



STATE OF ILLINOIS  
HEALTH FACILITIES AND SERVICES REVIEW BOARD

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<b>DOCKET NO:</b> I-01	<b>BOARD MEETING:</b> November 12, 2014	<b>PROJECT NO:</b> 13-040	<b>PROJECT COST:</b> Original: \$4,735,282
<b>FACILITY NAME:</b> Fresenius Medical Care Lemont		<b>CITY:</b> Lemont	
<b>TYPE OF PROJECT:</b> Substantive			<b>HSA:</b> VII

**PROJECT DESCRIPTION:** Fresenius Medical Care Holdings, Inc., and Fresenius Medical Care Lemont, LLC d/b/a Fresenius Medical Care Lemont (“the applicants”) are proposing the establishment of a 12-station End Stage Renal Dialysis (ESRD) facility located in 9,665 GSF of leased space in Lemont. The cost of the project is \$4,735,282.

**Board Staff notes** this project was deferred from the September and November 2013 IHFSRB meetings, at the applicant’s request. The applicants received an Intent to Deny at the December 17, 2013 State Board Meeting.

**The applicants stated the following in part:** “Lemont is a town of approximately 23,000 located in a somewhat secluded area in far southwest Cook County. It has a physical border to the north and west created by the Des Plaines River and the I&M Canal which is industrial in nature. To the east it is bordered by Cog Hill Golf club and wooded areas with numerous quarries left over from the mining days of the early 1900's. To the south there are newer subdivisions and additional forest preserves. Until I-355 was extended into this area several years ago, there was limited access to this area.

*In calendar year 2013 the patient population at the clinics considered to be within 30 minutes travel time of Lemont via non-highway travel grew by over 5%, which is significantly higher than the average yearly State rate of 1.92% (for 2010-2012).*

*Since the previous area application was given an intent-to-deny, several changes have taken place. At that time there were six new/start up facilities within 30 minutes of Lemont, all with 0% utilization (US Renal Bolingbrook, US Renal Oak Brook, DaVita Palos Park, Fresenius Joliet, Naperbrook and Lockport). Five are now in full operation with an average utilization of 50% as of December 2013, although the average time of operation for these five facilities is only 13 months. The sixth facility, Fresenius Lockport, has since surrendered its permit. While there are facilities within 30 minutes that are under the State's 80% target utilization rate, we note that the proposed Lemont facility will not be operational for approximately 2 years from the date it receives Board approval, because the developer will not build the shell building until this occurs. Depending on when the Board issues a final decision on this application, that may mean the facility would not be treating patients until December, 2016. Given the growth in the area it*

*would not be reasonable to expect the current underutilization to remain a full two and a half years from now. While we are required to provide this supplemental information now, we fully expect that new utilization statistics will show that area facilities have only continued to grow to reach or come closer to reaching the Board's utilization target of 80%. Additionally, over half of the facilities considered within 30 minutes are between ten and 20 miles away. We respectfully ask the Board to reconsider its decision based on the need evidenced by the ESRD growth in this area and the unique location of the city of Lemont, which straddles two HSAs, one where there is significant need. We thank Board members and staff for their time and consideration of this additional information.”*

At the conclusion to this report is the applicant’s entire response to the intent to deny and the transcripts from the December 2013 State Board Meeting.

## EXECUTIVE SUMMARY

### **PROJECT DESCRIPTION:**

- The applicants (Fresenius Medical Care Holdings, Inc., and Fresenius Medical Care Lemont, LLC d/b/a Fresenius Medical Care Lemont) are proposing the establishment of a 12-station End Stage Renal Dialysis (ESRD) facility located in 9,665 GSF of leased space in Lemont. The cost of the project is \$4,735,282.
- **The anticipated project completion date is September 30, 2015.**

### **WHY THE PROJECT IS BEFORE THE STATE BOARD:**

- This project is before the State Board because the project proposes to establish a health care facility as defined by Illinois Health Facilities Planning Act.

### **PURPOSE OF THE PROJECT:**

- The project seeks to address the calculated need for 58 stations by CY 2015 in the HSA VII ESRD Planning Area. .

### **NEED FOR THE PROJECT:**

- There is a calculated need for 58 ESRD stations in the HSA-VII planning area by CY 2015. The applicants have documented that the 100% of the patients will come from within a 5 mile radius of the proposed facility, to include Lockport, Romeoville, Lemont, and Homer Glen. This service area involves southwest Cook County (HSA-07), and northeast Will County (HSA-09). However, of the 9 facilities within 30 minutes of the proposed facility; 7 (78%) facilities are not operating at the 80% target occupancy.

### **BACKGROUND/COMPLIANCE ISSUES**

- Neither applicant has outstanding compliance issues with the State Board.

### **PUBLIC HEARING/COMMENTS**

- No public hearing was requested, no letters of support and three letters of opposition have been received by the State Board Staff.
- **Sun Health in Opposition stated in part** *“Project # 13-040 Fresenius Medical Care Lemont now proposes to build a 12 station facility to be located in Lemont, only 1 mile from US Renal Lemont, which was rejected by the Board in December of 2012. The Applicant misconstrues a reported need in HSA 7 to claim a need for HSA 9 patients. The Applicant has identified a need for 40 stations in HSA 7 -suburban Cook County - as justification for this proposed project, yet admits that it plans to fill this facility almost entirely with patients from HSA 9, to a large extent from Will County. Dr. Alausa has submitted a letter of support for this project, and has listed approximately 64 potential patients for referral to this facility. However, the vast majority of these patients would be pulled from HSA 9, which already has an excess of 23 stations as per the September 2013 inventory update. Thus this project proposes to divert patients from HSA 9, and will thus have an adverse effect on utilization of preexisting facilities in HSA 9 while failing to address the need for stations in HSA 7 - effectively causing unnecessary duplication and maldistribution. Earlier, Dr. Alausa's office had advocated strongly against the need for a dialysis facility in Lemont, as per the 2 letters of opposition it submitted opposing US Renal*

*Lemont. I have taken the liberty of attaching those letters and would urge the board to review them. His office also mentioned home dialysis and nursing home dialysis as two modalities that are not counted for need determination, but can actually reduce the need for in-center dialysis stations. Dr. Alausa's practice is concentrated at Silver Cross Hospital in New Lenox, Presence St. Joseph Medical Center in Joliet, and Morris Hospital in Morris - and maintains offices in close proximity to these hospitals. He does not have a meaningful presence in the proposed service area of this proposed facility in HSA 7, and he is not even on staff at Good Samaritan Hospital, which is listed as the backup hospital for this application. Further review of Dr. Alausa letter reveals that in the last 12 months, his practice started only 4 patients on dialysis from the listed zip codes, yet he proposes to refer over 60 patients to the proposed facility over the next 2 years."*

**Ungaretti & Harris LLP, in opposition stated in part** *"as Certificate of Need counsel to U.S. Renal Care, Inc., writes this letter in opposition to the Fresenius Medical Care Certificate of Need Application contemplating the establishment of a 12 station in-center hem dialysis facility in Lemont, Illinois (the "Application"). The facility proposed by Fresenius (the "Proposed Facility") will be located in Health Service Area HSA 7. Contrary to the applicable review criterion, however, Fresenius identifies a number of Pre-ESRD patient referrals which originate from outside HSA 7, where the facility will be located. Furthermore, it is precisely on this basis that Fresenius previously opposed a U.S. Renal Care ("USRC") Certificate of Need Application which contemplated the establishment of an in-center hemodialysis facility in Lemont, Illinois, only one mile away from the Proposed Facility."*

**Constance Fredericks in opposition stated in part** *"I am the practice administrator for Northeast Nephrology Consultants (NENC). In that capacity, I am writing on behalf of NENC to oppose Fresenius Medical Care's proposal to establish a 12-station in-center hemodialysis facility to be located at 16177 West 127th Street, Lemont, Illinois. This application is nearly identical to U.S. Renal's application, which received an intent to deny at the December 10, 2012 Health Facilities and Services Review Board (HFSRB) meeting. In fact the site of the proposed Fresenius Lemont Facility is 1.04 miles (or 2 minutes) from the proposed U.S. Renal Lemont facility. Since the U.S. Renal intent to deny, nothing has changed. Accordingly, there is no need at this time and the HFSRB should deny Fresenius' application for a 12-station facility in Lemont."*

## **FINANCIAL AND ECONOMIC FEASIBILITY**

- The entirety of the project will be funded through internal sources (Cash and Securities/Fair Market Value of the Leases and a review of the financial statements indicate sufficient cash is available to fund the project.

## **WHAT WE FOUND:**

- . The applicants addressed a total of 20 criteria and did not meet the following:

<b>State Board Standards Not Met</b>	
<b>Criteria</b>	<b>Reasons for Non-Compliance</b>
<b>1110.234 (c) Size of the Project</b>	The facility size is in excess of the State Standard by 285 GSF per station <i>The applicants explain that the additional space is needed for home therapies, administration, and for future expansion.</i>
<b>1110.1430 (d) Unnecessary Duplication of Service</b>	7 of 9 facilities within 30 minutes are not operating at 80% target occupancy therefore it appears that an

State Board Standards Not Met	
Criteria	Reasons for Non-Compliance
	unnecessary duplication may result with the establishment of this facility. This determination is based upon the assumption that all facilities in the planning area are operating 3 shifts a day, 6 days a week 52 weeks a year. It also assumes that all facilities have been in operation for more than 2 years after project completion.

**STATE BOARD STAFF REPORT**  
**Fresenius Medical Care Lemont**  
**PROJECT #13-040**

APPLICATION CHRONOLOGY	
Applicants	Fresenius Medical Care Holdings, Inc. Fresenius Medical Care Lemont, LLC
Facility Name	Fresenius Medical Care Lemont
Location	Lemont
Application Received	July 10, 2013
Application Deemed Complete	July 10, 2013
Can Applicants Request Another Deferral?	No

**I. The Proposed Project**

Fresenius Medical Care Holdings, Inc., and Fresenius Medical Care Lemont, LLC d/b/a Fresenius Medical Care Lemont (“the applicants”) are proposing the establishment of a 12-station End Stage Renal Dialysis (ESRD) facility located 9,665 GSF of leased space in Lemont. The cost of the project is \$4,735,282. **The anticipated project completion date is September 30, 2015.**

**II. Summary of Findings**

- A. The State Board Staff finds the proposed project does **not** appear to be in conformance with the provisions of Part 1110.
- B. The State Board Staff finds the proposed project appears to be in conformance with the provisions of Part 1120.

**III. General Information**

The applicants are Fresenius Medical Care Lemont, LLC d/b/a Fresenius Medical Care Lemont and Fresenius Medical Care Holdings, Inc. Fresenius Medical Care Holdings, Inc is the parent organization for all the entities. The proposed facility will be located at 16177 West 127<sup>th</sup> Street, Lemont. Net3, LLC, owns the site. Fresenius Medical Care Lemont, LLC d/b/a Fresenius Medical Care Lemont is the operating entity/licensee. The proposed facility will be located in Lemont in HSA VII. HSA VII is comprised of DuPage and Suburban Cook County. According to the September 2014 Update to IDPH Inventory of Health Care Facilities (“Inventory”), there is a calculated need for 58 stations in the HSA VII planning area by CY 2015.

Table Two depicts the ESRD facilities in within 30 minutes of the proposed facility and their utilization. There are 9 facilities within 30 minutes of the proposed facility. Of the 9 facilities 7 (78%), are not at target occupancy. Average utilization of these 9 facilities is 70.21%. The bolded facilities: USRC Bolingbrook Dialysis, Palos Park Dialysis, and FMC Joliet are not at the 2 year timeframe to be at 80% target occupancy. If those three facilities were not considered average occupancy would be 76.46% in this 30 minute

area. The two year time frame is calculated from the completion date provided in the application for permit or a permit renewal to 24 months from that date.

<b>TABLE ONE</b> <b>Facilities within 30 minutes of proposed facility</b>					
Name	City	Number of Stations	Adjusted Time	Utilization	Met Occupancy?
<b>USRC Bolingbrook Dialysis</b>	<b>Bolingbrook</b>	<b>13</b>	<b>18</b>	<b>60.26%</b>	<b>No</b>
<b>Palos Park Dialysis</b>	<b>Orland Park</b>	<b>12</b>	<b>18</b>	<b>51.39%</b>	<b>No</b>
FMC Bolingbrook	Bolingbrook	24	20	86.11%	Yes
FMC Dialysis Services of Willowbrook	Willowbrook	20	21	69.17%	No
Silver Cross Renal Center	New Lenox	19	24	75.44%	No
<b>FMC Joliet</b>	<b>Joliet</b>	<b>16</b>	<b>25</b>	<b>61.46%</b>	<b>No</b>
FMC Naperville	Naperville	16	25	85.42%	Yes
FMC Orland Park	Orland Park	18	26	75.93%	No
FMC Downers Grove Dialysis Ctr.	Downers Grove	19	30	66.67%	No
Stations/Average Utilization		157		70.21%	
Utilization information based upon September 2014 data					
Time and Distance determined by MapQuest and adjusted per 1100.510 (d)					

There is no land acquisition cost for this project. Start-Up Costs and Operating Deficit total \$54,748. This is a substantive project subject to both a Part 1110 and Part 1120 review. Project obligation will occur after permit issuance. **The anticipated project completion date is September 30, 2015.**

#### **Summary of Support and Opposition Letters**

No public hearing was requested. No letters of support and three letters of opposition were received by the State Board Staff.

#### **IV. The Proposed Project - Details**

The applicants propose to establish a 12 station ESRD facility housed in 9,665 Gross Square Feet ("GSF") of leased space in Lemont.

#### **V. Project Costs and Sources of Funds**

The total estimated project cost is \$4,735,282. The proposed project is being funded with cash and securities totaling \$2,249,000 and leases with a Fair Market Value of \$2,468,282. Table Three outlines the project's costs and uses of funds. The State Board Staff notes all costs are classified as being clinical.

<b>TABLE TWO</b>	
<b>Project Uses and Sources of Funds</b>	
<b>Uses of Funds</b>	<b>Clinical</b>
Modernization Contracts	\$1,610,000
Contingencies	\$160,000
A & E Fees	\$159,000
Moveable Equipment	\$320,000
Fair Market Value of Leased Space & Equipment	\$2,486,282
<b>Total Uses of Funds</b>	<b>\$4,735,282</b>
<b>Sources of Funds</b>	<b>Clinical</b>
Cash and Securities	\$2,249,000
Leases (fair market value)	\$2,486,282
<b>Total Sources of Funds</b>	<b>\$4,735,282</b>

## **VI. Cost/Space Requirements**

Table Four displays the project's cost/space requirements for the project. The clinical portion comprises approximately 100% of the cost and GSF.

<b>TABLE THREE</b>							
<b>Fresenius Medical Care Lemont Cost/Space Allocation</b>							
<b>Clinical Department</b>	<b>Cost</b>	<b>Existing GSF</b>	<b>Proposed GSF</b>	<b>New</b>	<b>Modernized</b>	<b>Vacated</b>	<b>As Is</b>
ESRD	\$4,735,282	0	9,665	0	9,665	0	0
<b>Total</b>	<b>\$4,735,282</b>	<b>0</b>	<b>9,665</b>	<b>0</b>	<b>9,665</b>	<b>0</b>	<b>0</b>

## **VI I. Section 1110.230 - Project Purpose, Safety Net Impact and Alternatives**

### **A. Criterion 1110.230(a) - Purpose of the Project**

**The Criterion states:**

**The applicant shall document that the project will provide health services that improve the health care or well-being of the market area population to be served. The applicant shall define the planning area or market area, or other, per the applicant's definition.**

The project seeks to address the calculated need for 58 stations by CY 2015 and the need to open up additional treatment options for patients in southwest Cook County, and HSA-07 and HSA-09. Dr. Morufu Alausa, M.D. from the Kidney Care Center, Joliet is the referring physician for the proposed project and



currently rounds at Fresenius Medical Care Plainfield and Joliet dialysis centers.

The applicants cited quantifiable goals as being the ability to improve access while monitoring patient demand, and that the facility will achieve quality outcomes as demonstrated by achieving 94% of patients having a URR greater than or equal to 65%, and 96% of patients having a Kt/V greater than or equal to 1.2.

**B. Criterion 1110.230 (b) - Safety Net Impact Statement/Charity Care**

**The applicants state the following:**

*“The establishment of the Fresenius Medical Care Lemont dialysis facility will not have any impact on safety net services in the community. Outpatient dialysis services are not typically considered "safety net" services, to the best of our knowledge. However, we do provide care for patients in the community who are economically challenged and/or who are undocumented aliens, who do not qualify for Medicare/Medicaid. We assist patients who do not have insurance in enrolling when possible in Medicaid and/or Medicaid as applicable, and also our social services department assists patients who have issues regarding transportation and/or who are wheel chair bound or have other disabilities which require assistance with respect to dialysis services and transport to and from the unit.*

*This particular application will not have an impact on any other safety net provider in the area, as no hospital within the area provides dialysis services on an outpatient basis.*

*Fresenius Medical Care is a for-profit publicly traded company and is not required to provide charity care, nor does it do so according to the Board's definition. However, Fresenius provides care to all patients regardless of their ability to pay. There are a number of patients treated by Fresenius who either do not qualify for or will not seek any type of coverage for dialysis services. These patients are considered “self-pay” patients. These patients are invoiced as all patients are invoiced, however payment is not expected and Fresenius does not initiate any collections activity on these accounts. These unpaid invoices are written off as bad debt. Fresenius notes that as a for profit entity, it does pay sales, real estate and income taxes. It also does provide community benefit by supporting various medical education activities and associations, such as the Renal Network and National Kidney Foundation.*

*The table below shows the amount of “self-pay” care provided for the 3 fiscal years prior to submission of the application for **all Fresenius Medical Care facilities in Illinois** and the amount of care provided to Medicaid patients for the three fiscal years prior to submission of the application for **all Fresenius Medical Care facilities in Illinois**. This includes in-center hemodialysis, peritoneal dialysis, home hemodialysis & sub-acute hemodialysis.”*

<b>TABLE FOUR</b> <b>SAFETY NET INFORMATION</b> <b>Fresenius Medical Care Facilities in Illinois</b>			
<b>Net Revenue</b>	<b>\$353,355,908</b>	<b>\$387,393,758</b>	<b>\$398,570,288</b>
<b>CHARITY</b>			
	<b>2011</b>	<b>2012</b>	<b>2013</b>
<b>Charity (# of self-pay patients)</b>	93	203	642
<b>Charity (self-pay) Cost</b>	\$632,154	\$1,536,372	\$5,346,976
<b>% of Charity Care to Net Rev.</b>	0.18%	0.40%	1.34%
<b>MEDICAID</b>			
	<b>2011</b>	<b>2012</b>	<b>2013</b>
<b>Medicaid (Patients)</b>	1,865	1,705	1,660
<b>Medicaid (Revenue)</b>	\$42,367,328	\$36,254,633	\$31,373,534
<b>% of Medicaid to Net Revenue</b>	12%	13%	7.87%

**C. Criterion 1110.230(c) - Alternatives to the Proposed Project**

**The Criterion states:**

**“The applicant shall document that the proposed project is the most effective or least costly alternative for meeting the health care needs of the population to be served by the project.**

The applicants propose a 12-station ESRD facility. The applicants considered the following alternatives:

1. **Proposing a project of greater or lesser scope**  
The applicants rejected this alternative, because it did not plan for the future, or address the need for additional station in the service area. There were no costs identified with this alternative.
2. **Pursuing a joint venture**  
The applicants rejected this alternative, based on the Fresenius model of ownership, which is to be wholly owned. The applicants have more than adequate capability to meet its expected financial obligations, and have structured the ownership of the proposed facility so physicians may invest in it at a later date, if they choose. There were no project costs identified with this alternative.

**3. Using other area facilities**

The applicants note the two closest clinics are less than two years old, and are still in the “ramp up” phase, with their own identified patient bases to reach the prescribed 80% operating standard. The applicants note these facilities are conveniently accessible only through the use of the expressway, which is not generally utilized by sick and elderly patients. The applicants identified other underutilized facilities in the Lombard/Joliet/Oak Brook area, but note that these facilities are not in the Lemont health care market. There were no project costs identified with this alternative.

**4. Option as Proposed**

The applicants note the chosen alternative, while most costly (\$4,735,282), provided the best benefit to its patient base through improved access and reduced travel time.

**VIII. Section 1110.234 - Project Scope and Size, Utilization**

**A) Criterion 1110.234 (a) - Size of Project**

**The Criterion states:**

**The applicant shall document that the amount of physical space proposed for the project is necessary and not excessive.**

The applicants propose to establish a 12 station ESRD facility in 9,665 GSF of leased space. The State board standard is 360-520 GSF per station. The applicants note the project is allocating 805 GSF per station, which exceeds the standard. The applicants explain that the additional space is needed for an administrative space, home therapies, and for future expansion. Table Six illustrates the spatial configuration, and the mentioned overage.

TABLE FIVE SIZE OF PROJECT 13-040 FMC Lemont				
Department/Service	Proposed BGSF/DGSF	State Standard	Difference	Met Standard?
ESRD Facility	9,665 GSF (12 Stations)	360-520 DGSF	3,425 GSF Over	No

**THE STATE BOARD STAFF FINDS THE PROPOSED PROJECT DOES NOT APPEAR TO BE IN CONFORMANCE WITH THE SIZE OF PROJECT CRITERION (77 IAC 1110.234(a)).**

**B) Criterion 1110.234 (b) - Project Services Utilization**

**The applicant shall document that, by the end of the second year of operation, the annual utilization of the clinical service areas or equipment shall meet or exceed the utilization standards specified in Appendix B.**

The applicants have identified 64 pre-ESRD patients expected to utilize the proposed facility, and have documented by the second year after project completion they will be above the State Board's target occupancy of 80% (Application, P. 49).

**THE STATE BOARD STAFF FINDS THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE PROJECTED SERVICES UTILIZATION CRITERION (77 IAC 1110.234(b)).**

**IX. Section 1110.1430 - In-Center Hemodialysis Projects – Review Criteria**

**A) Criterion 1110.1430 (b)(1)(3) - Background of Applicant**

***An applicant must demonstrate that it is fit, willing and able, and has the qualifications, background and character, to adequately provide a proper standard of health care service for the community. [20 ILCS 3960/6]***

The applicant provided a list of all health care facilities currently owned and/or operated by the applicant, including licensing, certification and accreditation identification numbers, a certified listing from the applicant 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, and authorization permitting HFPB and Illinois Department of Public Health (IDPH) access to any documents necessary to verify the information submitted.

**THE STATE BOARD STAFF FINDS THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE BACKGROUND OF APPLICANT CRITERION (77 IAC 1110.1430 (b)(1)(3))**

**B) Criterion 1110.1430 (c)(1)(2)(3)(5) - Planning Area Need**

- 1) 1110.1430 (c) (1) 77 Ill. Adm. Code 1100 (formula calculation)**
- 2) 1110.1430 (c) (2) Service to Planning Area Residents**
- 3) 1110.1430 (c) (3) Service Demand – Establishment of In-Center Hemodialysis Service**
- 4) 1110.1430 (c) (5) Service Accessibility**

**1) 77 Ill. Adm. Code 1100 (formula calculation)**

According to the September 2014 update to the IDPH Inventory of Health Care Facilities ("Inventory"), HSA-VII shows a calculated need for 58 stations in the planning area.

**2) Service to Planning Area Residents**

The primary purpose of this project is to provide in-center ESRD services to the residents of HSA-VII, and more specifically the Lemont area, The applicants state that they anticipate 100% (64 pre ESRD patients) of their patient base originating from the southwest Cook County (HSA-07), and northeast Will County (HSA-09) planning areas.

**3) Service Demand**

The applicants submitted a referral letter from Dr. Alausa, and his colleagues at the Kidney Care Center, attesting that of the 91 pre ESRD patients currently treated in his Lemont practice, approximately 64 will be provided service at the proposed facility after project completion.

**4) Service Accessibility**

The applicants note the proposed establishment of a 12-station ESRD facility is necessary to improve access to dialysis services in Lemont and surrounding communities and the State Board has projected a need for 58 stations in HSA VII ESRD planning area.

The State Board has projected a need for 58 ESRD stations by CY 2015 in the HSA VII ESRD planning area and it appears the proposed facility will serve the residents of the planning area and there is sufficient demand to justify the number of stations being requested. It also appears the proposed facility will improve access as there is a calculated need for 58 stations in the HSA VII ESRD planning area. The applicants have met this requirement.

**THE STATE BOARD STAFF FINDS THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE PLANNING AREA NEED CRITERION (77 IAC 1110.1430(b)).**

**C) Criterion 1110.1430 (d) - Unnecessary Duplication / Maldistribution**

- 1) **The applicant shall document that the project will not result in an unnecessary duplication.**
- 2) **The applicant shall 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, stations and services characterized by such factors as, but not limited to:**
- 3) **The applicant shall document that, within 24 months after project completion, the proposed project:**

The State Board Staff notes 7 of the 9 (78%), facilities within 30 minutes of the proposed site are not operating at the target occupancy of 80% (See Table One), with an average occupancy of 70.21%.

Maldistribution of service is characterized by the ratio of stations to population within a 30 minute area greater than 1.5 times the State of Illinois ratio of stations to population. The applicants provided a list of all zip code areas that are located within 30 minutes of the proposed site as required. The applicants' state that the ratio of ESRD stations to population is 1 station per 4,354 individuals based upon the 2010 census and within 30 minutes radius of the proposed facility. The State of Illinois ratio is 1 station per every 3,180 individuals. There is not an excess of stations in this 30 minute area.

The applicants state that the project will not have an adverse impact on area providers due to the 91 patients that are new pre-ESRD patients. In addition the applicants state the proposed facility will provide greater access to the Lemont service area.

There is no maldistribution of service in this 30 minute area, nor does it appear that the proposed facility will have an impact on other providers because no patients will be coming from facilities in the 30 minute area. Because there are existing facilities not at target occupancy it appears a duplication of service may result from the establishment of this facility.

**THE STATE BOARD STAFF FINDS THE PROPOSED PROJECT DOES NOT APPEAR TO BE IN CONFORMANCE WITH THE UNNECESSARY DUPLICATION MALDISTRIBUTION OF SERVICE CRITERION (77 IAC 1110.1430 (c).**

- C) Criterion 1110.1430 (e) - Staffing Availability
- D) Criterion 1110.1430(f) - Support Services
- E) Criterion 1110.1430 (g) - Minimum Number of Stations
- F) Criterion 1110.1430(h) - Continuity of Care
- G) Criterion 1110.1430 (j) - Assurances

The applicants have successfully addressed these criteria at pages 63-74 of the application for permit.

**THE STATE BOARD STAFF FINDS THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE STAFFING AVAILABILITY, SUPPORT SERVICES, MINIMUM NUMBER OF STATIONS, CONTINUITY OF CARE AND ASSURANCES CRITERION (77 IAC 1110.1430 (e)(f)(g)(h)(j)).**

## **FINANCIAL**

### **X. 1120.120 - Availability of Funds**

**The applicant shall document that financial resources shall be available and be equal to or exceed the estimated total project cost plus any related project costs by providing evidence of sufficient financial resources.**

The applicants are funding the project with cash and securities of \$2,249,000 and the FMV of the lease of \$2,486,282. A review of the applicants' financial statements indicates that sufficient cash is available to fund the project.

<b>TABLE SIX</b>		
<b>Fresenius Medical Care</b>		
<b>Audited Financial Information</b>		
<b>In thousands (000)</b>		
<b>Calendar Year</b>	<b>2013</b>	<b>2012</b>
Cash and Investments	\$275,719	\$341,071
Current Assets	\$3,866,123	\$5,673,703
Total Assets	\$16,597,314	\$17,808,635
Current Liabilities	\$2,094,693	\$2,510,111
Long Term Debt	\$2,113,723	\$2,030,126
Total Liabilities	\$8,075,490	\$8,401,166
Net Revenues	\$9,433,192	\$8,885,401
Expenses	\$8,088,952	\$7,384,745
Income Before Tax	\$1,344,240	\$1,500,656
Income Tax	\$465,540	\$497,177
Net Income	\$878,700	\$1,003,479

**THE STATE BOARD STAFF FINDS THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE AVAILABILITY OF FUNDS CRITERION (77 IAC 1120.120 (a)).**

**XI. 1120.130 - Financial Feasibility**

**Financial Viability Waiver**

The applicants have qualified for the financial waiver because the project is being funded with internal sources including capital expended through a lease. The applicants are funding the project with cash and securities of \$2,249,000 and the FMV of the lease of \$2,486,282. A review of the applicants' financial statements indicates that sufficient cash is available to fund the project.

**THE STATE BOARD STAFF FINDS THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE FINANCIAL FEASIBILITY CRITERION (77 IAC 1120.130 (a)).**

**XII. Section 1120.140 - Economic Feasibility**

**A. Criterion 1120.140(a) - Reasonableness of Financing Arrangements**

**The applicant shall document the reasonableness of financing arrangements.**

The applicants are funding the project with cash and securities of \$2,249,000 and the FMV of the lease of \$2,486,282. A review of the applicants' financial statements indicates that sufficient cash is available to fund the project. The applicants have provided the necessary attestation that borrowing (leasing) is less costly than the liquidation of existing investments. The applicants have met the requirements of this criterion.

**THE STATE BOARD STAFF FINDS THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE REASONABLENESS OF FINANCING ARRANGEMENTS CRITERION (77 IAC 1120.140(a)).**

**B. Criterion 1120.140(b) - Terms of Debt Financing**

**This criterion is applicable only to projects that involve debt financing.**

The applicants are funding the project with cash and securities of \$2,249,000 and the FMV of the lease of \$2,486,282. A review of the applicants' financial statements indicates that sufficient cash is available to fund the project. The applicants have attested that the selected form of debt financing (leasing) will be at the lower net cost available to the applicants. The applicants have met the requirements of this criterion.

**THE STATE BOARD STAFF FINDS THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE TERMS OF DEBT FINANCING CRITERION (77 IAC 1120.140(b)).**



**C. Criterion 1120.140(c) - Reasonableness of Project Cost**

**The applicant shall document that the estimated project costs are reasonable and shall document compliance with the State Board's standards as detailed in 77 IAC 1120.**

**Modernization Contracts and Contingencies** – These costs total \$1,770,000 or \$183.12 per gross square feet. ( $\$1,770,000/9,665 \text{ GSF} = \$183.12/\text{GSF}$ ) This appears **reasonable** when compared to the State Board standard of \$189.12/GSF.

TABLE SEVEN	
Temporary Facilities, Controls, Cleaning, Waste Management	\$84,500
Concrete	\$20,600
Masonry	\$24,500
Metal Fabrications	\$12,000
Carpentry	\$141,500
Thermal, Moisture & Fire Protection	\$28,600
Doors, Frames, Hardware, Glass & Glazing	\$110,300
Walls, Ceilings, Floors, Painting	\$260,000
Specialties	\$20,000
Casework Floor Mats and Window Treatments	\$9,600
Piping, Sanitary Waste, HVAC, Ductwork, Roof Penetrations	\$515,000
Wiring, Fire Alarm System, Lighting	\$310,400
Miscellaneous Construction Costs	\$73,000
Total	\$1,610,000

**Contingencies** – These costs total \$160,000. These costs are 9.9% of modernization costs. This appears reasonable when compared to the State Board standard of 10%-15% of modernization costs.

**Architect and Engineering Fees** – These costs total \$159,000 or 8.9% of modernization and contingency costs. This appears reasonable when compared to the State Board standard of 6.65% -9.99% of modernization and contingency costs.

**Moveable Equipment** - These costs total \$320,000 or \$26,666 per station. This appears reasonable when compared to the State Board standard of \$39,945.

TABLE EIGHT	
Dialysis Chairs	\$17,000
Misc. Clinical Equipment	\$18,000
Clinical Furniture & Equipment	\$27,000

TABLE EIGHT	
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 of Leased Space** - These costs are \$2,486,282. The State Board does not have a standard for these costs.

The applicants have modernization contracts and contingencies costs in excess of the State Board Standard. A negative finding has been made for this criterion.

**THE STATE BOARD STAFF FINDS THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE REASONABLENESS OF PROJECT COST CRITERION (77 IAC 1120.140 (c)).**

**D) Criterion 1120.140 (d) - Projected Operating Costs**

**The applicant shall provide the projected direct annual operating costs (in current dollars per equivalent patient day or unit of service) for the first full fiscal year at target utilization but no more than two years following project completion. Direct cost means the fully allocated costs of salaries, benefits and supplies for the service.**

The applicants anticipate the direct operating costs per treatment to be \$82.13. The State Board does not have a standard for these costs.

**THE STATE BOARD STAFF FINDS THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE PROJECT DIRECT OPERATING COSTS CRITERION (77 IAC 1120.140 (d)).**

**E) Criterion 1120.140 (e) - Total Effect of the Project on Capital Costs**

**The applicant shall provide the total projected annual capital costs (in current dollars per equivalent patient day) for the first full fiscal year at target utilization but no more than two years following project completion.**

The applicants anticipate the total effect of the Project on Capital Costs per treatment to be \$12.87. The State Board does not have a standard for these costs.

**THE STATE BOARD STAFF FINDS THE PROPOSED PROJECT APPEARS TO BE IN CONFORMANCE WITH THE TOTAL EFFECT OF THE PROJECT ON CAPITAL COSTS CRITERION (77 IAC 1120.140 (e)).**

# 13-040 Fresenius Medical Care Lemont - Lemont





**FRESENIUS  
MEDICAL CARE**

**RECEIVED**

**FEB 14 2014**

**HEALTH FACILITIES &  
SERVICES REVIEW BOARD**

February 13, 2014

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

**Re: Supplemental Information  
Project #13-040, Fresenius Medical Care Lemont**

Dear Ms. Avery,

The enclosed pages contain supplemental information in response to the Intent to Deny given to the above mentioned project at the December 17, 2013 meeting.

Thank you for your time and consideration of this information.

Sincerely,

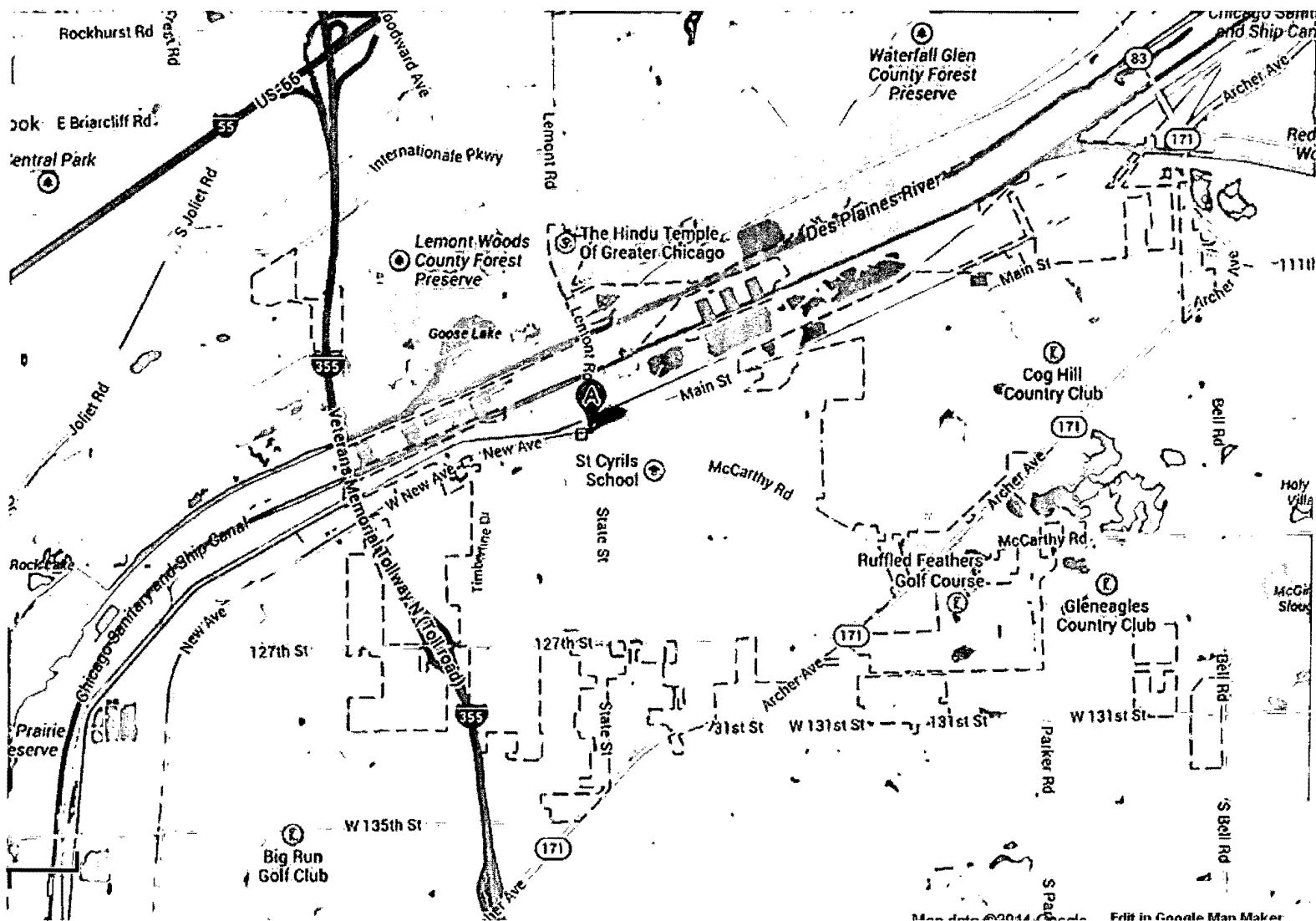
Lori Wright  
Senior CON Specialist

cc: Clare Ranalli

**SUPPLEMENTAL INFORMATION FOR  
#13-040 Fresenius Medical Care Lemont**

In response to the Intent to Deny issued to project #13-040 at the December 17, 2013 meeting, Fresenius Medical Care is submitting this additional information and requests the Board to reconsider its position based on the following information.

Lemont is a town of approximately 23,000 located in a somewhat secluded area in far southwest Cook County. It has a physical border to the north and west created by the Des Plaines River and the I&M Canal which is industrial in nature. To the east it is bordered by Cog Hill Golf club and wooded areas with numerous quarries left over from the mining days of the early 1900's. To the south there are newer sub-divisions and additional forest preserves. Until I-355 was extended into this area several years ago, there was limited access to this area.



In calendar year 2013 the patient population at the clinics considered to be within 30 minutes travel time of Lemont via non-highway travel (as shown in the chart below) grew by over 5%, which is significantly higher than the average yearly State rate of 1.92% (for 2010-2012).

### **State ESRD Growth<sup>1</sup>**

	2010	2011	2012		11 vs 10	12 vs 11		Avg Yearly Growth
Illinois ESRD	16,608	16,907	17,584		1.80%	4.00%		1.92%

### **Lemont Area ESRD Growth by Clinic**

Facility	Address	City	Miles	Adjusted Minutes		Stations	Patients 12/2012	Patients 12/2013	12/2013 Utilization
				Per Board Rules With Highway Travel	Per Board Rules With NO Highway Travel				
USR Bolingbrook	396 Remington Blvd	Bolingbrook	7.42	12	18	13	7	37	428.57%
DaVita Palos Park	13155 S La Grange Rd	Orland Park	9.22	18	18	12	12	27	125.00%
Fresenius Bolingbrook	329 Remington Blvd	Bolingbrook	7.22	12	20	24	132	120	-9.09%
Fresenius Willowbrook	6300 Kingery Highway	Willowbrook	11.37	18	21	20	88	76	-13.64%
DaVita SC Hosp	1890 Silver Cross Blvd.	New Lenox	9.11	14	24	19	81	83	2.47%
Fresenius Joliet	721 E. Jackson Street	Joliet	12.9	21	25	16	19	48	152.63%
Fresenius Naperville*	2451 S. Washington	Naperville	12.49	22	25	16	78	70	-10.26%
Fresenius Orland Park	9160 W 159th St	Orland Park	13.28	23	26	18	76	85	11.84%
Fresenius Downers Grove	3825 Highland Ave	Downers Grove	14.55	24	30	19	94	73	-22.34%
							<b>587</b>	<b>619</b>	<b>5.45%</b>

\*Naperville Dialysis will be closed by April 2014 and all patients transferred to the Naperville facility. For purposes of this travel/growth study, those patients of the Naperville Dialysis center are listed under the Naperville facility.

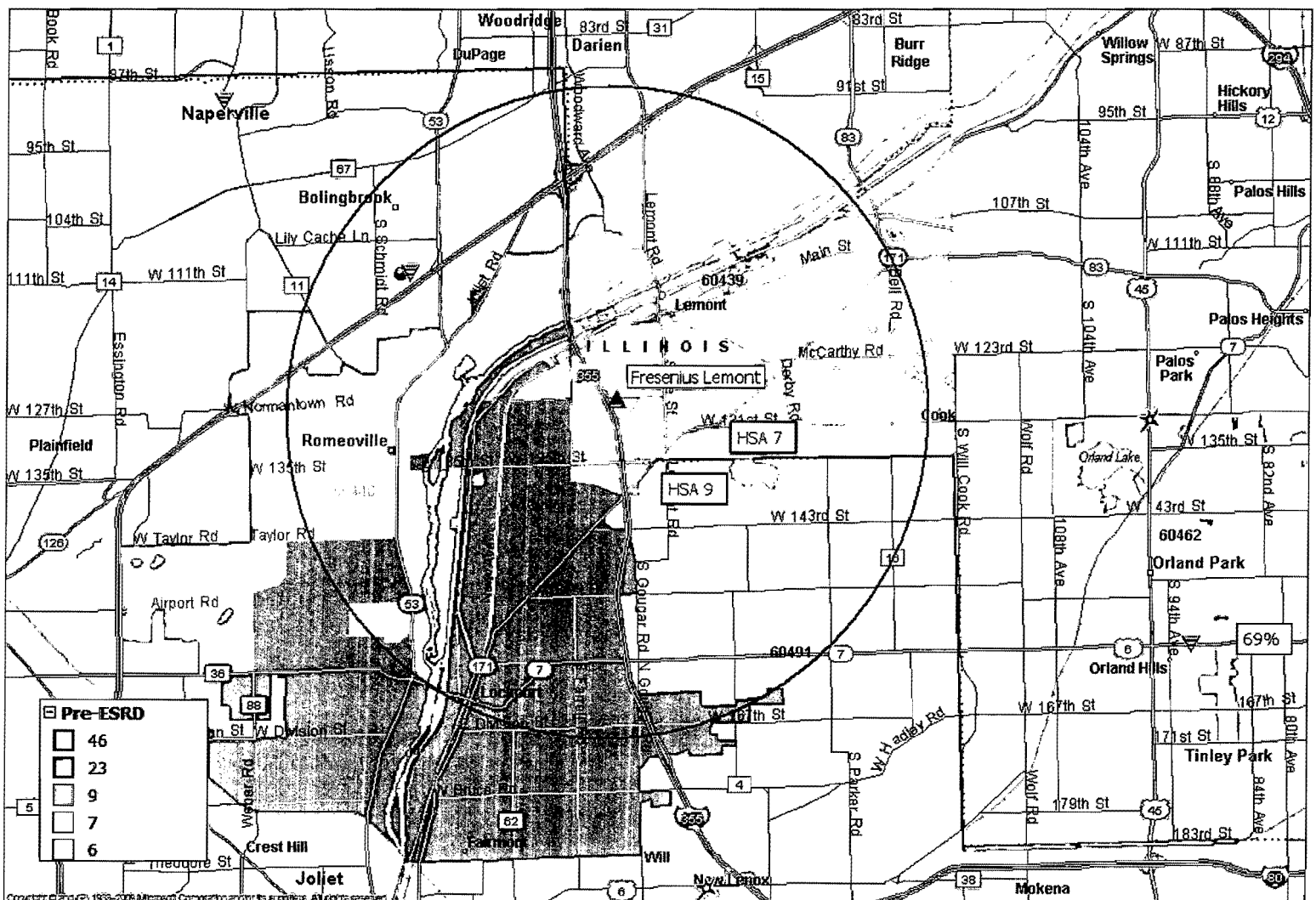
Facilities below are over 30 minutes travel via non-highway travel									
Sun Health	2121 W Oneida St	Joliet	19.73	29	31	17	59	54	
USR Oak Brook	1213 Butterfield Road	Downers Grove	14.55	23	33	13	4	34	
Fresenius Westchester	2400 Wolf Road	Westchester	17.98	30	33	20	89	97	
Fresenius Elmhurst	133 E Brush Hill Road	Elmhurst	20.23	30	33	28	132	101	
Fresenius Mokena	8910 W 192nd St	Mokena	17.1	23	35	12	45	52	
Fresenius Lombard	1940 Springer Dr	Lombard	15.22	24	36	12	44	36	
Fresenius Naperville North	516 W 5th Ave	Naperville	14.96	30	37	21	76	75	

1. Utilization and ESRD census data taken from the Renal Network 10 Annual Report for 2010, 2011 & 2012.



Because Lemont is situated on the border of Cook County (HSA 7) and Will County (HSA 9) it cannot reasonably serve only one HSA. As noted by the opposition, a majority of identified pre-ESRD patients who would use the Lemont clinic do not reside in HSA 7, but rather in HSA 9 **as stated in the application**. However, a majority of these patients reside within 5 miles of the chosen location; therefore it **will** serve its market area. This was **not** the case in a previous application submitted for Lemont by an applicant other than Fresenius. (The previous application also used duplicated patients, which the Fresenius application does not.)

### HSA 7 & 9 with Zip Codes of Pre-ESRD Patients Identified for the Lemont Facility



Since the previous area application was given an intent-to-deny, several changes have taken place. At that time there were six new/start up facilities within 30 minutes of Lemont, all with 0% utilization (US Renal Bolingbrook, US Renal Oak Brook, DaVita Palos Park, Fresenius Joliet, Naperbrook and Lockport). Five are now in full operation with an average utilization of 50% as of December 2013, although the average time of operation for these five facilities is only 13 months. The sixth facility, Fresenius Lockport, has since surrendered its permit.



While there are facilities within 30 minutes that are under the State's 80% target utilization rate, we note that the proposed Lemont facility will not be operational for approximately 2 years from the date it receives Board approval, because the developer will not build the shell building until this occurs. Depending on when the Board issues a final decision on this application, that may mean the facility would not be treating patients until December, 2016. Given the growth in the area it would not be reasonable to expect the current underutilization to remain a full two and a half years from now. While we are required to provide this supplemental information now, we fully expect that new utilization statistics will show that area facilities have only continued to grow to reach or come closer to reaching the Board's utilization target of 80%.

Additionally, over half of the facilities considered within 30 minutes are between ten and 20 miles away.

We respectfully ask the Board to reconsider its decision based on the need evidenced by the ESRD growth in this area and the unique location of the city of Lemont, which straddles two HSAs, one where there is significant need. We thank Board members and staff for their time and consideration of this additional information.

1 S63305

2 ILLINOIS DEPARTMENT OF PUBLIC HEALTH  
3 HEALTH FACILITIES AND SERVICES REVIEW BOARD  
4 OPEN SESSION

5

6

7

REPORT OF PROCEEDINGS

8

Bolingbrook Golf Club

2001 Rodeo Drive

9

Bolingbrook, Illinois 60490

10

December 17, 2013

9:02 a.m.

11

12

13 BOARD MEMBERS PRESENT:

14

MS. KATHY OLSON, Chairperson;

15

MR. JOHN HAYES, Vice Chairman;

16

MR. PHILIP BRADLEY;

17

DR. JAMES J. BURDEN;

18

SENATOR DEANNA DEMUZIO;

19

MR. DALE GALASSI;

20

JUSTICE ALAN GREIMAN; and

21

MR. RICHARD SEWELL.

22

23

Reported by: Melanie L. Humphrey-Sonntag,

CSR, RDR, CRR, CCP, FAPR

24

Notary Public, Kane County, Illinois

1 EX OFFICIO MEMBERS PRESENT:

2 MR. DAVID CARVALHO, IDPH;

3 MR. MATT HAMMOUDEH, IDHS; and

4 MR. MIKE JONES, IDHFS.

5

ALSO PRESENT:

6

MR. FRANK URSO, General Counsel ;

7

MR. NELSON AGBODO, Health Systems Data Manager;

8

MS. CATHERINE CLARKE, Board Staff;

9

MR. BILL DART, IDPH Staff;

10

MR. GEORGE ROATE, IDPH Staff; and

11

MR. SAI SEKUBOYINA, Board Intern.

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**REPORT OF PROCEEDINGS -- 12/17/2013  
FRESENIUS MEDICAL CARE**

13

1 MR. ROATE: Excuse me. Could you please  
2 sign in and just pass the roster down.

3 Thank you.

4 MR. URSO: Mr. Vinson, you can start.

5 MR. VINSON: Thank you, Madam Chairman,  
6 ladies and gentlemen of the Board.

7 I'm here to speak in opposition to the  
8 Fresenius Lemont application. The Board has previously  
9 recognized and, I think, understands the high  
10 concentration that DaVita and Fresenius have on  
11 dialysis facilities in this planning area, indeed in  
12 Northern Illinois.

13 This application demonstrates another effort  
14 to continue that concentration, and it has a series of  
15 defects that I'd like to very briefly describe.

16 The first and most important defect is that  
17 Fresenius, as a lessee, does not control the property.  
18 The application reveals that Fresenius would lease the  
19 property from a lessor, who does not control the  
20 property, cannot direct the property at this stage.

21 The lessor has a hundred days from your  
22 approval in order to acquire control of the property.  
23 That's in violation of your rules.

24 Secondly, if you look at the history of the

**REPORT OF PROCEEDINGS -- 12/17/2013  
FRESENIUS MEDICAL CARE**

14

1 Fresenius utilization, 62.5 percent of the projects  
2 approved by your Board in recent years, Fresenius has  
3 failed to meet the utilization standard of 80 percent  
4 two years after completion.

5 Third, if you examine your rules, you  
6 certainly understand that facilities are intended to be  
7 constructed for patients from the planning area.

8 In this case, an overwhelming majority of the  
9 patients do not come from the planning area, and so, as  
10 a consequence, what the -- we would be dealing with  
11 here is another effort to further the concentration and  
12 to establish more of a choke hold in this area by this  
13 particular provider.

14 And for those reasons I would urge you to  
15 reject the application.

16 CHAIRPERSON OLSON: Thank you, sir.  
17 Doctor.

18 DR. CHAWLA: Good morning, Madam Chair  
19 and members of the Board. My name is Dr. Bhuvan  
20 Chawla. I'd like to thank you for the opportunity to  
21 speak today.

22 I have previously submitted a detailed letter  
23 of opposition, but I wanted to cover the salient  
24 features again.

**REPORT OF PROCEEDINGS -- 12/17/2013  
FRESENIUS MEDICAL CARE**

15

1           This application seeks to misuse a reported  
2           need in HSA VII to seek approval so that it can divert  
3           patients from HSA IX, which has a reported surplus of  
4           stations. Thus, it fails to address need in HSA VII  
5           and, at the same time, seeks to cause duplication of  
6           services in HSA IX. Last year US Renal of Lemont  
7           attempted to utilize the same strategy, to which  
8           Fresenius had objected. Today the situation has  
9           changed, but there's -- correction. Today the  
10          situation is essentially the same, but the actors have  
11          changed.

12                 In the meantime, utilization of DaVita  
13          Silver Cross, which is the closest facility, has  
14          dropped from 80 percent two years ago to 59 percent now.

15                 At that time Fresenius stated, and I quote,  
16          "Patients identified for this facility do not reside in  
17          HSA VII; therefore, it will not serve the residents in  
18          the HSA for which it is being established per Board  
19          rules." That statement is equally applicable to  
20          Fresenius's own Lemont application.

21                 US Renal received an intent to deny in  
22          December of 2012, yet, seven months later, Fresenius is  
23          attempting the exact same maneuver. This -- I find --  
24          I personally find that kind of troubling. Apparently,



**REPORT OF PROCEEDINGS -- 12/17/2013  
CHICAGO RIDGE DIALYSIS**

16

1       the cost of a CON application is not a deterrent to a  
2       company of this size.

3               Once again, thank you for the opportunity to  
4       speak. I would urge the Board to reject this  
5       application.

6               CHAIRPERSON OLSON: Thank you, Doctor.

7               And that is --

8               MR. URSO: I want to let the Board know  
9       that those two speakers were speaking in opposition to  
10      Project 13-40, Fresenius Medical Care Lemont, and that  
11      is Item H-01 on your agendas.

12              MEMBER GALASSI: Thank you.

13              MR. URSO: Am I correct, gentlemen?

14              MR. VINSON: That's correct.

15              MR. URSO: Thank you.

16              MEMBER GALASSI: Thank you, Frank.

17              DR. PALLATH: Good morning, Madam Chair  
18      and members of the Board.

19              My name is Sreya Pallath, and I'm the planned  
20      medical director for the proposed Chicago Ridge  
21      Dialysis facility, located on the immediate border of  
22      the village of Chicago Ridge and of Worth, and there is  
23      a need there for 82 additional dialysis stations.

24              As I described in the referral letter for

**REPORT OF PROCEEDINGS -- 12/17/2013  
FRESENIUS MEDICAL CARE LEMONT**

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1           permits, there is no action.

2                   Applications subsequent to initial review,  
3           13-040, Fresenius Medical Care Lemont in Lemont.

4                   Please be sworn in for the court reporter.

5                   THE COURT REPORTER: Would you raise  
6           your right hands, please.

7                                   (Three witnesses duly sworn.)

8                   THE COURT REPORTER: Thank you. Please  
9           sign in.

10                   CHAIRPERSON OLSON: George, the State  
11           Board staff report, please.

12                   MR. ROATE: Thank you, Madam Chair.

13                   The Applicants are proposing the  
14           establishment of a 12-station end stage renal dialysis  
15           facility located in Lemont. The cost of the project is  
16           \$4.7 million.

17                   The Board staff reports that no public  
18           hearing was requested; no letters of support and  
19           three letters of opposition were received by State  
20           Board staff.

21                   The Board staff also notes that  
22           Project 13-061, to be heard later in this meeting, is  
23           scheduled to be heard and, if approved, will  
24           discontinue a 15-station dialysis center in the same

**REPORT OF PROCEEDINGS -- 12/17/2013  
FRESENIUS MEDICAL CARE LEMONT**

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1 planning area.

2 The Applicants also noted to -- in a -- the  
3 Applicants also noted that there was some incorrect  
4 data in Table 2, which is the utilization data on  
5 page 6 of your report.

6 If I can direct you to Fresenius Medical Care  
7 Joliet, the utilization data is incorrectly reported,  
8 and that facility operated at 50 percent for the  
9 reporting period of September 2013.

10 Thank you, Madam Chair.

11 CHAIRPERSON OLSON: Thank you, George.  
12 Comments for the Board?

13 MS. MULDOON: Good morning. My name is  
14 Colleen Muldoon. I'm a regional vice president for  
15 Fresenius Medical Care, and with me are Clare Ranalli  
16 and Lori Wright, our CON specialist.

17 And I'd like to just start by thanking the  
18 staff for preparing this report, the State Board  
19 report, and just to go over a few things. I'm not  
20 going to take too much of your time, just to let you  
21 know that we have been before you with projects in this  
22 area, this general area, and there have been concerns  
23 from the Board.

24 However, when we were before you previously,

**REPORT OF PROCEEDINGS -- 12/17/2013  
FRESENIUS MEDICAL CARE LEMONT**

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1       as in the case of other companies looking to establish  
2       clinics in this area, there was much less need. Now  
3       there is definite need based on the new inventory of  
4       84 stations.

5               Also, we want you to understand that we are  
6       focusing on this area because we work with a doctor in  
7       this practice sector who allows us -- who has an active  
8       practice and a CKD program in this area who has urged  
9       us to come before the Board on this project.

10              Dr. Alausa has a long-standing membership --  
11       a member of our medical staff at Fresenius clinics --  
12       and he has practiced -- has -- always has been trusted  
13       by Fresenius and its clinical partners.

14              Dr. Alausa has told us he has a significant  
15       number of patients who will need dialysis in the near  
16       future in this particular area. When we are able to --  
17       always been able to get the projects approved, he has  
18       always filled those clinics.

19              Two examples would be the Joliet clinic,  
20       which was opened just over a year ago and is at  
21       50 percent utilization with 48 patients, and then our  
22       Plainfield clinic, which has been open a couple years.  
23       We've added four stations since it did open, and  
24       they're well over 80 percent in this area. Both of

**REPORT OF PROCEEDINGS -- 12/17/2013  
FRESENIUS MEDICAL CARE LEMONT**

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1       those are run by Dr. Alausa as medical director and his  
2       partners.

3               Dr. Alausa's practice also has a 15 percent  
4       Medicaid mix in this area, and we know that this is  
5       important to the Board, and we always report the  
6       Medicaid at all of our facilities on the State Board  
7       report.

8               I hope this is helpful in your understanding  
9       of why we are coming back to the Board for approval in  
10      this area of Lemont. We've had projects before you for  
11      Lockport and this area, also, so we have come before  
12      you, and we do see a significant need, and that's why  
13      we are again before you today.

14              I'm going to hand this over to Clare, who's  
15      going to -- Ranalli -- who will just talk a little bit  
16      about the negative findings in the State Board report.

17              MS. RANALLI: Thank you.

18              The reason I wanted to talk to these findings  
19      is because, again, you may say, "Well, why would they  
20      come back before us again in front of Lemont when you  
21      look at the utilization chart and see the utilization  
22      of area providers within 30 minutes?" And we do want  
23      the Board to understand, regardless of your decision,  
24      that we aren't just whistling Dixie here. There truly

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1 is a need.

2 And I think if you look at the chart in black  
3 and white, it doesn't tell an accurate story of the  
4 utilization picture. As Mr. Roate noted, one of the  
5 clinics, Fresenius Naperbrook, which is at 2 percent --  
6 actually pursuant to our own condition that we made to  
7 you -- is going to accept all of the Fresenius  
8 Naperville clinic patients.

9 The Naperville discontinuation application is  
10 before you today. When those patients transfer, which  
11 will be not too long from now, Naperbrook will be well  
12 over 80 percent utilization because the Naperville  
13 clinic is over 80 percent utilization.

14 That leaves eight clinics that are  
15 underutilized on this chart. Of those eight clinics,  
16 five are new clinics, still in the ramp-up period.  
17 That includes DaVita Silver Cross, which just recently  
18 added stations -- it's not a new clinic but it just  
19 recently added stations and is also in the ramp-up  
20 period.

21 When you look at those clinics -- as an  
22 example, Fresenius Joliet, where Dr. Alausa admits,  
23 it's at 50 percent, well over what it should be for  
24 having operated one year. The same is true for

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1 US Renal Bolingbrook, DaVita Palos Park, US Renal  
2 Oak Brook, and the Silver Cross clinic. So when you  
3 take that into consideration, the utilization in the  
4 area is not exactly as daunting as it looks.

5 That still, however -- I grant you -- leaves  
6 three clinics that are under the 80 percent target, and  
7 one of those is at 74 percent and, quite frankly, in  
8 Orland Park could not accept Dr. Alausa's patients. He  
9 practices in the Plainfield, Joliet, Lemont area. He  
10 doesn't admit patients there. If he were to refer  
11 patients there, he would no longer be their  
12 nephrologist. That's not good for continuity of care.  
13 And, also, it's at 74 percent. It really could not  
14 accept the number of patients he's identified with this  
15 application.

16 Then you have Fresenius Willowbrook and  
17 Fresenius Downers Grove. They're in the 60 percent  
18 utilization range. Those are large facilities.  
19 Frequently the larger-station facilities don't hit  
20 target, but more importantly, once again, Dr. Alausa  
21 doesn't admit there.

22 That doesn't mean they couldn't accept his  
23 patients. I'm not trying to say that. But they would  
24 lose their physician-patient relationship with

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1 Dr. Alausa and his practice partners, which I don't  
2 think is ideal. Patients shouldn't have to lose a  
3 relationship that they may have had with the physician  
4 for years just because of slightly lower utilization at  
5 two clinics in our proposed service area.

6 Lastly, I would like to briefly address some  
7 of the public opposition comments.

8 This is not the same project as the US Renal  
9 Lemont project. The need in the area has increased  
10 significantly since they presented to you. When  
11 Naperville is discontinued today, if you grant the  
12 discontinuation request, it will go up to 97. That is  
13 significantly higher than when US Renal Lemont was  
14 before you.

15 Also, when it was before you, its Bolingbrook  
16 clinic, its -- and the Joliet clinic and the Oak Brook  
17 clinic had 0 percent utilization. You can now see that  
18 they've been open and they're on target to meet  
19 80 percent utilization after two years. That  
20 information was not available to you when they were  
21 before you previously. The application also duplicated  
22 patients that US Renal was submitting for a Plainfield  
23 facility.

24 And, lastly, while the comment was that we,



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1           too, were not serving the service area, that's not  
2           true. We are serving a 5-mile radius. This clinic is  
3           located on the border of HSA VII and HSA IX.

4                       We found a site in HSA VII because there's a  
5           need there, not in HSA IX. That was intentional. But  
6           you can't tell if maybe -- when a clinic's on the  
7           border, it's very difficult -- and your rules don't  
8           require that you can't treat patients from another HSA.  
9           What they say is you have to serve the market area and  
10          you look at zip codes, and this clinic serves a 5-mile  
11          radius from the proposed site.

12                      We had said previously, in the US Renal  
13          Lemont situation, that the patients they were going to  
14          serve were all over the place, as evidenced in part by  
15          the fact they were duplicating Plainfield patients.  
16          So, you know, I don't want to reiterate our opposition  
17          to that project, but it's somewhat unfair to say this  
18          is the exact same thing as what we had opposed  
19          previously.

20                      And, finally, Dr. Chawla spoke about the  
21          issue -- the Sun Health clinic isn't even in the  
22          service area according to this chart. You've heard  
23          before Dr. Chawla's practice only runs two shifts. His  
24          choice. That's fine. But that's the reason it's

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1 always underutilized, and it does not accept Medicaid  
2 patients.

3 Dr. Alausa's practice is 15 percent Medicaid.  
4 At Joliet there are 12 percent Medicaid patients. So  
5 we need a clinic that he can admit to that will accept  
6 Medicaid patients in this area.

7 Thank you for your time.

8 CHAIRPERSON OLSON: Thank you.

9 Questions from the Board?

10 MEMBER SEWELL: Madam Chair.

11 CHAIRPERSON OLSON: Mr. Sewell.

12 MEMBER SEWELL: During the public  
13 comment period, there was a comment made about your not  
14 having control of the property.

15 Do you remember that?

16 MS. RANALLI: Right. The letter of  
17 intent -- I don't have it in front of me, and  
18 I apologize for that. Lori may have it.

19 But I believe we -- the -- we're holding the  
20 site for a hundred days pursuant to the letter of  
21 intent. If you were to deny the application here  
22 today, then we'd have to negotiate with the landlord  
23 to -- pay the landlord to hold it longer because we'd  
24 come back in front of you, presumably, for the second

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1 chance that we might have.

2 But the landlord could say, you know,  
3 "I don't -- no, I'm not going to let you -- I'm not  
4 going to hold the site for you." Or he could say, "I'm  
5 going to charge you so much" that we may say, "No,  
6 thank you."

7 I believe that's what he was referring to.

8 CHAIRPERSON OLSON: Mr. Hayes.

9 VICE CHAIRMAN HAYES: Thank you,  
10 Madam Chairman.

11 In the State Agency Report, you know, the  
12 Naperville Dialysis Center that is scheduled to be  
13 heard at this meeting, if approved, would discontinue a  
14 15-station dialysis center in HSA VII ESRD planning  
15 area, and that discontinuation application was  
16 conditioned of the approval of Fresenius Medical Care  
17 Naperbrook facility.

18 And I was wondering if -- we'll be hearing  
19 this application today from Naperville Dialysis Center.  
20 How does that -- have you -- do you use that already,  
21 the discontinuation, in the -- for the Naperbrook --  
22 the Naperbrook facility, to get that approved by the  
23 Board?

24 MS. RANALLI: When we were in front of

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1       you on Naperbrook, we explained that we would be  
2       discontinuing Naperville. We couldn't do a relocation  
3       application from Naperville so we -- the permit was  
4       conditioned upon our coming before you to discontinue  
5       Naperville, if that's your question.

6               So those patients will transfer to  
7       Naperbrook, and the need will increase in the HSA as  
8       revealed by Mr. Roate in the State Board report because  
9       currently the Naperbrook 16 stations are in your  
10      inventory, as are Naperville. Now Naperville will go  
11      out, if you approve the discontinuation.

12              VICE CHAIRMAN HAYES: Okay. So -- and  
13      this is -- this project is in HSA VII.

14              MS. RANALLI: (Ms. Ranalli nodded her  
15      head up and down.)

16              VICE CHAIRMAN HAYES: Okay. And that  
17      has need; is that correct?

18              MS. RANALLI: Yes. If Naperville is  
19      approved, 97 stations is the need.

20              VICE CHAIRMAN HAYES: Okay. And what  
21      is the -- now, in the -- you're on the border between  
22      two facilities; is that correct? For two HSAs.

23              CHAIRPERSON OLSON: VII and IX.

24              VICE CHAIRMAN HAYES: VII and IX.

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1 MS. RANALLI: Right.

2 VICE CHAIRMAN HAYES: And what is the  
3 need calculation or the need in -- or the excess in  
4 HSA IX? And maybe I can turn to George for that,  
5 as well.

6 MR. ROATE: Yes, sir.

7 The November 14th update to the inventory  
8 shows an excess of 23 stations in HSA IX. And just for  
9 your information, for HSA VII the November 14th update  
10 shows a need for 82 end stage renal dialysis stations.

11 VICE CHAIRMAN HAYES: Okay. So,  
12 basically, in HSA IX there is an excess amount of  
13 stations of, what, 23?

14 MR. ROATE: Yes, sir, in IX.

15 VICE CHAIRMAN HAYES: All right.

16 Thank you very much.

17 CHAIRPERSON OLSON: I just want to  
18 piggyback on Mr. Hayes' point because it seems to me  
19 that you've already used the closing of the Naperville  
20 center as justification for opening of Naperbrook. Now  
21 it kind of feels like you're using the closing of that  
22 center once again to justify the opening of Lemont.

23 Can you help me out with that?

24 MS. RANALLI: We're not using it to

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1       justify. What we wanted to do was explain the chart  
2       here and utilization so, once again, you don't look at  
3       that and say, "Why in the world would the Applicant be  
4       before us when there are nine facilities that are  
5       underutilized?"

6               Naperbrook really isn't underutilized.  
7       I mean, in a very short amount of time, it's going to  
8       be accepting the patients from Naperville. It will be  
9       above 80 percent target.

10              So it's -- it's really -- really, there are  
11       eight facilities that are underutilized; again, five of  
12       which are new facilities in the ramp-up phase.

13              CHAIRPERSON OLSON: Thank you.

14              Other questions from the Board?

15                      (No response.)

16              CHAIRPERSON OLSON: Seeing none, I would  
17       entertain a motion to approve Fresenius Medical Care  
18       Lemont in Lemont.

19              MEMBER BRADLEY: So moved.

20              MEMBER BURDEN: Second.

21              MR. AGBODO: Thank you.

22              Motion made by Mr. Bradley; second by  
23       Dr. Burden.

24              Mr. Bradley.

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1                   MEMBER BRADLEY: I believe this project  
2 would increase patient access, and so I vote yes.

3                   MR. AGBODO: Thank you.

4                   Dr. Burden.

5                   MEMBER BURDEN: Based on the State Board  
6 statements and listening carefully to the opposition,  
7 as well, I feel, with the planning area need situation  
8 being discussed and, also, the unnecessary duplication  
9 of services, despite what I heard in argument to that,  
10 I vote no.

11                  MR. AGBODO: Thank you.

12                  Senator Demuzio.

13                  MEMBER DEMUZIO: Yes. Based upon the  
14 State Board finding and the size of the project, the  
15 planning area need, which is overutilized, and the  
16 necessary duplication of services, I vote no.

17                  MR. AGBODO: Thank you.

18                  Justice Greiman.

19                  MEMBER GREIMAN: Based on the  
20 suggestions above, the doctor, I vote no.

21                  MR. AGBODO: Mr. Galassi.

22                  MEMBER GALASSI: No. Previous comments.

23                  MR. AGBODO: Thank you.

24                  Mr. Hayes.

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1 VICE CHAIRMAN HAYES: No, because of  
2 previous comments.

3 MR. AGBODO: Thank you.

4 Mr. Sewell.

5 MEMBER SEWELL: No. Comments already  
6 stated.

7 MR. AGBODO: Madam Chair Olson.

8 CHAIRPERSON OLSON: I vote no based on  
9 nine facilities within 30 minutes are not at capacity.

10 MR. AGBODO: I have 8 -- 7 no; 1 yes.

11 CHAIRPERSON OLSON: The motion does  
12 not pass.

13 MR. URSO: You're going to be receiving  
14 an intent to deny.

15 MS. MULDOON: Thank you.

16 MR. URSO: You'll have another  
17 opportunity to come before the Board as well as submit  
18 additional information.

19 MS. MULDOON: Thank you.

20 MS. RANALLI: Thank you.

21 CHAIRPERSON OLSON: 13-050, DaVi ta  
22 Chi cago Ri dge Di alysi s i n Worth.

23 If the Applicant would come to the table.

24 Please state your name and be sworn in.