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Via Email and U.S. Mail

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

Re: DaVita Lawndale

Dear Ms. Avery:

On behalf of Fresenius Medical Care, I am providing information to clarify the supplemental material that DaVita submitted in support of its application to establish a facility in the Lawndale community in Chicago. **To be clear, Fresenius does not oppose this project.** Fresenius believes that the need for additional stations in Chicago as identified by the HFSRB should be addressed. However, much of DaVita's supplemental material did not speak to access, need or the safety net information provided by Sinai Medical Center, but rather spoke to antitrust issues and Fresenius' purported market share.

The HFSRB is not, through the Health Facilities Planning Act ("Planning Act") or otherwise, tasked with antitrust analysis or review. Nonetheless, DaVita argues its project should be approved so that patients will have a choice of providers. In fact, the patients do have a choice, as 40% of the facilities identified within 30 minutes of the proposed project are owned by DaVita or by an entity other than Fresenius Medical Care. Regardless, the policy behind the Certificate of Need process is not to guaranty patient choice. The opposite to health planning, i.e., free market competition would do that. Rather the Planning Act requires the provision, through the process of comprehensive health planning, for the orderly and economic development of healthcare facilities. It is designed to assure a healthcare facility has the qualifications, background and financial resources to adequately provide a proper service for the community and to provide for unmet need.

Introducing consumer choice and enhancement of competition as rationales for CON approval by the HFSRB would produce results that conflict with the CON policy of our state. For example, if there is only one hospital in a town or geographic area, and that hospital has adequate capacity to serve its community, any other hospital project in that geographic area would offer greater

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choice and enhance competition, but may not be necessary for proper health planning under the Planning Act. Furthermore, given the substantial portion of dialysis patients who are Medicare/Medicaid beneficiaries and the fixed reimbursement from those programs, there is very little consumer benefit to "competition" as it has almost no effect on price, and facilities must meet accreditation and other quality requirements to maintain provider status in those programs. The theoretical argument that a dominant player in a market has less incentive to provide quality is not supported as a general matter. In any event, the **attached information** clearly indicates a robust choice and competitive dynamic which would incent quality care and service. It also demonstrates that the information provided by DaVita in its submission did not present fully the growing market share held by DaVita in Illinois.

The continuing assertions by other dialysis facilities that their projects should be approved because Fresenius has a dominant "market share" are inaccurate, and irrelevant. Anecdotal and unsupported competition arguments present a slippery slope in derogation of the statutory purposes of the HFSRB. Certificate of Need applicants should focus on the review criteria promulgated under the Planning Act rather than asking for approval to "increase competition" or provide patient choice, neither of which are review criteria the HFSRB is charged to consider.

With respect to DaVita's Lawndale application, Fresenius notes the HFSRB has determined a need in Chicago. Fresenius will always argue that the HFSRB give an identified need in the Health Service Area great deference in its review of applications for CONs, even if there is also alleged maldistribution of services (i.e. projects with facilities below target utilization within a 30 minute radius). However, the HFSRB has recently, through its decision making, indicated its position that both the need and maldistribution review criteria should be met, absent mitigating circumstances (and, again, competition arguments do not present such a circumstance under HFSRB rules). While Fresenius will continue to argue the merits of each of its applications, and assumes other applicants will as well, it urges consistent decision making and application of only statutory/regulatory review criteria. In sum, we urge the HFSRB not to disapprove Fresenius projects that do not meet both criteria, yet approve non-Fresenius projects that do not do so based on "choice" or "market share" arguments. The latter are unrelated (and in fact contrary) arguments to the policies behind the Planning Act. Further, the attached information proves that despite its size, Fresenius has robust competition and patients have significant choice in dialysis providers.

Very truly yours,

HOLLAND & KNIGHT LLP


Clare Connor Ranalli
CCR/mjy

cc: Michelle Wiest
Lori Wright
Mike Constantino

**Project Analysis for January 1, 2010 through March 31, 2012
and Relating to DaVita and Fresenius Dialysis Projects Only**

DaVita claimed that in the last 2 years (exact time period was not specified) that Fresenius had 15 new clinics approved and DaVita only had 2 approved. However, DaVita failed to mention acquisitions and expansions listed below.

Project Type	Clinics Involved			Total
	DaVita	Fresenius	Other	
Acquisition - CHOW	16	3	2	21
Establish	6	13*	5	24
Expansion	0	11	4	15
Relocate	2	1	0	3
Relocate & Expand	5	1	1	7
Total	29	29	12	70

*Two Established clinics did not result in station gain, as they simply moved some stations from already existing clinics, without relocating the entire clinic.

Project Type	Stations Gained by Provider			Total
	DaVita	Fresenius	Other	
Acquisition - CHOW	273	42	50	365
Establish	70	155	67	292
Expansion	0	44	23	67
Relocate & Expand	40	1	5	46
Total	383	242	145	770

Proposed Projects*	Stations to be Gained			Total
	DaVita	Fresenius	Other	
Acquisition - CHOW	57	0	0	57
Establish	24	57	13	94
Expansion	17	4	0	21
Relocate & Expand	0	1	0	1
Total	98	62	13	173

*These proposed projects show DaVita remains on place to gain more stations than Fresenius over the next year or two, as it has done over the past two years.

**Excerpts Taken From
Respective Company's Websites**

DaVita Inc., a FORTUNE 500® company, is a leading provider of kidney care in the United States, delivering dialysis services to patients with chronic kidney failure and end stage renal disease. DaVita strives to improve patients' quality of life by innovating clinical care, and by offering integrated treatment plans, personalized care teams and convenient health-management services. As of March 31, 2012, DaVita operated or provided administrative services at **1,841 outpatient dialysis centers located in the United States, serving approximately 145,000 patients**. The company also operated 15 outpatient dialysis centers located in three countries outside the United States. DaVita supports numerous programs dedicated to creating positive, sustainable change in communities around the world. The company's leadership development initiatives and social responsibility efforts have been recognized by Fortune, Modern Healthcare, Newsweek and WorldBlu.

DaVita — which is Italian for "giving life" — has more than **41,000 teammates** (employees) around the nation working to provide superior patient care and exemplify the company's Core Values:

Fresenius Medical Care is the world's leading company devoted to patient-oriented renal therapy. Through over 2,700* kidney dialysis clinics in North America, Europe, Latin America, Asia-Pacific and Africa, we provide 32 million life-saving dialysis treatment to more than 215,000 patients worldwide. We are also the world's pre-eminent provider of dialysis products such as hemodialysis machines, dialyzers and related disposable products. Chronic kidney failure is a condition that affects about 2 million individuals worldwide.

In the United States, Fresenius Medical Care is the largest provider of dialysis products and services. With over **1,800* kidney dialysis clinics, we care for nearly 138,000 patients**. Our clinical laboratory unit, Spectra furnishes 57 million renal-specific lab tests annually. Whether it is managed care, clinical educational or management services, clinical trial management, dialysis machines, supplies or renal pharmaceuticals, Fresenius Medical Care offers a comprehensive portfolio of caring and knowledge for the renal community.

US Employees: 45,000

*Does not include the planned acquisition of 201 Liberty Dialysis clinics, which is not yet complete.