



STATE OF ILLINOIS
HEALTH FACILITIES AND SERVICES REVIEW BOARD

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DOCKET ITEM: C-01	BOARD MEETING: June 3, 2014	EXEMPTION NUMBER: E-007-14
EXEMPTION APPLICANT(S): Northwestern Memorial HealthCare, Northwestern Medical Faculty Foundation Dialysis Center, LLC		
FACILITY NAME and LOCATION: Northwestern Medical Faculty Foundation Dialysis Center		

STATE BOARD STAFF REPORT
CHANGE OF OWNERSHIP EXEMPTION REQUEST

I. The Exemption Application

The applicants are Northwestern Memorial HealthCare, 251 East Huron Street, Chicago, Illinois and Northwestern Medical Faculty Foundation Dialysis Center, LLC, 680 North Lake Shore Drive, Suite 1118, Chicago, Illinois. The applicants propose a change of ownership of Northwestern Medical Faculty Foundation Dialysis Center that will be accomplished through a change in 50% or more of the voting members of a not-for-profit corporation board of directors that control a health care facility operations, license, certification or physical plant and assets. The certified/operating entity is Northwestern Medical Faculty Foundation Dialysis Center, LLC. The owner of the site is Northwestern Memorial Hospital. The fair market value of the dialysis facility is \$9,007,064.

Northwestern Memorial HealthCare is the the sole corporate member of Northwestern Memorial Hospital, Northwestern Lake Forest Hospital, and Northwestern Memorial Foundation (the Foundation). Northwestern Memorial Healthcare’s subsidiary corporations are Northwestern HealthCare Corporation (NHC), Northwestern Memorial Physicians Group (NMPG), and Northwestern Memorial Insurance Company (NMIC). Northwestern Lake Forest Hospital’s subsidiary corporation is Lake Forest Health and Fitness Institute (HFI). Northwestern Memorial Hospital and Northwestern Lake Forest Hospital are both members of the obligated group (Obligated Group) for all of the outstanding bonds of Northwestern Memorial Hospital and Northwestern Lake Forest Hospital.

II. Background

In March of 2013 Northwestern Medical Faculty Foundation Dialysis Center, LLC was approved for a 36 station in-center dialysis center in Chicago, Illinois at a cost of \$9,007,464 (Permit #12-099). The project is to be completed by June 30, 2016 and according to the latest Annual Report dated March 2014 is on schedule to be completed by that time. The project was obligated on August 27, 2013 by the signing of the lease for the building space.

At the time of approval Northwestern Medical Faculty Foundation owned 80% of Northwestern Medical Faculty Foundation Dialysis Center, LLC. The remaining 20% was owned by Ambulatory Services of America, Inc. On August 12, 2013, U. S. Renal Care, Inc. acquired ASA, and, as a result, now holds ASA's 20% interest in the LLC. U.S. Renal Care, Inc. acquisition did not require approval of the State Board because control of the facility was not changing. As of the date of this report

The State Board Staff notes that the Northwestern Medical Faculty Foundation has changed its name to Northwestern Medical Group. This name change did not require approval of the State Board.

Following the approval of Project #12-099, on May 6, 2013, Fresenius Medical Care Holdings, Inc. and Dialysis Centers of America-Illinois, Inc. ("Fresenius") sued the Illinois Health Facilities and Services Review Board, Northwestern Medical Faculty Foundation Dialysis Center, LLC, Northwestern Medical Faculty Foundation, and Ambulatory Services of America, Inc., in the Circuit Court of Cook County, Chancery Division, seeking administrative review of the decision of the Illinois Health Facilities and Services Review Board ("State Board") to approve the LLC's application for a permit to establish a 36-station end stage renal dialysis facility. The complaint requested that the Court reverse the decision of the State Board, reverse the permit issued in connection with the project, direct that the State Board compile, certify and file with the Clerk of the Court the complete record of proceedings, and grant other relief as the Court deems appropriate. The parties filed briefs and the Honorable Peter Flynn, Judge of the Circuit Court of Cook County, after hearing extensive oral arguments on **October 3, 2013**, **upheld the decision of the State Board.** Fresenius filed its notice of appeal in the Appellate Court of Illinois, First Judicial District, on October 31, 2013. The appeal is still pending and briefs have not yet been filed.

On September 1, 2013 Northwestern Medical Faculty Foundation became a wholly owned subsidiary of Northwestern Memorial HealthCare pursuant to a clinical affiliation agreement. Northwestern Medical Faculty Foundation is an academic faculty practice plan with approximately 900 physicians and 1,500 additional health professionals and other staff. Northwestern Medical Faculty Foundation physicians serve as full time faculty at Feinberg School of Medicine and as members of the medical staff of the 894 - bed Northwestern Memorial Hospital and 201-bed Northwestern Lake Forest Hospital.

Northwestern Memorial HealthCare paid approximately \$230.5 million upon approval, plus annual payments totaling at least \$118.5 million through 2016, to acquire Northwestern Medical Faculty Foundation.

About \$193.5 million of the acquisition price covers the net value of the faculty foundation's \$631.7 million in unrestricted assets, after subtracting liabilities as of Sept. 1, 2013. Northwestern Memorial is accounting for the balance of the purchase price, about \$37 million, as goodwill. Goodwill reflects the value of intangible assets, such as a brand name and relationships with patients.

In September 2013, the health system paid the university \$210.3 million toward the \$230.5 million purchase price. Northwestern Memorial's ongoing annual payments to the university are based on the hospital's net patient revenue and financial operating results. Those payments will be at least \$39.5 million a year from 2014 through 2016 and will support research and education at Feinberg. (Information from 2013 audited financial statements of Northwestern Memorial Healthcare Subsidiaries)

The September 1, 2013 transaction resulted in a change of ownership of Northwestern Medical Faculty Foundation Dialysis Center, LLC.

The applicants have attested to the following (see 77 IAC 1130.520 (b)):

- The number of stations (36) will not change for a period of 12 months following the completion of the exemption;
- The applicant has had no adverse actions within 3 years of filing the application;
- The applicants have sufficient resources to retain ownership for a period of 3 years;
- All outstanding projects have been completed or obligated or will be completed or altered in accordance with the State Board Rules;
- The proposed change of ownership will be completed within 24 months from the date of the approval of the change of ownership.

III. Applicable Rules

The Illinois Health Facilities Planning Act defines a change of ownership as

“. . . a change in the person who has ownership or control of a health care facility's physical plant and capital assets. A change in ownership is indicated by the following transactions: sale, transfer, acquisition, lease, change of sponsorship or other means of transferring control.”

(20 ILCS 3960/6)

Sec. 6. Application for permit or exemption; exemption regulations.

(a) An application for a permit or exemption shall be made to the State Board upon forms provided by the State Board. This application shall contain such information as the State Board deems necessary. The State Board shall not require an applicant to file a Letter of Intent before an application is filed. Such application shall include affirmative evidence on which the State Board or Chairman may make its decision on the approval or denial of the permit or exemption.

(b) The State Board shall establish by regulation the procedures and requirements regarding issuance of exemptions. An exemption shall be approved when information required by the Board by rule is submitted. Projects eligible for an exemption, rather than a permit, include, but are not limited to, change of ownership of a health care

facility. For a change of ownership of a health care facility between related persons, the State Board shall provide by rule for an expedited process for obtaining an exemption. In connection with a change of ownership, the State Board may approve the transfer of an existing permit without regard to whether the permit to be transferred has yet been obligated, except for permits establishing a new facility or a new category of service.

Section 1130.500 - General Requirements for Exemptions

Persons that have initiated or completed such projects without obtaining an exemption are in violation of the provisions of the Act and are subject to the penalties and sanctions of the Act.

Section 1130.520 - Requirements for Exemptions Involving the Change of Ownership of a Health Care Facility

*“f) Completion of Projects with Outstanding Permits
A permit or exemption cannot be transferred.*

*1) For purposes of change of ownership exemptions, outstanding permits **will not be considered transferred** if the following conditions are met:*

C) for permits establishing a new facility or a new category of service, the existing permit has been obligated and is being carried out with due diligence; (see 20 ILCS 3960/6(b));

The State Board Staff Notes: The applicants did not file the proposed change of ownership before the change of ownership was initiated as required by State Board Rule. This failure was the result of a lawsuit challenging the State Board’s approval of the establishment of a 36-station ESRD facility. Subsequently in October 2013 the court upheld the State Board’s decision. In that ruling the court did not place an injunction on the applicants proceeding with the change of ownership of the dialysis facility.

V. Public Comment

No public hearing was requested and no letters of support were received by the State Board Staff. An opposition comment was received on this project which is attached to this report.

VI. Other Information

Included in the information submitted to the State Board is the change of ownership exemption application for the proposed change of ownership of Northwestern Medical Faculty Foundation Dialysis Center, LLC.