

## Hills, Bonnie

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**From:** Bhuvan Chawla [B.Chawla@esunhealth.com]  
**Sent:** Wednesday, June 08, 2011 11:13 AM  
**To:** Hills, Bonnie  
**Cc:** Constantino, Mike  
**Subject:** CON Objection Crest Hill Dialysis Project # 11-004  
**Attachments:** CON Objection Crest Hill Dialysis # 11-004.pdf

**Importance:** High

Ms. Hills,

Pursuant to our phone conversation this morning, please find attached my objection to Project # 11-004, Crest Hill Dialysis (DaVita). Today is the deadline for submitting written comment. I would appreciate confirmation of receipt.

I will also send you a fax copy. I am prepared to drive to Springfield to hand deliver if needed. I can also overnight a paper copy if you wish. Thank you for your help.

Bhuvan Chawla, M.D.

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Sun Health, Inc.  
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815.744.9300

**By EMAIL, FAX, and OVERNIGHT MAIL**

June 6, 2011

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

**Re: Opposition to Project No. 11-004: Crest Hill Dialysis (DaVita)**

Dear Chairman Galassie:

On behalf of Sun Health, Inc. ("Sun Health"), I submit this letter of opposition to DaVita's 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 11-004.

**HISTORICAL BACKGROUND:**

I am a board certified nephrologist, have been practicing nephrology in Joliet since 1981, and as such am the senior most nephrologist in the community. I am currently serving my 3<sup>rd</sup> consecutive term as Secretary / Treasurer of the Medical Staff of Provena St. Joseph Medical Center in Joliet.

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.

Silver Cross Hospital then submitted its own CON application (PM 90-018) on September 12, 1990 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. Silver Cross Renal Center West received Medicare certification on October 1991, effectively stunting the growth of Sun Health.

History is now repeating itself, as 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 voting against, with 1 member voting present). Fresenius proceeded to submit a number of boilerplate letters of support. For the record, I would like to acknowledge and thank State Senator Wilhelmi, who actually called me to

discuss this project at length and then declined to write a letter in support of the Fresenius CON. None of the other community leaders who signed letters of support had any contact with me. 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, that the project failed to meet the criteria of need and of conformance with the unnecessary duplication and maldistribution of services. 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.

### **CURRENT APPLICATION**

**Project # 11-004 Crest Hill Dialysis (DaVita) now seeks to add another 12 stations to this oversupply to result in an oversupply of 79 stations.**

#### **There is simply no need for the proposed Crest Hill Facility**

Sun Health has consistently voiced its opposition to various CON applications for dialysis facilities that have failed to meet the state's own need criteria. According to a recent 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.

#### **Excess Station Supply**

The SAR showed an oversupply of 51 stations prior to the approval of Fresenius Joliet's 16 additional stations on March 12, resulting in a reported oversupply of 67. Furthermore, the actual number of stations is **undercounted and understated**, since nursing home stations are NOT counted. Fairview Nursing Home and Deerbrook Nursing home have effectively added **13 effectively undocumented stations** to the inventory, diverting some patients from existing facilities, including Sun Health. Thus the real oversupply is significantly higher than the reported 67. This may be **further affected by health care reform** and the associated push towards home dialysis.

In presenting my comments, I have chosen to follow a format similar to the application for ease of reference by the Board.

### **Section 1, Identification, General Information, and Certification**

#### **Site Ownership (Attachment 2)**

The Letter of Intent to lease the listed space has expired.

### **Section III, Project Purpose, Background, And Alternatives**

#### **Criterion 1110.230(b), Project Purpose, Background and Alternatives**

##### **Purpose of the Project**

##### **1. Purpose:**

The applicant acknowledges that the Board has approved 17 stations in the geographic area in the last 17 months. However, subsequently the Board has approved an additional 16 stations on March 12 for Fresenius Joliet.

Table 1110.230(b)(1) in the application shows that three of the listed facilities including Sun Health are operating below target utilization; the **recently approved Fresenius is not listed**, and must be added to the list of approved facilities.

The Applicant chooses to report an average utilization of 81% for the facilities it chose to include on the list. If Fresenius Joliet were counted, total utilization of all facilities would drop to 69%.

Furthermore, the Applicant has chosen not to list the 9 other facilities in HSA 9 that did not meet the state target as of the time of my previous letter dated November 23, 2010 in opposition to the Fresenius Joliet application (Table on page 5 of my letter).

Silver Cross Renal West is listed with 87% utilization, **but this can be expected to drop precipitously if the Crest Hill Facility is approved**, since it will experience the normal 20% per annum attrition of its existing patients going forward, while receiving no new referrals from Dr. Naila Ahmed's group. Dr. Naila Ahmed specifically states in her letter that her group would refer ALL of its pre-ESRD patients to the proposed Crest Hill facility (Attachment 13A, page 97).

Silver Cross Renal Center is relocating to New Lenox, and will add 5 stations, thus dropping utilization to 78%. Further attrition due to lack of referrals from Dr. Naila Ahmad's group would also be predictable. The Applicant is incorrect in its assertion that the New Lenox relocation of Silver Cross Hospital will serve a different patient base. The Fresenius Lockport project, located off the same highway (I -355), is only 5.8 miles from the new Silver Cross Hospital, and DaVita has a home dialysis program in Lockport also.

The Applicant goes on to discuss the large number of patients over age 65 in need of dialysis. The Board needs to understand that these patients typically are covered by Medicare, and can already receive treatment at Sun Health, since Sun Health is a Medicare approved provider. The Applicant **unfairly dismisses Sun Health** because it does not have contracts with a number of commercial payers – The reality is that Sun Health is a viable alternative for patients with Medicare or Blue Cross coverage, who make up over 90% of patients needing dialysis. Sun Health has voiced its concern at being locked out of certain commercial insurance contracts, which it needs to help subsidize its ability to care for underinsured patients – cross subsidization an issue of which the Board is well aware.

The Applicant goes on to state that the average treatment time is 4-5 hours, which seems to be on the high end – perhaps, the Applicant should give a breakdown of the percentage of its patients treated 3-4 hours versus those treated 4-5 hours.

**2. Market area:** Applicant maps the market area to include a 25 mile radius / 30 minute travel time around the proposed facility, but later in its application tries to justify project need based on a 15 minute travel time.

**3. Growth projections** are faulty, since the Fresenius Joliet is completely excluded from calculations.

#### 4. Source Information: Standard

#### 5. Access:

The Applicant attempts to advocate for a 15-minute travel time to justify the need for its project. Transportation challenges are encountered even with patients living less than 5 minutes from a dialysis facility. Social workers at dialysis facilities routinely work with patients to facilitate transportation. The Board is well aware of state standards.

The Applicant glibly dismisses Sun Health as an option based on Sun Health's reported difficulty with obtaining contracts with certain commercial payers. The Board needs to understand that patients with commercial insurance make up only 10-15 % of patients needing dialysis, and do not lack access to care per se; rather they are much sought after by dialysis facilities as they are crucial to subsidizing care for patients with Medicare, Public Aid, or no insurance. How can certain commercial carriers be allowed to pay small providers 10-20% of what they pay larger providers for the same care?

The State should encourage commercial carriers to negotiate in good faith and not to discriminate against smaller existing dialysis providers in order to enhance access, rather than allowing large providers to be disrespectful of the role we have played in serving our respective communities over the years. The **CON board could help** in this regard by refusing to approve new and unneeded facilities at the expense of existing underutilized facilities. This would expand access to all without additional cost to society, truly a win-win solution for patients, society and the small dialysis providers who have diligently and faithfully served their communities for years and even decades.

Sun Health has been a network provider for Blue Cross Blue Shield - the largest commercial insurance carrier in Illinois - for many years. Sun Health has recently received a contract from United Healthcare – the 2<sup>nd</sup> largest health insurance carrier in Illinois – after many years of trying, though at terms far less favorable than those offered to larger dialysis providers. Sun Health has retained a senior health care consultant to help negotiate reasonable contracts with various payers. Sun Health is also prepared to partner with DaVita and others to further address this issue, which could in turn make this point moot.

In the meantime, residents of Crest Hill with commercial insurance will NOT encounter difficulty with access to care, since they will be able to choose between Silver Cross Hospital's 2 facilities, the recently approved Fresenius Joliet, and in most instances Sun Health.

#### **Nocturnal Dialysis:**

The Applicant states that DaVita started offering nocturnal dialysis in March of 2008. The Board needs to understand that Nocturnal Dialysis is not a separate category of service, but is rather treated as an additional shift of a regular dialysis center. Thus Nocturnal Dialysis can be viewed as a Trojan horse designed to get approval for a full-fledged new dialysis program.

The Board also needs to be aware of the **low level of success of nocturnal dialysis**. My social worker has compiled a list of all the Nocturnal Hemodialysis programs in the state of Illinois. The findings are self explanatory:

1. DaVita – Lake County Dialysis Services, Libertyville, IL: **8 patients**; has been in operation for couple of years.
2. DaVita – Olympia Fields Dialysis Center, Matteson, IL: **Program closed** for lack of patient interest and difficulty staffing.
3. DaVita - Maryville Dialysis, Maryville, IL: **Program closed** in 2009 due to lack of patient interest
4. DaVita – Metro East Dialysis, Belleville, IL: **15 patients**
5. DSI Hazel Crest, IL: 12 patients
6. FMC Niles, IL: 7 patients
7. FMC Mokena, IL: 11 patients.
8. Highland Park Hospital: Unable to obtain information

DaVita's web site lists 84 dialysis programs in Illinois, with 61 offering in-center hemodialysis. Of these, only 2 units currently offer nocturnal dialysis, one in the Chicagoland area and one in the St. Louis metropolitan area. DaVita's acquisition of DSI might make it 3, since DSI Hazel Crest also has a nocturnal dialysis program.

**The Applicant is thus highlighting nocturnal dialysis as an issue of improved access and improved quality, when it fails to offer it at almost all of its preexisting facilities.**

Nonetheless, if Dr. Naila Ahmed's group is truly serious about offering nocturnal dialysis, Sun Health is willing to explore potential collaboration and partnership with her group, as well as with DaVita and others.

6. Quality outcomes: Medicare requires all dialysis providers in the country to report the listed quality measures.

### **Section III, Project Purpose, Background and Alternatives**

#### **Criterion 1110.230(c), Project Purpose, Background and Alternatives**

##### **Alternatives**

- a. **Do nothing:** The Applicant dismisses this option too easily. It would be perfectly reasonable to wait for Silver Cross Hospital to expand by 5 stations when it moves to its new campus in about 8 months, and to wait for Fresenius Joliet to open its 16 new stations before seeking to add yet more stations.
  - The Applicant discusses utilization at facilities within 30 minutes travel time, and then proposes a 15-minute travel time to justify its project. Dialysis social workers routinely assist patients with transportation challenges, which may even be encountered by patients living less than 5 minutes from their facility.
  - The issue of transportation of nursing home patients is becoming moot with the development of dialysis programs at Deerbrook Nursing Home and Fairview Nursing Home in Joliet. In fact, Dr. Naila Ahmed's partner is the medical director of the Deerbrook program.
  - The issue of duration of dialysis as already been addressed.

- b. **Utilize existing facilities:** Once again, Silver Cross Hospital is adding 5 stations in about 8 months, and Fresenius Joliet has just been approved for 16 stations on March 12. Sun Health has available capacity today and has expressed an interest in working with Dr. Naila Ahmed's group, with DaVita, and with Silver Cross Hospital. Sun Health should not be dismissed arbitrarily as a viable option.

Dr. Ahmed's group has been treating patients at Silver Cross Hospital's 3 dialysis facilities, at Deerbrook Nursing Home, and at Fresenius, but not at Sun Health. A **simple no cost solution** to address underutilization and maldistribution from Sun Health's perspective would be for Dr. Naila Ahmed's group to begin referring patients to Sun Health. I have previously invited Dr. Ahmed's group to obtain privileges at Sun Health so that she and her physician associates can continue to treat their patients at Sun Health, and would like to extend the invitation again.

In this uncertain economy and in this era of health care reform, we need to find ways to work together. Sun Health and I are willing to explore various collaboration and partnership opportunities, with Dr. Ahmed's group as well as with DaVita, and others.

- c. **Establish a New 12-Station Dialysis Facility:** This **makes NO SENSE** from a CON perspective, when the community's need can easily be met at **NO COST** by working with existing facilities, while maintaining access within the guidelines for accessibility established by the state.

## **Section VII, Service Specific Review Criteria**

### **In-Center Hemodialysis**

#### **Criterion 1110.1430(b), Planning Area Need**

1. **Planning Area Need:** The applicant acknowledges that Board's inventory shows an excess of 51 stations in the area, and states that the Board has approved 21 additional stations in the past two years. This does not include the 16-station Fresenius facility that was approved on March 12, resulting in an oversupply of 67 stations. This also does not include the undocumented 13 nursing home stations that have been added, and the push towards home dialysis. **There is simply no need for the Crest Hill project.**
2. **Service to Planning Area Residents:** The Applicant refers to Dr. Naila Ahmed's referral letter to imply that there is no viable alternative for these patients. **This is incorrect.** Silver Cross Renal Center will be adding five stations, and Fresenius Joliet has been approved for 16 stations.

Sun Health remains a viable option and should not be summarily dismissed. Sun Health is approved both by Medicare and Public Aid, which account for 85% of dialysis patients. Sun Health is a network provider to Blue Cross, which is the largest commercial health insurance payer in Illinois. Sun Health has voiced concerns about its difficulty in obtaining reasonable and fair payment rates and contracts from a number of commercial payers, since these are crucial to subsidize

the care of the under-insured and uninsured; for example some payers have offered to pay Sun Health a fraction of what they pay the large providers.

I have previously invited Dr. Naila Ahmed's group to obtain privileges at Sun Health, and would like to extend that invitation again.

3. **Service Demand:** Attachment 26A lists prospective patients referrals by Dr. Naila Ahmed's group (NENC) to the proposed project, but fails to address the impact on other providers who will suddenly be cut off from referrals by this group.
4. **Service Accessibility:** The Applicant is repeating its statements, which I have already addressed in earlier in this letter, namely those of:

Transportation issues are routinely are addressed by social workers at all dialysis units. Nursing Home dialysis programs eliminate transportation issues for a number of patients, and Dr. Naila Ahmed's partner is the medical director of one such nursing home dialysis program in Joliet.

Availability of ample dialysis stations, actually an oversupply especially with the five stations to be added at Silver Cross Renal Center, and the 16 stations approved for Fresenius Joliet.

Sun Health is a community resource to be utilized and not to be dismissed.

Nocturnal Dialysis, its limited utilization by DaVita at its preexisting dialysis facilities, and Sun Health's willingness to explore collaboration in this area if Dr. Naila's group is truly committed to this modality.

## **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.

**CONCLUSION:**

The Applicant has failed to demonstrate a need for this project. The 16 stations approved for Fresenius Joliet need to be added to the preexisting oversupply of 51 stations to arrive at an accurate station count of 67. This existing oversupply of 67 stations should be utilized efficiently prior to approving additional stations. Nursing home dialysis programs address transportation needs for certain patients, and can impact utilization at in-center programs. Health care reform with its emphasis on home dialysis needs to be kept in mind.

The Applicant has also failed to address the potential adverse impact on preexisting facilities.

I share the Board's concern with access, but would urge the board to be alert to the potential for unnecessary duplication and maldistribution of services. I have experienced both firsthand.

I would like once again to invite Dr. Naila Ahmed's group to work with Sun Health. I also remain open to partnering with other providers.

I would like to urge the Board to vote NO on the application. After approving 35/35 applications, perhaps it is time to say NO to this one.

Respectfully Submitted,



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

cc: State Senator A. J. Wilhelmi  
State Representative Jack McGuire