

Constantino, Mike

From: Bhuvan Chawla [B.Chawla@esunhealth.com]
Sent: Wednesday, January 16, 2013 4:29 PM
To: Constantino, Mike
Cc: Hills, Bonnie
Subject: Opposition to Fresenius Plainfield North #12-047 - After Intent to Deny
Attachments: Fresenius Plainfield North Objection at Reconsideration.doc.docx

Mr. Constantino / Ms. Hills,

Please find attached my letter of opposition to Fresenius Plainfield North (#12-047) addressing additional information submitted by the Applicant after receiving an Intent to Deny.

Thank you,

Bhuvan Chawla, M.D.
Sun Health, Inc.
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815.741.8480

Mr. Dale Galassie
Chairman
Illinois Health Facilities and Services Review Board
525 West Jefferson, Second Floor
Springfield, IL 62761
October 21, 2012

**Re: Project No. 12-047: Fresenius Plainfield North
After Issuance of Intent to Deny on September 12, 2012**

Dear Chairman Galassie:

I applaud the Board for issuing its Intent to Deny to this project by a vote of 5 opposed, 3 in favor and 1 absent. The Board has subsequently issued its Intent to Deny to another similar Application, namely US Renal Plainfield.

Fresenius has failed to submit any material information to justify reconsideration of the Intent to Deny, and I would urge the Board to ratify its earlier decision and reject this Application once again.

I will focus my comments on the "Additional Information" submitted by the Applicant, and I would refer the Board to my earlier 2 letters of objection for further details about Sun Health's objection to this project.

I have taken the liberty of adding Attachment A, which summarizes historical background, and Attachment B, which shares Sun Health's actual experience in a patient referral to Fresenius.

The Applicant inappropriately claims absence of another clinic in Plainfield, and claims that Fresenius Plainfield is actually in Joliet. This contradicts the Applicant's earlier assertions made in its Application for Fresenius Plainfield (CON # 7-130) in which it led the Board to believe that Fresenius Plainfield was designed to serve the residents of Plainfield, as demonstrated by the following excerpts from that Application:

"Doing nothing will leave the Plainfield area pre ESRD patients virtually no place to dialyze" (Page 45)

"This alternative will provide access to treatment for current Plainfield area ESRD residents". (Page 45)

Fresenius linked its Application to the service area of Bolingbrook Hospital and stated "Plainfield is included in this area and is the same as will be served by Fresenius Medical Care of Plainfield." (Page 48)

The Applicant's statements regarding population growth are misleading.

ESRD has an incidence of 924 per million in Black persons, and 501 per million in Hispanic persons, which translates in 2.034 new black ESRD patients/year and 2.13 new Hispanic ESRD patients/year for Plainfield – hardly numbers to justify a new facility. Similarly, its comments about the population over 45 are meaningless, since this group may have to wait 20 years before its incidence of ESRD goes up.

The unprecedented growth at Fresenius Plainfield is actually an indicator of duplication and maldistribution, as Dr. Alausa seems to have drastically curtailed referrals to other dialysis units, especially of patients with insurance. For example, Sun Health's occupancy has dropped from 90% prior to the approval of Fresenius Plainfield, to 54% at the time this Application was filed, and subsequently has dropped further. At this time, Dr. Alausa has only 3 patients left at Sun Health, with his last patient having been admitted in May of 2010.

As I have previously stated, an existing dialysis facility needs new referrals to replace the 15-20 % of patients normally lost to transplantation, death, relocations, etc., and can expect to see a drop in occupancy with diversion of new patients when excess stations are approved.

The Applicant unfairly misrepresents Sun Health's utilization by claiming it is a chronic issue. Sun Health had a patient census of 79 in January of 2008 at the time that Fresenius Plainfield (#07-130) was being heard and approved; perhaps the decline in utilization at Sun Health is better linked to duplication and maldistribution. **The Applicant also attempts to mislead the Board by incorrectly describing Sun Health's utilization as 79% based on 2 shifts a day,** when Fresenius is well aware that the State standard is based on 6 shifts a week. Sun Health has actually operated 3 shifts a day (6 shifts per week) for many years and recently had to suspend 1 shift because of a drop in occupancy, rather than the other way around. Sun Health currently operates 3 shifts on Mon-Wed-Fri and 2 shifts on T-Th-Sat, and would actually like to reopen its remaining shift as soon as possible.

Dr. Alausa had unjustly complained under oath to the Board about Sun Health's asking for insurance information on patient referrals. May I remind the Board that Dr. Alausa had previously submitted a false patient census under oath in support of the Fresenius Joliet Application, and only recanted after objections by Silver Cross Hospital and Sun Health.

Fresenius and Dr. Alausa are both well aware of the need for insurance verification. Sun Health only asks Dr. Alausa to refer the normal payer mix of patients without selective diversion of patients with insurance to Plainfield. The State's 2011 ESRD Facility Profile lists 30 patients with insurance at Fresenius Plainfield vs. 6 at Sun Health.

The Applicant incorrectly attempts to discount US Renal Bolingbrook, which has just opened, as well as Fresenius Oswego and Yorkville Dialysis.

The Applicant also inappropriately asks the Board to overlook a pre-existing excess of 47 stations in 2013 , which is projected to grow to 85 stations by 2018, and thus is advocating for duplication and maldistribution for its own benefit.

Fresenius has stated its admission policy is to accept all patients regardless of their ability to pay, but in reality there is nothing to prevent its partnered nephrologists (medical director and/or joint venture partners) from referring their no-pay patients to other facilities. Furthermore, the Board may find **Attachment B enlightening, as it summarizes the difficulty encountered by my social worker in obtaining placement at a Fresenius facility for one of my patients who had to relocate out of state. This patient had received dialysis at Sun Health with large needles and dialyzer because of his size, and this became a barrier to his acceptance by Fresenius.**

In conclusion, the Applicant has failed to submit any meaningful additional information to justify reconsideration of the Intent to Deny issued to this Application, and I would therefore urge the Board to stand by its earlier decision and to **please reject this project unequivocally, in fulfillment of its mandate to prevent unnecessary duplication and maldistribution.**

Sincerely,

Bhuvan Chawla, M.D.
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Attachments A and B

ATTACHMENT A - HISTORICAL BACKGROUND, previously submitted by Bhuvan Chawla, M.D., Sun Health, Inc.

I am a board certified nephrologist, and have been practicing nephrology in Joliet since 1981, and as such am the senior-most nephrologist in the community. I am currently serving my 4th consecutive term as Secretary / Treasurer of the Medical Staff of Provena St. Joseph Medical Center (now part of Presence Health) in Joliet.

In October of 1989, I formed Sun Health to deliver outpatient dialysis to the west side of Joliet, after Silver Cross declined to do so. Sun Health submitted its CON application in October of 1989 (PN 89-116) and received Medicare certification on June 6, 1991 to become the first and thus oldest dialysis unit on the west side of Joliet. With the sale of Silver Cross Hospital's dialysis program to Davita, Sun Health is the **only remaining community based dialysis program in Joliet**, and likely belongs to a very small group of such facilities in HSA 9. Sun Health offers services frequently unavailable in many other dialysis facilities, including onsite laboratory, IV antibiotic therapy to dialysis patients, and LDL apheresis – a procedure to remove cholesterol from the blood available at less than 50 sites nationally. An Affiliate called SunAssociation offers a national prescription discount card program, and a medication assistance program for patients meeting federal poverty guidelines.

On September 12, 1990, Silver Cross Hospital – before Sun Health even opened - submitted its own CON application (PM 90-018) to develop Renal Center West 2.6 miles from Sun Health; Silver Cross failed to list Sun Health as an alternative to its project, and received an Intent to Deny. Inexplicably, this Intent to Deny was then reversed at the subsequent board meeting, without any discussion. At the time, there may have been a need in Kankakee, which was also in HSA 9 but was well over 30 minutes away. Silver Cross Renal Center West received Medicare certification on October 1991, effectively stunting the growth of Sun Health.

In 2010-11, history was repeated, when the Board issued an Intent to Deny to Project 10-066 (Fresenius Medical Care, Joliet) on December 14, 2010 by a near unanimous vote (by 6 out of 7 board members, with 1 member voting present). The physician who submitted the letter of support for that application actually submitted a false patient count, which was brought to the attention of the Board by both Silver Cross Hospital and Sun Health.

Fresenius proceeded to submit a number of boilerplate letters of support. For the record, State Senator Wilhellmi did talk to me and declined to write such a letter. The board then proceeded to reverse its position on March 12, 2011 with a unanimous vote by the 5 members in attendance, even though its own SAR stated that its initial findings remained unchanged, i.e. that the project failed to meet the criteria of need and of conformance with the unnecessary duplication

and maldistribution of service. The SAR reported a calculated excess of 51 ESRD stations in this planning area, and the Board voted to approve an additional 16 stations, resulting in an oversupply of 67 ESRD stations at the time.

On December 1, 2009, Fresenius Lockport (Project # 09-037) was approved by the Board, but was subsequently abandoned, and Fresenius proceed to file replacement CON Applications, as listed below.)

On January 7, 2011, DaVita filed a CON for Crest Hill Dialysis (Project # 11-004) in partnership with Silver Cross Hospital's own Dialysis Medical Directors. In my objection, **I had highlighted the anticipated duplication and maldistribution** that would result from approval of this project. I also pointed out how the applicant was using "nocturnal dialysis" as a Trojan Horse to seek approval, when it failed to offer this type of dialysis at most of its preexisting facilities in Illinois. I also invited the physicians involved in that project to work with Sun Health, but have not received a response.

On May 23, 2011, Fresenius filed another CON Application (Project 11-022) for Lockport to replace Project # 09-037. This was rejected in December of 2011 only to be re-filed in June of 2012.

On December 14, 2011, Silver Cross filed 3 CON Applications (Project # 11-117, 118, and 119) to sell its 3 dialysis units to DaVita, and completed the sale on July 31, 2012. **With the increasing risk of duplication and maldistribution** presented by the Board's approval of Fresenius Lockport and Fresenius Joliet, and the potential for Board approval of DaVita Crest Hill, Silver Cross Hospital decided to terminate its 30+ year commitment to dialysis in the community and sell its dialysis program.

Sun Health meanwhile opposed Crest Hill Dialysis, which received an Intent to Deny on July 21, 2011 and a Denial Letter on October 13, 2011.

In 2012, 4 new Applications have been filed in our community:

Fresenius Plainfield North (#12-047) Intent to Deny issued in September 2012 by a vote of 6 to 2 with 1 absent; Applicant is reappearing before the Board.

US Renal Plainfield (12-059) – Intent to Deny issued on October 31, 2012; Application subsequently withdrawn.

Fresenius Lockport (#12-055) – Intent to Deny issued December 2012, Applicant plans to reappear again before the Board

US Renal Lemont (#12-058) - Intent to Deny issued December 2012; Application subsequently withdrawn.

Each Application has attempted to discount preexisting capacity within 30 minutes in order to gain approval, so that it may redirect patients away from preexisting facilities.

ATTACHMENT B:

Timeline of Transfer Process for Patient K.C. to Dialysis Facility Near Gloster, Mississippi

08/06/2012 Patient notified the Sun Health Dialysis (SHD) Social Worker that he would be moving to Mississippi at the end of August. He requested that the SHD Social Worker attempt to transfer to a Fresenius unit in Centreville, Mississippi. Patient stated that the reason for the transfer was because his lease on his apartment would be terminating and he would be without a home. Thus, it would be necessary for him to move in with his father in Mississippi.

08/07/2012 The SHD Social Worker contacted Fresenius Central Admissions (866-939-1212) making the request for transfer to Centreville, the date that he would need to start at the new facility (8/30/12), and the patient's willingness to take any shift.

08/09/2012 The SHD Social Worker contacted Fresenius Central Admission regarding the transfer request status. The representative stated that "they did not receive it" despite the phone call made on 8/7/12. The rep stated she would reprocess the request.

08/13/2012 FMC Central Admissions representative, Raquel, faxed transfer request checklist on 8/10/12. The SHD Social Worker faxed requested medical documents to Raquel at (866-943-2364).

08/14/2012 The SHD Social Worker called Raquel at (866-939-1212 ext 2510) confirming receipt of records and inquired whether any further documentation would be needed. Raquel stated that she did not need any further information. The SHD Social Worker informed Raquel the need for the patient to have placement by the end of August because the patient would be without a home. Raquel stated she would be speaking with the clinic manager on 8/15/12 about the records and the status of the transfer review.

08/16/2012 The SHD Social Worker spoke with Raquel regarding the transfer status. She stated that the clinic manager was still reviewing the records and that there was not an update.

08/20/2012 The SHD Social Worker contacted Raquel regarding an update. Raquel stated that there was not an update, that the records were being reviewed by the Nephrologist and she would contact the SHD Social Worker when she had an update.

08/24/2012 From 8/21/12 to 8/24/12 the SHD Social Worker did not receive any update from Raquel at FMC Central Admissions. On 8/24/12 the Centreville clinical manager, Sandy, at (601-695-2951) contacted the SHD Social Worker. Sandy stated that at that unit they do not supply his prescribed needles (14 gauge), they only carry 15 gauge. Also, they do not supply his prescribed dialyzer (Optiflux 250), they only carry Fresenius 180. Sandy inquired whether the patient would be agreeable to dialyzing 3 times a week for 7 hours per treatment. The SHD Social Worker contacted the patient via phone and the patient agreed with this treatment plan. Patient inquired whether this would be necessary long term, and if it was going to be long term, whether it would be possible in the future to transfer to another facility that would be able to accommodate his prescribed needs. The SHD Social Worker contacted Sandy back and informed her that the patient would be agreeable to dialyzing 3 times a week at 7 hours per treatment. The SHD Social Worker inquired whether in the future the facility would be able to supply his current prescribed dialyzer and needles, to which she stated no. The SHD Social Worker relayed, as a courtesy, that the patient in the future may request a transfer to another facility that would be more accommodating of his needs. Sandy stated that she would relay this information to the nephrologist at Centreville then call back. Shortly thereafter, Sandy called the SHD Social Worker back stating that the unit and the physician will not be accepting the patient. The SHD Social Worker then contacted Raquel at Central Admission requesting to make a referral to the FMC unit in Natchez and McComb which are both 30 miles from the town where the patient would be moving (Gloster, MS). Raquel stated that there are not any facilities within that area that would be able to accommodate the patient's prescribed dialyzer and needles, and that she had escalated the request to the FMC Regional Manager. The SHD Social Worker reiterated the need for this patient to have a dialysis unit near Gloster, Mississippi due to him being without a home starting on 9/1/12.

08/27/2012 The SHD Social Worker contacted Raquel in regards to an update on the status, per Raquel the Regional Vice President of FMC for the area near Gloster, MS informed her that he refused to have any units within that area obtain the necessary supplies for the patient. The SHD Social Worker then proceeded to contact the Renal Network for MS at (601-936-9260) and spoke with the SHD Social Worker NaTasha Avery. She was informed of the patient's need for a dialysis facility near Gloster, MS, and that the facilities within that area, all of which are Fresenius units, refused to obtain the necessary supplies to accommodate the patient. The SHD Social Worker informed NaTasha that it was necessary for him to obtain a dialysis facility in that area because he would soon be without a home in Illinois. On this date, hurricane Isaac

touched down in MS; NaTasha stated that it could impact the progression and development of the case.

08/28/2012 The SHD Social Worker received an email from NaTasha with notification that the Director of Operations for the FMC Centreville unit (Mike Callahan) agreed to obtain the 14 gauge needles and 200 dialyzers for the patient at the Centreville clinic. However, the physician (Dr. Dykes) after reviewing the records determined that the patient would need to run for 6 hours. The physician was under the impression that the patient refused to run 6 hours stating he would only agree to run it for 2 weeks. At which point the physician made the decision not to accept the patient. Per NaTasha's email, the Director of Operations suggested that the patient schedule an office visit with Dr. Dykes in order for the patient to be reconsidered for an admission. Dr. Dykes office number is (607-833-3822). NaTasha suggested other FMC facilities greater than 30 miles from Gloster, MS; and stated that due to the storm that it would be difficult to setup placement prior to him leaving the Joliet, IL area because of the effects of the hurricane. The SHD Social Worker contacted Dr. Dykes office on behalf of the patient to setup an office visit. The office receptionist stated that the SHD Social Worker would need to speak with the unit manager at Centreville about the patient and would not be setting up an office visit. The SHD Social Worker spoke with Sandy (clinic manager), Sandy stated that Dr. Dykes was not accepting this patient and will not reconsider him as a patient and will not meet him in his office (per Sandy she was informed of such by the physician). This information was then relayed to NaTasha, to which she replied at 5:56 pm that Dr Dykes was requesting to speak directly with the patient's nephrologist at Sun Health Dialysis. The SHD Social Worker after speaking with Sandy proceeded to contact FMC central admissions in MS, which was then re-routed to the central admissions in Rhode Island because of the hurricane. A third request was made for transfer to any facility within a 30 mile radius of Gloster, MS. The SHD Social Worker was informed that someone from the Mississippi FMC Central Admissions would contact back in a "couple days" to restart the process.

08/30/2012 The SHD Social Worker spoke with NaTasha in regards to the status. NaTasha stated that the facility in McComb was flooded and it was unknown when they would re-open. She had not heard any further updates, and because of the hurricane many of the facilities were closed. The SHD Social Worker asked NaTasha for guidance on whether it would be to the patient's benefit to have copies of his dialysis medical records provided to him, and to suggest to the patient for him to go to the nearest hospital to where he is staying to have dialysis; due to it being unlikely that he would have a dialysis unit

setup in time for necessary departure from Joliet, IL to MS, and he would be in need of getting a dialysis treatment. NaTasha stated that she agreed that this was advisable and she agreed for the SHD Social Worker to do as such. NaTasha added at that time he could be setup with a new nephrologist and dialysis facility.

The SHD Social Worker provided the necessary medical records to the patient. The SHD Social Worker inquired whether it would be at all possible for the patient to stay in the area until a dialysis facility could be set up. To which he reiterated that it would not be possible. He stated that he would not have a temporary place to stay and it was not possible to stay in the area to wait for placement, and he would need to leave 8/31/12.

09/04/2012 Patient did not leave for Mississippi until 9/4/12 because per patient "my plans changed". He again reiterated to the Social Worker that he was not willing to stay to wait for placement since it was not possible and that he was choosing to go down to Mississippi today right after treatment.

The SHD Social Worker provided patient's nephrologist with the contact information for Dr. Dykes' office and informed the nephrologist that Dr. Dykes was requesting to speak about the patient for possible re-evaluation. Patient's nephrologist attempted to contact Dr. Dykes office but he was out of the office. Dr. Dykes was then paged for a return call to the Sun Health Nephrologist. Dr. Dykes never returned the call back.

09/06/2012 Patient contacted the SHD Social Worker regarding an update to the status of transfer to a facility in Mississippi, at which time there was not an update. Patient called on a date that was his regularly scheduled dialysis. The SHD Social Worker inquired about his current physical condition. To which he replied that he could feel he had fluid on but did not feel ill. Social Worker again advised, as suggested by NaTasha from the Renal Network, for the patient to go to the emergency room for dialysis treatment and to receive assistance in arranging a dialysis unit. To which he agreed to do.

09/10/2012 The SHD Social Worker was contacted by Sandra Stringer, Social Worker at South West Hospital in McComb, MS, she stated that the patient went to South West Hospital on Saturday 9/8/12 for emergency dialysis and she wanted to know why patient did not have a dialysis facility setup. The SHD Social Worker informed her of the attempted transfer process to which she stated she understood, and requested that patient's dialysis medical records be faxed to Lacey at FMC Kidney Care in McComb, MS where he was set up for dialysis. The SHD Social Worker contacted Lacey at FMC Kidney Care (601-684-6380) and informed Lacey about the patient's situation and that his

records would be sent. Patient's records were faxed to Lacey at (601-684-6943). Per Lacey, the patient was set up on the nocturnal shift for 5 hour sessions 3 times a week on Tuesdays, Thursdays, and Saturdays.