



STATE OF ILLINOIS  
**HEALTH FACILITIES AND SERVICES REVIEW BOARD**

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DOCKET NO: <b>H-13</b>	BOARD MEETING: October 22, 2019	PROJECT NO: 19-047	PROJECT COST:
FACILITY NAME: Fresenius Medical Care Waterloo		CITY: Waterloo	Original: \$0
TYPE OF PROJECT: Substantive			HSA: XI

**PROJECT DESCRIPTION:** The Applicants (Fresenius Medical Care *Illinois*, LLC d/b/a Fresenius Medical Care Waterloo, Fresenius Medical Care Holdings, Inc.) propose to discontinue a 6-station ESRD facility in Waterloo, Illinois. There is no cost to this project. The anticipated completion date is November 30, 2019.

**STATE BOARD STAFF REPORT**  
**EXECUTIVE SUMMARY**  
**Fresenius Medical Care Waterloo**

**PROJECT DESCRIPTION**

- The Applicants (Fresenius Medical Care Illinois, LLC d/b/a Fresenius Medical Care Waterloo, Fresenius Medical Care Holdings, Inc.) propose to discontinue a 6-station ESRD facility in Waterloo, Illinois. There is no cost to this project. The anticipated completion date is November 30, 2019.
- In March of 2013 the State Board approved the establishment of a 6-station ESRD facility in Waterloo at a cost of \$3 million in 6,920 GSF of leased space. The facility was certified on September 24, 2015.

**BACKGROUND:**

- Public Act 101-0083 effective July 15, 2019 amended the Illinois Health Facilities Planning Act and required the discontinuation of a health care facility be submitted as an Application for Permit. This amendment required the State Board to determine if there was a need for the discontinuation. Previously a discontinuation of a health care facility was submitted as an exemption and the State Board had to approve the discontinuation if all the information required by the State Board had been submitted. Evidence of need was not required for an exemption.

**WHY THE PROJECT IS BEFORE THE STATE BOARD:**

- The proposed project is before the State Board because the project discontinues a health care facility (20 ILCS 3960/8.7).

**PUBLIC HEARING/COMMENT:**

- No public hearing was requested, and no letters of support or opposition were received by the State Board.

**SUMMARY:**

- The Applicants have met all the criteria for discontinuation of a health care facility.

**STATE BOARD STAFF REPORT**  
**Project #19-047**  
**Fresenius Medical Care Waterloo**

<b>APPLICATION/ CHRONOLOGY/SUMMARY</b>	
Applicants(s)	Fresenius Medical Care Illinois, LLC d/b/a Fresenius Medical Care Waterloo, Fresenius Medical Care Holdings, Inc.
Facility Name	Fresenius Medical Care of Illinois, LLC d/b/a Fresenius Medical Care Waterloo
Location	624 Voris-Jost Drive, Waterloo, Illinois
Permit Holder	Fresenius Medical Care Illinois, LLC d/b/a Fresenius Medical Care Waterloo, Fresenius Medical Care Holdings, Inc.
Operating Entity	Fresenius Medical Care of Illinois, LLC d/b/a Fresenius Medical Care Waterloo
Owner of Site	GAHC3 Southern Illinois MOB Portfolio LLC
Application Received	September 20, 2019
Anticipated Completion Date	November 30, 2019

**I. Project Description**

The Applicants (Fresenius Medical Care Illinois, LLC d/b/a Fresenius Medical Care Waterloo, Fresenius Medical Care Holdings, Inc.) propose to discontinue a 6-station ESRD facility in Waterloo, Illinois. There is no cost to this project. The anticipated completion date is November 30, 2019.

**II. Summary of Findings**

**A.** State Board Staff finds the proposed project is in conformance with the provisions of 77 ILAC 1110 (Part 1110).

**B.** 77 ILAC 1120 (Part 1120) is not applicable for projects that have no cost.

**III. General Information**

The Applicants are Fresenius Medical Care Holdings, Inc and Fresenius Medical Care of Illinois d/b/a Fresenius Medical Care Northfield. Fresenius Medical Holdings, Inc. is a New York corporation and is subsidiary of Fresenius Medical Care AG & Co., a German company. Fresenius Medical Care Holdings, Inc. is the largest provider in the U.S. of kidney dialysis and related services and is the largest private international provider of kidney dialysis and ancillary services with operations in 14 other countries. The Company also offers related services including clinical laboratory and diagnostic testing and imaging services. Fresenius serves patients with low incomes, racial and ethnic minorities, women, handicapped persons, elderly, and other underserved persons in its facilities in the State of Illinois. [Source:2018 Annual Report] This project is subject to a Part 1110 review only.

#### IV. Health Service Area

Fresenius Medical Care Illinois, LLC d/b/a Fresenius Medical Care Waterloo is in the HSA XI ESRD Planning Area. There are 18 dialysis facilities within the HSA XI ESRD planning area with 260 stations. As of September 2019, there is a calculated excess of 16 ESRD stations in this planning area. HSA XI includes Illinois Counties of Illinois Counties of Clinton, Madison, Monroe, and St. Clair.

#### V. Background of the Applicants

##### A) Criterion 1110.110(a) - Background of the Applicant

*To address this criterion the applicants must provide a list of all facilities currently owned in the State of Illinois and an attestation documenting that no adverse actions<sup>1</sup> have been taken against any applicant's facility by either Medicare or Medicaid, or any State or Federal regulatory authority during the 3 years prior to the filing of the Application with the Illinois Health Facilities and Services Review Board or a certified listing of adverse action taken against any applicant's facility; and authorization to the State Board and Agency access to information in order to verify any documentation or information submitted in response to the requirements of the application for permit.*

1. A listing of Fresenius Medical Care Dialysis Facilities in Illinois has been provided at pages 108-109 of the Application for Permit. Fresenius has 140 ESRD facilities in the State of Illinois. Average CMS Star Rating<sup>2</sup> for the Illinois Fresenius facilities that have the necessary data to compile a rating is 3.9.
2. The Applicants provided the necessary attestation that no adverse action has been taken against any facility owned or operated by the Applicants and authorization allowing the State Board and IDPH access to all information to verify information in the Application for Permit. Fresenius has had no history of decertification of its facilities in Illinois. [Application for Permit page 110]
3. Neither the Centers for Medicare and Medicaid Services nor the Illinois Department of Public Health ("IDPH") has taken any adverse action involving civil monetary penalties or restriction or termination of participation in the Medicare or Medicaid programs against any Illinois health care clinics owned or operated by the Applicants, directly or indirectly, within three years preceding the filing of this application. [Application for Permit page 110]

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<sup>1</sup> "Adverse action is defined as a disciplinary action taken by IDPH, CMMS, or any other State or federal agency against a person or entity that owns or operates or owns and operates a licensed or Medicare or Medicaid certified healthcare facility in the State of Illinois. These actions include, but are not limited to, all Type "A" and Type "AA" violations." (77 IAC 1130.140)

<sup>2</sup> CMS Star Rating system is a rating system developed by Medicare that assigns 1 to 5 stars to dialysis facilities by comparing the health of the patients in their clinics to the patients in other dialysis facilities across the country. Each dialysis center is graded on nine separate health statistics. These include: mortality ratios (deaths), hospitalizations, blood transfusions, incidents of hypercalcemia (too much calcium in the blood), percentage of waste removed during hemodialysis in adults and children, percentage of waste removed in adults during peritoneal dialysis, percentage of AV fistulas, percentage of catheters in use over 90 days. Causes of death and reasons for hospitalization may not necessarily be related to the care at a dialysis facility. The statistics merely represent how many patients who attend that facility died or were hospitalized. Based on these nine statistics, each facility is given a summary rating of 1 to 5 stars. In addition, each facility is graded on a curve and ranked against one another nationwide. This results in clinics being rated in a bell-shaped curve where about 30% of facilities receive only one or two stars, 40% receive 3 stars, and 30% receive 4 or 5 stars. In theory, it's possible that every facility in a bell-shaped curve might deliver good or excellent care. [source: National Kidney Foundation]

4. Organizational relationships can be found at page 99 of the Application for Permit.
5. A Certificate of Good Standing has been provided as required for Fresenius Medical Care Holdings, Inc., as a foreign entity with permission to transact business in the State of Illinois. An Illinois Certificate of Good Standing is evidence that an Illinois business franchise (i.e. Illinois Corporation, LLC or LP) is in existence, is authorized to transact business in the state of Illinois and complies with all state of Illinois business requirements and therefore is in "Good Standing" in the State of Illinois. [Application for Permit page 27]

## VI. **Discontinuation**

### **A) Criterion 1110.290 - Discontinuation**

*These criteria pertain to the discontinuation of categories of service and health care facilities.*

- a) *Information Requirements – Review Criterion*  
*The applicant shall provide at least the following information:*
  - 1) *Identification of the categories of service and the number of beds, if any, that are to be discontinued;*
  - 2) *Identification of all other clinical services that are to be discontinued;*
  - 3) *The anticipated date of discontinuation for each identified service or for the entire facility;*
  - 4) *The anticipated use of the physical plant and equipment after discontinuation occurs;*
  - 5) *The anticipated disposition and location of all medical records pertaining to the services being discontinued and the length of time the records will be retained;*
  - 6) *For applications involving discontinuation of an entire facility, certification by an authorized representative that all questionnaires and data required by HFSRB or the Illinois Department of Public Health (IDPH) (e.g., annual questionnaires, capital expenditures surveys, etc.) will be provided through the date of discontinuation and that the required information will be submitted no later than 60 days following the date of discontinuation.*
- b) *Reasons for Discontinuation – Review Criterion*  
*The applicant shall document that the discontinuation is justified by providing data that verifies that one or more of the following factors (and other factors, as applicable) exist with respect to each service being discontinued:*
  - 1) *Insufficient volume or demand for the service;*
  - 2) *Lack of sufficient staff to adequately provide the service;*
  - 3) *The facility or the service is not economically feasible, and continuation impairs the facility's financial viability;*
  - 4) *The facility or the service is not in compliance with licensing or certification standards.*
- c) *Impact on Access – Review Criterion*  
*The applicant shall document whether the discontinuation of each service or of the entire facility will have an adverse impact upon access to care for residents of the facility's market area. The facility's market area, for purposes of this Section, is the established radii outlined in 77 Ill. Adm. Code 1100.510(d). Factors that indicate an adverse impact upon access to service for the population of the facility's market area include, but are not limited to, the following:*
  - 1) *The service will no longer exist within the established radii outlined in 77 Ill. Adm. Code 1100.510(d) of the applicant facility;*
  - 2) *Discontinuation of the service will result in creating or increasing a shortage of beds or services, as calculated in the Inventory of Health Care Facilities, which is described in 77 Ill. Adm. Code 1100.70 and found on HFSRB's website;*
  - 3) *Facilities or a shortage of other categories of service at determined by the provisions of 77 Ill. Adm. Code 1100 or other Sections of this Part.*
  - 4) *The applicant shall provide copies of notification letters sent to other resources or health care facilities that provide the same services as those proposed for discontinuation and that are located within the established radii outlined in 77 Ill. Adm. Code 1100.510(d). The notification letter*

*must include at least the anticipated date of discontinuation of the service and the total number of patients that received care or the number of treatments provided (as applicable) during the latest 24 month period.*

The Waterloo facility has been operating at an average utilization of 28%<sup>3</sup> with 6 stations over the past 5 years. Due to this continual adversely low utilization, Fresenius Medical Care has determined that continuing to operate the facility is not economically feasible.

There are four other clinics within this market operating at an average of 52% utilization. Fresenius Medical Care Belleville-Belleville, DaVita Metro East Dialysis Center-Belleville, DaVita Red Bud Dialysis Center-Red Bud, DaVita Sauget Dialysis Center-Sauget. Fresenius Belleville can easily accommodate the 13 current patients of the Waterloo facility if they so choose. For those who may choose a facility closer to their home, there are 3 facilities, owned by DaVita, operating at an average 48% utilization. Some patients, per their physician orders, will also be encouraged to try home dialysis modalities as an increasing number of patients are moving into home therapies. This falls in line with President Trump's executive order on advancing American Kidney Health.

The facility's patients are anticipated to choose to transfer to Fresenius Belleville, however some may choose an area DaVita facility that is closer to their homes. Medical records will be sent to the same facility the patient transfers to and will be maintained according to Fresenius' or DaVita's record retention policies. The leased space will be returned to the landlord and the equipment will be used in other Fresenius facilities if possible.

The Applicants stated:

*“The discontinuation of the Fresenius Waterloo facility will not have an adverse effect upon access to care for the residents in the Waterloo healthcare market/17-mile radius. Waterloo is in HSA X1 and as of the September 2019 State ESRD station inventory there is an excess of 16 stations in this HSA. As well, there are 4 other ESRD facilities within the radius with an average utilization of 52%. One is Fresenius Belleville and the other three are DaVita facilities. These four clinics can easily absorb the 13 patients at the Waterloo facility.”*

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<sup>3</sup> Per the 4<sup>th</sup> quarter HFSRB in-center hemodialysis facility patient census for 2014-2018 and June 30, 2019.

**TABLE ONE  
Facilities in the HSA XI Planning Area**

Facilities	Ownership	City	HSA	Stations	March	June
					Utilization	
Renal Care of Illinois	DaVita	Belleville	11	36	67.59%	64.35%
Granite City Dialysis	DaVita	Granite City	11	20	75.00%	76.67%
Sauget Dialysis	DaVita	Sauget	11	24	50.69%	50.00%
Alton Dialysis	DaVita	Alton	11	16	64.58%	63.54%
Maryville Dialysis- Renal Treatment	DaVita	Maryville	11	14	66.67%	72.62%
Edwardsville Dialysis	DaVita	Edwardsville	11	8	58.33%	60.42%
Shiloh Dialysis	DaVita	Shiloh	11	12	84.72%	80.56%
O'Fallon Dialysis	DaVita	O'Fallon	11	12	62.50%	61.11%
DaVita Collinsville Dialysis	DaVita	Collinsville	11	8	33.33%	31.25%
DaVita Edgemont Dialysis	DaVita	East St. Louis	11	12	9.72%	29.17%
DaVita FoxPoint Dialysis	DaVita	Granite City	11	12	15.28%	19.44%
DaVita Northgrove Dialysis	DaVita	Highland	11	12	0.00%	0.00%
Fresenius Medical Care Southwestern Illinois	Fresenius	East Alton	11	19	68.42%	70.18%
Fresenius Medical Care Regency Park	Fresenius	O'Fallon	11	20	65.00%	61.67%
Fresenius Medical Care Breese	Fresenius	Breese	11	8	64.58%	72.92%
Fresenius Medical Care Waterloo	Fresenius	Waterloo	11	6	36.11%	36.11%
Fresenius Medical Care Belleville	Fresenius	Belleville	11	12	56.94%	59.72%
Fresenius Medical Care Madison County	Fresenius	Granite City	11	9	0.00%	0.00%

Impact letters were sent facilities within the 17-mile GSA. **Note:** The Board Staff informed the Applicants that the impact letters need only be sent to ESRD facilities within the GSA and not the 18 facilities in the HSA. The Statute states “*that data and information requests shall not impose undue paperwork burdens on health care facilities and personnel.*” 20 ILCS 3960/13

## VII. **Safety Net Impact Statement**

The Applicants stated the following:

*“The discontinuation of Fresenius Medical Care Waterloo will not have any impact on safety net services in the Waterloo area of Monroe County in HSA 11. Outpatient dialysis services are not typically considered "safety net" services, however, we do provide care for patients in the community who are economically challenged and/or who are undocumented who do not qualify for Medicare/Medicaid and qualify under FMCNA's Indigent Waiver policy. We assist patients who do not have insurance in enrolling when possible in Medicare, Medicaid or insurance on the Healthcare Marketplace. Also, our social services department assists patients who have issues regarding transportation and/or mobility needs with making arrangement for transport to and from the unit. Since it is anticipated that all patients will choose to transfer to area Fresenius clinics, patients will maintain access to these services. Those who choose an area DaVita facility are anticipated to find they have similar policies. This application will not have an impact on any other safety net provider in the area, as no hospital within the area provides dialysis services on an outpatient basis. Fresenius Medical Care North America is a for-profit publicly traded company and is not required to provide charity care, nor does it do so according to the CON Board's definition. However, Fresenius Kidney Care provides care to patients who do not qualify for any type of coverage for dialysis services. These patients are considered "self-pay" patients. They are billed for services rendered, and after three statement reminders the charges are evaluated to determine if criteria have been met for bad debt. Collection actions are not initiated unless the applicants are aware that the patient has substantial financial resources available and/or the patient has received reimbursement from an insurer for services we have rendered and has not submitted the payment for same to the applicants. Fresenius notes that as a for profit entity, it does pay sales, real estate and income taxes. It also does provide community benefit by supporting various medical education activities and associations, such as the Renal Network and National Kidney Foundation.”*

Charity (self-pay) and Medicaid Information for the Fresenius Illinois Facilities is provided in the Table below.

**TABLE TWO**  
**Fresenius Medical Care Holding Inc.**  
**Illinois Facilities**  
**Charity (self-pay) and Medicaid Information**

	<b>2016</b>	<b>2017</b>	<b>2018</b>
<b>Net Revenue</b>	<b>\$449,611,411</b>	<b>\$460,678,799</b>	<b>\$436,811,409</b>
<b>CHARITY</b>			
Charity (# of self-pay patients)	233	280	294
Charity (self-pay) Cost	\$3,269,127	\$4,598,897	5,295,686
% of Charity Care to Net Rev.	0.72%	.98%	1.21%
<b>MEDICAID</b>			
Medicaid (Patients)	396	320	328
Medicaid (Revenue)	\$7,310,484	\$4383383	\$6,630,014
% of Medicaid to Net Revenue	0.97%	1.43%	1.52%

1. As a for-profit corporation Fresenius does not provide charity care per the Board's definition. Numbers reported are self-pay. Self-pay balances are written off to bad debt. Medicare may reimburse a portion of bad debt as part of cost reporting.

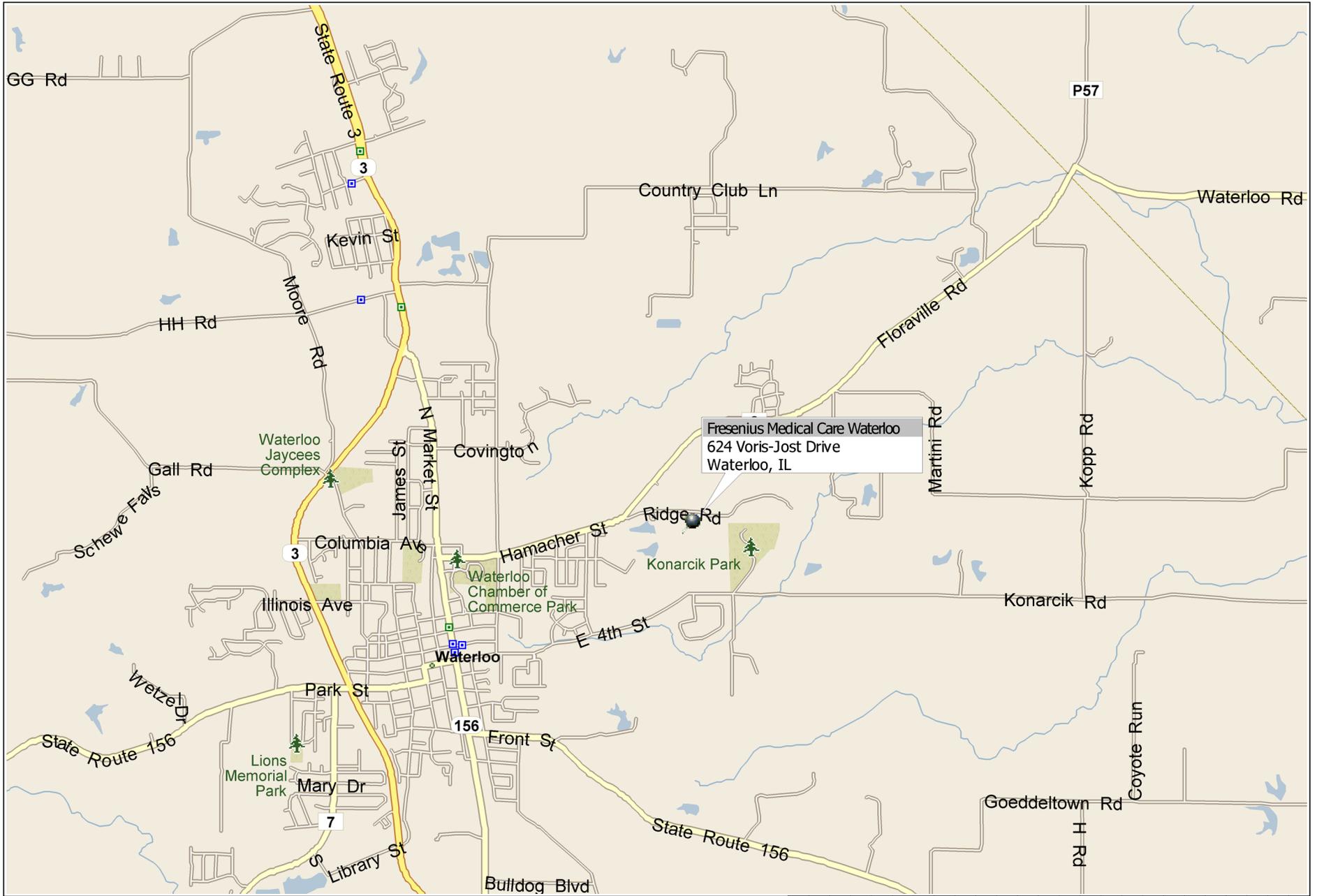
## VIII. Statute

### Health Facilities Planning Act (20 ILCS 3960/8.7)

Application for permit for discontinuation of a health care facility or category of service; public notice and public hearing.

- (a) Upon a finding that an application to close a health care facility or discontinue a category of service is complete, the State Board shall publish a legal notice on 3 consecutive days in a newspaper of general circulation in the area or community to be affected and afford the public an opportunity to request a hearing. If the application is for a facility located in a Metropolitan Statistical Area, an additional legal notice shall be published in a newspaper of limited circulation, if one exists, in the area in which the facility is located. If the newspaper of limited circulation is published on 3 consecutive days. The legal notice shall also be posted on the Health Facilities and Services Review Board's website and sent to the State Representative and State Senator of the district in which the health care facility is located. In addition, the health care facility shall provide notice of closure to the local media that the health care facility would routinely notify about facility events.
- (b) No later than 30 days after issuance of a permit to close a health care facility or discontinue a category of service, the permit holder shall give written notice of the closure or discontinuation to the State Senator and State Representative serving the legislative district in which the health care facility is located.
- (c) If there is a pending lawsuit that challenges an application to discontinue a health care facility that either names the Board as a party or alleges fraud in the filing of the application, the Board may defer action on the application for up to 6 months after the date of the initial deferral of the application.
- (d) The changes made to this Section by this amendatory Act of the 101st General Assembly shall apply to all applications submitted after the effective date of this amendatory Act of the 101st General Assembly.

# 19-047 Fresenius Medical Care Waterloo- Waterloo



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