

<b>DOCKET NO:</b> B -	<b>BOARD MEETING:</b> August 12-13,2008	<b>PROJECT NO:</b> 07-117	<b>PROJECT COST:</b> Original: \$2,420,395 Current:
<b>FACILITY NAME:</b> Fresenius Medical Care of Zion		<b>CITY:</b> Zion	
<b>TYPE OF PROJECT:</b> Non-Substantive			<b>HSA:</b> VIII

The applicants propose to establish a 10-station end stage renal disease (“ESRD”) facility in 6,900 gross square feet (“GSF”). The total estimated project cost is \$2,420,395.

The State Agency notes the applicants requested a deferral of this project at the October 2007 meeting. The applicants stated that additional information would be submitted to address the concerns and issues of the State Board. Subsequently, the project was scheduled for the January 2008 meeting. The State Board deferred this project at the January 2008 meeting (per 77 IAC 1130.655(e)) in order to review the supplemental material submitted by the applicants on January 7, 2008.

The project was reconsidered by the State Board at its February 2008 meeting. At this meeting, the applicants were issued an “Intent-to-Deny”. The applicants submitted additional information, received by the State Agency March 26, 2008, to address the State Board’s concerns. The applicants subsequently deferred the project until the August 2008 State Board Meeting.

The original State Agency Report (“OSAR”) and the supplemental State Agency Report (“SSAR”) indicated 23 criteria were reviewed by the State Agency. Of these criteria, four were determined to be not applicable. From the remaining 19 criteria, the State Agency determined the applicants met 13 criteria. The following six criteria were not met:

- 1110.1430(c) - Variance to Station Need
- 1110.230(a) - Location
- 1110.230(c) - Alternatives
- 1110.230(d) - Need for the Project
- 1110.230(e) - Size of the Project
- 1120.210(a) - Financial Feasibility

A review of the applicants’ most recent supplemental information indicates that the State Agency continues to have negative findings on the above-referenced criteria.

**SECOND SUPPLEMENTAL  
STATE AGENCY REPORT**

Fresenius Medical Care of Zion  
Project #07-117

<b>APPLICATION SUMMARY</b>	
Applicants	Fresenius Medical Care of Illinois, LLC, d/b/a Fresenius Medical Care of Zion, National Medical Care, Inc. and Fresenius Medical Care Holdings, Inc.
Facility Name	Fresenius Medical Care of Zion
Location	Zion, Illinois
Application Received	July 30, 2007
Application Deemed Complete	August 13, 2007
Scheduled Review Period Ended	October 12, 2007
Review Period Extended by the State Agency?	No
Public Hearing Requested?	No
Applicants' Deferred Project?	Yes
Can Applicants Request Another Deferral?	No
Applicants' Modified the Project?	No

**I. The Proposed Project**

The applicants propose to establish an ESRD facility to be known as Fresenius Medical Care of Zion, consisting of 10 stations in 6,900 GSF of leased space. The total estimated project cost is \$2,420,395.

**II. Summary of Findings**

- A. The State Agency finds the proposed project does **not** appear to be in conformance with the provisions of Part 1110.
- B. The State Agency finds the proposed project does **not** appear to be in conformance with the provisions of Part 1120.

**III. General Information**

The applicants are Fresenius Medical Care of Illinois, LLC, d/b/a Fresenius Medical Care of Zion, National Medical Care, Inc. and Fresenius Medical Care Holdings, Inc. The applicants propose to establish a 10-station ESRD facility in 6,900 GSF. The total estimated project cost is \$2,420,395.

The proposed facility will be located at the northwest corner of Rt. 173 and Garnett Ave., Zion (Lake County) in the HSA VIII ESRD planning area. There are 18 ESRD facilities within the planning area and three facilities within a 30-minute travel time of the proposed site. The June 2008 update to the Inventory of Healthcare Facilities and Services and Need Determination ("Inventory") shows a computed excess of 11 stations in the planning area.

This is a non-substantive project that is subject to both a Part 1110 and Part 1120 review. An opportunity for a public hearing was offered on this project. No hearing was requested, however. In addition, no written comments were received by the State Agency. Project obligation will occur after permit issuance. The anticipated project completion date is April 30, 2009.

**IV. The Proposed Project - Details**

The applicants propose to establish a 10-station ESRD facility in 6,900 GSF of leased space. The current owner of the site is Najib Kandu. Fresenius Medical Care of Zion will be the operating entity/licensee.

As noted, the applicants deferred consideration of the project at the October 2007 State Board meeting. In addition, the State Board deferred this project at the January 2008 meeting. The applicants submitted supplemental information in January 2008 to address the issues and concerns raised by the State Board. Finally, the project was reconsidered at the February 2008 Board Meeting where the applicants received an "Intent to Deny". In this supplemental State Agency Report ("Second SSAR"), only those criteria that received a negative finding will be addressed.

**V. Project Costs and Sources of Funds**

The total project cost is \$2,420,395 and includes \$1,281,000 that represents the fair market value ("FMV") of the space and equipment being leased. The applicants will fund all remaining costs from cash and securities. Table One displays the project's cost information.

<b>TABLE ONE</b>	
<b>Use of Funds</b>	<b>Amount</b>
Modernization Contracts	814,200
Contingencies	81,420

<b>TABLE ONE</b>	
<b>Use of Funds</b>	<b>Amount</b>
Architectural/Engineering Costs	73,775
Movable or Other Equipment	170,000
FMV of Leased Space	1,130,000
FMV of Leased Equipment	151,000
<b>Total</b>	<b>\$2,420,395</b>
<b>Sources of Funds</b>	<b>Amount</b>
Cash and Securities	1,139,395
FMV - Leased Space and Equipment	1,281,000
<b>Total</b>	<b>\$2,420,395</b>

**VI. Review Criteria -End Stage Renal Disease**

A. Criterion 1110.1430(c) - Variance to Station Need

The criterion states:

“An applicant proposing to establish a renal dialysis facility or to add stations when no need for additional stations exists in the planning area must document one of the following:

- 1) a new facility will improve access in a geographic area that is within 30 minutes travel time of the proposed facility site as evidenced by documentation that verifies:
  - A) all existing renal dialysis facilities in the area are operating at or in excess of the target utilization level for the latest 12 month period for which data is available; and
  - B) a sufficient number of patients is experiencing an access problem to justify the proposed number of stations at the minimum utilization level detailed in 77 Ill. Adm. Code 1100; and
  - C) the caseload at all existing renal dialysis facilities in the area will not be adversely affected; or
- 2) additional stations are needed to reduce high utilization of an existing facility as evidenced by documentation that verifies that the number of proposed stations will reduce the facility’s experienced utilization level for the latest 12 month period for

which data is available to the minimum utilization level detailed in 77 Ill. Adm. Code 1100.”

The OSAR

The applicants propose to establish a 10-station facility. Based upon the December 2007 Inventory update, there is a computed excess of 11 stations in the planning area.

Seven facilities were identified within a 30-minute travel time of the proposed facility, subsequent to a verification of distance and time data using MapQuest. Table Two displays distance, travel time, number of stations and utilization for these seven facilities. The State Agency notes station information was obtained from the Inventory while utilization data was received from The Renal Network (third quarter 2007).

TABLE TWO							
Facility	City	Ownership	Distance <sup>(1)</sup> (miles)	Travel Time <sup>(1)</sup> (minutes)	Stations	Patients <sup>(2)</sup>	Utilization <sup>(2)</sup>
<b>Fresenius Gurnee</b>	Gurnee	Fresenius	<b>9.0</b>	<b>15</b>	<b>14</b>	<b>78</b>	<b>94.5%</b>
<b>DSI - Waukegan</b>	Waukegan	DSI	<b>8.2</b>	<b>15</b>	<b>22</b>	<b>91</b>	<b>69.7%</b>
<b>Fresenius Antioch</b>	Antioch	Fresenius	<b>11.5</b>	<b>16</b>	<b>12</b>	<b>16</b>	<b>26.4%</b>
DaVita - Lake Villa	Lake Villa	DaVita	16.1	22	12	29	44.4%
<b>Fresenius Lake Bluff</b>	Lake Bluff	Fresenius	<b>14.4</b>	<b>23</b>	<b>16</b>	<b>46</b>	<b>53.1%</b>
DaVita- Lake County	Libertyville	DaVita	18.3	27	16	57	56.3%
Fresenius Round Lake	Round Lake	Fresenius	18.3	29	16	80	85.4%
(1) Map Quest (2) The Renal Network - Second Quarter 2007 (3) Bolded facilities identified by the applicants as being within 30 minutes travel time based upon their travel studies.							

The applicants provided a list of travel times to the proposed site from area ESRD facilities based upon several mapping services. In addition, the applicants provided a travel study conducted by a consultant; Land Strategies, Inc. Travel was conducted at different times of the day, using various routes to and from the various sites to replicate the different driving routes and driving behaviors of patients. An average travel time for each site was determined based upon the studies performed (see application p. 121). The applicants identified four facilities within a 30-minute travel time of the proposed site. The four facilities identified by the applicants have been bolded in Table Two.

As shown in Table Two only two of the seven facilities are currently meeting the State utilization rate of 80%. Should the State Board concur with the applicants' travel assessment, thereby excluding three of the seven facilities from the

*evaluation of this project, there are still three providers (Fresenius Antioch, Fresenius Lake Bluff and DSI Waukegan) within a 30-minute travel time of the proposed site which are not achieving the target utilization standard. Therefore, the applicants do not meet the requirements of subsection 1)A).*

*The applicants identify transportation challenges by the population as a significant access issue experienced by patients utilizing area facilities. The applicants indicate there is limited public transportation available to area residents. The applicants state Medicare does not cover public transportation for these services. The applicants note PACE transportation is only available for Medicaid patients. According to the applicants, "The PACE in Benton and Zion Township, where the patients for the Zion facility reside, will not transport patients to the facilities in Waukegan, Gurnee, Lake Bluff or Antioch." The reason cited by the applicants, is that PACE does not get reimbursed if they transport to these areas. Zion has been designated as an area with Medically Underserved Populations. The State Agency notes that HRSA Bureau of Health Professions defines Medically Underserved Populations as "groups of persons who face economic, cultural or linguistic barriers to health care, as determined by the Shortage Designation Branch in the Health Resources and Services Administration (HRSA) Bureau of Health Professions National Center for Health Workforce." The applicant refers to the difficulties this population encounters relating to affordable transportation. Finally, the applicants indicate another obstacle to accessibility for the target population is the high utilization at the Gurnee facility.*

*The high utilization of the Gurnee facility does not appear to be a compelling factor in support of access difficulties, due to the fact there are several area facilities with excess capacity as noted in Table Two. Though, it does appear the applicants have offered information that may indicate transportation is an obstacle to obtaining care for a segment of the target population. However, the applicants have not provided compelling evidence regarding the number of patients who would be utilizing public transportation to access care and that these numbers would justify the scope of services proposed. Therefore, the applicants do not meet the requirements of subsection 1)B).*

*The applicants indicate that of the 49 patients anticipated to utilize the proposed center in the first two years; only 12 are expected to transfer from another facility. The remaining 37 patients have been identified as pre-ESRD and are expected to begin their dialysis within the next two years. The 12 patients are to transfer from the Fresenius Gurnee clinic. This appears to be the only clinic that would be*

directly impacted by the proposed clinic. The applicants attest that the current caseload at Fresenius Gurnee is 83 patients and the facility is operating at 99%. Therefore, it appears the reduction in patient caseload at the Fresenius Gurnee facility will not reduce utilization below the 80% target rate. Therefore, the applicants have met the requirements of subsection 1)C).

The applicants have not met all the requirements of subsection 1; therefore, a positive finding cannot be made.

**The First SSAR**

The OSAR incorrectly identified the source of utilization data as second quarter 2007 in Table Two. The information displayed in Table Two of the OSAR was provided by The Renal Network for third quarter 2007. Table Two (Supplemental) reflects this correction.

TABLE TWO(Supplemental)							
Facility	City	Ownership	Distance <sup>(1)</sup> (miles)	Travel Time <sup>(1)</sup> (minutes)	Stations	Patients <sup>(2)</sup>	Utilization <sup>(2)</sup>
<b>Fresenius Gurnee</b>	Gurnee	Fresenius	9.0	15	14	78	94.5%
<b>DSI - Waukegan</b>	Waukegan	DSI	8.2	15	22	91	69.7%
<b>Fresenius Antioch</b>	Antioch	Fresenius	11.5	16	12	16	26.4%
DaVita - Lake Villa	Lake Villa	DaVita	16.1	22	12	29	44.4%
<b>Fresenius Lake Bluff</b>	Lake Bluff	Fresenius	14.4	23	16	46	53.1%
DaVita- Lake County	Libertyville	DaVita	18.3	27	16	57	56.3%
Fresenius Round Lake	Round Lake	Fresenius	18.3	29	16	80	85.4%
1. Map Quest 2. The Renal Network - Third Quarter 2007 3. Bolded facilities identified by the applicants as being within 30 minutes travel time based upon their travel studies.							

The applicants did not supply additional information to address this criterion. As a result, the finding remains unchanged.

**The Second SSAR**

The applicants note the proposed facility does not have an official address; therefore, it is not reflected in Map Quest calculations. Thus, the applicants supplied a revised travel distance table using an address (1516 21<sup>st</sup> Street), which they indicate maps to the same location. Table Two (Second Supplemental) displays these revised travel time figures along with updated first quarter 2008 utilization statistics from the Renal Network.

TABLE TWO (Second Supplemental )

Facility	City	Ownership	Distance <sup>(1)</sup> (miles)	Travel Time <sup>(1)</sup> (minutes)	Stations	Patients <sup>(2)</sup>	Utilization <sup>(2)</sup>
<b>DSI - Waukegan</b>	<b>Waukegan</b>	<b>DSI</b>	<b>7.5</b>	<b>16</b>	<b>22</b>	<b>97</b>	<b>72.7%</b>
<b>Fresenius Gurnee</b>	<b>Gurnee</b>	<b>Fresenius</b>	<b>10.5</b>	<b>19</b>	<b>14</b>	<b>76</b>	<b>90.5%</b>
<b>Fresenius Antioch</b>	<b>Antioch</b>	<b>Fresenius</b>	<b>14.8</b>	<b>22</b>	<b>12</b>	<b>25</b>	<b>34.7%</b>

1. Map Quest updated July 15, 2008  
 2. The Renal Network - First Quarter 2008  
 3. Bolded facilities identified by the applicants as being within 30 minutes travel time based upon their travel studies.

This updated information reveals three facilities within a 30-minute travel time of the proposed center. Therefore, the applicants do not meet the requirements of Subsection 1)A).

The applicants refer to the need for the facility at the proposed location, because Zion has been identified as a Federally Designated Medically Underserved Population. The applicants attest that 42% of the Zion area patients are on Medicaid. Although the applicants acknowledge that Medicaid pays for transportation, they note these services are limited. The applicants' state service is not offered between Zion and Lake Bluff and there is no direct transportation to Antioch. According to the applicants, "Bringing a dialysis facility to Zion would allow the 42% of Medicaid patients identified free transportation to and from treatment, three days per week, taking this burden off of the patient and family."

Based upon a review of the additional information provided, it appears that some Medicaid patients may be experiencing difficulties accessing dialysis services. However, the number of Medicaid patients affected has not been quantified, since it is unclear what portion of the Medicaid patient population is facing barriers to transportation. The applicants submitted a letter from a social worker, dated March 20, 2008, identifying difficulties encountered with Medicaid transportation providers, including unwillingness to drive to Antioch, to drive patients home after a third shift treatment, and to drive on Saturdays. The letter did note that one provider "might consider driving from Zion to Antioch", but there was no further elaboration. It was also noted that PACE-ADA and Dial-A-Ride bus services limit accessibility, because there is no direct service from Zion to Antioch.

Subsection 1)B) of this criterion states evidence of the number of patients experiencing an access problem must be provided to justify the number of stations proposed. Although there may be barriers to transportation for some Medicaid patients, it is unclear regarding the number of patients directly impacted. Even if all the Medicaid patients (42% of the anticipated patient population) were experiencing accessibility issues related to transportation, this volume would not support a ten station center at an 80% utilization rate. Thus, the applicants have not met all the requirements of Subsection and as a result, a negative finding remains.

THE STATE AGENCY FINDS THE PROPOSED PROJECT DOES **NOT** APPEAR TO BE IN CONFORMANCE WITH THE VARIANCE TO STATION NEED CRITERION.

## VII. General Review Criteria

### A. Criterion 1110.230(a) - Location

The criterion states:

“An applicant who proposes to establish a new health care facility or a new category of service or who proposes to acquire major medical equipment that is not located in a health care facility and that is not being acquired by or on behalf of a health care facility must document the following:

- 1) that the primary purpose of the proposed project will be to provide care to the residents of the planning area in which the proposed project will be physically located. Documentation for existing facilities shall include patient origin information for all admissions for the last 12 months. Patient origin information must be presented by zip code and be based upon the patient's legal residence other than a health care facility for the last six months immediately prior to admission. For all other projects for which referrals are required to support the project, patient origin information for the referrals is required. Each referral letter must contain a certification by the health care worker physician that the representations contained therein are true and correct. A complete set of the referral letters with original notarized signatures must accompany the application for permit.

- 2) that the location selected for a proposed project will not create a maldistribution of beds and services. Maldistribution is typified by such factors as: a ratio of beds to population (population will be based upon the most recent census data by zip code), within 30 minutes travel time under normal driving conditions of the proposed facility, which exceeds one and one half times the State average; an average utilization rate for the last 12 months for the facilities providing the proposed services within 30 minutes travel time under normal driving conditions of the proposed project which is below the Board's target occupancy rate; or the lack of a sufficient population concentration in an area to support the proposed project."

### The OSAR

*The applicants provided a map, which details the service area of the facility (application page 58). The applicants also provided zip code locations for the patients who have been identified as pre-ESRD who are expected to begin treatment at the proposed facility and those patients who intend to transfer from Fresenius Medical Care of Gurnee. It appears that all the zip codes identified are within 30 minutes travel time of the new facility. Thus, it appears the new facility will serve the residents in the proposed service area.*

*As previously referenced, the applicants have identified four facilities within a 30-minute travel time of the proposed clinic. Table Two shows three of these facilities are currently operating below the State standard of 80%.*

*In summary, considering information provided by the applicants, it appears the project will serve the residents in the planning area. However, it appears there are several facilities within a 30-minute travel time with excess capacity. Thus, a positive finding cannot be made.*

### The First SSAR

*The supplemental materials submitted by the applicants did not address this criterion. As a result, a negative finding is still made.*

### The Second SSAR

As previously noted, it still appears there is excess capacity at two facilities in the area that could accommodate additional volume. Thus, a positive finding cannot be made.

THE STATE AGENCY FINDS THE PROPOSED PROJECT DOES **NOT** APPEAR TO BE IN CONFORMANCE WITH THE LOCATION CRITERION.

B. Criterion 1110.230(c) - Alternatives

The criterion states:

“The applicant must document that the proposed project is the most effective or least costly alternative. Documentation shall consist of a comparison of the proposed project to alternative options. Such a comparison must address issues of cost, patient access, quality, and financial benefits in both the short and long term. If the alternative selected is based solely or in part on improved quality of care, the applicant shall provide empirical evidence including quantifiable outcome data that verifies improved quality of care. Alternatives must include, but are not limited to: purchase of equipment, leasing or utilization (by contract or agreement) of other facilities, development of freestanding settings for service and alternate settings within the facility.”

The OSAR

*The applicants considered the following options:*

1. *Proposed Project*

*The applicants indicate this option was selected, because Zion has been designated as a Medically Underserved Population. According to the applicants, “PACE (the public transportation service would serve Zion and surrounding residents) does not transport individuals from Zion to the cities in the area where other existing dialysis clinics are located.” The applicants note the other area clinics are located on the perimeter of 30 minutes travel time. Further, the applicants indicate that the 12 patients that are expected to transfer to the proposed clinic would have to change physicians if the proposed facility was not established. The applicants note*

*the importance of the physician/patient relationship. The project cost as proposed for this option is \$2,420,395*

2. *Do Nothing*

*The applicants rejected this option, because they believe this would not improve access to the medically underserved population in the area. As previously referenced, the applicants contend this option would not address transportation hardships for this population. In addition, the applicants note the DSI Waukegan clinic is operating at 72% occupancy; therefore, this facility would be unable to accommodate the full caseload of pre-dialysis patients that are expected to utilize the proposed facility. Finally, the applicants indicate this option would not help alleviate the overutilization in the Gurnee clinic.*

*Based on the most recent data available, it appears several existing providers within a 30-minute travel time have excess capacity that could be utilized by the patients identified by the applicants. Thus, it appears a more appropriate alternative would be to utilize these facilities. As a result, a positive finding cannot be made.*

**The First SSAR**

*The applicants did not provide additional information in reference to this criterion. The finding remains unchanged.*

**The Second SSAR**

No additional information was provided by the applicants to address this criterion. As a result, the negative finding remains.

THE STATE AGENCY FINDS THE PROPOSED PROJECT DOES **NOT** APPEAR TO BE IN CONFORMANCE WITH THE ALTERNATIVE CRITERION.

C. Criterion 1110.230(d) - Need for the Project

The criterion states:

- “1) If the State Board has determined need pursuant to Part 1100, the proposed project shall not exceed additional need determined unless the applicant meets the criterion for a variance.
- 2) If the State Board has not determined need pursuant to Part 1100, the applicant must document that it will serve a population group in need of the services proposed and that insufficient service exists to meet the need. Documentation shall include but not be limited to:
  - A) area studies (which evaluate population trends and service use factors);
  - B) calculation of need based upon models of estimating need for the service (all assumptions of the model and mathematical calculations must be included);
  - C) historical high utilization of other area providers; and
  - D) identification of individuals likely to use the project.
- 3) If the project is for the acquisition of major medical equipment that does not result in the establishment of a category of service, the applicant must document that the equipment will achieve or exceed any applicable target utilization levels specified in Appendix B within 12 months after acquisition. “

### The OSAR

*According to the December 2007 Inventory update, there is a computed excess of 11 dialysis stations in the HSA VIII planning area. The applicants' project need for additional dialysis stations that exceeds the number projected for the planning area. In order to establish a dialysis facility when insufficient need for the number of proposed additional stations exists in the planning area, an applicant must address a variance. The State Agency reviewed the applicants' response and finds the requirements for a variance have not been met.*

### The First SSAR

*According to the January 2008 Inventory update, there remains a computed excess of 11 dialysis stations in the HSA VIII planning area. A variance must be addressed when insufficient need for the number of proposed additional stations exists in the planning area. As previously referenced, the applicants did not submit additional information to support the variance. Therefore, the negative finding from the OSAR does not change.*

The Second SSAR

The June 2008 update to the Inventory of Health Care Facilities and Services and Need Determinations indicates a computed excess of 11 dialysis stations still remains in the HSA VIII planning area. Since there is a computed excess of stations and since the applicants were not successful in addressing the variance to station need criterion, a negative finding remains for this criterion.

THE STATE AGENCY FINDS THE PROPOSED PROJECT DOES **NOT** APPEAR TO BE IN CONFORMANCE WITH THE NEED FOR THE PROJECT CRITERION.

D. Criterion 1110.230(e) - Size of the Project

The criterion states:

“The applicant must document that the size of a proposed project is appropriate.

- 1) The proposed project cannot exceed the norms for project size found in Appendix B of this Part unless the additional square footage beyond the norm can be justified by one of the following:
  - A) the proposed project requires additional space due to the scope of services provided;
  - B) the proposed project involves an existing facility where the facility design places impediments on the architectural design of the proposed project;
  - C) the proposed project involves the conversion of existing bed space and the excess square footage results from that conversion; or
  - D) the proposed project includes the addition of beds and the historical demand over the last five year period for private rooms has generated a need for conversion of multiple bed rooms to private usage.
- 2) When the State Board has established utilization targets for the beds or services proposed, the applicant must document that in the second year of operation the annual utilization of the beds or service will meet or exceed the target utilization. Documentation

shall include, but not be limited to, historical utilization trends, population growth, expansion of professional staff or programs (demonstrated by signed contracts with additional physicians) and the provision of new procedures which would increase utilization."

### The OSAR

*The applicants propose to establish a 10-station facility in 6,900 GSF. This equates to 690 GSF per station. This appears to be high compared to the State standard of 470 GSF. Under the standard, the applicants would be allowed 4,700 GSF for the facility.*

*The applicants indicate approximately 2,200 square feet will be allocated to office space, peritoneal dialysis training rooms and office space for peritoneal dialysis staff and other administrative staff. According to the applicants, this space would be the same for a 10 station clinic as it would be for a 12 or 14 station center. According to the applicants, "the non-direct patient care space (which constitutes 75%-80% of a facility's total) is distributed over fewer stations resulting in a higher square footage/station ratio". In addition, the applicants note the advantages of housing the peritoneal department at the same site as the hemodialysis clinic. When the 2,200 GSF is removed, the GSF allocated to the dialysis unit is 4,700 GSF. This revised amount equates to 470 GSF per station.*

*It appears the additional space designated for peritoneal services is required due to the scope of services to be provided. However, the 2,200 GSF is not exclusively dedicated to peritoneal dialysis services. The applicants have indicated some of this space will be shared with the hemodialysis clinic (administrative offices and staff training rooms). Therefore, it appears the space for the facility is in excess of the State standard.*

*According to the information submitted (application page 117), the applicants anticipate 49 patients will utilize the new facility by the end of the second year of operation (April 2011). This results in a utilization of 81.6%, which is above the State standard utilization target rate of 80% (see Table Three). Considering transfer and pre-dialysis patients have been documented through physician referral letters, it appears the number of stations proposed is appropriate. However, as previously referenced the GSF per station is in excess of the State standard for this service. Thus, a positive finding cannot be made.*

<b>TABLE THREE</b>				
<i>Facility's Anticipated Utilization</i>				
<b>Year</b>	<b>Stations</b>	<b>Expected Census</b>	<b>Annual Treatments (1)</b>	<b>Utilization (2)</b>
<i>April 2011</i>	<i>10</i>	<i>49</i>	<i>7,644</i>	<i>81.6%</i>
<small>Source: Data supplied by the applicants.            1 Assumes three dialysis treatments per week per patient.            2 Utilization determined by the stations, times three shifts per day, times six days per week of operation, times 52 weeks per year.</small>				

**The First SSAR**

*The applicant did not provide additional information to address the GSF per station for this project, which is in excess of the State standard. As a result, the finding remains the same.*

**The Second SSAR**

The applicants' most recent submittal (received March 26, 2008) to the State Agency did not provide new information to address the fact that the proposed GSF per station exceeds the State standard. Therefore, the negative finding remains the same.

THE STATE AGENCY FINDS THE PROPOSED PROJECT DOES **NOT** APPEAR TO BE IN CONFORMANCE WITH THE SIZE OF THE PROJECT REVIEW CRITERION.

**VIII. Review Criteria - Financial Feasibility**

A. Criterion 1120.210(a) - Financial Viability

The criterion states:

“If an applicant has not documented a bond rating of “A” or better (pursuant to Section 1120.120), then the applicant must address the review criteria in this Section.

a) Financial Viability--Review Criterion

1) Viability Ratios

Applicants (including co-applicants) must document compliance with viability ratio standards detailed in Appendix A of this Part or address a variance. Applicants must document compliance for the most recent three years

for which audited financial statements are available. For Category B applications, the applicant also must document compliance through the first full fiscal year after project completion or for the first full fiscal year when the project achieves or exceeds target utilization pursuant to 77 Ill. Adm. Code 1100, whichever is later, or address a variance.

- 2) Variance for Applications Not Meeting Ratios  
 Applicants not in compliance with any of the viability ratios must document that another organization, public or private, shall assume the legal responsibility to meet the debt obligations should the applicant default."

**The OSAR**

*The review criterion specifies that certain ratios be met as an indication of financial viability for applicants that do not have a bond rating of "A" or better.*

*According to the applicants, "Ratios provided are for Fresenius Medical Care, Holdings, Inc. Fresenius Medical Care of Illinois, LLC and National Medical Care, Inc. do not maintain audited financial statements. Fresenius Medical Care Holdings, Inc. is willing and able to provide financial support to National Medical Care, Inc. and hence Fresenius Medical Care of Illinois, LLC if necessary."*

*The applicants' financial ratio information is presented in Table Four.*

<b>TABLE FOUR</b>					
<b><i>Applicants' Financial Ratio Information</i></b>					
<b><i>Fresenius Medical Care Holdings, Inc.</i></b>					
<b>Ratio</b>	<b>State Standard</b>	<b>Historical</b>			<b>Projected</b>
		<b>2004</b>	<b>2005</b>	<b>2006</b>	
<i>Current Ratio</i>	<i>&gt;=1.5</i>	<i>1.0</i>	<i>0.8</i>	<i>0.7</i>	<i>*</i>
<i>Net Margin Percentage</i>	<i>&gt;=3.5%</i>	<i>5.9%</i>	<i>5.8%</i>	<i>5.8%</i>	<i>*</i>
<i>Percent Debt to Total Capitalization</i>	<i>&lt;=80%</i>	<i>30.3%</i>	<i>32.6%</i>	<i>41.8%</i>	<i>*</i>
<i>Projected Debt Service Coverage</i>	<i>&gt;=1.75</i>	<i>0.01</i>	<i>0.03</i>	<i>0.02</i>	<i>*</i>
<i>Days Cash on Hand</i>	<i>&gt;=45</i>	<i>.003</i>	<i>2.371</i>	<i>6.416</i>	<i>*</i>
<i>Cushion Ratio</i>	<i>&gt;=5</i>	<i>0.00</i>	<i>0.17</i>	<i>0.55</i>	<i>*</i>
<i>* Projected ratios not provided due to Securities and Exchange Commission regulation fair disclosure Requirements (applications pages 56-57).</i>					

*The Current Ratio is low for all three reporting years. This ratio is an indication that an entity has the ability to meet its current obligations by measuring if a business has enough assets to cover its liabilities.*

*The Projected Debt Service Coverage Ratio was below the State standard for all three reporting years. This ratio (also known as the Times Interest Earned Ratio) is earnings before interest and taxes for a given reporting period divided by the period's interest payments. It measures a firm's ability to satisfy its annual borrowing costs from current operations.*

*The Days Cash On Hand Ratio for 2004, 2005 and 2006 are below the State standard ( $\geq 45$  days). The Days Cash on Hand ratio is an indication of the number days the facility could operate if no future revenue is provided.*

*The Cushion Ratios for 2004, 2005 and 2006 are below the State standard ( $\geq 5$ ). The Cushion Ratio is an indication of the amount of cash, short-term investment and unrestricted long-term investments remaining after paying all fixed-debt expenses (annual principal and interest payments).*

*The applicants stated that Fresenius Medical Care Holdings, Inc. (FMCH) has in excess of \$500 million of readily available liquidity. In addition, it has relatively low leverage (less than 4.0x Funded Debt/EBITDA) and a BB Standard & Poor credit rating. The applicants also stated that FMCH's healthy financial position and abundant liquidity indicate it has the ability to support the acquisition and development of additional dialysis centers. The applicants further stated FMCH has more than adequate capability to meet all of its expected financial obligations over the next 12 months and its long term outlook, following its acquisition of Renal Care Group, is expected to remain stable.*

*Documentation was not provided to demonstrate that the applicants have an "A" bond rating, nor have they demonstrated that this organization is compliant with the ratios. The applicants have not documented that another organization will assume the legal responsibility to meet the debt obligations should the applicants default. As a result, the applicants do not meet the requirements for the variance.*

**The First SSAR**

The applicants submitted projected financial ratios for Fresenius Medical Care Holdings, Inc. in response to issues raised by the State Board at the October 2007 meeting. Table Four (Supplemental) displays projected ratios for years 2007 through 2010. The applicants state that using projected ratios to determine financial viability is inappropriate. Specifically, projected ratios are insufficient measures of liquidity or ability to meet required payments. Dialysis providers that have debt and are well managed will minimize cash on hand, accelerate accounts receivable collections and pay payables no sooner than necessary to minimize interest expense and reduce leverage.

<b>TABLE FOUR (Supplemental)</b>					
<b>Applicants' Financial Ratio Information</b>					
<b>Fresenius Medical Care Holdings, Inc. (FMCH)</b>					
<b>Ratio</b>	<b>State Standard</b>	<b>Projected</b>			
		<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
Current Ratio	>=1.5	0.9	0.9	1.0	0.8
Net Margin Percentage	>=3.5%	6.3%	6.9%	7.2%	7.7%
Percent Debt to Total Capitalization	<=80%	48.4%	43.9%	40.5%	29.1%
Projected Debt Service Coverage	>=1.75				
Days Cash on Hand	>=45	9.5	9.4	8.9	8.5
Cushion Ratio	>=5	0.6	1.5	0.86	0.86

The Current Ratio is low for all three historical years and projected years. This ratio is an indication that an entity has the ability to meet its current obligations by measuring if a business has enough assets to cover its liabilities.

The Projected Debt Service Coverage Ratio was below the State standard for all three historical years. This ratio (also known as the Times Interest Earned Ratio) is earnings before interest and taxes for a given reporting period divided by the period's interest payments. It measures a firm's ability to satisfy its annual borrowing costs from current operations. The applicants did not furnish this ratio for the projected years.

The Days Cash On Hand Ratios for historical and projected years are below the State standard (>=45 days). The Days Cash on Hand ratio is an indication of the number days the facility could operate if no future revenue is provided.

The Cushion Ratios for historical and projected years are below the State standard (>=5). The Cushion Ratio is an indication of the amount of cash, short-term investment and unrestricted long-term investments remaining after paying all fixed-debt expenses (annual principal and interest payments).

*According to the applicants, Days Cash on Hand, Current and Cushion Ratios “are inappropriate measures of liquidity or ability to meet upcoming required payments”. The applicants refer to readily available liquidity and the healthy financial position of FMCH to support growth.*

*As previously referenced in the OSAR, the applicants have not documented an “A” bond rating or compliance with State standards for financial ratios. Finally, the applicants have not provided evidence that another organization will assume the legal responsibility to meet the debt obligations should the applicants default. The applicants’ supplemental information does not change the finding from the OSAR. Thus, a negative finding must still be made for this criterion.*

### **The Second SSAR**

The applicants did not provide additional information to address this criterion. As a result, the negative finding remains unchanged.

THE STATE AGENCY FINDS THE PROPOSED PROJECT DOES **NOT** APPEAR TO MEET THE FINANCIAL VIABILITY CRITERION.

07-117 FMC ZION



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