**B: 1051 Station Dr, Oswego, IL 60543-5008**

*Fresenius Oswego*

Total Travel Estimates: 19 minutes / 13.92 miles

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**MapQuest Travel Times**  
**ATTACHMENT - 22 + 23**

# MAPQUEST.

Total Travel Estimates: 20 minutes / 11.13 miles

**A: 899 Branson Dr, Batavia, IL 60510-7704**

- 
1: Start out going **NORTH** on **BRANSON DR** toward **SOUTH DR.** 0.2 mi
- 
2: Turn **RIGHT** onto **FABYAN PKWY/CR-8 E.** Continue to follow **CR-8 E.** 4.7 mi
- 
3: **CR-8 E** becomes **FABYAN PKWY/CR-21.** 1.7 mi
- 
4: **FABYAN PKWY/CR-21** becomes **W WASHINGTON ST.** 2.2 mi
- 

5: Turn **LEFT** onto **IL-59/N NELTNOR BLVD.** Continue to follow **IL-59.** 2.3 mi
- 
6: **1859 N NELTNOR BLVD.** 0.0 mi

**B: 1859 N Neltnor Blvd, West Chicago, IL 60185-5900** *Fresenius West Chicago*

Total Travel Estimates: 20 minutes / 11.13 miles

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**MapQuest Travel Times**  
**ATTACHMENT - 22 + 23**

# MAPQUEST

Total Travel Estimates: 23 minutes / 16.54 miles

**A: 899 Branson Dr, Batavia, IL 60510-7704**



1: Start out going **NORTH** on **BRANSON DR** toward **SOUTH DR**. 0.2 mi



2: Turn **RIGHT** onto **FABYAN PKWY/CR-8 E**. 0.6 mi



3: Turn **LEFT** onto **CR-34 N/N RANDALL RD**. Continue to follow **CR-34 N**. 15.3 mi



4: Turn **RIGHT** onto **POINT BLVD**. 0.4 mi



5: **2130 POINT BLVD** is on the **LEFT**. 0.0 mi

**B: 2130 Point Blvd, Elgin, IL 60123-9215** *Fresenius Elgin*

Total Travel Estimates: 23 minutes / 16.54 miles

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**MapQuest Travel Times**  
**ATTACHMENT - 22+23**



# MAPQUEST

Total Travel Estimates: 25 minutes / 18.80 miles

**A: 899 Branson Dr, Batavia, IL 60510-7704**

- START
1
1: Start out going **NORTH** on **BRANSON DR** toward **SOUTH DR**. 0.2 mi
- ↘
2: Turn **RIGHT** onto **FABYAN PKWY/CR-8 E**. 0.6 mi
- ↙
3: Turn **LEFT** onto **CR-34 N/N RANDALL RD**. Continue to follow **CR-34 N**. 18.0 mi
- END
4: **2203 RANDALL RD** is on the **RIGHT**. 0.0 mi

**B: 2203 Randall Rd, Carpentersville, IL 60110-3355**

QRC Carpentersville

Total Travel Estimates: 25 minutes / 18.80 miles

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**MapQuest Travel Times**  
**ATTACHMENT - 2:2 + 23**


# MAPQUEST.

Total Travel Estimates: 26 minutes / 18.20 miles


**A: 899 Branson Dr, Batavia, IL 60510-7704**

- 
1: Start out going **NORTH** on **BRANSON DR** toward **SOUTH DR.**
0.2 mi


---

- 
2: Turn **RIGHT** onto **FABYAN PKWY/CR-8 E.**
0.6 mi



---

- 
3: Turn **RIGHT** onto **N RANDALL RD/CR-34 S.**
3.3 mi



---

- 
4: Turn **RIGHT** onto **ORCHARD RD.**
7.5 mi


---

- 

5: Turn **LEFT** onto **US-30.**
4.8 mi


---

- 

6: Turn **LEFT** onto **US-34/US-30.** Continue to follow **US-34 E.**
1.6 mi


---

- 
7: Turn **LEFT** onto **RIDGE AVE.**
0.1 mi

---

- 
8: **RIDGE AVE** becomes **WATERFORD DR.**
0.2 mi

---

- 
9: **1300 WATERFORD DR** is on the **RIGHT.**
0.0 mi

**B: 1300 Waterford Dr, Aurora, IL 60504-5502**

*Fox Valley Dialysis*

Total Travel Estimates: 26 minutes / 18.20 miles

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**MapQuest Travel Times**  
**ATTACHMENT - 22+23**

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# MAPQUEST

Total Travel Estimates: 27 minutes / 17.55 miles

**A: 899 Branson Dr, Batavia, IL 60510-7704**

- 
1: Start out going **NORTH** on **BRANSON DR** toward **SOUTH DR.**
0.2 mi
- 
2: Turn **RIGHT** onto **FABYAN PKWY/CR-8 E.**
3.8 mi
- 
3: Turn **RIGHT** onto **N KIRK RD/CR-77.** Continue to follow **CR-77.**
4.9 mi
- 

4: Merge onto **I-88 E/RONALD REAGAN MEMORIAL TOLLWAY** toward **CHICAGO** (Portions toll).
5.8 mi
- 
5: Take the **WINFIELD ROAD** exit.
0.4 mi
- 
6: Turn **RIGHT** onto **WINFIELD RD.**
0.2 mi
- 
7: Turn **LEFT** onto **DIEHL RD/CR-53 E.** Continue to follow **DIEHL RD.**
0.7 mi
- 
8: Turn **RIGHT** onto **N MILL ST/CR-32.** Continue to follow **N MILL ST.**
1.4 mi
- 
9: Turn **RIGHT** onto **W 5TH AVE.**
0.1 mi
- 
10: **514 W 5TH AVE** is on the **LEFT.**
0.0 mi

**B: 514 W 5th Ave, Naperville, IL 60563-2901**

*Fresenius Naperville North  
(over 30 minutes)*

Total Travel Estimates: 27 minutes / 17.55 miles

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**MapQuest Travel Times**  
**ATTACHMENT - 22 to 3**

# MAPQUEST.

Total Travel Estimates: 31 minutes / 19.45 miles

**A: 899 Branson Dr, Batavia, IL 60510-7704**

- START**
1: Start out going **NORTH** on **BRANSON DR** toward **SOUTH DR.**
0.2 mi
- 
2: Turn **RIGHT** onto **FABYAN PKWY/CR-8 E.**
3.8 mi
- 
3: Turn **LEFT** onto **KIRK RD/CR-77.**
3.6 mi
- 

4: Turn **RIGHT** onto **IL-64 E/E MAIN ST/NORTH AVE.**  
Continue to follow **IL-64 E/NORTH AVE.**
11.3 mi
- 

5: Make a **U-TURN** at **GOODRICH AVE** onto **NORTH AVE/IL-64 W.**
0.4 mi
- END**
6: **520 NORTH AVE** is on the **RIGHT.**
0.0 mi

**B: 520 North Ave, Glendale Heights, IL 60139-3119**

*Fresenius Glendale Heights  
(over 30 minutes)*

Total Travel Estimates: 31 minutes / 19.45 miles

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MapQuest Travel Times  
ATTACHMENT - 22+23


# MAPQUEST.

Total Travel Estimates: 27 minutes / 17.66 miles


A: [800-899] Branson Dr, Batavia, IL 60510

-  1: Start out going NORTH on BRANSON DR toward HANSFORD AVE. 0.2 mi


---

-  2: Turn LEFT onto FABYAN PKWY/CR-8. 3.1 mi



---

-  3: Turn RIGHT onto MAIN ST/CR-10. 0.2 mi


---

-  4: Turn LEFT onto BLISS RD/CR-78. 5.1 mi


---

-   5: Turn LEFT onto IL-47 S. 7.3 mi


---

-  6: Turn RIGHT onto CANNONBALL TRL. 1.5 mi


---

-  7: Turn RIGHT onto JOHN ST. 0.2 mi

---

-  8: Turn SLIGHT RIGHT onto W JOHN ST. 0.1 mi

---

-  9: 1100 WEST VETERANS PARKWAY. 0.0 mi

B: Rush-Copley Healthcare Center: 1100 West Veterans Parkway, Yorkville, IL 60560, (630) 466-8200

*Yorkville Dialysis Center  
(exact address unknown. Facility is located on campus of RCHC)*

*Over 30 minutes*

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MapQuest Travel Times  
ATTACHMENT - 22 & 23

## Unnecessary Duplication/Maldistribution

1(A-B) The ratio of ESRD stations to population in the zip codes within a 30 minute radius of Fresenius Batavia is 1 station per 8,220 residents according to the 2000 census. This is more than double the state ratio of 1/3776 and does not account for population growth which would make the ratio even higher.

| Zip Code     | Population       | Stations   | Facility              |
|--------------|------------------|------------|-----------------------|
| 60103        | 75,585           |            |                       |
| 60110        | 32,145           | 13         | QRC Carpentersville   |
| 60112        | 1,294            |            |                       |
| 60115        | 42,372           |            |                       |
| 60118        | 14,739           |            |                       |
| 60119        | 7,705            |            |                       |
| 60120        | 48,581           |            |                       |
| 60123        | 55,201           | 12         | Fresenius Elgin       |
| 60134        | 21,497           | 18         | Tri-Cities Dialysis   |
| 60136        | 1,459            |            |                       |
| 60137        | 38,026           |            |                       |
| 60139        | 32,303           |            |                       |
| 60140        | 7,315            |            |                       |
| 60151        | 3,554            |            |                       |
| 60174        | 31,513           |            |                       |
| 60175        | 17,953           |            |                       |
| 60177        | 16,941           |            |                       |
| 60178        | 16,477           |            |                       |
| 60184        | 698              |            |                       |
| 60185        | 32,936           | 28         | Fresenius DuPage West |
| 60187        | 61,481           |            |                       |
| 60188        | 43,730           |            |                       |
| 60190        | 12,065           |            |                       |
| 60504        | 44,412           |            |                       |
| 60505        | 56,971           | 26         | Fox Valley Dialysis   |
| 60506        | 51,184           |            |                       |
| 60510        | 26,565           | 20         | Fresenius Aurora      |
| 60511        | 1,862            |            |                       |
| 60512        | 892              |            |                       |
| 60515        | 27,514           |            |                       |
| 60519        | 74               |            |                       |
| 60520        | 2,770            |            |                       |
| 60532        | 27,341           |            |                       |
| 60538        | 13,702           |            |                       |
| 60540        | 42,065           |            |                       |
| 60542        | 11,007           |            |                       |
| 60443        | 18,769           |            |                       |
| 60545        | 7,638            |            |                       |
| 60554        | 4,812            |            |                       |
| 60555        | 13,852           | 10         | Fresenius Oswego      |
| 60556        | 1,797            |            |                       |
| 60560        | 11,502           |            |                       |
| 60563        | 31,405           |            |                       |
| 60564        | 32,206           |            |                       |
| <b>Total</b> | <b>1,043,910</b> | <b>127</b> | <b>1/8,220</b>        |

Total population within a 30 minute\* travel time of Fresenius Batavia is 1,043,910 according to the 2000 Census.

According to the Sept 9, 2009 Station Inventory (3,385 stations) and the 2005-7 U.S. Census Bureau projection ( 12,783,049), the State ratio of stations to population is 1/3776.

\*Travel time is MapQuest x 1.15

## Unnecessary Duplication/Maldistribution

### C. In-center Hemodialysis Centers Within 30 minutes of Fresenius Medical Care Batavia

| Facility               | Address             | City            | Zip Code | Miles | Time | Adjusted Time | Sept 2009 Utilization |
|------------------------|---------------------|-----------------|----------|-------|------|---------------|-----------------------|
| Tri Cities LLC         | 306 Randall Rd      | Geneva          | 60134    | 2.31  | 4    | 4.6           | 81%                   |
| Fresenius Aurora       | 455 Mercy Ln        | Aurora          | 60506    | 8.02  | 13   | 14.95         | 82%                   |
| Fresenius DuPage West  | 450 E Roosevelt Rd  | West Chicago    | 60185    | 8.74  | 13   | 14.95         | 85%                   |
| Fresenius Oswego       | 1051 Station Drive  | Oswego          | 60543    | 13.92 | 19   | 21.85         | 72% (80%)             |
| Fresenius West Chicago | 1859 N Neltnor Blvd | West Chicago    | 60185    | 11.13 | 20   | 23            | 19%                   |
| Fresenius Elgin        | 2130 Point Blvd     | Elgin           | 60123    | 16.54 | 23   | 26.45         | 0%                    |
| QRC Carpentersville    | 2203 Randall Rd     | Carpentersville | 60110    | 18.8  | 25   | 28.75         | 97%                   |
| Fox Valley             | 1300 Waterford Dr   | Aurora          | 60504    | 18.2  | 26   | 29.9          | 86%                   |

\*2<sup>nd</sup> quarter 2009 the utilization at Fresenius Oswego was 80%, it dipped to 72% 3<sup>rd</sup> quarter 2009 and is now again at 80% according to the clinic patient data base (see certification at end of this attachment)

Although all facilities within thirty minutes travel time are not above the target utilization of 80%, Fresenius Medical Care Batavia will not create a maldistribution of services. As noted on the previous page, the ratio of stations to population within 30 minutes travel time exceeds the State ratio (1/3,776) by more than twice as much. (Based on 3,385 stations as of the September 9, 2009 State Inventory and State population estimated for 2005-7 of 12,783,049). This is evidence in itself of a need for this facility.

3A. Fresenius Medical Care Batavia will not have an adverse effect on any other area ESRD provider in that all of the 83 patients identified for this facility are new pre-ESRD patients. No patients will be transferred from any other facility. The facilities within 30 minutes are all operating at high utilization levels except for two, Fresenius West Chicago and Fresenius Elgin.

➤ Fresenius West Chicago – This facility was just recently certified in January 2009 after which it took several months to become contracted with Blue Cross/Blue Shield. This caused some delay in patient admissions. However the facility is now at 19% utilization after only a few months of becoming fully operational. Dr. Kozeney, in the West Chicago CON application, certified that he had 59 patients who would be referred to that facility within the first two years of operation. His patients are separate from those identified for Fresenius Batavia and live in a different market area. This facility could not accommodate Dr. Dodhia's 83 pre-ESRD patients. As well, the West Chicago facility may be 20 minutes away from the proposed Batavia site, but would over a 30 minute drive from where a majority of the patients identified reside – south and west of Batavia, further away from the West Chicago facility.

- Fresenius Elgin – This 12 station facility was approved by the Board in September 2009 and is not expected to open for another year. This facility was established to account for excessive ESRD growth in the Elgin market area. Dr. Ray, the Medical Director for Fresenius Elgin, certified that he has 108 pre-ESRD patients who will be referred to that facility within the first two years of operation. This facility also serves a separate and distinct patient base from that of Fresenius Batavia. This facility also would be well over a 30 minute drive for patients coming from southern Batavia, North Aurora & Sugar Grove, where a majority of the patients reside.

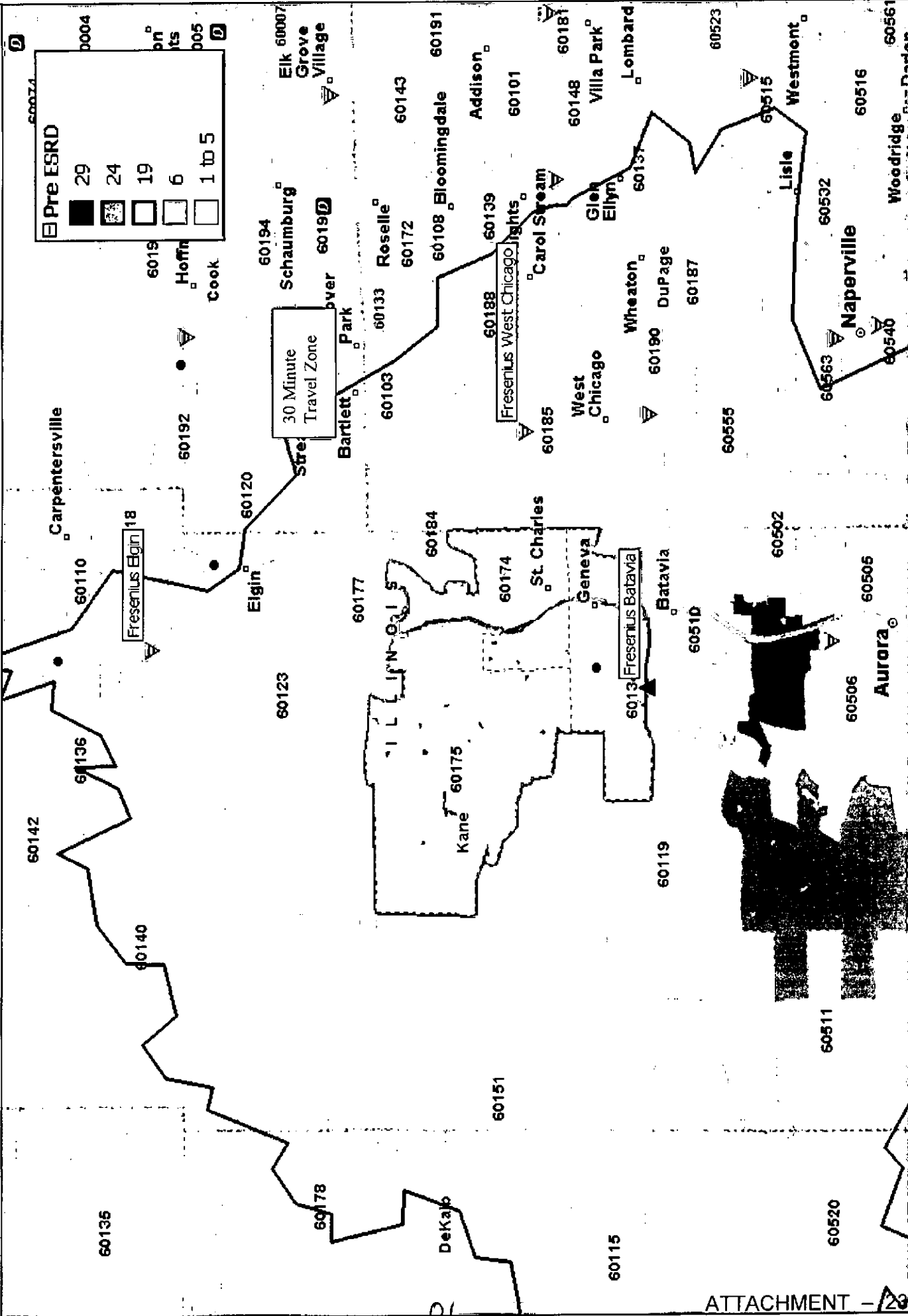
None of these three facilities (Batavia, West Chicago, Elgin) will have any impact on each other since they all serve separate markets driven by separate physicians.

(see map on following page)

B. Not applicable – applicant is not a hospital



# PRE-ESRD PATIENTS IDENTIFIED FOR FRESENIUS BATAVIA IN RELATION TO FRESENIUS ELGIN AND FRESENIUS WEST CHICAGO



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I Lori Wright, CON Specialist for Fresenius Medical Care attest to the fact that as of November 17, 2009, the patient census at Fresenius Medical Care Oswego, according to that facilities patient data base, is 48. This results in a utilization rate of 80%.

Lori Wright

Signature

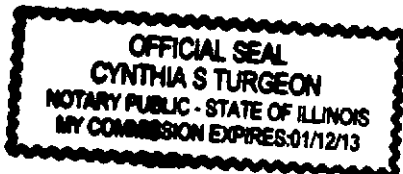
Notarization:

Subscribed and sworn to before me  
this 17<sup>th</sup> day of NOV., 2009

Cynthia S. Turgeon

Signature of Notary

Seal



ATTACHMENT - 23

Criterion 1110.1430 (e)(1) – Staffing

2) A. Medical Director

Dr. Dodhia is currently the Medical Director for Fresenius Aurora Dialysis Center and has been in this capacity for 11 years. Attached is his curriculum vitae.

B. All Other Personnel

Upon opening the facility will hire a Clinic Manager who is a Registered Nurse (RN) from within the company and will hire one Patient Care Technician (PCT). After we have more than one patient, we will hire another RN and another PCT.

Upon opening we will also employ:

- Part-time Registered Dietitian
- Part-time Licensed Master level Social Worker
- Part-time Equipment Technician
- Part-time Secretary

These positions will go to full time as the clinic census increases. As well, the patient care staff will increase to the following:

- One Clinic Manager – Registered Nurse
- Four Registered Nurses
- Ten Patient Care Technicians

- 3) All patient care staff and licensed/registered professionals will meet the State of Illinois requirements. Any additional staff hired must also meet these requirements along with completing a 9 week orientation training program through the Fresenius Medical Care staff education department.

Annually all clinical staff must complete OSHA training, Compliance training, CPR Certification, Skills Competency, CVC Competency, Water Quality training and pass the Competency Exam.

- 4) The above staffing model is required to maintain a 4 to 1 patient-staff ratio at all times on the treatment floor. A RN will be on duty at all times when the facility is in operation.

CURRICULUM VITAE  
**NAVinchandra J. DODHIA, M.D.**

**BUSINESS ADDRESS:**

Dreyer Medical Clinic  
1870 West Galena Boulevard  
Aurora, IL 60506  
630-859-6700

**MEDICAL SPECIALTY:**

Nephrology

**MEDICAL LICENSE:**

Illinois #036-073947

**BOARD CERTIFICATION:**

Internal Medicine, 1988  
Nephrology, 1990, Recredentialed 2000

**EDUCATION:**

**Premedical and Medical**

University of Nairobi  
Kenya  
July 1974 – June 1979

**Internship and Residency**

Coast Province General Hospital  
Mombasa, Kenya  
Rotating Internship – three months each  
Internal Medicine, Pediatrics, Surgery,  
Obstetrics and Gynecology  
August 1979 – July 1980

M. P. Shah Hospital  
Resident Medical Officer  
Intensive Care Unit  
Nairobi, Kenya  
April 1983 – June 1985

Grant Hospital of Chicago  
Chicago, Illinois  
Internal Medicine Residency  
July 1985 – June 1988

**Fellowship**

Rush-Presbyterian-St. Luke's Medical Center  
Chicago, Illinois  
Internal Medicine  
Chairman: Roger L. Bone, M.D.  
July 1988 – June 1990

**EMPLOYMENT HISTORY:**

Dreyer Medical Clinic  
November 1992 – Present

Southern Ohio Health Services Network  
Peebles Health Center – M.D.  
Peebles, OH  
October 1990 – October 1992

**NAVINCHANDRA J. DODHIA, M.D. (continued)**

**(EMPLOYMENT HISTORY):cont'd**

Coast Province General Hospital  
Mombasa, Kenya  
November 1981 – March 1983  
August 1980 – December 1980

NGAO Hospital, Kenya  
Medical Officer in Charge  
70 Bed Rural Hospital  
January 1981 – October 1981

**HOSPITALS:**

Provena Mercy Center  
Aurora, Illinois

Rush-Copley Medical Center  
Aurora, Illinois

**PROFESSIONAL SOCIETIES:**

American College of Physicians  
National Kidney Foundation  
American Society of Nephrology  
American Medical Association  
Illinois State Medical Society  
Kane County Medical Society

**PUBLICATIONS:**

Thomas C.R., Dodhia, N. Common Emergencies in  
Cancer Medicine: Metabolic Syndromes. *Journal of  
the National Medical Association*. In Press

Dodhia N., Rodney R., Jensik S.C., Korbet S.M. Renal  
Transplant Arterial Thrombosis: Association with  
cyclosporine. *American Journal of Kidney Diseases*,  
Vol. XVII, No. 5, May 1991, 532-536.

**BIRTHPLACE:**

Mombasa, Kenya

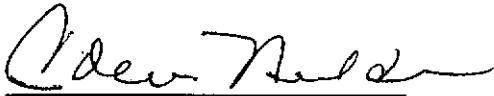
**DATE OF BIRTH:**

November 18, 1955

**Criterion 1110.1430 (e)(5) Medical Staff**

I am the Regional Vice President of the Chicago Central Region of the North Division of Fresenius Medical Care North America. In accordance with 77 II. Admin Code 1110.1430, and with regards to Fresenius Medical Care Batavia, I certify the following:

Fresenius Medical Care Batavia will be an "open" unit with regards to medical staff. Any Board Licensed nephrologist may apply for privileges at the Batavia facility, just as they currently are able to at all Fresenius Medical Care facilities.

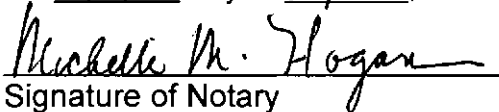


Signature

Coleen Muldoon  
Printed Name

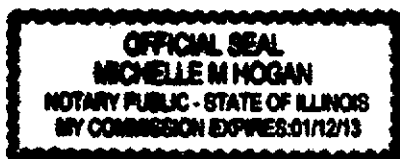
Regional Vice President  
Title

Subscribed and sworn to before me  
this 10th day of Sept., 2009



Signature of Notary

Seal



Criterion 1110.1430 (j) – Assurances

I am the Regional Vice President of the Chicago Central Region of the North Division of Fresenius Medical Care North America. In accordance with 77 Il. Admin Code 1110.1430, and with regards to Fresenius Medical Care Batavia, I certify the following:

1. As supported in this application through expected referrals to Fresenius Medical Care Batavia in the first two years of operation, the facility anticipates achieving and maintaining the utilization standard, specified in 77 Ill. Adm. Code 1100, of 80% and;
2. Fresenius Medical Care hemodialysis patients in Illinois have achieved adequacy outcomes of:
  - o 90.55% of patients had a URR  $\geq$  65%
  - o 92.66% of patients had a Kt/V  $\geq$  1.2

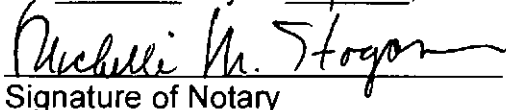
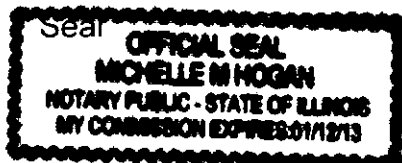
and same is expected for Fresenius Medical Care Batavia.



Signature

Coleen Muldoon/Regional Vice President  
Name/Title

Subscribed and sworn to before me  
this 10th day of Sept., 2009

  
Signature of Notary

**Criterion 1110.1430 (g) – Minimum Number of Stations**

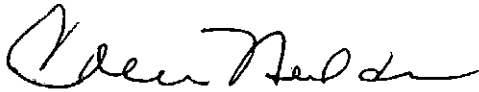
Fresenius Medical Care Batavia is located in the Chicago-Naperville-Joliet-Gary, IL-IN-WI Metropolitan Statistical Area (MSA). A minimum of eight dialysis stations is required to establish an in-center hemodialysis center in an MSA. Fresenius Medical Care Batavia will have twelve dialysis stations thereby meeting this requirement.



Criterion 1110.1430 (f) – Support Services

I am the Regional Vice President of the Chicago Central Region of the North Division of Fresenius Medical Care North America. In accordance with 77 Il. Admin Code 1110.1430, I certify to the following:

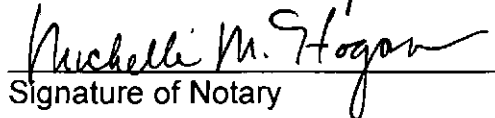
- Fresenius Medical Care utilizes the Proton patient data tracking system in all of its facilities.
- These support services are will be available at Fresenius Medical Care Batavia during all six shifts:
  - Nutritional Counseling
  - Psychiatric/Social Services
  - Home/self training
  - Clinical Laboratory Services – provided by Spectra Laboratories
- The following services will be provided via referral to Provena Mercy Medical Center, Aurora:
  - Blood Bank Services
  - Rehabilitation Services
  - Psychiatric Services



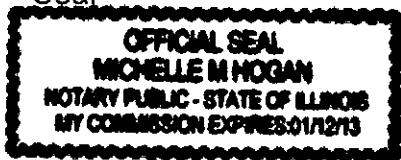
Signature

Coleen Muldoon/Regional Vice President  
Name/Title

Subscribed and sworn to before me  
this 10th day of Sept, 2009

  
Signature of Notary

Seal



## HOSPITAL TRANSFER AGREEMENT

**THIS HOSPITAL TRANSFER AGREEMENT ("Agreement")** is made this 29th day of September, 2009 (the "**Effective Date**") by and between **Fresenius Medical Care Batavia, LLC d/b/a Fresenius Medical Care Batavia**, a health care service provider, an Illinois not-for-profit corporation (the "**Transferring Facility**"), and **Provena Hospitals, d/b/a Provena Mercy Medical Center**, an Illinois not-for-profit corporation ("**Receiving Hospital**"). (Transferring Facility and Receiving Hospital may each be referred to herein as a "**Party**" and collectively as the "**Parties**").

### RECITALS

**WHEREAS**, Transferring Facility provides health care services to the community; and

**WHEREAS**, patients of Transferring Facility ("**Patients**") may require transfer to a Hospital for acute-inpatient or other emergency health care services; and

**WHEREAS**, Receiving Hospital owns and operates a licensed and Medicare certified acute care Hospital in reasonable proximity to Transferring Facility, which has a twenty-four (24) hour emergency room and provides emergency health care services; and

**WHEREAS**, the Parties desire to enter into this Agreement in order to specify the rights and duties of each of the Parties and to specify the procedure for ensuring the timely transfer of patients to Receiving Hospital.

**NOW, THEREFORE**, to facilitate the timely transfer of patients to Receiving Hospital, the Parties hereto agree as follows:

### ARTICLE I TRANSFER OF PATIENTS

In the event that any Patient needs acute inpatient or emergency care and has either requested to be taken to Receiving Hospital, or is unable to communicate a preference for Hospital services at a different Hospital, and a timely transfer to Receiving Hospital would best serve the immediate medical needs of Patient, a designated staff member of Transferring Facility shall contact the admitting office or emergency department of Receiving Hospital (the "**Emergency Department**") to facilitate admission. Receiving Hospital shall receive Patient in accordance with applicable federal and state laws and regulations, the standards of The Joint Commission ("**TJC**") and any other applicable accrediting bodies, and reasonable policies and procedures of Receiving Hospital's responsibility for patient care shall begin when Patient arrives upon Receiving Hospital's property.

**ARTICLE II**  
**RESPONSIBILITIES OF TRANSFERRING FACILITY**

Transferring Facility shall be responsible for performing or ensuring the performance of the following:

- (a) Arranging for ambulance service to Receiving Hospital;
- (b) Designating a person who has authority to represent Transferring Facility and coordinate the transfer of Patient to Receiving Hospital;
- (c) Notifying Receiving Hospital's designated representative prior to transfer to alert him or her of the impending arrival of Patient and provide information on Patient to the extent allowed pursuant to Article IV;
- (d) Notifying Receiving Hospital of the estimated time of arrival of the Patient;
- (e) Recognizing and complying with the requirements of any federal and state law and regulations or local ordinances that apply to the care and transfer of individuals to Receiving Hospitals for emergency care.

**ARTICLE III**  
**RESPONSIBILITIES OF RECEIVING HOSPITAL**

Receiving Hospital shall be responsible for performing or ensuring performance of the following:

- (a) Designating a person who has authority to represent and coordinate the transfer and receipt of Patients into the Emergency Department; and
- (b) Timely admission of Patient to Receiving Hospital when transfer of Patient is medically appropriate as determined by Receiving Hospital attending physician subject to Hospital capacity and patient census issues; and
- (c) Recognizing and complying with the requirements of any federal and state law and regulations or local ordinances that apply to Patients who present at Emergency Departments.

**ARTICLE IV**  
**PATIENT INFORMATION**

In order to meet the needs of Patients with respect to timely access to emergency care, Transferring Facility shall provide information on Patients to Receiving Hospital, to the extent approved in advance or authorized by law and to the extent Transferring Facility has such information available. Such information may include: Patient Name, Social Security Number, Date of Birth, insurance coverage and/or Medicare beneficiary information (if applicable), known

allergies or medical conditions, treating physician, contact person in case of emergency and any other relevant information Patient has provided Transferring Facility in advance, to be given in connection with seeking emergency care. Transferring Facility shall maintain the confidentiality of medical/insurance information provided by Patient and received from Patient, in connection with Patient's provision of such information, Patient's authorization to disclose such information to Emergency Department personnel, all in accordance with applicable state and federal rules and regulations governing the confidentiality of patient information.

**ARTICLE V**  
**NON EXCLUSIVITY**

This Agreement shall in no way give Receiving Hospital an exclusive right of transfer of Patients of Transferring Facility. Transferring Facility may enter into similar agreements with other Receiving Hospitals, and Patients will continue to have complete autonomy with respect to choice of Receiving Hospital service providers, as further described in Article VI.

**ARTICLE VI**  
**FREEDOM OF CHOICE**

In entering into this Agreement, Transferring Facility in no way is acting to endorse or promote the services of Receiving Hospital. Rather, Transferring Facility intends to coordinate the timely transfer of Patients for emergency care. Patients are in no way restricted in their choice of emergency care providers.

**ARTICLE VII**  
**BILLING AND COLLECTIONS**

Receiving Hospital shall be responsible for the billing and collection of all charges for professional services rendered at Receiving Hospital. Transferring Facility shall in no way share in the revenue generated by professional services delivered to Patients at Receiving Hospital.

**ARTICLE VIII**  
**INDEPENDENT RELATIONSHIP**

**Section 8.1** In performing services pursuant to this Agreement, Receiving Hospital and all employees, agents or representatives of Receiving Hospital are, at all times, acting and performing as independent contractors and nothing in this Agreement is intended and nothing shall be construed to create an employer/employee, principal/agent, partnership or joint venture relationship. Transferring Facility shall neither have nor exercise any direction or control over the methods, techniques or procedures by which Receiving Hospital or its employees, agents or representatives perform their professional responsibilities and functions. The sole interest of Transferring Facility is to coordinate the timely transfer of Patients to Receiving Hospital for emergency care.

**Section 8.2** Receiving Hospital shall be solely responsible for the payment of compensation and benefits to its personnel and for compliance with any and all payments of all taxes, social security, unemployment compensation and worker's compensation.

**Section 8.3** Notwithstanding the terms of this Agreement, in no event shall Receiving Hospital or any Receiving Hospital personnel be responsible for the acts or omissions of non-Receiving Hospital personnel.

**ARTICLE IX  
INSURANCE**

Both Parties shall maintain, at no cost to the other Party Facility, professional liability insurance in an amount customary for its business practices. Receiving Hospital shall provide evidence of the coverage required herein to Transferring Facility on an annual basis.

**ARTICLE X  
INDEMNIFICATION**

Each Party shall indemnify, defend and hold harmless the other Party from and against any and all liability, loss, claim, lawsuit, injury, cost, damage or expense whatsoever (including reasonable attorneys' fees and court costs), imposed by a third party and arising out of, incident to or in any manner occasioned by the performance or nonperformance of any duty or responsibility under this Agreement by such indemnifying Party, or any of its employees, agents, contractors or subcontractors.

**ARTICLE XI  
TERM AND TERMINATION**

**Section 11.1 Term.** The term of this Agreement shall commence on the Effective Date and shall continue in effect for one (1) year (the "**Initial Term**") and SHALL RENEW ON AN ANNUAL BASIS ("**RENEWAL TERM**") ABSENT WRITTEN NOTICE BY EITHER PARTY OF NON-RENEWAL TO THE OTHER PARTY THIRTY (30) CALENDAR DAYS PRIOR TO THE EXPIRATION OF THE INITIAL TERM OR ANY SUBSEQUENT RENEWAL TERM OF THIS AGREEMENT.

**Section 11.2 Events of Termination.** Notwithstanding the foregoing, this Agreement may be terminated upon the occurrence of any one (1) of the following events:

(a) Either Party may terminate this Agreement at any time upon sixty (60) days' prior written notice to the other Party.

(b) If either Party shall apply for or consent to the appointment of a receiver, trustee or liquidator of itself or of all or a substantial part of its assets, file a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they become due, make a general assignment for the benefit of creditors, file a petition or an answer seeking reorganization or arrangement with creditors or take advantage of any insolvency law, or if an order, judgment, or decree shall be entered by a court of competent jurisdiction or an application of a creditor, adjudicating such Party to be bankrupt or insolvent, or approving a petition seeking reorganization of such Party or appointing a receiver, trustee or liquidator of such Party or of all or a substantial part of its assets, and such order, judgment, or decree shall continue in effect and unstayed for a period of thirty

(30) consecutive calendar days, then the other Party may terminate this Agreement upon ten (10) business days' prior written notice to such Party.

**Section 11.3 Immediate Termination.** Notwithstanding anything to the contrary herein, this Agreement will be terminated immediately upon the following events: (a) the suspension or revocation of the license, certificate or other legal credential authorizing Receiving Hospital to provide emergency care services; (b) termination of Receiving Hospital's participation in or exclusion from any federal or state health care program for any reason; (c) the cancellation or termination of Receiving Hospital's professional liability insurance required under this Agreement without replacement coverage having been obtained.

## **ARTICLE XII**

### **MISCELLANEOUS PROVISIONS**

**Section 12.1 Entire Agreement.** This Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof. This Agreement supersedes any and all other prior agreements either written or oral, between the Parties with respect to the subject matter hereof.

**Section 12.2 Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute one and the same instrument.

**Section 12.3 Waiver.** Any waiver of any terms and conditions hereof must be in writing, and signed by the Parties. A waiver of any of the terms and conditions hereof shall not be construed as a waiver of any other terms and conditions hereof.

**Section 12.4 Severability.** The provisions of this Agreement shall be deemed severable, and, if any portion shall be held invalid, illegal or unenforceable for any reason, the remainder of this Agreement shall be effective and binding upon the Parties.

**Section 12.5 Headings.** All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

**Section 12.6 Assignment.** This Agreement, being intended to secure the services of Receiving Hospital, shall not be assigned, delegated or subcontracted by Receiving Hospital without prior written consent of Transferring Facility.

**Section 12.7 Governing Law.** This Agreement shall be construed under the laws of the state of Illinois, without giving affect to choice of law provisions.

**Section 12.8 Notices.** Any notice herein required or permitted to be given shall be in writing and shall be deemed to be duly given on the date of service if served personally on the other Party, or on the fourth (4th) day after mailing, if mailed to the other Party by certified mail, return receipt requested, postage pre-paid, and addressed to the Parties as follows:

**To Transferring Facility**

Fresenius Medical Care  
One Westbrook Corporate Center  
Tower One, Suite 1000  
Westchester, IL 60154

**To Receiving Hospital**

President & CEO  
Provena Mercy Medical Center  
1325 N. Highland Ave.  
Aurora, IL 60506

**Copy to:**

General Counsel  
Provena Health  
19065 Hickory Creek Drive, Suite 115  
Mokena, IL 60448

or such other place or places as either Party may designate by written notice to the other.

**Section 12.9 Amendment.** This Agreement may be amended upon mutual, written agreement of the Parties.

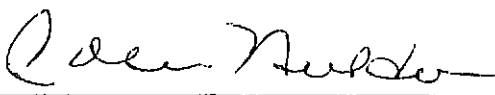
**Section 12.10 Regulatory Compliance.** The Parties agree that nothing contained in this Agreement shall require Transferring Facility to refer patients to Receiving Hospital for emergency care services or to purchase goods and services. Notwithstanding any unanticipated effect of any provision of this Agreement, neither Party will knowingly and intentionally conduct its behavior in such a manner as to violate the prohibition against fraud and abuse in connection with the Medicare and Medicaid programs.

**Section 12.11 Access to Books and Records.** If applicable, upon written request of the Secretary of Health and Human Services or the Comptroller General of the United States, or any of their duly authorized representatives, Receiving Hospital shall make available to the Secretary or to the Comptroller General those contracts, books, documents and records necessary to verify the nature and extent of the costs of providing its services under this Agreement. Such inspection shall be available for up to four (4) years after the rendering of such service. This Section is included pursuant to and is governed by the requirements of Public Law 96-499 and Regulations promulgated thereunder. The Parties agree that any attorney-client, accountant-client or other legal privileges shall not be deemed waived by virtue of this Agreement.

**IN WITNESS THEREOF,** the Parties have caused this Agreement to be executed by their duly authorized officers hereto setting their hands as of the date first written above.

**TRANSFERRING FACILITY**

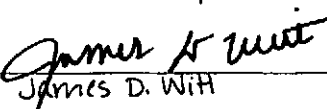
Fresenius Medical Care Batavia, LLC d/b/a  
Fresenius Medical Care Batavia

By: 

Its: Regional Vice President

**RECEIVING HOSPITAL**

Provena Hospitals, d/b/a,  
Provena Mercy Medical Center,  
an Illinois not-for-profit corporation

By:   
James D. With

Its: President + CEO



# MedProperties

October 1, 2009

Mr. Loren Guzik  
Associate Director, Office Group  
Cushman & Wakefield of Illinois, Inc.  
455 N. Cityfront Plaza Drive, Suite 2800  
Chicago, IL. 60611-5555

**RE: FRESenius MEDICAL CARE DIALYSIS CENTER – BATAVIA, IL.**

Dear Loren:

Thank you for the request for proposal from your client, Fresenius Medical Care. We are pleased to submit this proposal to lease space at the Dreyer Medical Campus in Batavia, Illinois under the following key terms and conditions:

1. OWNERSHIP: DBMC Associates, LLC or its assignee  
720 N. Franklin Street, #300, Chicago, IL. 60654  
("Landlord")
2. LOCATION: 2550 West Fabyan Parkway, Batavia, IL. 60510
3. DEVELOPER: MedProperties Group, Chicago, IL.
4. PERMANENT INDEX NUMBER (P.I.N.): To be established. The parcel is currently being subdivided into Lot 1 (the available parcel) and Lot 2 (Dreyer Medical Clinic parcel) of the Campbell Subdivision. A separate PIN will be available at a future date.
5. TENANT: Fresenius Medical Care North America ("Tenant").
6. SPACE REQUIRED: Approximately 7,500 usable square feet, based on the schematic layout prepared by the Tenant and reviewed by the Landlord ("Premises"). The

FMC Batavia proposal 10-1-09.doc

720 North Franklin Street Suite no. 300  
Chicago, Illinois 60610

ATTACHMENT – 75

96



Property has been fully entitled by the City of Batavia to include two 8,610 rsf buildings on Lot 1.

7. PRIMARY TERM: Minimum of ten (10) years
8. POSSESSION: Prior to Tenant taking possession of its Premises to commence its tenant improvement construction, the following steps must take place:
  - 1.) Upon lease execution, Landlord shall commence with the planning, design, and approvals of Tenant's core and shell building, subject to Tenant's indemnification of all associated costs.
  - 2.) Upon CON approval by the Health Facilities Planning Board, Landlord will commence construction of the building.
  - 3.) Landlord shall deliver the Premises to Tenant upon substantial completion of the building ready for Tenant contractor to commence construction of tenant improvements ("Possession").
9. RENT COMMENCEMENT: Rent shall commence 90 days after Possession.
10. OPTION TO RENEW: Tenant shall have the option to renew the term of the lease for three (3) five-year periods at the greater of its then escalated rent or the market rate for a similar medical use by providing the Landlord with no less than twelve (12) months and no more than eighteen (18) months prior written notice.
11. RENTAL RATE: \$25.00/rsf.
12. OPERATING EXPENSES & TAXES: The lease is a triple net lease structure, wherein the Tenant shall be responsible for all of its operating expenses and taxes ("OE&T").
13. NET RENT ESCALATION: The net rent will escalate 3 1/2% per annum commencing after the first lease year.
14. TI ALLOWANCE: Landlord shall provide Tenant with a tenant improvement allowance ("TI") of \$40.00/rsf. Tenant shall be responsible for all costs in excess of

Landlord provided tenant improvement allowance. Tenant shall not be required to remove its tenant improvements at the end of its term.

15. SHELL CONDITIONS: Landlord shall provide Tenant with a "build to suit" warm shell with HVAC, utilities, parking, landscaping and site improvements to meet Tenant's specifications and in compliance with the existing PUD and all applicable laws, codes and ordinances.
16. SIGNAGE: Tenant shall have the right to display its listing on the existing campus monument sign at the corner of Fabyan Parkway/Branson Drive. Additionally, Tenant will have building façade signage and building directory signage. All signage at Tenant's cost for signage and installation.
17. USE: Dialysis Center
18. TENANT'S PLANS: Tenant will provide the following: All space planning, architectural, and mechanical drawings required to construct the tenant improvements, including construction drawings stamped and submitted for approvals. All building permits and associated fees shall be the Tenant's responsibility.
19. PRELIMINARY PLANS: AutoCad file of the approved building and detailed building specifications to be provided.
20. GUARANTY: This lease shall have the guarantee of Fresenius Medical Care Holding, subject to Landlord's review and approval of its financial statements.
21. PARKING: Landlord shall provide a minimum of Tenant's standard parking ratio (4/1,000sf).
22. ZONING: The land is zoned B-3 Arterial-oriented commercial district, which includes office, general, business, retail, and health and wellness establishments. Confirmation of City of Batavia approval of Tenant's use is attached.
23. SNDA: Landlord will provide a non-disturbance agreement subject to Landlord approval and requirements.
24. ENVIRONMENTAL: Landlord shall provide standard environmental indemnifications.

25. EXCLUSIVE TERRITORY: Landlord agrees not to lease space under its control to another dialysis provider subject to approval by Dreyer Medical.
26. CON CONTINGENCY: Landlord shall provide Tenant with a Certificate of Need contingency in its lease.
27. BROKERAGE: Landlord recognizes Cushman & Wakefield of Illinois, Inc. as Tenant's exclusive agent for this transaction, and shall pay agent a procuring broker's fee per separate agreement.
28. EXPIRATION OF PROPOSAL: This proposal shall expire in 30 days.

Landlord and Tenant acknowledge that this proposal is not a lease and that it is intended as the basis for the preparation of a lease. The lease shall be subject to Landlord and Tenant's approval and only a fully executed and delivered document shall constitute a lease for the Premises.

Please feel free to call me at 312-568-4905 if you have any questions regarding this proposal.

Sincerely,



**Paul A. Kopecki**  
**Managing Partner**  
**MedProperties Group**

cc. M. Campbell

attach: City of Batavia Tenant Use Approval Letter

EXHIBIT 1

LEASE SCHEDULE NO. 769-0002105-016  
(True Lease)

LESSOR: SIEMENS FINANCIAL SERVICES, INC.  
("Lessor")

Address: 170 Wood Ave South  
Iselin, NJ 08830

LESSEE: NATIONAL MEDICAL CARE, INC.  
a Delaware corporation  
("Lessee")  
Address: 920 Winter Street  
Waltham, MA 02451

1. Lessor and Lessee have entered into a Master Equipment Lease Agreement dated as of March 10, 2008 ("Master Lease"), including this Schedule (together, the "Lease"), pursuant to which Lessor and Lessee have agreed to lease the equipment described in Exhibit A hereto (the "Equipment"). Lessee and Lessor each reaffirm all of its respective representations, warranties and covenants set forth in the Master Lease, all of the terms and provisions of which are incorporated herein by reference, as of the date hereof. Lessee further certifies to Lessor that Lessee has selected the Equipment and prior to the execution of this Schedule has received and approved a purchase order, purchase agreement or supply contract under which the Equipment will be acquired for purposes of this Lease.

2. The Acquisition Cost of the Equipment is: \$ 3,573,373.64

3. The Equipment will be located at the location specified in Exhibit A hereto, unless the Equipment is of the type normally used at more than one location (such as vehicular equipment, construction machinery or the like), in which case the Equipment will be used in the area specified on Exhibit A hereto.

4. TERM OF LEASE: The term for which the Equipment shall be leased shall be for 72 months (the "Initial Lease Term"), commencing on the Lease Term Commencement Date as set forth in the Acceptance Certificate to this Schedule, and expiring 03/30/2016, unless renewed, extended, or sooner terminated in accordance with the terms of the Lease.

6. RENT: (a) Payable in monthly installments on the 26th day of each month during the Initial Lease Term as follows:

| Rental<br>Payment<br>Numbers | Number of<br>Rental<br>Payments | Amount of<br>Each Rental<br>Payment |
|------------------------------|---------------------------------|-------------------------------------|
| 1-72                         | 72                              | \$53,064.37                         |

Lessor will invoice Lessee for all sales, use and/or personal property taxes as and when due and payable in accordance with applicable law, unless Lessee delivers to Lessor a valid exemption certificate with respect to such taxes. Delivery of such certificate shall constitute Lessee's representation and warranty that no such tax shall become due and payable with respect to the Equipment and Lessee shall indemnify and hold harmless Lessor from and against any and all liability or damages, including late charges and interest which Lessor may incur by reason of the assessment of such tax.

6. OTHER PAYMENTS:

(a) Lessee agrees to pay Rental Payments in advance.

7. **EARLY TERMINATION OPTION:** So long as no Event of Default under the Lease, nor any event which upon notice or lapse of time or both would constitute such an Event of Default has occurred and is continuing, Lessee shall have the option to terminate the Lease for all, but not less than all, of the Equipment on the rental payment date for the twenty-fourth (24th) monthly rental payment (the "Early Termination Date"). Lessee shall notify Lessor in writing of Lessee's intention to exercise such termination option at least ninety (90) days prior to the Early Termination Date of such Lease. Lessee shall pay to Lessor on the Early Termination Date an aggregate amount (the "Termination Amount") equal to: (i) all rental payments, late charges and other amounts due and owing under the Lease, including the rental payment due on the Early Termination Date; plus (ii) any and all taxes, assessments and other charges due in connection with the termination of the Lease; plus (iii) 64% of the original Acquisition Cost of the Equipment as set forth herein.

In addition to the payment of the Termination Amount, Lessee shall return all of the Equipment to Lessor on the Early Termination Date pursuant to and in the condition required by the terms of the Lease.

In the event Lessee shall not pay the Termination Amount on the Early Termination Date and return the Equipment to Lessor pursuant to, and in the condition required by the Lease, then the Lease Term for the Equipment shall continue in full force and effect and this Early Termination Option shall be null and void and of no further force or effect.

8. **EARLY PURCHASE OPTION:** So long as no Event of Default under the Lease, nor any event which upon notice or lapse of time or both would constitute such an Event of Default has occurred and is continuing, Lessee shall have the option to terminate the Lease and purchase all, but not less than all, of the Equipment on the rental payment date for the sixtieth (60th) monthly rental payment (the "Early Purchase Option Date"). Lessee shall notify Lessor in writing of Lessee's intention to exercise such early purchase option at least ninety (90) days prior to the Early Purchase Option Date of such Lease. Lessee shall pay to Lessor on the Early Purchase Option Date an aggregate amount (the "Purchase Price") equal to: (i) all rental payments, late charges and other amounts due and owing under the Lease, including the rental payment due on the Early Purchase Option Date; plus (ii) any and all taxes, assessments and other charges due in connection with the termination of the Lease and the purchase of the Equipment; plus (iii) 28.02% of the original Acquisition Cost of the Equipment as set forth herein.

Provided that Lessor shall have received the Purchase Price on the Early Purchase Option Date, Lessor shall convey all of its right, title and interest in and to the Equipment to Lessee on the Early Purchase Option Date, on an "AS-IS", "WHERE-IS" BASIS WITHOUT REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, and without recourse to Lessor; provided however, that notwithstanding anything else herein to the contrary, Lessor shall warrant that the Equipment is free and clear of all liens, charges and encumbrances created by, through or under Lessor, and that Lessor has good and lawful right, power and authority to sell said Equipment to Lessee.

In the event Lessee shall not pay the Purchase Price on the Early Purchase Option Date then the Initial Lease Term or any renewal term for the Equipment shall continue in full force and effect and this Early Purchase Option shall be null and void and of no further force or effect.

9. **PURCHASE OPTION:** So long as no Event of Default, nor any event which upon notice or lapse of time or both would constitute an Event of Default, has occurred and is continuing under the Lease, and the Lease has not been earlier terminated, and upon not less than ninety (90) days prior written notice, Lessee shall have the option, upon expiration of the Initial Lease Term, renewal term or Extended Term, to purchase all, but not less than all, of Lessor's right, title and interest in and to the Equipment at the end of the Lease Term for a Purchase Option Price (hereinafter defined), on the last day of the Lease Term, in immediately available funds.

The Purchase Option Price shall be equal to the Fair Market Value of the Equipment (hereinafter defined) plus any sales, use, property or excise taxes on or measured by such sale, any other amounts accrued and unpaid under the Lease and any other expenses of transfer including UCC termination fees.

The "Fair Market Value" of the Equipment, shall be determined on the basis of, and shall be equal in amount to the value which would be obtained in, an arm's-length transaction between an informed and willing buyer-user (other than a lessee currently in possession or a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. For purposes of determining Fair Market Value it will be assumed that as of the date of determination that the Equipment is in at least the condition required by the Lease. If during or after the period of thirty (30) days from Lessor's receipt of the aforesaid written notice from Lessee of Lessee's intention to exercise said purchase option, Lessor and Lessee determine that they cannot agree upon such fair market value, then such value shall be determined in accordance with the foregoing definition by a qualified independent appraiser as selected by mutual agreement between Lessor and Lessee, or failing such agreement, by a panel of three independent appraisers, one of whom shall be selected by Lessor, the second by Lessee and the third designated by the first two selected. If any party refuses or fails to appoint an appraiser or a third appraiser cannot be agreed upon by the other two appraisers, such appraiser or appraisers shall be selected in accordance with the rules for commercial arbitration of the

015 Exhibit 12.doc

American Arbitration Association. The appraisers shall be instructed to make such determination within a period of twenty (20) days following appointment, and shall promptly communicate such determination in writing to Lessor and Lessee. The determination of Fair Market Value so made by the sole appraiser or by a majority of the appraisers, if there is more than one, shall be conclusively binding upon both Lessor and Lessee. All appraisal costs, fees and expenses shall be payable by Lessee. The sale of the Equipment by Lessor to Lessee shall be on an AS-IS, WHERE-IS basis, without recourse to, or warranty by, Lessor, provided however, that notwithstanding anything else herein to the contrary, Lessor shall warrant that the Equipment is free and clear of all liens, charges and encumbrances created by, through or under Lessor, and that Lessor has good and lawful right, power and authority to sell said Equipment to Lessee.

Lessee shall be deemed to have waived this Purchase Option unless it provides Lessor written notice of its irrevocable election to exercise this option within fifteen (15) days after Lessee is advised of the Fair Market Value of the Equipment.

Lessee may elect to return all, but not less than all, of the Equipment at the end of the Initial Lease Term or any renewal term, provided that such return will only be permitted if (i) the Lessee provides the Lessor with written notice of its intention to return the Equipment not less than ninety (90) days prior to the end of the Initial Term, and (ii) the return of the Equipment is in accordance with the terms of the Lease and any Schedules, Acceptance Certificates, Riders, Exhibits and Addenda thereto.

If, for any reason whatsoever, the Lessee does not purchase the Equipment at the end of the Initial Lease Term or any renewal term in accordance with the foregoing, or exercise their option to return the Equipment as set forth above, the lease term of the Equipment shall and without further action on the part of Lessee be extended on a month-to-month basis with rentals payable monthly calculated at one hundred five percent (105%) of the highest monthly rental payable during the Initial Lease Term (the "Extended Term"). At the end of such Extended Term, the Lessee shall have the option to either: (i) return the Equipment to the Lessor in accordance with the terms of the Lease; or (ii) purchase the Equipment for its then Fair Market Value as determined in accordance with the provisions set forth above. The Extended Term shall continue until (a) Lessee provides Lessor with not less than ninety (90) days prior written notice of the anticipated date Lessee will return the Equipment and Lessee returns the Equipment in accordance with the return provisions of this Lease, or (b) Lessee provides Lessor with not less than ninety (90) days prior written notice of Lessee's exercise of its Fair Market Value purchase option with respect to the Equipment.

10. STIPULATED LOSS VALUES:

| Rental Payment # | Percentage of Acquisition Cost | Rental Payment # | Percentage of Acquisition Cost |
|------------------|--------------------------------|------------------|--------------------------------|
| 1                | 101.47                         | 37               | 60.22                          |
| 2                | 100.61                         | 38               | 58.94                          |
| 3                | 99.65                          | 39               | 57.66                          |
| 4                | 98.66                          | 40               | 56.37                          |
| 5                | 97.55                          | 41               | 55.08                          |
| 6                | 96.63                          | 42               | 53.78                          |
| 7                | 95.48                          | 43               | 52.47                          |
| 8                | 94.41                          | 44               | 51.16                          |
| 9                | 93.33                          | 45               | 49.84                          |
| 10               | 92.25                          | 46               | 48.51                          |
| 11               | 91.15                          | 47               | 47.18                          |
| 12               | 90.05                          | 48               | 45.84                          |
| 13               | 88.95                          | 49               | 44.50                          |
| 14               | 87.83                          | 50               | 43.15                          |
| 15               | 86.71                          | 51               | 41.79                          |
| 16               | 85.68                          | 52               | 40.43                          |
| 17               | 84.44                          | 53               | 39.06                          |
| 18               | 83.29                          | 54               | 37.69                          |
| 19               | 82.14                          | 55               | 36.31                          |

015 Exhibits 12.doc

| Rental Payment # | Percentage of Acquisition Cost | Rental Payment # | Percentage of Acquisition Cost |
|------------------|--------------------------------|------------------|--------------------------------|
| 20               | 80.97                          | 58               | 34.92                          |
| 21               | 79.81                          | 57               | 33.53                          |
| 22               | 78.63                          | 58               | 32.13                          |
| 23               | 77.45                          | 59               | 30.72                          |
| 24               | 76.26                          | 60               | 29.31                          |
| 25               | 75.06                          | 61               | 27.89                          |
| 26               | 73.86                          | 62               | 26.47                          |
| 27               | 72.66                          | 63               | 25.04                          |
| 28               | 71.44                          | 64               | 23.61                          |
| 29               | 70.22                          | 65               | 22.17                          |
| 30               | 68.99                          | 66               | 20.72                          |
| 31               | 67.76                          | 67               | 19.27                          |
| 32               | 66.52                          | 68               | 17.82                          |
| 33               | 65.27                          | 69               | 16.35                          |
| 34               | 64.01                          | 70               | 14.88                          |
| 35               | 62.75                          | 71               | 13.40                          |
| 36               | 61.49                          | 72               | 11.92                          |

Stipulated Loss Values are due in addition to the Rental Payment due on the same date.

IN WITNESS WHEREOF, the parties hereto certify that they have read, accepted and caused this Individual Leasing Record to be duly executed by their respective officers thereunto duly authorized.

Dated: 3/30/09

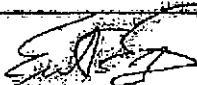
LESSOR:

Siemens Financial Services, Inc.

By: Carol Walters

Name: CAROL WALTERS

Title: VICEPRESIDENT-DOCUMENTATION



Ernest Erigo  
Sr. Transaction Coordinator

LESSEE:

National Medical Care, Inc.

By: MARCK FAWCETT

Name: MARCK FAWCETT

Title: TREASURER

015 Exhibits 12.doc





**DELL****QUOTATION**

QUOTE #: 485293558

Customer #: 84405601

Contract #: 70137

Customer Agreement #: Dell Std Terms

Quote Date: 4/22/09

Date: 4/22/09 12:33:14 PM

Customer Name: FRESENIUS MEDICAL CARE N A

|                      |          |                                |   |
|----------------------|----------|--------------------------------|---|
| TOTAL QUOTE AMOUNT:  | \$975.02 |                                |   |
| Product Subtotal:    | \$864.59 |                                |   |
| Tax:                 | \$46.43  |                                |   |
| Shipping & Handling: | \$64.00  |                                |   |
| Shipping Method:     | Ground   | Total Number of System Groups: | 1 |

| GROUP: 1  | QUANTITY: 1  | SYSTEM PRICE: \$584.51 | GROUP TOTAL: \$584.51 |
|---|--|------------------------|-----------------------|
| Base Unit:  | OptiPlex 760 Small Form Factor Base Standard PSU (224-2219)  |                        |                       |
| Processor:  | OptiPlex 760, Core 2 Duo E7300/2.66GHz, 3M, 1066FSB (311-9514)   |                        |                       |
| Memory:   | 2GB, Non-ECC, 800MHz DDR2, 2X1GB OptiPlex (311-7374)   |                        |                       |
| Keyboard:   | Dell USB Keyboard, No Hot Keys English, Black, OptiPlex (330-1987)   |                        |                       |
| Monitor:  | Dell UltraSharp 1708FP BLK w/AdjStn, 17 Inch, 1x08FP BLK OptiPlex, Precision and Latitude (320-7682)           |                        |                       |
| Video Card:   | Integrated Video, GMA 4500, Dell OptiPlex 760 and 960 (320-7407)   |                        |                       |
| Hard Drive:   | 80GB SATA 3.0Gb/s and 8MB DataBurst Cache, Dell OptiPlex (341-8006)  |                        |                       |
| Floppy Disk Drive:  | No Floppy Drive with Optical Filler Panel, Dell OptiPlex Small Form Factor (341-4609)                          |                        |                       |
| Operating System:   | Windows XP PRO SP3 with Windows Vista Business License English, Dell OptiPlex (420-9570)                       |                        |                       |
| Mouse:  | Dell USB 2 Button Optical Mouse with Scroll, Black OptiPlex (330-2733)   |                        |                       |
| NIC:  | ASF Basic Hardware Enabled Systems Management (330-2901)   |                        |                       |
| CD-ROM or DVD-ROM Drive:  | 24X24 CDRW/DVD Combo, with Cyberlink Power DVD, No Media Media, Dell OptiPlex 960 Small Form Factor (313-7071) |                        |                       |
| CD-ROM or DVD-ROM Drive:  | Cyberlink Power DVD 8.1, with Media, Dell OptiPlex/Precision (420-9179)  |                        |                       |
| Sound Card:   | Heat Sink, Mainstream, Dell OptiPlex Small Form Factor (311-9520)  |                        |                       |
| Speakers:   | Dell AX510 black Sound Bar for UltraSharp Flat Panel Displays Dell OptiPlex/Precision/ Latitude (313-6414)     |                        |                       |
| Cable:  | OptiPlex 760 Small Form Factor Standard Power Supply (330-1984)  |                        |                       |
| Documentation Diskette:   | Documentation, English, Dell OptiPlex (330-1710)   |                        |                       |
| Documentation Diskette:   | Power Cord, 125V, 2M, C13, Dell OptiPlex (330-1711)  |                        |                       |
| Factory Installed Software:   | No Dell Energy Smart Power Management Settings, OptiPlex (467-3554)  |                        |                       |
| Feature:  | Resource DVD contains Diagnostics and Drivers for Dell OptiPlex 760 Vista (330-2019)                           |                        |                       |
| Service:  | ProSupport for IT: Next Business Day Parts and Labor Onsite Response Initial Year (991-6370)                   |                        |                       |
| Service:  | ProSupport for IT: Next Business Day Parts and Labor Onsite Response 2 Year Extended (991-3642)                |                        |                       |
| Service:  | Dell Hardware Limited Warranty Plus Onsite Service Initial Year (992-6507)                                     |                        |                       |
| Service:  | Dell Hardware Limited Warranty Plus Onsite Service Extended Year(s) (992-6508)                                 |                        |                       |
| Service:  | ProSupport for IT: 7x24 Technical Support for certified IT Staff, Initial (984-6640)                           |                        |                       |
| Service:  | ProSupport for IT: 7x24 Technical Support for certified IT Staff, 2 Year Extended (984-0002)                   |                        |                       |
| Thank you choosing Dell ProSupport. For tech support, visit <a href="http://support.dell.com/ProSupport">http://support.dell.com/ProSupport</a> |  |                        |                       |

|               |   |
|---------------|---|
| Service:      | or call 1-866-516-31 (989-3449)   |
| Installation: | Standard On-Site Installation Declined (900-9987)                                 |
| Installation: | Standard On-Site Installation Declined (900-9987)                                 |
| Misc:         | Shipping Material for System Cypher Small Form Factor,Dell OptiPlex (330-2193)    |
|               | Vista Premium Downgrade Relationship Desktop (310-9161)                           |
|               | CFI Routing SKU (365-0257)  |
|               | CFI,Rollup,Integration Service,Image Load (366-1416)                              |
|               | CFI,Rollup,Custom Project,Fee for ESLH (366-1551)                                 |
|               | CFI,Rollup,Integration Services,BIOS Setting (366-1666)                           |
|               | CFI,Information,Vista To WXP ONLY,Factory Install (372-6272)                      |
|               | CFI,Software,Image,Quick Image,Titan,Factory Install (372-9740)                   |
|               | CFI,BIOS,Across Line Of Business,Wakeup-on-lan, Enable,Factory Install (374-4558) |
|               | CFI,Information,OptiPlex 760 Only,Factory Install (374-8402)                      |
|               |   |

| SOFTWARE & ACCESSORIES   |          |                            |          |
|--|----------|----------------------------|----------|
| Product  | Quantity | Unit Price                 | Total    |
| Office 2007 Sngl C 021-07777 (A0748570)                            | 1        | \$259.68                   | \$259.68 |
| Windows Server CAL 2008 Sngl MVL Device CAL C R18-02830 (A1511502) | 1        | \$20.40                    | \$20.40  |
| Number of S & A Items: 2   |          | S&A Total Amount: \$280.08 |          |

|                |                       |            |               |
|----------------|-----------------------|------------|---------------|
| SALES REP:     | PHIL CLINTON          | PHONE:     | 1800-274-3355 |
| Email Address: | Phil_Clinton@Dell.com | Phone Ext: | 723-3128      |

For your convenience, your sales representative, quote number and customer number have been included to provide you with faster service when you are ready to place your order. Orders may be faxed to the attention of your sales representative to 1-866-230-4217. You may also place your order online at [www.dell.com/qto](http://www.dell.com/qto)

This quote is subject to the terms of the agreement signed by you and Dell, or absent such agreement, to Dell's Terms of Sale.

Prices and tax rates are valid in the U.S. only and are subject to change.

**\*\*Sales/use tax is a destination charge, i.e. based on the "ship to" address on your purchase order. Please indicate your taxability status on your PO. If exempt, please fax exemption certificate to Dell Tax Department at 888-863-8778, referencing your customer number. If you have any questions regarding tax please call 800-433-9019 or email Tax\_Department@dell.com. \*\***

All product and pricing information is based on latest information available. Subject to change without notice or obligation.

LCD panels in Dell products contain mercury, please dispose properly. Please contact Dell Financial Services' Asset Recovery Services group for EPA compliant disposal options at [US\\_Dell\\_ARS\\_Requests@dell.com](mailto:US_Dell_ARS_Requests@dell.com). Minimum quantities may apply.

Shipments to California: For certain products, a State Environmental Fee Of Up to \$10 per item may be applied to your invoice as early as Jan 1, 2005. Prices in your cart do not reflect this fee. More Info: or refer to URL [www.dell.com/environmentalfee](http://www.dell.com/environmentalfee)

Computer Quote

file://C:\Documents and Settings\jurich\Local Settings\Templates\407D04\Quote ATTACHMENT 106 75

106

**Criterion 1120.210(c), Operating Start-up Costs**

|                                      |               |
|--------------------------------------|---------------|
| Estimated 1-month personnel expense: | \$28,420      |
| Estimated 2 weeks medical expense:   | 3,035         |
| Estimated 2 weeks rent expense:      | 8,781         |
| Estimated 1-month other expense:     | <u>12,370</u> |
| Total:                               | \$52,606      |

It is estimated that \$52,606 in start up costs will be incurred. No deficits are anticipated from the operation. Total funding for the project is available from cash and securities.

2008 Financial Statements for Fresenius Medical Care Holdings, Inc. were submitted previously to the Board with Project #09-028 and are the same financials that pertain to this application. In order to reduce bulk these financials can be referred to if necessary.

**Section V. Review Criteria Relating To Financial Feasibility (FIN)**

**A. Criterion 1120.210.a, Financial Viability**

**2. Variance**

\*Ratios provided are for Fresenius Medical Care, Holdings, Inc. Fresenius Medical Care Batavia, LLC, Fresenius Medical Care Ventures, LLC, Fresenius Medical Care Ventures Holding Company, Inc. and National Medical Care, Inc. do not maintain audited financial statements. Fresenius Medical Care Holdings, Inc. is willing and able to provide financial support to Fresenius Medical Care Batavia, LLC if necessary.



# Fresenius Medical Care

September 30, 2009

Fresenius Medical Care Holdings, Inc (the Company or FMCH) provides the internal financing necessary for all acquisitions and construction for its wholly-owned subsidiaries.

The Financial and Economic Ratios for FMCH are as follows:

|                                 | <u>Required</u> | <u>12/07</u> | <u>12/08</u> | <u>12/09</u> | <u>12/10</u> | <u>12/11</u> | <u>12/12</u> | <u>12/13</u> |
|---------------------------------|-----------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
| Net Margin (Last Twelve Months) | 3.5%            | 7.3%         | 7.6%         | 6.7%         | 6.7%         | 6.7%         | 6.7%         | 6.7%         |
| Debt to Total Capitalization    | 80.0%           | 41.9%        | 39.5%        | 34.9%        | 34.9%        | 34.9%        | 34.9%        | 34.9%        |
| Days Cash on Hand               | 45.0            | **10.0       | **7.2        | **6.4        | **6.4        | **6.4        | **6.4        | **6.4        |
| Current Ratio                   | 1.5             | **1.0        | **1.2        | **1.1        | **1.1        | **1.1        | **1.1        | **1.1        |
| Cushion Ratio                   | 5.0             | **1.09       | **0.65       | **0.64       | **0.64       | **0.64       | **0.64       | **0.64       |
| Projected Debt Service Coverage | 1.75            | .02          | (.01)        | 0            | 0            | 0            | 0            | 0            |

\*\* As discussed with Illinois CON Board on January 23, 2006, these ratios are inappropriate measures of liquidity or measures of ability to meet upcoming required payments. Well managed companies with debt will seek to minimize cash on hand, accelerate accounts receivable collections, and pay payables no sooner than required in order to minimize interest expense and reduce leverage.

The amounts for 2007/2008 represent actuals from the FMCH, Inc financials. The remainder of 2009 and the projected years are an extension of our most recent performance.

The Company currently has in excess of \$500 million of readily available liquidity. In addition, the Company has moderate leverage (currently less than 2.75x Funded Deb/EBITDA) and an S&P credit rating of BBB- on the Senior Secured bank debt. The Company's healthy financial position and abundant liquidity indicate that the Company has the ability to support the acquisition and development of additional dialysis centers. Additionally, the Company has more than adequate capability to meet all of its expected financial obligations over the next twelve months and its long term outlook is strong and stable.

Mark Fawcett  
Vice President, Treasurer  
Fresenius Medical Care NA

## Fresenius Medical Care North America

Corporate Headquarters: 920 Winter St Waltham, MA 02451 (781) 402-2668

**Criterion 1120.310(a) Reasonableness of Financing Arrangements**

Fresenius Medical Care Batavia, LLC

The applicant is paying for the project with cash on hand, and not borrowing any funds for the project. However, per the Board's rules the entering of a lease is treated as borrowing. As such, we are attesting that the entering into of a lease (borrowing) is less costly than the liquidation of existing investments which would be required for the applicant to buy the property and build a structure itself to house a dialysis clinic. Further, should the applicant be required to pay off the lease in full, its existing investments and capital retained could be converted to cash or used to retire the outstanding lease obligations within a sixty (60) day period.

By: *Marc Lieberman*  
Title: Marc Lieberman  
Asst. Treasurer

By: *M. Fawcett*  
Title: Mark Fawcett  
Vice President & Treasurer

Notarization:  
Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2009

Notarization:  
Subscribed and sworn to before me  
this 9 day of Oct, 2009

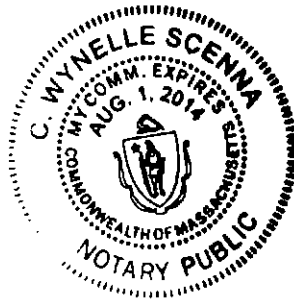
Signature of Notary

*C. Wynelle Scenna*

Signature of Notary

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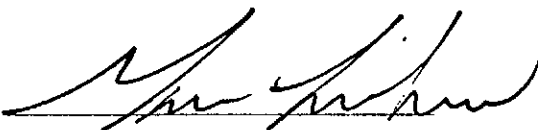
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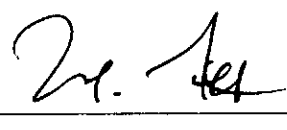


**Criterion 1120.310(a) Reasonableness of Financing Arrangements**

Fresenius Medical Care Ventures, LLC

The applicant is paying for the project with cash on hand, and not borrowing any funds for the project. However, per the Board's rules the entering of a lease is treated as borrowing. As such, we are attesting that the entering into of a lease (borrowing) is less costly than the liquidation of existing investments which would be required for the applicant to buy the property and build a structure itself to house a dialysis clinic. Further, should the applicant be required to pay off the lease in full, its existing investments and capital retained could be converted to cash or used to retire the outstanding lease obligations within a sixty (60) day period.

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ITS: Marc Lieberman  
Asst. Treasurer

By:   
ITS: \_\_\_\_\_  
**Mark Fawcett**  
**Vice President & Treasurer**

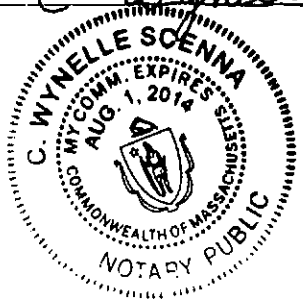
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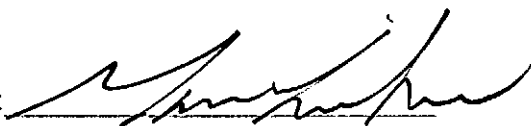
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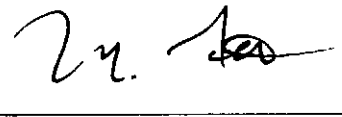
**Criterion 1120.310(a) Reasonableness of Financing Arrangements**

Fresenius Medical Care Ventures Holding Company, Inc.

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By: 

ITS: Marc Lieberman  
Asst. Treasurer

By: 

ITS: Mark Fawcett  
Vice President & Treasurer

Notarization:  
Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2009

Notarization:  
Subscribed and sworn to before me  
this 9 day of Oct, 2009

Signature of Notary  Signature of Notary

Seal



Seal

**Criterion 1120.310(a) Reasonableness of Financing Arrangements**

National Medical Care, Inc.

The applicant is paying for the project with cash on hand, and not borrowing any funds for the project. However, per the Board's rules the entering of a lease is treated as borrowing. As such, we are attesting that the entering into of a lease (borrowing) is less costly than the liquidation of existing investments which would be required for the applicant to buy the property and build a structure itself to house a dialysis clinic. Further, should the applicant be required to pay off the lease in full, its existing investments and capital retained could be converted to cash or used to retire the outstanding lease obligations within a sixty (60) day period.

By: [Signature]  
ITS: Marc Lieberman  
Asst. Treasurer

By: [Signature]  
ITS: Mark Fawcett  
Vice President & Treasurer

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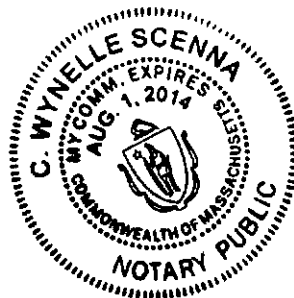
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this 21 day of Sept, 2009

C Wynelle Scenna  
Signature of Notary

Signature of Notary

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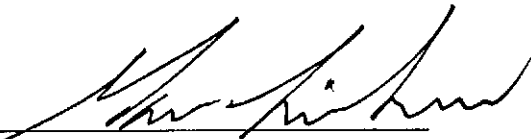
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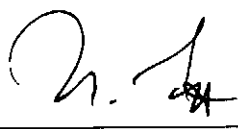


**Criterion 1120.310(a) Reasonableness of Financing Arrangements**

Fresenius Medical Care Holdings, Inc.

The applicant is paying for the project with cash on hand, and not borrowing any funds for the project. However, per the Board's rules the entering of a lease is treated as borrowing. As such, we are attesting that the entering into of a lease (borrowing) is less costly than the liquidation of existing investments which would be required for the applicant to buy the property and build a structure itself to house a dialysis clinic. Further, should the applicant be required to pay off the lease in full, its existing investments and capital retained could be converted to cash or used to retire the outstanding lease obligations within a sixty (60) day period.

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Asst. Treasurer

By:   
ITS: Mark Fawcett  
Vice President & Assistant Treasurer

Notarization:  
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this \_\_\_\_\_ day of \_\_\_\_\_, 2009

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this 21 day of Sept, 2009

Signature of Notary C. Wynelle Scenna Signature of Notary

Seal

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**Criterion 1120.310(b) Conditions of Debt Financing**

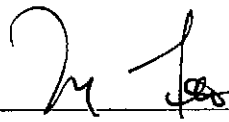
Fresenius Medical Care Batavia, LLC

In accordance with 77 ILL. ADM Code 1120, Subpart D, Section 1120.310, of the Illinois Health Facilities Planning Board Application for Certificate of Need; I do hereby attest to the fact that:

There is no debt financing. The project will be funded with cash and leasing arrangements; and

The expenses incurred with leasing the proposed facility and cost of leasing the equipment is less costly than constructing a new facility or purchasing new equipment.

By:   
ITS: Marc Lieberman  
Asst. Treasurer

By:   
ITS: Mark Fawcett  
Vice President & Treasurer

Notarization:  
Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2009

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this 9 day of Oct, 2009

Signature of Notary  Signature of Notary

Seal

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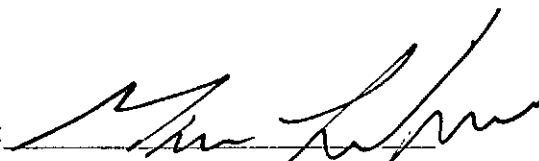
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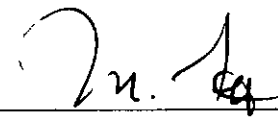
Fresenius Medical Care Ventures, LLC

In accordance with 77 ILL. ADM Code 1120, Subpart D, Section 1120.310, of the Illinois Health Facilities Planning Board Application for Certificate of Need; I do hereby attest to the fact that:

There is no debt financing. The project will be funded with cash and leasing arrangements; and


The expenses incurred with leasing the proposed facility and cost of leasing the equipment is less costly than constructing a new facility or purchasing new equipment.

By:   
ITS: Marc Lieberman  
Asst. Treasurer

By:   
ITS: Mark Fawcett  
Vice President & Treasurer

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Subscribed and sworn to before me  
this 9 day of Oct, 2009

Signature of Notary  Signature of Notary

Seal

Seal



**Criterion 1120.310(b) Conditions of Debt Financing**

Fresenius Medical Care Ventures Holding Company, Inc.

In accordance with 77 ILL. ADM Code 1120, Subpart D, Section 1120.310, of the Illinois Health Facilities Planning Board Application for Certificate of Need; I do hereby attest to the fact that:

There is no debt financing. The project will be funded with cash and leasing arrangements; and

The expenses incurred with leasing the proposed facility and cost of leasing the equipment is less costly than constructing a new facility or purchasing new equipment.

By: *Marc Lieberman*  
ITS: Marc Lieberman  
Asst. Treasurer

By: *Mark Fawcett*  
ITS: Mark Fawcett  
Vice President & Treasurer

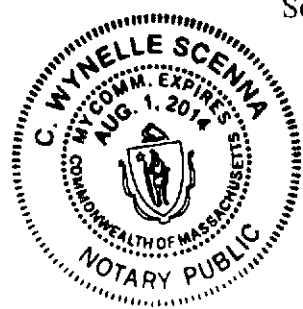
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Signature of Notary *C Wynelle Scenna* Signature of Notary

Seal

Seal



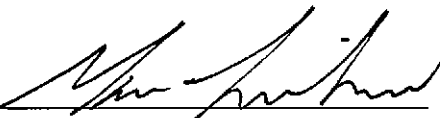
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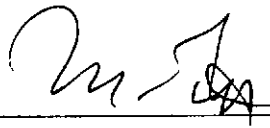
National Medical Care, Inc.

In accordance with 77 ILL. ADM Code 1120, Subpart D, Section 1120.310, of the Illinois Health Facilities Planning Board Application for Certificate of Need; I do hereby attest to the fact that:

There is no debt financing. The project will be funded with cash and leasing arrangements; and

The expenses incurred with leasing the proposed facility and cost of leasing the equipment is less costly than constructing a new facility or purchasing new equipment.

By:   
ITS: Marc Lieberman  
Asst. Treasurer

By:   
ITS: Mark Fawcett  
Vice President & Treasurer

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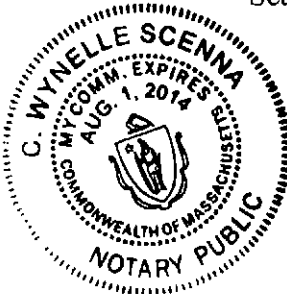
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Signature of Notary

C Wynelle Scenna

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Signature of Notary

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**Criterion 1120.310(b) Conditions of Debt Financing**

Fresenius Medical Care Holdings, Inc.

In accordance with 77 ILL. ADM Code 1120, Subpart D, Section 1120.310, of the Illinois Health Facilities Planning Board Application for Certificate of Need; I do hereby attest to the fact that:

There is no debt financing. The project will be funded with cash and leasing arrangements; and

The expenses incurred with leasing the proposed facility and cost of leasing the equipment is less costly than constructing a new facility or purchasing new equipment.

By: *Marc Lieberman*

ITS: Marc Lieberman  
Asst. Treasurer

By: *Mark Fawcett*

ITS: Mark Fawcett  
ice President & Assistant Treasurer

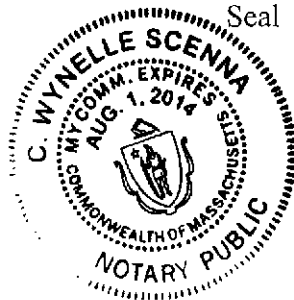
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Notarization:  
Subscribed and sworn to before me  
this 21 day of Sept, 2009

Signature of Notary *C Wynelle Scenna* Signature of Notary

Seal

Seal





Criterion 1120.310 (d) – Projected Operating Costs

**Year 2013**

Salaries            \$627,588

Benefits            156,897

Supplies            220,392

Total                \$1,004,877

Annual Treatments    8,986

Cost Per Treatment    \$111.83

Criterion 1120.310 (e) – Total Effect of the Project on Capital Costs

**Year 2013**

|                            |           |
|----------------------------|-----------|
| Depreciation/Amortization  | \$127,138 |
| Interest                   | <u>0</u>  |
| CAPITAL COSTS              | \$127,138 |
| Treatments:                | 8,986     |
| Capital Cost per treatment | \$14.15   |



**FRESENTIUS MEDICAL CARE HOLDINGS, INC.  
AND SUBSIDIARIES**

Consolidated Financial Statements

December 31, 2007 and 2006

(With Independent Auditors' Report Thereon)

**FRESENIUS MEDICAL CARE HOLDINGS, INC.  
AND SUBSIDIARIES**

**Index**

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| Consolidated Balance Sheets as of December 31, 2007 and 2006  | 2           |
| Consolidated Statements of Operations for the years ended December 31, 2007, 2006 and 2005              | 3           |
| Consolidated Statements of Comprehensive Income for the years ended December 31, 2007,<br>2006 and 2005 | 4           |
| Consolidated Statements of Changes in Equity for the years ended December 31, 2007, 2006 and<br>2005    | 5           |
| Consolidated Statements of Cash Flows for the years ended December 31, 2007, 2006 and 2005              | 6           |
| Notes to Consolidated Financial Statements  | 8           |



**KPMG LLP**  
99 High Street  
Boston, MA 02110-2371

Telephone 617 988 1000  
Fax 617 988 0800  
Internet [www.us.kpmg.com](http://www.us.kpmg.com)

## Independent Auditors' Report

To the Shareholders  
Fresenius Medical Care Holdings, Inc.

We have audited the accompanying consolidated balance sheets of Fresenius Medical Care Holdings, Inc. and subsidiaries (the Company) as of December 31, 2007 and 2006 and the related consolidated statements of operations, comprehensive income, changes in equity, and cash flows for each of the years in the three-year period ended December 31, 2007. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2007 and 2006, and the results of their operations and their cash flows for each of the years in the three-year period ended December 31, 2007 in conformity with U.S. generally accepted accounting principles.

As discussed in notes 2 and 12 to the consolidated financial statements, the Company adopted the recognition and disclosure provisions of Statement of Financial Accounting Standards No. 158, *Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans*, as of December 31, 2006.

As discussed in note 9 to the consolidated financial statements, the Company adopted the provisions of FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes*, as of January 1, 2007.

**KPMG LLP**

Boston, MA  
May 6, 2008

**FRESENIUS MEDICAL CARE HOLDINGS, INC.  
AND SUBSIDIARIES**

Consolidated Balance Sheets  
December 31, 2007 and 2006  
(Dollars in thousands)

| Assets  | <u>2007</u>          | <u>2006</u>       |
|---|----------------------|-------------------|
| <b>Current assets:</b>  |                      |                   |
| Cash and cash equivalents   | \$ 143,995           | 85,452            |
| Trade accounts receivable, less allowances of \$183,706 in 2007 and \$148,898 in 2006                                       | 1,034,696            | 1,018,533         |
| Inventories   | 274,378              | 240,339           |
| Deferred income taxes   | 290,147              | 236,180           |
| Other current assets  | 279,299              | 267,654           |
| Total current assets  | <u>2,022,515</u>     | <u>1,848,158</u>  |
| Property, plant and equipment, net of accumulated depreciation and amortization<br>of \$727,329 and \$661,845, respectively | <u>1,232,452</u>     | <u>1,121,978</u>  |
| <b>Other assets:</b>  |                      |                   |
| Goodwill  | 6,645,125            | 6,415,815         |
| Other intangible assets, net of accumulated amortization of \$243,267 and \$237,474, respectively                           | 619,446              | 587,409           |
| Other assets and deferred charges   | 311,678              | 149,765           |
| Total other assets  | <u>7,576,249</u>     | <u>7,152,989</u>  |
| Total assets  | <u>\$ 10,831,216</u> | <u>10,123,125</u> |
| <b>Liabilities and Equity</b>   |                      |                   |
| <b>Current liabilities:</b>   |                      |                   |
| Short-term borrowings   | \$ 85,006            | 266,074           |
| Current portion of long-term debt and capital lease obligations   | 123,614              | 137,842           |
| Current portion of borrowings from affiliates   | 543,732              | 919,300           |
| Current portion of mandatorily redeemable preferred securities  | —                    | 43,164            |
| Accounts payable  | 175,731              | 192,044           |
| Accrued liabilities   | 772,488              | 691,512           |
| Accrued special charge for legal matters  | 116,999              | 117,451           |
| Net accounts payable to affiliates  | 90,017               | 47,862            |
| Accrued income taxes  | 81,353               | 49,428            |
| Total current liabilities   | <u>1,988,940</u>     | <u>2,464,677</u>  |
| Long-term debt  | 1,631,565            | 1,932,202         |
| Noncurrent borrowings from affiliates   | 706,179              | 650,139           |
| Capital lease obligations   | 2,690                | 2,981             |
| Long-term portion of mandatorily redeemable preferred securities  | 1,136,141            | 446,867           |
| Deferred income taxes   | 320,659              | 282,697           |
| Minority interest   | 84,762               | 70,564            |
| Other liabilities   | 149,196              | 58,568            |
| Total liabilities   | <u>6,020,132</u>     | <u>5,908,695</u>  |
| <b>Equity:</b>  |                      |                   |
| Preferred stock, \$100 par value (liquidation preference at par value)  | —                    | 7,412             |
| Preferred stock, \$1 par value  | 1,520,262            | 1,360,088         |
| Common stock, \$1 par value. Authorized 300,000,000 shares;<br>outstanding 90,000,000 shares                                | 90,000               | 90,000            |
| Additional paid-in capital  | 1,974,597            | 1,967,621         |
| Retained earnings   | 1,289,249            | 808,219           |
| Accumulated other comprehensive loss  | (63,024)             | (18,910)          |
| Total equity  | <u>4,811,084</u>     | <u>4,214,430</u>  |
| Total liabilities and equity  | <u>\$ 10,831,216</u> | <u>10,123,125</u> |

**FRESENIUS MEDICAL CARE HOLDINGS, INC.  
AND SUBSIDIARIES**

Consolidated Statements of Operations  
Years ended December 31, 2007, 2006 and 2005  
(Dollars in thousands, except share data)

|   | <u>2007</u>       | <u>2006</u>      | <u>2005</u>      |
|---|-------------------|------------------|------------------|
| Net revenues:   |                   |                  |                  |
| Health care services  | \$ 5,973,605      | 5,442,048        | 4,040,193        |
| Medical supplies  | 621,905           | 518,193          | 490,877          |
|   | <u>6,595,510</u>  | <u>5,960,241</u> | <u>4,531,070</u> |
| Expenses:   |                   |                  |                  |
| Cost of health care services  | 3,890,580         | 3,628,595        | 2,803,757        |
| Cost of medical supplies  | 363,209           | 337,592          | 303,611          |
| General and administrative expenses   | 805,937           | 745,778          | 513,421          |
| Gain on sale of dialysis clinics  | —                 | (40,233)         | —                |
| Provision for doubtful accounts   | 193,209           | 176,021          | 133,820          |
| Depreciation and amortization   | 217,841           | 184,783          | 138,728          |
| Research and development  | 20,501            | 13,422           | 11,736           |
| Interest expense, net, and related financing costs including<br>\$135,717, \$126,477 and \$96,709 of interest with affiliates | 283,461           | 275,936          | 149,387          |
|   | <u>5,774,738</u>  | <u>5,321,894</u> | <u>4,054,460</u> |
| Income before income taxes  | 820,772           | 638,347          | 476,610          |
| Provision for income taxes  | 322,377           | 279,152          | 212,976          |
| Minority interest   | 18,472            | 14,050           | 174              |
| Net income  | <u>\$ 479,923</u> | <u>345,145</u>   | <u>263,460</u>   |
| Basic and fully dilutive net income per share   | \$ 5.33           | 3.83             | 2.92             |

See accompanying notes to consolidated financial statements

**FRESENIUS MEDICAL CARE HOLDINGS, INC.  
AND SUBSIDIARIES**

Consolidated Statements of Comprehensive Income

Years ended December 31, 2007, 2006 and 2005

(Dollars in thousands)

|   | <u>2007</u>       | <u>2006</u>    | <u>2005</u>    |
|---|-------------------|----------------|----------------|
| Net income  | \$ 479,923        | 345,145        | 263,460        |
| Other comprehensive income (loss):  |                   |                |                |
| Foreign currency translation adjustments  | 1,242             | (3,310)        | 3,021          |
| Pension asset (liability), (net of deferred tax<br>of (\$7,069), (\$9,525) and \$1,568, respectively) | 10,652            | 14,287         | (2,351)        |
| Derivative instruments, (net of deferred tax<br>of \$35,666, (\$3,419) and (\$14,867), respectively)  | <u>(55,386)</u>   | <u>7,015</u>   | <u>22,300</u>  |
| Total other comprehensive income (loss)   | <u>(43,492)</u>   | <u>17,992</u>  | <u>22,970</u>  |
| Comprehensive income  | <u>\$ 436,431</u> | <u>363,137</u> | <u>286,430</u> |

See accompanying notes to consolidated financial statements.



**FRESENIUS MEDICAL CARE HOLDINGS, INC.  
AND SUBSIDIARIES**

Consolidated Statements of Changes in Equity  
Years ended December 31, 2007, 2006 and 2005  
(Dollars in thousands, except share data)

|  | Preferred stock |              | Common stock |           | Additional paid-in capital | Retained earnings | Accumulated other comprehensive loss | Total equity |
|--|-----------------|--------------|--------------|-----------|----------------------------|-------------------|--------------------------------------|--------------|
|  | Shares          | Amount       | Shares       | Amount    |                            |                   |                                      |              |
| Balance, December 31, 2004                                       | 74,119          | 7,412        | 90,000,000   | 90,000    | 1,976,222                  | 200,654           | (58,250)                             | 2,216,038    |
| Net income   | —               | —            | —            | —         | —                          | 263,460           | —                                    | 263,460      |
| Cash dividends on preferred stock                                | —               | —            | —            | —         | —                          | (520)             | —                                    | (520)        |
| Adjustments relating to pension obligations                      | —               | —            | —            | —         | —                          | —                 | (2,351)                              | (2,351)      |
| Other comprehensive income - FX                                  | —               | —            | —            | —         | —                          | —                 | 3,021                                | 3,021        |
| Other comprehensive income - FAS 133                             | —               | —            | —            | —         | —                          | —                 | 22,300                               | 22,300       |
| Tax benefit on disposition of stock options                      | —               | —            | —            | —         | 6,471                      | —                 | —                                    | 6,471        |
| Tax settlement on international transfer                         | —               | —            | —            | —         | (23,972)                   | —                 | —                                    | (23,972)     |
| Balance, December 31, 2005                                       | 74,119          | 7,412        | 90,000,000   | 90,000    | 1,958,721                  | 463,594           | (35,280)                             | 2,484,447    |
| Net income   | —               | —            | —            | —         | —                          | 345,145           | —                                    | 345,145      |
| Cash dividends on preferred stock                                | —               | —            | —            | —         | —                          | (520)             | —                                    | (520)        |
| Adjustments relating to pension obligations                      | —               | —            | —            | —         | —                          | —                 | 14,287                               | 14,287       |
| Other comprehensive income - FX                                  | —               | —            | —            | —         | —                          | —                 | (3,310)                              | (3,310)      |
| Other comprehensive income - FAS 133                             | —               | —            | —            | —         | —                          | —                 | 7,015                                | 7,015        |
| Tax benefit on disposition of stock options                      | —               | —            | —            | —         | 8,900                      | —                 | —                                    | 8,900        |
| Effect of Adoption of FAS 158 (net of deferred taxes of \$1,081) | —               | —            | —            | —         | —                          | —                 | (1,622)                              | (1,622)      |
| Issuance of Series C Preferred Stock                             | 5,000,000       | 1,250,000    | —            | —         | —                          | —                 | —                                    | 1,250,000    |
| Series C Preferred Stock - Marked to Market                      | —               | 110,088      | —            | —         | —                          | —                 | —                                    | 110,088      |
| Balance, December 31, 2006                                       | 5,074,119       | \$ 1,367,500 | 90,000,000   | \$ 90,000 | \$ 1,967,621               | \$ 808,219        | \$ (18,910)                          | \$ 4,214,430 |
| Net income   | —               | —            | —            | —         | —                          | 479,923           | —                                    | 479,923      |
| Cash dividends on preferred stock                                | —               | —            | —            | —         | —                          | (468)             | —                                    | (468)        |
| Adjustments relating to pension obligations                      | —               | —            | —            | —         | —                          | —                 | 10,652                               | 10,652       |
| Other comprehensive income - FX                                  | —               | —            | —            | —         | —                          | —                 | 1,242                                | 1,242        |
| Other comprehensive income - FAS 133                             | —               | —            | —            | —         | —                          | —                 | (55,386)                             | (55,386)     |
| Tax benefit on disposition of stock options                      | —               | —            | —            | —         | 8,177                      | —                 | —                                    | 8,177        |
| Repurchase of preferred stock                                    | (74,119)        | (7,412)      | —            | —         | —                          | (248)             | —                                    | (7,660)      |
| Series C Preferred Stock - Marked to Market                      | —               | 160,174      | —            | —         | —                          | —                 | —                                    | 160,174      |
| Other reclassifications  | —               | —            | —            | —         | (1,201)                    | 1,823             | (622)                                | —            |
| Balance, December 31, 2007                                       | 5,000,000       | \$ 1,520,262 | 90,000,000   | \$ 90,000 | \$ 1,974,597               | \$ 1,289,249      | \$ (63,024)                          | \$ 4,811,084 |

See accompanying notes to consolidated financial statements

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**FRESENIUS MEDICAL CARE HOLDINGS, INC.  
AND SUBSIDIARIES**

Consolidated Statements of Cash Flows  
Years ended December 31, 2007, 2006, and 2005  
(Dollars in thousands)

|  | <u>2007</u>       | <u>2006</u>        | <u>2005</u>      |
|--|-------------------|--------------------|------------------|
| Cash flows from operating activities:  |                   |                    |                  |
| Net income   | \$ 479,923        | 345,145            | 263,460          |
| Adjustments to reconcile net income to net cash provided by operating activities:                          |                   |                    |                  |
| Depreciation and amortization  | 217,841           | 184,783            | 138,728          |
| Provision for doubtful accounts  | 193,209           | 176,021            | 133,820          |
| Deferred income taxes  | 5,309             | 10,118             | 6,428            |
| Loss on sale of divestitures   | 105               | 4,372              | —                |
| Loss on sale of business   | 1,373             | 21,914             | —                |
| Loss on disposal of properties and equipment   | 2,068             | 1,610              | 3,756            |
| Minority interest  | 30,359            | 23,072             | —                |
| (Gain) loss on forward sale and currency exchange agreements   | (1,900)           | 16,830             | —                |
| Changes in operating assets and liabilities, net of effects of purchase acquisitions and foreign exchange: |                   |                    |                  |
| Increase in trade accounts receivable  | (210,837)         | (138,135)          | (144,831)        |
| Increase in inventories  | (31,771)          | (27,080)           | (4,367)          |
| Increase in other current assets   | (54,310)          | (121,349)          | (23,623)         |
| Decrease in other assets and deferred charges  | 14,023            | 18,975             | 5,879            |
| (Decrease) increase in accounts payable  | (14,636)          | 55,434             | 16,824           |
| Increase (decrease) in accrued income taxes  | 64,515            | (58,299)           | (10,706)         |
| Increase in accrued liabilities  | 54,132            | 47,164             | 61,084           |
| Decrease in accrued special charge for legal matters   | (452)             | (90)               | (4,544)          |
| Increase (decrease) in other long-term liabilities   | 7,355             | (7,329)            | (9,624)          |
| Net changes due to/from affiliates   | 42,032            | 12,649             | 6,422            |
| Other, net   | (3,739)           | 28,601             | 268              |
| Net cash provided by operating activities  | <u>794,599</u>    | <u>594,406</u>     | <u>438,974</u>   |
| Cash flows from investing activities:  |                   |                    |                  |
| Capital expenditures   | (316,497)         | (301,306)          | (172,265)        |
| Proceeds from sale of property, plant and equipment  | 14,575            | 4,359              | 7,563            |
| Acquisitions and investments, net of cash acquired   | (181,868)         | (4,292,978)        | (76,825)         |
| Proceeds from divestitures   | 29,495            | 515,705            | —                |
| Net cash used in investing activities  | <u>(454,295)</u>  | <u>(4,074,220)</u> | <u>(241,527)</u> |
| Cash flows from financing activities:  |                   |                    |                  |
| Net increase in borrowings from affiliates   | 322,241           | 345,806            | 88,111           |
| Cash dividends paid on preferred stock   | (468)             | (520)              | (520)            |
| Repurchase of preferred stock  | (7,660)           | —                  | —                |
| Net increase (decrease) from receivable financing facility   | (181,000)         | 172,000            | (241,765)        |
| Net increase (decrease) on debt and capital leases   | (399,036)         | 1,843,492          | (26,041)         |
| Minority interest  | (18,720)          | (14,207)           | 174              |
| Debt issuance costs  | (8,416)           | (61,334)           | (133)            |
| Proceeds from preferred stock  | —                 | 1,250,000          | —                |
| Tax benefit on stock options   | 8,176             | 8,900              | 6,471            |
| Net cash (used in) provided by financing activities  | <u>(284,883)</u>  | <u>3,544,137</u>   | <u>(173,703)</u> |
| Effects of changes in foreign exchange rates   | <u>3,122</u>      | <u>(3,338)</u>     | <u>698</u>       |
| Change in cash and cash equivalents  | 58,543            | 60,985             | 24,442           |
| Cash and cash equivalents at beginning of year   | 85,452            | 24,467             | 25               |
| Cash and cash equivalents at end of year   | <u>\$ 143,995</u> | <u>85,452</u>      | <u>24,467</u>    |

**FRESENIUS MEDICAL CARE HOLDINGS, INC.  
AND SUBSIDIARIES**

Consolidated Statements of Cash Flows  
Years ended December 31, 2007, 2006 and 2005  
(Dollars in thousands)

|   | 2007       | 2006      | 2005    |
|---|------------|-----------|---------|
| Supplemental disclosures of cash flow information:      |            |           |         |
| Cash paid during the period for:                        |            |           |         |
| Interest  | \$ 224,645 | 206,425   | 66,540  |
| Interest on mandatorily redeemable preferred securities | 19,863     | 37,209    | 33,828  |
| Income taxes paid, net                                  | 235,592    | 319,069   | 203,618 |
| Details for acquisitions:                               |            |           |         |
| Assets acquired   | 283,914    | 4,582,435 | 81,788  |
| Liabilities assumed                                     | 14,569     | 171,913   | 9,980   |
| Minorities  | —          | 56,023    | (5,017) |
| Notes assumed in connection with acquisition            | 83,811     | 4,886     | —       |
| Cash paid   | 185,534    | 4,349,613 | 76,825  |
| Less cash acquired                                      | 6,522      | 56,635    | —       |
| Net cash paid for acquisitions                          | \$ 179,012 | 4,292,978 | 76,825  |

See accompanying notes to consolidated financial statements.

**FRESENIUS MEDICAL CARE HOLDINGS, INC.  
AND SUBSIDIARIES**

Notes to Consolidated Financial Statements

December 31, 2007 and 2006

(Dollars in thousands)

**(1) The Company**

Fresenius Medical Care Holdings, Inc., a New York corporation (the Company or FMCH) is a subsidiary of Fresenius Medical Care AG & Co. KGaA, a German partnership limited by shares (FMCAG & KGaA or the Parent Company) formerly Fresenius Medical Care AG (FMCAG). The Company conducts its operations through five principal subsidiaries, National Medical Care, Inc. (NMC), Fresenius USA Marketing, Inc., Fresenius USA Manufacturing, Inc. and SRC Holding Company, Inc., all Delaware corporations and Fresenius USA, Inc., a Massachusetts corporation.

The consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries and those financial statements where the Company controls professional corporations in accordance with Emerging Issues Task Force Issue 97-2. The consolidated financial statements include all companies in which the Company has legal or effective control. Minority interest represents the proportionate equity interest of owners in the Company's consolidated entities that are not wholly owned.

The Company is primarily engaged in (i) providing kidney dialysis services and clinical laboratory testing, (ii) manufacturing and distributing products and equipment for kidney dialysis treatment and (iii) providing other medical ancillary services.

On March 31, 2006, the Company completed its acquisition of Renal Care Group, Inc. (RCG) for an all cash purchase price approximating \$4,157,684. See note 3 Acquisitions and Divestitures for a discussion of this transaction.

**Basis of Presentation**

***Basis of Consolidation***

The consolidated financial statements in this report at December 31, 2007 and 2006 and for each of the years in the three-year period ended December 31, 2007 have been prepared in accordance with U.S. generally accepted accounting principles (U.S. GAAP). These consolidated financial statements reflect all adjustments that, in the opinion of management, are necessary for the fair presentation of the consolidated results for all periods presented. All significant intercompany accounts and transactions have been eliminated in consolidation.

**(2) Summary of Significant Accounting Policies**

**(a) Classification**

Certain items in prior years' consolidated financial statements may have been reclassified to conform with the current year's presentation. Net operating results have not been affected by the reclassifications.

**FRESENIUS MEDICAL CARE HOLDINGS, INC.  
AND SUBSIDIARIES**

Notes to Consolidated Financial Statements

December 31, 2007 and 2006

(Dollars in thousands)

**(b) Cash Equivalents**

Cash and cash equivalents comprise cash funds and all short-term, highly liquid investments with original maturities of up to three months.

**(c) Allowance for Doubtful Accounts**

Estimates for allowances for accounts receivable are based on an analysis of collection experience, recognizing the differences between payors and aging of accounts receivable. From time to time, accounts receivable are reviewed for changes from historic collection experience to ensure the appropriateness of the allowances.

**(d) Inventories**

Inventories are stated at the lower of cost (determined by using the first-in, first-out method) or market value (see note 4).

**(e) Property, Plant and Equipment**

Property, plant and equipment are stated at cost less accumulated depreciation (see note 10). Significant improvements are capitalized; repairs and maintenance costs that do not extend the useful lives of the assets are charged to expense as incurred. Property, plant and equipment under capital leases are stated at the present value of future minimum lease payments at the inception of the lease, less accumulated depreciation. The cost and accumulated depreciation of assets sold or otherwise disposed of are removed from the accounts, and any resulting gain or loss is included in income when the assets are disposed.

The cost of property, plant and equipment is depreciated over estimated useful lives on a straight-line basis as follows: buildings - 20 to 40 years, equipment and furniture - 3 to 10 years, equipment under capital leases and leasehold improvements - the shorter of the lease term or useful life of the asset. For income tax purposes, depreciation is calculated using accelerated methods to the extent permitted.

The Company capitalizes interest on borrowed funds during construction periods. Interest capitalized during 2007, 2006 and 2005 was \$6,352, \$7,151 and \$3,319 respectively.

**(f) Other Intangible Assets and Goodwill**

Intangible assets such as non-compete agreements, lease agreements, tradenames, management contracts, technology, patents, distribution rights, software, acute care agreements and licenses acquired in a purchase method business combination are recognized and reported apart from goodwill, pursuant to the criteria specified by Statement of Financial Accounting Standards (SFAS) No. 141, *Business Combinations* (see note 7).

Goodwill and identifiable intangibles with indefinite lives are not amortized but tested for impairment annually or when an event becomes known that could trigger an impairment. The

**FRESENIUS MEDICAL CARE HOLDINGS, INC.  
AND SUBSIDIARIES**

Notes to Consolidated Financial Statements

December 31, 2007 and 2006

(Dollars in thousands)

Company identified tradenames and certain qualified management contracts as intangible assets with indefinite useful lives. Intangible assets with finite useful lives are amortized over their respective estimated useful lives to their estimated residual values. The Company amortizes non-compete agreements over their average useful life of 8 years. Technology is amortized over the useful life of 15 years. All other intangibles are amortized over their individual estimated useful lives between 3 and 20 years. Intangible assets with finite useful lives are evaluated for impairment when events have occurred that may give rise to an impairment.

To perform the annual impairment test of goodwill, the Company identified its reporting units and determined their carrying value by assigning the assets and liabilities, including the existing goodwill and intangible assets, to those reporting units. In a first step, the Company compares the fair value of each reporting unit to the reporting unit's carrying amount. Fair value is determined using a discounted cash flow approach based upon the cash flow expected to be generated by the reporting unit. In the case that the fair value of the reporting unit is less than its book value, a second step is performed which compares the fair value of the reporting unit's goodwill to the carrying value of its goodwill. If the fair value of the goodwill is less than the book value, the difference is recorded as an impairment.

To evaluate the recoverability of intangible assets with indefinite useful lives, the Company compares the fair values of intangible assets with their carrying values. An intangible asset's fair value is determined using a discounted cash flow approach and other appropriate methods.

In connection with its annual impairment tests, the Company determined that there was no impairment of goodwill or other intangible assets. Accordingly the Company did not record any impairment charges during 2007, 2006 or 2005.

**(g) *Derivative Instruments and Hedging Activities***

The Company accounts for derivatives and hedging activities in accordance with SFAS No. 133, *Accounting for Derivative Instruments and Certain Hedging Activities*, as amended, which requires entities to recognize all derivative instruments as either assets or liabilities in the balance sheet at their respective fair values. For derivatives designated as hedges, changes in the fair value are either offset against the change in fair value of the assets and liabilities through earnings, or recognized in accumulated other comprehensive income until the hedged item is recognized in earnings.

For all hedging relationships the Company formally documents the hedging relationship and its risk-management objective and strategy for undertaking the hedge, the hedging instrument, the hedged item, the nature of the risk being hedged, how the hedging instrument's effectiveness in offsetting the hedged risk will be assessed prospectively and retrospectively, and a description of the method of measuring ineffectiveness. The Company also formally assesses, both at the hedge's inception and on an ongoing basis, whether the derivatives that are used in hedging transactions are highly effective in offsetting cash flows of hedged items. Changes in the fair value of a derivative that is highly effective and that is designated and qualifies as a cash-flow hedge are recorded in accumulated other comprehensive income to the extent that the derivative is effective as a hedge,

**FRESENTUS MEDICAL CARE HOLDINGS, INC.  
AND SUBSIDIARIES**

Notes to Consolidated Financial Statements

December 31, 2007 and 2006

(Dollars in thousands)

until earnings are affected by the variability in cash flows of the designated hedged item. The ineffective portion of the change in fair value of a derivative instrument that qualifies as a cash-flow hedge is reported in earnings.

The Company discontinues hedge accounting prospectively when it is determined that the derivative is no longer effective in offsetting cash flows of the hedged item, the derivative expires or is sold, terminated, or exercised, the derivative is redesignated as a hedging instrument, because it is unlikely that a forecasted transaction will occur, or management determines that designation of the derivative as a hedging instrument is no longer appropriate.

In all situations in which hedge accounting is discontinued and the derivative is retained, the Company continues to carry the derivative at its fair value on the balance sheet and recognizes any subsequent changes in its fair value in earnings. When it is probable that a forecasted transaction will not occur, the Company discontinues hedge accounting and recognizes immediately in earnings gains and losses that were accumulated in other comprehensive income.

The table below summarizes the derivative financial instruments pre-tax and after-tax effect on accumulated other comprehensive income (loss) in shareholders' equity for the years ended December 31, 2007, 2006 and 2005:

|   | Years ended December 31, |        |        |
|---|--------------------------|--------|--------|
|   | 2007                     | 2006   | 2005   |
|   | (Dollars in millions)    |        |        |
| Interest rate swaps:  |                          |        |        |
| Pre-tax loss/ (gain)  | 81.6                     | (24.9) | (29.7) |
| After-tax loss/ (gain)  | 49.7                     | (14.9) | (17.8) |
| Forecasted raw material product purchases<br>and other obligations: |                          |        |        |
| Pre-tax loss/ (gain)  | (0.6)                    | (4.6)  | 3.4    |
| After-tax (gain)/ loss  | (0.4)                    | (2.8)  | 2.0    |
| Euro denominated mandatorily<br>redeemable preferred stock:         |                          |        |        |
| Pre-tax (gain)/ loss  | 10.1                     | 18.5   | (9.6)  |
| After-tax (gain)/ loss  | 6.1                      | 11.1   | (5.8)  |

The interest rate swaps are designated as cash flow hedges effectively converting certain variable interest rate payments into fixed interest rate payments. After-tax gains and losses were deferred in other comprehensive income. Interest payable and receivable under the swap terms are accrued and recorded as adjustments to interest expense at each reporting date.

**FRESENIUS MEDICAL CARE HOLDINGS, INC.  
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Notes to Consolidated Financial Statements

December 31, 2007 and 2006

(Dollars in thousands)

The Company enters into forward rate agreements that are designated and effective as hedges of forecasted raw material purchases and other obligations. After tax gains and losses were deferred in other comprehensive income and will be reclassified into cost of sales in the period during which the hedged transactions affect earnings. All deferred amounts will be reclassified into earnings within the next twelve months.

The Company enters into forward rate agreements that are designated and effective as hedges of changes in the fair value of the Euro denominated mandatorily redeemable preferred stock. Changes in fair value are recorded in earnings and offset against gains and losses resulting from the underlying exposures. After-tax gains and losses were deferred in other comprehensive income. Ineffective amounts had no material impact on earnings for the years ended December 31, 2007, 2006 and 2005.

The Company entered into a forward sale agreement related to preference shares ("Preferred Stock") of FMCH issued to Fresenius Medical Care North America Holdings Limited Partnership, ("DLP"). This instrument is reflected in the consolidated balance sheet at fair value as part of Preferred Stock with changes in fair value recognized in earnings. Pre-tax losses recorded in the consolidated statements of operations for the years ended December 31, 2007 and 2006 were \$160.2 million and \$110.1 million, respectively. After-tax losses recorded in the consolidated statements of operations for the years ended December 31, 2007 and 2006 were \$101.6 million and \$69.9 million, respectively.

The Company also entered into a currency exchange agreement with DLP. The notional principal amounts of the currency exchange agreement is \$1,250,000 U.S. dollars and a Euro amount with equal market value applying the market foreign exchange rate at the time the exchange agreement was entered into. The currency exchange agreement requires that at each periodic settlement date, DLP is obligated to pay to FMCH, Euro interest on the Euro equivalent of \$1.25 billion. Conversely, at the periodic settlement date, FMCH is obligated to pay to DLP, the interest on \$1.25 billion in U.S. dollars.

Upon maturity (March 31, 2011) or termination of the exchange agreement, DLP is obligated to pay to FMCH, the Euro equivalent of \$1.25 billion converted at spot rate and FMCH will pay to DLP the final settlement amount of \$1.25 billion (plus any outstanding period interest payments). This instrument is reflected in the consolidated balance sheet at fair value as a derivative asset at the reporting date with changes in fair value recognized in earnings. Pre-tax gains recorded in the consolidated statements of operations for the years ended December 31, 2007 and 2006 were (\$148.4) million and (\$89.2) million, respectively. After-tax gains recorded in the consolidated statements of operations for the years ended December 31, 2007 and 2006 were (\$94.2) million and (\$56.6) million, respectively.

Periodically, the Company enters into derivative instruments with related parties to form a natural hedge for currency exchange rate exposures on intercompany obligations. These instruments are reflected in the consolidated balance sheets at fair value with changes in fair value recognized in earnings. Pre-tax losses (gains) recorded in the consolidated statements of operations for the years



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ended December 31, 2007, 2006 and 2005 were (\$0.3) million, \$0.8 million and (\$0.5) million, respectively.

**(h) Foreign Currency Translation**

The Company follows the provisions of SFAS No. 52, *Foreign Currency Translation*. Substantially all assets and liabilities of the Company's non U.S. subsidiaries are translated at year-end exchange rates, while revenue and expenses are translated at exchange rates prevailing during the year. Adjustments for foreign currency translation fluctuations are excluded from net income and are reported in accumulated other comprehensive income (loss). In addition, the translation of certain intercompany borrowings denominated in foreign currencies, which are considered foreign equity investments, are reported in accumulated other comprehensive income (loss).

Gains and losses resulting from the translation of revenues and expenses and intercompany borrowings, which are not considered equity investments, are included in general and administrative expense. Translation gains (losses) amounted to (\$1,229) \$2,295 and (\$3,663) for the years ended December 31, 2007, 2006 and 2005, respectively.

**(i) Revenue Recognition**

Revenues are recognized on the date services and related products are provided in accordance with shipping terms and are recorded at amounts estimated to be received under reimbursement arrangements with third-party payors, including Medicare and Medicaid. The Company establishes appropriate allowances based upon factors surrounding credit risks of specific third party payors, historical trends and other information. Retroactive adjustments are accrued on an estimated basis in the period the related services are rendered and adjusted in future periods as final settlements are determined.

Net revenues from machines sales for 2007, 2006 and 2005 include \$83.8 million, \$58.3 million, and \$42.0 million, respectively, of net revenues for machines sold to a third party leasing company which are utilized by the Dialysis Services division to provide services to customers. The profits on these sales are deferred and amortized to earnings over the lease terms.

**(j) Research and Development**

Research and development costs are expensed as incurred.

**(k) Income Taxes**

The Company adopted FASB Interpretation No. 48 ("FIN 48"), *Accounting for Uncertainty in Income Taxes - an interpretation of FASB Statement No. 109 Accounting for Income Taxes ("FAS109")* as of January 1, 2007. Deferred tax assets and liabilities are recognized for the future consequences attributable to temporary differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax basis as well as on consolidation procedures affecting net income and tax loss carry forwards which are more likely than not to be utilized. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable

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income in the years in which those temporary differences are expected to be recovered or settled. A valuation allowance is recorded to reduce the carrying amount of the deferred tax assets unless it is more likely than not that such assets will be realized (see note 9).

It is the Company's policy to recognize interest and penalties related to its tax positions as income tax expense.

**(l) Impairment**

The Company reviews the carrying value of its long-lived assets or asset groups with definite useful lives to be held and used for impairment whenever events or changes in circumstances indicate that the carrying value of these assets may not be recoverable in accordance with SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets*. Recoverability of these assets is measured by a comparison of the carrying value of an asset to the future net cash flow directly associated with the asset. If assets are considered to be impaired, the impairment recognized is the amount by which the carrying value exceeds the fair value of the asset. The Company uses present value techniques to assess fair value.

In accordance with SFAS No. 144, long-lived assets to be disposed of by sale are reported at the lower of carrying value or fair value less cost to sell and depreciation is ceased. Long-lived assets to be disposed of other than by sale are considered to be held and used until disposal.

**(m) Debt Issuance Costs**

Costs related to the issuance of debt are amortized over the term of the related obligation (see note 6).

**(n) Self-Insurance Programs**

The Company is partially self-insured for professional, product and general liability, auto liability and worker's compensation claims under which the Company assumes responsibility for incurred claims up to predetermined amounts above which third party insurance applies. Reported balances for the year include estimates of the anticipated expense for claims incurred (both reported and incurred but not reported) based on historical experience and existing claim activity. This experience includes both the rate of claims incidence (number) and claim severity (cost) and is combined with individual claim expectations to estimate the reported amounts.

**(o) Use of Estimates**

The preparation of consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

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**(p) Concentration of Credit Risk**

The Company is engaged in providing kidney dialysis services, clinical laboratory testing, and other medical ancillary services, and in the manufacture and sale of products for all forms of kidney dialysis, principally to health care providers throughout the world. The Company performs ongoing evaluations of its customers' financial condition and, generally, requires no collateral.

Approximately 53%, 53%, and 54% of the Company's revenues were earned and subject to regulations under governmental health care programs, Medicare and Medicaid, administered by various states and the United States government in 2007, 2006 and 2005, respectively.

See note 17 for concentration of supplier risks.

**(q) Comprehensive Income**

Comprehensive income consists of net income, foreign currency translation adjustments, minimum pension liability adjustments and changes in derivative instruments and is presented in the consolidated statements of comprehensive income.

**(r) Net Income per Share**

Basic net income per share is computed by dividing net income available to common shareholders by the weighted average number of common shares outstanding during the year. Diluted net income per share includes the effect of all dilutive potential common shares that were outstanding during the year. The number of shares used to compute basic and diluted net income per share was 90,000 in all periods as there were no potential common shares and no adjustments to income available to common shareholders to be considered for purposes of the diluted net income per share calculation.

|   | Years ended December 31, |        |        |
|---|--------------------------|--------|--------|
|   | 2007                     | 2006   | 2005   |
| The weighted average number of shares of common stock were as follows | 90,000                   | 90,000 | 90,000 |

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Net income available for common shareholders used in the computation of basic and fully dilutive net income per share is as follows:

|  | Years ended December 31 |         |         |
|--|-------------------------|---------|---------|
|  | 2007                    | 2006    | 2005    |
| Net income                                       | \$ 479,923              | 345,145 | 263,460 |
| Dividends paid on preferred stocks               | (468)                   | (520)   | (520)   |
| Income available to<br>common<br>shareholders    | \$ 479,455              | 344,625 | 262,940 |
| Basic and fully dilutive net income<br>per share | \$ 5.33                 | 3.83    | 2.92    |

**(s) Employee Benefit Plans**

As of December 31, 2006, the Company adopted the recognition provisions of SFAS No. 158, *Employer's Accounting for Defined Benefit Pension and Other Postretirement Plans – an amendment of FASB Statements No. 87, 88, 106, and 132(R)* (SFAS 158). The Company recognized the underfunded status of its defined benefit plans, measured as the difference between plan assets at fair value and the benefit obligation, as a liability as of December 31, 2006. Changes in the funded status of a plan, net of tax, resulting from actuarial gains or losses and prior service costs or credits that are not recognized as components of the net periodic benefit cost will be recognized through accumulated other comprehensive income in the year in which they occur. Actuarial gains or losses and prior service costs are subsequently recognized as components of net periodic benefit cost pursuant to the recognition and amortization provisions of those standards. The Company uses December 31 as the measurement date when measuring the funded status of all plans.

**(t) Stock Option Plans**

Effective January 1, 2006, FMCAG & KGaA adopted the provisions of SFAS No. 123R (revised 2004), *Share-Based Payment* (SFAS 123(R)) using the modified prospective transition method. Under this transition method, compensation cost recognized in 2006 by FMCAG & KGaA includes applicable amounts of: (a) compensation cost of all stock-based payments granted prior to, but not yet vested as of January 1, 2006 (based on the grant-date fair value estimated in accordance with the original provisions of SFAS No. 123 and previously presented by FMCAG & KGaA pro forma footnote disclosures), and (b) compensation cost for all stock-based payments subsequent to January 1, 2006 (based on the grant-date fair value estimated in accordance with the new provisions of SFAS 123(R)). Compensation costs for prior periods have been recognized using the intrinsic value method in accordance with the provisions of Accounting Principles Board Opinion No. 25, *Accounting for Stock Issued to Employees*.

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**(u) Legal contingencies**

From time to time, during the ordinary course of the Company's operations, the Company is party to litigation and arbitration and is subject to investigations relating to various aspects of its business (see note 16). The Company regularly analyzes current information about such claims for probable losses and provides accruals for such matters, including the estimated legal expenses and consulting services in connection with these matters, as appropriate. The Company utilizes its internal legal department as well as external resources for these assessments. In making the decision regarding the need for loss accrual, the Company considers the degree of probability of an unfavorable outcome and its ability to make a reasonable estimate of the amount of loss.

The filing of a suit or formal assertion of a claim or assessment, or the disclosure of any such suit or assertion, does not necessarily indicate that accrual of a loss is appropriate.

**(v) Recent Pronouncements and Accounting Changes**

In December 2007, the FASB issued FASB Statement No. 160, *Noncontrolling Interests in Consolidated Financial Statements – an amendment of ARB No. 51* (SFAS 160), which establishes a framework for reporting of noncontrolling or minority interest, the portion of equity in a subsidiary not attributable, directly or indirectly to a parent. SFAS 160 is effective for financial statement issued for fiscal years beginning on or after December 15, 2008. Earlier adoption is prohibited. The Company is currently evaluating the impact of this standard on its Consolidated Financial Statements.

In December 2007, the FASB issued FASB Statement 141 (revised), *Business Combinations*. This Statement replaces FASB Statement No. 141, *Business Combinations* and retains the fundamental requirements in Statement 141 that the acquisition method of accounting (which Statement 141 called the purchase method) be used for all business combinations and for an acquirer to be identified for each business combination. This Statement defines the acquirer as the entity that obtains control of one or more businesses in the business combination and establishes the acquisition date as the date that the acquirer achieves control.

In general, the main points of this Statement are that the assets acquired, liabilities assumed and the non-controlling interests in the acquired company are stated at fair value as of the date of acquisition, that assets acquired and liabilities assumed arising from contractual contingencies are recognized as of the acquisition date, measured at their acquisition-date fair values and that contingent consideration is recognized at the acquisition date, measured at its fair value at that date.

This Statement applies prospectively to business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008. Earlier adoption is prohibited. The effective date on this Statement is the same as that of the related FASB Statement No. 160, *Noncontrolling Interests in Consolidated Financial Statements*. The Company is currently evaluating the impact of this standard on its Consolidated Financial Statements.

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In February 2007, the FASB issued FASB Statement No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities – Including an amendment of FASB Statement No. 115* (SFAS 159), which gives the Company the irrevocable option to measure eligible items at fair value at specified election dates. A business entity shall report unrealized gains and losses on items for which the fair value option has been elected in earnings at each subsequent reporting date.

The fair value option:

- May be applied instrument by instrument, with a few exceptions, such as investments otherwise accounted for by the equity method;
- Is revocable (unless a new election date occurs); and
- Is applied only to entire instruments and not to portions of instruments.

This Statement is effective as of the beginning of an entity's first fiscal year that begins after November 15, 2007. Early adoption is permitted as of the beginning of a fiscal year that begins on or before November 15, 2007, provided the entity also elects to apply the provisions of FASB Statement No. 157, *Fair Value Measurements*. The Company has decided not to adopt the provisions of this standard for its Consolidated Financial Statements.

In September 2006, the FASB issued FASB Statement No. 157, *Fair Value Measurements* (SFAS 157), which establishes a framework for reporting fair value and expands disclosures about fair value measurements. SFAS 157 is effective for financial statements issued for fiscal years beginning after November 15, 2007, and interim periods within those fiscal years. The Company adopted this standard as of January 1, 2008 and the effect to the consolidated financials was not material.

**(3) Acquisitions and Divestiture**

During 2007, the Company made acquisitions mostly of dialysis centers in the normal course of its operations, totaling \$59,093 (excluding the Renal Solutions, Inc. ("RSI") acquisition described below). During 2006, acquisitions totaled \$71,501 (excluding the RCG and Phoslo Acquisitions described below).

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**(a) RSI Acquisition**

On November 26, 2007, the Company completed the acquisition of all the common stock of RSI, an Indiana Corporation with principal offices in Warrendale, PA. The RSI acquisition agreement provides for the total consideration of up to \$203,665, consisting of \$20,000 previously advanced to RSI in the form of a loan, \$99,834 paid at closing, \$60,000 payable after the first year which was recorded as a liability at closing, \$3,572 receivable related to working capital adjustment and up to \$30,000 in milestone payments over the next three years, contingent upon the achievement of certain performance criteria. The Company recorded a liability of \$27,384 representing the net present value of the \$30,000 milestone payments as it was deemed beyond reasonable doubt that the future performance criteria will be achieved. The purchase price was allocated to goodwill (\$159,385), intangible assets (\$34,480) and other net assets (\$9,800). RSI holds key patents and other intellectual property worldwide related to sorbent-based technology ("SORB"). SORB technology purifies potable water to dialysate quality and allows dialysis for up to 8 hours with only 6 liters of water through a process of dialysate regeneration and toxin absorption. This regeneration capability significantly reduces the water volume requirement for a typical hemodialysis treatment and is an important step in advancing home hemodialysis and helping create a potential platform for eventual development of a wearable kidney.

**(b) RCG Acquisition**

On March 31, 2006, the Company completed the acquisition of Renal Care Group, Inc. (RCG and the RCG Acquisition), a Delaware corporation with principal offices in Nashville, Tennessee, for an all cash purchase price, net of cash acquired, of \$4,157,684 for all of the outstanding common stock and the retirement of RCG stock options. The purchase price included the concurrent repayment of \$657,769 indebtedness of RCG. The operations of RCG are included in the Company's consolidated statements of operations and cash flows from April 1, 2006; therefore, the 2007 results are not comparable with the results for 2006 and 2005.

The final purchase price allocation is as follows:

|  |    |           |
|--|----|-----------|
| Assets held for sale   | \$ | 330,092   |
| Other current assets   |    | 414,006   |
| Property, plant and equipment                                    |    | 301,498   |
| Intangible assets and other assets                               |    | 149,486   |
| Goodwill   |    | 3,389,907 |
| Accounts payable, accrued expenses and other current liabilities |    | (289,378) |
| Income tax payable and deferred taxes                            |    | (58,756)  |
| Long-term debt and capital lease obligations                     |    | (3,882)   |
| Other liabilities  |    | (75,289)  |
| Total allocation of acquisition cost                             | \$ | 4,157,684 |

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**(c) Divestitures**

In order to complete the RCG Acquisition in accordance with a consent order issued by the United States Federal Trade Commission ("FTC") on March 31, 2006 the Company was required to divest a total of 105 renal dialysis centers, consisting of both former Company clinics (the "legacy clinics") and former RCG clinics. The Company sold 96 of such centers on April 7, 2006 to a wholly owned subsidiary of DSI Holding Company, Inc. (DSI) and sold DSI the remaining 9 centers effective as of June 30, 2006. Separately, in December 2006, the Company also sold the former laboratory business acquired in the RCG Acquisition receiving cash consideration of \$9,012. The Company received cash consideration of \$515,705, net of related expenses, for all centers divested and for the divested laboratory, subject to customary post-closing adjustments. Pre-tax income of \$40,233 on the sale of the legacy clinics was recorded in income from operations. Due to basis differences, tax expense of \$44,605 was recorded, resulting in a net loss on sale of \$4,372.

**(d) Pro Forma Financial Information**

The following unaudited financial information, on a pro forma basis, reflects the consolidated results of operations as if the RCG Acquisition and the divestitures described above had been consummated at the beginning of 2006 and 2005. The pro forma information includes adjustments primarily for eliminations, amortization of intangible assets, interest expense on acquisition debt, and income taxes. The pro forma financial information is not necessarily indicative of the results of operations as it would have been had the transactions been consummated at the beginning of the respective periods.

|  | 2006         | 2005      |
|--|--------------|-----------|
|  | (Unaudited)  |           |
| Pro forma net revenue                    | \$ 6,270,776 | 5,743,192 |
| Pro forma net income                     | 344,622      | 257,988   |
| Pro forma net income per ordinary share: |              |           |
| Basic and fully diluted                  | 3.82         | 2.86      |

**(e) Phoslo Acquisition**

On November 14, 2006, the Company acquired the worldwide rights to the PhosLo® phosphate binder product business and its related assets of Nabi Biopharmaceuticals. PhosLo® is an oral application calcium acetate phosphate binder for treatment of hyperphosphatemia primarily in end-stage renal disease patients. The Company paid cash of \$65,277 including related direct costs of \$277 plus a \$8,000 milestone payment in December 2006 and a \$2,500 milestone payment in 2007. An additional milestone payment of \$10,500 will be paid over the next two to three years, contingent upon the achievement of certain performance criteria. The purchase price was allocated to technology with estimated useful lives of 15 years (\$64,800), and in-process research and development project (\$2,750) which was immediately expensed, goodwill (\$7,327) and other net assets (\$900).



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In connection with the transaction, the Company also acquired worldwide rights to a new product formulation currently under development, which the Company expects will be submitted for approval in the U.S. during 2009. Following the successful launch of this new product formulation, the Company will pay Nabi Biopharmaceuticals royalties on sales of the new product formulation commencing upon the first commercialization of the new product and continuing until November 13, 2016. Total consideration, consisting of initial payment, milestone payments and royalties will not exceed \$150,000.

**(4) Other Balance Sheet Items**

**(a) Inventories**

As of December 31, 2007 and 2006, inventories consisted of the following:

|   | 2007       | 2006    |
|---|------------|---------|
| Inventories:  |            |         |
| Raw materials   | \$ 77,952  | 62,105  |
| Manufactured goods in process                           | 14,574     | 13,692  |
| Manufactured and purchased inventory available for sale | 97,016     | 70,312  |
|   | 189,542    | 146,109 |
| Health care supplies                                    | 84,836     | 94,230  |
| Total   | \$ 274,378 | 240,339 |

Under the terms of certain unconditional purchase commitments, the Company is obligated to purchase raw materials and health care supplies of \$192,571 of which \$101,058 is committed at December 31, 2007 for fiscal year 2008. The terms of these agreements run 1 to 6 years.

Inventories as of December 31, 2007 and 2006 include \$30,999 and \$46,131, respectively, of Erythropoietin (EPO), which is supplied by a single source supplier.

**(b) Other Current Assets**

As of December 31, 2007 and 2006, other current assets consisted of the following:

|                                   | 2007       | 2006    |
|-----------------------------------|------------|---------|
| Miscellaneous accounts receivable | \$ 216,145 | 214,078 |
| Deposits and prepaid expenses     | 63,154     | 53,576  |
| Total                             | \$ 279,299 | 267,654 |

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**(c) Accrued Liabilities**

As of December 31, 2007 and 2006, accrued liabilities consisted of the following:

|                                     | 2007       | 2006       |
|-------------------------------------|------------|------------|
| Accrued salaries and wages          | \$ 218,983 | \$ 198,385 |
| Accounts receivable credit balances | 173,134    | 148,429    |
| Accrued insurance                   | 145,436    | 120,327    |
| Accrued operating expenses          | 87,399     | 77,408     |
| Accrued lease obligations           | 60,240     | 43,651     |
| Accrued interest                    | 8,544      | 16,155     |
| Accrued legal and compliance        | 20,539     | 27,382     |
| Accrued physician compensation      | 15,470     | 17,806     |
| Accrued other                       | 42,743     | 41,969     |
| Total                               | \$ 772,488 | \$ 691,512 |

Accounts receivable credit balances principally reflect overpayments from third party payors and are in the process of repayment.

**(5) Sale of Accounts Receivable**

The Company has an asset securitization facility (the AR Facility) which is typically renewed in October of each year and was most recently renewed in October 2007. The AR Facility currently provides borrowings up to a maximum of \$650,000. Under the AR Facility, certain receivables are sold to NMC Funding Corporation (NMC Funding), a wholly owned subsidiary. NMC Funding then assigns undivided ownership interests in the accounts receivable to certain bank investors. Under the terms of the AR Facility, NMC Funding retains the right to recall all transferred interests in the accounts receivable assigned to the banks under the AR facility. As the Company has the right at any time to recall the then outstanding interests, the receivables remain on the consolidated balance sheet and the proceeds from the transfer of undivided interests are recorded as short-term borrowings.

At December 31, 2007 and 2006 there were outstanding short-term borrowings under the AR Facility of \$85,000 and \$266,000, respectively. NMC Funding pays interest to the bank investors, calculated based on the commercial paper rates for the particular tranches selected. The average interest rate at December 31, 2007 and 2006 was 5.44% and 5.31%, respectively. Annual refinancing fees, which include legal costs and bank fees (if any), are amortized over the term of the facility.

**(6) Debt**

**(a) 2006 Credit Agreement**

FMCAG & KGaA, FMCH and certain subsidiaries and affiliates entered into a \$4,600,000 syndicated credit facility (the 2006 Credit Agreement) with Bank of America, N.A. (BoFA); Deutsche Bank AG New York Branch; The Bank of Nova Scotia, Credit Suisse, Cayman Islands Branch; JPMorgan Chase Bank,

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National Association; and certain other lenders (collectively, the Lenders) on March 31, 2006 which replaced the prior credit agreement (the 2003 Credit Agreement).

The 2006 Credit Agreement consists of :

- a 5-year \$1,000,000 revolving credit facility (of which up to \$250,000 is available for letters of credit, up to \$300,000 is available for borrowings in certain non-U.S. currencies, up to \$150,000 is available as swing lines in U.S. dollars, up to \$250,000 is available as a competitive loan facility and up to \$50,000 is available as swing lines in certain non-U.S. currencies, the total of which cannot exceed \$1,000,000) which will be due and payable on March 31, 2011.
- a 5-year term loan facility (Loan A) of \$1,850,000, also scheduled to mature on March 31, 2011. The 2006 Credit Agreement requires 19 quarterly payments on Loan A of \$30,000 each that permanently reduce the term loan facility which began June 30, 2006 and continue through December 31, 2010. The remaining amount outstanding is due on March 31, 2011.
- a 7-year term loan facility (Loan B) of \$1,750,000 scheduled to mature on March 31, 2013. The terms of the 2006 Credit Agreement require 28 quarterly payments on Loan B that permanently reduce the term loan facility. The repayment began June 30, 2006. The first 24 quarterly payments will be equal to one quarter of one percent (0.25%) of the original principal balance outstanding, payments 25 through 28 will be equal to twenty-three and one-half percent (23.5%) of the original principal balance outstanding with the final payment due on March 31, 2013, subject to an early repayment requirement on March 1, 2011 if the Trust Preferred Securities due June 15, 2011 are not repaid or refinanced or their maturity is not extended prior to that date.

Interest on the credit facilities will be, at the Parent Company's option, depending on the interest periods chosen, at a rate equal to either (i) LIBOR plus an applicable margin or (ii) the higher of (a) BofA's prime rate or (b) the Federal Funds rate plus 0.5%, plus an applicable margin.

The applicable margin is variable and depends on the Parent Company's Consolidated Leverage Ratio which is a ratio of its Consolidated Funded Debt less up to \$30,000 cash and cash equivalents held by the Consolidated Group to Consolidated EBITDA (as these terms are defined in the 2006 Credit Agreement).

In addition to scheduled principal payments, indebtedness outstanding under the 2006 Credit Agreement will be reduced by mandatory prepayments utilizing portions of the net cash proceeds from certain sales of assets, securitization transactions other than the Company's existing accounts receivable facility, the issuance of subordinated debt other than certain intercompany transactions, certain issuances of equity and excess cash flow.

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The 2006 Credit Agreement contains affirmative and negative covenants with respect to the Parent Company and its subsidiaries and other payment restrictions. Some of the covenants limit indebtedness of the Parent Company and investments by the Parent Company, and require the Parent Company to maintain certain ratios defined in the agreement. In default, the outstanding balance under the 2006 Credit Agreement becomes immediately due and payable at the option of the Lenders. As of December 31, 2007, the Parent Company is in compliance with all financial covenants under the 2006 Credit Agreement.

The Company incurred fees of approximately \$61,548 in conjunction with the 2006 Credit Agreement which are being amortized over the life of the 2006 Credit Agreement and wrote off approximately \$10,009 in unamortized fees related to its prior 2003 Credit Agreement at March 31, 2006.

The following table shows the Company's outstanding amounts under the 2006 Credit Agreement at December 31, 2007 and 2006:

|                           | <b>Balance outstanding</b> |             |
|---------------------------|----------------------------|-------------|
|                           | <b>December 31,</b>        |             |
|                           | <b>2007</b>                | <b>2006</b> |
| Revolving credit facility | \$ 37,989                  | 67,827      |
| Loan A                    | 300,000                    | 510,000     |
| Loan B                    | 1,333,125                  | 1,491,875   |
|                           | \$ 1,671,114               | 2,069,702   |

In addition, at December 31, 2007 and 2006, \$87,140 and \$84,733, respectively, were utilized as letters of credit which are not included as part of the balances outstanding at those dates.

In June 2007, the 2006 Credit Agreement was amended in order to enable the Parent Company to issue \$500 million in Senior Notes (see below). Furthermore, on January 31, 2008 it was amended to increase certain types of permitted borrowings and to remove all limitations on capital expenditures.

On July 2, 2007 the Company voluntarily repaid portions of the term loans outstanding utilizing a portion of the proceeds from the issuance of senior notes (see Senior Notes below). Under the terms of the 2006 Senior Credit Agreement, advance payments on the term loans are applied first against the next four quarterly payments due with any amounts in excess of the four quarterly payments applied on a pro-rata basis against any remaining payments. As a result of the advance payments on the Term Loans, no payments will be made or will be due for either Term Loan A or B until the third quarter of 2008.

In conjunction with the 2006 Credit Agreement and the related variable rate based interest payments, the Company entered into additional interest rate swaps in the notional amount of \$1,215,000 with FMCAG & KGaA. As of December 31, 2007 and 2006 the Company had total interest rates swaps in

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the notional amount of \$1,565,000, and \$1,915,000, respectively. These instruments, designated as cash flow hedges, effectively convert forecasted LIBOR-based interest payments into fixed rate based interest payments which fix the interest rate on \$1,215,000 of the financing under the 2006 Credit Agreement at a weighted average rate of 4.78% plus an applicable margin. These swaps are denominated in U.S. dollars and expire at various dates between 2008 and 2012.

The weighted average interest rate for all Company debt outstanding as of December 31, 2007 and 2006 was approximately 6.24% and 6.04%, respectively including the effects of interest rate swaps in effect during the period.

**Senior Notes**

On July 2, 2007, FMC Finance III S.A., a wholly owned subsidiary of FMCAG & KGaA issued \$500,000 aggregate principal amount of 7 1/8% Senior Notes due 2017. The Senior Notes are guaranteed on a senior basis jointly and severally by FMCAG & KGaA and by its subsidiaries Fresenius Medical Care Holdings, Inc. (the Company or FMCH) and Fresenius Medical Care Deutschland GmbH (D-GmbH). The proceeds, net of discounts and bank fees but prior to the payment of other offering related expenses totaling approximately \$484,875 were used to reduce the five year term loan facility (Loan A) by \$150,000 and the seven year term loan facility (Loan B) by \$150,000 under the Company's 2006 Credit Agreement. The remaining \$184,875 was applied to the outstanding balance under the Company's AR Facility (see note 5). The \$500,000 of funds provided was recorded as intercompany borrowings from FMC Finance III, S.A. The discount is being amortized over the life of the Senior notes.

**(b) Long-Term Debt**

At December 31, 2007 and 2006, long-term debt consisted of the following:

|                                     | December 31  |           |
|-------------------------------------|--------------|-----------|
|                                     | 2007         | 2006      |
| Senior credit agreement             | \$ 1,671,114 | 2,069,702 |
| RSI deferred and milestone payments | 83,812       | —         |
| Other                               | 135          | 74        |
|                                     | 1,755,061    | 2,069,776 |
| Less amounts classified as current  | 123,496      | 137,574   |
|                                     | \$ 1,631,565 | 1,932,202 |

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*(c) Borrowings (Receivables) from Affiliates*

|   | December 31 |           |
|---|-------------|-----------|
|   | 2007        | 2006      |
| Borrowings (receivables) from affiliates consists of:   |             |           |
| Fresenius Medical Care AG & Co. KGaA borrowings primarily at interest rates approximating 4.86% and 5.39%, respectively | \$ 248,459  | 973,897   |
| RTC Holdings International, Inc. borrowings at a fixed interest rate of 5.20% and 5.46%, respectively                   | 12,928      | 12,249    |
| Fresenius Medical Care Trust Finance S.a.r.l. borrowings at fixed interest rate of 8.25%                                | 654,244     | 654,244   |
| FMC Finance III S.A. borrowings, net of discounts at a fixed rate of 7.019%   | 491,569     | —         |
| Fresenius Medical Care North America Holdings Limited Partnership receivables at a rate of LIBOR plus 1%                | (157,289)   | (70,951)  |
|   | 1,249,911   | 1,569,439 |
| Less amounts classified as current  | 543,732     | 919,300   |
| Total   | \$ 706,179  | 650,139   |

Scheduled maturities of long-term debt and borrowings from affiliates are as follows:

|                     |              |
|---------------------|--------------|
| 2008                | \$ 667,228   |
| 2009                | 648,716      |
| 2010                | 133,866      |
| 2011                | 21,841       |
| 2012                | 1,180,212    |
| 2013 and thereafter | 353,109      |
| Total               | \$ 3,004,972 |

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(7) **Goodwill and Other Intangible Assets**

At December 31, 2007 and 2006, the carrying value and accumulated amortization of other intangible assets consisted of the following:

|                                   | December 31, 2007          |                             |                   | December 31, 2006          |                             |                   |
|-----------------------------------|----------------------------|-----------------------------|-------------------|----------------------------|-----------------------------|-------------------|
|                                   | Gross<br>carrying<br>value | Accumulated<br>amortization | Carrying<br>value | Gross<br>carrying<br>value | Accumulated<br>amortization | Carrying<br>value |
| Amortizable intangible assets:    |                            |                             |                   |                            |                             |                   |
| Noncompete agreements             | \$ 183,379                 | (103,671)                   | 79,708            | 176,134                    | (94,994)                    | 81,140            |
| Acute care agreements             | 127,226                    | (116,217)                   | 11,009            | 121,912                    | (115,306)                   | 6,606             |
| Technology                        | 65,536                     | (4,680)                     | 60,856            | 64,800                     | (406)                       | 64,394            |
| Other intangibles                 | 58,537                     | (18,699)                    | 39,838            | 34,002                     | (26,768)                    | 7,234             |
|                                   | <u>\$ 434,678</u>          | <u>(243,267)</u>            | <u>191,411</u>    | <u>396,848</u>             | <u>(237,474)</u>            | <u>159,374</u>    |
| Nonamortizable intangible assets: |                            |                             |                   |                            |                             |                   |
| Tradenname                        | \$ 210,166                 | —                           | 210,166           | 210,166                    | —                           | 210,166           |
| Management contracts              | 217,869                    | —                           | 217,869           | 217,869                    | —                           | 217,869           |
|                                   | <u>\$ 428,035</u>          | <u>—</u>                    | <u>428,035</u>    | <u>428,035</u>             | <u>—</u>                    | <u>428,035</u>    |
| Net intangibles                   | \$ 862,713                 | (243,267)                   | 619,446           | 824,883                    | (237,474)                   | 587,409           |

Amortization expense for amortizable intangible assets for the years ended December 31, 2007, 2006 and 2005 was \$16,885, \$21,897 and \$18,178, respectively. Amortization expense is estimated to be \$18,000 for 2008, \$18,000 for 2009, \$19,000 for 2010, \$19,000 for 2011 and \$19,000 for 2012.

In connection with the Company's RCG Acquisition (see note 3), the Company performed a detailed review of the identification of intangible assets related to its dialysis clinic operations in the United States. As part of this review, the Company considered the conditions for recognition as an intangible asset apart from goodwill and practices in the dialysis care industry. The amortizable intangible assets acquired included \$64,000 for non-compete agreements, \$3,500 for acute care agreements and \$2,010 for lease agreements. As a result of this review, the Company concluded that its past practice of identifying certain intangible assets associated with "patient relationships" should be discontinued. Accordingly, the carrying amount of patient relationships that had been identified as separate intangible assets in prior business combinations involving clinics of the Company and related income tax effects have been reallocated to goodwill. These changes resulted in an increase of goodwill as of January 1, 2006 of \$35,240, a corresponding decrease of intangible assets and deferred tax liabilities of \$37,319 and \$2,079, respectively. The amortization recorded in prior periods on such intangible assets that should have been included in goodwill did not result in a material understatement of the Company's results of operations for any prior period and the aggregate effect does not materially understate the Company's shareholders' equity.

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**(a) Goodwill**

Changes in the carrying amount of goodwill for the years ended December 31, 2007 and 2006 are as follows:

|  | December 31  |           |
|--|--------------|-----------|
|  | 2007         | 2006      |
| Carrying value as of beginning of year       | \$ 6,415,815 | 3,054,262 |
| Goodwill acquired RSI                        | 159,385      | —         |
| Goodwill acquired RCG (excl. divestitures)   | 8,006        | 3,381,901 |
| Goodwill acquired other                      | 44,667       | 68,106    |
| Goodwill disposed of                         | —            | (119,942) |
| Reclassifications from patient relationships | —            | 35,240    |
| Other reclassifications                      | 17,252       | (3,752)   |
| Carrying value as of end of year             | \$ 6,645,125 | 6,415,815 |

**(8) Special Charge for Legal Matters**

In 2001, the Company recorded a \$258,159 special charge to address legal matters relating to transactions pursuant to the Agreement and Plan of Reorganization dated as of February 4, 1996 by and between W. R. Grace & Co. and Fresenius AG (the Merger), estimated liabilities and legal expenses arising in connection with the W. R. Grace & Co. Chapter 11 proceedings (the Grace Chapter 11 Proceedings) and the cost of resolving pending litigation and other disputes with certain commercial insurers. During the second quarter of 2003, the court supervising the Grace Chapter 11 Proceedings approved a definitive settlement agreement entered into among the Company, the committee representing the asbestos creditors and W. R. Grace & Co. Under the settlement agreement, the Company will pay \$115,000 upon plan confirmation (see note 16). With the exception of the proposed \$115,000 payment under the Settlement Agreement all other matters included in the special charge have been resolved.

At December 31, 2007, there is a remaining balance of \$116,999 for the accrual for the special charge for legal matters. During the years ended December 31, 2007 and 2006, \$452 and \$90, respectively, in charges were applied against the accrued special charge for legal matters.



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**(9) Income Taxes**

Income before income taxes and minority interest are as follows:

|                                     |    | Years ended December 31, |                |                |
|-------------------------------------|----|--------------------------|----------------|----------------|
|                                     |    | 2007                     | 2006           | 2005           |
| Domestic                            | \$ | 813,888                  | 636,378        | 476,176        |
| Foreign                             |    | 6,884                    | 1,969          | 434            |
| Total income before<br>income taxes |    | <u>820,772</u>           | <u>638,347</u> | <u>476,610</u> |

The provisions for income taxes are as follows:

|                            |    | Years ended December 31, |                |                |
|----------------------------|----|--------------------------|----------------|----------------|
|                            |    | 2007                     | 2006           | 2005           |
| Current tax expense:       |    |                          |                |                |
| Federal                    | \$ | 274,792                  | 229,324        | 173,960        |
| State                      |    | 40,424                   | 37,019         | 30,606         |
| Foreign                    |    | 1,852                    | 2,691          | 1,981          |
| Total current              |    | <u>317,068</u>           | <u>269,034</u> | <u>206,547</u> |
| Deferred tax expense:      |    |                          |                |                |
| Federal                    |    | (794)                    | 5,420          | 6,125          |
| State                      |    | 6,103                    | 4,698          | 304            |
| Foreign                    |    | —                        | —              | —              |
| Total deferred tax expense |    | <u>5,309</u>             | <u>10,118</u>  | <u>6,429</u>   |
| Total provision            |    | <u>\$ 322,377</u>        | <u>279,152</u> | <u>212,976</u> |

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The provision for income taxes for the years ended December 31, 2007, 2006, and 2005 differed from the amount of income taxes determined by applying the applicable statutory federal income tax rate to pre-tax earnings as a result of the following differences:

|  | Years ended December 31, |       |       |
|--|--------------------------|-------|-------|
|  | 2007                     | 2006  | 2005  |
| Statutory federal tax rate                     | 35.0%                    | 35.0% | 35.0% |
| State income taxes, net of federal tax benefit | 3.7                      | 4.3   | 4.2   |
| Provision for tax audit liability              | 0.1                      | —     | 5.3   |
| Gain on divested clinics                       | —                        | 4.3   | —     |
| Foreign losses and taxes                       | 0.2                      | 0.1   | 0.2   |
| Manufacturing deduction                        | (0.2)                    | (0.2) | (0.2) |
| Other  | 0.5                      | 0.2   | 0.2   |
|  | 39.3%                    | 43.7% | 44.7% |
| Effective tax rate                             |                          |       |       |

Deferred tax liabilities (assets) are comprised of the following:

|   | December 31, |           |
|---|--------------|-----------|
|   | 2007         | 2006      |
| Reserves and other accrued liabilities  | \$ (205,158) | (171,746) |
| Depreciation and amortization           | 325,586      | 283,290   |
| Special charge not currently deductible | (41,053)     | (41,425)  |
| Derivatives                             | (30,072)     | (28,146)  |
| Pension valuation                       | (14,928)     | 6,559     |
| Other                                   | (3,863)      | (2,015)   |
|   | \$ 30,512    | 46,517    |
| Net deferred tax liabilities            |              |           |

The Company has established valuation allowances for deferred tax assets of \$6,392 and \$10,479 at December 31, 2007 and 2006, respectively.

The net (decrease) increase in the valuation allowance for deferred tax assets was \$(4,087), \$101 and \$1,184 for the years ended December 31, 2007, 2006, and 2005, respectively. The changes for all three years relate to activities incurred in foreign jurisdictions.

It is the Company's expectation that it is more likely than not to generate future taxable income to utilize its deferred tax assets.

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At December 31, 2007, there is a federal net operating loss carryover of \$56,638 the majority of which will begin to expire in 2020. In addition, there is a Federal Tax Credit of \$1,162 which will begin to expire in 2020. State net operating loss carryovers are \$24,327 with varying expiration dates and foreign net operating losses are \$18,291, the majority of which expire within seven years.

Provision has not been made for additional federal, state, or foreign taxes on \$19,401 of undistributed earnings of foreign subsidiaries. Prior to a decision on the evaluation discussed below, those earnings have been and will continue to be reinvested. The earnings could be subject to additional tax if they were remitted as dividends, if foreign earnings were loaned to the Company or a U.S. affiliate or if the Company should sell its stock in these subsidiaries. The Company estimates that the distribution of these earnings would result in \$7,439 of additional foreign withholding tax and U.S. federal income taxes.

The Company adopted FASB Interpretation No. 48 ("FIN 48"), *Accounting for Uncertainty in Income Taxes - an interpretation of FASB Statement No. 109* as of January 1, 2007. FIN 48 prescribes a two step approach to the recognition and measurement of all tax positions taken or expected to be taken in a tax return. The enterprise must determine whether it is more-likely-than-not that a tax position will be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. If the threshold is met, the tax position is measured at the largest amount of benefit that is greater than 50% likely of being realized upon ultimate settlement and is recognized in the financial statements. The implementation of this interpretation had no impact on the assets and liabilities of the Company.

Except for the refund claims the Company has filed relative to the disallowance of tax deductions with respect to certain civil settlement payments for 2000 and 2001, the federal tax audit for the years 1999 through 2001 is completed. The tax has been paid and all results are recognized in the financial statements as of December 31, 2006. The unrecognized tax benefit relating to these deductions is included in the total unrecognized tax benefit noted below. The Federal tax audit for the years 2002 through 2004 has been completed and the IRS has issued its report. The audit report includes disallowance of a material amount of deductions taken during the audit period for interest expense related to intercompany mandatory redeemable preferred securities. The Company has filed a protest over the disallowed deductions and will avail itself of all remedies. An adverse determination with respect to any of the disputed disallowances could have a material adverse effect on the Company's cash flows, tax expenses, net income and earnings per share.

Fiscal years 2005 and 2006 are currently under audit. There are a number of state audits in progress and various years are open to audit in various states. All expected results have been recognized in the financial statements.

Upon adoption of FIN 48, the Company had \$77,755 of unrecognized tax benefits including the amounts relating to the tax audit items noted above. The following table shows the reconciliation of the beginning and ending amounts of unrecognized tax benefits:

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|  | <u>2007</u>      |
|--|------------------|
| Unrecognized tax benefits (net of interest):           |                  |
| Balance at January 1, 2007                             | \$ 77,755        |
| Increases in unrecognized tax benefits prior periods   | 2,936            |
| Decreases in unrecognized tax benefits prior periods   | (442)            |
| Increases in unrecognized tax benefits current periods | 1,478            |
| Changes related to settlements with tax authorities    | (1,350)          |
| Balance at December 31, 2007                           | <u>\$ 80,377</u> |

The vast majority of these unrecognized tax benefits would reduce the effective tax rate if recognized. The Company is currently not in a position to forecast the timing and magnitude of changes in the unrecognized tax benefits.

During the year ended December 31, 2007 the Company recognized \$6,136 in interest and penalties. The Company paid \$1,882 in interest and penalties for the year ended December 31, 2007.

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**(I0) Property, Plant and Equipment**

As of December 31, 2007 and 2006, property, plant and equipment consisted of the following:

|   | December 31, |           |
|---|--------------|-----------|
|   | 2007         | 2006      |
| Land and improvements                     | \$ 9,473     | 9,786     |
| Buildings                                 | 158,089      | 134,560   |
| Capital lease property                    | 529          | 343       |
| Leasehold improvements                    | 745,782      | 632,760   |
| Equipment and furniture                   | 891,817      | 804,749   |
| Construction in progress                  | 154,091      | 201,625   |
|   | 1,959,781    | 1,783,823 |
| Accumulated depreciation and amortization | (727,329)    | (661,845) |
| Property, plant and equipment, net        | \$ 1,232,452 | 1,121,978 |

Depreciation expense relating to property, plant and equipment amounted to \$200,956, \$162,886, and \$120,550 for the years ended December 31, 2007, 2006, and 2005, respectively.

Included in property, plant and equipment as of December 31, 2007, and 2006 were \$39,160 and \$37,953, respectively, of peritoneal dialysis cyclor machines which the Company leases to customers with end-stage renal disease on a month-to-month basis. Rental income for the peritoneal dialysis cyclor machines was \$13,288, \$9,523, and \$4,693, for the years ended December 31, 2007, 2006, and 2005, respectively.

**(a) Leases**

The Company leases buildings and machinery and equipment under various lease agreements expiring on dates through 2019. Rental expense for operating leases was \$327,487, \$308,813, and \$243,238 for the years ended December 31, 2007, 2006, and 2005, respectively. Amortization of properties under capital leases amounted to \$312, \$1,241, and \$124 for the years ended December 31, 2007, 2006, and 2005, respectively.

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Future minimum payments under noncancelable leases (principally for clinics, offices and equipment) as of December 31, 2007 are as follows:

|  | <u>Operating<br/>leases</u> | <u>Capital<br/>leases</u> | <u>Total</u>     |
|--|-----------------------------|---------------------------|------------------|
| 2008   | \$ 273,804                  | 445                       | 274,249          |
| 2009   | 244,268                     | 454                       | 244,722          |
| 2010   | 210,700                     | 464                       | 211,164          |
| 2011   | 175,097                     | 475                       | 175,572          |
| 2012   | 140,840                     | 186                       | 141,026          |
| 2013 and beyond  | <u>357,658</u>              | <u>1,256</u>              | <u>358,914</u>   |
| Total minimum payments   | <u>\$ 1,402,367</u>         | 3,280                     | <u>1,405,647</u> |
| Less interest and operating costs                                      |                             | <u>472</u>                |                  |
| Present value of minimum<br>lease Payments (\$118<br>payable in 2008). |                             | <u>\$ 2,808</u>           |                  |

Lease agreements frequently include renewal options and require that the Company pay for utilities, taxes, insurance and maintenance expenses. Options to purchase are also included in some lease agreements, particularly capital leases.

**(11) Mandatorily Redeemable Preferred Securities**

FMCA & KGa issued Trust Preferred Securities through Fresenius Medical Care Capital Trusts, statutory trusts organized under the laws of the State of Delaware. FMCA & KGa owns all of the common securities of these trusts. The sole asset of each trust is a senior subordinated note of FMCA & KGa or a wholly owned subsidiary of FMCA & KGa. FMCA & KGa, Fresenius Medical Care Deutschland GmbH (D-GmbH) and FMCH have guaranteed payment and performance of the senior subordinated notes to the Fresenius Medical Care Capital Trusts. The Trust Preferred Securities are guaranteed by FMCA & Co. KGa through series of undertakings by FMCA & KGa and FMCH and D-GmbH.

During 2001 and 2000, a wholly owned subsidiary of the Company issued shares of various series of Preferred Stock (Redeemable Preferred Securities) to NMC which were then transferred to FMCA for proceeds totaling \$392,037 in 2001 and \$305,500 in 2000. During 2003, net proceeds from the issuance of Series G and Series H Redeemable Preferred Securities and the redemption of Series A and Series C Redeemable Preferred Securities totaled \$37,400 net. During 2004, net proceeds from the issuance of Series I and Series J and the redemption of Series B, Series D, Series E and Series F totaled \$37,157 net.

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During 2005, net proceeds from the issuance of Series J increased by \$18,387. During 2006, a net decrease of \$305,500 resulted from the redemption of Series H. During 2007, a net increase of \$628,100 resulted from the issuance of Series A and the redemption of Series G.

The table below provides information for the remaining Redeemable Preferred Securities for the periods indicated.

|  | December 31, |         |
|--|--------------|---------|
|  | 2007         | 2006    |
| Mandatorily Redeemable Preferred Securities: |              |         |
| Series A Preferred Stock, 100 shares         | \$ 665,500   | —       |
| Series G Preferred Stock, 330 shares         | —            | 37,400  |
| Series I Preferred Stock, 1,000 shares       | 245,000      | 245,000 |
| Series J Preferred Stock, 1,000 shares       | 202,581      | 202,581 |
|  | 1,113,081    | 484,981 |
| Mark to market adjustment                    | 23,060       | 5,050   |
| Total mandatorily redeemable                 | 1,136,141    | 490,031 |
| Less amounts classified as current           | —            | 43,164  |
| Total  | \$ 1,136,141 | 446,867 |

These securities are similar in substance except for the order of preference both as to dividends and liquidation, dissolution or winding-up of the subsidiary. The order of preference among the various series corresponds to the alphabetical order of Series A through Series J. In addition, the holders of the Redeemable Preferred Securities are entitled to receive dividends in an amount of dollars per share that varies from approximately 3% to 5% of the purchase price depending on the Series. The dividends will be declared and paid in cash at least annually. All the Redeemable Preferred Securities have a par value of \$0.01 per share.

Upon liquidation or dissolution or winding up of the issuer of the Redeemable Preferred Securities, the holders of the Redeemable Preferred Securities are entitled to an amount equal to the liquidation preference for each share of stock plus an amount equal to all accrued and unpaid dividends thereon through the date of distribution. The liquidation preference is the sum of the issuance price plus, for each year or portion thereof, an amount equal to one-half of one percent of the issue price, not to exceed 5% of the issue price in the aggregate.

The remaining Redeemable Preferred Securities will be sold back to the Company ranging in periods of three year to six years from their respective date of issuance for a total amount equal to €153,278 (Series J) and U.S. dollars \$910,500 (Series A and I) plus any accrued and unpaid dividends. Redeemable Preferred Securities (Series G) were offered in August 2003 by the Company in the amount of €32,774 and were redeemed in December 2007. Redeemable Preferred Securities (Series H) were offered in December 2003

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in the amount of €252,057 (U.S. \$305,500) and were redeemed in December 2006. In connection with the redemption of Series H redeemable preferred securities, borrowings from affiliates were increased by \$305,500. Series I were offered in May 2004 in the amount of \$97,500 and were increased in the third quarter of 2004 by \$147,500 to a total of \$245,000 and have a redemption date in May 2010. Series J were offered in December 2004 in the amount of €138,944 and were increased in the second quarter of 2005 by €14,334 to a total of €153,278 and have a redemption date in May 2010. Series A were offered in March 2007 and have a redemption date in March 2013.

Dividends were recorded and classified as part of interest expense in the consolidated statements of operations in the amounts of \$55,670, \$32,973, and \$33,717, for the years ended December 31, 2007, 2006 and 2005, respectively. During the years ended December 31, 2007, 2006 and 2005, cash dividend payments were made totaling \$19,863, \$37,209 and \$33,828, respectively. The Euro Redeemable Preferred Securities are deemed to be a euro liability and the risk of foreign currency fluctuations are hedged through forward currency contracts.

The Company records mark to market adjustments based on fluctuations in currency rates and records the offset to accumulated comprehensive income.

The holders of the Redeemable Preferred Securities have the same participation rights as the holders of all other classes of capital stock of the issuing subsidiary.

**(12) Pension and Other Post Retirement Benefits**

**(a) Defined Benefit Pension Plans**

The Company has non-contributory, defined benefit pension plans. Each year the Company contributes at least the minimum required by the Employee Retirement Income Security Act of 1974, as amended. Plan assets consist primarily of publicly traded common stock, fixed income securities and cash equivalents.

During the first quarter of 2002, the Company curtailed its defined benefit and supplemental executive retirement plans. Under the curtailment amendment for substantially all employees eligible to participate in the plan, benefits have been frozen as of the curtailment date and no additional defined benefits for future services will be earned. The Company has retained all employee benefit obligations as of the curtailment date. Each year the Company contributes at least the minimum amount required by the Employee Retirement Income Security Act of 1974, as amended. There was no minimum funding requirement for FMCH for the defined benefit plan in 2007. The Company voluntarily contributed \$0, \$10,000 and \$25,000 for the years ended December 31, 2007, 2006 and 2005, respectively.



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The following table shows the changes in benefit obligations, the changes in plan assets, and the funded status of the defined benefit pension plan.

|  | Years ended December 31 |                |                |
|--|-------------------------|----------------|----------------|
|  | 2007                    | 2006           | 2005           |
| Change in benefit obligation:                  |                         |                |                |
| Benefit obligation at beginning of year        | \$ 209,314              | 213,118        | 199,653        |
| Service cost                                   | 1,794                   | 1,829          | 908            |
| Interest cost                                  | 12,449                  | 11,927         | 11,515         |
| Actuarial (gain)/loss                          | (17,078)                | (13,621)       | 4,411          |
| Benefits paid                                  | (4,593)                 | (3,939)        | (3,369)        |
| Benefit obligation at end of year              | <u>201,886</u>          | <u>209,314</u> | <u>213,118</u> |
| Change in plan assets:                         |                         |                |                |
| Fair value of plan assets at beginning of year | 214,453                 | 190,700        | 161,524        |
| Actual return on plan assets                   | 11,822                  | 17,692         | 7,545          |
| Employer contribution                          | —                       | 10,000         | 25,000         |
| Benefits paid                                  | (4,593)                 | (3,939)        | (3,369)        |
| Fair value of plan assets at end of year       | <u>221,682</u>          | <u>214,453</u> | <u>190,700</u> |
| Funded status at year-end                      | <u>\$ (19,796)</u>      | <u>(5,139)</u> | <u>22,418</u>  |

The pension asset recognized under SFAS 158 as of December 31, 2007, is equal to the amount shown as 2007 funded status at end of year in the table above. The funded status of \$19,796 is recorded as non-current pension asset in the consolidated balance sheet.

The accumulated benefit obligation for the defined benefit plan was \$199,189 and \$206,611 at December 31, 2007 and 2006, respectively. The accumulated benefit obligation for the defined benefit plan with an obligation less than plan assets was \$22,493 and \$7,842 at December 31, 2007 and 2006, respectively; the related plan assets had a fair value of \$221,682 and \$214,453 at December 31, 2007 and 2006, respectively.

The pre-tax changes in the table below for 2007 reflect actuarial losses (gains) in other comprehensive income relating to pension liabilities. The pre-tax changes in the table below for 2006 reflect actuarial losses (gains) in other comprehensive income relating to pension liabilities and changes to additional minimum liability. As of December 31, 2007 there are no cumulative effects of prior service costs included in other comprehensive income.

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|   | <b>Actuarial<br/>losses (gains)</b> | <b>Additional<br/>Minimum<br/>Liability</b> |
|---|-------------------------------------|---|
| Adjustments related to pensions at<br>January 1, 2006   | \$ —                                | 69,674                                      |
| Additions   | —                                   | —   |
| Releases  | —                                   | (22,764)                                    |
| Adjustment FAS 158                                      | 49,613                              | (46,910)                                    |
| Adjustments related to pensions at<br>December 31, 2006 | \$ 49,613                           | \$ —  |
| <br>  |                                     |   |
| Additions   | (12,990)                            | —   |
| Releases  | (3,451)                             | —   |
| Adjustments related to pensions at<br>December 31, 2007 | \$ 33,172                           | \$ —  |

The actuarial loss expected to be amortized from other comprehensive income into net periodic pension cost over the next year is \$1,325.

The following weighted average assumptions were utilized in determining benefit obligations as of December 31:

|                               | <b>2007</b> | <b>2006</b> | <b>2005</b> |
|-------------------------------|-------------|-------------|-------------|
| Discount rate                 | 6.50%       | 6.00%       | 5.60%       |
| Rate of compensation increase | 4.50        | 4.50        | 4.50        |

The defined benefit pension plans net periodic benefit cost are comprised of the following components:

|   | <b>2007</b> | <b>2006</b> | <b>2005</b> |
|---|-------------|-------------|-------------|
| Components of net periodic<br>benefit cost: |             |             |             |
| Service cost                                | \$ 1,794    | 1,829       | 908         |
| Interest cost                               | 12,449      | 11,927      | 11,515      |
| Expected return on plan assets              | (15,909)    | (14,966)    | (12,800)    |
| Amortization of unrealized losses           | 3,451       | 6,334       | 6,038       |
| Net periodic benefit<br>cost                | \$ 1,785    | 5,124       | 5,661       |

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The discount rates for all plans are derived from an analysis and comparison of yields of portfolios of highly rated equity and debt instruments with maturities that mirror the plan's benefit obligation. The Company discount rate is the weighted average of these plans based upon their benefit obligations at December 31, 2007. The following weighted average assumptions were used in determining net periodic benefit cost for the years ended December 31:

|                                | 2007  | 2006  | 2005  |
|--------------------------------|-------|-------|-------|
| Discount rate                  | 6.00% | 5.60% | 5.75% |
| Expected return of plan assets | 7.50  | 7.50  | 7.50  |
| Rate of compensation increase  | 4.50  | 4.50  | 4.50  |

Expected benefit payments for the next five years and in the aggregate for the five years thereafter are as follows:

|                   |    |        |
|-------------------|----|--------|
| 2008              | \$ | 5,133  |
| 2009              |    | 5,696  |
| 2010              |    | 6,342  |
| 2011              |    | 7,014  |
| 2012              |    | 7,866  |
| 2013 through 2017 |    | 53,940 |

The Company uses December 31 as the measurement date in determining the funded status of all plans.

The Company's supplemental executive retirement plan provides certain key executives with benefits in excess of normal pension benefits. This plan was also curtailed during the first quarter 2002. The projected benefit obligation was \$8,785 and \$9,093 at December 31, 2007 and 2006, respectively. Pension expense for this plan, for the years ended December 31, 2007, 2006 and 2005 was \$806, \$870, and \$824, respectively. The Company has recorded \$2,423 to accumulated other comprehensive income to recognize the additional liability for this plan at December 31, 2007. The Company has received \$3,123 to accumulated other comprehensive income to recognize the additional minimum liability for this plan related to the excess of the accumulated benefit obligation over the fair value of plan assets and accrued pension benefits at December 31, 2006.

The pension liability recognized under SFAS 158 as of December 31, 2007 of \$8,785, includes a current portion of \$488 which is recognized as a current liability in the line item "accrued liabilities" within the balance sheet. The non-current portion of \$8,297 is recorded as non-current pension liability in "other liabilities" within the consolidated balance sheet.

The Company does not provide any post retirement benefits to its employees other than those provided under its pension plan and supplemental executive retirement plan.

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**(b) Everest Employees' Retirement Plan and Trust**

The Company's Everest employees participated in the Everest Employees Retirement Plan (Everest Plan), a noncontributory defined benefit pension plan. The defined benefit plan covered all the employees of Everest and a related party with common ownership, Nephrology Associates of Northern Illinois, Ltd (NANI), who met certain eligibility requirements. Retirement benefit payments were based on years of credited service and average compensation over the final five years of employment. The funding policy was to contribute annually amounts, which were deductible for federal income tax purposes. Effective May 16, 1996, all participant plan benefits in the defined benefit plans were frozen. Everest and NANI ceased funding the defined benefit plans as of May 16, 1996 and no additional years of benefit service were accrued by plan participants subsequent to that date.

The projected benefit obligation was \$7,825 and \$8,052 as of December 31, 2007 and 2006 respectively. There was a pension expense of \$268, \$416 and \$178 for this plan for the years ended December 31, 2007, 2006 and 2005, respectively. The Company recorded \$1,286 and \$2,006 to accumulated other comprehensive income to recognize the additional liability and the additional minimum liability for this plan related to the excess of accumulated benefit obligation over the fair value of plan assets and accrued pension benefits at December 31, 2007 and 2006, respectively.

The pension liability recognized under SFAS 158 as of December 31, 2007 of \$926, is recognized as a non-current liability in the line item "other liabilities" within the consolidated balance sheet.

**(c) Plan Investment Policy and Strategy**

The Company periodically reviews the assumption for long-term expected return on pension plan assets. As part of the assumptions review, independent consulting actuaries determine a range of reasonable expected investment returns for the pension plan as a whole based on their analysis of expected future returns for each asset class weighted by the allocation of the assets. The range of returns developed relies both on forecasts, which include the actuarial firm's expected long-term rates of return for each significant asset class or economic indicator, and on broad-market historical benchmarks for expected return, correlation, and volatility for each asset class. As a result, the Company's expected rate of return on pension plan assets was 7.50% for 2007.

The investment policy, utilizing a target investment allocation of 35% equity and 65% long-term U.S. bonds, considers that there will be a time horizon for invested funds of more than 5 years. The total portfolio will be measured against a policy index that reflects the asset class benchmarks and the target asset allocation. The Plan policy does not allow investments in securities of the Company or other related party securities. The performance benchmarks for the separate asset classes include: S&P 500 Index, Russell 2000 Growth Index, MSCI EAFE Index, Lehman U.S. Long Government/Credit bond Index and the HFRI Fund of Funds Index. The Company expects to contribute \$853 to Plan Assets during 2008.

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The following schedule describes the Company's allocation for its plans:

|                            | <u>Allocation in<br/>2007 in %</u> | <u>Allocation in<br/>2006 in %</u> | <u>Target<br/>allocation in %</u> |
|----------------------------|------------------------------------|------------------------------------|-----------------------------------|
| Categories of plan assets: |                                    |                                    |                                   |
| Equity securities          | 30%                                | 37%                                | 35%                               |
| Debt securities            | 70                                 | 63                                 | 65                                |
| Total                      | <u>100%</u>                        | <u>100%</u>                        | <u>100%</u>                       |

**(d) Defined Contribution Plans**

Most of the Company's employees are eligible to join a 401(k) savings plan. Employees can deposit up to 75% of their pay up to a maximum of \$15.5 if under 50 years old (\$20.5 if 50 or over) under this savings plan. The Company will match 50% of the employee deposit up to a maximum Company contribution of 3% of the employee's pay. The Company's total expense under this defined contribution plan for the years ended December 31, 2007, 2006 and 2005 was \$23,534, \$19,900, and \$15,242, respectively.

**(13) Equity**

**(a) Preferred Stock \$1.00 par value**

During 2006, the Company issued to Fresenius Medical Care North America Holdings Limited Partnership, ("DLP"), 5,000,000 shares at \$1.00 par value of Series C Preferred Stock. The Company received proceeds of \$1,250,000. Simultaneously to the issuance of the securities the Company entered into a conditional forward sale contract on the shares with DLP, (see note 14 e). At December 31, 2006, the securities were marked to market at the Euro spot rate. The result was an increase in the fair value of the shares to \$1,360,088 with the change in fair value, (\$110,088), recognized in earnings. At December 31, 2007, the securities were marked to market at the Euro spot rate, increasing the fair value of the shares to \$1,520,262 with the change in fair value (\$160,174) recognized in earnings.

**(b) Preferred Stock, \$100 par value**

Effective October 31, 2007 (the "Effective Date"), FMCH Merger Sub, Inc. ("Merger Sub"), a wholly owned subsidiary of the Company, was merged with and into the Company, with the Company being the surviving corporation (the "Merger"). Pursuant to the Agreement and Plan of merger dated as of October 11, 2007 between the Company and Merger Sub, each share of the Company's 6% Preferred Stock, Class A Preferred Stock and Class B Preferred Stock (the "Preferred Stock") outstanding on the Effective Date (other than shares, if any as to which the holders properly exercised their statutory appraisal rights under New York law) ceased to be outstanding and was converted into the right to receive, upon delivery of the certificates representing the shares to the Company's designated paying agent, a cash payment in the amount of \$100 per share, \$106.60 per

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share and \$106.60 per share, respectively (the "Merger Consideration"), plus in each case, accrued but unpaid dividends from the dividend payment date preceding the Merger to the Effective Date. Payment of the Merger Consideration in respect of all 74,119 outstanding shares of Preferred Stock resulted in total cash outflow of \$7,660. This transaction had no earnings impact on the Company.

At December 31, 2007 and 2006, the components of the Company's preferred stocks as presented in the consolidated balance sheets consisted of the following:

|   | <b>December 31,</b> |                  |
|---|---------------------|------------------|
|   | <b>2007</b>         | <b>2006</b>      |
| Preferred stocks, \$100 par value:  |                     |                  |
| 6% Cumulative; 40,000 shares authorized;<br>36,460 outstanding            | \$ —                | 3,646            |
| 8% Cumulative Class A; 50,000 shares authorized;<br>16,176 outstanding    | —                   | 1,618            |
| 8% Noncumulative Class B; 40,000 shares<br>authorized; 21,483 outstanding | —                   | 2,148            |
|   | —                   | 7,412            |
| <br>Preferred stock \$1.00 par value                                      |                     |                  |
| Cumulative Class C; 5,000,000 shares authorized<br>and outstanding        | 1,520,262           | 1,360,088        |
| Total preferred stock   | \$ <u>1,520,262</u> | <u>1,367,500</u> |

**(c) Stock Options**

In connection with the Parent Company's stock option program, the Parent Company incurred compensation expense of \$24,208, \$16,610 and \$1,363 for the years ending December 31, 2007, 2006 and 2005, respectively. The Parent Company also recorded a related deferred income tax of \$6,880, \$4,599 and \$273 for the years ending December 31, 2007, 2006, 2005, respectively. Effective January 1, 2006 the Parent Company adopted the provisions of FAS 123(R) using the modified prospective transition method. As a result of the adoption of this standard, the Parent Company incurred compensation costs of \$14,258 for 2006, which would not have been recognized under its previous accounting policy in accordance with APB Opinion No. 25.

In 1996, FMCAG adopted a stock incentive plan (the FMCAG Plan) under which the Company's key management and executive employees are eligible. Under the FMCAG Plan, eligible employees will have the right to acquire preference shares of FMCAG. Options granted under the FMCAG Plan will be evidenced by a nontransferable convertible bond and corresponding nonrecourse loan to the employee, secured solely by the bond with which it was made. The bonds mature in ten years and are

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generally fully convertible after three to five years. Each convertible bond, which is deutsche mark (DM) denominated, entitles the holder thereof to convert the bond in preference shares equal to the face amount of the bond divided by the preference share's nominal value.

During 1998, FMCAG adopted a new stock incentive plan (FMCAG 98 Plan) under which the Parent Company and the Company's key management and executive employees are eligible. Under the FMCAG 98 Plan, eligible employees will have the right to acquire Preference Shares of FMCAG. Options granted under the FMCAG 98 Plan will be evidenced by a nontransferable convertible bond and a corresponding nonrecourse loan to the employee, secured solely by the bond with which it was made. Each convertible bond, which is DM denominated, will entitle the holder thereof to convert the bond in Preference Shares equal to the face amount of the bond divided by the preference share's nominal value. Effective September 2001, no additional grants or options will be awarded under the FMCAG 98 Plan.

On May 23, 2001, by resolution of the FMCAG shareholders, the FMCAG 98 Plan was replaced by a new plan (FMCAG International Plan). Under the FMCAG International Plan, options in the form of convertible bonds with a principal of up to 10,240 euros were issued to the members of the FMCAG Management Board and other employees of the Company representing grants for up to 4 million non-voting preference shares. The convertible bonds originally had a par value of 2.56 euros and bear interest at a rate of 5.5%. In connection with the share split, the principal amount was adjusted in the same proportion as the share capital out of the capital increase and the par value of the convertible bonds was adjusted to 0.85 euros without affecting the interest rate. Except for the members of the FMCAG Management Board, eligible employees may purchase the bonds by issuing a non-recourse note with terms corresponding to the terms of and secured by the bond. The Parent Company has the right to offset its obligation on a bond against the employee's obligation on the related note; therefore, the convertible bond obligations and employee note receivables represent stock options issued by the Parent Company and are not reflected in the Parent Company's Consolidated Financial Statements. The options expire ten years from issuance and can be exercised beginning two, three or four years after issuance.

Upon issuance of the option, the employees had the right to choose options with or without a stock price target. The conversion price of options subject to a stock price target corresponds to the stock exchange quoted price of the preference shares upon the first time the stock exchange quoted price exceeds the initial value by at least 25%. The initial value ("Initial Value") is the average price of the preference shares during the last 30 trading days prior to the date of grant. In the case of options not subject to a stock price target, the number of convertible bonds awarded to the eligible employee would be 15% less than if the employee elected options subject to the stock price target. The conversion price of the options without a stock price target is the Initial Value. Each option entitles the holder thereof, upon payment of the respective conversion price, to acquire one preference share. Effective May 2006, no further grants can be issued under the FMCAG International Plan and no options were granted under the FMCAG International Plan during 2006.

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On May 9, 2006 as amended on May 15, 2007 the Fresenius Medical Care AG & Co., KGaA Stock Option Plan 2006 (the Amended 2006 Plan) was established by resolution of the FMCAG & KGaA annual general meeting with a conditional capital increase up to 15,000 euros subject to the issue of up to fifteen million no par value bearer ordinary shares with a nominal value of 1.00 euros each. Under the 2006 Amended Plan, up to 15,000 million options can be issued to members of the management board and to other employees of FMCAG and the Company.

Options under the 2006 Plan can be granted the last Monday in July and/or the first Monday in December. The exercise price of the options granted under the 2006 Amended Plan shall be the average closing price on the Frankfurt Stock Exchange of FMCAG KGaA ordinary shares during the 30 calendar days immediately prior to each grant date. Options granted under the 2006 Amended Plan have a seven-year term but can be exercised only after a three-year vesting period. The vesting of options granted is subject to satisfaction of success targets measured over a three-year period. The success target for 2007 and 2006 was met. Vesting of a portion or portions of a grant for a year in which the success target is met does not occur until completion of the entire three-year vesting period. Upon the exercise of vested options, FMCAG & KGaA has the right to issue ordinary shares it owns or that it purchases on the market in place of increasing capital by the issuance of new shares.



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The following table summarizes the preference shares available at December 31, 2007 under each of the plans. All preference shares have been adjusted to reflect the three-for-one stock split which became effective upon registration in the commercial register on June 15, 2007.

|                                  | FMCAG<br>Plan | FMCAG 98<br>Plan | FMCAG<br>International<br>Plan | FMCAG<br>2006<br>Amended Plan |
|----------------------------------|---------------|------------------|--------------------------------|-------------------------------|
| Balance at December 31, 2004     | 475,500       | 3,974,904        | 4,722,504                      | —                             |
| Granted                          | —             | —                | 2,256,162                      | —                             |
| Exercised                        | (319,800)     | (1,911,717)      | (746,916)                      | —                             |
| Canceled/Forfeited               | (104,700)     | (641,487)        | (637,854)                      | —                             |
| Balance at December 31, 2005     | 51,000        | 1,421,700        | 5,593,896                      | —                             |
| Granted                          | —             | —                | —                              | 1,383,750                     |
| Exercised                        | (36,321)      | (627,375)        | (691,653)                      | —                             |
| Canceled/Forfeited               | (14,679)      | (318,750)        | (1,391,541)                    | —                             |
| Balance at December 31, 2006     | —             | 475,575          | 3,510,702                      | 1,383,750                     |
| Granted                          | —             | —                | —                              | 1,528,350                     |
| Exercised                        | —             | (103,807)        | (794,061)                      | —                             |
| Canceled/Forfeited               | —             | (6,303)          | (183,357)                      | (32,400)                      |
| Balance at December 31, 2007     | \$ —          | \$ 365,465       | \$ 2,533,284                   | \$ 2,879,700                  |
| Exercisable at December 31, 2007 | \$ —          | \$ 365,465       | \$ 1,086,213                   | \$ —                          |

**(14) Financial Instruments**

The Company is exposed to market risk from changes in interest rates and foreign exchange rates. In order to manage the risk of interest rate and currency exchange rate fluctuations, the Company enters into various hedging transactions with highly rated financial institutions as authorized by the Parent Company. The Company does not use financial instruments for trading purposes.

The Company established guidelines for risk assessment procedures and controls for the use of financial instruments. They include a clear segregation of duties with regard to execution on one side and administration, accounting and controlling on the other.

**(a) Foreign Currency Contracts**

The Company uses foreign exchange contracts as a hedge against foreign exchange risks associated with the settlement of foreign currency denominated payables and firm commitments. At December 31, 2007 and 2006, the Company had outstanding foreign currency contracts for the purchase of Euros (EUR) totaling 199,478 and 223,553, respectively, contracts for the purchase of 234,324 and 217,140 Mexican pesos, respectively, and contracts for the sale of 15,216 and 36,733

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Canadian dollars, respectively. The contracts outstanding at December 31, 2007 include forward contracts for purchase of EUR at rates ranging from \$1.313 to \$1.401 per EUR, forward contracts for the purchase of Mexican Pesos at rates ranging from 11.099 to 11.818 per U.S. dollar, and outright sale contracts for Canadian Dollars at rates ranging from \$0.886 to \$0.950 per Canadian Dollar. All contracts are for periods between January 2008 and May 2010.

The fair value of currency contracts are the estimated amounts that the Company would receive or pay to terminate the agreement at the reporting date, taking into account the current exchange rates and the current creditworthiness of the counterparties. At December 31, 2007 and 2006, the Company would have received approximately \$13,173 and \$3,855, respectively to terminate the contracts.

**(b) Interest Rate Agreements**

At December 31, 2007, the Company had interest rate swaps outstanding with various commercial banks for notional amounts totaling \$1,565 million. All of these agreements were solely entered into for interest rate hedging purposes.

For a notional amount of \$1,565 million, the interest rate swaps effectively change the Company's interest rate exposure on its variable-rate loans under the FMCH Credit Agreement (drawn as of December 31, 2007: \$300,000 Tranche A and \$1,333,125 Tranche B) to fixed rates of interest approximating 6.14%.

The fair value of the interest rate swaps and options is the estimated amount that the Company would receive or pay to terminate the agreements. The fair value of these agreements at December 31, 2007 and 2006 would generate a negative cash flow of \$66,632 and a positive cash flow of \$17,370, respectively. These estimates are subjective in nature and involve uncertainties and matters of significant judgment and therefore cannot be determined with precision. Changes in assumptions significantly affect the estimates.

**(c) Credit Risk**

The Company is exposed to credit risk to the extent of potential nonperformance by counter parties on financial instruments. As of December 31, 2007, the Company's credit exposure was insignificant and limited to the fair value stated above; the Company believes the risk of incurring losses due to credit risk is remote.

**(d) Fair Value of Other Financial Instruments**

At December 31, 2007 and 2006, the carrying value of cash, cash equivalents, accounts receivable, prepaid expenses, accounts payable, accrued expenses, short-term borrowings and current liabilities approximated their fair values, based on the short-term maturities of these instruments. Mandatorily redeemable preferred securities with related parties are marked to market at each balance sheet date and reflect their fair value.

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The Company's long-term bank debt represents borrowings primarily from a syndicated bank credit facility. The long-term bank debt is valued at its carrying amount because the actual drawings under the facility carry interest on a variable basis which reflects actual money market conditions, plus specific margins which represent Company-related performance ratios as well as the entire set of terms and conditions including covenants as determined in the 2006 Senior Credit Agreement.

In addition, the Company is a "Subsidiary Guarantor" along with its parent company, FMCAG, for the issuance of Trust Preferred Securities on the books of FMCAG at a carrying value of \$1,333,782 and \$1,253,828, at December 31, 2007 and 2006, respectively. FMCAG and Subsidiary Guarantors guarantee the Trust Preferred Securities through a series of undertakings. At December 31, 2007 the fair value of the Trust Preferred Securities exceeded the carrying value by \$30,406. At December 31, 2006, the fair value of these Trust Preferred Securities exceeded the carrying value by \$77,974. The fair value of these Trust Preferred Securities is based upon market quotes.

*(e) Forward Sale and Currency Exchange Agreements*

The Company has entered into a conditional forward sale agreement related to preference shares ("Preferred Stock") issued to DLP. The conditional aspects of the contract are not certain to occur and are related to dissolution or reorganization of DLP. However, if the conditions were to occur, the forward sale agreement requires that the Company redeem the securities at the same Euro value that was used to acquire the shares when initially issued plus any accumulated and declared but unpaid dividends at the spot rate in effect on the settlement date. At year-end, the securities were marked to market at the Euro spot rate. Changes in fair value are recognized in earnings.

The Company has also entered into a currency exchange agreement with DLP. The notional principal amount of the currency exchange agreement is \$1,250,000 and a Euro amount with equal market value applying the market foreign exchange rate at the time the exchange agreement was entered into. The currency exchange agreement requires that at each periodic settlement date, DLP is obligated to pay to FMCH, Euro interest on the Euro equivalent of \$1.25 billion. Conversely, at the periodic settlement date, FMCH is obligated to pay DLP, the interest on \$1.25 billion in U.S. dollars.

Upon maturity (March 31, 2011) or execution of the currency exchange agreement, DLP is obligated to pay to FMCH, the Euro equivalent of \$1.25 billion converted at the spot rate and FMCH will pay to DLP the final settlement amount of \$1.25 billion (plus any outstanding period interest payments).

This instrument is reflected in other assets and deferred charges within the consolidated balance sheets at fair value as a derivative asset at the reporting date with changes in fair value recognized in earnings at December 31, 2007 and 2006 the fair value of the derivative asset was \$238 million and \$89 million, respectively.

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**(15) Related Party Transactions**

*(a) Services*

Related party transactions pertaining to services performed and products purchased/sold between affiliates are recorded as net accounts payable to affiliates on the balance sheet. At December 31, 2007 and 2006, the Company had net accounts payable of \$90,017 and \$47,862, respectively.

*(b) Borrowings with Affiliates*

The Company has various outstanding borrowings with FMCAG and affiliates. The funds were used for general corporate purposes. The loans are due at various maturities. See note 6(c) and note 11.

**(16) Legal Proceedings**

*(a) Commercial Litigation*

The Company was originally formed as a result of a series of transactions it completed pursuant to the Agreement and Plan of Reorganization dated as of February 4, 1996, by and between W.R. Grace & Co. and Fresenius SE, (a "European Company (Societas Europaea) formally called Fresenius AG") (the "Merger"). At the time of the Merger, a W.R. Grace & Co. subsidiary known as W.R. Grace & Co.-Conn. had, and continues to have, significant liabilities arising out of product-liability related litigation (including asbestos-related actions), pre-Merger tax claims and other claims unrelated to National Medical Care, Inc. ("NMC"), which was W.R. Grace & Co.'s dialysis business prior to the Merger. In connection with the Merger, W.R. Grace & Co.-Conn. agreed to indemnify FMCAG KGaA, FMCH, and NMC against all liabilities of W.R. Grace & Co., whether relating to events occurring before or after the Merger, other than liabilities arising from or relating to NMC's operations. W.R. Grace & Co. and certain of its subsidiaries filed for reorganization under Chapter 11 of the U.S. Bankruptcy Code (the "Grace Chapter 11 Proceedings") on April 2, 2001.

Prior to and after the commencement of the Grace Chapter 11 Proceedings, class action complaints were filed against W.R. Grace & Co. and FMCH by plaintiffs claiming to be creditors of W.R. Grace & Co.-Conn., and by the asbestos creditors' committees on behalf of the W.R. Grace & Co. bankruptcy estate in the Grace Chapter 11 Proceedings, alleging among other things that the Merger was a fraudulent conveyance, violated the uniform fraudulent transfer act and constituted a conspiracy. All such cases have been stayed and transferred to or are pending before the U.S. District Court as part of the Grace Chapter 11 Proceedings.

In 2003, the Company reached agreement with the asbestos creditors' committees on behalf of the W.R. Grace & Co. bankruptcy estate and W.R. Grace & Co. in the matters pending in the Grace Chapter 11 Proceedings for the settlement of all fraudulent conveyance and tax claims against it and other claims related to the Company that arise out of the bankruptcy of W.R. Grace & Co. Under the terms of the settlement agreement as amended (the "Settlement Agreement"), fraudulent conveyance and other claims raised on behalf of asbestos claimants will be dismissed with prejudice and the Company will receive protection against existing and potential future W.R. Grace & Co. related claims, including fraudulent conveyance and asbestos claims, and indemnification against income

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tax claims related to the non-NMC members of the W.R. Grace & Co. consolidated tax group upon confirmation of a W.R. Grace & Co. bankruptcy reorganization plan that contains such provisions. Under the Settlement Agreement, the Company will pay a total of \$115,000 without interest to the W.R. Grace & Co. bankruptcy estate, or as otherwise directed by the Court, upon plan confirmation. No admission of liability has been or will be made. The Settlement Agreement has been approved by the U.S. District Court. Subsequent to the Merger, W.R. Grace & Co. was involved in a multi-step transaction involving Sealed Air Corporation ("Sealed Air," formerly known as Grace Holding, Inc.). The Company is engaged in litigation with Sealed Air to confirm its entitlement to indemnification from Sealed Air for all losses and expenses incurred by the Company relating to pre-Merger tax liabilities and Merger-related claims. Under the Settlement Agreement, upon confirmation of a plan that satisfies the conditions of the Company's payment obligation, this litigation will be dismissed with prejudice.

On April 4, 2003, FMCH filed a suit in the U. S. District Court for the Northern District of California, styled Fresenius USA, Inc., et al., v. Baxter International Inc., et al., Case No. C 03-1431, seeking a declaratory judgment that FMCH does not infringe on patents held by Baxter International Inc. and its subsidiaries and affiliates ("Baxter"), that the patents are invalid, and that Baxter is without right or authority to threaten or maintain suit against FMCH for alleged infringement of Baxter's patents. In general, the alleged patents concern the use of touch screen interfaces for hemodialysis machines. Baxter filed counterclaims against FMCH seeking more than \$140,000 in monetary damages and injunctive relief, and alleging that FMCH willfully infringed on Baxter's patents. On July 17, 2006, the court entered judgment on a jury verdict in favor of FMCH finding that all the asserted claims of the Baxter patents are invalid as obvious and/or anticipated in light of prior art. On February 13, 2007, the court granted Baxter's motion to set aside the jury's verdict in favor of FMCH and reinstated the patents and its prior infringement findings. Following a retrial on damages, the court entered judgment on November 6, 2007 in favor of Baxter on a jury award of \$14,300. We intend to appeal the court's rulings.

**(b) Other Litigation and Potential Exposures**

RCG was named as a nominal defendant in a second amended complaint filed September 13, 2006 in the Chancery Court for the State of Tennessee Twentieth Judicial District at Nashville against former officers and directors of RCG which purports to constitute a class action and derivative action relating to alleged unlawful actions and breaches of fiduciary duty in connection with the RCG Acquisition and in connection with alleged improper backdating and/or timing of stock option grants. The amended complaint was styled Indiana State District Council of Laborers and Hod Carriers Pension Fund, on behalf of itself and all others similarly situated and derivatively on behalf of RCG, Plaintiff, vs. RCG, Gary Brukart, William P. Johnston, Harry R. Jacobson, Joseph C. Hutts, William V. Lapham, Thomas A. Lowery, Stephen D. McMurray, Peter J. Grua, C. Thomas Smith, Ronald Hinds, Raymond Hakim and R. Dirk Allison, Defendants. The complaint sought damages against former officers and directors and did not state a claim for money damages directly against RCG. On August 30, 2007, this suit was dismissed by the trial court without leave to amend. Plaintiff subsequently appealed and the matter remains pending in the appellate court of Tennessee.

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In October 2004, FMCH and its subsidiaries, including RCG (prior to the RCG Acquisition), received subpoenas from the U.S. Department of Justice, Eastern District of New York in connection with a civil and criminal investigation, which requires production of a broad range of documents relating to FMCH's and RCG's operations, with specific attention to documents relating to laboratory testing for parathyroid hormone ("PTH") levels and vitamin D therapies. The Company is cooperating with the government's requests for information. While the Company believes that it has complied with applicable laws relating to PTH testing and use of vitamin D therapies, an adverse determination in this investigation could have a material adverse effect on the Company's business, financial condition, and results of operations.

FMCH and its subsidiaries, including RCG (prior to the RCG Acquisition), received a subpoena from the U.S. Department of Justice, Eastern District of Missouri, in connection with a joint civil and criminal investigation. FMCH received its subpoena in April 2005. RCG received its subpoena in August 2005. The subpoenas require production of a broad range of documents relating to FMCH's and RCG's operations, with specific attention to documents related to clinical quality programs, business development activities, medical director compensation and physician relationships, joint ventures, and anemia management programs, RCG's supply company, pharmaceutical and other services that RCG provides to patients, RCG's relationships to pharmaceutical companies, and RCG's purchase of dialysis equipment from FMCH. The Office of the Inspector General of the U.S. Department of Health and Human Services and the U.S. Attorney's office for the Eastern District of Texas have also confirmed that they are participating in the review of the anemia management program issues raised by the U.S. Attorney's office for the Eastern District of Missouri. On July 17, 2007, the U.S. Attorney's office filed a civil complaint against RCG and FMCH in its capacity as RCG's current corporate parent in United States District Court, Eastern District of Missouri. The complaint seeks monetary damages and penalties with respect to issues arising out of the operation of RCG's Method II supply company through 2005, prior to the date of FMCH's acquisition of RCG. The complaint is styled United States of America ex rel. Julie Williams et al. vs. Renal Care Group, Renal Care Group Supply Company and FMCH. The Company believes that RCG's operation of its Method II supply company was in compliance with applicable law and will defend this litigation vigorously. We will continue to cooperate in the ongoing investigation. An adverse determination in this investigation or litigation or any settlement arising out of this investigation or litigation could result in significant financial penalties, and any adverse determination in any litigation arising out of the investigation could have a material adverse effect on the Company's business, financial condition and results of operations.

In May 2006, RCG received a subpoena from the U.S. Department of Justice, Southern District of New York in connection with an investigation into RCG's administration of its stock option programs and practices, including the procedure under which the exercise price was established for certain of the option grants. The subpoena required production of a broad range of documents relating to the RCG stock option program prior to the RCG Acquisition. The Company cooperated with the government's requests for information and believes that we have completed the requested document production. The outcome and impact of this investigation cannot be predicted at this time.

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In August 2007, the Sheet Metal Workers National Pension Fund filed a complaint in the United States District Court for the Central District of California, Western Division (Los Angeles), alleging that Amgen, Inc., the Company and Davita Inc., marketed Amgen's products, Epogen® and Aranesp®, to hemodialysis patients for uses not approved by the FDA and thereby caused a putative class of commercial insurers to pay for unnecessary prescriptions of these products. Motions have been filed to consolidate this case with others against Amgen alone in a single case under the federal rules for multidistrict litigation. FMCH intends to contest and defend this litigation vigorously. An adverse determination in this litigation could have a material adverse effect on the Company's business, financial condition and results of operations.

On November 27, 2007, the United States District Court for the Western District of Texas (El Paso) unsealed and permitted service of two complaints previously filed under seal by a *qui tam* relator, a former FMCH local clinic employee. (*Qui tam* is a legal provision under the United States False Claims Act, which allows for private individuals to bring suit on behalf of the U.S. federal government, as far as such individuals believe to have knowledge of presumable fraud committed by third parties.) The first complaint alleges that a nephrologist unlawfully employed in his practice an assistant to perform patient care tasks that the assistant was not licensed to perform and that Medicare billings by the nephrologist and FMCH therefore violated the False Claims Act. The second complaint alleges that FMCH unlawfully retaliated against the relator by discharging her from employment constructively. The United States Attorney for the Western District of Texas has declined to intervene and to prosecute on behalf of the United States. Counsel for the nephrologist has asserted that a criminal investigation of the relator's allegations is continuing. FMCH has received no other notice of the pendency of any criminal investigation related to this matter. FMCH intends to defend vigorously against the allegations in the two complaints. The outcome of this litigation, or of any related investigation, cannot be predicted at this time.

From time to time, the Company is a party to or may be threatened with other litigation or arbitration, claims or assessments arising in the ordinary course of its business. Management regularly analyzes current information including, as applicable, the Company's defenses and insurance coverage and, as necessary, provides accruals for probable liabilities for the eventual disposition of these matters.

The Company, like other health care providers, conducts its operations under intense government regulation and scrutiny. It must comply with regulations which relate to or govern the safety and efficacy of medical products and supplies, the operation of manufacturing facilities, laboratories and dialysis clinics, and environmental and occupational health and safety. The Company must also comply with the Anti-Kickback Statute, the False Claims Act, the Stark Statute, and other federal and state fraud and abuse laws. Applicable laws or regulations may be amended, or enforcement agencies or courts may make interpretations that differ from the Company's interpretations or the manner in which it conducts its business. Enforcement has become a high priority for the federal government and some states. In addition, the provisions of the False Claims Act authorizing payment of a portion of any recovery to the party bringing the suit encourage private plaintiffs to commence "whistle blower" actions. By virtue of this regulatory environment, as well as the

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Company's corporate integrity agreement with the U.S. federal government, the Company's business activities and practices are subject to extensive review by regulatory authorities and private parties, and continuing audits, investigative demands, subpoenas, other inquiries, claims and litigation relating to the Company's compliance with applicable laws and regulations. The Company may not always be aware that an inquiry or action has begun, particularly in the case of "whistle blower" actions, which are initially filed under court seal.

The Company operates many facilities throughout the United States. In such a decentralized system, it is often difficult to maintain the desired level of oversight and control over the thousands of individuals employed by many affiliated companies. The Company relies upon its management structure, regulatory and legal resources, and the effective operation of its compliance program to direct, manage and monitor the activities of these employees. On occasion, the Company may identify instances where employees, deliberately or inadvertently, have submitted inadequate or false billings. The actions of such persons may subject the Company and its subsidiaries to liability under the Anti-Kickback Statute, the Stark Statute and the False Claims Act, among other laws.

Physicians, hospitals and other participants in the health care industry are also subject to a large number of lawsuits alleging professional negligence, malpractice, product liability, worker's compensation or related claims, many of which involve large claims and significant defense costs. The Company has been and is currently subject to these suits due to the nature of its business and expects that those types of lawsuits may continue. Although the Company maintains insurance at a level which it believes to be prudent, it cannot assure that the coverage limits will be adequate or that insurance will cover all asserted claims. A successful claim against the Company or any of its subsidiaries in excess of insurance coverage could have a material adverse effect upon it and the results of its operations. Any claims, regardless of their merit or eventual outcome, could have a material adverse effect on the Company's reputation and business.

The Company has also had claims asserted against it and has had lawsuits filed against it relating to alleged patent infringements or businesses that it has acquired or divested. These claims and suits relate both to operation of the businesses and to the acquisition and divestiture transactions. The Company has, when appropriate, asserted its own claims, and claims for indemnification. A successful claim against the Company or any of its subsidiaries could have a material adverse effect upon its business, financial condition, and the results of its operations. Any claims, regardless of their merit or eventual outcome, could have a material adverse effect on the Company's reputation and business.

**(c) *Accrued Special Charge for Legal Matters***

At December 31, 2001, the Company recorded a pre-tax special charge of \$258,159 to reflect anticipated expenses associated with the defense and resolution of pre-Merger tax claims, Merger-related claims, and commercial insurer claims. The costs associated with the Settlement Agreement and settlements with insurers have been charged against this accrual. With the exception of the proposed \$115,000 payment under the Settlement Agreement, all other matters included in the special charge have been resolved. While the Company believes that its remaining accrual



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reasonably estimates its currently anticipated costs related to the continued defense and resolution of this matter, no assurances can be given that its actual costs incurred will not exceed the amount of this accrual (see note 8).

**(17) Significant Concentrations**

For the periods presented, approximately 57% of the Company's health care services net revenues are paid by and subject to regulations under governmental programs, primarily Medicare and Medicaid. The Company maintains reserves for losses related to these programs, including uncollectible accounts receivable, and such losses have been within management's expectations.

Revenues from EPO accounted for approximately 21%, 23%, and 24% of the Dialysis Services division's net revenues for the years ended December 31, 2007, 2006, and 2005, respectively, and materially contribute to Dialysis Services operating earnings. EPO is produced by a single source manufacturer, Amgen, Inc. In October 2006, the Company entered into a five-year exclusive sourcing and supply agreement with Amgen. Any interruption of supply could materially adversely affect the Company's business and results of operations.

**(18) Industry Segments and Information About Foreign Operations**

The Company's reportable segments are Dialysis Services and Dialysis Products. For purposes of segment reporting, the Dialysis Services Division and Spectra Renal Management are combined and reported as Dialysis Services. These divisions are aggregated because of their similar economic classifications. These include the fact that they are both health care service providers whose services are provided to a common patient population, and both receive a significant portion of their net revenue from Medicare and other government and nongovernment third party payors. The Dialysis Products segment reflects the activity of the Dialysis Products Division only.

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The table below provides information for the years ended December 31, 2007, 2006 and 2005 pertaining to the Company's reportable segments by geographic area.

|  | <u>North America</u> | <u>Asia/Pacific</u> | <u>Total</u> |
|--|----------------------|---------------------|--------------|
| Net revenues for years ended:              |                      |                     |              |
| 2007                                       | \$ 6,595,174         | 336                 | 6,595,510    |
| 2006                                       | 5,959,462            | 779                 | 5,960,241    |
| 2005                                       | 4,530,310            | 760                 | 4,531,070    |
| Operating earnings (loss) for years ended: |                      |                     |              |
| 2007                                       | 1,228,180            | (297)               | 1,227,883    |
| 2006                                       | 1,039,096            | (308)               | 1,038,788    |
| 2005                                       | 706,568              | (909)               | 705,659      |
| Total assets at December 31:               |                      |                     |              |
| 2007                                       | 5,031,673            | 1,547               | 5,033,220    |
| 2006                                       | 4,777,621            | 2,003               | 4,779,624    |
| 2005                                       | 3,560,648            | 2,009               | 3,562,657    |

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The table below provides information for the years ended December 31, 2007, 2006 and 2005 pertaining to the Company's two industry segments.

|  | <u>Dialysis<br/>services</u> | <u>Dialysis<br/>products</u> | <u>Less<br/>intersegment<br/>sales</u> | <u>Total</u> |
|--|------------------------------|------------------------------|--|--------------|
| Net revenues for years ended:  |                              |                              |  |              |
| 2007   | \$ 6,008,754                 | 1,140,040                    | 553,284                                | 6,595,510    |
| 2006   | 5,470,128                    | 975,993                      | 485,880                                | 5,960,241    |
| 2005   | 4,060,038                    | 854,629                      | 383,597                                | 4,531,070    |
| Operating earnings for years ended:  |                              |                              |  |              |
| 2007   | 1,019,794                    | 208,089                      | —                                      | 1,227,883    |
| 2006   | 873,982                      | 164,806                      | —                                      | 1,038,788    |
| 2005   | 549,691                      | 155,968                      | —                                      | 705,659      |
| Total assets at December 31:   |                              |                              |  |              |
| 2007   | 3,775,510                    | 1,257,710                    | —                                      | 5,033,220    |
| 2006   | 3,845,840                    | 933,784                      | —                                      | 4,779,624    |
| 2005   | 2,798,595                    | 764,062                      | —                                      | 3,562,657    |
| Capital expenditures for years ended:  |                              |                              |  |              |
| 2007   | 204,044                      | 82,404                       | —                                      | 286,448      |
| 2006   | 164,978                      | 91,247                       | —                                      | 256,225      |
| 2005   | 101,956                      | 58,482                       | —                                      | 160,438      |
| Depreciation and amortization of<br>properties and equipment and<br>intangibles for years ended: |                              |                              |  |              |
| 2007   | 170,306                      | 31,883                       | —                                      | 202,189      |
| 2006   | 140,956                      | 27,278                       | —                                      | 168,234      |
| 2005   | 107,224                      | 25,825                       | —                                      | 133,049      |

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The table below provides the reconciliations of reportable segment operating earnings, assets, capital expenditures, and depreciation and amortization to the Company's consolidated totals.

| <u>Segment reconciliation</u>                               | <u>Years ended December 31</u> |                   |                  |
|---|--------------------------------|-------------------|------------------|
|   | <u>2007</u>                    | <u>2006</u>       | <u>2005</u>      |
| <b>Income (loss) before income taxes:</b>                   |                                |                   |                  |
| Total operating earnings for reportable segments            | \$ 1,227,883                   | 1,038,788         | 705,659          |
| Corporate G&A (including foreign exchange)                  | (87,497)                       | (94,534)          | (62,247)         |
| Corporate depreciation and amortization                     | (15,652)                       | (16,549)          | (5,679)          |
| Research and development expense                            | (20,501)                       | (13,422)          | (11,736)         |
| Net interest expense  | (283,461)                      | (275,936)         | (149,387)        |
| Income before income taxes                                  | <u>\$ 820,772</u>              | <u>638,347</u>    | <u>476,610</u>   |
| <b>Assets:</b>  |                                |                   |                  |
| Total assets for reportable segments                        | \$ 5,033,220                   | 4,779,624         | 3,562,657        |
| Intangible assets not allocated to segments                 | 4,629,119                      | 4,612,338         | 1,900,226        |
| Corporate assets and other                                  | 1,168,877                      | 731,163           | 103,791          |
| Total assets  | <u>\$ 10,831,216</u>           | <u>10,123,125</u> | <u>5,566,674</u> |
| <b>Capital expenditures:</b>                                |                                |                   |                  |
| Total capital expenditures for reportable segments          | \$ 286,448                     | 256,225           | 160,438          |
| Corporate capital expenditures                              | 30,050                         | 45,081            | 11,827           |
| Total capital expenditures                                  | <u>\$ 316,498</u>              | <u>301,306</u>    | <u>172,265</u>   |
| <b>Depreciation and amortization:</b>                       |                                |                   |                  |
| Total depreciation and amortization for reportable segments | \$ 202,189                     | 168,234           | 133,049          |
| Corporate depreciation and amortization                     | 15,652                         | 16,549            | 5,679            |
| Total depreciation and amortization                         | <u>\$ 217,841</u>              | <u>184,783</u>    | <u>138,728</u>   |