

Sun Health, Inc.  
2121 Oneida Street  
Joliet, IL 60435

**VIA OVERNIGHT MAIL**

RECEIVED

February 14, 2015

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Ms. Kathryn J. Olson  
Chair  
Illinois Health Facilities and Services Review Board  
525 West Jefferson Street, Second Floor  
Springfield, IL 62761

HEALTH FACILITIES &  
SERVICES REVIEW BOARD

**Re: Opposition to Project No. 14-065  
RCG Morris**

Dear Chairwoman Olson:

On behalf of Sun Health, Inc. ("Sun Health"), I urge the Board to approve discontinuation of Fresenius Morris, which is an overt example of duplication and maldistribution that was the direct result of the Board's decision to approve two dialysis facilities across the street from each other in Morris, Illinois.

At the same time, I would urge the Board to reject the proposed replacement facility in Plainfield North, which too is unneeded and will also result in duplication and maldistribution, this time in a different community.

**HISTORICAL BACKGROUND:**

Having previously submitted detailed historical background information, I will focus on an update at this time in the interest of brevity. I would still encourage the Board to review Attachment A, which outlines my prior summary of historical context.

Most recently, the Board issued its Intent-to-Deny to Fresenius Lemont (Project 13-040) in December of 2013 with a vote of 1-7-1. The Applicant then sought a reconsideration, failed to submit any meaningful additional information and then proceeded to defer the project each month till November of 2014, at which time the Board inexplicably reversed itself and approved the project with a vote of 5-0-1 with 2 absent.

The Applicant thus succeeded in obtaining approval for a project based on a reported need in HSA 7, with only 16 % of its proposed CKD patients residing in HSA 7, and a full 84% residing in HSA 9. The same Applicant had earlier objected vociferously when

US Renal Lemont (Project 12-058) attempted the same tactic only one mile away. Furthermore, the Applicant only listed 10.5 potential patients in HSA 7, and only 6 potential patients in Lemont, while claiming that the majority of its listed patients lived within 5 miles of that proposed facility. Approval of the Fresenius Lemont project will result in unnecessary duplication and maldistribution in HSA 9, and will adversely impact a number of preexisting providers, as outlined in my earlier objections.

Prior to that, Fresenius received an Intent-to-Deny for Fresenius Lockport (Project # 12-055), withdrew its application in May of 2013, and replaced it with Fresenius Lemont to misappropriate a need in HSA 7 and to exacerbate the station excess in HSA 9.

Previously, Fresenius Joliet (Project # 10-066) received an Intent-to-Deny, which was also reversed by the Board on reconsideration in spite of a persistently negative SAR.

Actions by the Board that result in such duplication and maldistribution have a tendency to harm independent and smaller dialysis providers that have abided with the CON rules and have historically served their community needs long before the advent of a Fresenius. Subsequently, they have also continued to provide an element of choice, often at lower fees. The Board has no doubt witnessed the sale of a number of such providers over the last several years, and may well have contributed to this trend through its decisions.

#### **CURRENT APPLICATION:**

The applicant proposes to discontinue its 10 station Morris facility, and build a "replacement" facility in Plainfield, 26.6 miles and 34 minutes away, making it effectively a de novo facility with no real relationship to the Morris facility.

Sun Health has no objection to the discontinuation of the Morris facility, as it will serve to reduce the number of excess stations in the HSA, and in a way offset the 12 excess stations approved for Fresenius Lemont. Sun Health therefore did not respond to the Applicant's request for an impact statement.

Sun Health does have some concerns relative to the proposed replacement facility. Sun Health would like to remind the Board that it rejected Fresenius Plainfield North 12-047 (Intent to Deny September 2012, and final denial February of 2013) and also US Renal Lemont (Intent to Deny December 2012, with application withdrawal January 2012). The former had also been proposed for a different lot on essentially the same location at 24020 Riverwalk Court, and the latter for a location 3.3 miles away.

Sun Health would like to question the Applicant's statements regarding a need for the proposed new facility.

**Demographics suggest a lower than normal incidence of ESRD:** Plainfield's growth relative to Morris is irrelevant in determining need for this facility, which is essentially a new facility. The actual population of Plainfield is only 39,581, which would theoretically translate into only 14 patients per year, based on an overall incidence of ESRD of 357 per million. However the anticipated incidence of ESRD will likely be less than normal

based on the relative under-representation of persons at increased risk of ESRD. The percentage of African Americans is only 5.6% compared to 14.5% in the State of Illinois, while the percentage of Hispanics is only 10.7% compared to a state average of 15.8%. Additionally, the percentage of persons over 65 is only 5.3% compared to a state average of 12.5%.

**Facilities within 30 Minutes are underutilized and have ample capacity:** Of the 9 Facilities are listed within 30 minutes of the proposed facility, 8 are operational and 5 (62.5%) are operating below 80% utilization. One facility – Fresenius Lemont – has not yet begun operations. There is thus ample capacity to accommodate the projected need (which seems to be a fraction of that listed).

There is presently an excess of 23 stations in HSA 9. This will likely be exacerbated by the 12 stations approved for Fresenius Lemont (increasing the excess to 35 stations), as well as by the increased use of home dialysis and nursing home dialysis – both of which are not counted by the Board.

I am aware that the Board discounts facilities in operation for less than 24 months in its deliberations, but would like to point out the fallacy of this logic. Increase in capacity that has not yet become operational is still an increase in capacity and needs to be kept in the context of actual need and utilization. Otherwise, there exists the potential to list CKD patients who may never need dialysis as pre-ESRD patients, obtain approval and then cease to refer new dialysis patients to pre-existing facilities, which will then see a gradual drop in utilization as they lose 15-25% of their patients to transplant, relocation, recovery or death. This may explain the drop in utilization by certain facilities such as DaVita (Silver Cross) in New Lenox and Joliet, and Sun Health.

**Proposed referral data is not credible:** Kidney Care Center has listed 109 patients to be referred to this facility, yet admits that it started only 11 patients on dialysis from those zip codes in the 12 month period listed, and had a total of only 7 patients from those zip codes on dialysis as of 08/31/2014.

	Pre-ESRD patients CON # 14-065	ESRD starts 09/01/13-08/31/14	Total ESRD patients as of 2 <sup>nd</sup> qtr. 2014
60446	32	1	4
60447	13	1	1
60543	1	0	0
60544	13	2	1
60585	2	1	0
60586	48	6	1
TOTAL	109	11	7

The practice's actual historical referrals do not seem to correlate with its projections, suggesting either that projections are inflated or possibly that referrals would come from elsewhere, presumably from transfers out of other preexisting facilities. Thus this project

could effectively serve to relocate duplication and maldistribution from Morris to Plainfield.

I have subsequently taken then liberty of comparing pre-ESRD patients listed on May 9, 2012 by Kidney Care in support of the Applicants prior CON application (Fresenius Plainfield North #12-047) with actual referrals over the following several years from those same zip codes. The discrepancy is impressive and disturbing:

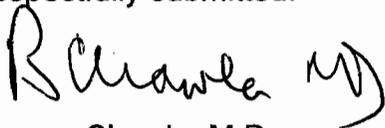
	Pre-ESRD patients #12-047	ESRD starts 09/01/13-08/31/14	ESRD census as of 2 <sup>nd</sup> qtr. 2014
60403	14	3	1
60446	13	1	4
60490	8	0	0
60447	0	1	1
60543	8	0	0
60544	15	2	1
60564	6	0	0
60585	6	1	0
60586	12	6	1
TOTAL	82	14	8

Thus, actual patients referral have been a fraction of that proposed. Additionally, Kidney Care Center has recently lost 2 of its 5 physicians, and is now a 3- physician practice, and thus future referrals may not even meet these projections. Furthermore, none of these physicians is even on staff at Edwards Hospitals, which is listed as the backup hospital for this Application.

**CONCLUSION:**

The Applicant has failed to demonstrate a need for the proposed replacement facility. On behalf of Sun Health, I would urge the Board to approve discontinuation of the Morris facility, and reject the proposed "replacement" facility on the grounds that it is unneeded, and will cause unnecessary duplication and maldistribution.

Respectfully submitted.



Bhuvan Chawla, M.D.

Attachment A: Historical background information previously submitted

Attachment B: Previously submitted opposition to Fresenius Lemont with data analysis

### **Attachment A: Historical Background previously submitted**

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 7<sup>th</sup> consecutive term as Secretary / Treasurer of the Medical Staff of Presence St. Joseph Medical Center in Joliet.

In October of 1989, I formed Sun Health to deliver outpatient dialysis to the west side of Joliet, after Silver Cross Hospital 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.

Sun Health has offered services frequently unavailable in many other dialysis facilities, including onsite laboratory and IV antibiotic therapy to dialysis patients. An Affiliate called SunAssociation offers a national prescription discount card program.

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 its 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 Wilhelmi 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 were filed in our community:

Fresenius Plainfield North (#12-047) received an Intent to Deny in September, followed by a Denial in February of 2013.

Fresenius Lockport (#12-055) received an Intent to Deny in December of 2012, and was subsequently withdrawn in May of 2013.

US Renal Lemont (#12-058) received an Intent to Deny in December of 2012, and was subsequently withdrawn in January of 2013.

US Renal Plainfield (12-059) received an Intent to Deny in October of 2012, and was subsequently withdrawn in December of 2012.

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

Fresenius actually submitted a letter of objection to US Renal Lemont in which it pointed out that "patients identified for the Lemont facility do not reside in HSA 7; therefore it will not serve the residents in the HSA in which it is being established per Board rules". Fresenius also pointed out that the US Renal Lemont application listed only 9 patients as residing in HSA 7, where Lemont was located. "US Renal Lemont will not serve a five mile radius of the clinic as stated in the application .... This statement misleads the Board ...".

**Yet, Fresenius commits the very same transgression in its own current Application, which lists 84% of its proposed patients as coming from HSA 9 (Will County) and only 16% of its listed pre-ESRD patients as coming from HSA 7 (Suburban Cook County). Its current application lists only 15 potential patients as residing in HSA 7 and only 9 potential patients in Lemont – it also anticipates a**

**30% attrition rate, which would result in only 10.5 potential patients in HSA 7 and only 6 potential patients in Lemont. It also states that the majority of patients reside within 5 miles of the proposed site.**

**Attachment B: Previously submitted opposition to Fresenius Lemont with data analysis**

**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 letter also mentions 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 – an 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:

	New patients last 12 months	Proposed patients over 2 years
60439:	0	9
60441:	3	46
60446:	0	23
60462:	0	6
60491:	1	7
Total:	4	91 (63.7 after a 30% attrition rate)

Based on this data, it is hard to see the need for this project – unless the plan is to divert patients from preexisting facilities, either by transferring them or by ceasing to refer new patients to those facilities – effectively causing duplication and maldistribution.

Review of the patient census of the Practice at various non-Fresenius facilities would seem to corroborate this:

Year	Census at DaVita/Silver Cross East and West	Census at Sun Health
2010	41	5
2011	41	4
2012	26	3
2013 1 <sup>st</sup> qtr	22	3

One can only wonder if patient transfers might account for some of the reported increase in patient census at certain Fresenius facilities, such as Fresenius Joliet. A comparative review of patient transfers out of the local facilities in 2012 is revealing:

	Census Average	Transfers Out	Transfers % of census
Fresenius Plainfield	67	47	70%
DaVita/Silver Cross W	144	34	24%
DaVita/Silver Cross E	88	13	15%
Sun Health	55	12	22%

**The Applicant fails to demonstrate need, and preexisting capacity can accommodate at least 311 new patients.**

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

The Applicant lists 514 patients being served by 157 stations within the adjusted 30 minutes without highway travel – these stations are operating at 55% combined utilization and can accommodate another 240 patients before reaching 80% utilization. Additional patients can be served with home dialysis and nursing home dialysis – these 2 modalities are not counted in the State Inventory.

The existing capacity with Highway travel is significantly higher, especially with I-355, which tends to be uncongested – another 148 patients additional patients could be served; this would more than offset any impact from closure of Fresenius Naperville (which would account for 77 patients at 80%)

The need is even less compelling when one considers that the majority of the projected patients would originate from HSA 9, which already has a surplus of 23 stations. The Applicant is proposing to misuse a need in HSA 7 to increase its patient capacity in HSA 9, thus fostering unnecessary duplication and maldistribution.

The Applicant states that DaVita Silver Cross is only 8 patients away from 80% utilization, but does not mention that its utilization has actually dropped from 92 in

January of 2012 to 84 in December of 2012 – perhaps a reflection of unnecessary duplication by Fresenius Joliet.

The Applicant lists growth at Fresenius Joliet, yet this growth could well be related to transfers and duplication.

Contrary to the assertions by the Applicant, this Project will cause maldistribution, unnecessary duplication and will adversely impact other area ESRD facilities.

**There may be a need in other parts of HSA 7, but not in Lemont** with an anticipated 5.71 new patients per year. A similar project only 1 mile away by US Renal Lemont was opposed by Fresenius and Dr. Alausa, and was rejected by the Board in December of 2012.

**Preexisting Access to Care Meets State Standards**

The Applicant proposes to serve residents within a 5-mile radius, but preexisting access to care meets state standards.

**Proposed Referrals can and should be served by other facilities**

On page 187, the Applicant lists the Zip Code of origin of the patients identified for referral to this facility:

		Patients Unadjusted	Patients After 30% attrition
60439	Lemont	9	6
60441	Lockport	46	32
60446	Romeoville	23	16
60462	Orland Park	6	4
60491	Homer Glen	7	5

Only 6 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.

Lemont (60439) patients might be better served at US Renal Bolingbrook and DaVita SC

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

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

Orland Park (60462) patients might be better served in Fresenius Orland Park and Fresenius Mokena

Homer Glen (60491) patients might be served at DaVita (Silver Cross, New Lenox), Fresenius Orland Park and Fresenius Mokena.

**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.

**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.

**In Conclusion: There is simply no need for the proposed Fresenius Lemont facility. In the words of Fresenius: “patients identified for the Lemont facility do not reside in HSA 7; therefore it will not serve the residents in the HSA in which it is being established per Board rules”. Thus, this Application attempts to misapply a reported need in HSA 7 to seek approval, and then to cause duplication and maldistribution in HSA 9.**

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.

cc: State Senator Pat McGuire  
State Representative Jack McGuire

Attachments:

1. Fresenius objection to US Renal Lemont
2. Dr. Alausa’s objections to US Renal Lemont

Proposed size of facility greatly exceeds state standards, as has been the case with several recent CON submissions by Fresenius – and is targeted primarily for future expansion.

The Application is required to list persons with 5% or greater interest in the licensee.  
None are listed – is that correct?