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HEALTH FACILITIES &
SERVICES REVIEW BOARD

VIA MESSENGER

October 16, 2013

Ms. Courtney Avery
Administrator
Illinois Health Facilities and Services Review Board
525 West Jefferson Street, 2nd Floor
Springfield, Illinois 62761

Re: Opposition to Fresenius Medical Care Lemont, Project Number 13-040

Ms. Avery:

Ungaretti & Harris LLP, as Certificate of Need counsel to U.S. Renal Care, Inc., writes this letter in opposition to the Fresenius Medical Care ("Fresenius") Certificate of Need Application contemplating the establishment of a 12 station in-center hemodialysis facility in Lemont, Illinois (the "Application"). The facility proposed by Fresenius (the "Proposed Facility") will be located in Health Service Area ("HSA") 7. Contrary to the applicable review criterion, however, Fresenius identifies a number of Pre-ESRD patient referrals which originate from outside HSA 7, where the facility will be located. Furthermore, it is precisely on this basis that Fresenius previously opposed a U.S. Renal Care ("USRC") Certificate of Need Application which contemplated the establishment of an in-center hemodialysis facility in Lemont, Illinois, only one mile away from the Proposed Facility. Each of these matters is discussed in further detail below.

1. The Primary Purpose of the Proposed Facility is Not to Serve Planning Area Residents.

In its administrative rules, the Illinois and Health Facilities and Services Review Board (the "IHFSRB") establishes certain criteria upon which projects are evaluated.¹ The review criteria for in-center hemodialysis projects are enumerated in 77 Ill. Admin. Code § 1110.1430, which includes such criteria as planning area need, unnecessary duplication of services and

¹ 20 ILCS 3960/12(1).

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maldistribution, among others. As it pertains to planning area need, 77 Ill. Admin. Code § 1110.1430(b)(2) establishes a criterion entitled "Service to Planning Area Residents" which states that "[a]pplicants proposing to establish or add stations shall document that the primary purpose of the project will be to provide necessary health care to the residents of the area in which the proposed project will be physically located (i.e., the planning or geographical service area, as applicable)."²

In the Application, Fresenius proposes to establish a facility in Lemont, Illinois which is located in HSA 7 and identifies a total of 91 Pre-ESRD patients who will be referred to the Proposed Facility (the "Proposed Referrals"). In addressing the Service to Planning Area Residents criterion, Fresenius identifies the origin of the Proposed Referrals in the following table, found on page 50 of the Application:

County	# Pre-ESRD Patients Who Will Be Referred to Fresenius Medical Care Lemont
Suburban Cook	15 Patients = 16%
Will	76 Patients = 84%
	91 Patients = 100%

Contrary to the Service to Planning Area Residents criterion, only a minority of the Proposed Referrals originate from HSA 7 (which is comprised of Suburban Cook and DuPage counties) while a majority of the Proposed Referrals originate from HSA 9 (which is comprised of the counties of Grundy, Kankakee, Kendall, and Will). Specifically, only 15 of the Proposed Referrals (16%) originate from HSA 7 while 76 of the Proposed Referrals (84%) originate from HSA 9.³ Clearly, given the fact that 84% of the Proposed Referrals originate from outside of HSA 7, the primary purpose of the Proposed Facility is not to provide necessary health care to the residents of the health service area in which the proposed project will be physically located, as required by the Service to Planning Area Residents criterion.

2. Fresenius has Previously Opposed a Certificate of Need Application on the Basis of Service to Planning Area Residents.

Not only is it a fact that the primary purpose of the Proposed Facility does not purport to provide necessary health care to the residents of the health service area in which the proposed project will be physically located, Fresenius has previously opposed a U.S. Renal Care Certificate of Need Application on this same basis. The U.S. Renal Care Lemont Dialysis

² 77 Ill. Admin. Code § 1110.1430(b)(2)(A).

³ Fresenius Medical Care Lemont Certificate of Need Application, Project Number 13-040, Page 50.

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Application ("USRC Lemont") also contemplated the establishment of an in-center hemodialysis facility in Lemont, Illinois, only one mile away from the Proposed Facility. In this application, U.S. Renal Care submitted patient referrals that originated from HSA 7 in a percentage which is comparable to that contained in the Application (11% of U.S. Renal Care referrals originated from HSA 7 compared to 16% for Fresenius). However, Fresenius opposed the USRC Lemont application on the basis that patient referrals originated from outside of HSA 7. Specifically, in its opposition letter dated November 20, 2012, Fresenius stated that:

"[P]atients 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 the Board rules....There are only 9 patients that reside in HSA 7, where Lemont is located."⁴

This contention was further argued in public comment provided by a physician affiliated with Kidney Care Center, the medical practice which submitted a patient referral letter in support of the Proposed Facility. In public comment provided at the December 10, 2012 meeting of the IHFSRB, this physician spoke in opposition to USRC Lemont and stated that:

"[T]he project does not serve the Planning Area it is located in according to the Board requirements. Only 9 of the 80 patients live in HSA VII. Therefore, it does not meet the service to the Planning Area residents requirements."⁵

Given that Fresenius has previously opposed an application on the basis that the applicant submitted patient referrals which originated from outside of the relevant HSA, it is inappropriate that Fresenius has submitted an application containing precisely the same characteristic.

For the foregoing reasons, we respectfully request that the IHFSRB deny the Application submitted by Fresenius.

Respectfully,



Shawn Moon

⁴ Letter from Lori Wright, Fresenius Medical Care, to Courtney Avery, Illinois Health Facilities and Services Review Board (Nov. 20, 2012) available at <http://www.hfsrb.illinois.gov/Apps/2012-11-21%2012-058%20OPPOSITION%20LTR-FMC.pdf>.

⁵ Transcript of the meeting of the State of Illinois Health Facilities and Services Review Board held on December 10, 2012, page 95.