

ARA
SOUTH BARRINGTON DIALYSIS LLC

November 3, 2017

Via Overnight Courier

Ms. Courtney R. Avery
Administrator
Illinois Health Facilities and Services Review Board
525 West Jefferson Street, 2nd Floor
Springfield, IL 62761

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**HEALTH FACILITIES &
SERVICES REVIEW BOARD**

Re: Response to State Board Report
Project No. 17-038 (the "Project")
Fresenius Kidney Care South Elgin
Fresenius Kidney Care South Elgin, LLC
Fresenius Medical Care Holdings, Inc. (collectively, the "Applicants" or "Fresenius")

Dear Ms. Avery:

We thank you and the State Board staff for the work performed in preparing the State Board Report in connection with the Fresenius South Elgin project referenced above. We are particularly appreciative the SBR include selected comment excerpts from our October 25 letter of opposition that detail the excess of beds in the planning area and the underutilized facilities, including our own.

Our letter of opposition also included several other important comments on rules that unfortunately were not reflected in the SBR. Several of these points go directly to findings in the SBR where we believe the Applicants did not supply the information required by Board rules and consequently require a negative finding.

Because our October 25 opposition letter addressed the review criterion in detail we make the points here briefly and ask the Board to refer to the original letter for further detail. We believe our letter well addressed the legal issues and we ask that the Board seek a legal interpretation of these points before approving the Project.

1. The Co-owner has not Proven the Availability of Funds.

The Project will be owned 51% by Fresenius and 49% by "Neptune III". The CON application contains no information as to the identity of this recently. More importantly, the application contains no information as whether this recently formed entity has available funds to pay its portion. While Fresenius may be able to prove funding for its share, federal Stark and anti-kickback laws likely prohibit Fresenius from funding or guaranteeing the other 49%.

Without the Applicants providing this information, the State Board Report must make a negative finding on Availability of Funds.

2. The Applicants are Financing with Debt and must include Financial Viability Information.

Under the Board's rules, when an applicant finances a project through debt it must provide financial viability information, including ratios, or have an "A" or better credit rating. The Applicants state, incorrectly, that this "Project is funded entirely through cash and securities thereby meeting the criterial for the financial waiver". (Page 115). A major portion of this Project, however, is being financed by a 15-year capital lease. The application even acknowledges that this lease is debt under the Board's rules, but nevertheless does not provide the financial viability information required by the rules. The failure to meet the waiver and provide the necessary information means that there cannot be a positive finding on § 1120 in the State Board Report.

3. The Applicants Provide No Charity Care as Defined by Law

The Planning Act and application form is quite precise as to what qualifies as "charity care", and bad debt does not qualify. The Applicants provided a chart claiming that it provided charity care of approximately \$3.2 million when in fact this is uncollected debt. Elsewhere, the application concedes that it provides no charity care as defined by law: "Fresenius Kidney Care is a for-profit publicly traded company and is not required to provide charity care, nor does it according to the Board's definition." (Application, 122). The SBR included the applicants' chart showing that charity care had been provided when it was not. Page 7 of the SBR should show that "\$0" of charity care was provided.

We thank the Board for the opportunity to respond to the State Board Report and ask that members consider these comments in its consideration of this Project.

Very truly yours,



Fauzia Javaid, R.N.
Clinic Manager

South Barrington Dialysis Center