

Sun Health

Bhuvan Chawla, MD
Medical Director

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Services
Hemodialysis
LDL Apheresis
Dietary Counseling
Social Services

SunNephrology

Services
Chronic Kidney Disease Clinic
Clinical Laboratory
IV Infusion Therapy
Medical Nutrition Therapy
ADA Recognized
Diabetes Education Program

VIA EMAIL

October 10, 2012

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

**Re: Opposition to Project No. 12-058 – US Renal Care
Lemont Dialysis**

Dear Chairman Galassie:

On behalf of Sun Health, Inc. ("Sun Health"), I submit this letter of opposition to the US Renal certificate of need ("CON") permit request and urge you and the other members of the Illinois Health Facilities and Services Review Board ("HFSRB") to reject Project Number 12-058.

HISTORICAL BACKGROUND:

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 locally owned dialysis program in Joliet**, and likely belongs to a very small group of such facilities in HSA 9.



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Sun Health offers services frequently unavailable at 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 Affillate 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 then 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, ie. 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 as Project # 12-055.

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) received an Intent to Deny in September, and has stated its Intent to Appear before the Board.

Fresenius Lockport (#12-055) – deferred by the Applicant

US Renal Lemont (#12-058) - pending

US Renal Lemont (12-059) - pending

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

CURRENT APPLICATION

Project # 12-058 US Renal Care Lemont Dialysis now proposes to build a 13 station facility to be located in Lemont, for the stated purpose of serving patients within a 5 mile radius.

The Applicant uses a reported need in HSA 7 to claim a need for HSA 9 patients

The Applicant has identified a need for 92 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.

Northeast Nephrology Consultant, Ltd. physicians are listed as joint venture partners, and their practice is based almost entirely around Silver Cross Hospital in New Lenox, Provena St. Joseph Medical Center in Joliet (now Presence Health) and to a smaller extent Morris Hospital; they maintain offices in close proximity to these hospitals.

The August 24, 2012 updated inventory of ESRD stations, on the other hand, lists a short-term need for 61 stations in 2013 rather than the 92 stations listed in the Application, and lists a long-term surplus of 204 stations in 2018 in HSA 7.

Meanwhile HSA 9 lists a current surplus of 47 stations, and this surplus is projected to grow to 85 stations by 2018.

The Applicant Falls to Demonstrate Need

When viewed through the lens of 30 minutes travel time, **there is no need whatsoever** at the proposed location.

The Applicant attempts to justify need on the basis of 80 pre-ESRD patients under the care of Northeast Nephrology Consultants, Ltd. These patients are scattered far outside the 5 mile radius service area that the Applicant lists as its goal, as demonstrated by their zip codes of origin.

Dr. Nagarkatte's letter of support states that in 2011 her group referred 86 patients for hemodialysis, and anticipates referring 80 patients to the US Renal Lemont Facility.

Meanwhile, her partner Dr. Naila Ahmed has submitted a similar letter of support for US Renal Plainfield, in which she states that her group referred 86 patients for hemodialysis in 2011, and anticipates referring 54 patients to the US Renal Plainfield facility. This number has subsequently been increased to 65.

Closer scrutiny suggests that perhaps some of **the same patients may have been counted twice to support these two applications**. Attachment 1 is a copy of the patient referral table from both applications reproduced on the same page. The referral numbers from Zip codes 60403, 60432, and 60435 seem to be identical.

Statements Relative to Incidence and Prevalence Data presented needs to be viewed in context

The Applicant attempts to use incidence and prevalence data in various demographic sub-populations to justify need. Incidence refers to the number of new patients with ESRD, and prevalence to the total number of patients with ESRD within a population.

In the context of need for new stations, actual growth rates should be the primary concern, ie. the number of new patients subtracted by the number of preexisting patients who no longer need dialysis due to renal recovery, transplant, death or relocation.

While it is true that the incidence of ESRD is higher in the elderly, the African-American and the Hispanic populations, the incidence needs to be considered in the context of the demographics of the actual population to be served. I would therefore present this information in the context of the population of Lemont compared to the state of Illinois, based on the 2010 census – since this Applicant proposes to serve people living within 5 miles of the facility.

	Lemont	Illinois
Population	16,005	12,830,632
Age > 65	15.1%	12.5%
Black persons	0.4%	14.5%
Hispanic persons	5.1%	15.8%

Thus the population of Lemont includes a higher percentage of seniors and a lower percentage of African-Americans and Hispanics.

The reported incidence of ESRD in Illinois is 356.9 per million population (USRDS 2012), which would translate into 5.71 new patients per year for the entire village of Lemont. The following table presents the rate for the reported demographics of Lemont to arrive at the predicted number of new patients with ESRD each year.

Incidence of ESRD	In Illinois	Expected in Lemont
Overall	357 per million	5.71 patients per year
Age >65	1,368 per million	3.31 patients per year
Age >75	1,773 per million	Population N/A
Black persons	924 per million	0.06 patients per year
Hispanic persons	501 per million	0.41 patients per year
White persons	276 per million	4.24 patients per year

There may be a need in other parts of HSA 7, but certainly not in Lemont, which has an anticipated incidence of 5.71 new patients per year.

Preexisting Capacity can accommodate 485 New Patients

The Applicant lists 17 facilities within a 30-minute drive time (Page 162). The Applicant then attempts to exclude 2 facilities including Sun Health, by assigning it an adjusted drive time of over 30 minutes. This decision is totally unjustified based on the zip codes of origin of anticipated patients listed by the Applicant, many of whom would originate from zip code 60435, where Sun Health is located.

The average utilization in these listed facilities is 53.2%. Of these, 76% (13 out of 17) of these facilities are operating below 80% occupancy, and 6 have not even begun operation, and list an occupancy rate of 0%. These include Fresenius Joliet, US Renal Bollingbrook and US Renal Downers Grove. Preexisting facilities can actually accommodate 485 new patients before reaching 80% utilization

Additional patients can be served with home dialysis and nursing home dialysis. These two modalities are not accounted for in the State Inventory, and may factor into the States projection of a surplus of 204 stations in HSA 7 in 2018.

Preexisting Access to Care Meets State Standards

The Applicant attempts to flaunt the State's 30 minute rule by discussing access in the context of a 5 mile radius.

Proposed Referrals can and should be served by other facilities and should not be diverted to this proposed facility

On page 306, the Applicant lists the Zip Code of origin of the patients identified for referral to this facility:

60403	Crest Hill	8 patients
60432	Joliet East	5 patients

60435	Joliet West	24 patients
60439	Lemont	9 patients
60440	Bolingbrook	0 patients
60441	Lockport	22 patients
60446	Romeoville	9 patients
60491	Homer Glen	5 patients

Only 9 of these patients even live in the zip code of the proposed facility. The rest would presumably be diverted from preexisting facilities within 30 minutes of their homes, effectively resulting in duplication and maldistribution with respect to those facilities.

Crest Hill (60403): 8 patients, who would be better served at Sun Health and Fresenius Joliet, and Davita (Silver Cross, New Lenox), all of which are listed as below 80% utilization.

Joliet, East (60432): 5 patients who would be better served at Davita (Silver Cross, New Lenox) and Fresenius Joliet.

Joliet West (60435): 23 patients who might be better served at Sun Health, and possibly Davita (Silver Cross West).

Bolingbrook (60490): 8 patients, who might be better served at US Renal, Bolingbrook.

Lockport (60441): 22 patients who might be better served at Davita (Silver Cross, New Lenox), Fresenius Joliet, and US Renal Bolingbrook.

Romeoville (60446): 13 patients, who might be better served at US Renal Bolingbrook which is apparently under development.

Homer Glen (60491): 5 patients who might be better served at Davita (Silver Cross, New Lenox), Fresenius Orland Park and Fresenius Mokena.

Sun Health has previously invited Dr. Nagarkatte's group to come on staff and work with Sun Health, and would like to extend another invitation to do so. Sun Health is also receptive to working with US Renal.

Approval of this project will have an adverse impact on existing facilities, as it seems to be based on diverting new patients away from existing facilities, leaving the existing facilities to deal with a 15-20% annual attrition rate of preexisting patients, due to patient relocation, renal recovery, renal transplant, or death. The Applicant is incorrect in asserting otherwise.

Dr. Nagarkatte's group (Northeast Nephrology Consultants) is the primary referring group for three facilities acquired by Davita from Silver Cross Hospital. This group also has a long term medical director agreement with Davita. Approval of this CON will result in diversion of new patients to US Renal, leaving Davita to deal with a 15-20% attrition rate of its preexisting patient base, with disastrous consequences. I previously presented details of this scenario in my objection to Davita Crest Hill (Attachment 2).

Alternatives: The best alternative would be to utilize area providers and to reject this Application. This would have no cost, could be implemented immediately, and would prevent duplication and maldistribution.

Issue of Competition

Concerns have periodically been raised about the need for competition to Fresenius and Davita. Sun Health has actually provided this competition in our community, but is constrained by the resistance of certain nephrologists to work with a facility owned by another nephrologist. Collaboration with Sun Health would enhance competition in the community instantly and at no cost.

Certain patients testified at the public hearing that they were disappointed with certain operational changes that occurred at the Silver Cross facilities after the sale to Davita. The Board needs to understand that Dr. Nagarkatte remains the medical director of the facility and had the option to advocate for the patient, or as an alternative to refer her to Sun Health, rather than having her testify in support of a proposed US Renal against Davita.

In Conclusion: There is simply no need for the proposed US Renal Lemont Facility. It will simply cause duplication and maldistribution without improving access.

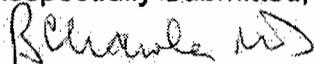
Sun Health has consistently voiced its opposition to various CON applications for dialysis that have failed to meet the state's own need criteria. According to a legal newsletter, **2010 was reportedly a "year to remember for ESRD companies that applied for a CON permit or exemption"**. The Board approved 100% of the 35 applications it considered in 2010.

Since then, the Board has however demonstrated its willingness to reject unnecessary projects, such as Fresenius Lockport, Fresenius Aurora, and Davita Crest Hill.

The Board can take a firm stand, and can help **prevent unnecessary duplication and maldistribution** by not approving new facilities and stations when current providers have existing station capacity to meet the needs of new dialysis patients.

Sun Health would therefore urge the Board to reject this CON permit application. Sun Health welcomes the opportunity to discuss this letter further, and I can be reached at (815) 744 9300.

Respectfully Submitted,



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

**APPENDIX C
ANTICIPATED REFERRALS IN THE TWO YEARS FOLLOWING PROJECT COMPLETION**

We anticipate a total of 80 patient referrals to ESRD to the U.S. Renal Care Lemont Dialysis Facility in the two years following project completion. We attribute these referrals to the following zip codes and physicians.

	Dr. Ahmed	Dr. Gurfinciel	Dr. Kravets	Dr. Mehta	Dr. Nagarkatte
60403	2	1	2	1	2
60432	1	1	1	1	1
60435	5	4	5	4	5
60439	2	1	2	2	2
60440	0	0	0	0	0
60441	5	3	5	4	5
60446	2	1	2	2	2
60491	1	1	1	1	1

**APPENDIX C
ANTICIPATED REFERRALS IN THE TWO YEARS FOLLOWING PROJECT COMPLETION**

We anticipate a total of 54 patient referrals to ESRD to the U.S. Renal Care Plainfield Dialysis Facility in the two years following project completion. We attribute these referrals to the following zip codes and physicians.

	Dr. Ahmed	Dr. Gurfinciel	Dr. Kravets	Dr. Mchta	Dr. Nagarkatte
60403	2	1	2	1	2
60432	1	1	1	1	1
60435	5	4	5	4	5
60544	2	1	2	2	2
60585	0	0	0	0	0
60586	2	1	2	2	2

ATTACHMENT 1

Excerpt from objection to Davita Crest Hill (#11-004)**Section VI Service Specific Review Criteria****In-Center Hemodialysis****Criterion 1110.1430(c), Unnecessary Duplication / Maldistribution**

As previously stated, there is already an excess of 67 stations, not counting the 13 Nursing Home stations in the area.

Fresenius Joliet's 16 stations are not accounted for in this application.

Sun Health is operating below target utilization.

Silver Cross Renal Center will be below target utilization with the addition of its 5 newly approved stations

Silver Cross Renal Center West and Renal Center would be expected to drop below target utilization if this project is approved as described below.

Proposed Referrals and Impact

Dr. Naila Ahmed (Attachment 13A) states that her group is currently treating 130 pre-ESRD patients, lists a 35% attrition rate, and proposes to refer the remaining 84 patients to the proposed facility over the next 24 months, and by inference none to Silver Cross Renal Center and Renal Center West. These patients seem to originate from zip codes in Joliet and its surrounding towns. A number of these patients seem to originate from zip codes near Silver Cross Hospital itself.

In 2010, Dr. Naila Ahmed's group referred 43 patients to Silver Cross Renal Center West, and 22 patients to Silver Cross Renal Center (per her letter dated May 19, 2011).

She lists her group's anticipated referrals to the proposed Crest Hill Dialysis Facility, but fails to address the potential impact on Silver Cross Renal Center and Renal Center West of the loss of referrals from her group. The Applicant states that 152 patients are receiving dialysis at Renal Center West and 89 at Silver Cross Renal Center. Per the data listed in Dr. Naila Ahmed letter (attachment 12B), her group accounts for 110 or 72% of the patients at Renal Center West and 60 or 67% of the patients at Silver Cross Renal Center.

There are 4 nephrology practices in the Joliet area:

Dr. Naila Ahmed's Group (Northeast Nephrology Consultants or NENC):

5 physicians

Medical directors of Silver Cross Hospitals three dialysis units

Renal Center, Renal Center West, and Morris.

Medical director of Deerbrook Nursing Home dialysis

Medical directors and equity in the proposed Crest Hill project

Dr. Tunji Alausa's Group (Germane Nephrology)

2 physicians

Medical directorship Fresenius Plainfield and Fresenius Joliet

Dr. David McFadden

1 physician
 Medical Director of Fresenius Morris
 My practice (Sun Nephrology)
 2 physicians
 Medical director and owner of Sun Health

The patient census at the Silver Cross facilities can be expected to plummet with the effective cutoff of new patient referrals with the defection of its principal physician group to the proposed Crest Hill Facility 3.7 miles away. Referrals by Dr. Alausa's group would also likely drop based on its affiliation with Fresenius Plainfield and Fresenius Joliet. The only remaining physician continuing to refer to Silver Cross Renal Center and Renal Center West would be Dr. McFadden, a solo physician whose practice is Morris focused. This loss of new patient referrals would be coupled with the normal anticipated attrition of patients due to death, transplantation, relocation and renal recovery. The Applicant mentions an average patient survival of six years based on the 2007 USRDS Annual report – this translates into an annual mortality rate of 16.67%.

If Silver Cross Renal West were to lose 20% of its patients per year in this fashion, its utilization could drop dramatically. If the patient census of the other physicians were to remain unchanged – an unlikely scenario based on the expected drop in Dr. Alausa's group's referrals also – the following table shows a **conservative** potential change in utilization at Renal Center West:

Year	Dr. Ahmed Patients	Other MD's Patients	Total Patients	Utilization %
0	110	42	152	87%
1	88	42	130	75%
2	70	42	112	64%
3	56	42	98	56%
4	45	42	87	50%

Silver Cross Renal Center could well experience a similar catastrophic scenario.