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**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Jon Leibowitz, Chairman**
 J. Thomas Rosch
 Edith Ramirez
 Julie Brill

In the Matter of

**FRESENIUS MEDICAL CARE AG &
CO. KGaA,**
 a partnership limited by shares.

Docket No. C-

DECISION AND ORDER
[Redacted Public Version]

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by

Order to Hold Separa

- E. “Alaska Clinic Assets” means the Liberty Dialysis Clinic located at 901 East Dimond Blvd, Anchorage, Alaska, 99515, and all Assets Associated with that Clinic.
- F. “Alaska Clinic Assets Acquirer” means Alaska Investment Partners (HC) LLC, or any Person that receives the prior approval of the Commission to acquire the Alaska Clinic Assets pursuant to Paragraph II or Paragraph V of this Order.
- G. “Appendix A Clinics” means Clinics listed in Appendix A to this Order.
- H. “Appendix A Clinic Assets” means the Appendix A Clinics, the Appendix A-2 Joint Venture Equity Interests, and all Assets Associated with each of the Appendix A Clinics.
- I. “Appendix A-2 Joint Venture Equity Interests” means the joint venture equity interest in Clinics owned by Liberty and Respondent Fresenius described in Appendix A-2.
- J. “Appendix F Clinics” means the clinics identified in Non-Public Appendix F that are (1) owned by Respondent Fresenius in locations proximate to the Liberty Clinics listed in Appendix A, or (2) Liberty Clinics in locations proximate to the Fresenius Clinics listed in Appendix A. In any g(.)Tjtc (ibe)Tj14.6400 0.0000 TD(rt)Tj7.3200 0.0000 TD(y)Tj5.6400 ibe

5. books, records, files, correspondence, manuals, computer printouts, databases, and other documents Relating To the Operation Of The Clinic located on the premises of the Clinic or in the possession of the Regional Manager responsible for such Clinic (or copies thereof where Respondent Fresenius or Liberty has a legal obligation to maintain the original document), including, but not limited to:
 - a. documents containing information Relating To patients (to the extent transferable under applicable law), including, but not limited to, medical records,
 - b. financial records,
 - c. personnel files,
 - d. Physician lists and other records of the Clinic's dealings with Physicians,
 - e. maintenance records,
 - f. documents Relating To policies and procedures,
 - g. documents Relating To quality control,
 - h. documents Relating To Payors,
 - i. documents Relating To Suppliers,
 - j. documents Relating To the Clinics to be Divested that are also Related To the Operation Of Clinics other than the Clinic To Be Divested, *PROVIDED, HOWEVER*, if such documents are located other than on the premises of the Clinic To Be Divested, Respondent Fresenius may submit a copy of the document with the portions not Relating To the Clinic To Be Divested redacted, and
 - k. copies of contracts redacted with the name of Fresenius or Liberty, and a copy of the

9. assets that are used in, or necessary for, the Operation Of The Clinic.

PROVIDED, HOWEVER, that “Assets Associated” does not include Excluded Assets.

- N. “Assets To Be Divested” means the Appendix A Clinic Assets, and any Appendix F Clinic Assets divested pursuant to Paragraph V.A. of the Order.
- O. “Clinic” means a facility that provides hemodialysis or peritoneal dialysis services to patients suffering from kidney disease.
- P. “Clinic’s Physician Contracts” means all agreements to provide the services of a Physician to a Clinic, regardless of whether any of the agreements are with a Physician or with a medical group, including, but not limited to, agreements for the services of a medical director for the Clinic and “joinder” agreements with Physicians in the same medical practice as a medical director of the Clinic.
- Q. “Clinic To Be Divested” and “Clinics To Be Divested” means the Appendix A Clinics, the Appendix A-2 Joint Venture Equity Interests, and where applicable, the Alaska Clinic Assets, or the Dallas Clinics Joint Venture Interests, and any Appendix F Clinics or Appendix F-2 Joint Venture Equity Interests divested pursuant Paragraph V.A. of the Order.
- R. “Confidential Business Information” means competitively sensitive, proprietary, and all other information that is not in the public domain owned by or pertaining to a Person or a Person’s business, and includes, but is not limited to, all customer lists, price lists, contracts, cost information, marketing methods, patents, technologies, processes, or other trade secrets.
- S. “Connecticut Governmental Approvals For Divestiture” means any Governmental Approvals For Divestiture issued by the State of.0000 TD(a)Tj8.2800 0c

technician, clerk, dietician, or social worker) who is not a Regional Manager, who is employed by Respondent Fresenius, or before the Acquisition, by Liberty, by an Acquirer, or by another manager or owner of such Clinic To Be Divested, and who has worked part-time or full-time on the premises of such Clinic To Be Divested at any time since July 1, 2011, regardless of whether the individual has also worked on the premises of any other Clinic.

FF. "Excluded Assets" means:

1. all cash, cash equivalents, and short term investments of cash;
2. accounts receivable;
3. income tax refunds and tax deposits due Respondent Fresenius or Liberty;
4. unbilled costs and fees, and Medicare bad debt recovery claims, arising before a Clinic is divested to an Acquirer;
5. rights to the names "Fresenius," "Liberty Dialysis," and "Renal Advantage," (unless otherwise licensed to an Acquirer pursuant to the Orde

13. e-mail addresses and telephone numbers of Respondent Fresenius's and Liberty's employees;
14. Software;
15. computer hardware used in the Operation Of The Clinic that is (a) not located at the

JJ. "Fresenius's Medical Protocols" me

SS. “Hawaii Clinic Assets” means the following clinics and all Assets Associated with each of those Clinics:

1. FMC Aloha Clinic, 1520 Liliha Street, Honolulu, HI;
2. FMC Kapahulu Clinic, 750 Palani Avenue, Honolulu, HI;
3. FMC Pearlridge Clinic, 98-1005 Moanaloa Road, Suite 420, Aiea, HI;
4. FMC Honolulu Clinic, 226 N. Kuakini Street, Honolulu, HI;
5. FMC Kapolei Clinic, 555 Farrington Highway, Kapolei, HI;
6. FMC Ko'Olau Clinic, 47-388 Hui Iwa Street, Kaneohe, HI;
7. FMC Wahiawa Clinic, 850 Kilani Avenue, Wahiawa, HI;
- 8.

attached as Appendix C to this Order. The Monitor Agreement Compensation is attached as Confidential Appendix C-1 to this Order.)

XX. “New York Governmental Approvals For Divestiture” means any Governmental Approvals For Divestiture issued by the State of New York.

YY. “New York Clinic Assets” means the FMC Dutchess Clinic located at 2585 South Rd., Poughkeepsie, NY, and all Assets Associated with that Clinic.

ZZ. “Operation Of A Clinic” and “Operation Of The Clinic” mean all activities Relating To the business of a Clinic, including, but not limited to:

1. attracting patients to the Clinic for dialysis services, providing dialysis services to patients of the Clinic, and dealing with their Physicians, including, but not limited to, services Relating To hemodialysis and peritoneal dialysis;

2. providing medical products to patients of the Clinic;

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– but does not mean the Clinic’s Physician Contracts and the leases for the Real Property Of The Clinic.

CCC. “Payor” means any Person that purchases, reimburses for, or otherwise pays for medical goods or services for themselves or for any other person, including, but not limited to: health insurance companies; preferred provider organizations; point of service organizations; prepaid hospital, medical, or other health service plans; health maintenance organizations; government health benefits programs; employers or other persons providing or administering self-insured health benefits programs; and patients who purchase medical goods or services for themselves.

DDD. “Person” means any natural person, partnership, corporation, association, trust, joint venture, government, government agency, or other business or legal entity.

EEE. “Physician” means a doctor of allo^e

II.

IT IS FURTHER ORDERED that:

A. Respondent Fresenius shall:

1. within thirty-two (32) days after the Effective Date, divest to DSI, absolutely, and in good faith, pursuant to and in accordance with the DSI-Fresenius Divestiture Agreements all t

either operate the Good Samaritan Hospital Dialysis Clinic itself or seek a new operator through a request for proposal process.

- b. enter into a transition services agreement with Good Samaritan Hospital which shall be submitted to the Commission for approval within the fifteen-day time period, and shall include, but not be limited to:
 - (1) providing services consistent with, or similar to, the services currently provided to Good Samaritan under the Good Samaritan Management Agreement;
 - (2) a term not to extend beyond December 31, 2012;
 - (3) the unilateral option of Good Samaritan Hospital to terminate such agreement or phase out particular services or parts of such agreement upon notice as determined by Good Samaritan Hospital;
 - (4) assigning values or costs for particular services, such that if the services are phased out before the end of

constitute a failure to comply with the Order. The Good Samaritan Management Termination Letter and the final Good Samaritan transition services agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order. Nothing in this Order shall reduce, or be construed to reduce, any rights or benefits of the Good Samaritan Hospital, or any obligations of Respondent Fresenius, under the Good Samaritan Management Termination Letter and the final Good Samaritan transition

J

Divested to such Acquirer or any of the Clinics To Be Divested to such Acquirer including, but not limited to, seeking or requesting the imposition of Gove

b. if such contract can be assigned to the Acquirer only with third party approval, assist and cooperate with the Acquirer in obtaining:

- (1) such third party approval and in assigning the contract to the Acquirer; or
- (2) a new contract.

E. Respondent Fresenius shall:

- 1. at the Time Of Divestiture of each Clinic To Be Divested, provide to the Acquirer of such Clinic contact information about Payors and Suppliers for the Clinic, and
- 2. not object to the sharing of Payor and Supplier contract terms Relating To the Clinics To Be Divested: (i) if the Payor or Supplier consents in writing to such disclosure upon a request by the Acquirer, and (ii) if the Acquirer enters into a confidentiality agreement with Respondent Fresenius not to disclose the information to any third party.

F. Respondent Fresenius shall:

- 1. if requested by an Acquirer, facilitate interviews between each Designated Fresenius Employee and the Acquirer, and shall not discourage such employee from participating in such interviews;
- 2. not interfere in employment negotiations between each Designated Fresenius Employee and an Acquirer.
- 3. not prevent, prohibit or restrict or threaten to prevent, prohibit or restrict the Designated Fresenius Employee from being employed by an Acquirer, and shall not offer any incentive to the Designated Fresenius Employee to decline employment with an Acquirer;
- 4. cooperate with an Acquirer of a Clinic in effecting transfer of the Designated Fresenius Employee to the Acquirer, a

Respondent Fresenius shall comply with the terms of this Paragraph II.F. from the time Respondent Fresenius signs the Agreement Containing Consent Order until sixty (60) days after the Time Of Divestiture of each Clinic To Be Divested for the employees who are Designated Fresenius Employees described in Paragraph I.Y.1.

Respondent Fresenius shall comply with the terms of this Paragraph II.F. from the time Respondent Fresenius signs the Agreement Containing Consent Order until one-hundred twenty (120) days after the divestiture required pursuant to Paragraph II.A.1. is completed for the employees who are Designated Fresenius Employees described in Paragraph I.Y.2.

PROVIDED, HOWEVER, that the terms of this Paragraph II.F. as it relates to the interviewing and hiring of Regional Managers shall not apply after the Acquirer has hired five (5) Regional Managers.

PROVIDED, FURTHER, HOWEVER, that if, at any time after the Time of Divestiture, DSI or the Acquirer of the Appendix A Clinic Assets gives Respondent Fresenius an unsolicited list of employees from the Non-Public Appendix G to whom the Acquirer does not intend to offer employment, then such employees may be hire

not, in any way, interfere with the employee's ability to fulfill his or her employment responsibilities to the Acquirer; and

2. six (6) months following the Time Of Divestiture of each Clinic To Be Divested, Respondent

a. shall not use Confidential Business I

2. in the case of a proposed unilateral termination by Respondent Fresenius due to an alleged breach of an agreement by the Acquirer, sixty (60) days notice of such termination. *PROVIDED, HOWEVER*, such sixty (60) days notice shall be given only after the parties have:
 - a. attempted to settle the dispute between themselves, and
 - b. engaged in arbitration and received an ar

Said advance written notification shall contain (i) either a detailed term sheet for the proposed acquisition or the proposed agreement with all attachments, and (ii) documents that would be responsive to Item 4(c) of the Premerger Notification and Report Form under the Hart-Scott-Rodino Premerger Notification Act, Section 7A of the Clayton Act, 15 U.S.C. § 18a, and Rules, 16 C.F.R. § 801-803, Relating To the proposed transaction (hereinafter referred to as “the Notification), *PROVIDED, HOWEVER*, (i) no filing fee will be required for the Notification, (ii) an original and one copy of the Notification shall be filed only with the Secretary of the Commission and need not be submitted to the United States Department of Justice, and (iii) the Notification is required from Respondent Fresenius and not from any other party to the transaction. Respondent Fresenius shall provide the Notification to the Commission at least thirty (30) days prior to consummating the transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondent Fresenius shall not consummate the transaction until thirty days after submitting such additional information or documentary material. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition.

PROVIDED, HOWEVER, that prior notification shall not be required by this paragraph for a transaction for which Notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.indirectly:

B. For the duration of the Order, Respondent Fresenius shall not:

1. acquire, directly or indirectly, any interest in the University of California, San Diego Clinic, where currently located, or wherever subsequently located within San Diego County, California; or
2. enter into any agreement or otherwise agree to manage, operate, expand, or move such University of California, San Diego Clinic, wherever it may be located within San Diego County, California.
3. shall not acquire, directly or indirectly, without receiving prior Commission approval, any interest in the Clinics divested, or any Clinics divested, pursuant to the terms of this Order including, but not limited to, entering into a management or operation agreement with such Clinics.

IV.

IT IS FURTHER ORDERED that:

- A. Richard A. Shermer, of R. Shermer & Company, shall be appointed Monitor to assure that Respondent Fresenius expeditiously complies with all of its obligations and performs all of its responsibilities as required by this Order.

- B. No later than one (1) day after the Effective Date, Respondent Fresenius shall, pursuant to the Monitor Agreement and to this Order, transfer to the Monitor all the rights, powers, and authorities necessary to permit the Monitor to perform their duties and responsibilities in a manner consistent with the purposes of this Order.
- C. In the event a substitute Monitor is required, the Commission shall select the Monitor, subject to the consent of Respondent Fresenius, which consent shall not be unreasonably withheld. If Respondent Fresenius has not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after notice by the staff of the Commission to Respondent Fresenius of the identity of any proposed Monitor, Respondent Fresenius shall be deemed to have consented to the selection of the proposed Monitor. Not later than ten (10) days after appointment of a substitute Monitor, Respondent Fresenius shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondent Fresenius's compliance with the terms of this Order, the Order to Maintain Assets, and the Divestiture Agreements in a manner consistent with the purposes of this Order.
- D. Respondent Fresenius shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
 - 1. The Monitor shall have the power and authority to monitor Respondent Fresenius's

kept in the Ordinary Course Of Business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondent Fresenius's compliance with its obligations under this Order, the Order to Maintain Assets, and the Divestiture Agreements. Respondent Fresenius shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondent Fresenius's compliance with this Order, the Order to Maintain Assets, and the Divestiture Agreements.

5. The Monitor shall serve, without bond or other security, at the expense of Respondent Fresenius on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Respondent Fresenius, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. The Monitor shall account for all expenses incurred, including fees for services rendered, subject to the approval of the Commission.
 6. Respondent Fresenius shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Monitor.
 7. Respondent Fresenius shall report to the Monitor in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission. The Monitor shall evaluate the reports submitted to the Monitor by Respondent Fresenius, and any reports submitted by the Acquirer with respect to the performance of Respondent Fresenius's obligations under this Order, the Order to Maintain Assets, and the Divestiture Agreements.
 8. Within one (1) month from the date the Monitor is appointed pursuant to this paragraph, every sixty (60) days thereafter, and otherwise as requested by the Commission, the Monitor shall report in writing to the Commission concerning performance by Respondent Fresenius of its obligations under this Order, the Order to Maintain Assets, and the Divestiture Agreements.
 9. Respondent Fresenius may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *PROVIDED, HOWEVER*, such agreement shall not restrict the Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an

for whatever reason, (2) divest the Appendix F-4 Clinics in the Alaska area at the option of the Divestiture Trustee and the Commission.

In the event that the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondent Fresenius shall consent to the appointment of a trustee in such action to divest the relevant assets in accordance with the terms of this Order. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent Fresenius to comply with this Order.

- B. The Commission shall select the trustee, subject to the consent of Respondent Fresenius, which consent shall not be unreasonably withheld. The trustee shall be a Person with experience and expertise in acquisitions and divestitures. If Respondent Fresenius has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after receipt of notice by the staff of the Commission to Respondent Fresenius of the identity of any proposed trustee, Respondent Fresenius shall be deemed to have consented to the selection of the proposed trustee.
- C. Within ten (10) days after appointment of a trustee, Respondent Fresenius shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestitures required by this Order.
- D. If a trustee is appointed by the Commission or a court pursuant to this Order, Respondent Fresenius shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:
 - 1. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest any of the Appendix A Assets that have not been divested pursuant to Paragraph II of this Order and, subject to the provisions of Paragraph V.A. of the Order, divest Appendix F Clinic Assets.
 - 2. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the trustee has submitted a divestiture plan or the Commission believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission; *PROVIDED, HOWEVER*, the Commission may extend the divestiture period only two (2) times.
 - 3. Subject to any demonstrated legally recognized privilege, the trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant

assets that are required to be divested by this Order and to any other relevant information, as the trustee may request. Respondent Fresenius shall develop such financial or other information as the trustee may request and shall cooperate with the trustee. Respondent Fresenius shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent Fresenius shall extend the time for divestiture under this Paragraph V in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

4. The trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent Fresenius's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an Acquirer or Acquirers that receives the prior approval of the Commission, as required by this Order; *PROVIDED, HOWEVER*, if the trustee receives bona fide offers for particular assets from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity for such assets, the trustee shall divest the assets to the acquiring entity selected by Respondent Fresenius from among those approved by the Commission; *PROVIDED, FURTHER, HOWEVER*, that Respondent Fresenius shall select such entity within five (5) days of receiving notification o

7. The trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
 8. The trustee shall report in writing to Respondent Fresenius and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestiture.
 9. Respondent Fresenius may require the trustee and each of the trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *PROVIDED, HOWEVER*, such agreement shall not restrict the trustee from providing any information to the Commission.
- E. If the Commission determines that a trustee has ceased to act or failed to act diligently, the

VII.

IT IS FURTHER ORDERED that Respondent Fresenius shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of Respondent Fresenius,
- B. Any proposed acquisition, merger or consolidation of Respondent Fresenius, or
- C. Any other change in Respondent Fresenius that may affect compliance obligations arising out of this Order, including but not limited to assignment, the creation or dissolution of subsidiaries, or any other change in Respondent Fresenius.

VIII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing

APPENDIX A

APPENDIX A CLINICS

APPENDIX A CLINICS

	Clinic Name	Clinic Address
1	Liberty Flagstaff De Novo	2268 North Walgreens Street Flagstaff, AZ 86004
2	FMC Berkeley	2895 7 th Street Berkeley, CA 94710
3	Liberty Broadway Chula Vista	1181 Broadway, Suite 5 Chula Vista, CA 91911
4	Liberty El Camino Real	2227 South El Camino Real, Suite B Oceanside, CA 92054
5	Liberty Pueblo	850 Eagleridge Boulevard Pueblo, CO 81008
6	Liberty Orange	240 Indian River Road Orange, CT 6477
7	Liberty North Haven	510 Washington Avenue North Haven, CT 6473
8	Liberty Seaford	600 Health Service Drive Seaford, DE 19973
9	Liberty Wilmington	913 Delaware Avenue Wilmington, DE 19806
10	Liberty Sarasota	1921 Waldemere Street, Suite 107 Sarasota, FL 34239
11	FMC Viera	8041 Spyglass Road Viera, FL 32940
12	FMC Pine Street	745 Pine Street Macon, GA 31210
13	BMA of Macon Inc.	280 Clinton Street Macon, GA 31217
14	FMC South Macon Dialysis	2500 Second Street Macon, GA 31205
15	FMC Milledgeville	411 North Jefferson Street Milledgeville, GA 31061
16	Liberty Drayton Savannanfa 31210	



	Clinic Name	Clinic Address
36	Liberty Silver Hill	5652 Silver Hill Road District Heights, MD 20747
37	Liberty Indian Head Oxon Hill	5410 Indian Head Highway Oxon Hill, MD 20745
38	FMC Kent County De Novo	TBD Wyoming, MI
39	Liberty South East Jackson	200 South East Avenue Jackson, MI 49201
40	FMC Watervliet	8816 Red Arrow Highway Watervliet, MI 49098
41	FMC Dutchess	2585 South Road Poughkeepsie, NY 12601
42	Liberty Latrobe Charlotte	3515 Latrobe Drive Charlotte, NC 28211
43	Liberty Charlton Poughkeepsie	

	Clinic Name	Clinic Address
54	FMC Laredo	5501 Springfield Avenue Laredo, TX 78041

APPENDIX A-2

Appendix A Joint Ventures

APPENDI

	Joint Venture Name	Clinic Name (Medicare Provider Number)	Clinic Address
16	NRA-Memphis (Midtown), Tennessee, LLC	Liberty Poplar Avenue	1333 Poplar Avenue Memphis, TN 38104
17	RAI Care Centers of Gallatin I, LLC	Liberty Gallatin	270 East Main Street, Suite 100 Gallatin, TN 37066

APPENDIX B

AREA DEFINITIONS TO APPENDIX A CLINICS, THE DALLAS JOINT VENTURE INTERESTS CLINICS, AND THE ALASKA CLINIC ASSETS

AREA DEFINITIONS

! Five digit numbers refer to zip codes.

! Geographic areas bounded by roads include all properties abutting the referenced road (*i.e.*, properties on both sides of the road).

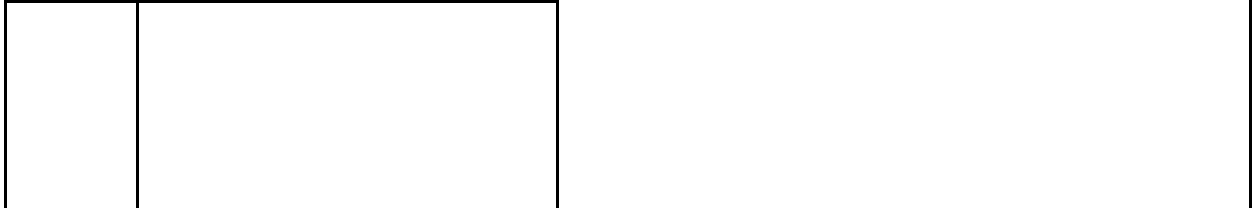
! Zip codes or other areas fully surrounded by areas included in the area definition shall be considered part of the area definition.

! Area definitions are based on maps submitted to the Commission staff by Fresenius.

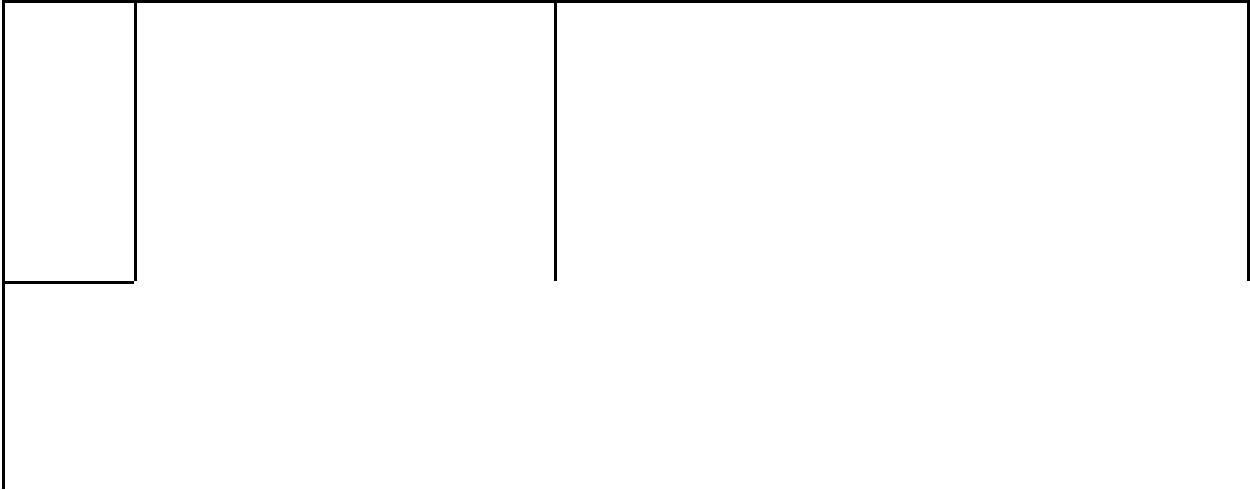
	Divested Clinics	Corresponding Area Definition
1	Liberty Alaska LLC	The area in and/or near Anchorage, AK, consisting of: 99501; 99502; 99503; 99504; 99505; 99506; 99507; 99508; 99515; 99516; 99517; 99518; 99520; 99540; 99567; 99577; 99587; 99654; and the portion of 99645 that lies south and west of Chickaloon, AK.
2	Liberty Flagstaff De Novo	The area in and/or near Flagstaff, AZ, consisting of: 86001, 86004, 86030, 86031, 86033, 86034, 86035, 86039, 86040, 86042, 86043, 86044, 86045, 86046, 86047, 86048, 86053, 86054, 86435, and 86510.
3	FMC Berkeley	The area in and/or near Berkeley, CA, consisting of: 94051; 94501; 94530; 94547; 94564; 94601; 94602; the portion of 94605 that lies north of 66 th Avenue; 94606; 94607; 94608; 94609; 94610; 94611; 94612; 94613; 94618; 94619; 94702; 94703; 94704; 94705; 94706; 94707; 94708; 94709; 94710; 94611; 94613; 94618; 94619; 94801; 94803; 94804; 94805; and 94806.

4	Liberty Broadway Chula Vista	The area in and/or near Chula Vista, CA, consisting of: the portion of 91901 that lies south of Japatul Road; 91905; 91906; 91910; 91911; 91913; 91914; 91915; 91917; 91932; 91934; 91935; 91945; 91950; 91962; 91963; 91977; 91978; 92101; 92102; the portion of 92103 that lies south of West Washington Street; 92104; 92105; 92113; 92114; the portion of 92115 that lies south of University Avenue; 92118; 92135; 92136; 92139; 92154; 91962; 91963; 92173; and 92174.
5	Liberty El Camino Real Oceanside	The area in and/or near Oceanside, CA, consisting of: the portions of 91901, 91962, and 92021 that lie north of 8, 91916, 91948, 92003, 92004, 92007, 92008, 92009, 92010, 92011, 92014, 92024, 92025, 92026, 92027, 92028, 92029, 92036, 92037, 92040, 92054, 92055, 92056, 92057, 92058, 92059, 92060, 92061, 92064, 92065, 92066, 92067, 92069, 92070, the portions of 92071, 92111, 92123, and 92124 that lie north of Route 52, 92075, 92078, 92081, 92082, 92083, 92084, 92086, 92121, 92122, 92126, 92127, 92128, 92129, 92130, 92131, 92137, and 92145.
6	Liberty Pueblo	The area in and/or near Pueblo, CO, consisting of: 81001, 81002, 81003, 81004, 81005, 81006, 81007, 81008, 81022, 81023, and 81069.
7	Liberty Orange and Liberty North Haven	The area in and/or near New Haven, CT, consisting of: 06405, 06460, 06461, 06471, 06472, 06473, 06 of University

10	Liberty Sarasota	The area in and/or near Sarasota, FL, consisting of: 34201, 34203, 34207, 34231, 34232, 34233, 34234, 34235, 34236, 34237, 34238, 34239, 34240, 34243, the portion of 34202 that lies to the south of State Road 64, the portion of 34208 that lies to the east of 57 th Street East, the portion of 34241 that lies to the north of Clark Road/State Road 72.
11	FMC Viera	The area in and/or near Merritt Island, FL, consisting of: 32920, 32922, 32924, 32926, 32927, 32931, 32940, 32952, 32953, 32954, 32955, and the portion of 32937 that lies north of Route 404.
12	FMC Pine Street, BMA of Macon Inc., and FMC South Macon Dialysis	The area in and/or near Macon, GA, consisting of: 31017, 31020, 31032, 31033, 31044, 31052, 31066, 31201, 31203, 31204, 31206, 31210, 31211, 31216, 31217, 31218, and 31220.
13	FMC Milledgeville	The area in and/or near Milledgeville, GA, consisting of: 31024, 31031, 31042, 31054, 31061, the portion of 31082 that lies to the west of North Indian Trail Road and South Indian Trail Road, 31087, and 31090.
14	Liberty Drayton Savannah	The area in and/or near Savannah, GA, consisting of: the portion of Chatham County, GA that lies to the east of I-95, and the portion of 29927 that lies to the south of the line formed by Route 170.
15	FMC Aloha, FMC Kapahulu, FMC Pearlridge, FMC Honolulu, FMC Kapolei, FMC Ko'Olau, FMC Wahiawa, FMC Waipahu De Novo, FMC Windward	The area in and/or near Honolulu, HI, consisting of the island of Oahu, HI.
16	FMC Idaho Panhandle	The area in and/or near Bonner, ID, consisting of: 83801, 83804, 83805, 83809, 83811, 83813, 83821, 83822, 83836, 83845, 83846, 83848, 83853, the portion of 83856 that lies in Idaho, 83864, and 83860.



25	FMC Kent County De Novo	The area in and/or near Grand Rapids, MI, consisting of: 49301, 49302, 49306, 49315, 49316, 49319, 49321, 49323, 49330, 49331, 49335, 49339, 49341, 39343, 49344, 49345, 49348, 49418, 49426, 49428, 49503, 49504, 49505, 49506, 49507, 49508, 49509, 49512, 49519, 49525, 49534, 49544, 49546, and 49548.
26	Liberty South East Jackson	The area in and/or near Jackson, MI, consisting of: 49201, 49202, 49203, 49204, 49224, 49230, 49234, 49237, 49240, 49241, 49245, 49246, 49259, the portion of 49264 south of Wilcox Lane, 49269, 49272, 49277, 49283, and 49284.
27	FMC Watervliet	The area in and/or near Watervliet, MI, consisting of: 49013, 49022, 49038, 49043, 49045, 49047, 49057, 49064, 49085, 49098, 49101, 49102, 49103, 49106, 49107, 49111, 49113, 49117, 49120, 49125, 49126, 49127, 49128, and 49129.
28	Fresenius Medical Director Agreement	



APPENDIX C

MONITOR AGREEMENT

NON-PUBLIC APPENDIX C-1

**COMPENSATION PROVISIONS OF
MONITOR AGREEMENT**

[Redacted From the Public Record Version, But Incorporated By Reference]

APPENDIX D

EXCLUDED TRADEMARKS & DESIGNS

[None]

NON-PUBLIC APPENDIX E

**DSI-FRESENIUS
DIVESTITURE AGREEMENTS**

[Redacted From the Public Record Version, But Incorporated By Reference]

NON-PUBLIC APPENDIX F

**LIST OF ALTERNATIVE CLINICS TO APPENDIX A
CLINICS TO DIVEST**

[Redacted From the Public Record Version, But Incorporated By Reference]

NON-PUBLIC APPENDIX

NON-PUBLIC APPENDIX F-4

**LIST OF ALTERNATIVE CLINIC TO DIVEST IN
ANCHORAGE, ALASKA AREA**

[Redacted From the Pub]th

NON-PUBLIC APPENDIX G

**DESIGNATED FRESENIUS EMPLOYEES:
ADDITIONAL FRESENIUS, RAI, AND
LIBERTY EMPLOYEES LIST**

[Redacted From the Public Record Version, But Incorporated By Reference]

NON-PUBLIC APPENDIX H

ALASKA CLINIC DIVESTITURE AGREEMENT

[Redacted From the Public Record Version, But Incorporated By Reference]

NON-PUBLIC APPENDIX I

**DALLAS CLINICS JOINT VENTURE INTERESTS
DIVESTITURE AGREEMENT**

[Redacted From the Public Record Version, But Incorporated By Reference]

