

Constantino, Mike

From: Bhuvan Chawla [B.Chawla@esunhealth.com]
Sent: Friday, November 30, 2012 3:16 AM
To: Constantino, Mike
Cc: Hills, Bonnie
Subject: Opposition to Fresniue Lockport
Attachments: Fresenius Lockport.doc

Mr. Constantino / Ms. Hills,

Please find attached my letter of opposition to Fresenius Lockport - Project 12-055.

The Health Facilities and Services Review Board web site lists November 30, 2012 as the last date for submission of written comments, and I was surprised to find it on the agenda for December, along with a State Agency report. Please acknowledge receipt, and confirm delivery to the Board.

Thank you,
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VIA EMAIL

November 29, 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. 12-055 – Fresenius Medical Care Lockport

Dear Chairman Galassie:

On behalf of Sun Health, Inc. ("Sun Health"), I submit this letter of opposition to the Fresenius Lockport 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 12-055.

HISTORICAL BACKGROUND

Fresenius Lockport was originally approved as Permit # 09-037 on December 1, 2009, at a point in history when the Board rejected few dialysis applications. Silver Cross Hospital, Sun Health Dialysis, and Dr. Nagarkatte of Northeast Nephrology Consultants had opposed that project. This CON was eventually abandoned.

In May of 2011, Fresenius Lockport filed another Application – Project # 11- 022, which was rejected by the Board on December 6, 2011 (by a vote of 8-0-1 absent) based on nonconformance with:

- Criterion 1110.234(a) – Size of Project
- Criterion 1110.1430(b) – Planning Area Need
- Criterion 1110.1430(c) – Unnecessary Duplication / Maldistribution.

In June of 2012 – only 7 months later – Fresenius has essentially resubmitted the same Application for an identical facility at the same location, and should be rejected on the same grounds.

After approving 100% of CON applications submitted in 2010, the Board has been rejecting a number of unneeded applications. For further historical background, please refer to Appendix A.

CURRENT APPLICATION

Project # 12-055 Fresenius Lockport now proposes to build a 12-station facility to be located in Lockport as a replacement for a previously approved permit, but seems to avoid acknowledging that the replacement project was already rejected 7 months earlier.

The Applicant fails to demonstrate need

The Applicant admits that HSA 9 has an excess of 46 stations, that it would apparently like the Board to overlook for reasons that are tenuous at best.

Fresenius argues for approval of its project because other projects were approved since its original Lockport application (09-037). This argument is irrelevant to the Board's consideration of need at this point in time – and, as the dominant provider of dialysis in the State and in the world, Fresenius certainly cannot pretend to be a victim

Fresenius incorrectly attempts to discount existing capacity on the grounds of being supported by other physician groups. Three facilities with 41 stations and capacity for 197 patients are listed as yet to begin operations. I understand that US Renal Bolingbrook and Fresenius Joliet are very close to starting or may even have started operations.

I suspect that existing facilities would be happy to accept patient referrals from Southwest Nephrology Associates, including Davita (Silver Cross) New Lenox, and Sun Health.

The Applicant also attempts to exclude Fresenius Naperville (0%) and Fresenius Mokena (58%) based on a few seconds of adjusted travel time. However, Fresenius Mokena would actually be the logical choice for the 40 potential patients listed from Homer Glen.

The November 2, 2012 updated inventory of ESRD stations lists a short-term excess of 47 stations in 2013, and a long-term surplus of 85 stations in 2018 for HSA 9. Home dialysis and nursing home dialysis are unaccounted for in state inventory, and increasing use of these modalities would exacerbate the excess of stations.

Preexisting Capacity can accommodate 229 - 245 New Patients

The Applicant lists 14 facilities within a 30-minute drive time (Page 55). The Applicant then attempts to exclude 5 facilities, by assigning them an adjusted drive time of over 30 minutes – as little as a few seconds over 30 minutes in some instances.

After excluding these 5 facilities, the remaining 9 facilities add up to 164 stations serving 558 patients for a utilization rate of 57%. 78% (7 out of 9) of these facilities are operating below 80%, with 3 being listed at 0%. Preexisting facilities can actually accommodate 229 new patients before reaching 80% utilization. This number grows to 245 patients if Fresenius Mokena is not excluded.

Furthermore, Fresenius Mokena should not be excluded based on its proximity to the listed patients from Homer Glen, of which it can accommodate and additional 16 before reaching 80%; potential future need based expansion of that facility, which is also owned by Fresenius, would seem to make more sense.

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 growing surplus of stations from 47 in 2013 to 85 in 2018 for HSA 9.

Preexisting Access to Care Meets State Standards

Dialysis patients can face transportation challenges in general, but the preexisting access to care meets state standards.

Proposed Referrals can and should be served by other facilities and should not be diverted

SWNA lists only 19 patients from Lockport. 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.

30 patients from Lemont would seem to be best served by US Renal Bolingbrook (0% utilization)

20 patients from New Lenox would be best served at Davita (Silver Cross), New Lenox (70% utilization and expected to drop with the opening of Fresenius Joliet)

44 patients from Homer Glen would seem to be closest to Fresenius Mokena (58% utilization and inappropriately disqualified by the Application as being 30.8 minutes from the proposed Lockport facility), and Fresenius Orland Park (77%).

Sun Health remains open to working with Fresenius to serve the need of our community.

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 local facilities, as they do need access to new patients to replace the 15-20% of patients lost each year due to patient relocation, renal recovery, renal transplant, or death. The Applicant is incorrect in asserting otherwise (Page 63)

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). Fresenius has previously challenged the Board's authority in this area.

However the Board does have discretion as well as a fiduciary responsibility to the State. The Board also has the right to refer the issue and its concerns to other governmental agencies.

In Conclusion: There is simply no need for the proposed Fresenius Lockport Facility.

The Board rejected the same application from Fresenius Lockport 7 months ago, and should reject this one also for the same reasons..

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, as well as recent Intent to Deny to Fresenius Plainfield North, and US Renal Plainfield.

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.

Once again, 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 A - FURTHER 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 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, 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.

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 by a vote of 6 to 2 with 1 absent; the Applicant 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 Plainfield (12-059) – received an intent to deny on October 31, 2012

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.