



# HAWAII STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

## ADMINISTRATIVE APPLICATION - CERTIFICATE OF NEED PROGRAM

Application Number: 11-20A Date of Receipt: November 10, 2011  
To be assigned by Agency

### APPLICANT PROFILE

Project Title: Acquisition of Liberty Dialysis Holdings, Inc.

Project Addresses: 3625 Harding Avenue, Honolulu, Hawai'i 96816

140 Rainbow Drive, Hilo, Hawai'i 96720

10 Hoohui Street, Lahaina, Hawai'i 96761

3224 Elua Street, Lihue, Hawai'i 96766

78-6831 Ali'i Drive, Suite 336, Kailua-Kona, Hawai'i 96740

91-2137 Fort Weaver Road, Ewa Beach, Hawai'i 96706

28 Kamoi Street, Suite 400, Kaunakakai, Hawai'i 96748

2226 Liliha Street, Honolulu, Hawai'i 96817

86-080 Farrington Highway, Waianae, Hawai'i 96792

94-450 Mokuola Street, Suite 109, Waipahu, Hawai'i 96797

4643A Waimea Canyon Drive, Waimea, Hawai'i 96796

67-1123 Mamalahoa Highway, Suite 112, Kamuela, Hawai'i 96743

105 Maui Lani Parkway, Suite 105, Wailuku, Hawai'i 96793

25 Kaneohe Bay Drive, Kailua, Hawai'i 96734

7192 Kalaniana'ole Highway, Suite Q-101, Honolulu, Hawaii 96825 – approved by

SHPDA but not yet established

Applicant Facility/Organization: Bio-Medical Applications Management Company, Inc.

Name of CEO or equivalent: Rice Powell

Title: President

Address: 920 Winter Street, Waltham, MA 02451

Phone Number: (781) 699-9000 Fax Number: (781) 699-9410

Contact Person for this Application: Domenic Gaeta

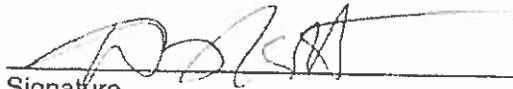
Title: Associate General Counsel

Address: 920 Winter Street, Waltham, MA 02451

Phone Number: (781) 699-9000 Fax Number: (781) 466-0631

### CERTIFICATION BY APPLICANT

I hereby attest that I reviewed the application and have knowledge of the content and the information contained herein. I declare that the project described and each statement amount and supporting documentation included is true and correct to the best of my knowledge and belief.

  
Signature

11/30/11  
Date

Douglas Kott  
Name (please type or print)

Sr. Vice President and Secretary  
Title (please type or print)

**1. TYPE OF ORGANIZATION:** (Please check all applicable)

Public \_\_\_\_\_  
Private   X    
Non-profit \_\_\_\_\_  
For-profit   X    
Individual \_\_\_\_\_  
Corporation   X    
Partnership \_\_\_\_\_  
Limited Liability Corporation (LLC) \_\_\_\_\_  
Limited Liability Partnership (LLP) \_\_\_\_\_  
Other: \_\_\_\_\_

**2. PROJECT LOCATION INFORMATION**

A. Primary Service Area(s) of Project: (please check all applicable)

Statewide:   X    
O`ahu-wide: \_\_\_\_\_  
Honolulu: \_\_\_\_\_  
Windward O`ahu: \_\_\_\_\_  
West O`ahu: \_\_\_\_\_  
Maui County: \_\_\_\_\_  
Kaua`i County: \_\_\_\_\_  
Hawai`i County: \_\_\_\_\_

**3. DOCUMENTATION** (Please attach the following to your application form):

A. Site Control documentation (e.g. lease/purchase agreement, DROA agreement, letter of intent)

Attachment 1 is an Abstract of the Agreement and Plan of Merger by and Among Bio-Medical Applications Management Company, Inc., PB Merger Sub, Inc. & Liberty Dialysis Holdings, Inc., dated August 1, 2011

B. A listing of all other permits or approvals from other government bodies (federal, state, county) that will be required before this proposal can be implemented (such as building permit, land use permit, etc.)

Hart-Scott-Rodino filing with the Federal Trade Commission and the Anti-Trust Division of the United States Department of Justice

C. Your governing body: list by names, titles and address/phone numbers

See Attachment 2

D. If you have filed a Certificate of Need Application this current calendar year, you may skip the four items listed below. All others, please provide the following:

- Articles of Incorporation: See Attachment 3
- By-Laws: See Attachment 4
- Partnership Agreements: Not applicable
- Tax Key Number (project's location) See Attachment 5

**4. TYPE OF PROJECT.** This section helps our reviewers understand what type of project you are proposing. Please place an "x" in the appropriate box.

	Used Medical Equipment (over \$400,000)	New/Upgraded Medical Equip. (over \$1 million)	Other Capital Project (over \$4 million)	Change in Ownership	Change in Beds
Inpatient Facility					
Outpatient Facility				X	
Private Practice					

This is a proposed change in ownership for a portion of the equity interests in 15 outpatient hemodialysis clinics (the three dialysis facilities on the campus of Honolulu Medical Center East are considered one clinic), peritoneal dialysis program and acute dialysis program now owned by Liberty Dialysis Holdings, Inc. ("Liberty Dialysis Holdings") indirectly through its indirect subsidiaries Liberty Dialysis-Hawaii, LLC ("LDH") and Liberty Dialysis-North Hawaii, LLC ("LDNH"). Upon the approval of this application and the consummation of the proposed merger, Bio-Medical Applications Management Company, Inc. ("BMAMC"), an indirect subsidiary of Fresenius Medical Care Holdings, Inc. ("FMCH") will become the sole shareholder of Liberty Dialysis Holdings and will indirectly, through Liberty Dialysis Holding, Inc. ("Merged Liberty") own a portion of the equity interests in LDH and LDNH that are now owned indirectly by Liberty Dialysis Holdings. The ownership interests of the remaining equity holders of LDH and LDNH will be unaffected by the merger. The clinics will continue to provide the services they are currently providing. The acquisition is not intended to change the scope and nature of the services provided to end-stage renal disease ("ESRD") patients. A schematic illustrating the structure of the companies before and after the merger is included in Attachment 6.

**5. BED CHANGES.** Please complete this chart only if your project deals with a change in your bed count and/or licensed types. Again, this chart is intended to help our reviewers understand at a glance what your project would like to accomplish. Under the heading "Type of Bed," please use only the categories listed in the certificate of need rules.

Type of Bed	Current Bed Total	Proposed Beds for your Project	Total Combined Beds if your Project is Approved
<b>TOTAL</b>			

**6. PROJECT COSTS AND SOURCES OF FUNDS**

**A. List All Project Costs:**

**AMOUNT:**

1.	Land Acquisition	_____
2.	Construction Contract	_____
3.	Fixed Equipment	<u>\$ 848,690.00</u>
4.	Movable Equipment	<u>\$ 4,039,419.00</u>
5.	Financing Costs	_____
6.	Fair Market Value of assets acquired by lease, rent, donation, etc. (clinic leases)	<u>\$11,372,634.00</u>
7.	Other: _____	_____

**TOTAL PROJECT COST: \$16,260,743.00**

**B. Source of Funds**

1.	Cash	<u>\$16,260,743.00</u>
2.	State Appropriations	_____
3.	Other Grants	_____
4.	Fund Drive	_____
5.	Debt	_____
6.	Other: _____	_____

**TOTAL SOURCE OF FUNDS: \$16,260,743.00**

7. **CHANGE OF SERVICE:** If you are proposing a change in service, then please briefly list what services will be added/modified. Be sure to include the establishment of a new service or the addition of a new location of an existing service. Please reference the Certificate of Need Rules Section 11-186-5 for the categories of services. If you are unable to determine which category best describes your project, please consult with agency staff.

This application is for the change of ownership of St. H. E. P. Dialysis Holdings, which owns an indirect partial equity interest in the dialysis clinics identified on page 1 of 12 of this application to BMAMC, an indirect subsidiary of FMCH. This service category is per HAR § 186-5(4)(A). No new locations or expansions are proposed in this Application. The ownership interests of other equity holders in the clinics will be unaffected by the planned merger.

8. **IMPLEMENTATION SCHEDULE:** Please present a projected time schedule for the completion of this project from start to finish. Include all of the following items that are applicable to your project:
- a) Date of site control for the proposed project: Upon closing of the merger, which is scheduled for January 3, 2012.
  - b) Dates by which other government approvals/permits will be applied for and received: Hart-Scott-Rodino filing made with the Federal Trade Commission and the Anti-Trust Division of the Department of Justice on August 1, 2011
  - c) Dates by which financing is assured for the project: Not applicable; this is a cash transaction
  - d) Date construction will commence: Not applicable
  - e) Length of construction period: Not applicable
  - f) Date of completion of the project: Upon closing of the merger
  - g) Date of commencement of operation: Upon closing of the merger

Please remember that the Agency does monitor the implementation of Certificates approved. Non-implementation of a project as described in your application may result in a fine and/or withdrawal of the certificate of need.

REPLACEMENT PAGE

9. **EXECUTIVE SUMMARY:** Please present a brief summary of your project. In addition, provide a description of how your project meets each of the certificate of need criteria listed below. If a new location is proposed, please attach an easy to read map that shows your project site.

- a) Relationship to the State of Hawai'i Health Services and Facilities Plan
- b) Need and Accessibility
- c) Quality of Service/Care
- d) Cost and Finances (include revenue/cost projections for the first and third year of operation)
- e) Relationship to the existing health care system
- f) Availability of Resources

## EXECUTIVE SUMMARY

The merger of FMCH, through its indirect subsidiary BMAMC, with Liberty Dialysis Holdings, which owns an indirect partial interest in LDH and LDNH, is taking place amid the backdrop of recent changes in the Medicare payment system, which provides insurance for about 80 percent of all ESRD patients. Since January 1, 2011, Medicare no longer pays dialysis clinic operators for individual services and drugs but instead pays a so-called "bundled rate" per dialysis session. The lump-sum reimbursement is subject to a number of adjustments including penalties associated with failing to achieve certain clinical outcomes. These changes in the reimbursement system have, and will continue, to force dialysis providers to run clinics more efficiently and tightly control costs to maintain financial viability, while still maintain the highest levels of patient care. Accomplishment of these objectives tends to be easier for larger operators.

In Hawai'i, the 15 dialysis clinics in which Liberty Dialysis Holdings now owns an indirect partial interest will become affiliated with FMCH's U.S. network of dialysis treatment facilities. However, the ownership interests of LDH's and LDNH's remaining equity holders will remain unchanged. The merger is not intended to change the scope of services now provided at the clinics or the staff employed at the clinics. The merger is expected to result in lower annual operating costs for the clinics because of the economies of scale that will be realized from their participation in the larger FMCH network and the vertical integration offered by FMCH's manufacturing capabilities.

- a) Relationship to the State of Hawai'i Health Services and Facilities Plan.

This project will advance the Statewide Health Coordinating Council ("SHCC") priorities of promoting the long-term viability of the health care delivery system and of ensuring maintenance of overall access to quality health care at a reasonable cost by ensuring that Hawai'i residents have continued access to cost-effective dialysis services. The anticipated reduction in the clinics' operating expenses will not only ensure their long-term financial viability, but will also help to slow the rising cost of providing dialysis services to Hawaii's ESRD patients.

In addition, this Project will advance the goals of the Honolulu Subarea Council ("SAC"), the Kauai SAC and the Maui County/Tri-Isles SAC by maintaining the availability of support services and reducing the cost of senior care. ESRD frequently develops secondary to diabetes mellitus, which is prevalent among individuals between 45 - 64 years of age, with the median age of onset over the age of 55. The costs associated with dialysis are minimal compared to the costs of emergency medical care and/or hospitalization due to complications from ESRD

that can result from noncompliance with prescribed dialysis treatment regimens. Additionally complications of ESRD not infrequently make it impossible for seniors to continue living in their homes and necessitate costly nursing home care. By maintaining access to dialysis centers in their communities and near their homes, this proposal will assist seniors with ESRD to comply with their dialysis treatment regimens, thereby helping them to avoid nursing home care and reducing the financial and social costs of ESRD for patients, their families, and the community.

This proposal does not directly relate to the Hawaii County SAC's goals of eliminating workforce, facility and long-term care bed shortages and improving preventive health care.

b) Need and Accessibility

The need for these services is evidenced and established in the already approved certificates of need ("CONs") held by Liberty for these dialysis clinics. Access to dialysis services in the current service areas will be maintained. All of the stock of Liberty Dialysis Holdings is being transferred to BMAMC/FMCH by way of a stock and merger transaction resulting in BMAMC becoming an indirect partial owner of LDH. As with the administrative application submitted by LDH in 2005 (CON #05-26A) for the acquisition of many of these same facilities, this application similarly covers dialysis clinics located at multiple addresses. However, in this case, the transaction is purely a stock transfer of a remote parent of one of the members of LDH and does not involve an asset transfer or acquisition of a 100% ownership interest. The CON numbers of the affected clinics are: Hawaii Medical Center East campus (grandfathered); Leeward Dialysis (CON #77-28A); Waianae Dialysis (CON #94-15A); Hilo Dialysis (grandfathered); Kona Dialysis (CON #83-32A); Kauai Dialysis (CON # 76-61); West Kauai Dialysis (CON # 97-18A); Kahana (CON #94-20A); Molokai Dialysis (CON # 99-01A); Wailuku Dialysis (CON #03-30A); Kaimuki Dialysis (CON #06-24A); North Hawaii (CON #07-15A); Kailua Dialysis (CON #07-29A); Waipahu Dialysis (CON #07-01A); Hawaii Kai Dialysis Center (CON #11-13A – approved by SHPDA, but not yet established).

The centers will continue to provide service for all of their approximately 2000 ESRD patients throughout Hawai'i, who would die without dialysis or a successful kidney transplant. Charity care will continue to be provided to those who are otherwise unable to afford dialysis treatment.

The current payer-mix at the LDNH dialysis clinic is as follows:

Medicare	83.3%
Medicaid	5.6%
Commercial Insurance	8.3%
Other	2.8%

The current payer-mix at LDH dialysis clinics is as follows:

Medicare	72.1%
Medicaid	7.5%
Commercial Insurance	18.1%
Other	2.3%

Liberty Dialysis Holdings and BMAMC/FMCH believe the dialysis centers' patient-mix is representative of the overall population of ESRD patients in the communities that they serve. No material change in patient-mix is expected after the merger.

The centers will continue to serve all Hawai'i residents including low income persons, racial and ethnic minorities, women, persons with disabilities and other underserved groups, and the elderly.

For Liberty's patients, the change of ownership will be invisible as timely processing of this certificate of need application will result in seamless continuity of care and patients will continue to enjoy services from caregivers they have grown to know and trust.

c) Quality of Service/Care

The centers are, and will continue to be Medicare certified. The merger is not intended to alter the scope of services provided at the centers, nor change the clinical staff and attending physicians, thereby ensuring the continuity and quality of care.

FMC is the largest provider of dialysis products and services in the United States, with over 1,800 kidney dialysis clinics serving nearly 142,000 patients. FMCH is a subsidiary of Fresenius Medical Care AG & Co. KGaA, the world's leading company devoted to patient-oriented renal therapy. Through over 2,800 kidney dialysis clinics in North America, Europe, Latin America, Asia-Pacific and Africa, Fresenius Medical Care AG & Co. KGaA now provides life-saving dialysis treatments to more than 228,000 patients worldwide.

FMCH will incorporate its UltraCare® program into the centers' quality assurance protocols. UltraCare and certain innovative technology are exclusively available to patients at FMCH facilities. UltraCare represents FMC's commitment to deliver excellent care to patients, through innovative programs, the latest technology, continuous quality improvement and a focus on superior customer service. UltraCare is delivered by highly trained staff and demonstrated through dedication, leadership and compassion by every team member, every day.

The six elements of UltraCare are:

- Superior Customer Service
- Patient-Centered Care
- Clinical Leadership
- Team Approach to Care
- Continuous Quality Improvement
- Innovative Technology

Clinical outcomes will be measured using industry standards developed by the National Kidney Foundation and the ESRD Network.

d) Cost and Finances (include revenue/cost projections for the first and third year of operation)

BMAMC will pay \$16,260,743 for Liberty Dialysis Holdings' proportionate share of LDH's and LDNH's assets, of which \$848,690 is attributable to fixed equipment, \$4,039,419 is attributable to moveable equipment, and \$11,372,634 is attributable to the value of the leased premises where the clinics are located. The project will be financed with cash.

The estimated revenue and cost projects for LDNH for the first and third full years of operation following the merger are shown below:

	Projected 1 <sup>st</sup> Full Year Operations	Projected 3 <sup>rd</sup> Full Year Operations
Revenue	1,819,274	1,948,049
Labor Expense	711,255	799,680
Drugs and Medical Supplies	364,290	397,878
Rent	45,000	45,000
Depreciation and Amortization	90,000	90,000
Interest Expense	90,000	90,000
General Excise Tax	62,956	67,412
Other Operating Expenses	495,871	515,905
Total Expenses	1,859,373	2,005,875
Pretax Income	(40,099)	(57,826)

The estimated revenue and cost projects for LDH for the first and third full years of operation following the merger are shown below:

	Projected 1 <sup>st</sup> Full Year Operations	Projected 3 <sup>rd</sup> Full Year Operations
Revenue	79,283,131	84,895,108
Labor Expense	29,510,529	33,179,372
Drugs and Medical Supplies	15,129,059	16,685,953
Rent	3,082,605	3,082,605
Depreciation and Amortization	3,205,772	3,368,064
Interest Expense	1,309,109	1,276,381
General Excise Tax	2,539,455	2,719,208
Other Operating Expenses	17,748,106	18,465,129
Total Expenses	72,524,634	78,776,712
Pretax Income	6,758,497	6,118,396

e) Relationship to the existing health care system

The centers will continue to provide chronic outpatient and acute dialysis services as they are currently provided by Liberty. Because the centers will continue an existing service, with no anticipated change in scope of service or staffing, the merger is not expected to have any effect on other providers or patients. The merger will contribute to the maintenance and improvement of Hawaii's existing health care system by enhancing LDH's and LDNH's ability to respond to current and anticipated future changes in the payment methodology used by Medicare and Medicaid, which are the primary payment sources for dialysis services. The improved operating efficiencies that are expected from the integration of the LDH and LDNH dialysis centers into the Fresenius network will augment their ability to provide life-sustaining dialysis treatment to residents of their respective service areas and maintain high quality patient care in the most efficacious way possible.

LDH and LDNH will continue their collaboration with other health care providers, community and government organizations, such as the National Kidney Foundation, Hawaii Health Systems Corporation, Transpacific Renal Network; the GFR Alliance, HMSA, Kaiser Permanente; University of Hawai'i at Manoa, Hilo, Maui and Kauai; Kapi'olani Community College; and the National Renal Administrators Association, and work with these partners to help enhance (i) patient education, (ii) interaction with the Hawai'i medical community, and (iii) advanced treatment of CKD patients to forestall the onset of ESRD and better prepare them to begin dialysis.

f) Availability of Resources.

The total value of the Hawai'i-based assets that will be transferred as the result of the merger transaction is estimated at \$16,260,743, which includes fixed equipment valued at \$848,690, movable equipment valued at \$4,039,419, and clinic site leases valued at \$11,372,634. BMAMC will purchase all of the outstanding stock of Liberty Dialysis Holdings in a cash transaction.

Because this merger is not intended to result in any change in the staff currently employed by the clinics, no additional employees will be required to continue serving the existing patient base.

**10. Eligibility to file for Administrative Review.** This project is eligible to file for Administrative review because: (Check all applicable)

- It involves bed changes, which will have a capital expense of \$1,000,000 or less, and which will have an increased annual operating expense of less than \$500,000.
- It involves service changes which will have a capital expense of \$1,000,000 or less, and which will have an increased annual operating expense of less than \$500,000.
- It is an acquisition of a health care facility or service, which will result in lower annual operating expenses for that facility, or service.
- It is a change of ownership, where the change is from one entity to another substantially related entity.
- It is an additional location of an existing service or facility.
- The applicant believes it will not have a significant impact on the health care system.