



STATE OF ILLINOIS
HEALTH FACILITIES AND SERVICES REVIEW BOARD

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DOCKET ITEM: C-07	BOARD MEETING: September 17, 2019	EXEMPTION NUMBER: E-037-19
EXEMPTION APPLICANT(S): Fresenius Medical Care West Metro. LLC, WSKC Dialysis Services, Inc. Fresenius Medical Care Holdings, Inc.		
FACILITY NAME and LOCATION: WSKC Dialysis Services. Inc. d/b/a Fresenius Medical Care West Metro, Chicago		

PROJECT DESCRIPTION: The Applicants (Fresenius Medical Care West Metro. LLC, WSKC Dialysis Services, Inc. Fresenius Medical Care Holdings, Inc.) propose a change of ownership of a 12-station ESRD facility. The expected completion date is January 31, 2020.

Health Facilities Planning Act (20 ILCS 3960/6)

(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 and discontinuation of a category of service.*

The Applicants have provided all the information required by the State Board.

STATE BOARD STAFF FINDS THE EXEMPTION FOR CHANGE OF OWNERSHIP IN CONFORMANCE WITH CRITERIA (77 ILAC 1130.500 & 77 ILAC 1130.520)

STATE BOARD STAFF REPORT
CHANGE OF OWNERSHIP EXEMPTION REQUEST

I. The Exemption Application

The Fresenius Medical Care West Metro facility is a certified entity that is owned by WSKC Dialysis Services, Inc. which is a subsidiary of Fresenius Medical Care Holdings, Inc. The assets of the facility will be transferred to Fresenius Medical Care West Metro, LLC. This is an internal transfer of assets only. The Fair Market Value of the Assets to be transferred is \$85,000. The owner of the site is Norwegian American Hospital. Upon approval the name of the facility will be changed to Fresenius Kidney Care West Metro.

This transaction is considered a related party transaction¹. A related person" means any person that:

- *is at least 50% owned, directly or indirectly, by either the health care facility or a person owning, directly or indirectly, at least 50% of the health care facility; or*
- *owns, directly or indirectly, at least 50% of the health care facility; or [20 ILCS 3960/3]*
- *is otherwise controlled or managed by one or more health care facilities or controls or manages the health care facility; or*
- *otherwise controls or manages the health care facility; or is otherwise, directly or indirectly, under common management or control with one or more health care facilities.*

This change of ownership exemption is before the State Board because the transaction is a change of ownership of a health care facility resulting in a change in the operating entity. End Stage Dialysis Facilities² are not licensed by the Illinois Department of Public Health but are certified entities by the Centers for Medicare and Medicaid Services.

There was no request for a public hearing. No letters of support or opposition were received by the State Board.

¹ 20 ILCS 3960/8.5 Certificate of exemption for change of ownership of a health care facility; for purposes of this Section, a change of ownership among related persons means a transaction where the parties to the transaction are under common control or ownership before and after the transaction is completed.

² The Health Facilities Planning Act states: "Health care facilities" means and includes the following facilities, organizations, and related persons 5)Kidney disease treatment centers, including a free-standing hemodialysis unit required to meet the requirements of 42 CFR 494 in order to be certified for participation in Medicare and Medicaid under Titles XVIII and XIX of the federal Social Security Act.

(A) This Act does not apply to a dialysis facility that provides only dialysis training, support, and related services to individuals with end stage renal disease who have elected to receive home dialysis.

(B) This Act does not apply to a dialysis unit located in a licensed nursing home that offers or provides dialysis-related services to residents with end stage renal disease who have elected to receive home dialysis within the nursing home.

(C) The Board, however, may require dialysis facilities and licensed nursing homes under items (A) and (B) of this subsection to report statistical information on a quarterly basis to the Board to be used by the Board to conduct analyses on the need for proposed kidney disease treatment centers.

II. General Information

The Applicants are Fresenius Medical Care West Metro, LLC, WSKC Dialysis Services, Inc. and Fresenius Medical Care Holdings, Inc. Fresenius Medical Care Holdings, Inc., operating as Fresenius Medical Care North America or FMCNA, operates a network of some 2,100 dialysis clinics located throughout the continent. One of the largest providers of kidney dialysis services, FMCNA offers outpatient and in-home hemodialysis treatments for chronic kidney disease. The company's operating units also market and sell dialysis machines and related equipment and provide renal research, laboratory, and patient support services. FMCNA oversees the North American operations of Fresenius Medical Care AG & Co.

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The facility will maintain Fresenius Kidney Care quality control mechanisms. According to the Applicants Fresenius's Quality Assessment and Performance Improvement (QAI) Program encompasses all aspects of patient care, including in-center, home hemodialysis, home peritoneal dialysis and self-care, as well as support services to provide that care. The Applicants report Fresenius Kidney Care's quality outcomes are above standard, and it is expected the quality of Fresenius Kidney Care West Metro will continue to be so as well. There will be no change in the Governing Body that will consist of the Director of Operations, the Medical Director, the Clinical Manager, and the Regional Vice President.

III. Charity Care and Medicaid Information

As a for-profit corporation Fresenius does not provide charity care per the Board's definition.³ 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.

TABLE ONE ⁽¹⁾			
SAFETY NET INFORMATION			
Fresenius Medical Care Facilities in Illinois			
	2015	2016	2017
Net Revenue	\$438,247,352	\$449,611,441	\$460,678,799
CHARITY			
Charity (# of self-pay patients)	195	233	280
Charity (self-pay) Cost	\$3,204,986	\$3,269,127	\$4,552,654

³ "Charity Care" means care provided by a health care facility for which the provider does not expect to receive payment from the patient or a third-party payer. [20 ILCS 3960/3]

TABLE ONE ⁽¹⁾			
SAFETY NET INFORMATION			
Fresenius Medical Care Facilities in Illinois			
	2015	2016	2017
Net Revenue	\$438,247,352	\$449,611,441	\$460,678,799
% of Charity Care to Net Rev.	0.68%	.072%	.098%
MEDICAID			
Medicaid (Patients)	396	320	328
Medicaid (Revenue)	\$7,310,484	\$4,383,383	\$6,630,014
% of Medicaid to Net Revenue	1.67%	.097%	1.43%
<p>1. Source: Pages 67-69 of the Application for Permit.</p> <p>2. Charity Care is defined by the State Board as care provided by a health care facility for which the provider does not expect to receive payment from the patient or a third-party payer. [20 ILCS 3960/3]. As a for profit entity Fresenius Medical Care does not provide charity care the numbers reported are for self-pay patients.</p> <p>Note: Medicaid reported numbers are impacted by many patients who switch from Medicaid to Medicaid Risk Insurance (managed care plan) which pays similar to Medicaid. These patients are reported under commercial insurance however, in 2016 of our commercial patients we had 1,230 Medicaid Risk patients with Revenues of \$22,664,352.</p>			

IV. 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.”

The State Board’s rule (77 ILAC 1130.500 & 77 ILAC 1130.520) specifies the requirements necessary for a change of ownership exemption application to be filed with the State Board. The State Board may, by rule, delegate authority to the Chairman to grant permits or exemptions when applications meet all the State Board's review criteria and are unopposed [20 ILCS 3960/5].

An exemption shall be approved when information required by the Board by rule is submitted [20 ILCS 3960/6].

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

- a) Submission of Application for Exemption
Prior to acquiring or entering into a contract to acquire an existing health care facility, a person shall submit an application for exemption to HFSRB, submit the required application-processing fee (see Section 1130.230) and receive approval from HFSRB.
- b) Application for Exemption

The application for exemption is subject to approval under Section 1130.560 and shall include the information required by Section 1130.500 and the following information:

- 1) *Key terms of the transaction*, including the:
 - A) *names of the parties*;
 - B) *background of the parties*, which shall include proof that the applicant is fit, willing, able, and has the qualifications, background and character to adequately provide a proper standard of health service for the community by certifying that no adverse action has been taken against the applicant by the federal government, licensing or certifying bodies, or any other agency of the State of Illinois against any health care facility owned or operated by the applicant, directly or indirectly, within three years preceding the filing of the application;
 - C) *structure of the transaction*;
 - D) *name of the person who will be the licensed or certified entity after the transaction*;
 - E) *list of the ownership or membership interests in such licensed or certified entity both prior to and after the transaction*, including a description of the applicant's organizational structure with a listing of controlling or subsidiary persons;
 - F) *fair market value of assets to be transferred*; and
 - G) *the purchase price or other forms of consideration to be provided for those assets.* [20 ILCS 3960/8.5(a)]

HFSRB NOTE: If the transaction is not completed according to the key terms submitted in the exemption application, a new application is required.

- 2) affirmation that any projects for which permits have been issued have been completed or will be completed or altered in accordance with the provisions of this Section;
- 3) if the ownership change is for a hospital, affirmation that the facility will not adopt a more restrictive charity care policy than the policy that was in effect one year prior to the transaction. The hospital must provide

affirmation that the compliant charity care policy will remain in effect for a two-year period following the change of ownership transaction;

- 4) a statement as to the anticipated benefits of the proposed changes in ownership to the community;
- 5) the anticipated or potential cost savings, if any, that will result for the community and the facility because of the change in ownership;
- 6) a description of the facility's quality improvement program mechanism that will be utilized to assure quality control;
- 7) a description of the selection process that the acquiring entity will use to select the facility's governing body;
- 8) a statement that the applicant has prepared a written response addressing the review criteria contained in 77 Ill. Adm. Code 1110.240 and that the response is available for public review on the premises of the health care facility; and
- 9) a description or summary of any proposed changes to the scope of services or levels of care currently provided at the facility that are anticipated to occur within 24 months after acquisition.

c) **Application for Exemption Among Related Persons**

When a change of ownership is among related persons, and there are no other changes being proposed at the health care facility that would otherwise require a permit or exemption under the Act, the applicant shall submit an application consisting of a standard notice in a form set forth by the Board briefly explaining the reasons for the proposed change of ownership. [20 ILCS 3960/8.5(a)]

d) **Opportunity for Public Hearing**

Upon a finding by HFSRB staff that an application for a change of ownership is complete, the State Board staff 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 a daily basis, the additional legal notice shall be published on 3 consecutive days. The applicant shall pay the cost incurred by the Board in publishing the change of ownership notice in the newspaper as required under this subsection. The legal notice shall also be posted on Health Facilities and Services Review Board web site and sent to the State Representative and State Senator of the district in which

the health care facility is located. [20 ILCS 3960/8.5(a)] This legal notice shall provide the following:

- 1) Name of applicants and addresses;
 - 2) Name of facility and address;
 - 3) Description of the proposed project and estimated total cost;
 - 4) Notice of request for public hearing;
 - 5) Notice of tentative HFSRB meeting and location; and
 - 6) Notice of tentative release of the State Board Staff Report and the time to comment on the State Board Staff Report. See HFSRB website (www.hfsrb.illinois.gov).
- e) Completion of Projects with Outstanding Permits
- 1) A permit or exemption cannot be transferred.
 - 2) *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. (see 20 ILCS 3960/6(b).)*
 - 3) If the requirements of this subsection (e) are not met, any outstanding permit will be considered a transfer of the permit and results in the permit being null and void.

E-037-19 Fresenius Medical Care West Metro - Chicago

