



**ADMINISTRATIVE APPLICATION - CERTIFICATE OF NEED PROGRAM**

Application Number: #12-07A Date of Receipt:  
To be assigned by Agency

**APPLICANT PROFILE**

Project Title: Acquisition of hemodialysis outpatient clinics owned by Fresenius Medical Care Holdings, Inc.

Project Addresses: 98-1005 Moanalua Rd., Suite 420, Aiea, HI 96701 (IRCP)

1520 Liliha Street, Honolulu, HI 96817 (BMA)

750 Palani Avenue, Honolulu, HI 96816 (BMA)

226 North Kuakini Street, 2<sup>nd</sup> Floor, Honolulu, HI 96817 (BMA)

45-480 Kaneohe Bay Drive, #D09, Kaneohe, HI 96744 (BMA)

47-388 Hui Iwa Street, Kaneohe, HI 96744 (BMA)

555 Farrington Highway, Kapolei, HI 96707 (BMA)

850 Kilani Avenue, Wahiawa, HI 96786 (BMA)

94-862 Kahuailani Street, Waipahu, HI 96797 (BMA)

Applicant Facility/Organization: Dialysis Newco, Inc., d.b.a. DSI Renal, Inc.

Name of CEO or equivalent: Craig Goguen

Title: CEO

Address: 424 Church Street, Suite 1900, Nashville, TN 37219

Phone Number: (615) 777-8200 Fax Number: (615) 234-3504

Contact Person for this Application: Kevin J. Ryan, Esq.

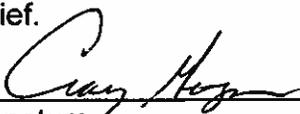
Title: Counsel for Dialysis Newco, Inc., d.b.a. DSI Renal

Address: Epstein Becker Green, 150 North Michigan Avenue, 35<sup>th</sup> Floor, Chicago, IL 60601

Phone Number: (312) 499-1421 Fax Number: (312) 827-9521

**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.

X   
\_\_\_\_\_  
Signature

March 15, 2012  
\_\_\_\_\_  
Date

Craig Goguen  
\_\_\_\_\_  
Name (please type or print)

President and CEO, Dialysis Newco, Inc.  
\_\_\_\_\_  
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: \_\_\_\_\_
- O`ahu-wide:   X
- 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)

Abstract of the Amended and Restated Asset Purchase Agreement by and between Dialysis Newco, Inc., d.b.a. DSI Renal and Fresenius Medical Care Holdings, Inc. dated as of February 1, 2012 (**Exhibit 1**).

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.)

1. Federal Trade Commission Decision and Order, In the Matter of Fresenius Medical Care AG & Co. KGaA, File Number 111 0170, issued February 28, 2012, mandating the divestiture of the Oahu clinics of Fresenius Medical Care Holdings, Inc. to DSI Renal (**Exhibit 2**).
2. A CMS-855A Enrollment Application for Institutional Providers will be submitted for each clinic within 30 days following closing to document the change of ownership.

c) Your governing body: list of names, titles and address/phone numbers.

Craig Goguen  
Director, President and Chief Executive Officer  
424 Church Street, Suite 1900  
Nashville, TN 37219  
Phone: (615) 777-8200

Robert Lefton  
Director and Vice President  
424 Church Street, Suite 1900  
Nashville, TN 37219  
Phone: (615) 777-8200

- 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 **Exhibit 3**.
  - By-Laws – See **Exhibit 4**.
  - Partnership Agreements – Not applicable.
  - Tax Key Number (project's location) – See below:

98-1005 Moanalua Rd., Suite 420, Aiea, HI 96701 – TMK No. 1-9-08-016-049

1520 Liliha Street, Honolulu, HI 96817 – TMK No. 1-1-7-033-005

750 Palani Avenue, Honolulu, HI 96816 – TMK No. 1-2-7-034-022

226 North Kuakini Street, 2<sup>nd</sup> Floor, Honolulu, HI 96817 – TMK No. 1-1-7-014-042

45-480 Kaneohe Bay Drive, #D09, Kaneohe, HI 96744 – TMK No. 1-4-5-060-061

47-388 Hui Iwa Street, Kaneohe, HI 96744 – TMK No. 1-4-7-004-025

555 Farrington Highway, Kapolei, HI 96707 – TMK No. 1-9-106-002

850 Kilani Avenue, Wahiawa, HI 96786 – TMK No. 1-7-4-005-001

94-862 Kahualani Street, Waipahu, HI 96797 – TMK No. 1-9-4-013-004

**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 Service	Change in Beds
Inpatient Facility					
Outpatient Facility				X Change in Ownership	
Private Practice					

**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. Not applicable.

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

## 1. PROJECT COSTS AND SOURCES OF FUNDS

<b>a) List All Project Costs:</b>	<b>AMOUNT:</b>
1. Land Acquisition	_____
2. Construction Contract	_____
3. Fixed Equipment	<u>\$3,657,924.08</u>
4. Movable Equipment	<u>\$2,840,404.65</u>
5. Financing Costs	_____
6. Fair Market Value of assets acquired by lease, rent, donation, etc.	<u>\$11,002,204.01</u>
7. Other: _____	_____
<b>TOTAL PROJECT COST:</b>	<b><u>\$17,500,532.74</u> ***</b>
 <b>b) Source of Funds</b>	
1. Cash	<u>\$ 6,498,328.73</u>
2. State Appropriations	_____
3. Other Grants	_____
4. Fund Drive	_____
5. Debt	_____
6. Other: FMV of lease space; paid by Monthly rent payments	<u>\$11,002,204.01</u>
<b>TOTAL SOURCE OF FUNDS:</b>	<b><u>\$17,500,532.74</u></b>

\*\*\* This number comprises the fair market value of the leases and the equipment that pertain directly to the provision of hemodialysis services. The \$60.3 million amount referenced in Exhibit 1 constitutes the entire allocated transaction amount which includes property and equipment that is not directly related to the provision of hemodialysis services, and other items such as goodwill.

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 the nine clinics identified on page 1 of this application that are wholly-owned by subsidiaries of Fresenius Medical Care Holdings, Inc. ("FMC") to Dialysis Newco, Inc., d.b.a. DSI Renal. Eight of the clinics are owned and operated by FMC subsidiary Bio-Medical Applications of California, Inc. and one of the clinics by FMC subsidiary Integrated Renal Care of the Pacific, LLC. This service category is per H.A.R. § 186-5(4)(A). No new locations or expansions are proposed in this Application.

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: The acquisition will occur promptly following the approval of this CON.
  - b) Dates by which other government approvals/permits will be applied for and received: The FTC Decision and Order was issued February 28, 2012. A CMS-855A Enrollment Application for Institutional Providers will be submitted for each clinic within 30 days following closing to document the change of ownership.
  - 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 acquisition.
  - g) Date of commencement of operation: Upon closing of the acquisition.

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.

9. **EXECUTIVE SUMMARY:** Please present a brief summary of your project. In addition, please 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**

This application is for the acquisition by Dialysis Newco, Inc., d.b.a. DSI Renal ("DSI Renal") of all Oahu dialysis clinics wholly-owned by Fresenius Medical Care Holdings, Inc. subsidiaries, Bio-Medical Applications of California, Inc. and Integrated Renal Care of the Pacific, LLC (collectively, "FMC"). The acquisition is happening in the context of the Fresenius Medical Care Holdings, Inc.-Liberty Dialysis Holdings, Inc. ("Liberty") merger and CON #11-20A.

The Federal Trade Commission ("FTC") has required FMC to divest all of its Oahu clinics as a condition to approving the Liberty merger pursuant to the FTC Decision and Order, File 111 0170. The FTC has approved DSI Renal as the buyer of FMC's Oahu clinics. The FTC has ordered that the divestiture of the Oahu clinics must be completed within ninety days of the closing of the FMC-Liberty merger, or by May 28, 2012.

The acquisition is not intended to change the scope of services now provided at the clinics nor is it anticipated to change the staff employed at the clinics. The acquisition 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 DSI Renal network.

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

Specific goals of the current edition of the Health Services and Facilities Plan ("HSFP") are consistent with the purpose of SHPDA. In addition, the goals reflect current issues facing Hawaii's health care environment, and include:

- Focus on increasing cost-effective access to necessary health care services. Access is distinguished from convenience.
- Promote the financial viability of the health care delivery system.
- Encourage optimization of services and expensive technology by ensuring that supply meets the need and costs are reasonable.
- Promote regionalization of services where appropriate.

This application consists of existing dialysis facilities on Oahu. Dialysis services are vitally necessary to its patients and, in keeping with the goals of the HSFP, we strive constantly to maintain a high standard of quality care while also being focused on cost-effective access as shown in the Cost and Finances section of our application. By doing so, we believe we contribute to the financial viability of the healthcare delivery system. Our service will be regionalized on Oahu, which will help optimize the use of services and equipment in a manner that closely matches the current and future dialysis needs of the people of Oahu.

The HSFP includes Statewide Health Coordinating Council ("SHCC") Priorities and General Principles. For ease of reference they are listed here:

### ***General Principles***

- 1. Promote and support the long-term viability of the health care delivery system*
- 2. Expand and retain the health care workforce to enable access to the appropriate level of care in a timely manner*
- 3. Ensure that any proposed service will at least maintain overall access to quality health care at a reasonable cost*
- 4. Strive for equitable access to health care services (i.e., remove financial barriers, increase availability of physicians)*
- 5. Ensure all projects are appropriate for the regional and statewide continuum of care*
- 6. Encourage and support health education, promotion, and prevention initiatives*
- 7. Expand awareness of available human, financial, programmatic resources*

### ***Specific Health Areas of Concern***

- 1. Ensure capacity and access to a continuum of long-term care services*
- 2. Establish a statewide emergency and trauma system*
- 3. Ensure capacity and access to primary care services*
- 4. Increase and improve access to mental health programs, services, and education*
- 5. Increase and improve access to substance abuse programs, services, and education*

This application addressed all general principles of the SHCC. By maintaining an existing family of dialysis facilities, this application continues and supports the long-term viability of the healthcare system. We anticipate retaining the existing workforce and will provide ongoing training for them.

As all of our facilities already exist and were approved by SHPDA in the past, all facilities continue to abide by the requirements of those CONs by maintaining access to care and appropriate quality assurance policies. Further, our services include health education, nutrition education and care education for patients and their families.

None of SHCC's specific health areas of concern directly address dialysis facilities.

Oahu has three Subarea Councils (SACs). They are: Honolulu ("HONSAC"), West Oahu SAC, and Windward SAC. For ease of reference their priorities are listed below:

HONOLULU (HONSAC) PRIORITIES

1. *Increase the availability of long-term care services and other supportive services.*
  - *Long-term care services include nursing homes, assisted living facilities, skilled nursing facilities, home and community-based services and hospice services.*
  - *Supportive services help maintain the quality of life and include housing, transportation, nutrition, and social support for independent living.*
2. *Support efforts to promote scientifically-based nutritional health knowledge within the community for the development of healthy living lifestyles for all.*
3. *Identify and address workforce shortages in the health care industry with particular emphasis on senior care services.*
4. *Control escalating costs in the senior care industry and other needed services. For example, reduce the need for institutionalized care.*

WEST OAHU SAC PRIORITIES

**1. IMPROVE AND INCREASE ACCESS**

- *Acute care*
- *Critical care*
- *Specialty care*
- *Emergency care options*
- *Routine outpatient diagnostic services (i.e., blood pressure, urinalysis)*
- *Geriatric services (home and community based) to keep older adults out of institutions*
- *Nursing home beds*
- *Mental health services*
- *Substance abuse services*
- *Services for uninsured and underinsured*
- *Telemedicine*

**2. INCREASE COMMUNITY ENGAGEMENT**

- *Raise dialog of health issues in the community (neighborhood boards, businesses, providers, schools)*
- *Develop partnerships between various organizations in the community to support health care activities (University of Hawaii-West Oahu/Leeward, neighborhood boards, community associations, focal points) and increase utilization*

### 3. IMPROVE EDUCATION AND INCREASE PREVENTIVE MEDICINE

- Health education for chronic disease (i.e., hypertension, diabetes, asthma) to ensure cost savings
- Community preventive health campaigns (obesity/chronic disease, screenings, nutrition)
- Establish preventive care programs at John A. Burns School of Medicine and other institutions that can be taken out into community (i.e., kidney screenings, diabetic screenings)

### WINDWARD SAC PRIORITIES

1. **IMPROVE BED AVAILABILITY:** Improve the hospital bed availability through timely transfer of ready patients to appropriate levels of care.

- Examples include the transfer of an acute care patient to a long term care facility or for specialized continued treatment.

2. **HAVE ADEQUATE ACCESS:** Have adequate access to and from the facilities of care or to medical information using emerging technologies.

- Examples of emerging technologies include telemedicine, remote monitoring, online medical information or similar technology solutions.

3. **EDUCATION AND PREVENTION:** Through collaborative partnerships, improve health with easily accessible education and prevention.

- Example of disease areas should include obesity, diabetes, cancer, dental and mental health.
- Examples of easily accessible education include partnering to provide the end user with an easy navigation of the health care system. The end user includes the patient, advocates, facilities or physicians.

This application addressed the pertinent priorities of the Oahu SACs.

- Dialysis is a supportive service that maintains the quality of life for its patients.
- Nutrition is an important part of a dialysis patient's everyday lifestyle and our nutrition guidelines and support to patients are all based on industry standards and scientifically-based knowledge.
- By continuing the operation of existing facilities, we maintain access to dialysis specialty care on Oahu.
- We aim to be active in community engagement via partnerships with a wide array of organizations such as the National Kidney Foundation, Hawaii Health Systems Corporation, Transpacific Renal Network, the GFR Alliance, HMSA, Kaiser Permanente, the University of Hawaii, Kapiolani Community College and the National Renal Administrators Association.
- A vital part of our patient and family services will be health education counseling and classes about dialysis care and participation in community preventive health campaigns about kidney disease and diabetes.

**b) Need and Accessibility.**

The need for these services is evidenced and established in the already approved Certificates of Need ("CONs") held by the FMC subsidiary (Bio-Medical or IRCP) as listed below:

**CON App#    Project**

- 00-10A      1520 Liliha St., 1<sup>st</sup> Floor, Honolulu (Aloha Dialysis Center) (Bio-Medical)  
226 N. Kuakini St., 2<sup>nd</sup> Fl, Honolulu (Honolulu Dialysis Center) (Bio-Medical)  
850 Kilani Ave., Wahiawa (Wahiawa Dialysis Center) (Bio-Medical)  
45-480 Kaneohe Bay Dr., #D09, Kaneohe (Windward Dialysis Center) (Bio-Medical)  
555 Farrington Hwy., Kapolei (Kapolei) (Bio-Medical)
- 02-01A      98-1005 Moanalua Rd, Ste. 420, Aiea (Pearlridge) (IRCP)
- 05-19A      750 Palani Ave., Honolulu (Kapahulu) (Bio-Medical)
- 06-13A      47-388 Hui Iwa St., Kaneohe (Koolau) (Bio-Medical)
- 07-33A      94-862 Kahuailani St., Waipahu (Waipahu) (Bio-Medical)

Access to dialysis services in the current service areas will be maintained.

The centers will continue to provide service for all of their current ESRD patients throughout Hawaii, 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 FMC dialysis clinics is as follows:

Medicare	71.0%
Medicaid	4.6%
Commercial Insurance	22.7%
Private Pay	.7%
Other	1.0%

DSI Renal and FMC 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 Hawaii residents including low income persons, racial and ethnic minorities, women, persons with disabilities and other underserved groups, and the elderly. For FMC'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 divestiture of the centers to DSI Renal is not intended to alter the scope of services provided at the centers, nor do we anticipate any changes to the clinical staff and attending physicians, thereby ensuring the continuity and quality of care.

DSI Renal is a leading dialysis provider in the United States. DSI Renal's standards of patient care are established through its medical protocol guidelines developed and monitored by its Medical Advisory Board. These protocols are established using the best practices across DSI Renal's network of affiliated nephrologists.

DSI Renal's parallel priorities are to achieve optimal patient outcomes and ensure patient satisfaction. DSI Renal is committed to quality care, benefiting patients' quality of life and longevity, and contributing to the company's financial strength. This commitment results in higher survival rates and reduced days spent in hospitals.

DSI Renal's Chief Medical Officer will be actively involved in the operations, from training and protocol development to purchasing and cost management opportunities. The substantial involvement of the Chief Medical Officer and Medical Advisory Board, which consists of prominent nephrologists, has been a significant factor in: (1) attracting new medical directors; and (2) maintaining strong relationships with existing attending physicians. DSI Renal's physician leadership also allows it to achieve physician consensus among the dialysis centers, which enhances the ability to achieve a high level of standardization among the clinics. Clinical outcomes will be measured using industry standards developed by the National Kidney Foundation and the ESRD Network.

DSI Renal was founded in 2011 as a result of the acquisition of several dialysis clinics required by the FTC to be divested as part of the CDSI I Holding Company, Inc. ("CDSII") merger with Da Vita Inc ("Da Vita"). Since its formation in October 2011, DSI Renal currently operates in 21 states, including California, Arizona, Alabama, Georgia, Kentucky, Louisiana, South Carolina, Tennessee, and Texas. Attached as **Exhibit 5** are Preview Performance Score Reports by CMS' ESRD Quality Incentive Program for clinics across the country which were acquired from CDSII or Da Vita in 2011 and are now operated by DSI Renal. Attached as **Exhibit 6** are copies of state licenses for existing DSI Renal facilities located across the United States which demonstrate that DSI Renal has met or exceeded quality of care standards for those jurisdictions. DSI Renal is in the process of finalizing licensure of clinics in other states, including clinics being acquired as part of the FTC divestiture process in the Fresenius-Liberty merger.

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

DSI Renal will pay \$17,500,532.74 for FMC's assets, of which \$3,657,924.08 is attributable to fixed equipment, \$2,840,404.65 is attributable to moveable equipment, and \$11,002,204.01 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 the first and third full years of operation following the change of ownership are shown below:

	<b>Projected 1<sup>st</sup> Full Year Operations</b>	<b>Projected 3<sup>rd</sup> Full Year Operations</b>
<b>Revenue</b>	\$61,043,150.00	\$67,371,416.00
<b>Labor Expense (Salaries &amp; Wages)</b>	\$19,496,517.00	\$21,648,163.00
<b>Depreciation</b>	\$1,299,871.00	\$1,429,125.00
<b>Bad Debt</b>	\$1,630,536.00	\$1,808,353.00
<b>Other Operating Expenses</b>	\$36,852,655.00	\$40,890,606.00
<b>Total Expenses</b>	\$59,279,579.00	\$65,776,247.00

**e) Relationship to the existing health care system.**

We are continuing the services of the existing dialysis facilities and services with no anticipated change in services or staffing.

The centers will continue to provide chronic outpatient dialysis services as they are currently provided by FMC. Because the centers will continue an existing service, with no anticipated change in scope of service or staffing, the sale of the centers is not expected to have any effect on patients or other providers. DSI Renal will collaborate with other providers, community groups and government organizations to ensure solid care for our mutual patients and health goals.

**f) Availability of Resources.**

The total value of the Oahu-based assets that will be transferred as the result of the transaction is estimated at \$17,500,532.74, which includes fixed equipment valued at \$3,657,924.08, movable equipment valued at \$2,840,404.65, and clinic site leases valued at \$11,002,204.01. The project will be financed by cash obtained from DSI's equity owners, which include Frazier Healthcare and New Enterprise Associates, Inc., both of whom have existing investments in multiple health care enterprises and providers. The cash to pay for the project is currently in escrow to be disbursed upon CON approval. See **Exhibit 7**.

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

REPLACEMENT PAGE

**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 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.