

STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

AGENDA

August 4, 2011
10:00 a.m.

ALBANY
Meeting Room #6
Concourse Level, Empire State Plaza

I. INTRODUCTION OF OBSERVERS

Dr. William Streck, Chairman

II. REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

10:00 a.m.

A. Report of the Department of Health

Nirav R. Shah, M.D., M.P.H., Commissioner of Health

B. Report of the Office of Health Insurance Programs Activities

Jason Helgeson, Deputy Commissioner, Office of Health Insurance Programs

C. Report of the Office of Health Information Technology Transformation Activities

Rachel Block, Deputy Commissioner, Office of Health Information
Technology Transformation

D. Report of the Office of Public Health Activities

Dr. Guthrie Birkead, Deputy Commissioner, Office of Public Health

E. Report of the Office of Health Systems Management Activities

Richard Cook, Deputy Commissioner, Office of Health Systems Management

III. HEALTH POLICY

11:00 a.m.

A. Healthcare Finance and Restructuring Initiatives: Multi-State Obligated Groups and Provider Integration/Collaboration Legislation

Karen Lipson, Director, Division of Policy

Charles Abel, Assistant Director, Division of Health Facility Planning

B. Report of the Committee on Health Planning

John Ruge, M.D., Chair

C. Request for Stroke Center Designation

Auburn Memorial Hospital

Exhibit #1

IV. PUBLIC HEALTH SERVICES

11:30 a.m.

Report of the Committee on Public Health

Jo Ivey Boufford, M.D., Chair

V. REGULATION

11:45 a.m.

Report of the Committee on Codes, Regulations and Legislation

John Palmer, Ph.D., Vice Chair

For Adoption

10-05 Amendment of Subpart 5-1 of Title 10 NYCRR
(Public Water Systems)

Exhibit #2

For Discussion

Sections 405.8 and 751.10 (New York Patient Occurrence Reporting and
Tracking System (NYPORTS))

Exhibit #3

*****Break for Lunch*****

VI. PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

12:30 p.m.

Report of the Committee on Establishment and Project Review

Christopher Booth, Vice Chair

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 1: Applications Recommended for Approval – No Issues or Recusals, Abstentions/Interests

CON Applications

NO APPLICATIONS

CATEGORY 2: Applications Recommended for Approval with the Following:

- ❖ PHHPC Member Recusals
- ❖ Without Dissent by HSA
- ❖ Without Dissent by Establishment and Project Review Committee

CON Applications

Cardiac Services – Construction

Exhibit #4

| | <u>Number</u> | <u>Applicant/Facility</u> | <u>E.P.R.C. Recommendation</u> |
|----|----------------------|--|---------------------------------------|
| 1. | 102412 C | Buffalo General Hospital – Kaleida Health (Cattaraugus County) Interest – Mr. Booth Interest – Ms. Regan | Conditional Approval |
| 2. | 102404 C | Olean General Hospital (Cattaraugus County) Interest – Mr. Booth | Contingent Approval |

Ambulatory Surgery Centers – Construction

Exhibit #5

| | <u>Number</u> | <u>Applicant/Facility</u> | <u>E.P.R.C. Recommendation</u> |
|----|----------------------|---|---------------------------------------|
| 1. | 111109 C | Eastern Niagara Hospital – Lockport Division d/b/a Eastern Niagara Ambulatory Surgery Center (Niagara County) Interest – Mr. Booth | Contingent Approval |

Transitional Care Units - Construction

Exhibit #6

| | <u>Number</u> | <u>Applicant/Facility</u> | <u>E.P.R.C. Recommendation</u> |
|----|---------------|--|--------------------------------|
| 1. | 102368 T | Rome Memorial Hospital, Inc. (Oneida County) Interest – Mr. Booth | Contingent Approval |
| 2. | 102369 T | New York Hospital Medical Center of Queens (Queens County) Interest – Mr. Fassler Interest – Dr. Martin Interest – Dr. Sullivan | Contingent Approval |
| 3. | 102370 T | Good Samaritan Hospital of Suffern (Rockland County) Recusal – Dr. Torres Interest – Dr. Martin Interest – Dr. Sullivan | Contingent Approval |

CATEGORY 3: Applications Recommended for Approval with the Following:

- ❖ No PHHPC Member Recusals
- ❖ Establishment and Project Review Committee Dissent, or
- ❖ Contrary Recommendations by HSA

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

- ❖ PHHPC Member Recusals
- ❖ Establishment and Project Review Committee Dissent, or
- ❖ Contrary Recommendation by HSA

NO APPLICATIONS

CATEGORY 5: Applications Recommended for Disapproval by OHSM or
Establishment and Project Review Committee - with or without
Recusals

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

CON Applications

NO APPLICATIONS

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 1: Applications Recommended for Approval – No Issues or Recusals, Abstentions/Interests

CON Applications

Acute Care Services – Establish/Construct

Exhibit #7

| | <u>Number</u> | <u>Applicant/Facility</u> | <u>E.P.R.C. Recommendation</u> |
|----|----------------------|--|---------------------------------------|
| 1. | 111388 E | Riverside Health Care System, Inc. (Westchester County) | Approval |

Diagnostic and Treatment Centers – Establish/Construct

Exhibit #8

| | <u>Number</u> | <u>Applicant/Facility</u> | <u>E.P.R.C. Recommendation</u> |
|----|----------------------|--|---------------------------------------|
| 1. | 102147 B | Premium Health (Kings County) | Contingent Approval |
| 2. | 111183 E | Airport Imaging, LLC d/b/a Hudson Valley Imaging (Orange County) | Contingent Approval |
| 3. | 111220 B | Healthcare Partners of Saratoga, LTD (Saratoga County) | Contingent Approval |

Residential Health Care Facilities – Establish/Construct

Exhibit #9

| | <u>Number</u> | <u>Applicant/Facility</u> | <u>E.P.R.C. Recommendation</u> |
|----|----------------------|---|---------------------------------------|
| 1. | 111347 E | CPRNC, LLC d/b/a Central Park Rehabilitation and Nursing Center (Onondaga County) | Contingent Approval |

Certified Home Health Agencies – Establish/Construct**Exhibit #10**

| <u>Number</u> | <u>Applicant/Facility</u> | <u>E.P.R.C. Recommendation</u> |
|---------------|---|--------------------------------|
| 1. 071074 E | *DEFERRED AT THE APPLICANT’S REQUEST Excellent Home Care Services, LLC (Kings County) | |

HOME HEALTH AGENCY LICENSURES**Exhibit #11**

| <u>Number</u> | <u>Applicant/Facility</u> | <u>E.P.R.C. Recommendation</u> |
|---------------|---|--------------------------------|
| 1990 L | Meadowbrook Terrace, Inc. (Jefferson County) | Contingent Approval |
| 1966 L | Chautauqua County Department of Health (Chautauqua County) | Contingent Approval |
| 2024 L | Schuyler County Public Health Department (Schuyler County) | Contingent Approval |
| 2025 L | Lewis County Public Health Licensed Home Care Service Agency (Lewis County) | Contingent Approval |
| 1884 L | Crestwood Health Care Center, Inc. d/b/a Elderwood Assisted Living at Crestwood (Niagara County) | Contingent Approval |
| 1910 L | Heathwood Health Care Center, Inc. d/b/a Elderwood Assisted Living at Heathwood (Erie County) | Contingent Approval |
| 1981 L | Elderwood Assisted Living at Riverwood, Inc. (Erie County) | Contingent Approval |

CATEGORY 2: Applications Recommended for Approval with the Following:

- ❖ PHHPC Member Recusals
- ❖ Without Dissent by HSA
- ❖ Without Dissent by Establishment and Project Review Committee

CON Applications

Ambulatory Surgery Center – Establish/Construct

Exhibit #12

| | <u>Number</u> | <u>Applicant/Facility</u> | <u>E.P.R.C. Recommendation</u> |
|----|----------------------|---|---------------------------------------|
| 1. | 111076 B | QEASC, LLC (Queens County) Interest – Dr. Martin Interest – Dr. Sullivan | Contingent Approval |
| 2. | 111165 B | Queens Boulevard GI, LLC (Queens County) Interest – Dr. Martin Interest – Dr. Sullivan | Contingent Approval |
| 3. | 111196 B | Syracuse Surgery Center, LLC (Onondaga County) Interest – Mr. Booth | Contingent Approval |

Diagnostic and Treatment Centers – Establish/Construct

Exhibit #13

| | <u>Number</u> | <u>Applicant/Facility</u> | <u>E.P.R.C. Recommendation</u> |
|----|----------------------|--|---------------------------------------|
| 1. | 081059 B | Menorah Campus Health Services, Inc. (Erie County) Interest – Mr. Fassler | Contingent Approval |

Hospice – Establish/Construct

Exhibit #14

| | <u>Number</u> | <u>Applicant/Facility</u> | <u>E.P.R.C. Recommendation</u> |
|----|----------------------|---|---------------------------------------|
| 1. | 102454 E | Compassionate Care Hospice of New York, Inc. (Bronx County) Interest – Ms. Regan | Contingent Approval |

Residential Health Care Facilities – Establish/Construct**Exhibit #15**

| | <u>Number</u> | <u>Applicant/Facility</u> | <u>E.P.R.C. Recommendation</u> |
|----|----------------------|---|---------------------------------------|
| 1. | 092035 E | Park Avenue Operating Co., LLC d/b/a Park Avenue Extended Care Facility (Nassau County) Recusal – Mr. Fensterman | Approval |
| 2. | 092037 E | Nassau Operating Co., LLC d/b/a Nassau Extended Care Facility (Nassau County) Recusal – Mr. Fensterman | Approval |
| 3. | 092038 E | Townhouse Operating Co., LLC d/b/a Townhouse Center for Rehabilitation and Nursing (Nassau County) Recusal – Mr. Fensterman | Contingent Approval |
| 4. | 092041 E | Throgs Neck Operating Co., LLC d/b/a Throgs Neck Extended Care Facility (Bronx County) Recusal – Mr. Fensterman | Approval |
| 5. | 092077 E | Bayview Nursing and Rehabilitation Center (Nassau County) Recusal – Mr. Fensterman | Contingent Approval |
| 6. | 111132 E | Amerifalls, LLC d/b/a Niagara Rehabilitation and Nursing Center (Niagara County) Recusal – Mr. Fensterman | Contingent Approval |
| 7. | 111170 E | JOPAL, Bronx, LLC (Bronx County) Recusal – Mr. Fensterman | Contingent Approval |

Certificates

Certificate of Dissolution

Exhibit #16

Applicant

E.P.R.C. Recommendation

1. MTC Senior Housing, Inc.
Recusal – Mr. Fassler

Approval

HOME HEALTH AGENCY LICENSURES

Exhibit #17

Number

Applicant/Facility

E.P.R.C. Recommendation

| | | |
|--------|---|---------------------|
| 1708 L | Jules Home HealthCare, Inc. Interest - Ms. Regan | Contingent Approval |
| 1731 L | Tradition, LLC Interest - Mr. Fassler Interest - Ms. Regan | Contingent Approval |
| 1849 L | Caring Hands Home Care Services, Inc. Interest - Ms. Regan | Contingent Approval |
| 1892 L | 1 st Aide Home Care, Inc. Interest - Ms. Regan | Contingent Approval |
| 1918 L | Caring Touch Homecare, Inc. Interest - Ms. Regan | Contingent Approval |
| 1931 L | JARME Home and Healthcare Services Corporation Interest - Ms. Regan | Contingent Approval |
| 1924 L | Signature Care, LLC Interest - Ms. Regan | Contingent Approval |
| 1580 L | Direct Home Care, Inc. Interest - Ms. Regan | Contingent Approval |
| 1737 L | Reliable Choice Home Health Care, Inc. Interest - Ms. Regan | Contingent Approval |
| 1806 L | Elite Home Services, LLC Interest - Ms. Regan | Contingent Approval |

| | | |
|--------|--|---------------------|
| 1916 L | ADJ Wisdom Home Care, Inc. Interest - Ms. Regan | Contingent Approval |
| 1930 L | Maplewood Home Care, LLC d/b/a Maplewood Home Care Recusal - Ms. Hines Interest - Mr. Booth Interest - Ms. Regan | Contingent Approval |
| 1942 L | Glorious Home Care Agency Interest - Ms. Regan | Contingent Approval |
| 1948 L | Liberty Resources, Inc. Interest - Ms. Regan | Contingent Approval |
| 1908 L | Greater Harlem Nursing Home and Rehabilitation Center, Inc., d/b/a Greater Harlem Licensed Home Care Services Agency Interest - Mr. Fassler Interest - Dr. Palmer Interest - Ms. Regan | Contingent Approval |
| 1722 L | AZA Home Health Care, LLC Interest - Ms. Regan | Contingent Approval |
| 1974 L | Light 101, Inc. Interest - Ms. Regan | Contingent Approval |
| 1926 L | Doral Investor's Group, LLC d/b/a House Calls Home Care Interest - Ms. Regan | Contingent Approval |

CATEGORY 3: Applications Recommended for Approval with the Following:

- ❖ No PHHPC Member Recusals
- ❖ Establishment and Project Review Committee Dissent, or
- ❖ Contrary Recommendations by or HSA

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

- ❖ PHHPC Member Recusals
- ❖ Establishment an Project Review Committee Dissent, or
- ❖ Contrary Recommendation by HSA

NO APPLICATIONS

CATEGORY 5: Applications Recommended for Disapproval by OHSM or Establishment and Project Review Committee - with or without Recusals

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

Diagnostic and Treatment Centers – Establish/Construct

Exhibit #18

| | <u>Number</u> | <u>Applicant/Facility</u> | <u>E.P.R.C. Recommendation</u> |
|----|----------------------|--|---------------------------------------|
| 1. | 102159 B | Parcare Community Health Network (Kings County) Recusal – Mr. Fensterman | No Recommendation |

Dialysis Services – Establish/Construct

Exhibit #19

| | <u>Number</u> | <u>Applicant/Facility</u> | <u>E.P.R.C. Recommendation</u> |
|----|----------------------|--|---------------------------------------|
| 1. | 092072 B | Mohawk Valley Dialysis Center, Inc. (Montgomery County) | Contingent Approval |

VII. PROFESSIONAL

Report of the Committee on Health Personnel and Interprofessional Relations

Dr. Theodore Strange, Chair
One Case

VIII. NEXT MEETING

September 22, 2011 – Committee Day (NYC)
October 6, 2011 – Full Council (NYC)

IX. ADJOURNMENT

**New York State Department of Health
Public Health and Health Planning Council**

August 4, 2011

I. HEALTH POLICY

C. Request for Stroke Center Designation

Auburn Memorial Hospital

Exhibit #1

MEMORANDUM

TO: Members of the Public Health and Healthcare Planning Council

FROM: Charles P. Abel, Assistant Director
Division of Health Facility Planning

DATE: July 13, 2011

SUBJECT: **Application for Designation as Hospital Stroke Centers Staff Review – Auburn Memorial Hospital**

Enclosed is one staff recommendation requesting approval for stroke center designation:

1. Auburn Memorial Hospital

The Department has just received an application from Columbia Memorial Hospital and has an application pending complete submission from DeGraff Memorial Hospital. An onsite visit was conducted at Millard Fillmore Suburban and designation is pending submission of additional information.

APPLICATION FOR DESIGNATED STROKE CENTER

Staff Report

Hospital: Scott Berlucci
President and Chief Executive Officer
Auburn Memorial Hospital
17 Lansing Street
Auburn, NY 13021

- Findings:
- Meets the criteria for designation of stroke center
 - The stroke center has been established and is operational with written policy and procedures
 - There is a dedicated acute stroke team and it is staffed by qualified healthcare professionals
 - The medical director meets the criteria for training as delineated by the Department with contingency
 - Neuro-imaging services available 24/7 to perform and read CT/MRI scans consistent with time targets acceptable to Department
 - Policies and Procedures exist for laboratory services 24/7 with laboratory results for acute stroke patients being a priority
 - A letter of commitment from department of neurosurgery has been submitted and operating room services are available 24/7
 - The stroke center has established outcome objectives and tracking objectives for QI
 - Evidence of ongoing patient and community education services has been submitted
 - Quality improvement, progress reports and committee have been established to evaluate their QI system for acute stroke patients

Approval Conditional Upon:

- None

Recommendations:

- Approval

**New York State Department of Health
Public Health and Health Planning Council**

August 4, 2011

I. REGULATION

For Adoption

10-05 Amendment of Subpart 5-1 of Title 10 NYCRR
(Public Water Systems)

Exhibit #2

For Discussion

Sections 405.8 and 751.10 (New York Patient Occurrence Reporting and
Tracking System (NYPORTS))

Exhibit #3

Summary of Express Terms

These amendments are necessary due to the promulgation by the United States Environmental Protection Agency (EPA) of the Ground Water Rule (GWR) on October 11, 2006, in order to make New York's regulations of Public Water Systems (PWS) consistent with EPA requirements.

The GWR was promulgated to reduce the risk of exposure to fecal contamination that may be present in public water systems that use ground water sources. The GWR also specifies when corrective action (which may include disinfection) is required to protect consumers who receive water from ground water systems from bacteria and viruses.

The new requirements of the GWR include:

- new Maximum Contaminant Levels/Treatment Techniques for indicators of fecal contamination in ground water sources (wells);
- expanded requirements for conducting inspections of public water systems known as sanitary surveys;
- additional record-keeping requirements for public water systems and local and state health departments; and
- customer notification by public water systems when there is a significant deficiency in the facilities or operation of the public water system or if there is fecal contamination of the raw source water and the system does not provide at least 4-log (99.99%) removal or disinfection of viruses.

Water systems must correct significant deficiencies at facilities or in system operation which may allow contaminated water to reach consumers, when directed by the State or local health department. Customers must be notified and the system must correct this violation of the regulation, either immediately or after development of an approved correction plan.

The minimum required concentration of disinfectant entering the water distribution system (and for chemical disinfectants other than chlorine) is clarified. Systems using chlorine must maintain a minimum of 0.2 mg/l at the entry point, and must notify the State if the concentration falls below that level for four or more hours. Systems must take specific actions if the system fails to meet these requirements, and notify the public in case of failure to meet the specified requirements.

Monitoring plan requirements are expanded to require inclusion of all required sampling locations and frequencies. For simple ground water systems, these monitoring plans will be simple to prepare. While comprehensive monitoring plans are currently required in Department guidance, the current requirements apply only to plans for monitoring disinfection byproducts.

Consecutive PWS, who purchase or otherwise obtain water from PWS's using ground water sources (wholesalers), must describe in their monitoring plan the process by which they will notify their wholesaler in the event of a total-coliform positive sample (unless

invalidated or determined to have originated in the distribution system). If the consecutive system, or the wholesaler, provides 4-log treatment that is confirmed, using process compliance monitoring, this additional notification and source water sampling is not required. Confirmation of treatment system performance through measurements and record keeping is known as process compliance monitoring.

Several tables summarizing violation determination or monitoring frequencies have been revised and or added. The affected tables and substantial changes include:

Table 6

- New treatment technique violations when fecal contamination is found at a system that does not provide 4-log microbial treatment.
- The required fecal indicator will remain *E.coli*. (If fecal contamination is observed in the untreated source water, corrective action must be taken.)

Table 11

- Enterococcus and bacteriophage are added as fecal contaminants, however no monitoring requirements are added.
- Systems with disinfection waivers will no longer be eligible for reduced microbiological monitoring, previously allowed at State discretion.

New Table 11B

- Lists actions required when microbial contamination is detected in routine or follow-up monitoring samples.

GWR Notifications are added to Table 13 of Required Notifications

Tables 15 and 15A

- Revised to reflect changes to disinfection residual measurement as amended by the GWR

All PWS's must respond to notification of significant deficiencies observed at the PWS and indicate that failure to address any significant deficiencies is a treatment technique violation.

The requirements for completion of daily operation records are simplified to allow for the use of electronic or other forms. These records must include documentation of process compliance monitoring at ground water systems where 4-log treatment is required.

Reporting requirements for all PWS's specific to GWR violations and significant deficiencies have been expanded to ensure that consumers are informed of source contamination or threats to the quality of water provided by the water system.

The reporting responsibilities of consecutive systems are clarified, and include notification of the wholesaler from whom they purchase water as well as the health department, whenever microbiological contamination is observed.

Ground water systems must notify the State within 24 hours of a GWR violation. Failure to do so will result in the requirement for a Tier 1 notification for failure to notify as well as for the violation.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by section 225 of the Public Health Law, Subpart 5-1 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective upon publication of a Notice of Adoption in the New York State Register, as follows:

Existing Section 5-1.1, Definitions, is being renumbered and amended to be in alphabetical and sequential order, as noted below.

Existing subdivisions (a)-(f) of section 5-1.1 are renumbered to be subdivisions (b)-(g), respectively. A new subdivision (a) is added to section 5-1.1 to read as follows:

(a) “-log treatment” means the reduction of a specified proportion of viruses, bacteria, protozoa or other organisms present in drinking water expressed as factors of ten, through disinfection (inactivation) and/or removal. For example, 3-log treatment removes or inactivates 999 out of 1000 organisms or 99.9 percent.

A new subdivision (h) to section 5-1.1 is added to read as follows:

(h) Consecutive system means a public water system that receives some or all of its finished water from one or more wholesale systems. Delivery may be through a direct connection or through the distribution system of one or more consecutive systems.

Existing subdivisions (g)-(h) of section 5-1.1 are renumbered to be subdivisions (i)-(j), respectively. A new subdivision (k) to section 5-1.1 is added to read as follows:

(k) Corrective action means the action(s) taken by a water system consistent with the requirements of this code including one or more of the following: correcting significant deficiencies; providing an alternate source of water; removing source(s) of contamination; providing treatment; or other action acceptable to the State.

Existing Subdivisions (i)-(v) of section 5-1.1 are renumbered to be subdivisions (l)-(y), respectively. A new subdivision (z) of section 5-1.1 is added to read as follows:

(z) Fecal indicator means a microorganism (for example a bacteriophage, coliphage, or bacterium) that is used to determine the sanitary quality of drinking water and the likelihood of the presence of pathogen contamination from the waste of warm-blooded animals. The most commonly used fecal indicator is *Escherichia coli* (*E. coli*).

Existing subdivisions (w)-(ad) of section 5-1.1 are renumbered to be subdivisions (aa)-(ah), respectively. Subdivision (ah) to section 5-1.1, as renumbered, is amended to read as follows:

(ah) Ground water directly influenced by surface water, also known as Ground Water Under the Direct Influence of surface water, or GWUDI, means any water beneath the surface of the ground which exhibits significant and rapid shifts in water characteristics such as turbidity, temperature, conductivity or pH which closely correlates to climatological or surface water conditions and/or which contains macroorganisms, algae, large diameter (three microns or greater) pathogens or insect parts of a surface water origin.

Existing subdivision (ae) of section 5-1.1 is renumbered to be subdivision (ai).

Subdivision (ai) of section 5-1.1 is amended to read as follows:

(ai) Ground water source means a source of water supply taken from a ground water aquifer and developed in accordance with section 5-1.22 of this Subpart, but shall not include an admixture of surface water or water exposed to the ground surface. Any ground water source at a system that uses surface water or ground water under the direct influence of surface water that does not receive treatment as described in subdivision 5-1.30(b) of this Subpart, prior to the first customer, is subject to all requirements applicable to ground water systems and ground water sources.

Existing subdivisions (af)-(av) of section 5-1.1 are renumbered to be subdivisions (ak)-(ba), respectively. A new subdivision (aj) is added to section 5-1.1 to read as follows:

(aj) Ground water system means a public water system that uses only ground water, excluding any surface water or ground water under the direct influence of surface water.

Existing subdivisions (aw)-(bd) of section 5-1.1 are renumbered to be subdivisions (bc)-(bj), respectively. A new subdivision (bb) is added to section 5-1.1 to read as follows:

(bb) Process compliance monitoring means the State-approved measurements and records of water system operation and/or water quality parameters that demonstrate the effectiveness of the treatment process(es) employed by the public water system to achieve a treatment technique requirement.

Existing subdivisions (be)-(bf) of section 5-1.1 are renumbered to be subdivisions (bl)-(bm), respectively. A new subdivision (bk) is added to section 5-1.1 to read as follows:

(bk) Sanitary survey means an onsite review of a water system including the water source, facilities, equipment, operations maintenance, and monitoring compliance of a public water system to evaluate the adequacy of the system, its sources and operations and the distribution of safe drinking water. The survey must include evaluation of the following components: source; treatment; distribution system; finished water storage; pumps, pump facilities, and controls; monitoring, reporting, and data verification; system management and operation; and operator compliance with State requirements. Review of each of these categories of system operation need not be completed in a single visit.

Existing subdivisions (bg)-(bu) of section 5-1.1 are renumbered to be subdivisions (bo)-(cc), respectively. A new subdivision (bn) is added to section 5-1.1 to read as follows:

(bn) Significant deficiency means a defect in a system's design, operation or maintenance, or a failure or malfunction of its source, treatment, storage, or distribution, that causes or is reasonably expected to cause the introduction of contamination into water delivered to consumers. Significant deficiencies also include: loss of ability to deliver an adequate quantity of water; inadequate barriers of protection including failure of monitoring; conditions that pose an obvious security risk to the water system; or any other condition with the potential to cause a future public health hazard (i.e. before the next scheduled sanitary survey).

Existing subdivisions (bv)-(cb) of section 5-1.1 are renumbered to be subdivisions (ce)-(ck), respectively. A new subdivision (cd) is added to section 5-1.1 to read as follows:

(cd) Treatment technique means any minimum treatment or action specified by this Part or designated by the State as necessary to prevent the entry of contamination into or to reduce the level of a contaminant in drinking water delivered by a public water system.

A new subdivision (cl) of section 5-1.1 is added to read as follows:

(cl) Wholesale system means a public water system that treats source water as necessary to produce finished water and then delivers some or all of that finished water to another public water system. Delivery may be through a direct connection or through the distribution system of one or more consecutive systems.

Section 5-1.22 is amended to read as follows:

5-1.22 Approval of plans and completed works.

(a) No supplier of water shall make, install or construct, or allow to be made, installed or constructed, a public water system or any addition or deletion to or modification of a public water system until the plans and specifications have been submitted to and approved by the State. Materials used in the design, construction and repair of a public water system shall be lead-free. For this Subpart, lead-free shall mean solder or flux which contains no more than 0.2 percent lead and pipes, pipe fittings or any appurtenances which contain no more than eight percent lead.

(b) [Recommended Standards for Water Works², 2003 edition, published by the Great Lakes-Upper Mississippi River Board of State and Provisional Public Health and

Environmental Managers and available from Health Research Inc., P.O. Box 7126, Albany, NY 12224, Standards for Water Wells³ and Special Requirements for Wells Serving Public Water Systems⁴, all available for public inspection at the Bureau of Water Supply Protection of the Department of Health, Flanigan Square, 547 River Street, Troy, NY 12180, shall, in their entirety, be the basis on which all plans and specifications for public water systems will be approved. The department] Approval of plans and specifications for public water systems shall be based on the following standards in their entirety. The State may allow deviations from these standards in accordance with procedures [and criteria] established by the commissioner.

(1) “Recommended Standards for Water Works”, (Appendix 5-A)

(2) Standards for Water Wells (Appendix 5-B)

(3) Special Requirements for Wells Serving Public Water Systems (Appendix 5-D)

(c) The State may approve such plans or may require such modification which is deemed necessary to protect public health or safety. Application for plan approval shall be made on a form prescribed by the department.

(d) A supplier of water shall receive the approval of the State before placing into service any public water system constructed under the requirements of this section.

[²See Appendix 5-A, *infra*.

³See Appendix 5-B, *infra*.

⁴See Appendix 5-D, *infra*.]

Subdivision 5-1.30 (a) is amended to read as follows:

(a) Minimum treatment for a ground water source shall be disinfection by chlorination or other [disinfection] microbial contaminant treatment acceptable to the [department] State

in accordance with the provisions of section 5-1.22 of this Subpart. If chemical disinfection is used, the disinfectant residual concentration must be maintained at all times and under no circumstances shall be less than the required concentration for more than four hours. Unless other corrective action is approved by the State, any ground water source where fecal contamination has been observed, or where a significant deficiency may be causing or has the potential to cause the introduction of contamination into the water delivered to customers, must be treated to remove or inactivate 99.99% (4-log) of viruses. Continuous monitoring of active microbial treatment processes is required, except as provided in section 5-1.52 table 15 of this Subpart.

Paragraph (2) of Subdivision 5-1.30 (b) is amended to read as follows:

(2) For [for] systems using chlorine, the free chlorine residual disinfection concentration in the water entering the distribution system [can not be less than 0.2 milligrams per liter for more than four hours.] must be at least 0.2 milligrams per liter and may not be less than the required minimum concentration for compliance for more than four hours. Systems using other chemical disinfectants shall maintain residual disinfection levels entering the distribution system comparable to requirements for systems using chlorination. Continuous monitoring is required, except as provided in section 5-1.52 table 15 of this Subpart; and

Paragraph (5) of subdivision 5-1.30(c) is amended to read as follows:

(5) For systems using chlorine, the free chlorine residual disinfection concentration in the water entering the distribution system [cannot be less than] must be at least 0.2

milligrams per liter and may not be less than the required minimum concentration for compliance for more than four hours, unless the State determines that any such failure was caused by circumstances that were unusual or unpredictable. Systems using other chemical disinfectants shall maintain residual disinfection levels entering the distribution system comparable to requirements for systems using chlorination. Continuous monitoring is required, except as provided in section 5-1.52 table 15 of this Subpart.

Subdivision 5-1.30(d) is amended to read as follows:

(d) Notwithstanding anything to the contrary in sections 5-1.12, 5-1.23, 5-1.51 or 5-1.77 of this Subpart, if the public water system fails to comply with the treatment technique and/or the monitoring requirements of subdivisions (a), (b), (c) or (g) of this section, fails to install the filtration and/or disinfection treatment [facilities] required by this section or fails to comply with the avoidance criteria requirements contained in subdivision (c) of this section, the system violates this Subpart and shall make State and public notification, including any required mandatory health effects language. Pursuant to subdivision (c) of this section, if at any time the raw water turbidity exceeds five nephelometric turbidity units, the system shall consult with the State within 24 hours of learning of the exceedance. Based on this consultation, the State may determine that the exceedance constitutes a public health hazard, [as defined in paragraph 5-1.1(aw)(4)] as found in paragraph (4) of subdivision 5-1.1(bc) of this Subpart, which requires a Tier 1 notification. When consultation does not take place within the 24 hour period, the water system must distribute a Tier 1 notification no later than 48 hours after the system learns of the violation. [Pursuant to subdivisions (b) and (c) of this section, if the free chlorine

residual falls below 0.2 milligrams per liter in the water entering the distribution system, for a system using chlorine, the system shall make State notification. The system must make State notification whether the residual was restored to at least 0.2 milligrams per liter within four hours.] Ground water systems that are required to provide 4-log virus treatment, surface water systems and Ground Water Under the Direct Influence of surface water (GWUDI) systems that use chemical disinfection must notify the State whenever residual disinfectant levels in the water entering the distribution system are less than the specified concentration pursuant to subdivisions (b) and (c) of this section. Any water system that uses chemical disinfection must make State notification whenever disinfectant residual levels entering the distribution system are not restored within four hours.

Subdivision 5-1.30 (g) is amended to read as follows:

(g) When [chlorine] a chlorine-based chemical disinfectant is used [as the disinfectant, a free chlorine residual shall be maintained], the residual disinfectant concentration in the distribution system, measured as free or combined chlorine shall be maintained at detectable concentrations at representative points in the distribution system, in accordance with the monitoring requirements in [provision of] section 5-1.52 [table] Table 11 [footnotes 1 and 6] of this Subpart. No more than five percent of the free chlorine residual samples shall be undetectable in any two consecutive months that the system serves water to the public. Chlorine residual or heterotrophic bacteria analyses shall be performed in accordance with section 5-1.52 Table 11 of this Subpart.

Monitoring for heterotrophic bacteria may be substituted for free chlorine residuals. A heterotrophic plate count result equal to or less than 500 colonies per milliliter is considered to be equivalent to a measurable free chlorine residual.

Subdivision 5-1.51 (c) is amended to read as follows:

(c) Each system [required to monitor for disinfection byproducts must develop and implement a monitoring plan] must develop and implement a monitoring plan that includes all monitoring requirements specified in this Subpart. This plan must be completed by January 31, 2012. The system must maintain the plan and make it available for inspection by the State and the general public [no later than 30 days after the compliance date. If the system is a community or nontransient noncommunity system that uses surface water or ground water under the direct influence of surface water and serves 10,000 or more people, the monitoring plan must be made available by January 31, 2002. If the system is a community or nontransient noncommunity system that uses surface water or ground water under the direct influence of surface water and serves fewer than 10,000 people, or it is a community or nontransient noncommunity system using only ground water, the monitoring plan must be made available by January 31, 2004. All community and nontransient noncommunity systems using surface water or ground water under the direct influence of surface water that serve more than 3,300 people must submit a copy of the monitoring plan to the State, or provide written acknowledgement and acceptance of a plan provided by the State, no later than the date of the first report required in section 5-1.72 of this Subpart]. After review, the State may require changes in any plan elements. Failure to monitor in accordance with the

monitoring plan is a monitoring violation. Systems may only use [only] data collected in accordance with the monitoring plan to qualify for reduced monitoring [of disinfection byproducts or disinfection byproduct precursors]. The monitoring plan must include at least the following elements, as applicable:

(1) specific locations and schedules for collecting samples for [any] all applicable parameters listed in [this section] section 5-1.42, section 5-1.43, Tables 8A-12 of section 5-1.52, and section 5-1.61 of this Subpart;

(2) how the system will calculate compliance with MCLs, MRDLs, and treatment techniques;

(3) if [approved for monitoring as] the system is a consecutive system, or [if] it is providing water to a consecutive system, and has been approved for modified monitoring under the provisions of section 5-1.76 of this Subpart, the sampling plan must reflect the entire distribution system for any analytes approved for modified monitoring;

(4) consecutive ground water systems must define and implement a protocol for notifying the system from which they receive water of any total coliform positive samples so the source can be tested for fecal contamination, unless the wholesale ground water system provides 4-log virus treatment at peak flow before or at the first customer as confirmed through process compliance monitoring.

Repeal Tables 6, 11, 13, 15 and 15A of section 5-1.52. New Tables 6, 11, 11B, 13, 15 and 15A are added to section 5-1.52 to read as follows:

Table 6. Microbiological Contaminants Maximum Contaminant Level (MCL)/Treatment Technique (TT) Violation Determination

| Contaminant | Sample Location | MCL or TT | Performance Standard ^{1,2} | Determination of MCL/TT violation ³ |
|--|---------------------------|--|-------------------------------------|--|
| Total coliform | Distribution Sample Sites | MCL | No positive sample ⁴ | An MCL violation occurs at systems collecting 40 or more samples per month when more than 5.0 percent of the total coliform samples are positive. |
| | | MCL | | An MCL violation occurs at systems collecting less than 40 samples per month when two or more samples are total coliform positive. |
| <i>Escherichia coli</i> (<i>E. coli</i>) | Distribution Sample Sites | MCL | No positive sample ⁴ | An MCL violation occurs when a total coliform positive sample is positive for <i>E. coli</i> and a repeat total coliform sample is positive or when a total coliform positive sample is negative for <i>E. coli</i> but a repeat total coliform sample is positive and the sample is also positive for <i>E. coli</i> . ⁵ |
| Fecal indicator: <i>E. coli</i> , and/or enterococci, and/or coliphage | | Untreated Water from a Ground Water Source | TT | No fecal indicator in samples collected from raw source water from a ground water source. ⁶ |

¹ A public water system must comply with the MCL for total coliform each month the system is required to monitor for total coliform.

² All samples collected in accordance with Table 11 footnotes 1, and 2 and Table 11B of this section, and samples collected in accordance with section 5-1.51(g) of this Subpart shall be included in determining compliance with the MCL unless any of the samples have been invalidated by the State.

³ For notification purpose, an *E. coli* MCL violation in the distribution system is a public health hazard requiring Tier 1 notification.

⁴ See Table 13 for public notification requirements.

⁵ If any total coliform or *E. Coli* sample is positive, repeat samples must be collected in accordance with Table 11B of this section.

⁶ If raw water source sample is fecal indicator positive, the water system, in consultation with the State, may collect an additional 5 samples within 24 hours at each source that tested fecal indicator positive. If none of the additional samples are fecal indicator positive, then there is no TT violation. Note that Tier 1 notification must be made after the initial raw water fecal indicator positive sample, even if it is not confirmed.

Table 11 Microbiological Minimum Monitoring Requirements (Refer to Table 11B following any positive samples) ^{1,2,3,4}

| Contaminant | Type of water system | Number of samples based on population | | | |
|--|---|---------------------------------------|---|------------------------|--|
| | | Population Served | Minimum number of Samples per month ⁴ | Population Served | Minimum number of Samples per month ⁴ |
| Total coliform in distribution system ⁵ | Community | Up to 1,000 ⁶ | 1 | 59,001 to 70,000 | 70 |
| | | 1,001 to 2,500 | 2 | 70,001 to 83,000 | 80 |
| | | 2,501 to 3,300 | 3 | 83,001 to 96,000 | 90 |
| | | 3,301 to 4,100 | 4 | 96,001 to 130,000 | 100 |
| | | 4,101 to 4,900 | 5 | 130,001 to 220,000 | 120 |
| | | 4,901 to 5,800 | 6 | 220,001 to 320,000 | 150 |
| | | 5,801 to 6,700 | 7 | 320,001 to 450,000 | 180 |
| | | 6,701 to 7,600 | 8 | 450,001 to 600,000 | 210 |
| | | 7,601 to 8,500 | 9 | 600,001 to 780,000 | 240 |
| | | 8,501 to 12,900 | 10 | 780,001 to 970,000 | 270 |
| | | 12,901 to 17,200 | 15 | 970,001 to 1,230,000 | 300 |
| | | 17,201 to 21,500 | 20 | 1,230,001 to 1,520,000 | 330 |
| | | 21,501 to 25,000 | 25 | 1,520,001 to 1,850,000 | 360 |
| | | 25,001 to 33,000 | 30 | 1,850,001 to 2,270,000 | 390 |
| | | 33,001 to 41,000 | 40 | 2,270,001 to 3,020,000 | 420 |
| 41,001 to 50,000 | 50 | 3,020,001 to 3,960,000 | 450 | | |
| 50,001 to 59,000 | 60 | 3,960,001 or more | 480 | | |
| | Noncommunity using surface water or groundwater directly influenced by surface water | All | Same as community | | |
| | Noncommunity using only groundwater not directly influenced by surface water | ≤1,000 >1,000 | Quarterly Same as community | | |
| <i>Escherichia coli</i> (<i>E. coli</i>) | Community and Noncommunity | All | Any routine or repeat samples that are Coliform positive must be analyzed for <i>E. coli</i> . ⁴ | | |
| Fecal Indicator in Raw Source Water ⁷ | All ground water systems unless providing 4-log virus treatment and process compliance monitoring | All | State discretion ⁸ | | |

¹Public water systems must collect total coliform samples at sites which are representative of water throughout the distribution system and throughout the reporting period according to a written monitoring plan which is subject of State review and revision as described in subdivision 5-1.51(c) of this Subpart.

²Public water systems using surface water or groundwater directly influenced by surface water, and which do not provide filtration, must collect and analyze at least one sample for total coliforms near the first service connection each day the turbidity level of the raw water exceeds 1.49 NTU. This sample shall be collected within 24 hours. Results of this sample must be included in determining compliance with the Maximum Contaminant Level (MCL) of total coliforms in Table 6 of this section.

Table 11 (cont.)

³Samples taken to determine disinfection practices after pipe repair, replacement, etc. are not to be used for determining MCL compliance for total coliforms in Table 6 of this section.

⁴See Table 11B for repeat sampling requirements following any total coliform or *E. Coli* positive samples.

⁵If chlorine or chloramines are used as the disinfectant, a chlorine residual determination shall be made at the same time and location that the sample is collected for total coliform analysis. Monitoring for heterotrophic bacteria may be substituted for free chlorine residuals. A heterotrophic plate count result equal to or less than 500 colonies per milliliter is considered to be equivalent to a measurable free chlorine residual.

⁶The State may, in writing, reduce the monitoring frequency to quarterly for a community water system serving 1,000 or fewer persons if the system has no history of total coliform contamination and a sanitary survey conducted in the past five years shows that the system is supplied solely by a protected groundwater source and the system and groundwater source are free of sanitary defects. Systems that have been granted a disinfection waiver are not eligible for reduced monitoring frequency.

⁷Fecal indicators include *Escherichia coli* (*E. coli*), enterococci, and coliphage. Only *E. coli* testing will be required, unless otherwise directed by the State.

⁸State discretion shall mean that monitoring is required when the State has reason to believe the Maximum Contaminant Level or Treatment Technique (MCL/TT) has been violated, the potential exists for an MCL/TT violation or the contaminant may present a risk to public health.

Table 11B Repeat Microbiological Sampling Requirements following Total Coliform Positive and/or Fecal Indicator Positive Sample(s) ¹

| Type of Positive Sample | Type of Water System/Source | System Size | Number of Repeat Samples Required within 24 hours of notification | Sampling Location | Required action for positive repeat samples |
|--|--|--|---|---|--|
| Routine total coliform sample(s) from distribution system positive | Surface water, GWUDI ² , or ground water performing 4-log virus treatment and process compliance | More than one service connection | Four distribution system samples | The same sampling site where the original coliform-positive sample was collected, one sample within five service connections upstream, one sample within five service connections downstream and one sample taken at random in the distribution system. | Distribution sampling must be repeated until total coliform is not detected in repeat samples or it is determined that the MCL has been violated. ³ |
| | | One service connection | One distribution system sample ⁴ | Original sampling location | |
| | Ground water system or ground water source not providing (or not documenting) 4-log virus treatment ⁵ | Population >1,000 | Four distribution system samples and source water sample(s) collected in accordance with a State-approved sampling plan ⁶ | The same distribution system sampling site where the original coliform-positive sample was collected, one sample within five service connections upstream, one sample within five service connections downstream and one sample taken at random in the distribution system. An additional sample must be collected from each raw water source or according to State approved sampling plan. ^{6,7} | Distribution sampling must be repeated until total coliform is not detected in repeat samples or it is determined that the MCL has been violated. ³ |
| | | Population ≤ 1,000 and more than one service connection | Four samples, three at specified locations in the distribution system and one sample to characterize raw water quality. Additional raw water samples according to approved sampling plan if multiple sources are in use. ^{5,8} | The same distribution system sampling site where the original coliform-positive sample was collected, one sample within five service connections upstream, and one sample within five service connections downstream. A fourth sample can be taken at random in the distribution system or collected from a single raw water source. An additional sample must be collected from each raw water source or according to State approved sampling plan. ^{6,7,8} | |
| | | One service connection | One distribution system sample and source water sample(s) in accordance with a State-approved sampling plan ^{4,6,8} | Original sampling location. An additional sample must be collected from each raw water source or according to State approved sampling plan. ^{6,7,8} | |
| Wholesale System of any size | After notification by consecutive system of total coliform-positive sample ^{6,7,9,11} | Collect one raw water sample at each source or in accordance with a State-approved sampling plan. ^{6,7,9} | As directed by State ¹⁰ | | |
| Source water sample(s) fecal indicator positive ^{7,10} | Ground water system or ground water source not providing or not documenting 4-log virus treatment | All | Five raw water samples for fecal indicator or immediate corrective action as directed by State ^{6,9,11} | Fecal indicator sampling from source or sources with initial fecal indicator positive samples ^{6,7} | As directed by State ^{10,11} |

Table 11B (cont.)

¹ After any total coliform positive sample from the distribution system, the system must collect repeat samples on the same day and within 24 hours of being notified.

² GWUDI = Ground Water Under the Direct Influence of surface water

³ The month following repeat sample collection, the system must collect a minimum of five routine distribution system samples. The State may waive, in writing, the requirement to collect five routine samples the next month the system provides water to the public, if the State carries out an onsite visit before the end of the next month and the State determines why the sample was total coliform positive and establishes that the system has corrected the problem. The State cannot waive the requirement to collect five routine samples solely on the basis that all the repeat samples were total coliform negative. Before the end of the next month the system serves water to the public, at least one routine sample to determine compliance with the MCL must be collected by the system as required in Table 11. If the State determines that the system has corrected the problem that allowed the total coliform contamination and if all repeat samples were total coliform negative, only the routine samples will be required the following month.

⁴ The sample may be collected in four (4) bottles of equal sample volume taken consecutively from the same tap, or a single bottle four (4) times the minimum sample volume. If *E. coli* is used as the fecal indicator at a ground water system, a single sample of three (3) times the minimum sample volume or three (3) bottles of minimum required sample volume may be collected consecutively from the tap and the fourth sample collected from the raw water source. This source water sample result must be used to determine compliance with all Table 6 requirements.

⁵ If a consecutive system purchasing (or otherwise obtaining) ground water from a wholesale system has a total coliform-positive sample from the distribution system, the system must notify the wholesale system and collect distribution system repeat samples as specified in Table 11B within 24 hours. The wholesale system must collect raw source water sample(s) unless the system provides 4-log virus treatment at peak flow before or at the first customer as confirmed through process compliance monitoring.

⁶ Sampling plan requirements are given in subdivision 5-1.51 (c) of this Subpart.

⁷ Fecal indicators include *E. coli*, enterococci and coliphage. Sampling for fecal indicators other than *E. coli* is at State discretion.

⁸ A system with a single well may collect a single raw water sample to serve as both a distribution repeat sample to replace the “at random” location sample and a raw water sample taken following a routine total coliform positive sample, if *E. coli* is used as the fecal indicator. If this dual-purpose source water sample is collected, the sample result must be used to determine compliance with all Table 6 requirements.

⁹ Wholesale system source water sampling requirements are in addition to distribution system sampling requirements for consecutive systems.

¹⁰ In the event of a fecal indicator positive sample from the raw source water, the state must be notified immediately and may require immediate corrective action. In no case will notification be later than 24 hours as described in paragraph 5-1.78(d)(4) of this Subpart.

¹¹ If a ground water wholesale system does not perform 4-log virus treatment and process compliance monitoring, and has a fecal indicator positive sample from a raw source water, the system must notify any consecutive systems as well as any of its own customers.

Table 13 - REQUIRED NOTIFICATIONS

| Contaminant/Situation (Subpart 5-1 citations) | Single sample exceeds MCL/MRDL¹ | MCL/MRDL/TT¹ violation | Failure to meet monitoring requirements and/or failure to use applicable testing procedure |
|---|---|--|---|
| Public Health Hazard (section 5-1.1(bc)) ² | Not applicable | State Tier 1 | State Tier 1 |
| <i>Escherichia coli</i> (<i>E. coli</i>) in distribution system (section 5-1.52 tables 6, 11 and 11B) | ³ State Not applicable, or ⁴ Tier 1 | State Tier 1 | State ⁵ Tier 3, or Tier 1 |
| <i>E. coli</i> or other fecal indicator detected in ground water source at system not providing both 4-log virus treatment and process compliance monitoring (section 5-1.52 tables 6, 11 and 11B) | ^{2,3,5,6} Tier 1 | ⁶ Tier 1 | State ^{2,5,7} Tier 3, or Tier 1 |
| Total coliform in distribution system (section 5-1.52 tables 6, 11 and 11B) | Not applicable | ⁸ State ⁹ Tier 2, or Tier 1 | State Tier 3, or Tier 2 as directed by State |
| Entry Point Turbidity monthly average (section 5-1.52 tables 4 and 10) | ¹⁰ State | State Tier 2 | State Tier 3 |
| Entry Point Turbidity two day average (section 5-1.52 tables 4 and 10) | State | State ¹¹ Tier 2, or Tier 1 | State Tier 3 |
| Raw Water Turbidity (subdivision 5-1.30(d) and section 5-1.52 table 10A) | State | State ¹¹ Tier 2, or Tier 1 | State Tier 3 |
| Filtered Water Turbidity Single exceedance of the maximum allowable Turbidity level (section 5-1.52 tables 4A and 10A) | State | State ¹¹ Tier 2, or Tier 1 | State Tier 3 |
| Filtered Water Turbidity Treatment Technique violation (section 5-1.52 tables 4A and 10A) | Not applicable | State Tier 2 | State Tier 3 |

Table 13 (cont.)

| Contaminant/Situation (Subpart 5-1 citations) | Single sample exceeds MCL/MRDL¹ | MCL/MRDL/TT¹ violation | Failure to meet monitoring requirements and/or failure to use applicable testing procedure |
|--|---|--|---|
| Distribution Point Turbidity (section 5-1.52 tables 5, 10 and 10A) | Not applicable | State Tier 2 | State Tier 3 |
| ^{12, 13} Treatment Technique violations other than turbidity (subdivisions 5-1.12, 5-1.30 and 5-1.71(d)) | Not applicable | State ^{2, 13} Tier 2, or Tier 1 | State ¹³ Tier 3 |
| ¹⁴ Free chlorine residual less than 0.2 mg/L at the entry point (subdivision 5-1.30(d)) | Not applicable | State | Not applicable |
| ¹⁵ Free chlorine residual less than required minimum for a ground water system or ground water source required to provide 4-log virus treatment (subdivision 5-1.30(a)) | Not applicable | State ⁹ Tier 2, or Tier 1 | Tier 2 |
| Inorganic chemicals and physical characteristics listed in Tables 8A and 8B (section 5-1.52 tables 1, 8A, and 8B) | State | State Tier 2 | State Tier 3 |
| Chloride, iron, manganese, silver, sulfate, and zinc (section 5-1.52 tables 1 and 8D) | Not applicable | State Tier 3 | State Tier 3 |
| Sodium (section 5-1.52 tables 1 and 8D) | State if the level exceeds 20 mg/L | Tier 2 if the level exceeds 270 mg/L | Tier 3 |
| Nitrate, Nitrite, Total Nitrate and Nitrite (section 5-1.52 tables 2 and 8C) | State | State Tier 1 | State ¹⁶ Tier 1, or Tier 3 |
| Lead and Copper (sections 5-1.40 to 1.49) | Not applicable | State Tier 2 | State Tier 3 |
| Organic Chemicals Group 1 and 2 (section 5-1.52 table 9C) | State | State Tier 2 | State Tier 3 |

Table 13 (cont.)

| Contaminant/Situation (Subpart 5-1 citations) | Single sample exceeds MCL/MRDL¹ | MCL/MRDL/TT¹ violation | Failure to meet monitoring requirements and/or failure to use applicable testing procedure |
|--|---|--|---|
| Principal Organic Contaminants Unspecified Organic Contaminants Total POCs and UOCs (section 5-1.52 tables 3, 9B and 9D) | State | State Tier 2 | State Tier 3 |
| Radiological Contaminants (section 5-1.52 tables 7 and 12) | State | State Tier 2 | State Tier 3 |
| Monitoring and Control of Disinfection Byproduct Precursors (section 5-1.60 to 5-1.64) | Not applicable | State Tier 2 | State Tier 3 |
| Disinfectant residuals Chlorine and Chloramine (section 5-1.52 tables 3A and 15) | State | State Tier 2 | State Tier 3 |
| Disinfectant residual Chlorine dioxide At entry point (section 5-1.52 tables 3A and 15) | State | State Tier 2 | State ¹⁷ Tier 3, or Tier 2 |
| Disinfectant residual Chlorine dioxide In distribution system (section 5-1.52 tables 3A and 15) | State | State ¹⁸ Tier 1 | State ¹⁸ Tier 1 |
| Disinfection byproducts Trihalomethanes Haloacetic acids (section 5-1.52 tables 3 and 9A) and Bromate and Chlorite (section 5-1.52 tables 1 and 8B) | Not applicable | State Tier 2 | State Tier 3 |

Table 13 (cont.)

| Contaminant/Situation (Subpart 5-1 citations) | Single sample exceeds MCL/MRDL¹ | MCL/MRDL/TT¹ violation | Failure to meet monitoring requirements and/or failure to use applicable testing procedure |
|---|---|--|---|
| Acrylamide and Epichlorohydrin (subdivision 5-1.51(j)) | Not applicable | State Tier 2 | Not applicable |
| Operation under a variance or exemption | Not applicable | Tier 3 | Not applicable |
| Violation of conditions of a variance or exemption | Not applicable | State Tier 2 | Not applicable |
| Disruption of water service of four hours or more (subdivision 5-1.23(b)) | Not applicable | ¹⁹ State | Not applicable |

¹MCL-maximum contaminant level, MRDL-maximum residual disinfectant level, TT-treatment technique

²Community systems must describe in their annual water supply statement (5-1.72(e)), prepared in accordance with section 5-1.72(f), any Public Health Hazard that is determined to be a violation, or any uncorrected significant deficiency, and indicate whether corrective action is completed. This notice must be repeated every year until the annual report documents that corrective action is completed in accordance with section 5-1.22 of this Subpart.

³ State notification must be made by the supplier of water within 24 hours of learning of an *E. coli* positive sample.

⁴Public notification normally does not have to be issued for an *E. coli* positive sample prior to the results of the repeat samples. However, there may be situations where the State determines that a Tier 1 notification is necessary to protect the public health. The supplier of water must provide the Tier 1 notification no later than 24 hours after learning of the State's determination.

⁵Failure to test for *E. coli* requires a Tier 1 notification if testing is not done after any repeat sample tests positive for coliform. All other *E. coli* monitoring and testing procedure violations require Tier 3 notification.

⁶At a ground water system, Tier 1 notification is required after initial detection of *E. coli* or other fecal indicator in raw source water, if system does not provide 4-log virus treatment and process compliance monitoring. Confirmation of *E. coli* or other fecal indicator in the source water requires Tier 1 notification. Failure to take confirmatory samples may be a public health hazard requiring Tier 1 notification.

⁷Notice of the fecal indicator positive raw water sample must be made in the annual water supply statement (5-1.72(e)), until the annual report documents that corrective action is completed.

Table 13 (cont.)

⁸State notification must be made by the supplier of water within 24 hours of learning of the violation.

⁹Tier 2 notification is normally required, however, there may be situations where the State determines that a Tier 1 notification is necessary to protect the public health. The supplier of water must provide the Tier 1 notification no later than 24 hours after learning of the State's determination.

¹⁰If the daily entry point analysis exceeds one NTU, a repeat sample must be taken as soon as practicable and preferably within one hour. If the repeat sample exceeds one NTU, the supplier of water must make state notification.

¹¹Systems must consult with the State within 24 hours after learning of the violation. Based on this consultation, the State may subsequently decide to elevate the violation from a Tier 2 to a Tier 1 notification. If consultation does not take place within the 24-hour period, the water system must distribute a Tier 1 notification no later than 48 hours after the system learns of the violation.

¹²These violations include the following: failure to comply with the treatment technique or monitoring requirements in section 5-1.30(a), (b), (c), and (g) of this Subpart; failure to comply with the avoidance criteria in section 5-1.30(c) of this Subpart; and failure to install filtration or disinfection treatment facilities required by section 5-1.30 of this Subpart; failure to report to the state information required in section 5-1.72(c)(3) of this Subpart; and failure to maintain records required in section 5-1.72(c)(7) of this Subpart.

¹³Any significant deficiency that is not corrected or where correction has not begun according to a State-approved corrective action plan within 120 days, or as directed by the State, is a treatment technique violation and must be addressed in accordance with the requirements in section 5-1.12. If the deficiency is a public health hazard, the deficiency must be addressed as directed by the State and Tier 1 notification is required.

¹⁴Applies to systems that have surface water or groundwater directly influenced by surface water as a source and use chlorine. The system must make State notification whether the residual was restored to at least 0.2 mg/L within four hours.

¹⁵Required minimum chlorine residual at point that demonstrates adequate CT for disinfected water from ground water sources at first customer.

¹⁶Failure to take a confirmation sample within 24 hours for nitrate or nitrite after an initial sample exceeds the MCL requires a Tier 1 notification. Other monitoring violations for nitrate or nitrite require a Tier 3 notification.

¹⁷Failure to monitor for chlorine dioxide at the entrance to the distribution system the day after exceeding the MRDL at the entrance to the distribution system requires a Tier 2 notification. Other monitoring violations for chlorine dioxide at the entrance to the distribution system require a Tier 3 notification.

¹⁸If any daily sample taken at the entrance to the distribution system exceeds the MRDL for chlorine dioxide and one or more samples taken in the distribution system the next day exceed the MRDL, Tier 1 notification is required. Failure to take the required samples in the distribution system the day after the MRDL is exceeded at the entry point also triggers Tier 1 notification.

¹⁹Tier 1 notification is required if the situation meets the definition of a public health hazard.

Table 15 Entry Point Disinfectant Monitoring Frequency for Systems Using Chemical Disinfection¹

| Water System Source Type | Population served | Samples per day ⁴ |
|---|-------------------|---|
| Surface Water or Ground Water under the Direct Influence of Surface Water (GWUDI) ^{2, 3} | Up to 500 | 1 |
| | 501 - 1,000 | 2 |
| | 1,001 - 2,500 | 3 |
| | 2,501 - 3,300 | 4 |
| | > 3,300 | Continuous monitoring required ⁵ |
| Ground Water System or ground water source required to provide 4-log virus treatment and process compliance monitoring ^{6, 7, 8} | ≤ 3,300 | 1 ⁹ |
| | > 3,300 | Continuous monitoring required ⁵ |
| Ground Water System or ground water source with other than 4-log virus treatment | Any | 1 ⁹ |

¹See also Table 15A for distribution system disinfectant residual sampling locations and frequency depending on disinfectant used.

²If at any time chlorine residual concentration falls below 0.2 mg/L at the entry point for a surface water or GWUDI system, the system must collect and analyze a grab sample every four hours until the chlorine residual concentration is again equal to or greater than 0.2 mg/L.

³Entry point samples collected at Surface Water or GWUDI systems

⁴The day's grab samples may not be conducted at the same time.

⁵If there is a failure in the continuous monitoring equipment, grab samples, every four hours, may be conducted in lieu of continuous monitoring, but for no more than five working days (fourteen working days for ground water systems) following the failure of the equipment.

⁶If at any time the disinfectant concentration at a ground water system falls below the minimum required in the process compliance monitoring plan approved by the State, the system must collect and analyze a grab sample every four hours until the disinfectant residual concentration is again at or above minimum required levels, without exceeding other applicable concentration requirements in Table 3A.

⁷Any ground water system required to provide 4-log virus treatment because of fecal contamination of the source or because of significant deficiencies in system operation, and using chemical disinfection, must demonstrate minimum disinfectant residual at a location that demonstrates adequate concentration to provide the required treatment at the first customer during peak flow according to the sampling plan developed for the system. These samples to confirm the minimum disinfection residual are to be collected at the frequency in this table.

⁸Lowest daily concentration must be recorded on operation report.

⁹A minimum of one disinfectant residual concentration must be recorded on operation report every day.

Table 15A
Disinfectant Residual Minimum Distribution System Monitoring Requirements for Systems Using Chemical Disinfection

| Disinfectant | Type of Water System | Routine Monitoring |
|-------------------------------|---|--|
| Chlorine Chloramines | Community and Nontransient Noncommunity | Sample at the same time and same points in the distribution system as total coliform sampling ¹ |
| Chlorine Dioxide ² | Community, Nontransient Noncommunity and Transient Noncommunity | Daily sample at the entrance to the distribution system ³ |

¹Community Water Systems using surface water or ground water under the direct influence of surface water may use heterotrophic plate count results of equal to or less than 500 colonies per milliliter as equivalent to a free chlorine residual as outlined in table 11, footnote 5, in lieu of taking separate samples for disinfection residuals

²Monitoring is required if chlorine dioxide is used for either oxidation or disinfection.

³If the Maximum Residual Disinfectant Level (MRDL) of 0.8 mg/L is exceeded, the system must take three samples in the distribution system on the following day. If chlorine dioxide or chloramines are used to maintain a disinfectant residual in the distribution system, or if chlorine is used and there are no rechlorination stations, the system must take 3 samples as close to the first customer as possible, at intervals of at least 6 hours. If chlorine is used and there is a rechlorination station, the system must take one sample as close to the first customer as possible, one sample representing average residence time, and one sample representing maximum residence time.

The title of Table 16 of Section 5-1.52 is amended to read as follows:

Table 16. Additional Contaminants [Required to be Reported] for which Reporting is Required Pursuant to 5-1.72 (e)-(h) of this Subpart

Section 5-1.70 is amended to read as follows:

5-1.70 Applicability.

Sections 5-1.70 through 5-1.79 of this Subpart shall be applicable to all public water systems, provided the systems serve 15 or more service connections or serve 25 or more persons. Subdivisions 5-1.71 (c) and (d), subdivision 5-1.72 (c), and paragraph 5-1.78(a)(4) apply to all public water systems.

New subdivisions (c) and (d) of Section 5-1.71 are added, to read as follows:

(c) If the State notifies the supplier of water that a significant deficiency exists, the supplier of water shall consult with the State within 30 days regarding corrective action. Within 120 days of being notified that a significant deficiency exists (or earlier if the State determines that action is necessary to protect public health), the supplier of water shall correct the significant deficiency or be in compliance with a corrective action plan to correct the deficiency. The corrective action plan must specify appropriate modifications and/or improvements to the existing system or facility as may be necessary to fully conform to the requirements of this Subpart.

(d) Any significant deficiency that is not corrected or where correction has not begun according to a corrective action plan prepared to meet the requirements of this code, within 120 days, or as directed by the State, is a treatment technique violation and must be addressed in accordance with the requirements in section 5-1.12. If the deficiency is a

public health hazard, the deficiency must be addressed as directed or approved by the State and Tier 1 notification is required.

Subdivision 5-1.72 (c) is amended to read as follows:

(c) Complete records shall be kept of the operation of a public water system [on forms provided or approved by the department].

(1) A copy of [such] daily operation records in a format provided or approved by the State shall be sent to the State by the 10th calendar day of the next reporting period.

These records shall include the results of all tests, measurements or analysis required to be made by this Subpart or as requested by the State. [Other] All operational records shall be available [for inspection by the State] to the State either upon request or in conjunction with periodic sanitary surveys conducted by the State.

* * *

New paragraph (4) is added to subdivision 5-1.72(c) to read as follows:

(4) Ground water systems and ground water sources that are required to conduct process compliance monitoring to assure the achievement of 4-log virus treatment, must record the lowest treatment performance each day and record the date and duration of any failure to achieve 4-log virus treatment for a period of more than four hours. In the event of failure to achieve required virus treatment, the system shall continue to monitor treatment performance every four hours until the system returns to compliance with minimum performance requirements. The State must be notified of any failure to meet process

compliance monitoring requirements as well as any failure to achieve 4-log virus treatment, as soon as possible, but no later than the end of the next business day.

Paragraph (2) of subdivision 5-1.72(d) is amended to read as follows:

(2) Records of corrective actions taken by the supplier of water to correct significant deficiencies and/or violations of the requirements of this Subpart shall be retained for at least [~~three~~] ten years.

Paragraph (5) of subdivision 5-1.72(f) is amended to read as follows:

(5) Information on detected contaminants from sampling used to determine compliance. For the purpose of this subdivision (except Cryptosporidium, Giardia, and radon monitoring), detected means: at or above the contaminant's minimum detection limit (MDL), as specified in Appendix 5-C of this Subpart or as prescribed by the State. Any contaminants specified in sections 5-1.41 (lead and copper) and 5-1.51 of this Subpart and section 5-1.52 tables 8A, 8B, 8C, 8D, 9A, 9B, 9C, 9D, 10, 10A, 11, 11A, 11B, 12, 16 and 17 of this Subpart that are detected during compliance monitoring must be displayed in one table or in several adjacent tables. Additionally, the report shall include detected monitoring results for samples collected and analyzed by the State and/or detected monitoring results of additional samples required by the State. If a system is allowed to monitor for specific contaminants less often than once a year, the table must include the date and results of the most recent sampling and the report must include a brief statement indicating that the data presented in the report are from the most recent testing done in

accordance with the regulations. No data older than five years need be included. For the contaminants listed in section 5-1.52 tables 8A, 8B, 8C, 8D, 9A, 9B, 9C, 9D, 10, 10A, 11, 11B, 12, 16 of this Subpart the table(s) must contain:

Subparagraph (viii) of paragraph (5) of subdivision 5-1.72(f) is amended to read as follows:

(viii) for *E. coli* detected in the distribution system: the total number of positive samples; and

New paragraphs (16) and (17) of subdivision 5-1.72(f) are added to read as follows:

(16) Water systems are required to include information regarding significant deficiencies as follows:

(i) any significant deficiency that remains uncorrected at the end of the year (December 31) or any other significant deficiency as directed by the State. A description of the significant deficiency must include: the date the significant deficiency was identified by the State; status of corrective action; the completion date if corrective action has been completed; and if corrective action has not been completed, the reason why it has not been completed. Uncorrected significant deficiencies must be reported each year until the annual report documents that corrective action is completed; and

(ii) any failure to take corrective action to correct a significant deficiency in system facilities or operation, including a description of the significant deficiency, the date the significant deficiency was identified by the State, and the reason why corrective action has not been taken.

(17) Ground water systems and systems with ground water sources are also required to include information regarding source sampling and process compliance monitoring as follows:

(i) Report of fecal indicator positive ground water source sample, including: the date the fecal contamination of the source was identified; the likely source of the contamination, if known; the date(s) and status of any corrective action; and potential health effects

language prescribed by the State.;

(ii) If required to perform 4-log virus treatment, failure to provide the treatment must be described including date(s) of failure and whether 4-log virus treatment has resumed; and

(iii) If required to perform 4-log virus treatment, failure to meet process compliance monitoring requirements must be described including date(s) of failure and whether the required process compliance monitoring has resumed.

Subdivision 5-1.74(a) is amended to read as follows:

(a) For determining compliance with the Subpart, results of analyses may be considered only if they have been performed by an environmental laboratory approved in accordance with Subpart 55-2 of this Title of the administrative rules and regulations of the State (10 NYCRR Part 55, Subpart 55-2). However, measurements for pH, temperature, conductivity, turbidity, disinfectant residual, alkalinity, calcium, orthophosphate, bromide, chlorite, total organic carbon (TOC) concentration, dissolved organic carbon concentration, ultraviolet (UV) absorption [at 254 nanometers], and silica may be performed by any person with a demonstrated ability to perform these analyses.

Section 5-1.76 is amended to read as follows:

5-1.76 [Monitoring of consecutive] Consecutive public water systems.

(a) When a public water system supplies water to one or more [other] consecutive public water systems, the State may modify the monitoring requirements of this Subpart when the circumstances justify treating them as a single system for monitoring purposes. Any modified monitoring shall be conducted pursuant to a schedule approved by the State, in accordance with the provisions of sections 5-1.51 and 5-1.52 of this Subpart.

(b) Consecutive systems must follow section 5-1.52 Table 11B of this Subpart in the event of a total coliform positive sample from their distribution system. When a consecutive system that receives ground water from a wholesale system is notified of a positive total coliform sample result, the consecutive system must, within 24 hours, notify the State, the wholesale system and any other wholesale system that owns and/or operates ground water sources that provides water used by the consecutive system. If all the water provided by the consecutive system has been subject to 4-log virus treatment and process compliance monitoring, notification by the consecutive system about the total coliform sample is not required.

After notification, the wholesaler must, within 24 hours, test its raw water source(s) for fecal indicator organism(s) in accordance with section 5-1.52 Table 11B of this Subpart at the location(s) specified in the monitoring plan described in section 5-1.51 of this Subpart.

New subdivision (c) is added to Section 5-1.77 to read as follows:

(c) Ground water systems and ground water sources that complete corrective action to correct significant deficiencies or address fecal contamination of a ground water source must notify the state within 30 days of the completion of the action.

New paragraph (4) is added to subdivision 5-1.78(a) to read as follows:

(4) Public notification is required when a significant deficiency is identified at a public water system that is not required to prepare an annual water supply statement (report), as directed in sections 5-1.72 (e) and (f) of this subpart. If the water system has been notified by the State of a significant deficiency and it has not been corrected as directed or approved by the State, the system must notify its customers in a format prescribed or approved by the State. Notice must be provided if any significant deficiency has not been corrected within 12 months of State notification or as otherwise directed by the State. The system must continue to inform the public until the significant deficiency is corrected.

Subdivision 5-1.78 (c) is amended to read as follows:

(c) Tier 1 notification requirements (public health hazards, as defined in subdivision [5-1.1(a)] 5-1.1 (bc) of this Subpart, require Tier 1 notification).

Paragraph (4) of Subdivision 5-1.78(d) is renumbered to be Paragraph (5) and a new Paragraph (4) is added to read as follows:

(4) Consultation with the State is required within 24 hours after a ground water system or ground water source learns of any of the following:

- (i) A fecal indicator positive sample from the source(s) as specified in section 5-1.52 table 6 of this subpart;
- (ii) A significant deficiency that is considered to constitute a public health hazard; or
- (iii) Failure of 4-log virus treatment by the water system that is not resolved within four hours.

The State will determine whether Tier 1 notification is required to protect public health. When consultation does not take place within the 24-hour period, the water system must distribute Tier 1 notification no later than 48 hours after the system learns of the violation or exceedance.

Appendix 5-A is REPEALED and a new Appendix 5-A is added to read as follows:

APPENDIX 5-A

RECOMMENDED STANDARDS FOR WATER WORKS, 2007 EDITION

“Recommended Standards for Water Works, 2007 edition”, published by Health Research Inc., Health Education Services Division, P.O. Box 7126, Albany, NY 12224, (518) 439-7286, www.hes.org and reported by the Water Supply Committee of the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers. Available from Health Research Inc., at the address above, for a nominal fee. Also available online at <http://10statesstandards.com/waterstandards.html> and is available for viewing at the Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231 and the Bureau of Water Supply Protection,

Department of Health, Flanigan Square, 547 River Street, Troy, NY 12180.

Item IV. of the table of contents of Appendix 5-C is amended to read as follows:

IV. Microbiological Contaminants (Tables 6, 11, 11A, 11B)

The text of item IV. of Appendix 5-C is amended, and the table and footnotes thereto are repealed and a new table and footnotes are added, so that item IV. reads as follows:

IV. MICROBIOLOGICAL CONTAMINANTS ([Tables 6, 11 and 11A] Tables 6, 11, 11A and 11B)

- A. Laboratory Certification - Measurement of total coliforms, fecal coliforms, *E.coli.*, enterococci, coliphage and heterotrophic plate count (HPC) must be conducted by a laboratory certified by the Department’s Environmental Laboratory Approval Program (ELAP) for the method used.
- B. Approved Methods – the following analytical methods are acceptable for measurement of microbiological contaminants:

| Approved Methods ^{1,2} | Media | Reference Method ^{3,4} |
|--|--------------------------------------|---------------------------------|
| Total Coliforms ⁵ | | |
| Fermentation broth method ^{6,7,8} | LTB BGLB Broth | SM 9221B |
| | P-A Broth BGLB Broth ^{8,10} | SM 9221D |
| Enzyme substrate method | Colilert, Colilert-18 ¹¹ | SM 9223 |
| | Colisure ^{12,13} | SM 9223 |
| | E*colite Test ¹⁴ | |
| Membrane filter method | mEndo or LES-Endo | SM 9222B |
| | MI Agar ⁹ | |
| | m-ColiBlue 24 ¹⁵ | |
| Fecal Coliforms ⁵ | | |
| Fermentation broth method | EC broth | SM 9221E |

| | | |
|-------------------------------------|---|-------------------------------|
| | A-1 broth ¹⁷ | SM 9221E |
| Membrane filter method | MFC | SM 9222D |
| <i>Escherichia coli</i> | | |
| Enzyme substrate method | Colilert or Colilert-18 | SM 9223 |
| | Colisure ^{12,13} | SM 9223 |
| | E*Colite ¹⁴ | |
| | LTB or P/A broth then EC-MUG ¹⁶ | SM 9221F ¹⁶ |
| Membrane filter method | MI Medium ⁹ | |
| | m-ColiBlue24 ¹⁵ | |
| | mEndo or LES Endo ¹⁶ then NA-MUG ¹⁶ | SM 9222G ¹⁶ |
| Heterotrophic Bacteria ⁵ | | |
| Pour plate method | | SM 9215B |
| Enterococci | | |
| | Multiple-Tube Technique | 9230B ¹⁸ |
| | Membrane Filter Technique | EPA Method 1600 ¹⁹ |
| | Enterolert ²⁰ | |
| Coliphage | | |
| | Two-Step Enrichment Presence-Absence Procedure | EPA Method 1601 ²¹ |
| | Single Agar Layer Procedure | EPA Method 1602 ²² |

¹It is strongly recommended that laboratories evaluate the false-positive and negative rates for the method(s) they use for monitoring total coliforms. Laboratories are also encouraged to establish false-positive rates within their own laboratory and sample matrix (drinking water or source water) with the intent that if the method they choose has an unacceptable false-positive or negative rate, another method can be used. When one of the approved methods does not include confirmatory samples, it is recommended that confirmatory analysis is performed on a minimum of 5% of all total coliform-positive samples. Methods for establishing rates of false-positive and

negative may be established based on: lactose fermentation; the rapid test for β -galactosidase and cytochrome oxidase; multi-test identification systems; or equivalent confirmation tests. False-positive and false negative information is often available in published studies and/or from the manufacturer(s).

²Preparation of EC medium is described in Method 9221 E (paragraph 1a) and preparation of Nutrient Agar is described in Method 9221 B (paragraph 3). Both methods are in "Standard Methods for the Examination of Water and Wastewater", 20th Edition, 1998, and 21st Edition, 2005; either edition may be used.

³SM = "Standard Methods for the Examination of Water and Wastewater", 20th Edition, 1998, or 21st Edition, 2005, American Public Health Association, 1015 Fifteenth Street NW, Washington, D.C. 2005; either edition may be used.

⁴Methods 9221 A, B; 9222 A, B, C; 9221 D and 9223 are contained in "Standard Methods for the Examination of Water and Wastewater", 20th Edition, 1998, or 21st Edition, 2005, American Public Health Association, 1015 Fifteenth Street NW, Washington, D.C. 2005; either edition may be used.

⁵The time from sample collection of a drinking water sample to initiation of total coliform analysis may not exceed 30 hours. The time from sample collection of a drinking water sample to initiation of heterotrophic bacteria analysis may not exceed 8 hours. Raw water samples may not exceed 8 hours. Systems are encouraged, but not required to hold samples below 10°C during transit.

⁶Lactose broth, as commercially available, may be used in lieu of lauryl tryptose broth, if the system conducts at least 25 parallel tests between this medium and lauryl tryptose broth using the water normally tested, and this comparison demonstrates that the false-positive rate for total coliforms, using lactose broth, is less than 10 percent.

⁷If inverted tubes are used to detect gas production, the media should cover these tubes at least one-half to two-thirds after the sample is added.

⁸No requirement exists to run the completed phase on 10 percent of all total coliform-positive confirmed tubes.

⁹Preparation and use of MI agar is set forth in the article, “New medium for the simultaneous detection of total coliform and *Escherichia coli* in water” by Brenner K.P., et al., 1993, Appl. Environ. Microbiol. 59:3534-3544. Also available from the Office of Water Resources Center (RC-4100), 1200 Pennsylvania Avenue, SW, Washington, D.C. 20460, EPA 600/J-99/225.

¹⁰Six-times formulation strength may be used if the medium is filter-sterilized rather than autoclaved.

¹¹The Chromogenic Substrate Coliform Test or ONPG-MUG Test is also known as the Autoanalysis Colilert System.

¹²A description of the Colisure Test, Feb. 28, 1994, may be obtained from the IDEXX Laboratories, Inc., One IDEXX Drive, Westbrook, Maine 04092.

¹³The Colisure test may be read after an incubation time of 24 hours.

¹⁴ A description of the E*Colite® Test, “Presence/Absence for Coliforms and *E. coli* in Water”, Dec. 21, 1997, is available from Charm Sciences, Inc., 659 Andover St., Lawrence, MA 01843–1032 or from EPA’s Water Resource Center (RC–4100T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

¹⁵ A description of the m-ColiBlue24® Test, “Total Coliforms and *E. coli* Membrane Filtration Method with m-ColiBlue24 Broth,” Method No. 10029 Revision 2, Aug. 17, 1999, is available from Hach Company, 100 Dayton Avenue, Ames, IA 50010 or from EPA’s Water Resource Center (RC–4100T), 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

¹⁶ EC–MUG (Method 9221F) or NA–MUG (Method 9222G) can be used for *E. coli* testing step as described in § 141.21(f)(6)(i) or (ii) after use of Standard Methods 9221 B, 9221 D, (for 9221F) or 9222 B, or 9222 C (for 9222G).

¹⁷ A-1 Broth may be held up to 3 months in a tightly closed screwcap tube at 4°C.

¹⁸ Methods are described in Standard Methods for the Examination of Water and Wastewater 20th edition, 1998 or 21st edition, 2005; copies may be obtained from the American Public Health Association, 1015 Fifteenth Street, NW., Washington, DC 20005–2605.

¹⁹ EPA Method 1600: Enterococci in Water by Membrane Filtration Using membrane-Enterococcus Indoxyl–b–D–Glucoside Agar (mEI) EPA 821–R–02–022 (September 2002) is an approved variation of Standard Method 9230C. The method is available at <http://www.epa.gov/nerlcwww/1600sp02.pdf> or from EPA’s Water Resource Center (RC–4100T), 1200 Pennsylvania Avenue, NW, Washington, DC 20460. The holding time and

temperature for ground water samples are specified in footnote 2 above, rather than as specified in Section 8 of EPA Method 1600.

²⁰Medium is available through IDEXX Laboratories, Inc., One IDEXX Drive, Westbrook, Maine 04092. Preparation and use of the medium is set forth in the article “Evaluation of Enterolert for Enumeration of Enterococci in Recreational Waters,” by Budnick, G.E., Howard, R.T., and Mayo, D.R., 1996, Applied and Environmental Microbiology, 62:3881–3884.

²¹EPA Method 1601: Male-specific (F+) and Somatic Coliphage in Water by Two-step Enrichment Procedure; April 2001, EPA 821–R–01–030. Method is available at <http://www.epa.gov/nerlcwww/1601ap01.pdf> or from EPA’s Water Resource Center (RC–4100T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

²²EPA Method 1602: Male-specific (F+) and Somatic Coliphage in Water by Single Agar Layer (SAL) Procedure; April 2001, EPA 821–R–01–029. Method is available at <http://www.epa.gov/nerlcwww/1602ap01.pdf> or from EPA’s Water Resource Center (RC–4100T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

VI. of Appendix 5-C is amended to read as follows:

VI. RESIDUAL DISINFECTANTS

A. Approved Methods – The analysis of [Residual Disinfectants] residual disinfectants shall be conducted using one of the following analytical methods:

| Disinfectant | Reference Methodology | Reference Methods ¹ |
|---|--------------------------------------|--------------------------------|
| Free and Combined Chlorine ² | Amperometric Titration Method | 4500-C1 D |
| | Low Level Amperometric Titration | 4500-C1 E |
| | DPD Ferrous Titrimetric Method | 4500-C1 F |
| | DPD Colorimetric Method ³ | 4500-C1 G |
| | Syringaldazine (FACTS) Method | 4500-C1 H |
| Ozone | Indigo Colorimetric Method | 4500-O ₃ B |
| Chlorine Dioxide | DPD Method | 4500-C1O ₂ D |
| | Amperometric Method II | 4500-C1O ₂ E |

¹ "Standard Methods for the Examination of Water and Wastewater", [18th Edition, 1992] 20th Edition, 1998, or [19th Edition, 1995] 21st Edition, 2005, American Public Health Association, 1015 Fifteenth Street NW, Washington, D.C. 2005; [American Water Works Association, Water Environment Federation, American Public Health Association]; either edition may be used.

²Free and total chlorine residuals may be measured continuously by adapting a specified chlorine residual method for use with a continuous monitoring instrument provided the chemistry, accuracy, and precision of the measurement remain the same. Instruments used for continuous monitoring must be calibrated with a grab sample measurement at least every 5 days, or with a protocol approved by the State.

³The Hach Company Method No. 8167 (Version no. 1, dated April 24, 1995) as found in Hach Method 8021 in the "Water Quality Analysis Handbook", 3rd edition, by Hach Company, Loveland, Colorado, 1997, pg. 335, for determining total chlorine is an acceptable version of the spectrophotometric, DPD, Standard Method 4500-C1-G in "Standard Methods for the Examination of Water and Wastewater", [18th Edition, American Public Health Association,

1992], 20th Edition, 1998, or 21st Edition 2005, American Public Health Association, 1015 Fifteenth Street NW, Washington, D.C. 20005; either edition may be used.

VII. of Appendix 5-C is amended to read as follows:

VII. GENERAL REFERENCES

More information about the regulations pertaining to the parameters listed in this appendix can be found in 40CFR parts 141.23, 141.24, National Primary and Secondary Drinking Water Regulations.

Copies of documents referenced in this appendix may be obtained from the National Technical Information Services, U.S. Department of Commerce, 5285 Pont Royal Road, Springfield, Virginia 22161 or online at: <http://www.ntis.gov/>.

Copies of cited references are available for review and inspection from Records Access Officer, Department of Health, [Room 2230, Corning Tower, Empire State Plaza, Albany, New York 12237] Corning Tower, Room 2364, Albany, New York 12237-0044 and New York State Department of State, Office of Information Services, [41 State Street]99 Washington Ave., Albany, New York 12231.

Copies of "Standard Methods for the Examination of Water and Wastewater", 21st Edition, 2005, American Public Health Association, 1015 Fifteenth Street NW, Washington, D.C. 20005, are available for review and inspection from the Department of Health, Bureau of Water Supply Protection, 547 River Street, Room 400, Troy, NY 12180.

U.S. EPA. “Technical Notes on Drinking Water Methods”, Office of Research and Development, Washington, DC 20460. EPA/600/R-94/173, October 1994 (EPA, 1994).

Copies of EPA analytical methods may be obtained online at

http://water.epa.gov/scitech/drinkingwater/labcert/analyticalmethods_ogwdw.cfm,

by contacting EPA’s Safe Drinking Water Hotline at 1-800-426-4791, or by [email:

sdwh@erols.com] contacting the EPA using one of the contact options listed at

<http://water.epa.gov/drink/contact.cfm>.

Regulatory Impact Statement

Statutory Authority:

Public Health Law Section 201(1)(l) authorizes the Department of Health (DOH) to regulate public water systems. In addition, Section 225 (8) requires the DOH to establish a system of public notification of public health hazards to be used by public water systems (PWSs). The revisions are in accord with the requirements of the United States Environmental Protection Agency for the Ground Water Rule (GWR), at 71 FR 65574, November 8, 2006, Vol. 71, No. 216 Correction 71 FR 67427, November 21, 2006, Vol. 71, No. 224.

Legislative Objectives:

The legislative objective is to protect public health. The purpose of promulgating these revised regulations is the enhancement of current protections governing public water supply systems with ground water sources for protection of the health of the consumers. Further, it is necessary to update the State Sanitary Code to be consistent with federal requirements in order to minimize burdens placed on regulated parties.

Needs and Benefits:

An estimated 8,600 public water systems (PWSs) in New York State, serving over 3.6 million people, use ground water as the source of drinking water. The United States Environmental Protection Agency (EPA) promulgated revised federal drinking water regulations to reduce potential adverse health risks that may be associated with ground water sources and, in particular, the risks associated with fecal contamination. Fecal contamination includes all of the bacteria and viruses—both pathogenic (disease-causing) and non-pathogenic—found in feces. Under certain circumstances, these microorganisms can migrate into ground water sources. Unlike existing requirements for surface water sources, no earlier federal regulations required filtration or disinfection of ground water sources to remove microbial contaminants, although New York State currently requires disinfection at all public water systems, including ground water systems.

These revisions to the PWS regulations, 10 NYCRR Subpart 5-1, are proposed to implement federally mandated provisions of the GWR that were promulgated in October 2006 and became effective December 1, 2009. The GWR aims to improve upon the protection provided by existing sanitary survey requirements for Ground Water Systems (GWSs). A risk-targeted approach was selected for implementation. Because of the difficulties involved in monitoring for the wide range of specific pathogenic bacteria and viruses that could occur in ground water, one of the key provisions of the risk-targeted approach is monitoring for a more easily measured bacterial or viral fecal indicator microorganism. Based on source water sampling results, as well as sanitary survey

results, PWSs will be required to take action to minimize the possible presence of pathogenic bacteria and viruses that pose threats to human health.

In the event that the revisions are not made, water systems will still be required to comply with the regulations, and additionally work directly with a second agency for oversight and enforcement. Oversight of public water systems in New York State is by State and Local Health Departments: State, City, and County Health Departments (SLHDs). If the revised regulations are not adopted, oversight of water systems for the GWR will be done directly by EPA while oversight for the implementation of the remaining aspects of public water system oversight will continue under the SLHDs. Additional reporting will be required for both agencies.

The Economic Analysis for the GWR (EAGWR) that was prepared by EPA (EPA 815-R-06-014, October 2006), is available at: <http://www.epa.gov/safewater/>. It reports that the “GWR will provide important protection against illnesses and deaths attributable to ground water contamination. EPA also believes that the GWR will provide this desired protection from groundwater pathogen contamination at a justifiable cost.” EPA found that “The GWR is cost-effective (using either the Enhanced or the Traditional Cost of Illness approach): no other alternative achieves greater benefits at the same cost or the same benefits at lower cost.”

After a new federal regulation is adopted, requirements must be fulfilled so the State can obtain primacy enforcement responsibility (primacy), a formal process of transfer of

authority for rule implementation in which EPA ensures that the State has the authority to take all necessary actions for rule implementation. The GWR was promulgated with a primacy deadline of October 2008 but with the option of a two-year extension. The extension of the date that final primacy requirements are due to the EPA was negotiated and, on November 24, 2008, approved by EPA Region 2. The date for submission of the primacy package by New York State for primacy in implementing the GWR is now November 8, 2010. These revisions of the State Sanitary Code, Subpart 5-1, are needed to incorporate rule requirements and revisions to obtain primacy for GWR implementation from the EPA.

Costs:

Costs to Public Water Systems:

The costs to ground water systems to comply with the rule were estimated based on EPA's EAGWR. For those approximately 300 systems in New York State (3.5% of approximately 8,600 systems statewide) needing capital construction to comply with the rule, initial capital costs were estimated by EPA at an average of about \$1.51 per household per year. For systems serving less than 10,000 customers (over 99% of all ground water systems), the average per system cost was estimated at an average of \$1900. Overall, the cost of compliance is estimated at less than \$1 per ground water system customer household per year.

Costs to the Agency, the State and Local Governments for the Implementation and Continuation of the Rule:

State and local government agencies are affected in several ways by these rule revisions. Some public water systems are operated by local, state or federal government agencies. In New York State, direct supervision of public water systems is performed by SLHDs. The cost to the government agencies that operate water systems to comply with these revised rules will be higher than any increases in oversight costs incurred to implement this rule. There will be little increase in the cost of oversight from the current cost of oversight activities required under the existing rules because most oversight activities are currently required. There will be a small increase in the cost related to record keeping, but the greatest impact to oversight will be the increased effort to enforce rule provisions. Still, if the regulations are not revised, and oversight is split between the SLHDs and the EPA who could retain GWR primacy, the burden on public water systems will be greater.

Source(s) of Cost Information:

The EAGWR was developed by the EPA to evaluate costs of GWR implementation and summarized costs nationally. The report is available online at the address given above. The costs were proportionally applied to the size and type of ground water Public Water Systems in New York State. For the purposes of the EAGWR, one-time and yearly costs were projected over a 25-year time period to coincide with the estimated life span of

capital equipment and a time lag of 5 to 10 years for treatment technology installation after rule promulgation.

Local Government Mandates:

These revised rules impose little change in what is requested of the SLHDs. Most of the SLHDs that will be overseeing implementation of these rules are operated by the county governments. None of the provisions affect public water systems owned or operated by local governments any differently from systems operated by any other public or private parties. Local governments that operate public water systems will have to comply with the revised regulations, but the new compliance standards will apply even if the revised regulations are not adopted.

Paperwork:

These revised regulations do not require new forms or other paperwork but for some PWS there will be revisions to the current forms. The biggest increase in paperwork will be for any systems for which enforcement action will be required. If these revisions are not made, the paperwork burden will increase because system reporting will need to go to the EPA as well as the SLHDs. Reporting requirements may vary between the two agencies resulting in two different reporting standards.

Duplication:

Adoption of these revised regulations will reduce duplication in effort for public water systems that use ground water sources because without the revisions, the EPA will not grant primacy to the State for GWR provisions. Without State primacy, systems will face the complication of direct oversight by both EPA and SLHDs for drinking water rules compared with the current system of oversight by SLHDs. States were granted discretion for certain aspects of rule implementation, without reducing the standard for implementation. The simplest approach that met minimum requirements and protected public health was selected in coordination for rule implementation with advice from a Ground Water Rule Implementation Work Group (GWRIWG) that included representatives of the regulated community and local governments.

Alternatives:

The GWRIWG, consisting of members of groups impacted by the revisions to the regulations under the GWR, met several times to provide advice to the Bureau of Water Supply Protection on rule implementation. Some of the options discussed but not selected might have posed an even greater financial or administrative burden on the public water systems. The alternative of not revising the regulations was considered. This would make oversight of water system compliance with the ground water rule the responsibility of the EPA. That option would assign additional reporting and

coordination efforts to the water systems in order to report to, meet with, and otherwise be overseen by both the EPA and the SLHD that would retain primacy for enforcement of other drinking water regulations. The proposed rule revisions are the better alternative.

Federal Standards:

These revisions are proposed because of changes in the minimum standards of the federal government for public water systems. After the federal government adopts drinking water regulations under the Safe Drinking Water Act, the state obtains primacy for oversight of rule implementation through the primacy process, which includes revising state regulations and developing or revising implementation guidance documents. Certain aspects of GWR implementation were left to states. The proposed options were selected to provide the least impact on public water systems while meeting rule requirements and protecting public health. For example, EPA requires states to select a fecal indicator but suggests that using two is more protective. To date, available information from New York public water systems do not show that the additional expense of requiring sampling for two indicators of fecal contamination would be more protective than continuing the practice of sampling for E. Coli.

If the proposed revisions to the regulations are not adopted, the federal standards will be implemented directly by the federal EPA and may result in a greater regulatory and compliance burden on the water systems.

Compliance Schedule:

Public Water Systems must comply with GWR requirements effective December 1, 2009, even if these proposed regulatory revisions are not promulgated. SLHDs will have to ensure that all 8 components of the sanitary survey are completed at all community water systems by December 31, 2012 and noncommunity water systems by December 31, 2014. Since sanitary surveys are already required at all public water systems in New York State, this will require only minor changes in the documentation of the sanitary survey.

Effective December 1, 2009, any time a routine coliform sample has a positive result at a ground water system that does not provide and document effective treatment, the water system will have to collect one or more follow-up samples from the raw source water. If the system is complying with the GWR by treating the water, they will have to ensure that process compliance monitoring demonstrates adequate, effective treatment and report the measurements to the SLHD with their monthly operations report.

Note: The above compliance schedule was established by EPA and has taken effect. In late 2008, The NY State Department of Health (DOH) and the EPA signed an agreement extending the deadline for DOH to obtain primary enforcement responsibility (“primacy”) for implementing the GWR, as required under federal regulations. The extension agreement expires on November 8, 2010. When DOH obtains primacy, it will

accept authority and responsibility for implementing all aspects of the GWR. The extension agreement authorized DOH to implement day-to-day oversight of rule implementation, while EPA conducts any required GWR enforcement actions on issues that are not resolved within 60 days. Expeditious adoption of these regulatory changes will allow the Department to submit the primacy package to EPA prior to the expiration of the extension agreement.

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Regulatory Flexibility Analysis for Small Businesses and Local Governments

Effect of Rule:

The revisions to 10 NYCRR Subpart 5-1 are necessary to implement the Federal Ground Water Rule (GWR). If the revisions are not made, the provisions of the rule will be imposed directly by the United States Environmental Protection Agency (EPA), in addition to the current structure where oversight of public water system compliance with the rest of 10 NYCRR Part 5 is conducted by State and Local (City and County) Health Departments (SLHDs). So the impact of adopting these revisions to the regulations will benefit small businesses by allowing oversight to remain the responsibility of the SLHDs. Systems will have one fewer set of reporting paperwork to prepare and one less agency directly overseeing regulatory compliance. Because most of the sources for ground water systems are not contaminated, most water systems will need to make only minor adjustments to current operation requirements in order to implement the requirements of the GWR.

Local governments and small businesses operate most of the ground water public water systems (GWPWS) affected by these revisions to 10 NYCRR Subpart 5-1. The revised regulations impact about 8,600 of the almost 10,000 public water systems in New York State. Of these impacted systems, 8 serve a population greater than 100,000, 60 serve populations between 10,000 and 100,000, and the rest serve smaller populations. Of the seven largest systems, two are water authorities (one mixed public and private ownership,

the other local government owned), three are operated by privately owned companies, and two are municipalities. It is estimated that over 95% of the impacted water systems are either small businesses or local governments. In New York State, about 950 GWPWS are operated by local governments, over 200 GWPWS by state agencies and 16 GWPWS by the federal government.

Compliance Requirements:

These revisions require only minor changes to record keeping or reporting requirements for public water systems. Up to 10 % of the water systems may need to provide additional documentation of disinfection adequacy in the event that they increase the documentation of treatment process as one of the alternatives they may take to comply with the rule requirements. For most of these systems, the additional documentation would amount to recording disinfectant concentration, an existing requirement, at a new or alternate location from currently required location(s), once a day. If these revisions are not made, reporting requirements will increase as new reporting to the EPA will be required in addition to reporting to the SLHD, but the content of the reports will be the same whether one or two agencies provide oversight.

Professional Services:

The revision of these rules require only minor changes to the requirements for professional services that a small business or local government is likely to need to comply with the rule. There will be a small (averaging less than \$5 per system per year) increase in water sampling costs for some of the water systems, particularly those that use more than one well to supply water to their customers on a regular basis. In the event that contamination in the form of a total coliform positive sample is detected during routine sampling of the distribution system at a public water system, source water sampling must be completed to determine whether fecal contamination is present in the source water. A typical water sample analyzed for total coliform and E. Coli costs about \$50, including sampling and analysis.

Ground water systems that serve less than 1000 customers will have additional sampling costs if they have more than one well. Because systems must sample either each well or representative wells according to their sampling plan, systems with a sampling plan can minimize the need for additional sampling. Of the systems impacted by this rule, 703 have more than two wells, and 1389 use two wells. The remaining systems operate a single well. The 114 systems with a single well serving 1000 or more people may incur additional sampling costs (averaging less than \$5 per system per year) to comply with this rule. The other 5889 systems serving less than 1000 population with one well will not be required to pay for any extra samples under these rules, unless they have fecal contamination in the source water.

Because of the enhanced treatment requirements in the few cases of a public water system where fecal contamination is confirmed in the source water, professional services may be required for design of new or updated water treatment or other system updates. Prices will vary with the complexity of required design. EPA estimated costs were prorated for New York State and the cost for professional design services was estimated to be about \$0.30 (thirty cents) per household per year.

Compliance Costs:

The EPA estimates that the mean annual cost per household for complying with the GWR will be less than \$1 a year for 96% of households affected by the new requirements of the rule. For an estimated 83% of systems, there will be no additional costs incurred in complying with this rule. For those systems needing capital construction to comply with the rule, initial capital costs were estimated by EPA as an average of about \$1.51 per household per year, with an average of \$1900 per system serving less than 10,000 customers (over 99% of all ground water systems). As described under “Compliance Requirements”, above, the cost to systems of compliance with GWR requirements will be higher if the regulations are not revised as direct oversight would be performed by both EPA and the SLHDs. Because compliance with the federal regulations is mandatory for public water systems, the overall workload is similar, but higher costs come from the time and effort spent meeting and otherwise communicating with the EPA, an additional oversight agency.

Economic and Technological Feasibility:

Extensive research has been completed by the EPA to determine whether small businesses and local governments can economically and technically comply with these revised regulations. Their report includes cost/benefit and feasibility analyses and is available online at:

http://www.epa.gov/safewater/disinfection/gwr/pdfs/support_gwr_economicanalysis.pdf.

Currently available technology is adequate to meet GWR requirements, although ongoing or future innovation may result in water treatment that would use less energy and/or chemicals while remaining effective at protecting the health of consumers. About 5% of systems may need to add to currently utilized facilities in order to comply with this rule, most of which would be at minimal additional expense.

Minimizing Adverse Impact:

Water systems will have to comply with the requirements of the GWR even if these rules are not revised. In reviewing aspects of rule implementation over which the EPA granted limited discretion to states, costs for implementation as well as ease of implementation by water systems and effective protection of ground water from contamination were considered. For example, some systems are required to complete triggered monitoring, following the trigger of a total coliform positive sample from the distribution system of a

public water system. The proposed regulations will require testing for the most effective single fecal indicator, rather than the optional two or three fecal indicator organisms that may be selected by states. Another example is that when a sample collected from the distribution system is found to contain total coliform bacteria (TC+), at a public water system serving less than 1000 population, the system may use one of their currently required follow-up samples rather than collecting an additional sample at the raw water source. Again, the adverse impact of implementing this federally mandated rule will be greater if the regulations are not revised because of the additional oversight agency added if the state is unable to obtain primacy for rule implementation.

Small Business and Local Government Participation:

An ad hoc work group was organized to provide advice to the Department on those aspects of GWR implementation over which states were given discretion. For example, states are instructed to choose at least one fecal indicator organism and were encouraged to select two microorganisms as fecal indicators for use under the rule. The group provided valuable advice on this and other topics. The work group consensus was in favor of the Department's adoption of the GWR. The following organizations and individuals were invited to participate and kept apprised of work group meetings and progress:

- New York State Section of the American Water Works Association (NYSAWWA)
- New York State Association of Towns

- New York State Conference of Environmental Health Directors
- New York State Association of County Health Officials
- New York State Rural Water Association (NYRWA)
- New York State Housing Association, Inc.
- League of Women Voters
- New York State Hospitality & Tourism Association
- Empire State Restaurant & Tavern Association
- New York State Restaurant Association
- Operators of NY State Public Water Systems (not a group)

Of these, most groups accepted the invitation and participated in some form, whether by attending meetings and participating in discussions, by providing comments on proposed alternatives, or by coordinating with representatives of other groups who were not able to participate directly. Local governments were represented through the participation of county health department staff (CEHD). The interests of water systems were represented by NYSAWWA and NYRWA. In addition, the USEPA consulted with small businesses, water organizations, states and other representatives in writing the requirements of the federal GWR that these revisions to the State Sanitary Code (in 10 NYCRR) are intended to address.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

The proposed revisions to 10 NYCRR Subpart 5-1 are being made in response to promulgation of the federal Ground Water Rule (GWR) that resulted in revisions to several sections of federal regulations. The GWR goal is to reduce exposure to fecal contamination in the drinking water provided by public water systems. These proposed revisions are needed in order for the New York State Department of Health, Bureau of Water Supply Protection to obtain primacy from the United States Environmental Protection Agency (EPA) for enforcement of the GWR. If New York does not obtain primacy for rule enforcement, the public ground water systems will be required to comply with the rule provisions under the additional oversight of the EPA. That means that instead of direct oversight provided by the by State and Local (City and County) Health Departments (SLHDs) where the water system is located, the system will be overseen by the SLHD for implementation of some rules and by the EPA for the GWR. The revisions impact all public ground water systems including many public water systems in rural areas. However, if these revisions to the regulations are not made, the impact on systems across the state will not be reduced, and in fact may be greater.

The revisions apply to public water systems in New York State that use ground water as the source for any part of their drinking water. In New York's rural counties, much of the population served by public water systems is served by a large number of mostly small

public ground water systems. Most surface water systems (surface water systems supply drinking water to over 80% of New York's population served by community/residential public water systems) are not impacted by this rule. Ground water sources are used by 87% of the public water systems in the state (serving about 30% of the community water system population (Note, because some surface water systems also use ground water sources, this does not add up to 100%)). Many of the systems that use ground water are located in the 42 of the 62 counties in New York State that are considered rural.

Statewide, about 70% of public water systems that use ground water are in rural counties, defined as those counties with a population less than 200,000 residents. These ground water systems serve about 60% of the residential population served by public water systems in these rural counties. The rural counties also host 68%, (4305 of the 6343) of the ground water noncommunity water systems in the state (those public water systems at schools, factories, motels, restaurants and other locations with nonresidential or seasonal consumers). These noncommunity systems in rural counties serve 74% of the population served by noncommunity public water systems.

EPA's analysis of the economic impact of the GWR indicates that there will be a proportionally higher impact on small systems required to implement changes to their operation, particularly in cases where treatment is added or enhanced in order to meet rule requirements, largely because there are fewer customers per system to share the cost. While most rural systems are small systems, EPA did not differentiate between rural and suburban small water systems in their economic impact analysis.

Reporting, Record keeping and Other Compliance Requirements; and Professional Services:

These revisions do not substantially change reporting or record keeping requirements for public water systems in rural areas. Water systems are currently required to maintain records and report to the SLHDs no less than monthly. For a few systems, there may be minor changes in reporting requirements, but for most systems, reporting requirements will not change. Because of the enhanced treatment requirements in the case of a public water system where fecal contamination is found in the source water, in some cases, professional services may be required for design of new or updated water treatment or other system updates. If not adopted, the federal GWR provisions will be directly overseen at the water systems by the EPA. This would add the complication of oversight being provided by two separate agencies, so the impact of not updating the regulations on systems will be greater than authorizing the New York State Department of Health and its designees to enforce the new provisions.

Costs:

The United States Environmental Protection Agency estimates that the mean annual cost per household for complying with the GWR will be less than \$1 a year for 96% of households affected by the new requirements of the rule. For an estimated 83% of systems, there will be no additional costs incurred in complying with this rule. For those

systems needing capital construction to comply with the rule, initial capital costs were estimated by EPA as an average of about \$1.51 per household per year, with an average of \$1900 per system serving less than 10,000 customers (over 99% of all ground water systems). Again, the cost will be higher if the regulations are not revised as compliance with the federal regulations is mandatory for the public water systems.

Minimizing Adverse Impact:

In developing the discretionary aspects of GWR implementation, efforts were taken to make implementation as simple as possible, and to minimize blanket requirements such as universal chlorination requirements or the sudden elimination of disinfection waivers. For most rural public water systems, any additional costs for implementation of revised rule provisions will be minimal and be incurred over a period of several years. If a rural water system is found to have fecal contamination of the source water, then immediate action will be required to provide safe drinking water to the system's customers.

Rural Area Participation:

An ad hoc work group was organized to provide advice on those aspects of GWR implementation over which states were given discretion. For example, states are instructed to choose at least one fecal indicator organism and were encouraged to select two microorganisms as fecal indicators for use under the rule. The group provided

advice on this and other items. The work group consensus was in favor of the Department's adoption of the GWR. The following organizations and individuals were invited to participate and kept apprised of work group meetings and progress:

- New York State Section of the American Water Works Association (NYSAWWA)
- New York State Association of Towns
- New York State Conference of Environmental Health Directors
- New York State Association of County Health Officials
- New York State Rural Water Association (NYRWA)
- New York State Housing Association, Inc.
- League of Women Voters
- New York State Hospitality & Tourism Association
- Empire State Restaurant & Tavern Association
- New York State Restaurant Association
- Operators of NY State Public Water Systems (not a group)

Several of these work group participants represent rural communities and businesses. The Restaurant Association (who also represented the Tavern Association) and the New York State Housing Association, Inc., represent numerous businesses which operate public water systems in rural areas. Staff from participating County Health Departments, including a representative of the New York State Conference of Environmental Health Directors and staff of New York State Health Department District and Regional Offices represented rural areas across the state. The New York Rural Water Association and

New York Section of the American Water Works Association both have members who work at or own ground water systems in rural areas and participated in development of the regulations.

Job Impact Statement

The Department of Health has determined that the proposed revisions will not have substantial adverse impact on jobs or employment opportunities. The proposed revisions enhance existing requirements under the State Sanitary Code for protection of drinking water quality. In the event that these revisions are not adopted by New York State, the requirements will be imposed directly by the United States Environmental Protection Agency. Thus, the adoption of the changes to the regulations will not substantially impact employment. It is possible that new technologies or products developed to comply with the revised rules would bring new employment opportunities to the state.

FOR DISCUSSION
NOT ADOPTION

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by sections 2803 and 2805-1 of the Public Health Law, sections 405.8 and 751.10 of Title 10 (Health) of the Official Compilation of Codes, Rules, and Regulations of the State of New York are hereby repealed and new sections 405.8 and 751.10 are hereby added to be effective upon the publication of a Notice of Adoption in the New York State Register to read, as follows:

Section 405.8 is repealed.

A new section 405.8 is added to read as follows:

405.8 Adverse Event Reporting

(a) Any adverse event required to be reported pursuant to subdivision (b) of this section shall be reported to the department. Hospitals shall report such adverse events, as defined in subdivision (b) of this section, within 24 hours of when the hospital obtains knowledge of any information and determines that such an adverse event has occurred. This report to the department shall be submitted in a format specified by the department and shall at a minimum include: the date, the nature, classification and location of the adverse event; and medical record numbers of all patients directly affected by the adverse event.

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(b) Adverse events to be reported are:

(1) patients' deaths in circumstances other than those related to the natural course of illness, disease or proper treatment in accordance with generally accepted medical standards;

(2) injuries and impairments of bodily functions, in circumstances other than those related to the natural course of illness, disease or proper treatment in accordance with generally accepted medical standards and that necessitate additional or more complicated treatment regimens or that result in a significant change in patient status, shall also be considered reportable under this subdivision;

(3) equipment malfunction during treatment or diagnosis of a patient which results in death or serious injury of a patient;

(4) patient elopements resulting in death or serious injury;

(5) abduction of a patient of any age;

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NOT ADOPTION

(6) sexual abuse/sexual assault on a patient or staff member within or on the grounds of a general hospital;

(7) physical assault of a patient or staff member within or on the grounds of a general hospital;

(8) discharge or release of a patient of any age, who is unable to make decisions, to other than an authorized person;

(9) patient or staff death or serious injury associated with a burn incurred from any source in the course of a patient care process;

(10) patient suicide, attempted suicide or self harm resulting in serious injury;

(11) poisoning occurring within the facility;

(12) fires or other internal disasters in the facility which disrupt the provision of patient care services or cause harm to patients or personnel;

FOR DISCUSSION
NOT ADOPTION

(13) disasters or other emergency situations external to the hospital environment which affect facility operations;

(14) termination of any services vital to the continued safe operation of the facility or to the health and safety of its patients and personnel, including but not limited to the termination of telephone, electric, gas, fuel, water, heat, air conditioning, rodent or pest control, laundry services, food, or contract services; and

(15) strikes by personnel.

(c) The hospital shall conduct an investigation of adverse events described in paragraphs (1-10) of subdivision (b) of this section. Such investigations shall be thorough and credible and occur within thirty days of the hospital obtaining knowledge of any information which reasonably appears to show that such an adverse event occurred or upon determination by the department that an investigation is warranted in order to protect patient health and safety. If the hospital reasonably expects such investigation to extend beyond the thirty day period, the hospital shall notify the department electronically of such expectation and the reason(s) and shall inform the department of the expected date of completion, not to exceed sixty days. For adverse events described in paragraphs (1- 10) of subdivision (b) of this section, the hospital shall submit its investigative report electronically, in a format prescribed by the department. The investigative report shall document all hospital efforts to identify and analyze the

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circumstances surrounding the adverse event and to develop and implement appropriate measures to prevent recurrence and improve the overall quality of patient care. This report shall be credible and thorough and contain all information in a format specified by the department.

(d) The requirements of this section shall be in addition to and shall not replace other reporting required by this Part.

(e) Nothing in this section shall prohibit the department from investigating any adverse event occurring in general hospitals.

Section 751.10 is repealed.

A new section 751.10 is amended to read as follows:

(a) Any adverse event required to be reported pursuant to subdivision (b) of this section shall be reported to the department within one business day of when the center has determined that such an adverse event occurred. This notification shall be submitted in a format specified by the department and shall at least include: the date, the nature, classification, and location of the adverse event and medical record numbers of all patients directly affected by the adverse event.

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(b) Adverse events to be reported are:

(1) patients' deaths in circumstances other than those related to the natural course of illness, disease or proper treatment in accordance with generally accepted medical standards;

(2) injuries and impairments of bodily functions, in circumstances other than those related to the natural course of illness, disease or proper treatment in accordance with generally accepted medical standards and that necessitate additional or more complicated treatment regimens or that result in a significant change in patient status, shall also be considered reportable under this subdivision;

(3) patient or staff death or serious injury associated with a burn incurred from any source in the course of a patient care process;

(4) equipment malfunction during treatment or diagnosis of a patient which results in death or serious injury of a patient;

(5) fires or other internal disasters in the center which disrupt the provision of patient care services or cause harm to patients or personnel;

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(6) termination of any services vital to the continued safe operation of the center or the health and safety of its patients and personnel, including but not limited to the termination of telephone, electric, gas, fuel, water, heat, air conditioning, rodent or pest control, laundry services, food or contract services;

(7) strikes by center staff; and

(8) disasters or other emergency situations external to the center environment which affect facility operations excluding snow days and/or rescheduled appointments.

(c) The center shall conduct an investigation of any adverse events described in paragraphs (1 - 4) of subdivision (b) of this section. Such investigation shall be thorough and credible and occur within thirty days of determination that such an adverse event has occurred or upon determination by the department that an investigation is warranted in order to protect patient health and safety. If the center reasonably expects such investigation to extend beyond the thirty day period, the center shall notify the department electronically of such expectation and the reason(s) and shall inform the department of the expected date of completion, not to exceed sixty days. This investigative report shall be thorough and credible and the center shall submit its report electronically, in a format prescribed by the department.

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(d) Nothing in this section shall prohibit the department from investigating any adverse event included in subdivision (b) of this section occurring in such centers.

(e) The requirements of this section shall be in addition to and shall not replace other reporting required by this Chapter.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The authority for the promulgation of this regulation is contained in Sections 2803(2), and 2805-1 of the Public Health Law (PHL). PHL Section 2803(2) authorizes the Public Health and Health Planning Council (PHHPC) to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of Article 28 of the Public Health Law, and to establish minimum standards governing the operation of health care facilities. PHL Section 2805-1 outlines the adverse event reporting requirements general hospitals must follow and specifically directs the Commissioner to make, adopt, promulgate and enforce such rules and regulations deemed appropriate to effectuate the purposes of this section.

Legislative Objectives:

The legislative intent of PHL Article 28 is to provide for the protection and promotion of the health of the inhabitants of the State of New York by delivering high quality hospital and related services in a safe and efficient manner at a reasonable cost. PHL Section 2805-1 specifically intends to strengthen New York State's hospital and diagnostic and treatment system by enhancing safeguards and protocols to ensure patient safety with its adverse event reporting requirements. Its aim is to ensure that facility staff

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become promptly aware of problems, take necessary corrective action and minimize the potential for recurrence. The Department has over time developed and implemented a state of the art, nationally recognized adverse event reporting system, with a strong reliance on each facility's statutory reporting obligation.

Needs and Benefits:

Current adverse event reporting practice includes the reporting of defined occurrences, adverse events and unexpected deaths to the Department's Office of Health Systems Management's New York Patient Reporting System (NYPORTS). The Department analyzes aggregate data and provides feedback regarding patient safety activities throughout the state. NYPORTS is the third iteration of adverse event reporting in New York State. The evolution of NYPORTS spans over 3 decades, initially known as the Hospital Adverse event Reporting System (HIRS) followed by the Patient Event Tracking System (PETS).

NYPORTS has been in place since 1998 and serves as a nationally recognized adverse event reporting system. NYPORTS is an internet-based system with all required security measures in place. Facilities can query the database to compare their experience with reported events statewide, regional or peer group experience. While the identity of individual facilities in the comparative groups is not disclosed, the comparative database is a useful tool in support of facility quality improvement activities.

Chapter 542 of the Laws of 2000 created Article 29-D of the Public Health Law, known as the Patient Health Information and Quality Improvement Act of 2000. This law included provisions that established a patient safety center to maximize patient

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safety, reduce medical errors, and improve the quality of health care. This was to be accomplished by improving systems of data reporting, collection, analysis and dissemination, and to improve public access to health care information not otherwise restricted. The Department's NYPORTS activities support the mission of the patient safety center through its efforts to collect adverse event report data, analyses of the data and dissemination of such analyses to the hospital community.

A collaborative effort between the Department and stakeholders to align the NYPORTS system with national reporting trends resulted in statutory changes made by the Legislature in 2011 through significant, but not complete, adoption of the National Quality Forum (NQF)'s Serious Reportable Events (SREs). PHL Section 2805-l was revised to allow the Department the ability to conform to NQF reporting definitions and to share NYPORTS de-identified data and findings. These changes allow the Department to share data with researchers with the goal of robust data analysis and information sharing with New York State hospitals. This regulatory measure updates its adverse reporting requirements to reflect current practice and to conform to the changes in the statute.

Costs:

This proposal will not increase costs to the Department or to the facilities required to report adverse events to the Department via the NYPORTS system. These amendments merely update the regulation to reflect current practice and to conform to statutory changes.

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NOT ADOPTION

Local Government Mandates:

This regulation does not impose any new programs, services, duties, or responsibilities upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

There will be no additional paperwork as these amendments merely update the regulation to reflect current practice and statutory changes.

Duplication:

This regulation does not duplicate any other state or federal law or regulation.

Alternatives:

There are no other alternatives. The current regulation is out of date. This proposal updates the regulation to reflect current practice and statutory changes.

Federal Standards:

This regulatory amendment does not exceed any minimum standards of the federal government.

FOR DISCUSSION
NOT ADOPTION

Compliance Schedule:

The proposed rule will become effective upon publication of a Notice of Adoption in the State Register.

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FOR DISCUSSION
NOT ADOPTION

**REGULATORY FLEXIBILITY ANALYSIS
FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS**

Pursuant to section 202-b of the State Administrative Procedure Act, a regulatory flexibility analysis is not required. This regulatory action simply updates already existing adverse event reporting requirements in sections 405.8 and 751.10 of 10 NYCRR to reflect current practice and statutory changes.

The proposed rule will not impose an adverse economic impact on any of the facilities required to report adverse events to the Department, and will not impose a negative impact on local governments. These provisions will not impose any additional recordkeeping, reporting and other compliance requirements on any party since the proposal simply updates already existing adverse event reporting and investigative requirements.

FOR DISCUSSION
NOT ADOPTION

RURAL AREA FLEXIBILITY ANALYSIS

Pursuant to section 202-bb of the State Administrative Procedure Act, a rural area flexibility analysis is not required. This regulatory action simply updates already existing adverse event reporting requirements in sections 405.8 and 751.10 of 10 NYCRR to reflect current practice and statutory changes.

The proposed rule will not impose an adverse economic impact on hospitals and diagnostic treatment centers located in rural areas in New York State and will not impose any additional recordkeeping, reporting and other compliance requirements since the proposal simply updates already existing adverse event reporting and investigative requirements.

FOR DISCUSSION
NOT ADOPTION

JOB IMPACT STATEMENT

A Job Impact Statement is not included because it is apparent from the nature and purpose of these amendments that they will not have a substantial adverse impact on jobs and employment opportunities. This proposal merely updates the adverse event reporting and investigative provisions in sections 405.8 and 751.10 of 10 NYCRR to reflect current practice and statutory changes.

**New York State Department of Health
Public Health and Health Planning Council**

August 4, 2011

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 2: Applications Recommended for Approval with the Following:

- ❖ PHHPC Member Recusals
- ❖ Without Dissent by HSA
- ❖ Without Dissent by Establishment and Project Review Committee

CON Applications

Cardiac Services – Construction

Exhibit #4

| | <u>Number</u> | <u>Applicant/Facility</u> | <u>E.P.R.C. Recommendation</u> |
|----|----------------------|--|---------------------------------------|
| 1. | 102412 C | Buffalo General Hospital – Kaleida Health (Cattaraugus County) Interest – Mr. Booth Interest – Ms. Regan | Conditional Approval |
| 2. | 102404 C | Olean General Hospital (Cattaraugus County) Interest – Mr. Booth | Contingent Approval |

Ambulatory Surgery Centers – Construction

Exhibit #5

| | <u>Number</u> | <u>Applicant/Facility</u> | <u>E.P.R.C. Recommendation</u> |
|----|----------------------|---|---------------------------------------|
| 1. | 111109 C | Eastern Niagara Hospital – Lockport Division d/b/a Eastern Niagara Ambulatory Surgery Center (Niagara County) Interest – Mr. Booth | Contingent Approval |

Transitional Care Units - Construction**Exhibit #6**

| | <u>Number</u> | <u>Applicant/Facility</u> | <u>E.P.R.C. Recommendation</u> |
|----|----------------------|--|---------------------------------------|
| 1. | 102368 T | Rome Memorial Hospital, Inc. (Oneida County) Interest – Mr. Booth | Contingent Approval |
| 2. | 102369 T | New York Hospital Medical Center of Queens (Queens County) Interest – Mr. Fassler Interest – Dr. Martin Interest – Dr. Sullivan | Contingent Approval |
| 3. | 102370 T | Good Samaritan Hospital of Suffern (Rockland County) Recusal – Dr. Torres Interest – Dr. Martin Interest – Dr. Sullivan | Contingent Approval |



Public Health and Health Planning Council

Project # 102412-C Buffalo General Hospital – Kaleida Health

County: Cattaraugus (Olean)
Purpose: Construction

Program: Cardiac Services
Submitted: November 26, 2010

Executive Summary

Description

Buffalo General Hospital, a 461-bed not-for-profit hospital located in Erie County, is seeking approval for the relocation of an existing percutaneous coronary intervention (PCI) capable cardiac catheterization lab from Buffalo General Hospital to Olean General Hospital. Kaleida Health is the operator of Buffalo General Hospital. The lab is proposed to be jointly-operated by Olean General Hospital (OGH) and Buffalo General Hospital (BGH).

Existing equipment would be relocated from BGH to OGH, with the BGH lab decommissioned upon relocation to OGH. The proposed lab will occupy existing space within OGH in which a cardiac catheterization lab previously operated.

Under the terms of the joint operating agreement, OGH will provide and bill for the service. The cardiac catheterization lab will be staffed with OGH employees, with the exception of the lab director, who will be employed by Kaleida Health. Kaleida Health will be responsible for the day-to-day management of the lab, including the planning and implementation of the lab and oversight of OGH staff assigned to the lab.

DOH Recommendation
Approval.

Need Summary

The proposed relocation and joint-operation of the cardiac catheterization laboratory will help to ensure adequate physician coverage, provide quality oversight, and improve patient access by bringing services closer to patients in Cattaraugus and Allegany Counties.

Program Summary

Under the terms of the joint operating agreement, the lab will be staffed by OGH employees, with the exception of

the Lab Director, who will be employed by Kaleida Health. Drawing on their experience, Kaleida Health will be responsible for the day-to-day management of the lab.

BGH is currently certified for:

Cardiac Catheterization – Adult Diagnostic
Cardiac Catheterization – Percutaneous Coronary Intervention (PCI)

There will be no change in services to the BGH operating certificate. However, a notation will be added to the BGH operating certificate indicating the joint-operating responsibility of Kaleida Health for the lab at OGH.

A concurrent CON (#102404-C) has been submitted by OGH. Upon approval, OGH will have the above services added to their operating certificate. In addition, the OGH operating certificate will include a notation indicating the joint operating responsibility of Kaleida Health for the lab.

Financial Summary

The total project cost will be just for the CON fee, which will be met via accumulated funds.

| | | |
|---------------------|--------------|--------------------|
| Incremental Budget: | Revenues: | \$ (2,302,103) |
| | Expenses: | <u>(2,287,102)</u> |
| | Gain/(Loss): | \$ (15,001) |

The reduction in revenue and expenses represents the share of PCI procedures that will shift to Olean General Hospital. The applicant has demonstrated the capability to proceed in a financially feasible manner.

Architectural Summary

The applicant proposes to relocate cardiac catheterization services now provided at BGH to a PCI-capable facility at OGH. Modifications to the existing lab at OGH are limited to the relocation of a medical waste closet.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval conditional upon:

1. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
2. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
3. The medical waste closet currently adjacent to the proposed patient holding and nurse/tech station shall be relocated to an approved location indicated on the final construction documents. [AER]
4. The proposed facility, including related HVAC systems shall be provided in accord with the submitted Patient Safety Risk Assessment or an approved revision. [AER]
5. The applicant shall complete construction by April 1, 2014. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]
6. Submission of a description of the co-operator's billing and revenue sharing arrangement, and the arrangement is found acceptable to the Department. [BFA, CSL]
7. Submission of an executed co-operator contract that is acceptable to the Department. [BFA, CSL]
8. Submission of board resolutions from Kaleida Health and from Olean General Hospital approving the co-operator contract and accepting joint and several liability to the Department of Health for any failure to comply with applicable laws or regulations and for failing to correct any deficiencies found on surveys, investigations, or audits. [CSL]

Approval conditional upon:

1. Approval is conditioned on Kaleida Health and Olean General Hospital formally agreeing they are jointly and severally liable to the New York State Department of Health for any failure to comply with applicable laws or regulations and for failing to correct any deficiencies found on surveys, investigations, or audits.
2. Approval is conditioned on Kaleida Health and Olean General Hospital obtaining prior written approval by the Department of Health of any changes to the approved co-operator contract.

Council Action Date

August 4, 2011.

Need Analysis

Background

Buffalo General Hospital requests approval to relocate an existing (PCI) capable cardiac catheterization laboratory to Olean General Hospital, under a joint operating agreement. Buffalo General Hospital is certified for the following beds and services:

| <u>Certified Beds</u> | |
|------------------------------|------------|
| Intensive Care | 48 |
| Coronary Care | 18 |
| Medical/Surgical | 260 |
| Phys Med/Rehab | 28 |
| Psychiatric | 107 |
| Total | 461 |

| <u>Licensed Services</u> | |
|--|--|
| Acute Renal Dialysis | Magnetic Resonance Imaging |
| Alcohol Rehab O/P | Nuclear Medicine-Diagnostic |
| Ambulatory Surgery | Nuclear Medicine-Therapeutic |
| Audiology O/P | Occupational Therapy O/P |
| Cardiac Catheterization-Adult Diagnostic | Open Heart Surgery-Adult |
| Chronic Renal Dialysis | Outpatient Surgery |
| CT Scanner | Part Time Clinics |
| Cystoscopy | Physical Medicine and Rehabilitation O/P |
| Dental O/P | Physical Therapy O/P |
| Emergency Department | Primary Medical Care O/P |
| Family Planning O/P | Psychiatric |
| Health Fairs O/P | Social Work Service |
| Kidney Transplantation | Speech-Language Pathology |
| <i>Other Locations: 37</i> | |

Analysis

Cattaraugus and Allegany Counties do not have facilities that provide cardiac catheterization services. Patients from these counties travel to hospitals in Buffalo or migrate to Pennsylvania hospitals.

The distance from Olean General Hospital (OGH) to Buffalo General Hospital is 74.0 miles with travel time of one hour and 40 minutes.

The Kaleida Hospitals (Buffalo General and Millard Fillmore-Gates) report that in 2009, they received referrals for 1,022 patients from Olean General Hospital to receive cardiac catheterization procedures at their facilities. The applicant states that the bulk of these referrals came from OGH's primary and secondary service areas.

The following projections are based on 45% of the cases currently being performed at the Kaleida Hospitals shifting to Olean General Hospital.

| Procedure | Year 1 | Year 3 |
|--------------------------|------------|------------|
| Diagnostic Cardiac Caths | 250 | 500 |
| PCI | 113 | 225 |
| TOTALS | 363 | 725 |

Project 102404 proposes to relocate an existing Buffalo General Hospital PCI capable cardiac catheterization lab to OGH, with each party entering into a joint operating agreement to operate the service. The applicant states that joint operation of the proposed laboratory will ensure adequate physician coverage, improve patient access, and provide quality oversight.

The proposed laboratory will occupy existing space within OGH where a cardiac catheterization laboratory previously operated. The project does not require renovation or construction. Existing fixed and movable equipment will be relocated from Buffalo General to OGH. No new equipment will be required. The cost to relocate the equipment is estimated to be \$75,000. The equipment will be leased by Kaleida Health to OGH.

Under the terms of the operating agreement, Olean General will provide and bill for the service. The cardiac catheterization lab will be staffed with Olean General employees, with the exception of the laboratory director who will be employed by Kaleida. Kaleida will be responsible for the day-to-day management of the laboratory, including its planning and implementation, and for oversight of OGH staff.

Additional services to be provided by Kaleida include oversight of budget development, billing guidance, supply procurement and distribution, equipment maintenance, licensure, scheduling, development and implementation of quality assurance, performance improvement and utilization review, of physician and community education and outreach, development of patient selection criteria, oversight of case management, data analysis and reporting, medical recordkeeping, staff training, and compliance. Kaleida Health will work with OGH to develop policies and procedures for the laboratory.

| Adult Cardiac Catheterization Programs Western New York, 2009 | | | | | |
|--|-------------------------|-------------------------------------|---------------------------|---|----------------------------------|
| <i>Facility</i> | <i>Cath Labs</i> | <i>Cardiac Caths (a)</i> | <i>PCI (b)</i> | <i>Total Vol. (a+2b)¹</i> | <i>Volume per Lab</i> |
| Buffalo General | 6 | 5,646 | 1,562 | 8,770 | 1,462 |
| Erie County M.C | 3 | 1,011 | 173 | 1,357 | 452 |
| Mercy Hospital | 4 | 2,368 | 607 | 3,582 | 896 |
| Millard Fillmore Gates | 3 | 3,047 | 912 | 4,871 | 1,624 |
| Women's Christian Assoc. | 1 | 377 | 0 | 377 | 377 |
| Total | 17 | 12,449 | 3,254 | 18,957 | 1,115 |

The Kaleida Hospitals (Buffalo General and Millard Fillmore-Gates) have a total of nine cardiac catheterization laboratories that perform an average of 1,342 cardiac catheterizations in 2009.

Public Need Criteria

As stated in 10 NYCRR 709.14(d)(1), the factors and methodology for determining the public need for PCI-capable cardiac laboratory centers shall include, but not be limited to the following:

- (a) The planning area for PCI capable catheterization laboratories is one hour average surface travel time.
- (b) Evidence that existing PCI capable catheterization laboratories within the planning area cannot adequately meet the needs of patients in need of emergency PCIs due to conditions such as capacity, geography, and/or EMS limitations.
- (c) Documentation by the applicant must demonstrate the hospital's ability to provide high quality care that would yield a minimum of 36 emergency PCI procedures per year within the first year of operation and would yield a minimum of 200 total PCI cases per year within two years of start-up.
- (d) Existing referral patterns indicate that approval of an additional service will not jeopardize the minimum volume required at other existing PCI capable cardiac catheterization laboratories.

All existing PCI capable cardiac catheterization laboratories are expected to continue to perform at least 300 PCI procedures per year.

¹ PCI procedures generally take twice as long as diagnostic catheterizations and therefore receive double weight in determining procedure volume.

Distance and Travel Time

| | |
|------------------|--------------------------|
| <i>From:</i> | Olean General Hospital |
| <i>To:</i> | Buffalo General Hospital |
| <i>Distance:</i> | 74.0 miles |
| <i>Time:</i> | 1 hour, 40 minutes |

The travel time from Olean General Hospital to Buffalo General Hospital is one hour and forty minutes. This exceeds the one hour travel standard (709.14(a)) for access to a PCI capable cardiac catheterization laboratory.

Due to the geographic location of Olean, there are no other PCI capable catheterization laboratories that can meet the need for emergency PCI's.

Based on SPARCS data for 2009, Olean General Hospital had 127 acute myocardial infarction (AMI) discharges and 9 deaths for an observed mortality rate of 7.09%. The New York State observed mortality rate for AMI discharges is 6.78%.

With 127 acute myocardial infarction discharges per year, Olean General can satisfy the minimum standard of 36 emergency PCI procedures per year.

All existing PCI capable cardiac catheterization laboratories in the region are expected to perform at least 300 PCI procedures per year.

Conclusion

The proposed relocation of an existing PCI capable cardiac catheterization laboratory from Buffalo General Hospital will improve access to emergency PCI services for this service area.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Compliance with Applicable Codes, Rules and Regulations

The medical staff will ensure that procedures performed at the Center conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and/or expertise. The Center's admissions policy will include anti-discrimination regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures will be performed in accordance with all applicable federal and state codes, rules and regulations, including standards for credentialing, anesthesiology services, nursing, patient admission and discharge, a medical records system, emergency care, quality assurance and data requirements.

This facility has no outstanding Article 28 surveillance or enforcement actions and, based on the most recent surveillance information, is deemed to be currently operating in substantial compliance with all applicable State and Federal codes, rules and regulations. This determination was made based on a review of the files of the Department of Health, including all pertinent records and reports regarding the facility's enforcement history and the results of routine Article 28 surveys as well as investigations of reported incidents and complaints.

Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Joint Operating Agreement

The applicant has submitted an executed joint operating agreement, the terms of which are summarized below:

| | |
|--------------------------------------|--|
| <i>Parties:</i> | Kaleida Health (Kaleida) and Olean General Hospital (OGH). |
| <i>Operation of the Lab:</i> | The Parties acknowledge and agree that the Cath Lab shall be operated as a department of OGH; Cath Lab will be operated, and the provision of Cath Lab services will fall under, each Party's operating certificate, as required by NYSDOH; physicians who provide professional services at the Cath Lab shall have medical staff membership and clinical privileges at OGH; the medical director of the Cath Lab, who shall be a member of the medical staff of Kaleida as well as OGH, shall be responsible for the overall quality of services of the Cath Lab; OGH's medical staff committees shall be responsible for medical activities in the provision of Cath Lab services, including quality assurance, utilization review, and the coordination and integration of services and the financial operations of the Cath Lab will be fully integrated within the financial system of OGH, as evidenced by shared income and expenses between OGH and the Cath Lab relating to the Cath Lab services. |
| <i>OGH Contributed Services:</i> | OGH will provide the following services in connection with the operation of the Cath Lab; OGH will provide up to seven hundred square feet of space in OGH in which the Cath Lab will be situated; OGH shall employ and provide all administrative and clinical personnel who are the reasonably necessary for the operation of the Cath Lab except for the Medical Director; perform the following billing and collection services and manage care contracting; and shall provide the books of accounts and reports in regards to the Cath Lab. |
| <i>Kaleida Contributed Services:</i> | Kaleida will provide the following services in connection with the operation of the Cath Lab; Kaleida will be responsible for the day-to-day management of the Cath Lab, including general planning and implementation of the day-to-day operations of the Cath Lab; Kaleida shall provide the Cath Lab Director; will advise OGH of the billing requirements of the Medicare and Medicaid programs; will prepare and submit to the management Committee for its approval annual operating and capital budgets for the Cath Lab; will oversee the procurement, storage and distribution of consumable medical supplies necessary for patient care in the operation of the Cath Lab; take other actions, necessary to obtain and maintain all licenses and permits required in connection with the management or operation of the Cath Lab, will develop and implement an efficient scheduling system to ensure access to the Cath Lab; will implement and maintain a quality assurance and performance improvement plan and will establish systems, procedures and reports to assess and report the clinical activity relating to the Cath Lab Services. |
| <i>Term:</i> | The term shall be for ten years and shall thereafter automatically renew for additional, successive five year terms. |
| <i>Distributions:</i> | The Contributed Margin is the amount by which the net cath lab revenues exceed the Direct Costs. The Parties agree that the Contributed Margin Sharing Ratio for a fiscal year, of any Contributed Margin during a fiscal year shall be allocated 100% to Kaleida and any Contributed Margin for a fiscal year that is in excess of \$3,500,000 shall be allocated 50% to Kaleida and 50% to OGH. |
| | The Parties agree that the Loss Sharing Ratio for the fiscal year shall be as follows: any Loss shall be allocated 50% to Kaleida and 50% to OGH. |

Under the term of the joint operating agreement between Kaleida Health Buffalo General Hospital and Olean General Hospital, the cath lab will be operated as a department of Olean General Hospital, resulting in incremental revenues for Olean.

Operating Budget

The applicant has submitted incremental operating budget, in 2011 dollars, for Buffalo General Hospital for the first and third years, summarized below:

| | <u>Year One</u> | <u>Year Three</u> |
|------------------|----------------------|----------------------|
| Revenues: | <u>\$(1,049,688)</u> | <u>\$(2,302,103)</u> |
| Expenses: | | |
| Operating | <u>\$(1,316,270)</u> | <u>\$(2,287,102)</u> |
| Capital | <u>0</u> | <u>0</u> |
| Total Expenses | <u>\$(1,316,270)</u> | <u>\$(2,287,102)</u> |
| Excess Revenues: | \$266,582 | \$(15,001) |

* Under the terms of the Joint Operating Agreement between Olean General Hospital and Kaleida Health, OGH and Kaleida will share in losses of the venture 50/50%. Other direct expenses include Kaleida's contribution in the amount of \$281,582 to offset the loss under the agreement in Year 1. Also, under the Joint Operating Agreement between OGH and Kaleida Health, Kaleida Health will receive 100% of operational gains of the venture up to \$3M. The applicant projected \$82,274 in non-operating revenue in Year 3, which represents the OGH payment to Kaleida under the agreement.

Expense assumptions are based on the historical experience of Buffalo General Hospital.

Capability and Feasibility

The project cost will consist of the CON fee, which will be met via accumulated funds. Presented as BFA Attachment A are the 2009 and 2010 certified financial statements of Kaleida Health, which indicates the availability of sufficient funds to meet the project costs.

The submitted budget projects an excess of revenues over expenses of \$266,582 and \$(15,001) during the first and third years, respectively. The third year loss will be offset via operations. As indicated previously, revenues and expenses that currently roll up to Kaleida Health Buffalo General Hospital will shift to Olean General Hospital.

Presented as BFA Attachment A are the 2009 and 2010 certified financial statements of Kaleida Health. As shown on Attachment A, the hospital had an average positive working capital position and an average positive net asset position during the period shown. Also, the applicant achieved an operating excess of revenues over expenses of \$14,178,000 and \$18,768,000 during 2009 and 2010, respectively.

Presented as BFA Attachment B are the April 30, 2011 internal financial statements of Kaleida Health. As shown on Attachment B, the hospital had a positive working capital position and a positive net asset position through April 30, 2011. Also, the applicant incurred an operating excess of expenses over revenues of \$10,141,000 through April 30, 2011.

The applicant has indicated that the reason for the losses are the following: the Western New York market has seen a significant downturn in inpatient volume since the third quarter of 2010, continuing through early 2011, and lower reimbursement from Medicaid and Medicare. The applicant has implemented the following steps to improve operations: productivity improvements; labor cost control; corporate and fixed costs review and reductions; community benefit analysis, and Waterfront Health Care Center Disposition.

The applicant has demonstrated the capability to proceed in a financially feasible manner and approval is recommended.

Recommendation

From a financial perspective, approval is recommended.

Architectural Analysis

Background

The proposed project entails the relocation of cardiac catheterization services now provided at Kaleida Health Buffalo General Hospital to a PCI capable facility at Olean General. A medical waste closet will be relocated from its current location adjacent to patient holding and the nurse/tech station due to asepsis concerns. HVAC systems within the procedure and control rooms shall maintain air flow to control asepsis risks derived from the locating of scrub sinks and gowning in an area contiguous to the procedure space. The lab and support spaces are designed for the provision of patient preparation within the procedure room. Patients are transported directly into and out of the procedure room through an un-restricted corridor.

Environmental Review:

The Department has deemed this project to be an UNLISTED ACTION and has determined that for its purposes an Environmental Impact Statement (EIS) is not required. However, any agency that has an interest in this project may make their own independent determination of significance and necessity for an EIS in accordance with the procedures specified within Part 97.8 of Title 10: Rules and Regulations.

Recommendation

From an architectural perspective, approval is recommended.

Attachments

- | | |
|------------------|--|
| BFA Attachment A | Financial Summary- 2009 and 2010 certified financial statements of Kaleida Health. |
| BFA Attachment B | Financial Summary- the April 30, 2011 internal financial statements of Kaleida Health. |



Public Health and Health Planning Council

Project # 102404-C
Olean General Hospital

County: Cattaraugus (Olean)
Purpose: Construction

Program: Cardiac Services
Submitted: November 22, 2010

Executive Summary

Description

Olean General Hospital, a 186-bed not-for-profit hospital located in Cattaraugus County, is seeking approval for the relocation of an existing percutaneous coronary intervention (PCI) capable cardiac catheterization lab from Buffalo General Hospital to Olean General Hospital and the addition of cardiac catheterization services to the Olean General Hospital's operating certificate. Kaleida Health is the operator of Buffalo General Hospital. The lab is proposed to be jointly operated by Olean General Hospital (OGH) and Buffalo General Hospital (BGH).

Existing equipment would be relocated from BGH to OGH, with the BGH lab decommissioned upon relocation to OGH. The proposed lab will occupy existing space within OGH in which a cardiac catheterization lab previously operated.

Under the terms of the joint operating agreement, OGH will provide and bill for the service. The cardiac catheterization lab will be staffed with OGH employees, with the exception of the lab director, who will be employed by Kaleida Health. Kaleida Health will be responsible for the day-to-day management of the lab, including the planning and implementation of the lab and oversight of OGH staff assigned to the lab.

Total project costs are estimated at \$77,413.

DOH Recommendation
Contingent approval

Need Summary

The proposed relocation and joint-operation of the cardiac catheterization laboratory will help to ensure adequate physician coverage, provide quality oversight, and improve patient access by bringing services closer to patients in Cattaraugus and Allegany Counties.

Program Summary

Under the terms of the joint operating agreement, the lab will be staffed by OGH employees, with the exception of the Lab Director, who will be employed by Kaleida Health. Drawing on their experience, Kaleida Health will be responsible for the day-to-day management of the lab.

If approved, the application would result in OGH being certified for:

Cardiac Catheterization – Adult Diagnostic
Cardiac Catheterization – Percutaneous Coronary Intervention (PCI)

In addition, a notation will be added to the OGH operating certificate indicating the joint-operating responsibility of Kaleida Health for the lab at OGH.

Financial Summary

Project cost will be met via accumulated funds.

| | | |
|---------------------|---------------------|------------------|
| Incremental Budget: | <i>Revenues:</i> | \$ 2,669,375 |
| | <i>Expenses:</i> | <u>2,669,375</u> |
| | <i>Gain/(Loss):</i> | \$ 0 |

The revenue and expenses represent the PCI cases shifting from Buffalo General Hospital.

The applicant has demonstrated the capability to proceed in a financially feasible manner.

Architectural Summary

The applicant proposes to relocate cardiac catheterization services now provided at BGH to a PCI-capable facility at OGH. Modifications to the existing lab at OGH are limited to the relocation of a medical waste closet.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]

Approval conditional upon:

1. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
2. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
3. The medical waste closet currently adjacent to the proposed patient holding and nurse/tech station shall be relocated to an approved location indicated on the final construction documents. [AER]
4. The proposed facility, including related HVAC systems shall be provided in accord with the submitted Patient Safety Risk Assessment or an approved revision. [AER]
5. The applicant shall complete construction by April 1, 2014. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]
6. Submission of a description of the co-operator's billing and revenue sharing arrangement, and the arrangement is found acceptable to the Department. [BFA, CSL]
7. Submission of an executed co-operator contract that is acceptable to the Department. [BFA, CSL]
8. Submission of board resolutions from Kaleida Health and from Olean General Hospital approving the co-operator contract and accepting joint and several liability to the Department of Health for any failure to comply with applicable laws or regulations and for failing to correct any deficiencies found on surveys, investigations, or audits. [CSL]

Approval conditional upon:

1. Approval is conditioned on Kaleida Health and Olean General Hospital formally agreeing they are jointly and severally liable to the New York State Department of Health for any failure to comply with applicable laws or regulations and for failing to correct any deficiencies found on surveys, investigations, or audits.
2. Approval is conditioned on Kaleida Health and Olean General Hospital obtaining prior written approval by the Department of Health of any changes to the approved co-operator contract.

Council Action Date

August 4, 2011.

Need Analysis

Background

Olean General Hospital is certified for the following beds and services:

| Certified Beds | |
|-----------------------|------------|
| Intensive Care | 14 |
| Maternity | 14 |
| Medical/Surgical | 138 |
| Pediatric | 6 |
| Psychiatric | 14 |
| Total | 186 |

| Licensed Services | |
|--|-----------------------------|
| Ambulatory Surgery-Multi Specialty | Medical Social Services |
| Dental O/P | CT Scanner |
| Magnetic Resonance Imaging | Radiology-Diagnostic |
| Psychiatric | Clinical Laboratory Service |
| Physical Medicine and Rehabilitation O/P | Intensive Care |
| Swing Bed Program | Medical/Surgical |
| Renal Dialysis-Chronic (12) | Pediatric |
| Emergency Department | Renal Dialysis-Acute |
| Maternity | Coronary Care |
| Nuclear Medicine-Diagnostic | Lithotripsy |
| Primary Medical Care O/P | Pharmaceutical Service |
| <i>Other Authorized Locations: 3</i> | |

Analysis

Cattaraugus and Allegany Counties do not have facilities that provide cardiac catheterization services. Patients from these counties travel to hospitals in Buffalo or migrate to Pennsylvania hospitals for these services.

The Kaleida Hospitals (Buffalo General and Millard Fillmore-Gates) report that in 2009, they received referrals from OGH for 1,022 cardiac catheterization procedures at their facilities. The applicant states that the bulk of these referrals came from OGH's primary and secondary service areas.

| Adult Cardiac Catheterization Programs Western New York, 2009 | | | | | |
|--|-------------------------|---|---------------------------------|---|----------------------------------|
| <u>Facility</u> | <u>Cath Labs</u> | <u>Cardiac Caths</u> <i>(a)</i> | <u>PCI</u> <i>(b)</i> | <u>Total Vol.</u> <i>(a+2b)¹</i> | <u>Volume per Lab</u> |
| Buffalo General | 6 | 5,646 | 1,562 | 8,770 | 1,462 |
| Erie County M.C | 3 | 1,011 | 173 | 1,357 | 452 |
| Mercy Hospital | 4 | 2,368 | 607 | 3,582 | 896 |
| Millard Fillmore Gates | 3 | 3,047 | 912 | 4,871 | 1,624 |
| Women's Christian Assoc. | 1 | 377 | 0 | 377 | 377 |
| Total | 17 | 12,449 | 3,254 | 18,957 | 1,115 |

The Kaleida Hospitals (Buffalo General and Millard Fillmore-Gates) have a total of nine cardiac catheterization labs that performed an average of 1,342 cardiac catheterizations per lab in 2009.

¹ PCI procedures generally take twice as long as diagnostic catheterizations and therefore receive double weight in determining procedure volume.

| Adult Cardiac Catheterization Programs Western New York, 2010 | | | | | |
|--|-------------------------|-------------------------------------|---------------------------|---|----------------------------------|
| <i>Facility</i> | <i>Cath Labs</i> | <i>Cardiac Caths (a)</i> | <i>PCI (b)</i> | <i>Total Vol. (a+2b)²</i> | <i>Volume per Lab</i> |
| Buffalo General | 6 | 5,321 | 1,350 | 8,021 | 1,337 |
| Erie County M.C | 3 | 833 | 144 | 1,121 | 374 |
| Mercy Hospital | 4 | 2,857 | 687 | 4,231 | 1,058 |
| Millard Fillmore Gates | 3 | 2,896 | 843 | 4,642 | 1,547 |
| Women's Christian Assoc. | 1 | 311 | 0 | 311 | 311 |
| Total | 17 | 12,218 | 3,024 | 18,326 | 1,078 |

The Kaleida Hospitals (Buffalo General and Millard Fillmore-Gates) have a total of nine cardiac catheterization laboratories that performed an average of 1,407 cardiac catheterizations per lab in 2010.

Public Need Criteria

As stated in 10 NYCRR 709.14(d)(1), the factors and methodology for determining the public need for PCI-capable cardiac laboratory centers shall include, but not be limited to the following:

- (a) The planning area for PCI capable catheterization laboratories is one hour average surface travel time.
- (b) Evidence that existing PCI capable catheterization laboratories within the planning area cannot adequately meet the needs of patients in need of emergency PCIs due to conditions such as capacity, geography, and/or EMS limitations.
- (c) Documentation by the applicant must demonstrate the hospital's ability to provide high quality care that would yield a minimum of 36 emergency PCI procedures per year within the first year of operation and would yield a minimum of 200 total PCI cases per year within two years of start-up.
- (d) Existing referral patterns indicate that approval of an additional service will not jeopardize the minimum volume required at other existing PCI capable cardiac catheterization laboratories.

All existing PCI capable cardiac catheterization laboratories are expected to continue to perform at least 300 PCI procedures per year.

Distance and Travel Time

| | |
|------------------|--------------------------|
| <i>From:</i> | Olean General Hospital |
| <i>To:</i> | Buffalo General Hospital |
| <i>Distance:</i> | 74.0 miles |
| <i>Time:</i> | 1 hour, 40 minutes |

The travel time from Olean General Hospital to Buffalo General Hospital is one hour and forty minutes. This exceeds the one hour travel standard (709.14(a)) for access to a PCI capable cardiac catheterization laboratory.

Due to the geographic location of Olean, there are no other PCI capable catheterization laboratories that can meet the need for emergency PCI's.

Based on SPARCS data for 2009, Olean General Hospital had 127 acute myocardial infarction (AMI) discharges and 9 deaths, for an observed mortality rate of 7.09%. The New York State observed mortality rate for AMI discharges is 6.78%.

With 127 acute myocardial infarction discharges per year, Olean General can satisfy the minimum standard of 36 emergency PCI procedures per year.

All existing PCI capable cardiac catheterization laboratories in the area are expected to perform at least 300 PCI procedures per year.

² PCI procedures generally take twice as long as diagnostic catheterizations and therefore receive double weight in determining procedure volume.

The proposed relocation of an existing PCI capable cardiac catheterization laboratory from Buffalo General Hospital will improve access to emergency PCI services for this service area.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Compliance with Applicable Codes, Rules and Regulations

The medical staff will ensure that procedures performed at the Center conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and/or expertise. The Center's admissions policy will include anti-discrimination regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures will be performed in accordance with all applicable federal and state codes, rules and regulations, including standards for credentialing, anesthesiology services, nursing, patient admission and discharge, a medical records system, emergency care, quality assurance and data requirements.

This facility has no outstanding Article 28 surveillance or enforcement actions and, based on the most recent surveillance information, is deemed to be currently operating in substantial compliance with all applicable State and Federal codes, rules and regulations. This determination was made based on a review of the files of the Department of Health, including all pertinent records and reports regarding the facility's enforcement history and the results of routine Article 28 surveys as well as investigations of reported incidents and complaints.

Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Joint Operating Agreement

The applicant has submitted an executed joint operating agreement, the terms of which are summarized below:

| | |
|----------------------------------|---|
| <i>Parties:</i> | Kaleida Health (Kaleida) and Olean General Hospital (OGH). |
| <i>Operation of the Lab:</i> | The Parties acknowledge and agree that the Cath Lab shall be operated as a department of OGH; Cath Lab will be operated, and the provision of Cath Lab services will fall under, each Party's operating certificate, as required by NYSDOH; physicians who provide professional services at the Cath Lab shall have medical staff membership and clinical privileges at OGH; the medical director of the Cath Lab, who shall be a member of the medical staff of Kaleida as well as OGH, shall be responsible for the overall quality of services of the Cath Lab; OGH's medical staff committees shall be responsible for medical activities in the provision of Cath Lab services, including quality assurance, utilization review, and the coordination and integration of services and the financial operations of the Cath Lab will be fully integrated within the financial system of OGH, as evidenced by shared income and expenses between OGH and the Cath Lab relating to the Cath Lab services. |
| <i>OGH Contributed Services:</i> | OGH will provide the following services in connection with the operation of the Cath Lab: OGH will provide up to seven hundred square feet of space in OGH in which the Cath Lab will be situated; OGH shall employ and provide all administrative and clinical personnel who are reasonably necessary for the operation of the Cath Lab |

except for the Medical Director; perform billing and collection services and managed care contracting; and shall provide the books of accounts and reports in regards to the Cath Lab.

Kaleida Contributed Services: Kaleida will provide the following services in connection with the operation of the Cath Lab; Kaleida will be responsible for the day-to-day management of the Cath Lab, including general planning and implementation of the day-to-day operations of the Cath Lab; Kaleida shall provide the Cath Lab Director; will advise OGH of the billing requirements of the Medicare and Medicaid programs; will prepare and submit to the management Committee for its approval annual operating and capital budgets for the Cath Lab; will oversee the procurement, storage and distribution of consumable medical supplies necessary for patient care in the operation of the Cath Lab; take other actions, necessary to obtain and maintain all licenses and permits required in connection with the management or operation of the Cath Lab, will develop and implement an efficient scheduling system to ensure access to the Cath Lab; will implement and maintain a quality assurance and performance improvement plan and will establish systems, procedures and reports to assess and report the clinical activity relating to the Cath Lab Services.

Term: The term shall be for ten years and shall thereafter automatically renew for additional, successive five year terms.

Distributions: The Contributed Margin is the amount by which the net cath lab revenues exceed the Direct Costs. The Parties agree that the Contributed Margin Sharing Ratio for a fiscal year, of any Contributed Margin during a fiscal year shall be allocated 100% to Kaleida and any Contributed Margin for a fiscal year that is in excess of \$3,500,000 shall be allocated 50% to Kaleida and 50% to OGH.

The Parties agree that the Loss Sharing Ratio for the fiscal year shall be as follows: any Loss shall be allocated 50% to Kaleida and 50% to OGH.

Under the term of the joint operating agreement between Kaleida Health Buffalo General Hospital and Olean General Hospital, the cath lab will be operated as a department of Olean General Hospital, resulting in incremental revenues for Olean.

Total Project Cost and Financing

Total project cost, which is for fixed equipment and processing fees, is estimated at \$77,413, are itemized as follows:

| | |
|---------------------------|------------|
| Fixed Equipment | \$75,000 |
| CON Fee | 2,000 |
| Additional Processing Fee | <u>413</u> |
| Total Project Cost | \$77,413 |

The hospital will provide equity to meet the total project cost.

Operating Budget

The applicant has submitted an incremental operating budget, in 2011 dollars, for OGH for the first and third years, summarized below:

| | <u>Year One</u> | <u>Year Three</u> |
|------------------------|-----------------|-------------------|
| Revenues: | | |
| Inpatient | \$726,154 | \$1,452,306 |
| Outpatient | 608,534 | 1,217,069 |
| *Non Operating Revenue | <u>281,582</u> | <u>0</u> |
| Total Revenues: | \$1,616,270 | \$2,669,375 |
| Expenses: | | |
| Operating | \$1,597,852 | \$2,369,375 |
| Capital | <u>300,000</u> | <u>300,000</u> |

| | | |
|----------------------------------|-------------|-------------|
| Total Expenses | \$1,897,852 | \$2,669,375 |
| Excess of Revenues over Expenses | \$(281,582) | \$0 |
| Inpatient: (Discharges) | 50 | 100 |
| Outpatient: (Visits) | 200 | 400 |

*Under the terms of the Joint Operating Agreement between Olean General Hospital and Kaleida Health, OGH and Kaleida will share in losses of the venture 50/50. The non-operating revenue of \$281,582 in year one represents the Kaleida payment to OGH under the agreement.

Incremental utilization, itemized by payor source, for the first and third year for Olean General Hospital inpatient services is as follows:

| | <u>Year One</u> | <u>Year Three</u> |
|----------------------------|-----------------|-------------------|
| Medicaid Fee-For-Service | 4.4% | 4.4% |
| Medicaid Managed Care | 7.9% | 7.9% |
| Medicare Fee-For-Service | 38.6% | 38.6% |
| Medicare Managed Care | 17.9% | 17.9% |
| Commercial Fee-For-Service | 16.6% | 16.6% |
| Commercial Managed Care | 9.4% | 9.4% |
| Other | 5.2% | 5.2% |

Incremental utilization, itemized by payor source, for the first and third year for Olean General Hospital outpatient services is as follows:

| | <u>Year One</u> | <u>Year Three</u> |
|----------------------------|-----------------|-------------------|
| Medicaid Fee-For-Service | 2.80% | 2.80% |
| Medicaid Managed Care | 11.50% | 11.50% |
| Medicare Fee-For-Service | 25.54% | 25.90% |
| Medicare Managed Care | 15.80% | 15.80% |
| Commercial Fee-For-Service | 19.30% | 19.30% |
| Commercial Managed Care | 18.90% | 18.90% |
| Other | 6.16% | 5.80% |

Expense and utilization assumptions are based on Kaleida's historical experience in operating cardiac catheterization labs.

Capability and Feasibility

The hospital will provide equity to meet the total project cost. Presented as BFA Attachment A is the 2009 and 2010 certified financial statements of Olean General Hospital, which indicates the availability of sufficient funds to meet the total project cost.

The submitted budget for Olean General Hospital projects an excess of revenues over expenses of \$(281,582) and \$0 during the first and third years, respectively. The first year loss will be offset via Olean General Hospital's operations. Medicare and Medicaid reimbursement rates are Olean General Hospital's existing rates of payment.

As the primary patient base assumed to be catheterized in the proposed lab would come from volume currently treated at Kaleida Health Buffalo General Hospital, a blended rate was developed for Commercial/HMO payors equivalent to 50% of Kaleida Health and Olean General Hospital's current rates of payment.

Presented as BFA Attachment A are the 2009 and 2010 certified financial statements of Olean General Hospital. As shown on Attachment A, the hospital had an average positive working capital position and an average positive net asset position during the period shown. Also, the hospital achieved an operating excess of revenues over expenses of \$2,650,839 and \$1,074,420 during 2009 and 2010, respectively.

Presented as BFA Attachment B are the May 31, 2011 internal financial statements of Olean General Hospital. As shown on Attachment B, the hospital had a positive working capital position and a positive net asset position. Also, the hospital achieved an operating income of \$297,217 through May 31, 2011.

The applicant has demonstrated the capability to proceed in a financially feasible manner and approval is recommended.

Recommendation

From a financial perspective, approval is recommended.

Architectural Analysis

Background

The proposed project entails the relocation of cardiac catheterization services now provided at Kaleida Health Buffalo General Hospital to a PCI capable facility at Olean General. A medical waste closet will be relocated from its current location adjacent to patient holding and the nurse/tech station due to asepsis concerns. HVAC systems within the procedure and control rooms shall maintain air flow to control asepsis risks derived from the locating of scrub sinks and gowning in an area contiguous to the procedure space. The lab and support spaces are designed for the provision of patient preparation within the procedure room. Patients are transported directly into and out of the procedure room through an un-restricted corridor.

Environmental Review:

The Department has deemed this project to be an UNLISTED ACTION and has determined that for its purposes an Environmental Impact Statement (EIS) is not required. However, any agency that has an interest in this project may make their own independent determination of significance and necessity for an EIS in accordance with the procedures specified within Part 97.8 of Title 10: Rules and Regulations.

Recommendation

From an architectural perspective, approval is recommended.

Attachments

| | |
|------------------|--|
| BFA Attachment A | Financial Summary - 2009 and 2010 certified financial statements of Olean General Hospital |
| BFA Attachment B | Financial Summary - The May 31, 2011 internal financial statements of Olean General Hospital |



Public Health and Health Planning Council

Project # 111109-C Eastern Niagara Hospital – Lockport Division d/b/a Eastern Niagara Ambulatory Surgery Center

County: Niagara (Lockport)
Purpose: Construction

Program: Ambulatory Surgery Center
Submitted: January 28, 2011

Executive Summary

Description

Eastern Niagara Hospital, Inc., a 205-bed not-for-profit acute care hospital located in Niagara County, seeks approval to construct an enhancement to an existing extension clinic (Eastern Niagara Hospital Health Center) located at 5875 S. Transit Road, Lockport. The enhancement will be a multi-specialty ambulatory surgery center extension clinic (ASC). The facility will be operated under a d/b/a and be known as Eastern Niagara Ambulatory Surgery Center.

The ASC proposes to provide surgical services in the areas of orthopedics, plastic and reconstructive, interventional pain management, gastroenterology/endoscopy, general, gynecologic, urology, otolaryngology, and ophthalmology.

Eastern Niagara Health System (ENHS) is a health care system which serves the eastern two thirds of Niagara County. It is comprised of Eastern Niagara Hospital and Newfane Rehabilitation and Health Care Center (a 175-bed skilled nursing facility). The two health care operating entities in the ENHS system are under the common control of a parent corporation that bears the system name. Eastern Niagara Hospital has two acute care hospital sites – one in Lockport, approximately twenty miles northeast of Buffalo, and one in Newfane, a semi-rural area north of Lockport.

Total project costs are estimated at \$5,649,490.

DOH Recommendation
Contingent approval

Need Summary

Eastern Niagara Hospital projects that the number of visits will be 3,265 in year one and 3,463 in year three, proposing to serve cases that leave the area annually to

seek care. The primary service area of the proposed project is Niagara County.

Program Summary

Based on the information reviewed, staff concluded that the facilities have provided a substantially consistent high level of care as defined in New York State Public Health Law Section 2810(a)(3) and 10 NYCRR 600.2 during the past 10 years.

Emergency, in-patient and back-up support services will be provided by Eastern Niagara Hospital - Lockport Division which is 3.5 miles or 7 minutes in travel time from the clinic.

Financial Summary

Project costs will be met with \$565,720 in accumulated and a \$5,083,770 bank loan at 6.5% for 15 years.

| | | |
|---------------------|---------------------|------------------|
| Incremental Budget: | <i>Revenues:</i> | \$ 3,441,040 |
| | <i>Expenses:</i> | <u>3,061,489</u> |
| | <i>Gain/(Loss):</i> | \$ 379,551 |

Subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Architectural Summary

This project involves the construction of a 13,490 SF freestanding multispecialty ASC – including 4 operating rooms, 5 pre-op bays, 5 primary recovery, and 8 secondary recovery areas. The facility will be constructed in space located on the ground floor of an existing one-story office building. It will be designed to meet the life safety requirements applicable to an ambulatory health care occupancy.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a commitment acceptable to the Department of Health, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest within 120 days of receipt from the Office of Health Systems Management, Bureau of Architectural and Engineering Facility Planning, of approval of final plans and specifications and before the start of construction. Included with the submitted permanent mortgage commitment must be a source and uses statement and debt amortization schedule for both new and refinanced debt. [BFA]

Approval conditional upon:

1. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
2. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
3. The applicant shall complete construction by July 31, 2014. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

August 4, 2011.

Need Analysis

Background

Eastern Niagara Hospital, Inc. (ENH) proposes to expand its existing extension clinic at 5875 South Transit Road, Lockport, 14094 to include multi-specialty ambulatory surgery.

Eastern Niagara Hospital, as recommended by the Commission on Health Care Facilities in the 21st Century, is the product of the full asset merger between Lockport Memorial Hospital and Inter-Community Memorial Hospital. ENH proposes to provide the following surgical specialties:

Gastroenterology
Ophthalmology
Plastic surgery

General surgery
Orthopedics
Urology

Gynecology
Otolaryngology

Analysis

The primary service area of the proposed project is Niagara County.

The table below indicates that in 2009, nearly 46% of Niagara County residents in need of ambulatory surgical services went to Erie County for treatment.

| 2009 Ambulatory Surgery Report on Patient County | Patient County Niagara | Patient County Niagara |
|---|-------------------------------|-------------------------------|
| | <i>Number of Patients</i> | <i>% of Patients</i> |
| Niagara | 19,681 | 52.4% |
| Erie | 17,124 | 45.6% |
| Orleans | 547 | 1.5% |
| Monroe | 190 | 0.5% |
| Total Above | 37,542 | 99.9% |
| All Other | 40 | 0.1% |
| Total All | 37,582 | 100.0% |

SPARCS 2009

Conclusion

With more than 17,000 Niagara County residents currently going to Erie County for ambulatory surgery, it is likely that the proposed ASC will be well-utilized and will constitute a significant expansion of access to ambulatory surgical care for residents of the hospital's service area.

Eastern Niagara Hospital will use a Charity Care Policy for persons who are unable to pay the full charge for services or who are uninsured.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

Eastern Niagara Hospital requests approval to construct four operating rooms and add multi-specialty ambulatory surgery services at an existing extension clinic located at 5875 S. Transit Road, Lockport.

Program Description

Staffing will consist of 18.14 FTEs including registered nurses and technicians, under the supervision of the clinic's medical director. Anesthesiology services will be provided in accordance with Section 755.4 of 10 NYCRR

Emergency, in-patient and back-up support services will be provided by Eastern Niagara Hospital – Lockport Division which is 3.5 miles and 7 minutes in travel time from the clinic.

Patients will be provided with telephone numbers to reach both his/her surgeon and the Hospital during hours when the facility is closed.

Compliance with Applicable Codes, Rules and Regulations

The medical staff will ensure that procedures performed conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and/or expertise. The clinic's admissions policy will include anti-discrimination regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures will be performed in accordance with all applicable federal and state codes, rules and regulations, including standards for credentialing, anesthesiology services, nursing, patient admission and discharge, a medical records system, emergency care, quality assurance and data requirements.

Character and Competence

This facility has no outstanding Article 28 surveillance or enforcement actions and, based on the most recent surveillance information, is deemed to be currently operating in substantial compliance with all applicable State and Federal codes, rules and regulations. This determination was made based on a review of the files of the Department of Health, including all pertinent records and reports regarding the facility's enforcement history and the results of routine Article 28 surveys as well as investigations of reported incidents and complaints.

Conclusion

Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Total Project Cost

Total project cost for construction and renovations to a multi-specialty ASC extension clinic and the acquisition of moveable equipment, is estimated at \$5,649,490, itemized as follows:

| | |
|---------------------------------|--------------------|
| Renovations and Demolition | \$2,647,059 |
| Design Contingency | 264,706 |
| Construction Contingency | 264,706 |
| Architect/Engineering Fees | 270,000 |
| Moveable Equipment | 2,170,128 |
| CON Fee – Application | 2,000 |
| CON Fee – Additional Processing | <u>30,891</u> |
| Total Project Cost | <u>\$5,649,490</u> |

Total costs are based on a six month construction period with a start date of 1/31/2012 and completion date of 7/31/2012.

The hospital has submitted a letter of interest for permanent financing with a 6.5% expected interest rate and a 15 year term.

The applicant's financing plan appears as follows:

| | |
|-------------------------------|-----------|
| Equity | \$565,720 |
| Bank Loan (6.5%,15 year-term) | 5,083,770 |

Operating Budget

The applicant has submitted an incremental operating budget, in 2011 dollars, for the first and third years, summarized below:

| | <u>Year One</u> | <u>Year Three</u> |
|----------------------------------|------------------|-------------------|
| Revenues | \$3,258,296 | \$3,441,040 |
| Expenses: | | |
| Operating | \$1,958,276 | \$2,077,536 |
| Capital | <u>1,050,911</u> | <u>983,953</u> |
| Total Expenses | \$3,009,187 | \$3,061,489 |
| Excess Revenues over Expenses | <u>\$249,109</u> | <u>\$379,551</u> |
| Utilization: (Discharges/Visits) | 3,266 | 3,449 |
| Cost Per Discharge / Visit | \$921.38 | \$887.65 |

Utilization by payor source for the first and third years is as follows:

| | | |
|--------------------------|--------|--------|
| Medicaid Fee for Service | 9.31% | 9.18% |
| Medicare Fee-for-Service | 28.29% | 28.15% |
| Medicare Managed Care | 22.50% | 22.62% |
| Commercial Managed Care | 36.90% | 37.05% |
| Private Pay | 3.00% | 3.00% |

Expense and utilization assumptions are based on the hospital's experience in providing ambulatory surgery services.

Capability and Feasibility

The issue of capability is centered on the applicant's ability to meet the \$5,649,490 total project cost. As indicated, total project cost will be funded as follows: \$5,083,770 will be financed, for which a letter of interest has been provided. The remainder, \$565,720 will be provided as equity from the hospital. Reference to BFA Attachment A, a financial summary of Eastern Niagara Hospital, Inc. indicates the availability of sufficient resources for this purpose.

The issue of feasibility is centered on the applicant's ability to meet expenses with revenues. The submitted incremental budget projects excess revenues over expenses of \$249,109 and \$379,551 during the first and third years, respectively. The applicant's revenues reflect current reimbursement methodologies for ambulatory surgery services.

As shown on BFA Attachment A, 2008-2010 certified financials for Eastern Niagara Hospital, Inc. the facility maintained a positive working capital and a positive net asset position, and generated average annual excess revenues of \$3,271,831. The 2008 certified financial statements shown are a combination of Inter-Community Memorial Hospital and Lockport Memorial Hospital, which are the two facilities that comprise Eastern Niagara Hospital, which was formed through a full asset merger in 2009.

The reason for the reduction in the net income between the 2008 and 2009 certified financials and the 2010 certified financials is due to the fact that the 2008 and 2009 income statements included the Heal 4 grant monies of 9.1 million dollars in them. Three million dollars were included as the main portion of the 4.895 million dollars in other revenues reported for 2008, and 6.1 million dollars were included as the main portion of the 8.376 million dollars in other revenues for 2009. These amounts are one time occurrences and without them, the facility would have had a net income of 113,077 dollars in 2008 and a net loss of 543,966 dollars in 2009. The 2009 loss is due to the full asset merger of Inter-Community Memorial Hospital and Lockport Memorial Hospital, which formed Eastern Niagara Hospital in 2009 and the start up of operations as the new entity. In 2010, the facility was able to bring the facility back to a positive net income of 387,721 due to 2 new initiatives; (1) the consolidation of the maternity units at the Lockport site, which provided an operational savings of 600,000 dollars, and (2) the facility also instituted a hospitalist program to maintain volume and enhance primary care physician satisfaction and retention.

Subject to the noted contingency, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Architectural Analysis

Background

Eastern Niagara Hospital requests approval to construct a 13,490 SF freestanding multispecialty ambulatory surgery center. The center will consist of 4 operating rooms, 3 patient changing bays, 4 pre-operative bays, 5 post-anesthesia recovery bays, and 5 phase II recovery bays. It will also include clean and soiled work and storage areas, a control station, an anesthesia work room, staff lockers and lounge, waiting, reception and business areas and support facilities such as rest rooms, housekeeping closets and mechanical/electrical rooms.

Environmental Review:

The Department has deemed this project to be a TYPE II Action and will not have a significant effect on the environment. An Environmental Impact Statement is not required. However, any agency that has an interest in this project may make their own independent determination of significance and necessity for an EIS in accordance with the procedures specified within Part 97.8 of Title 10: Rules and Regulations.

Recommendation

From an architectural perspective, approval is recommended.

Attachments

| | |
|------------------|---|
| BFA Attachment A | Financial Summary, Eastern Niagara Hospital, Inc. 2008-2010 Certified Financials |
| BHFP Attachment | Map |



Public Health and Health Planning Council

Project # 102368-T
Rome Memorial Hospital, Inc.

County: Oneida (Rome)
Purpose: Demonstration

Program: Transitional Care Unit
Submitted: November 18, 2010

Executive Summary

Description

Rome Memorial Hospital, Inc., (RMH) is a not-for-profit entity that operates both a 144-bed acute care community hospital and 80-bed skilled residential health care facility, located at 1500 N James Street, Rome. RMH requests approval to reuse 14 of its existing 86 medical/surgical (M/S) beds to create a 12-bed Transitional Care Unit (TCU). This will allow the hospital to bridge the gap between the acute-care and post-acute care settings. On September 1, 2010, the Department of Health requested applications for a TCU Demonstration Program in accordance with the provisions of Section 2802-(a) of the Public Health Law.

Total project costs are estimated at \$102,550.

DOH Recommendation
Contingent approval.

Need Summary

Section 2802-a of the Public Health Law was amended by Chapter 58 of 2010, authorizing the Commissioner to approve an additional 13 general hospitals to operate transitional care units (TCUs) on a demonstration basis.

Program Summary

Rome Hospital operates a residential health care facility, which includes a sub-acute unit. The applicant will collaborate with neighboring nursing homes to improve quality of care and reduce recidivism. The TCU will educate area providers to ensure that all participate in a continuum of care to include the physician, hospital, sub-acute care, nursing homes and home care.

Financial Summary

Project costs will be met with \$102,550 from Rome Memorial Hospital's accumulated funds.

| | | |
|---------------------|---------------------|----------------|
| Incremental Budget: | <i>Revenues:</i> | \$ 1,235,827 |
| | <i>Expenses:</i> | <u>549,505</u> |
| | <i>Gain/(Loss):</i> | \$ 686,322 |

It appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Architectural Summary

The applicant proposes to develop a 16-bed TCU located within an existing m/s nursing unit. Six contiguous double occupancy m/s patient rooms are to be repurposed to the proposed TCU. An additional room will be used as a TCU patient lounge, dining, and recreation space. Handicap accessible toilet(s) and dedicated shower/bathing area(s) will be provided as required.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]

Approval conditional upon:

1. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
2. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's request for, and Department's granting approval for the start of construction. [AER]
3. The applicant shall complete construction by August 31, 2013. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

August 4, 2011.

Need Analysis

Background

Section 2802-a of the Public Health Law was amended by Chapter 58 of 2010 authorizing the Commissioner to approve an additional 13 general hospitals to operate transitional care units (TCUs) on a demonstration basis. The original TCU enabling legislation of 2005 authorized five demonstration projects.

Transitional Care Unit Purpose

Section 2802-a of PHL defines "transitional care" as sub-acute care services provided to inpatients of a general hospital who no longer require acute care inpatient services, but continue to need specialized medical, nursing and other hospital ancillary services and are not yet ready for discharge. TCUs should be limited in length of stay and designed to meet and resolve patients' specific sub-acute medical care needs. Discharges from these units are to be timely and appropriate.

The improvement of quality outcomes for the TCU population through the provision of appropriate services, delivered in the most efficient manner, is the primary goal of the TCU demonstration program. Hospitals selected for this program are required to demonstrate an overall decrease in length of stay, quantify the clinical benefits of the program for TCU patients, and illustrate a synergistic relationship with long term care providers in the community. Collaboration between hospitals and nursing homes in local service areas will help bring about more efficient allocation of patients between the two settings.

In accordance with Section 2802-a of PHL, all providers applying to participate in this demonstration program must meet all Conditions of Participation (CoP) for skilled nursing facilities (SNFs) as defined under Title XVIII of the Federal Social Security Act (Medicare). In order to qualify for Medicare certification, providers must comply with Part 415 of Title 10 of the New York Compilation of Codes, Rules and Regulations (10 NYCRR). In this demonstration, providers not currently licensed to operate nursing home beds will not be required to obtain Public Health and Health Planning Council establishment approval. Additionally, TCU units are not recognized as RHCF beds as defined in 10 NYCRR Section 709.3.

As part of this demonstration program, specific State SNF regulations that may impede the development of TCUs or their ability to provide appropriate services to patients may be subject to waiver, at the discretion of the Department. Such issues will be reviewed on an individual basis.

Applicants must demonstrate the need for any services proposed within the TCU and emphasize the benefits of such a program to a specific community, including, but not limited to, addressing the absence of sufficient post-discharge services in nursing homes and community-based care.

Transitional care units should be limited in length of stay and designed to meet and resolve specific sub-acute medical care needs. The average length of stay for patients served in a TCU ranges from 5 to 21 days, following a qualifying acute care stay. TCU services will be reimbursed at the applicable Medicare per diem SNF rate.

Transitional Care Unit Criteria and Requirements

Section 2802-a requires all providers applying to participate in this demonstration program to meet all applicable requirements as defined under Title XVIII of the Federal Social Security Act (Medicare). Additionally, Transitional Care Units must:

- Have a length of stay of not less than 5 days and not in excess of 21 days;
- Have a pre-opening survey, separate Medicare Number, and SNF certification;
- Be staffed by qualified staff dedicated to the TCU;
- Serve patients who will benefit from active rehabilitation. (It is expected that patients will actively participate in three hours or more of Occupational Therapy/Physical Therapy/Speech Therapy, every day, either three hours consecutively or in combination between rehabilitative sessions); and

- Collect information and submit reports to the Department on an annual basis to demonstrate an overall decrease in length of stay; quantify the clinical benefits of the program for TCU residents and illustrate a synergistic relationship with long term care providers.

Applications must address the configuration of the Transitional Care Unit. However, the applicant must adhere to the following requirements:

- Beds must be located at one geographic location; and
- Beds must be located contiguously within a distinct unit/space within the hospital.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

The TCU will serve patients who, if not discharged to the TCU, would continue to be served in a Med/Surg bed. The applicant anticipates an average daily census of 9 patients. These patients will remain in the TCU for a short stay of not less than 5 and no more than 20 days.

The TCU will focus on more complex, convalescing patients who have multiple diagnoses, such as diabetes, pneumonia, COPD, septicemia and underlying heart conditions associated with congestive heart failure.

The TCU will be under the direct responsibility of the Vice President of Senior Services at Rome Hospital and a Nursing Home Administrator. The management team will include a nurse manager, Medical Director, and an interdisciplinary team. Staff will include a social worker, activities director, RNs, LPNs, physical therapists, a dietician and aides.

The applicant will submit an annual report on TCU operations to the Department of Health.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Background

The TCU mission and roles are designed to achieve the following:

- Improve the quality of care afforded to the patients through improved earlier intervention of rehabilitative services, continuity of care, and the availability of a more appropriate inpatient resource for convalescence;
- Reduce the length of the hospital's Medicare stays;
- Foster enhanced continuity among the acute and post-acute programs of RMH and non-RMH providers of post-acute care, and serve as a catalyst to the nursing home industry to expand its sub-acute capability;
- Fill a gap in service availability by making available a high tech, highly staffed skilled nursing bed to serve as a true alternative to the medical/surgical bed for those patients whose inpatient needs are in between Medicare's definition of "acute" and traditional definitions of Skilled Nursing;
- Serve as an alternative resource to existing programs within RMH that are being closed and/or are less appropriate options for the care of the convalescing patient with medical/surgical complications;
- Eliminate inflationary pressure on health care dollar by utilizing the Medicare Program effectively, thus reducing the cost to all other consumers, taxpayers, and insurers of New York;
- Improve the quality of care to elders;
- Measure outcomes and report the findings;

- Serve as the administrative coordinator of the health continuum for hospitalized elders with specific focus on service coordination to reduce recidivism.

The proposed TCU will enable a more efficient use of the hospital's existing post-acute services.

Total Project Cost and Financing

Total project cost for renovation is estimated at \$102,550, broken down as follows:

| | |
|-------------------------|------------|
| Renovation & Demolition | \$100,000 |
| CON Application Fee | 2,000 |
| CON Processing Fee | <u>550</u> |
| Total Project Cost | \$102,550 |

RMH proposes to reuse 14 existing m/s beds on its second floor to create a Medicare-certified, "distinct-part", hospital-based skilled nursing unit/facility (HBSNF) that will become its 12 bed TCU. The TCU will be located at the end of a medical/surgical corridor. It is expected the TCU will share the medical/surgical unit's core nursing resources as permitted under amended federal rules. But the TCU will have dedicated dining and recreation areas.

RMH has allocated \$100,000 in renovation cost in case the Department wants the hospital to add one or more dedicated handicapped accessible toilet and/or dedicated shower/bathing area. RMH is prepared to meet all the Department's requirements.

Project costs are based on October 1, 2011 start date with a two month construction period. Total project cost will be provided from RMH's accumulated funds.

Operating Budget

The applicant has submitted first and third years incremental operating budgets, in 2011 dollars, as summarized below:

| | <u>Year One</u> | <u>Year Three</u> |
|-------------------------------------|-----------------|-------------------|
| Revenues | \$639,557 | \$1,235,827 |
| Expenses: | <u>549,505</u> | <u>549,505</u> |
| Total Excess Revenues Over Expenses | \$90,052 | \$686,322 |
| Utilization: (patient days) | 1,700 | 3,285 |

Utilization by payor source for the first and third years is anticipated as follows:

| | <u>Year One</u> | <u>Year Three</u> |
|--------------------------|-----------------|-------------------|
| Medicare Fee-For-Service | 100.0% | 91.3% |
| Medicare Manage Care | | 3.6% |
| Commercial Manage Care | | 5.1% |

Estimated utilization was based on calculating the average excess Medicare patient days, and adjusting it for RMH's Diagnosis Related Group (DRG) mix. If the proposed TCU is approved, then when appropriate, RMH will transfer the extended stay patient to the TCU, where the patients stay are expected to be paid, in part, under the Medicare skilled nursing benefit. The TCU will be fully staffed from the first day, and the incremental direct expenses are its unique costs.

Capability and Feasibility

Total project costs, if necessary, will be funded from Rome Memorial Hospital's accumulated funds. Presented as BFA Attachment A is their 2010 and 2009 certified financial statement which indicates there is adequate resources to fund this project.

Working capital requirements are estimated at \$91,584, which appear reasonable based on two months of third year expenses. The funds will be provided from on going operations.

The first and third year's financial projections show an incremental operating profit of \$90,052 and \$686,322, respectively. RMH has identified the DRG's which have the greatest individual number of excess days. The TCU will receive additional revenues through Medicare reimbursement rules under the Resource Utilization Group (RUG) rates. The budget appears reasonable.

A review of BFA Attachment A shows during 2009 and 2010 Rome Memorial Hospital had an average operating loss of \$855,013, and during this same period provided \$1,303,000 in average yearly charity care. The hospital stated the proposed TCU contribution to margin will help offset these losses and minimize potential program and personnel cutbacks. At the end of 2010 the hospital's unrestricted net assets grew to \$21,213,756, an increase of \$138,863 from the prior year, and 2010 total net asset stood at \$21,838,297 an increase of \$171,799 from the prior year.

It appears that the applicant has demonstrated the capability to proceed in a financially feasible manner; and approval is recommended.

Recommendation

From a financial perspective, approval is recommended.

Architectural Analysis

Environmental Review:

The Department has deemed this project to be a TYPE II Action and will not have a significant effect on the environment. An Environmental Impact Statement is not required. However, any agency that has an interest in this project may make their own independent determination of significance and necessity for an EIS in accordance with the procedures specified within Part 97.8 of Title 10: Rules and Regulations.

Recommendation

From an architectural perspective, approval is recommended.

Attachments

BFA Attachment A Financial Summary for 2009 & 2010, Rome Memorial Hospital, Inc., and Affiliates



Public Health and Health Planning Council

Project # 102369-T New York Hospital Medical Center of Queens

County: Queens (Flushing)
Purpose: Demonstration

Program: Transitional Care Unit
Submitted: November 18, 2010

Executive Summary

Description

New York Hospital Medical Center of Queens, a 439-bed not-for-profit hospital located in Queens County, requests approval to create a 16-bed Transitional Care Unit (TCU) to bridge the gap between the Hospital's acute care and post-acute care settings. On September 1, 2010, the Department of Health requested applications in accordance with the provisions of Section 2802-a of the Public Health Law for a TCU Demonstration Program.

The TCU will be designed to achieve the following objectives:

- Improve clinical outcomes for medically complex patients by providing 24-hour skilled nursing and rehabilitative care prior to long-term care or discharge home.
- Assist patients to fully recover before discharge.
- Reduce overall patient length of stay.
- Educate and prepare family members for care for these patients at home.

The TCU program will provide access to rehabilitation therapies, which in turn will reduce the Hospital's overall medical length of stay per TCU eligible patient. The TCU unit will be located on the seventh floor of the main hospital building. Management of the TCU unit, including staffing and training for the unit, will be provided by Silvercrest Center for Nursing and Rehabilitation, a 320-bed residential health care facility (RHCF) that is a related entity of NYHQ.

Total project costs are estimated at \$33,372.

DOH Recommendation
Contingent approval.

Need Summary

Section 2802-a of the Public Health Law was amended by Chapter 58 of 2010, authorizing the Commissioner to approve an additional 13 general hospitals to operate transitional care units (TCUs) on a demonstration basis.

Program Summary

The principal elements of the proposed TCU program are:

- 16-bed unit on the 7th Floor, South Building
- Single and Double-bedded Rooms

Financial Summary

Project costs will be met with accumulated funds of \$33,372 from New York Hospital Medical Center of Queens.

| | | |
|---------------------|---------------------|------------------|
| Incremental Budget: | <i>Revenues:</i> | \$ 2,797,827 |
| | <i>Expenses:</i> | <u>2,197,576</u> |
| | <i>Gain/(Loss):</i> | \$ 600,251 |

The applicant has demonstrated the capability to proceed in a financially feasible manner, and approval is recommended.

Architectural Summary

This project involves the renovation of 5,700 SF of the eighth floor of the hospital for a 15-bed transitional care unit.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Indicating location of ADA Accessible toilet within the area of work, acceptable to the Department. [AER]

Approval conditional upon:

1. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
2. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's request for, and Department's granting approval for the start of construction. [AER]
3. The applicant shall complete construction by August 31, 2013. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

August 4, 2011.

Need Analysis

Background

Section 2802-a of the Public Health Law was amended by Chapter 58 of 2010 authorizing the Commissioner to approve an additional 13 general hospitals to operate transitional care units (TCUs) on a demonstration basis. The original TCU enabling legislation of 2005 authorized five demonstration projects.

Transitional Care Unit Purpose

Section 2802-a of PHL defines "transitional care" as sub-acute care services provided to inpatients of a general hospital who no longer require acute care inpatient services, but continue to need specialized medical, nursing and other hospital ancillary services and are not yet ready for discharge. TCUs should be limited in length of stay and designed to meet and resolve patients' specific sub-acute medical care needs. Discharges from these units are to be timely and appropriate.

The improvement of quality outcomes for the TCU population through the provision of appropriate services, delivered in the most efficient manner, is the primary goal of the TCU demonstration program. Hospitals selected for this program are required to demonstrate an overall decrease in length of stay, quantify the clinical benefits of the program for TCU patients, and illustrate a synergistic relationship with long term care providers in the community. Collaboration between hospitals and nursing homes in local service areas will help bring about more efficient allocation of patients between the two settings.

In accordance with Section 2802-a of PHL, all providers applying to participate in this demonstration program must meet all Conditions of Participation (CoP) for skilled nursing facilities (SNFs) as defined under Title XVIII of the Federal Social Security Act (Medicare). In order to qualify for Medicare certification, providers must comply with Part 415 of Title 10 of the New York Compilation of Codes, Rules and Regulations (10 NYCRR). In this demonstration, providers not currently licensed to operate nursing home beds will not be required to obtain Public Health and Health Planning Council establishment approval. Additionally, TCU units are not recognized as RHCf beds as defined in 10 NYCRR Section 709.3.

As part of this demonstration program, specific State SNF regulations that may impede the development of TCUs or their ability to provide appropriate services to patients may be subject to waiver, at the discretion of the Department. Such issues will be reviewed on an individual basis.

Applicants must demonstrate the need for any services proposed within the TCU and emphasize the benefits of such a program to a specific community, including, but not limited to, addressing the absence of sufficient post-discharge services in nursing homes and community-based care.

Transitional care units should be limited in length of stay and designed to meet and resolve specific sub-acute medical care needs. The average length of stay for patients served in a TCU ranges from 5 to 21 days, following a qualifying acute care stay. TCU services will be reimbursed at the applicable Medicare per diem SNF rate.

Transitional Care Unit Criteria and Requirements

Section 2802-a requires all providers applying to participate in this demonstration program to meet all applicable requirements as defined under Title XVIII of the Federal Social Security Act (Medicare). Additionally, Transitional Care Units must:

- Have a length of stay of not less than 5 days and not in excess of 21 days;
- Have a pre-opening survey, separate Medicare Number, and SNF certification;
- Be staffed by qualified staff dedicated to the TCU;
- Serve patients who will benefit from active rehabilitation. (It is expected that patients will actively participate in three hours or more of Occupational Therapy/Physical Therapy/Speech Therapy, every day, either three hours consecutively or in combination between rehabilitative sessions); and
- Collect information and submit reports to the Department on an annual basis to demonstrate an overall decrease in length of stay; quantify the clinical benefits of the program for TCU residents and illustrate a synergistic relationship with long term care providers.

Applications must address the configuration of the Transitional Care Unit. However, the applicant must adhere to the following requirements:

- Beds must be located at one geographic location; and
- Beds must be located contiguously within a distinct unit/space within the hospital.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

The TCU will focus on patients who, if not discharged to the TCU, would continue to be served in a Med/Surg bed. These patients will remain in the TCU for a short stay of 5 to 20 days. The applicant projects an average length of stay of approximately 20 days during the first year of operation, decreasing to 16 days by the fifth year.

The TCU will focus on patients with congestive heart failure, myocardial infarction, or pneumonia, who are de-conditioned and require additional days of rehabilitation and/or monitoring before discharge.

Management of the TCU, including staffing and training for the unit, will be provided by Silvercrest Center for Nursing and Rehabilitation, a 320-bed RHCF that is affiliated with New York Hospital Medical Center of Queens (NYHMCQ). The TCU’s management team will consist of a Medical Director, a director of nursing and a licensed nursing home administrator. The TCU will use an interdisciplinary care team approach consisting of physicians, psychologists, care managers, nurses, physical therapists, recreational therapists, occupational therapists, respiratory therapists, speech/language pathologists and dieticians.

New York Hospital Medical Center of Queens is a member of the New York-Presbyterian Healthcare System. The applicant will enter into a Memorandum of Understanding with Silvercrest Center for Nursing and Rehabilitation to ensure that patients who are cared for by the TCU have nursing home services available to them upon discharge.

On a quarterly basis, the substantive results of the quality review program will be reported to NYHMCQ’s quality committee and ultimately to the Board of Trustees. That reporting will also be submitted to the Department of Health to assist in the monitoring of the TCU Demonstration Program.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Total Project Cost and Financing

Total project cost for the acquisition of moveable equipment is estimated at \$33,372, itemized as follows:

| | |
|---------------------------|-----------------|
| Moveable Equipment | 10,400 |
| Telecommunications | 20,800 |
| CON Fee | 2,000 |
| Additional Processing Fee | <u>172</u> |
| Total Project Cost | <u>\$33,372</u> |

New York Hospital Medical Center of Queens will finance total project costs through accumulated funds.

Operating Budget

The applicant has submitted an incremental operating budget, in 2011 dollars, for the first and third years, summarized below:

| | <u>Year One</u> | <u>Year Three</u> |
|----------------------------------|-----------------|-------------------|
| Revenues | \$2,485,289 | \$2,797,827 |
| Expenses: | | |
| Operating | \$2,048,999 | \$2,192,576 |
| Capital | <u>5,000</u> | <u>5,000</u> |
| Total Expenses | \$2,053,999 | \$2,197,576 |
| Excess of Revenues over Expenses | \$431,290 | \$600,251 |
| Utilization: (patient days) | 4,745 | 5,110 |
| Occupancy | 81.25% | 87.50% |

Utilization for the first and third years is 100% Medicare.

Expense and utilization assumptions are based on the historical experience of New York Hospital Medical Center's inpatients.

Capability and Feasibility

Project costs of \$33,372 will be satisfied by accumulated funds from New York Hospital Medical Center of Queens, which indicates the availability of sufficient funds as presented on Attachment A.

The submitted budget indicates an excess of revenues over expenses of \$431,290 and \$600,251 during the first and third years, respectively. The budget appears reasonable. The Medicare revenues are based on RUG rates for Medicare in selected RUGS categories, in which TCU patients are expected, and were used to calculate reimbursement rates.

As shown on Attachment A, the hospital maintained an average positive working capital position and an average positive net asset position during the period shown. The hospital achieved an operating excess of revenues over expenses of \$4,806,000 and \$12,313,000 during the 2009 and 2010, respectively.

Presented as BFA Attachment B are the May 31, 2011 internal financial statements of New York Hospital Medical Center of Queens. As shown on Attachment B, the hospital had a positive working capital position and a positive net asset position for the period through May 31, 2011. Also, the facility achieved an operating income of \$570,000 for the period through May 31, 2011.

The applicant has demonstrated the capability to proceed in a financially feasible manner and approval is recommended.

Recommendation

From a financial perspective, approval is recommended.

Architectural Analysis

Background

This project will consist of 5,700 SF of renovation of the eighth floor of the hospital and will include 15 transitional care beds, 13 private patient beds and 2 semi-private patient beds. Also included are a rehabilitation gym, offices, a nurse station, medication room, clean and soiled utility rooms and a staff toilet room.

Environmental Review

The Department has deemed this project to be a TYPE II Action and will not have a significant effect on the environment. An Environmental Impact Statement is not required. However, any agency that has an interest in this project may make their own independent determination of significance and necessity for an EIS in accordance with the procedures specified within Part 97.8 of Title 10: Rules and Regulations.

Recommendation

From an architectural perspective, approval is recommended.

Attachments

- BFA Attachment A Financial Summary- 2009 and 2010 certified financial statements of New York Hospital Medical Center of Queens

- BFA Attachment B Financial Summary- May 31, 2011 Internal Financial Statements of New York Hospital Medical Center of Queens



Public Health and Health Planning Council

Project # 102370-T Good Samaritan Hospital of Suffern

County: Rockland (Suffern)
Purpose: Demonstration

Program: Transitional Care Unit
Submitted: November 18, 2010

Executive Summary

Description

Good Samaritan Hospital of Suffern (GSH), a 370-bed voluntary not-for-profit hospital located at 255 Lafayette Avenue, Suffern, requests approval to create an 18-bed skilled nursing facility to function as a Transitional Care Unit (TCU) to bridge the gap between GSH's acute care and post-acute care settings. On September 1, 2010, the Department of Health requested applications in accordance with the provisions of Section 2802-a of the Public Health Law for a TCU Demonstration Program.

The TCU will be designed to achieve the following:

- Improve clinical outcomes for medically complex patients by providing 24-hour skilled nursing and rehabilitative care prior to long-term care or discharge home.
- Assist patients to fully recover before discharge.
- Reduce overall patient length of stay.
- Prevent readmissions.
- Educate and prepare family members to care for these patients at home.

The TCU will provide access to rehabilitation therapies, pulmonary management, surgical recovery, renal management with on site dialysis, nutritional support management, wound care, neurology, orthopedic and cardiac programs, oncology management, intravenous therapy, trauma care, therapeutic recreation activities and psychology services as necessary, which in turn will reduce GSH's overall medical surgical length of stay per TCU eligible patient.

GSH is part of the Bon Secours Charity Health System (BSCHS), which was formed in 2000 and is comprised of 3 acute care hospitals: GSH, St. Anthony Community Hospital (73 beds), and Bon Secours Community Hospital (141 beds); 2 residential health care facilities: Schervier Pavilion (120 beds) and St. Joseph's Place (46 beds) and an adult care facility (85 beds) with a 55-bed assisted living component. The purpose of BHCSH was to create an integrated delivery system of caregivers and facilities in Orange and Rockland

counties that strive to bring persons and communities to health and wholeness.

Total project costs are estimated at \$1,779,459.

DOH Recommendation
Contingent approval.

Need Summary

Section 2802-a of the Public Health Law was amended by Chapter 58 of 2010, authorizing the Commissioner to approve an additional 13 general hospitals to operate transitional care units (TCUs) on a demonstration basis.

Program Summary

The principal elements of the proposed TCU program are:

- An 18-bed unit. The TCU unit will be located as a distinct unit within GSH on the fourth floor.
- Operations will focus on admitting those Diagnostic Related Groupings that have attributed to the highest levels of excess days at GSH.
- Single-bedded rooms will be contiguously located in discrete space of hospital.

Financial Summary

Project costs will be met with \$256,983 in accumulated funds from BSCHS and \$1,522,476 from a HEAL-NY Phase 11 grant.

| | | |
|---------------------|---------------------|------------------|
| Incremental Budget: | <i>Revenues:</i> | \$ 2,457,965 |
| | <i>Expenses:</i> | <u>2,131,207</u> |
| | <i>Gain/(Loss):</i> | \$ 326,758 |

It appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Architectural Summary

This project involves the renovation of 10,425 SF of the fourth floor of GSH for an 18-bed transitional care unit.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]

Approval conditional upon:

1. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
2. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's request for, and Department's granting approval for the start of construction. [AER]
3. The applicant shall complete construction by August 31, 2013. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

August 4, 2011.

Need Analysis

Background

Section 2802-a of the Public Health Law was amended by Chapter 58 of 2010 authorizing the Commissioner to approve an additional 13 general hospitals to operate transitional care units (TCUs) on a demonstration basis. The original TCU enabling legislation of 2005 authorized five demonstration projects.

Transitional Care Unit Purpose

Section 2802-a of PHL defines "transitional care" as sub-acute care services provided to inpatients of a general hospital who no longer require acute care inpatient services, but continue to need specialized medical, nursing and other hospital ancillary services and are not yet ready for discharge. TCUs should be limited in length of stay and designed to meet and resolve patients' specific sub-acute medical care needs. Discharges from these units are to be timely and appropriate.

The improvement of quality outcomes for the TCU population through the provision of appropriate services, delivered in the most efficient manner, is the primary goal of the TCU demonstration program. Hospitals selected for this program are required to demonstrate an overall decrease in length of stay, quantify the clinical benefits of the program for TCU patients, and illustrate a synergistic relationship with long term care providers in the community. Collaboration between hospitals and nursing homes in local service areas will help bring about more efficient allocation of patients between the two settings.

In accordance with Section 2802-a of PHL, all providers applying to participate in this demonstration program must meet all Conditions of Participation (CoP) for skilled nursing facilities (SNFs) as defined under Title XVIII of the Federal Social Security Act (Medicare). In order to qualify for Medicare certification, providers must comply with Part 415 of Title 10 of the New York Compilation of Codes, Rules and Regulations (10 NYCRR). In this demonstration, providers not currently licensed to operate nursing home beds will not be required to obtain Public Health and Health Planning Council establishment approval. Additionally, TCU units are not recognized as RHCFC beds as defined in 10 NYCRR Section 709.3.

As part of this demonstration program, specific State SNF regulations that may impede the development of TCUs or their ability to provide appropriate services to patients may be subject to waiver, at the discretion of the Department. Such issues will be reviewed on an individual basis.

Applicants must demonstrate the need for any services proposed within the TCU and emphasize the benefits of such a program to a specific community, including, but not limited to, addressing the absence of sufficient post-discharge services in nursing homes and community-based care.

Transitional care units should be limited in length of stay and designed to meet and resolve specific sub-acute medical care needs. The average length of stay for patients served in a TCU ranges from 5 to 21 days, following a qualifying acute care stay. TCU services will be reimbursed at the applicable Medicare per diem SNF rate.

Transitional Care Unit Criteria and Requirements

Section 2802-a requires all providers applying to participate in this demonstration program to meet all applicable requirements as defined under Title XVIII of the Federal Social Security Act (Medicare). Additionally, Transitional Care Units must:

- Have a length of stay of not less than 5 days and not in excess of 21 days;
- Have a pre-opening survey, separate Medicare Number, and SNF certification;
- Be staffed by qualified staff dedicated to the TCU;
- Serve patients who will benefit from active rehabilitation. (It is expected that patients will actively participate in three hours or more of Occupational Therapy/Physical Therapy/Speech Therapy, every day, either three hours consecutively or in combination between rehabilitative sessions); and

- Collect information and submit reports to the Department on an annual basis to demonstrate an overall decrease in length of stay; quantify the clinical benefits of the program for TCU residents and illustrate a synergistic relationship with long term care providers.

Applications must address the configuration of the Transitional Care Unit. However, the applicant must adhere to the following requirements:

- Beds must be located at one geographic location; and
- Beds must be located contiguously within a distinct unit/space within the hospital.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

The applicant is affiliated the Bons Secours Charity Health System (BSCHS) an Accountable Care Organization consisting of three acute care hospitals, two residential health care facilities, an adult care facility with a 55-bed assisted living program and a home care agency aimed at delivering integrated care and services to the community and specifically Rockland and Orange Counties.

Projected average length of stay is expected to be 7 days. The applicant proposed that the TCU at GSH will provide a multitude of services and focus service delivery to those individuals requiring renal dialysis with complicating medical conditions, patients requiring intravenous antibiotics who also may require hyperbaric or complex wound care, geriatric and HIV-positive patients with dual diagnosis requiring medication adjustment to control behaviors and patients requiring radiation therapy treatment complicated by an inability to ambulate or those require oxygen therapy.

The applicant has proposed a management team consisting of a medical director, director of nursing and a licensed nursing home administrator. Care will be provided by a team of professionals including registered nurses, physicians, social workers, and recreation therapists. In addition to this staff, the applicant’s initial staffing proposal identifies all necessary key personnel required to operate the TCU program.

The applicant proposes to renovate an existing medical/surgical nursing unit occupying 7,164 sq of the hospital’s third floor to support the program. The TCU will be comprised of 18 single-bedded rooms meeting all applicable code requirements.

Additionally, the applicant’s proposal details how the organization will monitor the achievement of measurable goals and outcomes including the implementation of a Performance Improvement Plan to measure, assess and improve processes related to TCU activities.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Total Project Costs

Total project costs for renovations and the acquisition of movable equipment is estimated at \$1,779,459, broken down as follows:

| | |
|--------------------------|--------------|
| Renovation & Demolition | \$ 1,299,833 |
| Design Contingency | 129,983 |
| Construction Contingency | 129,983 |

| | |
|----------------------------|--------------------|
| Architect/Engineering Fees | 128,087 |
| Movable Equipment | 79,850 |
| Application Fee | 2,000 |
| Additional Processing Fee | <u>9,723</u> |
| Total Project Cost | <u>\$1,779,459</u> |

Project costs are based on a October 15, 2011 construction start date and a four month construction period. GSH will finance project costs with \$256,983 accumulated funds and \$1,522,476 from HEAL NY 11 Grant.

The applicant has submitted an incremental operating budget in 2011 dollars, for the first and third years of operation, summarized below:

| | <u>Year One</u> | <u>Year Three</u> |
|---------------------------|------------------|-------------------|
| Revenues: | \$2,328,599 | \$2,457,965 |
| Expenses: | | |
| Operating | \$1,956,718 | \$2,038,827 |
| Depreciation and Rent | <u>92,379</u> | <u>92,379</u> |
| Total Expenses | \$2,049,097 | \$2,131,207 |
| Net Income | <u>\$279,502</u> | <u>\$326,758</u> |
| Utilization: Patient Days | 5,913 | 6,242 |

Utilization for the first and third years is 100% Medicare.

Expense and utilization assumptions are based on the historical experience of Good Samaritan Hospital of Suffern inpatients.

Capability and Feasibility

Project cost will be satisfied by accumulated funds from Bon Secours Charity Health System, Inc. and a HEAL NY 11 grant. Presented as BFA Attachment A is the financial summary of Bon Secours Charity Health System, Inc. showing sufficient funds.

Working capital of \$355,201 based on two months of third year expenses will come from hospital operations.

The submitted incremental budget indicates a net income of \$279,502 and \$326,758 during the first and third years of operation, respectively. The budget appears reasonable. Bon Secours Charity Health System, Inc. maintained positive net asset and working capital positions and experienced negative net income in 2008 and 2009, which was due to volumes in both the inpatient and outpatient areas. In order to correct this, one of the strategic initiatives was to focus on physician alignment activities in Rockland County in order to recruit and generate new patient business from physicians that are currently aligned with other surrounding health facilities. The facility also invested in technology in order to bring state of the art equipment to attract physicians to utilize the facility. The facility expects to start to see benefits from these initiatives beginning in the final 5 months of the facility's 2011 fiscal year.

The Medicare revenues were based on a blend of 53 DRGs associated with GSH medically complex patients and excess days these patients spent in the Hospital. The budget appears reasonable.

It appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and approval is recommended.

Recommendation

From a financial perspective, approval is recommended.

Architectural Analysis

Background

This project will consist of 10,425 SF of renovation of the fourth floor of the Hospital and will include 18 transitional care beds, all in private patient bedrooms. Also included are a dining/multi-purpose room, day room, education room, treatment room, and shower and bathing rooms. Administrative offices, a nurse station, medication room, nourishment room, clean and soiled utility rooms, occupational and physical therapy storage rooms, and a staff lounge and staff toilet room are also included.

Environmental Review

The Department has deemed this project to be a TYPE II Action and will not have a significant effect on the environment. An Environmental Impact Statement is not required. However, any agency that has an interest in this project may make their own independent determination of significance and necessity for an EIS in accordance with the procedures specified within Part 97.8 of Title 10: Rules and Regulations.

Recommendation

From an architectural perspective, approval is recommended.

Attachments

| | |
|------------------|--|
| BFA Attachment A | Financial Summary of Bon Secours Charity Health System, Inc. - 2008 and 2009 Audited |
| BFA Attachment B | Financial Summary of Bon Secours Charity Health System, Inc. - 2010 internals |

**New York State Department of Health
Public Health and Health Planning Council**

August 4, 2011

**B. APPLICATIONS FOR ESTABLISHMENT AND
CONSTRUCTION OF HEALTH CARE FACILITIES**

CATEGORY 1: Applications Recommended for Approval – No Issues or Recusals,
Abstentions/Interests

CON Applications

Acute Care Services – Establish/Construct

Exhibit #7

| | <u>Number</u> | <u>Applicant/Facility</u> | <u>E.P.R.C. Recommendation</u> |
|----|----------------------|---|---------------------------------------|
| 1. | 111388 E | Riverside Health Care System, Inc. (Westchester County) | Approval |

Diagnostic and Treatment Centers – Establish/Construct

Exhibit #8

| | <u>Number</u> | <u>Applicant/Facility</u> | <u>E.P.R.C. Recommendation</u> |
|----|----------------------|--|---------------------------------------|
| 1. | 102147 B | Premium Health (Kings County) | Contingent Approval |
| 2. | 111183 E | Airport Imaging, LLC d/b/a Hudson Valley Imaging (Orange County) | Contingent Approval |
| 3. | 111220 B | Healthcare Partners of Saratoga, LTD (Saratoga County) | Contingent Approval |

Residential Health Care Facilities – Establish/Construct**Exhibit #9**

| <u>Number</u> | <u>Applicant/Facility</u> | <u>E.P.R.C. Recommendation</u> |
|---------------|---|--------------------------------|
| 1. 111347 E | CPRNC, LLC d/b/a Central Park Rehabilitation and Nursing Center (Onondaga County) | Contingent Approval |

Certified Home Health Agencies – Establish/Construct**Exhibit #10**

| <u>Number</u> | <u>Applicant/Facility</u> | <u>E.P.R.C. Recommendation</u> |
|---------------|--|--------------------------------|
| 1. 071074 E | *DEFERRED AT THE APPLICANT'S REQUEST Excellent Home Care Services, LLC (Kings County) | |

HOME HEALTH AGENCY LICENSURES**Exhibit #11**

| <u>Number</u> | <u>Applicant/Facility</u> | <u>E.P.R.C. Recommendation</u> |
|---------------|---|--------------------------------|
| 1990 L | Meadowbrook Terrace, Inc. (Jefferson County) | Contingent Approval |
| 1966 L | Chautauqua County Department of Health (Chautauqua County) | Contingent Approval |
| 2024 L | Schuyler County Public Health Department (Schuyler County) | Contingent Approval |
| 2025 L | Lewis County Public Health Licensed Home Care Service Agency (Lewis County) | Contingent Approval |
| 1884 L | Crestwood Health Care Center, Inc. d/b/a Elderwood Assisted Living at Crestwood (Niagara County) | Contingent Approval |

| | | |
|--------|--|---------------------|
| 1910 L | Heathwood Health Care Center, Inc. d/b/a Elderwood Assisted Living at Heathwood (Erie County) | Contingent Approval |
| 1981 L | Elderwood Assisted Living at Riverwood, Inc. (Erie County) | Contingent Approval |



Public Health and Health Planning Council

Project # 111388-E

Riverside Health Care System, Inc.

County: Westchester (Yonkers)
Purpose: Establishment

Program: Acute Care Services
Submitted: April 29, 2011

Executive Summary

Description

Riverside Health Care System, Inc., (RHCS) an existing not-for-profit corporation, requests approval to withdraw from Pinnacle Healthcare, Inc. (Pinnacle), a not-for-profit corporation formed for the charitable purpose of supporting its members. In 1997, Pinnacle was formed to serve as the parent organization of a healthcare network located in Westchester County. In 1999, under CON #982511-E, Pinnacle was established as the sole corporate member and active parent of Riverside Health Care System, Inc., Sound Shore Health System, Inc. and Westchester Putnam Health Management System.

RHCS was initially formed in 1984 to coordinate and support activities for St. John's Riverside Hospital and Yonkers General Hospital, including long range planning and future fund raising. In 2000, under CONs #001101-E and #001102-E, RHCS became the hospitals' active parent and co-operator, enabling more direction over system planning, greater insight over the budgetary process for the system and greater control over day-to-day operations. In 2004 under CON #011125-B, St. John's Riverside Hospital and Yonkers General Hospital completed a full asset merger, with St. John's Riverside Hospital as the surviving entity. RHCS maintained its relationship with St. John's Riverside Hospital upon merger.

The corporate withdrawal of RHCS from Pinnacle was effectuated in January 2007, with the removal of its membership interests in Pinnacle. Pinnacle has also effectuated its removal as the sole corporate member of RHCS through written consent from its President. RHCS ceased to be a corporate member of Pinnacle in February 2008, with the payment of its obligations to Pinnacle. Pinnacle has provided a written statement

affirming that the corporate withdrawal of RHCS will have no adverse effects, either financial or operational, on Pinnacle.

DOH Recommendation
Approval.

Need Summary

In 2008, the hospitals in RHCS had 18,344 total inpatient discharges. By 2010, these discharges increased by 4.7% to 19,195. In 2008, total emergency departments visits at these hospitals were 41,889. By 2009, these visits increased to 45,050 and decreased to 44,017 in 2010.

Program Summary

Based on the information reviewed, staff concluded that the facilities have provided a substantially consistent high level of care as defined in New York State Public Health Law Section 2810(a)(3) during the past 10 years.

Financial Summary

There are no project costs or incremental revenue or expenses associated with this application.

Riverside Health Care System, Inc. has paid in full its obligation of \$50,000 to Pinnacle Healthcare, Inc. to be released of 100% of its membership interests.

It appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Architectural Summary

This project is for Establishment action only; therefore, no Architectural recommendation is required.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval.

Council Action Date

August 4, 2011.

Need Analysis

Background

Riverside Health Care System (RHCS) Inc. is comprised of the following facilities in Westchester County: SJRH Dobbs Ferry Pavilion - 128 Ashford Avenue Dobbs Ferry; SJRH Park Care Pavilion - Two Park Avenue, Yonkers; SJRH St. Johns Division - 967 North Broadway, Yonkers; and Michael Malotz Skilled Nursing Pavilion - 120 Odell Ave Yonkers. The applicant is seeking CON approval to complete its withdrawal from Pinnacle Healthcare (Pinnacle) Inc. When CON 111388 is approved, the beds and services at RHCS will remain the same.

RHCS Beds and Services:

| Bed Type | Hospitals | | | RHCF |
|--------------------------------------|---------------------------|---------------------------|-----------------------------|----------------------------|
| | St. Johns Division | Park Care Pavilion | Dobbs Ferry Pavilion | Michael Malotz RHCF |
| Coronary Care | 8 | | | |
| Intensive Care | 10 | | | |
| Maternity | 25 | | | |
| Medical / Surgical | 174 | | 12 | |
| Neonatal Continuing Care | 3 | | | |
| Neonatal Intermediate Care | 5 | | | |
| Chemical Dependence - Rehabilitation | | 69 | | |
| Chemical Dependence - Detoxification | | 72 | | |
| RHCF | | | | 120 |
| <i>Total</i> | <i>225</i> | <i>141</i> | <i>12</i> | <i>120</i> |

| Service | St. Johns Division | Park Care Pavilion | Dobbs Ferry Pavilion |
|--|---------------------------|---------------------------|-----------------------------|
| AIDS Center | | ✓ | |
| Ambulatory Surgery - Multi Specialty | ✓ | | ✓ |
| Audiology O/P | ✓ | | |
| Cardiac Catheterization - Adult Diagnostic | ✓ | | |
| Chemical Dependence - Detoxification | | ✓ | |
| Chemical Dependence - Rehabilitation | | ✓ | |
| Chemical Dependence - Rehabilitation O/P | | ✓ | |
| Chemical Dependence - Withdrawal O/P | | ✓ | |
| Clinic Part Time Services | ✓ | | |
| Clinical Laboratory Service | ✓ | | ✓ |
| Coronary Care | ✓ | | |
| CT Scanner | ✓ | | ✓ |
| Dental O/P | ✓ | ✓ | |
| Emergency Department | ✓ | | ✓ |
| Family Planning O/P | ✓ | | |
| Health Fairs O/P | | | ✓ |
| Intensive Care | ✓ | | |
| Magnetic Resonance Imaging | ✓ | | ✓ |
| Maternity | ✓ | | |
| Medical Social Services | ✓ | ✓ | ✓ |
| Medical/Surgical | ✓ | | ✓ |
| Methadone Maintenance O/P | | ✓ | |

| Service | St. Johns Division | Park Care Pavilion | Dobbs Ferry Pavilion |
|--|---------------------------|---------------------------|-----------------------------|
| Neonatal Continuing Care | ✓ | | |
| Neonatal Intermediate Care | ✓ | | |
| Nuclear Medicine - Diagnostic | ✓ | | |
| Nuclear Medicine - Therapeutic | ✓ | | |
| Pharmaceutical Service | ✓ | | ✓ |
| Physical Medicine and Rehabilitation O/P | | | ✓ |
| Prenatal O/P | | ✓ | |
| Primary Medical Care O/P | ✓ | | |
| Radiology - Diagnostic | ✓ | | ✓ |
| Radiology-Therapeutic | | | ✓ |
| Renal Dialysis - Acute | ✓ | | |
| Therapy - Occupational O/P | ✓ | | |
| Therapy - Physical O/P | ✓ | | |
| Therapy - Speech Language Pathology | ✓ | | |

Riverside Health Care System is authorized to operate 7 hospital extension clinics and a mobile van in Westchester County. These clinics offer a range of outpatient services including Chemical Dependence Rehabilitation, Primary Medical Care and Methadone Maintenance.

State Designations:

SJRH - St Johns Division:

- AIDS Center;
- Level 2 Perinatal Center; and
- Stroke Center.

SJRH - Park Care Pavilion:

- AIDS Center

Analysis

Table 3 below shows inpatient and Emergency Department (ED) utilization statistics for the 3 hospitals in Riverside Health Care System. Combined, the hospitals in RHCS have 378 total inpatient beds. In 2008, the hospitals in RHCS generated 18,344 total inpatient discharges. By 2010, these discharges increased by 4.7% to 19,195. The hospitals in RHCS also provide Emergency Department services. In 2008, total ED visits at the hospitals amounted to 41,889. By 2009, these visits increased to 45,050 and stood at 44,017 in 2010.

| <i>Riverside Health Care Hospitals: Distribution of Total Inpatient Discharges and Total Emergency Department Visits.</i> | | | |
|--|---------------|---------------|---------------|
| Hospital | 2008 | 2009 | 2010 |
| <i>Discharges</i> | | | |
| SJRH - St Johns Division | 11,988 | 11,288 | 12,374 |
| SJRH - Park Care Pavilion | 4,590 | 5,189 | 5,567 |
| SJRH- Dobbs Ferry Pavilion | 1,756 | 1,319 | 1,254 |
| Total | 18,334 | 17,796 | 19,195 |
| <i>Emergency Department</i> | | | |
| SJRH - St Johns Division | 32,488 | 35,708 | 34,949 |
| SJRH - Park Care Pavilion | 11 | 25 | 34 |
| SJRH- Dobbs Ferry Pavilion | 9,390 | 9,317 | 9,034 |
| Total | 41,889 | 45,050 | 44,017 |

Source: SPARCS 2008 - 2010* (*Reporting for 2010 is incomplete)

Riverside Health Care System is authorized to operate 120 total nursing home beds, with occupancy rates of 90.8%, 91.2%, 91.2% and 92.0% in 2006, 2007, 2008, and 2009, respectively.

Conclusion

Pinnacle Healthcare also submitted documentation indicating that the withdrawal of RHCS will not have an adverse impact on either system.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

Riverside Health Care System, Inc., the sole member of St. John's Riverside Hospital is seeking to withdraw from Pinnacle Healthcare, Inc., which has had active parent powers over the facility. Upon completion of this application Pinnacle will no longer have such powers. There will be no changes to staffing or services concurrent with approval of this application.

Compliance with Applicable Codes, Rules and Regulations

This facility has no outstanding Article 28 surveillance or enforcement actions and, based on the most recent surveillance information, is deemed to be currently operating in substantial compliance with all applicable State and Federal codes, rules and regulations. This determination was made based on a review of the files of the Department of Health, including all pertinent records and reports regarding the facility's enforcement history and the results of routine Article 28 surveys as well as investigations of reported incidents and complaints.

Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Background

Presented as BFA Attachment A, is the organization chart for Riverside Health Care Systems before and after their withdrawal from Pinnacle.

Operating Budgets

The applicant has indicated there are no incremental operating expenses or revenues associated with his project since patient care services will not be affected or interrupted.

Capability and Feasibility

There are no project costs associated with this application.

Riverside Health Care System, Inc. executed an agreement to withdraw its membership interests of 25% in Pinnacle Healthcare Inc. Pinnacle Healthcare, Inc. will continue to exist with Sound Shore Medical Center, Mt. Vernon Hospital and Hudson Valley Hospital Center as its remaining members. In February 2007, RHCS paid \$50,000 in full for its portion of potential liabilities to finalize their withdrawal as a member of Pinnacle Health Care, Inc.

Presented as BFA Attachment B, a financial summary of Riverside Health Care System, Inc. indicates that the system has maintained positive working capital, negative net asset position and experienced a net loss from operations of \$10,047,501 in 2009, and generated a net income from operations of \$4,391,279 in 2010. The negative asset position was due to the recording of the pension liability according to FASB rules. The net loss from operations in 2009 was due to St. John's Riverside Hospital recording \$10,000,000 for three malpractice claims that were settled and to be paid over twenty years.

It appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and approval is recommended.

Recommendation

From a financial perspective, approval is recommended.

Attachments

| | |
|------------------|--|
| BFA Attachment A | Organization charts before and after withdrawal from Pinnacle Healthcare, Inc. |
| BFA Attachment B | Financial Summary, Riverside Health Care System, Inc. |

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of section 2801-a of the Public Health Law, on this 21st day of July, 2011, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby approves the following application for the corporate withdrawal of Riverside Health Care System from Pinnacle Care, LLC, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

111388-E

FACILITY/APPLICANT:

Riverside Health Care System, Inc.



Public Health and Health Planning Council

Project # 102147-B

Premium Health, Inc.

County: Kings (Brooklyn)

Program: Diagnostic and Treatment Center

Purpose: Establishment and Construction

Submitted: August 23, 2010

Executive Summary

Description

Premium Health, Inc., a not-for-profit corporation, requests approval to establish and construct a diagnostic and treatment center (D&TC) to provide primary medical care, pediatric, psychology, well child health care and educational services to the residents of Kings County. Premium Health, Inc. proposes to lease space on the third floor of a building located at 620 Foster Avenue, Brooklyn.

Premium Health, Inc. intends to become the sub-grantee of the Lutheran Medical Center Network, a Federally Qualified Health Center currently co-operated by Lutheran Medical Center and the Lutheran Family Health Center Network (corporately known as the Sunset Park Health Council, Inc.). Premium Health, Inc. will be receiving grant support from Lutheran Medical Center Network.

Total project costs are estimated at \$1,256,445.

DOH Recommendation

Contingent approval for a 5-year limited life.

Need Summary

Premium Health, Inc. (Center) proposes to serve the communities of Borough Park and Flatbush/Midwood/Kensington, with a focus on primary care within the local Hasidic Jewish community. The proposed D&TC will be open to all patients who are in need of services, and will serve as the medical home for an underserved Hasidic Jewish population in Borough Park.

Program Summary

The information reviewed revealed nothing which would reflect adversely upon the applicant's character and competence or standing in the community.

A transfer and affiliation agreement for emergency, inpatient and back-up support services is being negotiated with Lutheran Medical Center, which is 3.3 miles or 15 minutes in travel time from the Center.

Financial Summary

Project costs will be met with cash of \$125,845 and a loan of \$1,130,600 (10 yrs. @ 4% interest).

| | | |
|---------|---------------------|------------------|
| Budget: | <i>Revenues:</i> | \$ 1,763,366 |
| | <i>Expenses:</i> | <u>1,705,958</u> |
| | <i>Gain/(Loss):</i> | \$ 57,048 |

Subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Architectural Summary

This project involves the renovation of 5,500 SF on the third floor of an existing 5-story building for a diagnostic and treatment center.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval for a limited life of 5 years from the date of the issuance of an operating certificate is recommended contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of forty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a written commitment that at least 5 percent of total visits to the facility annually will be uninsured or under-insured patients by the second year of operation. [RNR]
3. Submission of a written agreement that the percentage of total visits annually by Medicaid managed care and fee-for-service beneficiaries, in the aggregate, to the clinic, will be at least 60 percent. [RNR]
4. Submission of a written commitment that at least 50 percent of total visits to the approved clinic will be for primary care. [RNR]
5. Written acknowledgement, executed by the governing body, that the third year of operation the approved facility will achieve at least Level 1 practice certification under the NCQA Patient-Centered Medical Home standards and guidelines. [RNR]
6. Written acknowledgement that the facility will file all required utilization reports with the appropriate New York State Department of Health organizations. [RNR]
7. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
8. Submission of a loan commitment acceptable to the Department. [BFA]
9. Submission of a working capital loan commitment acceptable to the Department. [BFA]

Approval conditional upon:

1. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
2. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
3. The applicant shall complete construction by December 1, 2013. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

August 4, 2011.

Need Analysis

Background

Premium Health requests approval to establish and construct a D&TC at 620 Avenue, Brooklyn.

Premium Health proposed service area consists of four zip codes (11204, 11218, 11219 and 11230) in the communities of Borough Park and Flatbush/Midwood/Kensington with a population of 185,046 and 168,806 residents, respectively. The clinic will offer the following certified services to the residents of the community:

- Primary Medical Care (including internal medicine and gynecology services):
- Pediatrics O/P;
- Psychology O/P;
- Weld Child; and
- Health Education.

Due to the location of the D&TC in Borough Park, it is expected that most of the individuals to be served by the Center will be members of the local Hasidic Jewish community. The community of Borough Park is home to a large Orthodox and Hasidic Jewish community; large families are the rule rather than the exception. According to the New York City planning Department, the birthrate is above average with eight to ten children per family being the norm. The community is also experiencing an influx of new immigrants i.e., Chinese, Russians, Polish, Pakistani and Bangladeshi.

The foremost concern to the Hasidic Jewish population is the unique religious requirements that affect medical care and how medical providers are chosen. For example, for religious and modesty purposes, Hasidic women of child-bearing age often prefer not to be served by a male obstetrician/gynecologist. Rather than choose a doctor who does not understand the religious requirements of this population, many individuals of this community often choose to delay care or to forgo medical care altogether. This situation has left this large and growing Hasidic population with few choices in medical care and without a medical home to access basic healthcare services.

In response to this crisis, two (2) not-for-profit organizations were set up to assist local community members, mainly Hasidic Jewish residents, in accessing primary and specialty medical and mental health services. The first organization, Refuah Resources, was created to serve as a referral agency for primary and specialty medical care services. The second organization, Relief Resources, was created to serve as a referral agency for mental health services.

Premium states that each organization maintains an internal database that tracks patient requests for healthcare referrals (Refuah Resources tracks medical referrals and Relief Resources tracks mental health referrals). A comprehensive database on local providers is also maintained, including information on specialties provided, special therapeutic techniques, location of the practice and insurance participation. It has generally been the experience of both entities that, although a patient may receive a referral to a provider for a single visit, the patient's insurance status often precludes that patient from becoming a regular patient of that provider. In most cases, local physicians do not take Medicaid cases. Although these referral agencies have helped many individuals, they cannot force local private physicians to accept low-income/under-insured patients. Through the establishment of this D&TC, that problem can be addressed. In addition, Hasidic Jews usually prefer to utilize Hasidic doctors to non-Hasidic doctors.

As of August 5, 2010, the applicant indicates that Refuah Resources had 11,756 unique individuals listed in its database who were in need of primary medical and specialty services. Of these persons, a total of 5,290 (or 45%) have not been able to be paired up with a local physician (most often due to his/her insurance status). Likewise, as of August 5, 2010, Relief Resources had 10,164 unique individuals listed in its database (who were in need of mental health services). Of these persons, a total of 4,269 (or 42%) have not been able to be paired up with a local mental health provider (most often due to his/her insurance status). In short, both entities have a combined list of 21,920 individuals in the local community who are seeking medical and/or mental health services. Of these individuals, a total of 9,559 individuals representing about 44% of local residents looking for care do not have a medical/mental health home and do not receive regular medical/mental health services.

These currently un-served individuals will comprise the base of patients to be served by the proposed Center, as the majority of the users of the proposed Center are expected to originate from referrals of Refuah Resources and Relief Resources.

The Center will have a transfer and affiliation agreement for emergency and backup services with Lutheran Medical Center, which is located at 150 55th Street, Brooklyn (Kings County), New York, 3.3 miles and 15 minutes' travel time from the proposed Center.

Prevention Quality Indicators

The PQI's are the rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease.

The overall PQI admission rate in the PSA is 1,616 admissions per 100,000 compared to the statewide rate of 1,854 admissions per 100,000. The PQI admission rate in the PSA is 87 percent of the statewide rate. The PQI admission rates for White, Hispanic and Black Hispanic populations are 84 percent, 91 percent and 228 percent of the statewide admission rate, respectively. Three PQI conditions in the PSA exceed the statewide rate: Urinary Tract Infections (116%), Hypertension (114%) and Uncontrolled Diabetes (103%), (Table 1).

| Table 1: Prevention Quality Indicator (PQI) Statistics for the PSA | | | | | | | |
|---|------------|-------------------------------|---|--|--------------|-----------------|--------------|
| Prevention Quality Indicators Conditions | PQI | Statewide Rate/100,000 | Area Rate Adjusted for Age & Sex/100,000 | Admissions as % of Expected by Race/Ethnicity | | | |
| | | | | <i>Overall</i> | <i>White</i> | <i>Hispanic</i> | <i>Black</i> |
| All Conditions | | 1,854 | 1,616 | 87% | 84% | 91% | 228% |
| Acute | | | | | | | |
| Bacterial Pneumonia | 11 | 381 | 291 | 76% | 76% | 84% | 148% |
| Dehydration | 10 | 116 | 94 | 81% | 83% | 49% | 136% |
| Urinary Tract Infection | 12 | 169 | 196 | 116% | 116% | 133% | 202% |
| All Acute | | 666 | 582 | 87% | 87% | 91% | 160% |
| Circulatory | | | | | | | |
| Angina | 13 | 50 | 25 | 49% | 45% | 28% | 149% |
| Congestive Heart Failure | 8 | 443 | 420 | 95% | 94% | 65% | 272% |
| Hypertension | 7 | 61 | 69 | 114% | 93% | 84% | 424% |
| All Circulatory | | 554 | 516 | 93% | 91% | 64% | 279% |
| Diabetes | | | | | | | |
| Short-term Complication | 1 | 52 | 31 | 60% | 47% | 75% | 321% |
| Long-term Complication | 3 | 155 | 154 | 99% | 88% | 105% | 406% |
| Lower Extremity | 16 | 37 | 34 | 92% | 97% | 95% | 278% |
| Uncontrolled Diabetes | 14 | 39 | 40 | 103% | 87% | 150% | 429% |
| All Diabetes | | 283 | 260 | 92% | 83% | 103% | 376% |
| Respiratory | | | | | | | |
| Asthma | 15 | 174 | 121 | 70% | 58% | 127% | 171% |
| COPD | 5 | 178 | 134 | 75% | 76% | 101% | 123% |
| All Respiratory | | 351 | 256 | 73% | 68% | 116% | 150% |

Premium Health projects that Medicaid will account for 95.0 percent of the proposed utilization and charity care will account for 2.0 percent of utilization (Table 2).

| Table 2: Premium Health Projected Utilization by Payer for the First Year of Operation | |
|---|-----------------------------|
| <i>Payer</i> | <i>% Utilization</i> |
| Commercial FFS | 0.0% |
| Medicare FFS | 0.0% |
| Medicare MC | 0.0% |
| Medicaid FFS | 20.0% |
| Medicaid MC | 75.0% |
| Self-Pay | 3.0% |
| Charity Care | 2.0% |
| Total | 100.0% |

The facility projects the following visits during the first year of operation:

| Table 3: Projected Utilization by Service Category for the First Year of Operation | |
|---|--------------|
| Primary Medical Care O/P | 7,500 |
| Pediatrics O/P | 711 |
| Well Child Care | 89 |
| Psychology O/P | 350 |
| Health Education | 500 |
| Total | 9,150 |

The ZIP Code (11230) for the proposed site, with a population of 88,933 residents in 2000, contains two (2) diagnostic and treatment centers and one extension clinic providing primary medical care services, as well as four (4) specialty facilities (three (3) dialysis facilities and one (1) clinic treatment program).

In order to make its services highly accessible to its patients, the applicant will:

- Provide healthcare services six (6) days per week, upon opening. The anticipated hours of operation upon opening are Sunday through Thursday from 8am to 6pm, and on Friday from 8am to 4pm.
- Provide for expanded hours, as determined by demand. It is expected that the majority of the visits will be scheduled, but there will be capacity for “walk-in” patients.
- Be accessible to the physically handicapped and provide language assistance, as required.
- Have signage positioned in appropriate areas that properly identify the D&TC and its services.
- Be responsive to the language and cultural requirements of its patients.
- Be easily reached by major transportation lines, including the New York City subway and bus that travel within the PSA for the project.

Conclusion

Premium Health Inc. seeks CON approval to approval to establish and construct a D&TC at 620 Avenue in Brooklyn New York. The implementation of this project will improve access to healthcare services for residents of the local medically underserved community who are not currently accessing medical care. This project will improve access to healthcare services and will enable such services to be provided in a culturally competent and sensitive manner. The site will also serve as the medical home for an underserved Hasidic Jewish population in Borough Park.

Recommendation

From a need perspective, contingent approval for a five year limited life is recommended.

Programmatic Analysis

Background

Premium Health, a not-for-profit corporation, requests approval to establish and construct a diagnostic and treatment center at 620 Foster Avenue, Brooklyn. Services to be provided include: primary medical care, pediatrics, psychology, well child and health education.

Staff, under the supervision of Martin Drooker as medical director, will initially consist of 9.6% FTEs and is projected to expand to 12.8% FTEs by the end of the third year. Included will be 1.25 FTEs physicians, .25 FTE social workers, and 1 FTE nurses.

The Center will be in operation Sunday through Thursday from 8:00 a.m. to 4:00 p.m. An answering machine, with access to center staff, will be provided to address patient concerns during hours when the facility is closed.

Compliance with Applicable Codes, Rules and Regulations

The applicant has attested to compliance with the following: the governing body and medical staff will develop, maintain, and periodically review a list of policies and procedures that will ensure that services performed at the facility will conform with generally accepted standards of practice. The Center's admissions policy will include anti-discrimination provisions regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, and source of payment. All services will be performed in compliance with all applicable federal and state rules, including standards for credentialing, nursing, patient admission and discharge, a medical records system, emergency care, quality assurance and data requirements.

Characteristics of the governing body reflect responsiveness to community need in the use of a patient satisfaction measurement tool that will provide continuous, ongoing feedback to the organization for the quality improvement program and planning discussions.

Character and Competence

The Board of Directors and offices held are as follows:

| <u>Name</u> | <u>Office Held</u> |
|--------------------|--------------------|
| Alexander Ornstein | President |
| Chaim Steinmetz | Secretary |
| Shiya Ostreicher | Treasurer |

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted by the individuals regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's and relatives' ownership interest in other health care facilities.

None of the above disclosed a record of legal actions, past or pending. In addition, the following offices or agencies were consulted as appropriate regarding licensed individuals: the Office of Health Insurance Programs (relative to Medicaid fraud and abuse), the Office Professional Medical Conduct, and the Education Department. No issues were indicated.

None of the applicants disclosed ownership/operator association with a medical care facility, other than the private practice of medicine.

The above reviews revealed nothing which would reflect adversely upon the applicant's character and competence or standing in the community.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Lease Rental Agreement

The applicant has submitted an executed lease rental agreement for the site to be occupied. The terms of which are summarized below:

| | |
|--------------------|---|
| <i>Premises:</i> | 5,333 square feet located at 620 Foster Ave., Brooklyn, NY 11230 |
| <i>Lessor:</i> | 620 Foster Ave. Assoc., LLC |
| <i>Lessee:</i> | Premium Health, Inc. |
| <i>Rental:</i> | \$159,990 annually (\$30.00 per sq. ft.) |
| <i>Term:</i> | 10 years with 3% escalation per year. |
| <i>Provisions:</i> | Lessee is paying for utilities, sewer, security, and water. |

Two letters from licensed Real Estate agents support the rent reasonableness. The applicant has indicated that the lease agreement will be an arms-length lease agreement.

Total Project Cost And Financing

Total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$1,256,445 is itemized as follows:

| | |
|---------------------------|--------------------|
| Renovation & Demolition | \$571,154 |
| Design Contingency | 57,115 |
| Construction Contingency | 57,115 |
| Planning Consultant Fees | 57,115 |
| Other Fees | 25,958 |
| Moveable Equipment | 449,024 |
| Financing Costs | 22,652 |
| Interim Interest Expense | 9,438 |
| CON Fee | 1,250 |
| Additional Processing Fee | <u>5,624</u> |
| Total Project Cost | <u>\$1,256,445</u> |

Project costs are based on an October 11, 2011 construction start date and three month construction period. The applicant's financing plan appears as follows:

| | |
|---|-------------|
| Equity | \$125,845 |
| Loan to Premium Health, Inc. (Term 10 year at 4%) | \$1,130,600 |

A letter of interest has been submitted indicating interest in providing a loan from Greystone to Premium Health, Inc. in the amount of \$1,130,600 for a ten year term at an interest rate of 4%.

Operating Budget

The applicant has submitted an operating budget, in 2010 dollars, for the first and third years of operation, summarized below:

| | <u>Year One</u> | <u>Year Three</u> |
|----------------|-----------------|-------------------|
| Revenues | \$1,559,902 | \$1,763,366 |
| Expenses: | | |
| Operating | \$1,097,802 | \$1,288,661 |
| Capital | <u>414,238</u> | <u>417,297</u> |
| Total Expenses | \$1,512,040 | \$1,705,958 |

| | | |
|-----------------------|----------|----------|
| Net Income | \$47,862 | \$57,408 |
| Utilization: (Visits) | 9,150 | 10,500 |
| Cost Per Procedure | \$165.25 | \$162.47 |

Utilization by payor source for the first and third years is as follows:

| | <u>Year One</u> | <u>Year Three</u> |
|----------------------------|-----------------|-------------------|
| Commercial Fee-for-Service | 0% | .6% |
| Commercial Managed Care | 0% | 1.2% |
| Medicare Fee-for-Service | 0% | 1.8% |
| Medicare Managed Care | 0% | .4% |
| Medicaid Fee-for-Service | 20% | 11.0% |
| Medicaid Managed Care | 75% | 75.0% |
| Charity Care | 2% | 6.0% |
| Private Pay | 3% | 4.0% |

Expense and utilization assumptions are based on the historical experience of Lutheran Medical Center and the Lutheran Family Health Center Network, which currently serves Kings County.

Capability and Feasibility

Total project cost of \$1,256,445 will be met via equity of \$125,845 provided by the applicant, and the residual of \$1,130,600 will be paid via loan for a term of 10 years at a rate of 4%. Also, a letter of interest for a loan has been submitted by the applicant.

Working capital requirements, estimated at \$284,326 appear reasonable based on two months' of third year expenses. The working capital requirement will be met via cash of \$142,163 contribution from a proposed board member and a loan of \$142,163 at a rate of 4% for a term of 5 years. A letter of interest has been submitted by the applicant to provide the working capital loan. Presented as BFA Attachment A, is a summary net worth statement of the proposed board member of Premium Health, Inc. This indicates the availability of sufficient funds for the stated equity levels. Presented as BFA Attachment B, is the pro-forma balance sheet of Premium Health, Inc., which indicates a positive net asset position of \$270,009 as of the first day of operation.

The submitted budget projects a net income of \$47,862 and \$57,048 during the first and third years of operation, respectively. Revenues are based on current reimbursement methodologies for primary care diagnostic and treatment services. The budget appears reasonable.

Subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner; and contingent approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Architectural Analysis

Background

The renovated third floor will consist of 5,500 SF and will include a reception area with two waiting rooms, nine exam rooms, a nurse station, soiled and clean holding rooms, office space, storage rooms, and support spaces. The building is fully sprinklered.

Environmental Review:

The Department has deemed this project to be a TYPE II Action and will not have a significant effect on the environment. An Environmental Impact Statement is not required. However, any agency that has an interest in this project may make their own independent determination of significance and necessity for an EIS in accordance with the procedures specified within Part 97.8 of Title 10: Rules and Regulations.

Recommendation

From an architectural perspective, approval is recommended.

Attachments

| | |
|------------------|--|
| BFA Attachment A | Personal Net Worth Statement- Premium Health, Inc. |
| BFA Attachment B | Pro-forma Balance Sheet- Premium Health, Inc. |
| BFA Attachment C | Establishment Checklist for D&TC |
| BFA Attachment D | Detailed Budget Analysis |
| BHFP Attachment | Map |

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 21st day of July, 2011, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a diagnostic and treatment center to provide primary medical care, pediatric, psychology, well child health care and educational services to the residents of Kings County, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

102147-B

FACILITY/APPLICANT:

Premium Health, Inc.

APPROVAL CONTINGENT UPON:

Approval for a limited life of 5 years from the date of the issuance of an operating certificate is recommended contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of forty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a written commitment that at least 5 percent of total visits to the facility annually will be uninsured or under-insured patients by the second year of operation. [RNR]
3. Submission of a written agreement that the percentage of total visits annually by Medicaid managed care and fee-for-service beneficiaries, in the aggregate, to the clinic, will be at least 60 percent. [RNR]
4. Submission of a written commitment that at least 50 percent of total visits to the approved clinic will be for primary care. [RNR]
5. Written acknowledgement, executed by the governing body, that the third year of operation the approved facility will achieve at least Level 1 practice certification under the NCQA Patient-Centered Medical Home standards and guidelines. [RNR]
6. Written acknowledgement that the facility will file all required utilization reports with the appropriate New York State Department of Health organizations. [RNR]
7. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
8. Submission of a loan commitment acceptable to the Department. [BFA]
9. Submission of a working capital loan commitment acceptable to the Department. [BFA]

APPROVAL CONDITIONAL UPON:

1. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
2. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
3. The applicant shall complete construction by December 1, 2013. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York 12180-2299



Public Health and Health Planning Council

Project # 111183-E
Airport Imaging, LLC
d/b/a Hudson Valley Imaging

County: Orange (New Windsor)
Purpose: Establishment

Program: Diagnostic and Treatment Center
Submitted: February 7, 2011

Executive Summary

Description

Airport Imaging, LLC d/b/a Hudson Valley Imaging, an existing proprietary limited liability company, was approved for magnetic resonance imaging (MRI), computed tomography (CT) and diagnostic radiology services by the Public Health Council on November 19, 2004 (CON #032451-B), and began operation in May of 2006.

Airport Imaging, LLC is currently comprised of two members – St. Luke’s Cornwall Hospital (40%) and Hudson Valley Diagnostic Imaging, PLLC (60%).

The applicant, currently located at 575 Hudson Valley Avenue, New Windsor, requests approval to admit four new physicians as members of Hudson Valley Diagnostic Imaging, PLLC (HVDI). The proposed new members are: Lisa A Fisher, M.D., Adel Ramsey Abadir, M.D., John A Markisz, M.D., and Chris D. Donikyan, M.D.

DOH Recommendation
Contingent approval

Need Summary

Hudson Valley Imaging currently provides CT scans, MRI scans, and diagnostic radiology services. This application requests approval to add four physicians as new members. There will be no charge in licensing services as a result of this change in ownership.

Program Summary

Based on the information reviewed, staff concluded that the facilities have provided a substantially consistent high level of care as defined in New York

State Public Health Law Section 2810(a)(3) and 10 NYCRR 600.2 during the past 10 years.

The above reviews revealed nothing which would reflect adversely upon the applicant’s character and competence or standing in the community.

Financial Summary

There are no project costs associated with this application. The purchase prices of the four new proposed members are as follows:

| Purchaser | Price | Paid at Phase # |
|------------------------|-----------|-----------------|
| Adel Ramsey Abadir, MD | \$50,000 | One |
| Lisa Fisher, MD | \$40,000 | One |
| John Markisz, MD | \$395,358 | Two |
| Chris Donikyan, MD | \$558,441 | Three |

The purchase prices will be funded with promissory notes from each new member at 3.25% for five years.

| | | |
|---------|---------------------|------------------|
| Budget: | <i>Revenues:</i> | \$ 7,203,165 |
| | <i>Expenses:</i> | <u>6,035,481</u> |
| | <i>Gain/(Loss):</i> | \$ 1,167,684 |

Subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Architectural Summary

This project is for Establishment action only; therefore, no Architectural recommendation is required.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of executed promissory notes from each of the four new members, acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of a fully executed and dated Purchase Agreement for the purchase of membership interest in Hudson Valley Diagnostic Imaging, PLLC (HVDI) by Chris D. Donikyan, M.D. [BFA, CSL]
3. Submission of a photocopy of a fully executed and dated Purchase Agreement for the purchase of membership interest in HVDI by John A. Markisz, M.D. [BFA, CSL]
4. Submission of a photocopy of HVDI's fully executed First Amended and Restated Operating Agreement. [CSL]

Council Action Date

August 4, 2011.

Need Analysis

Background

Hudson Valley Imaging, an existing Article 28 Diagnostic and Treatment Center, requests approval to add four physicians as new members.

Analysis

Hudson Valley Imaging is an existing Article 28 Diagnostic and Treatment Center at 575 Hudson Valley Avenue, New Windsor, New York 12553. The operator of this facility is Airport Imaging, LLC which consists of two members: St. Luke's Cornwall Hospital (SLCH) and Hudson Valley Diagnostic Imaging (HVDI), PLLC. SLCH owns a 40 percent membership and HVDI owns a 60 percent membership interest in Airport Imaging, LLC. HVDI currently has two members: Joseph L. Recanelli, M.D. and Clifford D. Barker, M.D. Drs. Recanelli and Barker each own a 50 percent membership interest in HVDI.

The four new physicians are: Adel Ramsey Abadir, M.D., Lisa A. Fisher, M.D., John A. Markisz, M.D., and Chris Donikyou, M.D. There is no proposed change in the ownership interest of SLCH.

The two existing members and the four new members of HVDI will each be equal owners in HVDI.

The applicant has an existing transfer and affiliation agreement for backup and emergency services with SLCH which is located at 70 Dubois Street, Newburgh, New York which is 5 miles and 10 minutes travel time from Hudson Valley Imaging. The applicant states that all services will be provided regardless of ability to pay, source of payment or personal characteristics.

| <u>Existing Services</u> | <u>Utilization 2010</u> |
|--------------------------|-------------------------|
| CT Scanner | 5,371 |
| MRI | 5,809 |
| Diagnostic Radiology | 8,499 |

The first and third year utilization is expected to remain the same as the current utilization.

CT scanners are expected to perform 3,500 scans per year and MRI machines are expected to perform 3,200 scans per year. Based on the applicant's reported utilization, the existing imaging services exceed the standards of minimal utilization.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Compliance with Applicable Codes, Rules and Regulations

The medical staff will ensure that procedures performed at the Center conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and/or expertise. The Center's admissions policy will include anti-discrimination regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures will be performed in accordance with all applicable federal and state codes, rules and regulations, including standards for credentialing, anesthesiology services, nursing, patient admission and discharge, a medical records system, emergency care, quality assurance and data requirements.

Character and Competence

The proposed new members of HDVI are as follows:

| <u>Name</u> |
|------------------------|
| Adel Ramsey Abadir, MD |
| Lisa A. Fisher, MD |
| John A. Markisz, MD |
| Chris Donikyan, MD |

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's and relatives' ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management (relative to Medicaid fraud and abuse), the Office of Professional Medical Conduct, and the Education Department databases.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action. Based on this information, staff concluded that the facilities have provided a substantially consistent high level of care as defined in New York State Public Health Law 2810(a)(3) and 10NYCRR 600.2 during the past 10 years.

The above reviews revealed nothing which would reflect adversely upon the applicant's character and competence or standing in the community.

Recommendation

From a programmatic perspective, approval is recommended.

| |
|--------------------|
| Financial Analysis |
|--------------------|

Background

The current members of Airport Imaging, LLC and their ownership percentages are as follows:

| | |
|--|-----|
| Hudson Valley Diagnostic Imaging, PLLC | 60% |
| St. Luke's Cornwall Hospital | 40% |

The current members of Hudson Valley Diagnostic Imaging, PLLC and their ownership percentages are:

| | |
|------------------------|-----|
| Joseph Racanelli, M.D. | 50% |
| Clifford Barker, M.D. | 50% |

The four new physicians will be admitted as members of HVDI in three phases, of which Phase One has occurred.

Phase One:

| | <u>Current Membership Interests</u> | <u>Proposed Membership Interests</u> | <u>Purchase Price</u> | <u>Purchase Price Received</u> |
|--------------------------|---|--|---------------------------|--|
| Joseph Racanelli, M.D. | 50% | 26.32% | | \$45,000 |
| Clifford Barker, M.D. | 50% | 26.32% | | \$45,000 |
| Adel Ramsey Abadir, M.D. | 0% | 26.32% | \$50,000 | |
| Lisa Fisher, M.D. | 0% | 21.04% | \$40,000 | |

Phase Two:

| | <u>Current Membership Interests</u> | <u>Proposed Membership Interests</u> | <u>Purchase Price</u> | <u>Purchase Price Received</u> |
|--------------------------|---|--|---------------------------|--|
| Joseph Racanelli, M.D. | 26.32% | 20.83% | | \$104,058.23 |
| Clifford Barker, M.D. | 26.32% | 20.83% | | \$104,058.23 |
| Adel Ramsey Abadir, M.D. | 26.32% | 20.83% | | \$104,058.23 |
| Lisa Fisher, M.D. | 21.04% | 16.68% | | \$83,183.31 |
| John A. Markisz, M.D. | 0% | 20.83% | \$395,358 | |

Phase Three:

| | <u>Current Membership Interests</u> | <u>Proposed Membership Interests</u> | <u>Purchase Price</u> | <u>Purchase Price Received</u> |
|--------------------------|---|--|---------------------------|--|
| Joseph Racanelli, M.D. | 20.83% | 17.24% | | \$116,341.87 |
| Clifford Barker, M.D. | 20.83% | 17.24% | | \$116,341.87 |
| Adel Ramsey Abadir, M.D. | 20.83% | 17.24% | | \$116,341.87 |
| Lisa Fisher, M.D. | 16.68% | 13.80% | | \$93,073.52 |
| John A. Markisz, M.D. | 20.83% | 17.24% | | \$116,341.87 |
| Chris D. Donikyan, M.D. | 0% | 17.24% | \$558,441 | |

Presented as BFA Attachment A are the proposed members, their ownership percentages and purchase price distribution after each phase.

There are no project costs associated with this application.

The purchase prices will be funded with promissory notes from each new member at an interest rate of 3.25% for five years.

Hudson Valley Imaging has an existing transfer and affiliation agreement with St. Luke's Cornwall Hospital.

Purchase Agreement

The applicant has submitted executed purchase agreements from proposed members Adel Ramsey Abadir, M.D. and Lisa Fisher, M.D., the terms of which are summarized below:

- Date:* September 8, 2010
- Purpose:* Purchase 26.32% membership interest
- Purchaser:* Adel Ramsey Abadir, M.D.
- Seller:* Clifford D. Barker, M.D. and Joseph L. Racanelli, M.D.
- Purchase Price:* \$50,000 due at closing in the form of a promissory note with a 3.25% interest rate for 5 years.
- Date:* September 8, 2010
- Purpose:* Purchase 21.04% membership interest
- Purchaser:* Lisa Fisher, M.D.
- Seller:* Clifford D. Barker, M.D. and Joseph L. Racanelli, M.D.
- Purchase Price:* \$40,000 due at closing in the form of a promissory note with a 3.25% interest rate for 5 years.

The applicant has submitted draft purchase agreements from proposed members John Markisz, M.D. and Chris Donikyan, M.D., the terms of which are summarized below:

Purpose: Purchase 20.83% membership interest
Purchaser: John Markisz, M.D.
Seller: Adel Ramsey Abadir, M.D., Clifford Barker, M.D., Lisa Fisher, M.D. and Joseph L. Racanelli, M.D.
Purchase Price: \$395,358 due at closing in the form of a promissory note with a 3.25% interest rate for 5 years.

Purpose: Purchase 17.24% membership interest
Purchaser: Chris Donikyan, M.D.
Seller: Adel Ramsey Abadir, M.D., Clifford Barker, M.D., Lisa Fisher, M.D. and Joseph L. Racanelli, M.D. and John A. Markisz, M.D.
Purchase Price: \$558,441 due at closing in the form of a promissory note with a 3.25% interest rate for 5 years.

The purchase prices will be met with promissory notes from each of the proposed members at stated terms and will be deducted from his or her distributions as a member of HVDI.

Operating Budget

The applicant has submitted an operating budget in 2011 dollars, for the first and third years of operation, summarized below:

| | <u>Years One and Three</u> |
|-----------------------|----------------------------|
| Revenues: | \$7,203,165 |
| Expenses: | |
| Operating | \$4,724,484 |
| Capital | 1,310,997 |
| Total Expenses: | \$6,035,481 |
| Net Income: | \$1,167,684 |
| Utilization (visits): | 39,801 |
| Cost per visit: | \$151.64 |

Revenues and expenses remain constant in years one and three because the four new proposed members have been practicing at the facility.

Utilization by payor source for the first and third years is as follows:

| | <u>Years One and Three</u> |
|----------------------------|----------------------------|
| Commercial Fee for Service | 8.12% |
| Commercial Managed Care | 31.73% |
| Medicare Fee for Service | 32.45% |
| Medicare Managed Care | 0.38% |
| Medicaid Fee for Service | 3.05% |
| Medicaid Managed Care | 1.44% |
| Charity Care | 6.30% |
| Private Pay/Other | 16.53% |

Expenses and utilization assumptions are based on historical experience of current services within the center.

Capability and Feasibility

There are no project costs associated with this application.

The purchase prices will be met with promissory notes from each of the proposed members at stated terms and will be deducted from his or her distributions as a member of HVDI.

The submitted budget indicates a net income of \$1,167,684 during the first and third years of operation. Revenues are based on current reimbursement methodologies for diagnostic and treatment centers. The Medicaid outpatient reforms have been approved by the Federal government and implemented to change the reimbursement methodology as of September 1, 2009, phased in over a four year period. Reimbursement will be determined on an average rate by diagnostic and treatment center and region enhanced by the applicable service intensity weight (SIW). The budget appears reasonable.

As shown on BFA Attachment B, financial summary of Hudson Valley Diagnostic Imaging, PLLC, indicates that the facility has maintained positive working capital, member's equity and generated a net income of \$565,142 and \$333,726 for the years 2009 and 2010, respectively. HVDI incurs no liabilities since it is considered a flow through entity, whereas revenues shown are from past billing practices.

As shown on BFA Attachment C, financial summary of Airport Imaging, LLC, indicates that the facility has maintained positive working capital, member's equity and generated a net income of \$1,349,563 and \$1,086,808 for the years 2009 and 2010, respectively.

As shown on BFA Attachment D, financial summary of St. Luke's Cornwall Hospital, indicates that the facility has maintained positive working capital and net asset positions and generated a positive net income of \$10,178,024 and \$10,215,356 for the years 2009 and 2010, respectively.

Based on the preceding, and subject to noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

| | |
|------------------|--|
| BFA Attachment A | Proposed members and ownership percentages after each phase. |
| BFA Attachment B | Financial Summary, Hudson Valley Diagnostic Imaging, PLLC |
| BFA Attachment C | Financial Summary, Airport Imaging, LLC |
| BFA Attachment D | Financial Summary, St. Luke's Cornwall Hospital |
| BFA Attachment E | Establishment Checklist |
| BHFP Attachment | Map |

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 21st day of July, 2011, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish four new physicians as members of Hudson Valley Diagnostic Imaging, PLLC, a 60% owner of Airport Imaging, LLC, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

111183-E

FACILITY/APPLICANT:

Airport Imaging, LLC d/b/a Hudson Valley
Imaging

APPROVAL CONTINGENT UPON:

1. Submission of executed promissory notes from each of the four new members, acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of a fully executed and dated Purchase Agreement for the purchase of membership interest in Hudson Valley Diagnostic Imaging, PLLC (HVDI) by Chris D. Donikyan, M.D. [BFA, CSL]
3. Submission of a photocopy of a fully executed and dated Purchase Agreement for the purchase of membership interest in HVDI by John A. Markisz, M.D. [BFA, CSL]
4. Submission of a photocopy of HVDI's fully executed First Amended and Restated Operating Agreement. [CSL]

APPROVAL CONDITIONAL UPON:

N/A

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York 12180-2299



Public Health and Health Planning Council

Project # 111220-B Healthcare Partners of Saratoga, LTD

County: Saratoga (Malta) **Program:** Diagnostic and Treatment Center
Purpose: Establishment and Construction **Submitted:** February 14, 2011

Executive Summary

Description

Healthcare Partners of Saratoga, LTD (HPS), a to-be-formed not-for-profit corporation, requests approval to establish and construct an Article 28 diagnostic and treatment center (D&TC) which will also provide 24/7 urgent care.

The two corporate members of HPS, Saratoga Hospital and Albany Medical Center Hospital, propose this active parent arrangement and collaborative project to improve access to preventive care, as well as to facilitate appropriate triage in response to perceived emergent medical needs for the residents of Saratoga County and portions of western Washington County. Each organization will benefit from the collaboration by reducing unnecessary visits to its emergency department and associated treatment delays, and by consolidating certain services through co-location at a centrally located and easily accessible facility.

Structures in place within each system will be used to facilitate access to medical services and minimize administrative costs. Each hospital will share equal corporate membership and start-up costs.

The new facility will be located at Route 67 and I-87, Malta. To be operated by Healthcare Partners of Saratoga, it will replace the services of Saratoga Hospital's Malta Medical Arts (MMA) facility and enhance them with certain services of Albany Medical Center Hospital, to establish a single facility that will accommodate a wide range of medical needs.

Total project costs are estimated at \$4,107,457.

DOH Recommendation
Contingent approval.

Need Summary

Saratoga Hospital intends to cease operation of MMA, one of its extension clinics located less than one mile

from the proposed new facility. Therefore, all of the services currently offered at MMA will be available at the new facility and MMA will be closed. Urgent care services will be expanded to the new facility in order to offer emergent care. Saratoga Hospital will provide back-up and staffing support to the proposed new site.

Program Summary

Based on the information reviewed, staff concluded that the facilities have provided a substantially consistent high level of care as defined in New York State Public Health Law Section 2810(a)(3) and 10 NYCRR 600.2 during the past 10 years.

The above reviews revealed nothing which would reflect adversely upon the applicant's character and competence or standing in the community.

Financial Summary

Total project costs will be met via cash of \$417,457 and an equipment lease of \$3,690,000 at a rate of approximately 3.5% for 72 months.

| | | |
|---------|--------------|-------------------|
| Budget: | Revenues: | \$ 11,672,000 |
| | Expenses: | <u>11,294,000</u> |
| | Gain/(Loss): | \$ 378,000 |

Subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Architectural Summary

The facility being proposed is a new two-story, 60,000 SF fully-sprinklered building. The first floor, consisting of 33,500 SF, will include an urgent/emergent care suite, an imaging suite, a lab/phlebotomy suite, and the required support and administrative spaces. The second floor, consisting of 26,500 SF, will be vacant space for future medical offices.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of an executed Design Build and Leaseback Agreement acceptable to the Department. [BFA]
4. Submission of an executed Ground Lease Agreement acceptable to the Department. [BFA]
5. Submission of a Tax Exempt Equipment Lease (TELP) commitment acceptable to the Department. [BFA]
6. Submission of a photocopy of an executed Certificate of Incorporation for Healthcare Partners of Saratoga, LTD., setting forth its corporate members and enumerating the reserve powers of its members, that is acceptable to the Department. [CSL]
7. Submission of a photocopy of the executed Certificate of Incorporation for Albany Medical Center setting forth its membership interest in, and enumerating its reserve powers with regard to, Healthcare Partners of Saratoga, LTD., that is acceptable to the Department. [CSL]
8. Submission of a photocopy of the executed Certificate of Incorporation for Saratoga Hospital setting forth its membership interest in, and enumerating its reserve powers with regard to, Healthcare Partners of Saratoga, LTD., that is acceptable to the Department. [CSL]

Approval conditional upon:

1. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
2. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
3. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
4. The clinical space must be used exclusively for the approved purpose. [HSP]
5. The submission of State Hospital Code (SHC) Drawings for review, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
6. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the start of construction. [AER]
7. The applicant shall complete construction by June 30, 2014. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

August 4, 2011.

Need Analysis

Background

Saratoga Hospital is a 171-bed acute care hospital located at 211 Church Street, Saratoga Springs. Albany Medical Center Hospital is a 631-bed acute care teaching hospital located at 43 New Scotland Avenue, Albany. The facilities seek CON approval to establish and construct an urgent care diagnostic and treatment center (D&TC) at Route 67 and I-87, Malta, to serve the residents of Saratoga County and parts of Washington County.

Albany Medical Center and Saratoga Hospital have the following beds and services:

| <u>Bed Category</u> | <u>AMC</u> | <u>TSH</u> |
|--------------------------------------|------------|------------|
| AIDS | 15 | |
| Bone Marrow Transplant | 6 | |
| Coronary Care | 20 | 7 |
| Intensive Care | 30 | 7 |
| Maternity | 39 | 14 |
| Medical / Surgical | 365 | 115 |
| Neonatal Continuing Care | 14 | |
| Neonatal Intensive Care | 7 | |
| Neonatal Intermediate Care | 29 | |
| Pediatric | 44 | 12 |
| Pediatric ICU | 15 | |
| Physical Medicine and Rehabilitation | 21 | |
| Psychiatric | 26 | 16 |
| Total Beds | 631 | 171 |

| <u>Service Category</u> | <u>AMC</u> | <u>TSH</u> |
|--|------------|------------|
| AIDS | ✓ | |
| AIDS Center | ✓ | |
| Ambulatory Surgery - Multi Specialty | ✓ | ✓ |
| Audiology O/P | ✓ | |
| Cardiac Catheterization - Adult Diagnostic | ✓ | ✓ |
| Cardiac Catheterization - Electrophysiology (EP) | ✓ | |
| Cardiac Catheterization - Pediatric Diagnostic | ✓ | |
| Cardiac Catheterization - Percutaneous Coronary Intervention (PCI) | ✓ | |
| Cardiac Surgery - Adult | ✓ | |
| Cardiac Surgery - Pediatric | ✓ | |
| Certified Mental Health Services O/P | ✓ | |
| Chemical Dependency Withdrawal O/P | | ✓ |
| Clinic Part Time Services | ✓ | |
| Clinical Laboratory Service | ✓ | ✓ |
| Coronary Care | ✓ | ✓ |
| CT Scanner | ✓ | ✓ |
| Emergency Department | ✓ | ✓ |
| Epilepsy Comprehensive Services | ✓ | |
| Family Planning O/P | ✓ | |
| Home Peritoneal Dialysis Training and Support | ✓ | |
| Intensive Care | ✓ | ✓ |
| Linear Accelerator | ✓ | ✓ |

| Table 2: Albany Medical Center and Saratoga Hospital: Certified Services | | |
|---|------------|------------|
| <u>Service Category</u> | <u>AMC</u> | <u>TSH</u> |
| Magnetic Resonance Imaging | ✓ | ✓ |
| Maternity | ✓ | ✓ |
| Medical Social Services | ✓ | ✓ |
| Medical/Surgical | ✓ | ✓ |
| Neonatal Continuing Care | ✓ | |
| Neonatal Intensive Care | ✓ | |
| Neonatal Intermediate Care | ✓ | |
| Nuclear Medicine - Diagnostic | ✓ | |
| Nuclear Medicine - Therapeutic | ✓ | |
| Pediatric | ✓ | ✓ |
| Pediatric Intensive Care | ✓ | |
| Pharmaceutical Service | ✓ | ✓ |
| Physical Medical Rehabilitation | ✓ | |
| Physical Medicine and Rehabilitation O/P | ✓ | |
| Psychiatric | ✓ | ✓ |
| Radiology - Diagnostic | ✓ | ✓ |
| Radiology-Therapeutic | ✓ | ✓ |
| Renal Dialysis - Acute | ✓ | ✓ |
| Renal Dialysis - Chronic | ✓ | |
| Respiratory Care | ✓ | |
| Therapy - Occupational O/P | ✓ | ✓ |
| Therapy - Physical | | ✓ |
| Therapy - Speech Language Pathology | ✓ | ✓ |
| Transplant - Bone Marrow | ✓ | |
| Transplant - Heart - Adult | ✓ | |
| Transplant - Kidney | ✓ | |

Albany Medical Center is authorized to operate 3 hospital extension clinics, these clinics provides services such as Dental, Primary Medical Care, Occupational Therapy and Physical Therapy.

Saratoga Hospital operates 6 hospital extension clinics providing the following services: Primary Medical Care, Diagnostic Radiology, Clinical Laboratory Service , CT Scanner, Magnetic Resonance Imaging, Physical Therapy , Occupational Therapy, Nutritional, Ambulatory Surgery - Multi Specialty, Speech Language Pathology, Audiology and Psychology.

Saratoga Hospital also operates a 36-bed skilled nursing facility on-site.

State Designations:

Albany Medical Center:

- AIDS Center
- Regional Perinatal Center;
- Regional Trauma Center; and
- Stroke Center.

Saratoga Hospital:

- Level 1 Perinatal Center.

Project Description

Saratoga Hospital and Albany Medical Center Hospital collaborated to develop creative alternatives for a segment of Emergency Department (ED) users in order to achieve broader directions for system reform, including reduction in the number of patients visiting emergency departments; and decreases in emergency department wait-times and overcrowding.

As a result of the collaboration, it is expected that the residents of the Community will benefit from the availability primary and high-end urgent care at a convenient location that will address the patient's need to self-refer based on a perceived need for emergent medical care. The community will also have 24-hour access to emergency medical physicians, rather than primary care physicians, practiced in diagnosing and treating a wide range of conditions.

The new facility will be staffed with emergency medicine trained physicians and equipped to treat patients with any level of urgent care needs. It is anticipated that some patients treated and triaged at the new facility will be discharged home with follow-up to their primary care or specialist, thus avoiding an emergency room visit to their local hospital. Higher intensity medical needs, which cannot be treated at the facility, will be transferred to an appropriate facility.

The new facility will offer diagnostic services relocated from Malta Medical Arts including an MRI, CT, X-ray and Ultrasound. Additional equipment is contemplated and will be selected based on further analysis of patient needs. Basic laboratories services will be available at the new facility. Additional diagnostic lab needs will be met by other available lab facilities, avoiding the duplication of infrastructure and overhead.

Population and Total Inpatient Discharges

For this project Saratoga Hospital and Albany Medical Center Hospital have defined a service area consisting mainly of Saratoga County zip codes and a few zip codes in Western Washington County. Based on the 2000 census, the resident population of Saratoga County was 200,635, it increased by 9.5 percent to 219,607 in 2010.

The two facilities have experienced consistent growth in total inpatient discharges over the last five years. Combined, in 2006 the hospitals recorded 38,156 total inpatient discharges; by 2010, these discharges increased by 9.2 percent to 41,683 (Table 3).

| <i>Hospital</i> | <u>2006</u> | <u>2007</u> | <u>2008</u> | <u>2009</u> | <u>2010</u> |
|-----------------------|---------------|---------------|---------------|---------------|---------------|
| Albany Medical Center | 29,770 | 30,250 | 31,031 | 31,600 | 31,995 |
| Saratoga Hospital | 8,386 | 8,664 | 8,890 | 9,247 | 9,688 |
| Total | 38,156 | 38,914 | 39,921 | 40,847 | 41,683 |

Source: SPARCS 2006

* Reporting for 2010 is incomplete.

Emergency Department Use

In 2006, there were 56,799 total Emergency Department (ED) visits from the proposed service area. By 2009, these visits increased by 4.7 percent to 61,584 and stood at 59,472 in 2010. On average, about 46.0 percent of the residents from the service area received ED services from Saratoga Hospital. During the period under review, an average of about 21.0 percent of the total ED visits from the service area resulted in an inpatient admission. Saratoga Hospital's ED visits that resulted in an inpatient admission were slightly below the service area rate (Table 4).

| <i>Hospital</i> | <u>Total Emergency Department Visits</u> | | | | | <u>Percent ED Visits Admitted</u> | | | | |
|-------------------|--|-------------|-------------|-------------|-------------|-----------------------------------|-------------|-------------|-------------|-------------|
| | <u>2006</u> | <u>2007</u> | <u>2008</u> | <u>2009</u> | <u>2010</u> | <u>2006</u> | <u>2007</u> | <u>2008</u> | <u>2009</u> | <u>2010</u> |
| Albany M. C. | 3,247 | 3,284 | 3,629 | 4,063 | 3,920 | 31.7 | 28.1 | 29.0 | 30.2 | 31.9 |
| Albany Memorial | 1,108 | 990 | 947 | 1,246 | 1,220 | 13.3 | 16.0 | 13.3 | 12.2 | 10.6 |
| St. Peters | 2,254 | 2,154 | 2,095 | 2,391 | 2,368 | 28.8 | 30.1 | 32.4 | 32.6 | 34.0 |
| Seton-St. Mary's | 4,721 | 4,660 | 4,699 | 4,716 | 4,445 | 23.6 | 24.7 | 25.2 | 25.5 | 23.1 |
| Samaritan Troy | 2,672 | 2,616 | 2,873 | 3,028 | 3,175 | 17.7 | 18.7 | 17.6 | 15.3 | 12.2 |
| Saratoga Hospital | 26,534 | 27,872 | 27,283 | 28,275 | 27,254 | 18.7 | 17.4 | 19.3 | 19.3 | 20.8 |
| Ellis Hospital | 4,223 | 4,425 | 4,433 | 5,113 | 4,770 | 29.1 | 27.4 | 29.1 | 23.1 | 24.1 |
| Ellis - McClellan | 1,266 | 1,119 | 796 | 488 | 372 | 16.1 | 17.3 | 9.7 | - | - |
| Glens Falls | 9,430 | 9,921 | 10,501 | 10,517 | 10,303 | 21.1 | 21.6 | 21.7 | 21.2 | 23.6 |

**Table 4:
Distribution of Service Area Total Emergency Department Visits by Hospital**

| <i>Hospital</i> | <i>Total Emergency Department Visits</i> | | | | | <i>Percent ED Visits Admitted</i> | | | | |
|-----------------|--|-------------|-------------|-------------|-------------|-----------------------------------|-------------|-------------|-------------|-------------|
| | <i>2006</i> | <i>2007</i> | <i>2008</i> | <i>2009</i> | <i>2010</i> | <i>2006</i> | <i>2007</i> | <i>2008</i> | <i>2009</i> | <i>2010</i> |
| Other NYS | 1,344 | 1,642 | 1,788 | 1,747 | 1,645 | 13.8 | 12.4 | 13.1 | 12.1 | 11.7 |
| Total | 56,799 | 58,683 | 59,044 | 61,584 | 59,472 | 21.1 | 20.4 | 21.5 | 21.0 | 21.9 |

Source: SPARCS 2006 – 2010*
* Reporting for 2010 is incomplete.

In addition to ED services Saratoga Hospital provides a sizeable amount of general clinic services to the community. In 2005, the hospital’s clinics recorded 22,956 general clinic visits; by 2009, the visits more than double to 47,115 (Table 5).

**Table 5:
Distribution of General Clinic Visits:
Saratoga Hospital**

| <i>Year</i> | <i>Clinic</i> |
|-------------|---------------|
| 2005 | 22,956 |
| 2006 | 27,490 |
| 2007 | 31,335 |
| 2008 | 38,180 |
| 2009 | 47,115 |

Source: Institutional Cost Reports, 2005 – 2009.

Conclusion

In the proposed service area, between 2006 and 2010, an average of 46.0 percent of the Emergency Department visits were seen at Saratoga Hospital. Almost 80 percent of the Emergency Department visits from the service area were treated-and-released. Saratoga Hospital’s percentage of ED treated-and-released visits were slightly below the groups’ average. The high percentage of ED treated-and-released cases in the service area provides an opportunity for the applicant to offer urgent care service in a non-traditional setting. The proposed facility also presents a non-ED alternative for urgent care services to residents of the community.

The proposal is a collaborative project between the two facilities in order to improve access to preventive care and facilitate appropriate triage in response to perceived emergent medical needs for the residents of Saratoga County and portions of western Washington County. The two entities are committed to working together and combining their complementary areas of clinical strength in innovative ways to assure that every patient has access to the right care in the right place at the right time.

Each organization will benefit from the collaboration by reducing unnecessary visits to its emergency department and associated treatment delays, and by consolidating certain services through co-location at a centrally located and easily accessible facility. The new facility, to be operated by Healthcare Partners of Saratoga and will accommodate a wide range of medical needs on a 24/7 basis.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

Healthcare Partners of Saratoga, LTD will have two corporate members, Saratoga Hospital and Albany Medical Center.

Saratoga Hospital currently operates a primary care extension clinic in Malta. Upon completion of this application that site will close. The proposed Center will provide urgent care services twenty-four hours per day, seven days per

week, as well as primary care services. The “triage” center will be staffed by emergency medicine trained physicians. Patients with low to moderate medical needs will be treated at the center and then discharged home with follow-up by their primary care physician or a specialist. Patients with high intensity medical needs, which cannot be treated at the facility, will be transferred to an appropriate facility. Staffing will consist of 77.1 FTEs including physicians, registered nurses and technicians, under the supervision of the Center's medical director, Joyce Peabody. Staffing is expected to increase to 86.9 FTEs by the third year of operation.

Emergency, in-patient and back-up support services will be provided by Saratoga Hospital, which is ten miles and fifteen minutes travel time from the Center.

Compliance with Applicable Codes, Rules and Regulations

The medical staff will ensure that procedures performed at the Center conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and/or expertise. The Center's admissions policy will include anti-discrimination regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures will be performed in accordance with all applicable federal and state codes, rules and regulations, including standards for credentialing, anesthesiology services, nursing, patient admission and discharge, a medical records system, emergency care, quality assurance and data requirements.

Character and Competence

The Board of Directors is as follows:

| <u>Name</u> | <u>Office Held</u> |
|---------------------------|--------------------|
| Angelo G. Calbone | Chair |
| Steven Frisch, MD | Vice Chair |
| Gary Foster | Secretary |
| William Hasselbarth | Treasurer |
| Gary Kochem | |
| Jeffrey Methven | |
| Richard E. Schumaker, Jr. | |
| Vincent P. Verdile | |

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's and relatives' ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management (relative to Medicaid fraud and abuse), the Office of Professional Medical Conduct, and the Education Department databases.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action. Based on this information, staff concluded that the facilities have provided a substantially consistent high level of care as defined in New York State Public Health Law 2810(a)(3) and 10NYCRR 600.2 during the past 10 years.

Conclusion

The above reviews revealed nothing which would reflect adversely upon the applicant's character and competence or standing in the community.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Background

The corporate members of Healthcare Partners of Saratoga, LTD (HPS) will have substantial active powers, including among others, the powers listed below. Each partnering hospital will appoint four of the eight directors on the board of HPS.

Active powers will include the following:

- Strategic plans
- Select/remove CEO and any other corporate officer
- Approve annual capital and operating budgets
- Approve non-budgeted expenditures above a pre-approved established threshold
- Share in all credentialing, quality assurance, risk management and peer review
- Add or delete services
- File CON applications
- Approve debt incurrence
- Approve the commencement and settlement of any litigation
- Approve sale by D&TC of any assets outside ordinary course of business
- Exercise any power that is not specifically reserved to D&TC by Certificate of Incorporation, bylaws or regulations.
- Approve dissolution of D&TC

Total Project Cost and Financing

The total project cost is itemized as follows:

| | |
|--------------------|---------------|
| Fixed equipment | \$ 301,000 |
| Professional Fees | 240,000 |
| Movable equipment | 2,967,000 |
| Telecommunications | 575,000 |
| Application fee | 2,000 |
| Processing fee | <u>22,457</u> |
| Total Project Cost | \$4,107,457 |

Total project cost will be financed via cash of \$417,457 and a DASNY equipment lease of \$3,690,000 at a rate of 3.5% for 72 months.

Ground Lease

The applicant has submitted draft ground lease terms for the site to be occupied.

The terms are summarized below.

| | |
|--------------------|---|
| <i>Lessor:</i> | Saratoga Hospital/Albany Medical Center |
| <i>Lessee:</i> | Columbia Development Companies-affiliate |
| <i>Site:</i> | 7.41 +/- acres on campus of proposed Saratoga Medical Park at Malta |
| <i>Rental:</i> | One lump pre-payment of \$2,320,000, and \$1 per year thereafter. |
| <i>Term:</i> | 60 years. |
| <i>Provisions:</i> | Lessee responsible for all plans, approvals, permits, fees, etc. Lessee will convey to lessor ownership of all improvements at the end of term. |

Design Build and Leaseback Agreement

The applicant has submitted a draft Design Build and Leaseback agreement for the site to be occupied. The terms of which are summarized below:

Premises: 560 Route 67, Malta, NY 12020
 7.41 acre site. The site is located on the campus of the proposed Saratoga Medical Park at Malta. Landlord will enter into a sixty year ground lease with Saratoga Hospital.

Lessor: Columbia Development Company, affiliate

Lessee: Healthcare Partners of Saratoga, LTD

Rental: +/-28,000/sf – entire 1st floor of two story (56,000/sf) building: consisting of:
 +/-6,300/sf base medical space at \$16.85/sf
 +/-14,000/sf Urgent Care space at \$30.00/sf
 +/-5,200/sf Imaging space at \$37.00/sf
 +/-2,500/sf of Lab space at \$17.95/sf
 Total annual first year rent is \$763,430
 Rent increase 5% every five years.

Term: 18 year term. Two optional extension terms consisting of five years, each.

Provisions: Triple net lease.

Two letters from licensed independent realtors have been furnished, which verify rent reasonableness. The applicant has submitted an affidavit indicating that the Design Build and Lease Agreement will be an arm's length agreement.

Project construction is scheduled to start September 1, 2011 with anticipated completion date of June 30, 2012.

Operating Budget

The applicant has submitted an operating budget, in 2010 dollars, for the first and third years of operation after the change in ownership, summarized below:

| | <u>Year One</u> | <u>Year Three</u> |
|--------------------------------|--------------------|-------------------|
| Revenues: | \$9,719,000 | \$11,672,000 |
| Expenses: | | |
| Operating | \$8,362,000 | \$9,582,000 |
| Capital | <u>1,914,000</u> | <u>1,712,000</u> |
| Total Expenses | \$10,276,000 | \$11,294,000 |
| Excess Revenues over Expenses: | <u>(\$557,000)</u> | <u>\$ 378,000</u> |
| Utilization: Visits | 24,392 | 32,653 |
| Tests | 98,518 | 128,267 |

Utilization by payor source for the first and third year:

| | |
|----------------------------|-------|
| Medicare Fee-for-Service | 16.4% |
| Medicare Managed Care | 9.6% |
| Medicaid Fee-for-Service | 0.9% |
| Medicaid managed Care | 5.8% |
| Commercial Fee-for-Service | 11.1% |
| Commercial Managed Care | 51.2% |
| Private Pay | 2.4% |
| Other | 2.6% |

Expense assumptions are based on Saratoga Hospital's historical experience at its Malta Medical Art's extension clinic. Utilization assumptions are based on Malta Medical Art's extension clinic historical utilization along with projected trends for the demographics of the service area.

Capability and Feasibility

The project costs of \$4,107,457 will be met through a cash equity contribution of \$417,457 from the members, and a DASNY TELP loan of \$3,690,000 payable over 72 months at a rate of 3.5%. Presented as BFA Attachments A and C are the 2009 and 2008 audited financial statements of Saratoga Hospital and Albany Medical Center, respectively; which indicate the availability of sufficient resources for the project equity contribution. A letter of interest from The Dormitory Authority of the State of New York has been submitted, indicating interest in financing the TELP loan, at the stated terms.

Working capital requirements estimated at \$1,882,333 appears reasonable based on two months of third year expense. The proposed working capital requirement will be met through an equity contribution from the member hospitals. Presented as BFA Attachment E, is the pro-forma balance sheet of Healthcare Partners of Saratoga, LTD, which indicates a positive equity position of \$2,031,000 as of the first day of operation.

The submitted budget projects an excess of revenues over expenses of (\$557,000) and \$378,000 during the first year and third year of operation, respectively. Revenues are based on prevailing payment methodologies and payment rates. The budget appears reasonable.

Subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and contingent approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Architectural Analysis

Background

- First Floor (33,500 SF new construction)

The first floor will consist of 33,500 SF and will include the entry/common space, urgent care suite, imaging suite, lab suite, and the required support and administrative spaces.

The square footage of the various suites on the first floor breaks down as follows:

The central core of the first floor, approximately 2,000 sf, will act as an entry/ common space area which will house stairs and elevators for the second floor as well as public restrooms. Vehicles entering the site will have the opportunity to drop off patients under a weather protected canopy with access to (2) entrances to the building. Once in the building, there will be a central desk which will be the home to security personnel who will have unrestricted visibility to the waiting areas, main stair, elevator and the canopy area. This desk will also function as the information desk. The central core will also have multi-stall public toilets as well as a coffee bar and a small healing garden.

The urgent/emergent care suite is approximately 14,000 square feet. The associated waiting/triage/registration area is approximately 2,700 square feet. Patients entering through the main entrance will have their first point of contact at the triage/registration area. Separate waiting areas are provided for sick and well patients, located to each side of triage/registration. Internally, the suite contains (13) general treatment rooms, (6) observation rooms with private toilets, (3) procedure rooms, and (2) resuscitation rooms. Of these (24) rooms, (6) will be capable for use as negative pressure rooms and (1) will be provided as a S.A.N.E./O.B. room. Nurse stations are provided throughout to allow maximum visibility to each patient room. All required medical support spaces (soiled holding, clean holding, meds, janitor's closet, etc) are provided within the suite. Access

to the suite is also provided through a covered ambulance entry, and through a separate decontamination shower entry.

The imaging suite is approximately 5,700 square feet which includes (2) waiting areas. The first is within the central core of the building, the second is a smaller waiting area within the suite itself. (3) change rooms are accessed directly off the waiting area, (2) of these leading to a gowned waiting area. These (3) change rooms will serve the (2) x-ray rooms and the (2) ultrasound rooms. The ultrasound rooms will have a shared toilet between them. The suite will also offer CT and MRI scanner rooms. There will be an injection/change room specifically for the CT and MRI rooms. The layout of the suite allows for quick access to the MRI/CT areas from Urgent/Emergent Care as well as the ambulance entrance.

The phlebotomy/lab suite is approximately 2,750 square feet. The lab will have its own waiting area, outside of the suite, within the central core of the building. Within the suite (5) phlebotomy rooms are provided with (1) being a private phlebotomy for children, etc. (2) Toilets are provided with (1) of these being constructed as a drug testing toilet. The lab will also have a vehicle pull-up area for specimen drop off directly to the lab, without having to enter the facility.

The phlebotomy and imaging suites will share a waiting/registration/check-out area which is approximately 1,850 square feet.

Support/administrative areas will be approximately 4,500 square feet, including a loading dock, building support spaces (mechanical and electrical rooms), the staff entrance, staff break room with locker rooms, offices, conference room, and equipment room.

- Second Floor (26,500 SF new construction)

The second floor will consist of 26,500 SF and will be vacant space.

Environmental Review

The Department has deemed this project to be a TYPE I Action and the lead agency shall be the county of Saratoga or the authority having jurisdiction.

Recommendation

From an architectural perspective, approval is recommended.

Attachments

| | |
|------------------|---|
| BFA Attachment A | Financial Summary- Saratoga Hospital (2009 & 2008 Audited) |
| BFA Attachment B | Financial Summary- Saratoga Hospital (2010 Internal) |
| BFA Attachment C | Financial Summary- Albany Medical Center Hospital (2009 & 2008 Audited) |
| BFA Attachment D | Financial Summary- Albany Medical Center Hospital (2010 Internal) |
| BFA Attachment E | Pro-forma Balance Healthcare Partners of Saratoga, LTD |
| BFA Attachment F | Establishment Checklist for Ambulatory Care Sites |

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 21st day of July, 2011, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establishment and construct an Article 28 diagnostic and treatment center which will also provide 24/7 urgent care, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

111220-B

FACILITY/APPLICANT:

Healthcare Partners of Saratoga, LTD

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of an executed Design Build and Leaseback Agreement acceptable to the Department. [BFA]
4. Submission of an executed Ground Lease Agreement acceptable to the Department. [BFA]
5. Submission of a Tax Exempt Equipment Lease (TELP) commitment acceptable to the Department. [BFA]
6. Submission of a photocopy of an executed Certificate of Incorporation for Healthcare Partners of Saratoga, LTD., setting forth its corporate members and enumerating the reserve powers of its members, that is acceptable to the Department. [CSL]
7. Submission of a photocopy of the executed Certificate of Incorporation for Albany Medical Center setting forth its membership interest in, and enumerating its reserve powers with regard to, Healthcare Partners of Saratoga, LTD., that is acceptable to the Department. [CSL]
8. Submission of a photocopy of the executed Certificate of Incorporation for Saratoga Hospital setting forth its membership interest in, and enumerating its reserve powers with regard to, Healthcare Partners of Saratoga, LTD., that is acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
2. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
3. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
4. The clinical space must be used exclusively for the approved purpose. [HSP]
5. The submission of State Hospital Code (SHC) Drawings for review, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
6. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the start of construction. [AER]
7. The applicant shall complete construction by June 30, 2014. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York 12180-2299



Public Health and Health Planning Council

Project # 111347-E

CPRNC, LLC

d/b/a Central Park Rehabilitation and Nursing Center

County: Onondaga (Syracuse)
Purpose: Establishment

Program: Residential Health Care Facility
Submitted: April 4, 2011

Executive Summary

Description

CPRNC, LLC d/b/a Central Park Rehabilitation and Nursing Center (Central Park) is seeking approval to be established as the new operator of Vivian Teal Howard Residential Health Care Facility, an existing 160-bed not-for-profit residential health care facility (RHCF) with a 50-slot Adult Day Health Care Program (ADHCP), located at 116 East Castle Street, Syracuse. Castle Rest Residential Health Care Facility, Inc. d/b/a Vivian Teal Howard Residential Health Care Facility entered into a voluntary receivership agreement dated November 7, 2008 with CPRNC, LLC. The Department approved the appointment of CPRNC, LLC as the new receiver on November 24, 2008.

The current operator is CPRNC, LLC d/b/a Central Park Rehabilitation and Nursing Center (Central Park), with Efraim Steif as the sole member receiver. Upon approval of this CON, ownership of the operation will be as follows:

| | |
|--|--------|
| <u>Proposed Operation</u> | |
| CPRNC, LLC | |
| d/b/a Central Park Rehabilitation and Nursing Center | |
| MEMBERS: | |
| -- Efraim Steif | 44.90% |
| -- Uri Koenig | 27.50% |
| -- Lawrence Koenig | 27.50% |
| -- David Camerota | 0.1% |

85.4%, and 95.1% in 2007, 2008, and 2009, respectively. Onondaga County had occupancy levels of 94.9%, 96.2%, and 96.2% in 2007, 2008, and 2009, respectively.

Program Summary

The review of operations results in a conclusion of a substantially consistent high level of care, since there were no repeat enforcements. There are no proposed changes in either the program or physical environment of the facility.

Financial Summary

The facility assets have been sold in accordance with the Asset Purchase Agreement effective September 22, 2008.

This CON is effectively changing the status of the current receiver/operator to owner/operator, and is adjusting the current ownership of CPRNC, LLC d/b/a Central Park Rehabilitation and Nursing Center (Central Park). There are no project costs associated with this proposal.

| | | |
|---------|--------------|-------------------|
| Budget: | Revenues: | \$ 14,211,618 |
| | Expenses: | <u>13,334,813</u> |
| | Gain/(Loss): | \$ 876,805 |

DOH Recommendation
Contingent approval

Need Summary

There is currently a surplus of 570 beds in Onondaga County. However, Vivian Teal Howard Residential Health Care Facility had occupancy levels of 91.4%,

Subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Architectural Summary

This project is for Establishment action only; therefore, no Architectural recommendation is required.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a Loan commitment for working capital acceptable to the Department. [BFA]
3. Submission of updated budgets, with all assumptions noted, that include the impact of the State's 2011-12 Budget and continues to demonstrate financial feasibility, acceptable to the Department. [BFA]
4. Submission of a photocopy of the executed Certificate of Amendment of the Articles of Organization of CPRNC, LLC, acceptable to the Department. [CSL]

Council Action Date

August 4, 2011.

Need Analysis

Background

CPRNC, LLC, doing business as Central Park Rehabilitation and Nursing Center (CPRNC), proposes to become the operator of Vivian Teal Howard Residential Health Care Facility, a 160-bed residential health care facility with an Adult Day Health Care Program capacity of 50, located at 116 East Castle Street, Syracuse.

Analysis

| <u>RHCF Bed Need</u> | <u>Onondaga County</u> |
|-------------------------|------------------------|
| 2016 Projected Need | 2,416 |
| Current Beds | 2,923 |
| Beds Under Construction | 63 |
| Total Resources | 2,986 |
| Unmet Need | -570 |

There will be no change in beds or services upon approval.

Vivian Teal Howard Residential Health Care Facility has utilization below that of Onondaga County for all years in question as shown in the table below:

| <u>RHCF Occupancy</u> | <u>2007</u> | <u>2008</u> | <u>2009</u> |
|-------------------------|-------------|-------------|-------------|
| Vivian Teal Howard RHCF | 91.4% | 85.4% | 95.1% |
| Onondaga County | 94.9% | 96.2% | 96.2% |

At the end of 2010, the facility's RUG score was 1.18, 8 were Physical A's and 2 were Physical B's.

Conclusion

CPRNC will continue the services currently offered at Vivian Teal Howard Residential Health Care Facility – medical, nursing, social work, rehabilitation, recreational therapy, nutritional, pharmaceutical and dental services – in a comprehensive and coordinated manner to ensure that individualized care is given to all residents.

CPRNC will maintain the existing admission policy of non-discrimination based on ethnic background or financial circumstance. The facility is committed to accepting hospitalized patients on alternate level of care status on a priority basis.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Facility Information

| | <i>Existing</i> | <i>Proposed</i> |
|-----------------------|--|-----------------|
| <i>Facility Name</i> | Central Park Rehabilitation and Nursing Center formerly Vivian Teal Howard Residential Health Care Facility | Same |
| <i>Address</i> | 116 East Castle Street Syracuse, NY 13205 | Same |
| <i>RHCF Capacity</i> | 160 | Same |
| <i>ADHCP Capacity</i> | 50 | Same |

| | | |
|--------------------------|---|--|
| <i>Type of Operator</i> | Limited Liability Company formerly Not-for-Profit Corporation | Same |
| <i>Class of Operator</i> | Proprietary formerly voluntary before receivership | Same |
| <i>Operator</i> | CPRNC, LLC voluntary receivership effective November 24, 2008 <u>Members</u> Efraim Steif 100% <i>* Formerly Castle Rest Residential Health Care Facility, Inc.</i> | CPRNC, LLC d/b/a Central Park Rehabilitation and Nursing Center <u>Members</u> Efraim Steif 44.9% -- Managing Member Lawrence Koenig 27.5% Uri Koenig 27.5% David Camerota 0.1% |

• FACILITIES REVIEWED:

Nursing Homes

| | |
|---|---------------------|
| Pine Valley Center for Rehabilitation & Nursing | 2/4/04 to present |
| Bridgewater Center for Rehabilitation | 2/1/05 to present |
| Westchester Center for Rehabilitation and Nursing | 1/1/03 to 2006 |
| Central Park Rehabilitation and Nursing Center | 11/24/08 to present |

Adult Homes

| | |
|-----------------|------------------|
| Riverside Manor | 9/1/09 to 7/1/10 |
|-----------------|------------------|

• INDIVIDUAL BACKGROUND REVIEW:

Efraim Steif is a licensed nursing home administrator in good standing in the States of New York and New Jersey. Mr. Steif is currently the President of FRS Healthcare Consultants, Inc., and served as Administrator of Record at Forest View Center for Rehab and Nursing in Forest Hills from 2000 to 2005. Mr. Steif is the Court appointed receiver for Central Park Rehabilitation and Nursing Care Center, which is the nursing home of the subject application. Mr. Steif has disclosed the following nursing home ownership interests.

| | |
|---|-------------------|
| Bridgewater Center for Rehabilitation | 8/1/06 to present |
| Pine Valley Center for Rehabilitation and Nursing | 1/1/08 to present |

Mr. Steif has served as the Court-appointed receiver for the following nursing homes:

| | |
|--|---------------------|
| Hillcrest Receivership, LLC d/b/a Pine Valley Center | 12/4/04 to 1/1/08 |
| Bridgewater Center for Rehabilitation | 2/1/05 to 8/1/06 |
| Westchester Center for Rehabilitation and Nursing | 1/1/03 to 2006 |
| Riverside Manor | 2/1/05 to 8/1/06 |
| Central Park Rehabilitation and Nursing Center | 11/24/08 to present |

Lawrence Koenig is employed as the operating officer/investment manager at BRK Holdings Inc., an investment holding company located in Toronto, Canada. Mr. Koenig indicates he holds no ownership interests in health care facilities.

Uri Koenig is a New York State Certified Public Account with license in good standing employed by JH Koenig & Co in New York. Mr. Koenig discloses the following nursing home ownership interests.

| | |
|---|-------------------|
| Bridgewater Center for Rehabilitation | 8/1/06 to present |
| Pine Valley Center for Rehabilitation and Nursing | 1/1/08 to present |

David Camerota is a licensed nursing home administrator in good standing currently employed as Administrator of Record at Central Park Rehabilitation and Nursing Center. Mr. Camerota has served nearly continuously as administrator for the past eleven years including service at Heritage Health Care Center in Utica, Sunnyside Care Center in Syracuse and Valley View Manor Nursing Home in Norwich. Mr. Camerota indicates he holds no ownership interests in health care facilities.

Character and Competence – Analysis:

No negative information has been received concerning the character and competence of the applicants.

The review of operations of Bridgewater Center for Rehabilitation, Pine Valley Center for Rehabilitation and Nursing and Westchester Center for Rehabilitation and Nursing results in a conclusion of a substantially consistent high level of care, since there were no enforcements.

A review of the operations for Central Park Rehabilitation and Nursing Center for the period reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order issued December 6, 2010 for surveillance findings on May 26, 2009. Deficiencies were found under 10 NYCRR 415.19(a) Quality of Care: Infection Control.

The review of operations for Central Park Rehabilitation and Nursing Center results in a conclusion of a substantially consistent high level of care, since there were no repeat enforcements.

The review of operations of Riverside Manor results in a conclusion of a substantially consistent high level of care, since there were no enforcements.

Project Review

There are no proposed changes in either the program or physical environment of the facility.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The change in ownership will be effectuated in accordance with an executed asset purchase agreement, the terms of which are summarized below:

| | |
|--------------------------|--|
| <i>Date:</i> | September 22, 2008 |
| <i>Seller:</i> | Castle Rest Residential Health Care facility, Inc., d/b/a Vivian Teal Howard Residential Health Care Facility. |
| <i>Purchaser:</i> | CPRNC, LLC d/b/a Central Park Rehabilitation and Nursing Center(the Center) |
| <i>Purchased Assets:</i> | Seller's right, title and interest in that certain plot, piece and parcel of land and building, fixtures, equipment, furniture, improvements and depreciable assets occupied by or used by the facility and located at 116 East Castle Street, Syracuse, New York 13205, including all real and personal property securing that certain loan insured by the States Department of Housing and Urban Development and known as HUD project No. 014-43091, as may have been modified and amended including any and all documents, indentures, agreements etc in connection with the Castle Rest Residential Health Care Facility FHA insured Mortgage Revenue Bonds, Series 1997-A and Subordinated Health Care Facility Revenue Bonds, Series 1997-B and all amendments thereto (collectively the "HUD mortgage"), all easements, hereditaments and appurtenances belonging to or inuring to the benefit of seller, all right, title and interest, if any of seller in and to any land lying in the bed of any streets or roads, opened or proposed, any unpaid award made or to be made in lieu thereof or any change of grade of any such |

street or road and all transferable consents, authorizations, variances or waivers, licenses, permits and approvals from any governmental or quasi-governmental agency, department board, commission, bureau or other entity or instrumentality relating to the foregoing and all reserves, escrows, funds, deposits, repurchase agreements, accounts and the like related to the HUD Mortgage.

Excluded Assets: n/a
Liabilities Assumed: The Buyer shall assume Seller's obligations under the HUD Mortgage on the closing date which shall be allocated to the purchase of the property
Purchase Price: \$17,295,000 Mortgage assumption
Payment of Purchase Price: 26-year mortgage at 7.95% interest rate starting at closing, this amount is what entails the lease payment for the year.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility.

The members of the reality entity; 116 East Castle Street Syracuse, LLC, are as follows:

| <u>Proposed Members</u> | <u>Percentage Ownership</u> |
|-------------------------|-----------------------------|
| Efraim Steif | 45.00% |
| Uri Koenig | 27.50% |
| Lawrence Koenig | 27.50% |

Lease Agreement and Medicaid Capital Reimbursement

Facility occupancy will continue to be subject to a lease agreement, the terms of which are summarized as follows:

Date: April 23, 2009
Premises: A 160 bed RHCF and 50 slot ADHCP located at 116 East Castle Street, Syracuse, NY
Lessor: 116 East Castle Street Syracuse, LLC
Lessee: CPRNC, LLC d/b/a Central Park Rehabilitation and Nursing Center (the Center)
Term: 30 years commencing on the execution of the lease
Rental: \$1,592,928 per year (\$132,744 per month)
Provisions: Triple Net Lease

The lease arrangement is a non-arms-length agreement. The applicant has submitted an affidavit attesting to the relationship between the landlord and operating entity.

As of September 22, 2008, the facility was being reimbursed for both interest and depreciation based on the HUD mortgage. With this change from a voluntary to a proprietary facility, the reimbursement methodology is going to be changed to interest and amortization for the remainder of the facilities mortgage term of 26 years.

Operating Budget

Following is a summary of the submitted operating budget, presented in 2011 dollars, for the first year subsequent to change in ownership:

| | <u>Per Diem</u> | <u>Total</u> |
|-------------|-----------------|------------------|
| Revenues: | | |
| Medicaid | \$192.87 | \$8,459,018 |
| Medicare | 332.92 | 2,301,176 |
| Private Pay | 334.76 | <u>1,598,821</u> |
| Total | | \$12,359,015 |

| | | |
|-----------------------------|----------------|------------------|
| Expenses: | | |
| Operating | \$181.25 | \$10,067,679 |
| Capital | <u>\$32.22</u> | <u>1,789,843</u> |
| Total | \$213.47 | \$11,857,522 |
| Net Income | | <u>\$501,493</u> |
| Utilization: (patient days) | | <u>55,546</u> |
| Occupancy | | <u>95.11%</u> |

The following is noted with respect to the submitted operating budget:

- Overall utilization is projected at 95.11%, while utilization by payor source is expected as follows:

| | |
|-------------|--------|
| Medicaid | 78.96% |
| Medicare | 12.44% |
| Private Pay | 8.60% |

- Breakeven utilization is projected at 91.26%.

Additional net income for the ADHCP/Outpatient services is projected for year one as follows:

ADHCP

| | |
|-------------|------------------|
| Revenue: | \$273,777 |
| Expenses: | <u>\$234,927</u> |
| Net Income: | \$38,850 |

Utilization by payor source for the ADHCP will be 97.45% Medicaid and 2.55% Private Pay for the first year subsequent to the change of ownership of the facility.

The combined projected revenues and expenses for the first year subsequent to the change of ownership are as follows:

| | |
|-------------|---------------------|
| Revenues: | \$12,632,792 |
| Expenses: | <u>\$12,092,449</u> |
| Net Income: | \$540,343 |

Capability and Feasibility

The purchase price and initiation of operations, as a financially viable entity, will be accomplished by the applicant taking over the remaining life of the HUD Mortgage of 26 year at 7.95% interest rate with a remaining value of \$17,295,000.

Working capital requirements are estimated at \$2,015,408, based on two months' of first year expenses, which \$1,007,704 will be satisfied from the proposed member's equity and from existing facility cash, and the remaining \$1,007,704 will be satisfied through a loan from Century Health Capital, Inc at 6.25% over 5 years.

A letter of interest has been supplied by the Century Health Capital, Inc. An affidavit from each member, which states that he or she is willing to contribute resources disproportionate to ownership percentages, has been provided by all of the proposed members. Presented as BFA Attachment A, is the Net Worth of proposed members.

The submitted budget indicates that a net income of \$540,343 would be maintained during the first year following change in ownership.

Presented as BFA Attachment B is the pro-forma balance sheet of Central Park Rehabilitation and Nursing Center, which indicates positive members' equity of \$855,896 as of the first day of operations.

As shown on BFA Attachment C, CPRNC, LLC D/B/A Central Park experienced average negative working capital and equity positions and an average net operating loss of \$1,520,201 for the years 2008-2010.

The loss was due to a \$4,718,989 loss in 2008 due to a ban on admission and serious operating deficiencies. In order to correct this loss, in November 2008, they agreed to a voluntary receivership in which CPRNC, LLC was appointed as the receiver.

In 2009, with the receiver in place, the facility was able to greatly reduce their loss to only \$68,425. This loss was due to a reduced Medicaid payment caused by prior year Medicaid recoupment and expenses associated with the receivership. By 2010, the facility was able to completely turn the operations around and had a net income of \$226,810.

As shown on BFA Attachment D, Hillcrest Receivership, LLC D/B/A Pine Valley Center had an average negative working capital position and average positive net asset position, and generated an average net income of \$1,074,287 during the period 2008 through 2010.

As shown on BFA Attachment E, Bridgewater Center for Rehabilitation had an average positive working capital position and average positive net asset position, and generated an average net income of \$899,027 during the period 2008 through 2010.

Based on the preceding, and subject to the noted contingency, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner; and contingent approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

| | |
|------------------|--|
| BFA Attachment A | Net Worth of Proposed Members |
| BFA Attachment B | Pro-forma Balance Sheet |
| BFA Attachment C | Financial Summary, CPRNC, LLC D/B/A Central Park Rehabilitation & Nursing Center (2008 Is a combined financial of CPRNC, LLC as receiver of Vivian Teal Howard Residential Health Care Facility) |
| BFA Attachment D | Financial Summary, Hillcrest Receivership, LLC D/B/A Pine Valley Center |
| BFA Attachment E | Financial Summary, Bridgewater Center for Rehabilitation |
| BFA Attachment F | Establishment Checklist CPRNC, LLC D/B/A Central Park |

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 21st day of July, 2011, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Central Park Rehabilitation and Nursing Center, LLC as the new operator of Vivian Teal Howard Residential Health Care Facility, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

111347-E

FACILITY/APPLICANT:

CPRNC, LLC d/b/a Central Park Rehabilitation
and Nursing Center

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a Loan commitment for working capital acceptable to the Department. [BFA]
3. Submission of updated budgets, with all assumptions noted, that include the impact of the State's 2011-12 Budget and continues to demonstrate financial feasibility, acceptable to the Department. [BFA]
4. Submission of a photocopy of the executed Certificate of Amendment of the Articles of Organization of CPRNC, LLC, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

N/A

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York 12180-2299

071074 Excellent Home Care Services, LLC

DEFERRED AT THE APPLICANT'S REQUEST

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Meadowbrook Terrace, Inc.
Address: Carthage
County: Jefferson
Structure: Not-For-Profit Corporation
Application Number: 1990-L

Description of Project:

Meadowbrook Terrace, Inc., a not-for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

This application is requesting approval to establish a licensed home care services agency (LHCSA) associated with a new Assisted Living Program (ALP). This LHCSA will be associated with Meadowbrook Terrace, Inc.

The parent of Meadowbrook Terrace, Inc. is Carthage Area Hospital, Inc., another not-for-profit corporation.

The members of the Board of Directors of Meadowbrook Terrace, Inc. comprise the following individuals:

Dale A. Klock, President (Chairperson)
FVP/CFO, Carthage Federal Savings & Loan
Affiliation: Carthage Area Hospital

Nata Z. Parnes, M.D., Vice President
Director of Orthopedics, Carthage Area Hospital

Patricia M. Bishop, Secretary
Executive Director, Northern New York Rural
Healthcare Alliance, Inc.

Kelly E. Bush, Treasurer
Public Housing Manager, Town of Wilna
Housing Authority

Victoria H. Collins, Esq.
Attorney, Conboy, McKay, Bachman & Kendall,
LLP

James A. Nabywaniec
Regional VP, Robert J. Natoil (retail)

Brian J. Scott, R.Ph.
Supervising Pharmacist/Store Manager, Kinney
Drugs, Inc.

Amjad G. Sheikh, M.D.
Physician, Mirza Ashraf, M.D., P.C.

Affiliation: Carthage Area Hospital
Mary M. Storms
Deputy Town Clerk, Town of Wilna
Affiliation: Carthage Area Hospital

The members of the Board of Directors of Carthage Area Hospital, Inc. comprise the following individuals:

Brian J. Scott, R.Ph., President (Chairperson)
(Disclosed above)

Mary M. Storms, Vice President
(Disclosed above)

Lawrence D. Hasseler, Esq., Secretary
Partner, Conboy, McKay, Bachman & Kendall,
LLP

Mary M. Rumble, Treasurer
Reading teacher, Carthage School District

Affiliation: Mental Health Association of
Jefferson County
Mirza M. Ashraf, M.D.
Cardiologist, Mirza Ashraf, M.D., P.C.

Robert J. Bookser
Retired

Dale A. Klock
(Disclosed above)

John F. McHugh
Community Development Coordinator,
Jefferson County Industrial Development
Authority

Maria J. Roche
Retired
Affiliations: Children's Home of Jefferson
County, North Country Children's Clinic

Anne M. Rohr
Retired

Gary E. Rowe, C.P.A.
Self-employed

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department, the New York Physician Profile and the Office of Professional Medical Conduct, where appropriate, indicates no issues with the licenses of the healthcare professionals associated with this application.

A Certificate of Good Standing has been received for all attorneys.

The applicant proposes to serve the residents of Jefferson County from an office located at 21957 Cole Road, Carthage, New York 13619.

The applicant proposes to provide the following health care services:

| | | | |
|------------------|---------------------------|---------------------|----------------------|
| Nursing | Home Health Aide | Personal Care | Occupational Therapy |
| Physical Therapy | Medical Social Services | Respiratory Therapy | Nutrition |
| Housekeeper | Speech-Language Pathology | | |

A ten year review of the operations of the following facilities was performed as part of this review:

Carthage Area Hospital
North Country Children's Clinic
Children's Home of Jefferson County
Mental Health Association of Jefferson County

The Information provided by the Division of Certification and Surveillance has indicated that the hospital and diagnostic and treatment center reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the Office of Mental Health has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: June 23, 2011

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Chautauqua County Department of Health
Address: Mayville
County: Chautauqua
Structure: Public
Application Number: 1966-L

Description of Project:

Chautauqua County Department of Health requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law in order to enable the county to provide essential public health nursing services.

The applicant proposes to serve the residents of Chautauqua County from an office located at: HRC Building, 4th Floor, 7 North Erie Street, Mayville, New York 14757.

The applicant proposes to provide the following health care services:

Nursing

Chautauqua County Department of Health currently operates a Diagnostic and Treatment Center, Chautauqua County Home (residential health care facility), and Chautauqua County Office of Mental Hygiene.

The Bureau of Quality Assurance and Surveillance has indicated the following:

Chautauqua County Home was fined \$10,000 pursuant to a stipulation and order dated March 11, 2011 for surveillance findings of January 6, 2009. Deficiencies were found under 10 NYCRR 415.12 Quality of Care.

The information provided by the Bureau of Quality Assurance and Surveillance has indicated that the residential health care facility reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the Division of Certification and Surveillance has indicated that the diagnostic and treatment center reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the Office of Mental Health has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

Since the applicant is a public entity, it is not subject to a character and competence review.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: June 21, 2011

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Schuyler County Public Health Department
Address: Watkins Glen
County: Schuyler
Structure: Public
Application Number: 2024-L

Description of Project:

Schuyler County Public Health Department requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The county currently operates a certified home health agency which they are planning on selling. Schuyler County is requesting approval to open a licensed home care services agency to enable the county to continue to provide essential public health nursing services.

The applicant proposes to serve the residents of Schuyler County from an office located at 106 South Perry Street, Watkins Glen, New York 14891.

The applicant proposes to provide the following health care services:

Nursing

Schuyler County currently operates a Certified Home Health Agency and a Diagnostic and Treatment Center.

The Bureau of Quality Assurance and Licensure has indicated the following:

Schuyler County Home Health Agency was fined \$3,000 pursuant to a stipulation and order dated July 6, 2007 for surveillance findings of June 12, 2006. Deficiencies were found under 10 NYCRR 763.4(a) and (h) Policies and Procedures of Service Delivery, 763.6(a) and (b) Patient Assessment and Plan of Care, and 763.11(a) and (b) Governing Authority.

The information provided by the Bureau of Quality Assurance and Licensure has indicated that the certified home health agency reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the Division of Certification and Surveillance has indicated that the diagnostic and treatment center reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

Since the applicant is a public entity, it is not subject to a character and competence review.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: June 21, 2011

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Lewis County Public Health Licensed Home Care Agency
Address: Lowville
County: Lewis
Structure: Public
Application Number: 2025-L

Description of Project:

Lewis County Public Health Department requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The county currently operates a certified home health agency which they are planning on selling. Lewis County is requesting approval to open a licensed home care services agency to enable the county to continue to provide essential public health nursing services.

The applicant proposes to serve the residents of Lewis County from an office located at 7785 North State Street, Lowville, New York 13367.

The applicant proposes to provide the following health care services:

Nursing Nutrition

Lewis County currently operates a Certified Home Health Agency, a Hospice and a Diagnostic and Treatment Center.

The information provided by the Bureau of Quality Assurance and Licensure has indicated that the certified home health agency and hospice reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the Division of Certification and Surveillance has indicated that the diagnostic and treatment center reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

Since the applicant is a public entity, it is not subject to a character and competence review.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: June 21, 2011

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Crestwood Health Care Center, Inc.
d/b/a Elderwood Assisted Living at Crestwood
Address: Niagara Falls
County: Niagara
Structure: For-Profit
Application Number: 1884L

Description of Project:

Crestwood Health Care Center, Inc. d/b/a Elderwood Assisted Living at Crestwood, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

This application is requesting approval to establish a licensed home care services agency (LHCSA) associated with a new Assisted Living Program (ALP). This LHCSA will be associated with Crestwood Health Care Center, Inc. d/b/a Elderwood Assisted Living at Crestwood. This project is part of an approved HEAL-NY Phase 12 grant application.

The applicant has authorized 200 shares of stock which are owned as follows:

| | |
|---|---|
| Robert M. Chur – NHA – 132 shares – 66% President/CEO, Elderwood Senior Care | Carol L. Chur– 50 shares – 25% Elderwood Senior Care |
| Kelly E. Henry – 9 shares – 4.5% | Carla A. Suero – 9 shares – 4.5% |

Neither Kelly E. Henry nor Carla A. Suero are subject to Character and Competency review because they own less than 10% of the corporation.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of Niagara County from an office located at 2600 Niagara Falls Blvd, Niagara, New York 14304:

The applicant proposes to provide the following health care services:

| | | |
|---------------------------|----------------------|-------------------------|
| Nursing | Home Health Aide | Personal Care |
| Physical Therapy | Occupational Therapy | Respiratory Therapy |
| Speech-Language Pathology | Audiology | Medical Social Services |
| Nutrition | Housekeeper | |

A 10 year review of the operations of the following facilities was performed as part of this review (unless otherwise noted):

Elderwood Health Care at Heathwood – RHCF
Elderwood Health Care at Lakewood – RHCF
Elderwood Health Care at Birchwood – RHCF
Elderwood Health Care at Riverwood – RHCF
Elderwood Health Care at Maplewood – RHCF
Elderwood Health Care at Oakwood – RHCF
Elderwood Health Care at Crestwood – RHCF
Elderwood Health Care at Linwood – RHCF

Elderwood Health Care at Wedgewood – RHCF
Elderwood Health Care at Tioga – RHCF (1/08 - present)
Elderwood Assisted Living at Tioga – Enriched Housing Program/Assisted Living Program (01/08 – present)
Elderwood Village at Glenwood – Enriched Housing Program
Elderwood Village at Maplewood – Adult Home/Assisted Living Program
Elderwood Village at Rosewood – Enriched Housing Program/Assisted Living Program
Elderwood Village at Westwood – Enriched Housing Program/Assisted Living Program
Elderwood Assisted Living at Penfield – Enriched Housing Program/Assisted Living Program (04/10 - present)
Elderwood Assisted Living at Penfield – LHCSA (04/10 - present)
Elderwood Assisted Living at Tioga – LHCSA (01/08 - present)
Elderwood Village at Maplewood – LHCSA (05/02 – present)
Rosewood Village, Inc. – LHCSA
Westwood Village, Inc. – LHCSA
Woodmark Pharmacy Inc.
Woodmark Services, Inc. – Durable Medical Equipment
Elderwood Village of Dover, LLC – Assisted Living (6/99 – 4/02) State of Delaware

The Bureau of Quality Assurance and Surveillance for Nursing Homes has indicated the following:

Birchwood Health Care Center, Inc. was fined six thousand dollars (\$6,000.00) pursuant to a stipulation and order dated October 9, 2002 for surveillance findings of January 11, 2002. Deficiencies were found under 10 NYCRR 415.12(c) Quality of Care: Pressure Sores, 10 NYCRR 415.12(j) Quality of Care: Hydration and 10 NYCRR 415.26 Organization and Administration.

Lakewood Health Care Center, Inc. was fined two thousand dollars (\$2,000.00) pursuant to a stipulation and order dated April 9, 2004 for surveillance findings of November 27, 2001. Deficiencies were found under 10 NYCRR 415.12 Quality of Care.

Wedgewood Health Care Center, LLC was fined eight thousand dollars (\$8,000.00) pursuant to a stipulation and order dated November 13, 2003 for surveillance findings of June 6, 2001 and January 2, 2003. Deficiencies were found in the following areas:

- June 6, 2001 – 10 NYCRR 415.4(b) Resident Behavior and Facility Practices: Staff Treatment of Residents; 10 NYCRR 415.12 Quality of Care; 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.
- January 2, 2003 – 10 NYCRR 415.12(j) Quality of Care: Hydration.

Elderwood Health Care at Tioga, LLC was fined two thousand dollars (\$2,000.00) pursuant to a stipulation and order dated January 27, 2010 for surveillance findings of December 12, 2008. Deficiencies were found under 10 NYCRR 415.12 Quality of Care.

A review of the above listed facilities has determined that all of the facilities have exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the out-of-state regulatory agency in the state of Delaware indicates there have not been any enforcement actions the Assisted Living entity.

The information provided by the Bureau of Quality Assurance and Licensure has indicated that the Licensed Home Care Services Agency's provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent code violations.

The information provided by the Bureau of Adult Care Facility Quality and Surveillance has indicated that the Adult Homes, Enriched Housing Programs and Assisted Living Programs reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The Bureau of Professional Credentialing has indicated that Robert Chur holds a NYS Nursing Home Administrator license #02692, issued January 1, 1976. He is currently registered and in good standing. The Board of Examiners has never taken disciplinary action against this individual or his license. The license is registered through December 31, 2011.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval

Date: June 23, 2011

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Heathwood Health Care Center, Inc.
d/b/a Elderwood Assisted Living at Heathwood
Address: Williamsville
County: Erie
Structure: For-Profit
Application Number: 1910L

Description of Project:

Heathwood Health Care Center, Inc. d/b/a Elderwood Assisted Living at Heathwood, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

This application is requesting approval to establish a licensed home care services agency (LHCSA) associated with a new Assisted Living Program (ALP). This LHCSA will be associated with Heathwood Health Care Center d/b/a Elderwood Assisted Living at Heathwood. This project is part of an approved HEAL-NY Phase 12 grant application.

The applicant has authorized 200 shares of stock which are owned as follows:

Robert M. Chur – NHA – 200 shares
President/CEO, Elderwood Senior Care

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of Erie County from an office located at 815 Hopkins Road, Williamsville, New York 14221:

The applicant proposes to provide the following health care services:

| | | |
|---------------------------|----------------------|-------------------------|
| Nursing | Home Health Aide | Personal Care |
| Physical Therapy | Occupational Therapy | Respiratory Therapy |
| Speech-Language Pathology | Audiology | Medical Social Services |
| Nutrition | Housekeeper | |

A 10 year review of the operations of the following facilities was performed as part of this review (unless otherwise noted):

Elderwood Health Care at Heathwood – RHCF
Elderwood Health Care at Lakewood – RHCF
Elderwood Health Care at Birchwood – RHCF
Elderwood Health Care at Riverwood – RHCF
Elderwood Health Care at Maplewood – RHCF
Elderwood Health Care at Oakwood – RHCF
Elderwood Health Care at Crestwood – RHCF
Elderwood Health Care at Linwood – RHCF
Elderwood Health Care at Wedgewood – RHCF
Elderwood Health Care at Tioga – RHCF (1/08 - present)
Elderwood Assisted Living at Tioga – Enriched Housing Program/Assisted Living Program (01/08 – present)
Elderwood Village at Glenwood – Enriched Housing Program

Elderwood Village at Maplewood – Adult Home/Assisted Living Program
Elderwood Village at Rosewood – Enriched Housing Program/Assisted Living Program
Elderwood Village at Westwood – Enriched Housing Program/Assisted Living Program
Elderwood Assisted Living at Penfield – Enriched Housing Program/Assisted Living Program
(04/10 - present)
Elderwood Assisted Living at Penfield – LHCSA (04/10 - present)
Elderwood Assisted Living at Tioga – LHCSA (01/08 - present)
Elderwood Village at Maplewood – LHCSA (05/02 – present)
Rosewood Village, Inc. – LHCSA
Westwood Village, Inc. – LHCSA
Woodmark Pharmacy Inc.
Woodmark Services, Inc. – Durable Medical Equipment
Elderwood Village of Dover, LLC – Assisted Living (6/99 – 4/02) State of

The Bureau of Quality Assurance and Surveillance for Nursing Homes has indicated the following:

Birchwood Health Care Center, Inc. was fined six thousand dollars (\$6,000.00) pursuant to a stipulation and order dated October 9, 2002 for surveillance findings of January 11, 2002. Deficiencies were found under 10 NYCRR 415.12(c) Quality of Care: Pressure Sores, 10 NYCRR 415.12(j) Quality of Care: Hydration and 10 NYCRR 415.26 Organization and Administration.

Lakewood Health Care Center, Inc. was fined two thousand dollars (\$2,000.00) pursuant to a stipulation and order dated April 9, 2004 for surveillance findings of November 27, 2001. Deficiencies were found under 10 NYCRR 415.12 Quality of Care.

Wedgewood Health Care Centre, LLC was fined eight thousand dollars (\$8,000.00) pursuant to a stipulation and order dated November 13, 2003 for surveillance findings of June 6, 2001 and January 2, 2003. Deficiencies were found in the following areas:

- June 6, 2001 – 10 NYCRR 415.4(b) Resident Behavior and Facility Practices: Staff Treatment of Residents; 10 NYCRR 415.12 Quality of Care; 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.
- January 2, 2003 – 10 NYCRR 415.12(j) Quality of Care: Hydration.

Elderwood Health Care at Tioga, LLC was fined two thousand dollars (\$2,000.00) pursuant to a stipulation and order dated January 27, 2010 for surveillance findings of December 12, 2008. Deficiencies were found under 10 NYCRR 415.12 Quality of Care.

A review of the above listed facilities has determined that all of the facilities have exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the out-of-state regulatory agency in the state of Delaware indicates there have not been any enforcement actions the Assisted Living entity.

The information provided by the Bureau of Quality Assurance and Licensure has indicated that the Licensed Home Care Services Agency's provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent code violations.

The information provided by the Bureau of Adult Care Facility Quality and Surveillance has indicated that the Adult Homes, Enriched Housing Programs and Assisted Living Programs reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The Bureau of Professional Credentialing has indicated that Robert Chur holds a NYS Nursing Home Administrator license #02692, issued January 1, 1976. He is currently registered and in good standing. The Board of Examiners has never taken disciplinary action against this individual or his license. The license is registered through December 31, 2011.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval

Date: June 23, 2011

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Elderwood Assisted Living at Riverwood, Inc.
Address: Williamsville
County: Erie
Structure: For-Profit
Application Number: 1981-L

Description of Project:

Elderwood Assisted Living at Riverwood, Inc. a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

This application is requesting approval to establish a licensed home care services agency (LHCSA) associated with a new Assisted Living Program (ALP). This LHCSA will be associated with Elderwood Assisted Living at Riverwood, Inc. This project is part of an approved HEAL-NY Phase 12 grant application.

The applicant has authorized 200 shares of stock which are owned as follows:

| | |
|---|---------------------------------|
| Robert M. Chur – NHA – 150 shares – 75% | Carol L. Chur – 50 shares – 25% |
| President/CEO, Elderwood Senior Care | Retired |

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of Erie County from an office located at 7 Limestone Drive, Williamsville, New York, 14221

The applicant proposes to provide the following health care services:

| | | |
|-------------------------|---------------------|---------------------------|
| Nursing | Home Health Aide | Physical Therapy |
| Occupational Therapy | Respiratory Therapy | Speech-Language Pathology |
| Medical Social Services | Nutrition | Housekeeper |

A 10 year review of the operations of the following facilities was performed as part of this review (unless otherwise noted):

Elderwood Health Care at Heathwood – RHCF
Elderwood Health Care at Lakewood – RHCF
Elderwood Health Care at Birchwood – RHCF
Elderwood Health Care at Riverwood – RHCF
Elderwood Health Care at Maplewood – RHCF
Elderwood Health Care at Oakwood – RHCF
Elderwood Health Care at Crestwood – RHCF
Elderwood Health Care at Linwood – RHCF
Elderwood Health Care at Wedgewood – RHCF
Elderwood Health Care at Tioga – RHCF (1/08 - present)
Elderwood Assisted Living at Tioga – Enriched Housing Program/Assisted Living Program (01/08 – present)
Elderwood Village at Glenwood – Enriched Housing Program
Elderwood Village at Maplewood – Adult Home/Assisted Living Program
Elderwood Village at Rosewood – Enriched Housing Program/Assisted Living Program
Elderwood Village at Westwood – Enriched Housing Program/Assisted Living Program

Elderwood Assisted Living at Penfield – Enriched Housing Program/Assisted Living Program (04/10 - present)
Elderwood Assisted Living at Penfield – LHCSA (04/10 - present)
Elderwood Assisted Living at Tioga – LHCSA (01/08 - present)
Elderwood Village at Maplewood – LHCSA (05/02 – present)
Rosewood Village, Inc. – LHCSA
Westwood Village, Inc. – LHCSA
Woodmark Pharmacy Inc.
Woodmark Services, Inc. – Durable Medical Equipment
Elderwood Village of Dover, LLC – Assisted Living (6/99 – 4/02) State of

The Bureau of Quality Assurance and Surveillance for Nursing Homes has indicated the following:

Birchwood Health Care Center, Inc. was fined six thousand dollars (\$6,000.00) pursuant to a stipulation and order dated October 9, 2002 for surveillance findings of January 11, 2002. Deficiencies were found under 10 NYCRR 415.12(c) Quality of Care: Pressure Sores, 10 NYCRR 415.12(j) Quality of Care: Hydration and 10 NYCRR 415.26 Organization and Administration.

Lakewood Health Care Center, Inc. was fined two thousand dollars (\$2,000.00) pursuant to a stipulation and order dated April 9, 2004 for surveillance findings of November 27, 2001. Deficiencies were found under 10 NYCRR 415.12 Quality of Care.

Wedgewood Health Care Center, LLC was fined eight thousand dollars (\$8,000.00) pursuant to a stipulation and order dated November 13, 2003 for surveillance findings of June 6, 2001 and January 2, 2003. Deficiencies were found in the following areas:

- June 6, 2001 – 10 NYCRR 415.4(b) Resident Behavior and Facility Practices: Staff Treatment of Residents; 10 NYCRR 415.12 Quality of Care; 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.
- January 2, 2003 – 10 NYCRR 415.12(j) Quality of Care: Hydration.

Elderwood Health Care at Tioga, LLC was fined two thousand dollars (\$2,000.00) pursuant to a stipulation and order dated January 27, 2010 for surveillance findings of December 12, 2008. Deficiencies were found under 10 NYCRR 415.12 Quality of Care.

A review of the above listed facilities has determined that all of the facilities have exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the out-of-state regulatory agencies in the state of Delaware indicates there have not been any enforcement actions against the Assisted Living entity.

The information provided by the Bureau of Quality Assurance and Licensure has indicated that the Licensed Home Care Services Agency's provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent code violations.

The information provided by the Bureau of Adult Care Facility Quality and Surveillance has indicated that the Adult Homes, Enriched Housing Programs and Assisted Living Programs reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The Bureau of Professional Credentialing has indicated that Robert Chur holds a NYS Nursing Home Administrator license #02692, issued January 1, 1976. He is currently registered and in good standing. The Board of Examiners has never taken disciplinary action against this individual or his license. The license is registered through December 31, 2011.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval

Date: June 23, 2011

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 21st day of July, 2011, having considered any advice offered by the staff of the New York State Department of Health and the Establishment and Project Review Committee of the Council, and after due deliberation, hereby approves the following applications for licensure, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

| <u>NUMBER:</u> | <u>FACILITY:</u> |
|----------------|--|
| 1708 L | Jules Home HealthCare, Inc. (Bronx, Westchester, Kings, New York and Queens Counties) |
| 1731 L | Tradition, LLC (Bronx, Richmond, Kings, New York and Queens Counties) |
| 1849 L | Caring Hands Home Care Services, Inc. (New York, Kings, Bronx, Queens, Richmond, and Nassau Counties) |
| 1892 L | 1 st Aide Home Care, Inc. (New York, Kings, Bronx, Queens, and Richmond Counties) |
| 1918 L | Caring Touch Homecare, Inc. (Bronx, Queens, Kings, Richmond, Nassau and New York Counties) |
| 1931 L | JARME Home and Healthcare Services Corporation (Kings, Queens, Bronx, Westchester, and Richmond Counties) |

Counties)

- 1990 L Meadowbrook Terrace, Inc.
(Jefferson County)
- 1966 L Chautauqua County Department of Health
(Chautauqua County)
- 2024 L Schuyler County Public Health Department
(Schuyler County)
- 2025 L Lewis County Public Health Licensed Home Care
Service Agency
(Lewis County)
- 1924 L Signature Care, LLC
(Bronx, New York, Kings, Queens, Nassau and
Richmond Counties)
- 1580 L Direct Home Care, Inc.
(Bronx, Queens, Kings, New York and Richmond
Counties)
- 1737 L Reliable Choice Home Health Care, Inc.
(Nassau, Queens and Suffolk Counties)
- 1806 L Elite Home Services, LLC
(New York, Bronx, Kings, Richmond, Queens and
Westchester Counties)
- 1916 L ADJ Wisdom Home Care, Inc.
(Bronx, Queens, Kings, Richmond, Nassau and New
York Counties)
- 1930 L Maplewood Home Care, LLC d/b/a Maplewood Home
Care
(Monroe, Livingston, Wayne, Orleans, and Ontario
Counties)
- 1942 L Glorious Home Care Agency
(Bronx, Richmond, Kings, Westchester, New York, and
Queens)

- 1948 L Liberty Resources, Inc.
(Broome, Cortland, Lewis, Onondaga, Tioga, Cayuga, Herkimer, Madison, Oswego, Tompkins, Chenango, Jefferson, Oneida, St. Lawrence, Dutchess, Rockland, Westchester, Orange, Sullivan, Putman, and Ulster Counties)
- 1884 L Crestwood Health Care Center, Inc. d/b/a Elderwood Assisted Living at Crestwood
(Niagara County)
- 1910 L Heathwood Health Care Center, Inc. d/b/a Elderwood Assisted Living at Heathwood
(Erie County)
- 1981 L Elderwood Assisted Living at Riverwood, Inc.
(Erie County)
- 1908 L Greater Harlem Nursing Home and Rehabilitation Center, Inc., d/b/a Greater Harlem Licensed Home Care Services Agency
(Bronx, New York, Kings, Queens, Richmond and Westchester Counties)
- 1722-L AZA Home Health Care, LLC
(Bronx, Queens, Kings, Richmond, Nassau and New York Counties)
- 1974-L Light 101, Inc.
(New York, Westchester, Kings, Richmond, Queens, and Bronx Counties)
- 1926-L Doral Investor's Group, LLC d/b/a House Calls Home Care
(Bronx, Richmond, Kings, Westchester, New York and Queens Counties)

**New York State Department of Health
Public Health and Health Planning Council**

August 4, 2011

**B. APPLICATIONS FOR ESTABLISHMENT AND
CONSTRUCTION OF HEALTH CARE FACILITIES**

CATEGORY 2: Applications Recommended for Approval with the Following:

- ❖ PHHPC Member Recusals
- ❖ Without Dissent by HSA
- ❖ Without Dissent by Establishment and Project Review Committee

CON Applications

Ambulatory Surgery Center – Establish/Construct

Exhibit #12

| | <u>Number</u> | <u>Applicant/Facility</u> | <u>E.P.R.C. Recommendation</u> |
|----|----------------------|---|---------------------------------------|
| 1. | 111076 B | QEASC, LLC (Queens County) Interest – Dr. Martin Interest – Dr. Sullivan | Contingent Approval |
| 2. | 111165 B | Queens Boulevard GI, LLC (Queens County) Interest – Dr. Martin Interest – Dr. Sullivan | Contingent Approval |
| 3. | 111196 B | Syracuse Surgery Center, LLC (Onondaga County) Interest – Mr. Booth | Contingent Approval |

Diagnostic and Treatment Centers – Establish/Construct**Exhibit #13**

| <u>Number</u> | <u>Applicant/Facility</u> | <u>E.P.R.C. Recommendation</u> |
|---------------|---|--------------------------------|
| 1. 081059 B | Menorah Campus Health Services, Inc. (Erie County) Interest – Mr. Fassler | Contingent Approval |

Hospice – Establish/Construct**Exhibit #14**

| <u>Number</u> | <u>Applicant/Facility</u> | <u>E.P.R.C. Recommendation</u> |
|---------------|--|--------------------------------|
| 1. 102454 E | Compassionate Care Hospice of New York, Inc. (Bronx County) Interest – Ms. Regan | Contingent Approval |

Residential Health Care Facilities – Establish/Construct**Exhibit #15**

| <u>Number</u> | <u>Applicant/Facility</u> | <u>E.P.R.C. Recommendation</u> |
|---------------|---|--------------------------------|
| 1. 092035 E | Park Avenue Operating Co., LLC d/b/a Park Avenue Extended Care Facility (Nassau County) Recusal – Mr. Fensterman | Approval |
| 2. 092037 E | Nassau Operating Co., LLC d/b/a Nassau Extended Care Facility (Nassau County) Recusal – Mr. Fensterman | Approval |
| 3. 092038 E | Townhouse Operating Co., LLC d/b/a Townhouse Center for Rehabilitation and Nursing (Nassau County) Recusal – Mr. Fensterman | Contingent Approval |
| 4. 092041 E | Throgs Neck Operating Co., LLC d/b/a Throgs Neck Extended Care Facility (Bronx County) Recusal – Mr. Fensterman | Approval |

| | | | |
|----|----------|---|---------------------|
| 5. | 092077 E | Bayview Nursing and Rehabilitation Center (Nassau County) Recusal – Mr. Fensterman | Contingent Approval |
| 6. | 111132 E | Amerifalls, LLC d/b/a Niagara Rehabilitation and Nursing Center (Niagara County) Recusal – Mr. Fensterman | Contingent Approval |
| 7. | 111170 E | JOPAL, Bronx, LLC (Bronx County) Recusal – Mr. Fensterman | Contingent Approval |

Certificates

Certificate of Dissolution

Exhibit #16

Applicant

E.P.R.C. Recommendation

1. MTC Senior Housing, Inc.
Recusal – Mr. Fassler

Approval

HOME HEALTH AGENCY LICENSURES

Exhibit #17

Number

Applicant/Facility

E.P.R.C. Recommendation

| | | |
|--------|--|---------------------|
| 1708 L | Jules Home HealthCare, Inc. Interest - Ms. Regan | Contingent Approval |
| 1731 L | Tradition, LLC Interest - Mr. Fassler Interest - Ms. Regan | Contingent Approval |
| 1849 L | Caring Hands Home Care Services, Inc. Interest - Ms. Regan | Contingent Approval |
| 1892 L | 1 st Aide Home Care, Inc. Interest - Ms. Regan | Contingent Approval |
| 1918 L | Caring Touch Homecare, Inc. Interest - Ms. Regan | Contingent Approval |

| | | |
|--------|--|---------------------|
| 1931 L | JARME Home and Healthcare Services Corporation Interest - Ms. Regan | Contingent Approval |
| 1924 L | Signature Care, LLC Interest - Ms. Regan | Contingent Approval |
| 1580 L | Direct Home Care, Inc. Interest - Ms. Regan | Contingent Approval |
| 1737 L | Reliable Choice Home Health Care, Inc. Interest - Ms. Regan | Contingent Approval |
| 1806 L | Elite Home Services, LLC Interest - Ms. Regan | Contingent Approval |
| 1916 L | ADJ Wisdom Home Care, Inc. Interest - Ms. Regan | Contingent Approval |
| 1930 L | Maplewood Home Care, LLC d/b/a Maplewood Home Care Recusal - Ms. Hines Interest - Mr. Booth Interest - Ms. Regan | Contingent Approval |
| 1942 L | Glorious Home Care Agency Interest - Ms. Regan | Contingent Approval |
| 1948 L | Liberty Resources, Inc. Interest - Ms. Regan | Contingent Approval |
| 1908 L | Greater Harlem Nursing Home and Rehabilitation Center, Inc., d/b/a Greater Harlem Licensed Home Care Services Agency Interest - Mr. Fassler Interest - Dr. Palmer Interest - Ms. Regan | Contingent Approval |
| 1722 L | AZA Home Health Care, LLC Interest - Ms. Regan | Contingent Approval |
| 1974 L | Light 101, Inc. Interest - Ms. Regan | Contingent Approval |

1926 L

Doral Investor's Group, LLC d/b/a Contingent Approval
House Calls Home Care
Interest - Ms. Regan



Public Health and Health Planning Council

Project # 111076-B

QEASC, LLC

County: Queens (Fresh Meadows)
Purpose: Establishment and Construction

Program: Ambulatory Surgery Center
Submitted: January 6, 2011

Executive Summary

Description

QEASC, a recently-formed limited liability company to be renamed Queens Endoscopy ASC, LLC requests approval to establish a diagnostic and treatment center, to be located in leased space at 175-15 Horace Harding Expressway, Fresh Meadows. QEASC will be certified as a single-specialty freestanding ambulatory center (FASC) in the discipline of gastroenterology, providing endoscopy and colonoscopy services.

The proposed members of QEASC, LLC consists of ten members, two of which are investors and eight are practicing gastroenterologists. The proposed members and their ownership interests are as follows:

| <i>Proposed Membership</i> | |
|------------------------------|---------------|
| Jordan C Fowler | 3.715% |
| Oleg Gutnik, M.D. | 3.715% |
| Armand V. Asadourian, M.D. | 6.380% |
| Neil M. Brodsky, M.D. | 13.790% |
| Rom M, Gupta, M.D. | 13.790% |
| Donald J. Palmadessa, M.D. | 13.790% |
| James A. Rand, M.D. | 16.980% |
| H. Alan Schnall, M.D. | 13.790% |
| Nicholas Triantafillou, M.D. | 9.550% |
| Arthur J. Vogelman, M.D. | <u>4.500%</u> |
| Total | 100.00% |

Jordan Fowler and Oleg Gutnik, M.D. are investors in the proposed FASC and equal owners in Frontier Healthcare Management Services, LLC, the Administrative Services Agreement provider.

No responses were received to the Department's inquiry to local hospitals regarding the impact of the proposed ASC in the service area.

Total project costs are estimated at \$2,061,465.

DOH Recommendation

Contingent approval for a 5-year limited life.

Need Summary

The FASC projects 10,065 procedures to be performed in year one and 11,071 in year three. All of the procedures to be done at the center are presently performed in the participating physicians' offices but could be better provided in a structured ASC environment.

Program Summary

The information reviewed revealed nothing which would reflect adversely upon the applicant's character and competence or standing in the community.

QEASC, LLC has entered into a transfer and affiliation agreement for backup services with New York Hospital Medical Center of Queens, which is two miles or three minutes away.

Financial Summary

Project costs will be met a \$1,855,000 loan (5 yrs. @ 4.5%) and member's personal investment of \$206,465.

| | | |
|----------------|---------------------|------------------|
| Budget: | <i>Revenues:</i> | \$ 4,982,387 |
| | <i>Expenses:</i> | <u>3,076,355</u> |
| | <i>Gain/(Loss):</i> | \$ 1,906,032 |

Subject to noted contingencies, it appears the applicant has demonstrated the capability to proceed in a financially feasible manner

Architectural Summary

The FASC will be located on the cellar and first floor levels of an existing single-story, plus cellar, commercial office building in Queens. The floor area to be renovated is approximately 6,640 SF. The program will have 4 endoscopic procedure rooms, along with a pre-op and recovery area with 8 recovery bays. A 24-hour central station fire alarm system will be provided and the facility will be fully sprinklered. A new elevator will also be installed, which will meet ADA compliance.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval for a limited life of 5 years from the date of issuance of an operating certificate is recommended contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the Department of Health beginning in the second year of operation. Said reports shall include:
 - Data showing actual utilization including procedures;
 - Data showing breakdown of visits by payor source;
 - Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
 - Data showing number of emergency transfers to a hospital;
 - Data showing percentage of charity care provided, and
 - Number of nosocomial infections recorded during the year in question. [RNR]
3. Submission by the governing body of the ambulatory surgery center of an organizational Mission Statement, which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations such as racial and ethnic minorities, women, and handicapped persons and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
4. Submission of a statement from the applicant, acceptable to the Department, that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with consultation of the legal counsel, and it is concluded that proceeding with the proposal is acceptable. [RNR]
5. Submission of a loan commitment acceptable to the Department. [BFA]
6. Submission of a working capital loan commitment acceptable to the Department. [BFA]
7. Submission of an executed lease agreement acceptable to the Department. [BFA, CSL]
8. Submission of an executed administrative services agreement acceptable to the Department. [BFA]
9. Submission of an executed development services agreement acceptable to the Department. [BFA]
10. Submission of a completed Schedule 3B of the certificate of need application which is acceptable to the Department. [CSL]

Approval conditional upon:

1. Staff of the facility must be separate and distinct from staff of other entities. [HSP]
2. Signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
3. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
4. The clinical space must be used exclusively for the approved purposes. [HSP]
5. The submission of State Hospital Code (SHC) Drawings for review, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
6. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the start of construction. [AER]
7. The applicant shall complete construction by May 1, 2013. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

August 4, 2011.

Need Analysis

Background

The projected number of procedures to be performed at the proposed facility is 10,065 in year one and 11,071 in year three.

All of the procedures to be done at the center are presently performed in the participating physicians' offices but could be better provided in a structured ASC environment. Each of the practicing physicians at the ASC will continue to perform inpatient and outpatient gastroenterological procedures that are more appropriately performed in a general hospital setting at the hospitals at which they now are affiliated.

Queens Endoscopy ASC is committed to serving all persons in need of endoscopic care without regard to race, sex, age, religion, creed, sexual orientation, ability to pay, source of payment or other personal characteristics. As evidence of the commitment, the operating budget is projecting 2.5 percent for charity care provision.

Analysis

The service area includes zip codes 11365, 11358, 11361, 11362, 11366, and 11367 in Queens County.

The total population of the primary service area is 178,503. Approximately 16% or 29,078, of these persons are Medicaid recipients. Of these Medicaid recipients, 55 percent are enrolled in HMOs, and the remaining 45 percent are enrolled in the fee-for-service Medicaid plan.

The fee-for-service Medicaid patients had 4.3 primary care visits per person per year compared to the statewide average of 5.77 visits per year. (Medicaid Data 2008).

| 111076 QEASC, LLC- Population Base – 178,503 | | | | | |
|---|---------------------------|----------------|-------------------------------|----------------------------|------------------------------------|
| ZIP CODE | Total Medicaid Recipients | HMO Enrollment | MA Fee for Service Recipients | Annual Primary Care Visits | Primary Care Use per eligible Year |
| 11358 | 5,193 | 2,877 | 2,316 | 7,814 | 3.37 |
| 11361 | 3,412 | 1,583 | 1,829 | 6,486 | 3.55 |
| 11362 | 1,476 | 674 | 802 | 2,570 | 3.21 |
| 11365 | 7,031 | 3,954 | 3,077 | 13,084 | 4.25 |
| 11366 | 2,399 | 1,154 | 1,245 | 7,504 | 6.03 |
| 11367 | 9,568 | 5,715 | 3,853 | 19,578 | 5.08 |
| Total | 29,078 | 15,957 | 13,121 | 57,036 | 4.35 |
| STATEWIDE | | | | | 5.77 |
| M-Caid Recipients as % of Serv Area Pop. | | | | | 16.3% |
| HMO Enroll as % of Total M-Caid recipients | | | | | 54.9% |
| MA Fee for Serv as % of Total M-Caid recipients | | | | | 45.1% |

Source: Medicaid Data 2008

In Queens, the 2008 rate of colon cancer screening is lower at 44 percent than the Take Care NY (TCNY) target of 60 percent. (Source: 'Your Community Your Health,' NYCDOHMH, 2008.)

Queens County has a total of 16 facilities providing ambulatory surgery services as follows:

| <u>Type of Facility</u> | <u>Single Specialty</u> | <u>Multi Specialty</u> |
|-------------------------|-------------------------|------------------------|
| D/TC | 1-Gastroenterology | 0 |
| D/TC | 1-Ophthalmology | 0 |
| D/TC | 0 | 4 |
| Hospital-Based | 0 | 10 |
| Total | 2 | 14 |

Source: HFIS

An overview of gastroenterology ambulatory procedures in Queens County for 2008 and 2009 is given below. The data show an increase of about 3% between 2008 and 2009.

| <u>Ambulatory Surgery Queens County Patients</u> | | |
|---|-------------|-------------|
| <u>Clinical Classification (CCS) Diagnosis Category</u> | <u>2008</u> | <u>2009</u> |
| Cancer of colon | 193 | 171 |
| Cancer of esophagus | 28 | 36 |
| Cancer of other GI organs; peritoneum | 16 | 8 |
| Cancer of rectum and anus | 158 | 113 |
| Cancer of stomach | 51 | 40 |
| Gastritis and duodenitis | 2636 | 2,780 |
| Gastroduodenal ulcer (except hemorrhage) | 142 | 129 |
| Gastrointestinal hemorrhage | 946 | 1,012 |
| Total | 4170 | 4289 |
| % Change 2008-09 | | 2.9% |

Source: SPARCS 2008-09

Conclusion

Based on the current volume of procedures in the applicant physicians' office-based practices and on the number of procedures projected for the proposed ASC, contingent approval is recommended for a limited life of five years from the date of the issuance of an operating certificate.

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Background

This freestanding single-specialty ambulatory surgery center proposes to provide surgical services in the area of gastroenterology utilizing four endoscopic procedures rooms. The Center will be in operation five days a week from 8:00 a.m. to 6:00 p.m. The Center may modify the hours and days of operation to accommodate patient demand.

The list of procedures provided reflects the proposed services are consistent with the specialties of the physicians that have expressed interest in practicing at this Center. Staffing will consist of 16 FTEs under the direction of the medical director, Neil Brodsky. Emergency, in-patient and back-up support services will be provided by New York Hospital Queens which is two miles and five minutes in travel time from the Center.

Compliance with Applicable Codes, Rules and Regulations

The medical staff will ensure that procedures performed at the Center conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and/or expertise. The Center's admissions policy will include anti-discrimination regarding age, race, creed, color, national origin, marital status, sex,

sexual orientation, religion, disability, or source of payment. All procedures will be performed in accordance with all applicable federal and state codes, rules and regulations, including standards for credentialing, anesthesiology services, nursing, patient admission and discharge, a medical records system, emergency care, quality assurance and data requirements.

A sliding fee scale will be in place for those without insurance, and provisions will be made for those who cannot afford services. The governing body intends on using a patient satisfaction measurement tool, and discussions with their patients, to reflect responsiveness to community need, as well as provide continuous, ongoing feedback to the organization for the total quality management improvement program.

Character and Competence

The membership interests of QEASC, LLC are as follows:

| <u>Name</u> | <u>Membership Interest</u> |
|--------------------------|----------------------------|
| Jordan C. Fowler | 3.715% |
| Arthur J. Vogelman, MD | 4.500% |
| James A. Rand, MD | 16.980% |
| Armand V. Asadourian, MD | 6.380% |
| Neil M. Brodsky, MD | 13.790% |
| Rom M. Gupta, MD | 13.790% |
| Donald J. Palmadessa, MD | 13.790% |
| Oleg Gutnik, MD | 3.715% |
| H. Allen Schnall, MD | 13.790% |
| Nicholas Triantafillou | <u>9.550%</u> |
| | 100.00% |

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant’s and relatives’ ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management (relative to Medicaid fraud and abuse), the Office of Professional Medical Conduct, and the Education Department databases.

Dr. Gupta disclosed a three-year OPMC imposed stayed-suspension related to a HIPPA violation. The action expired in 2009. During the three years no restrictions were placed on Dr. Gupta’s license

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action. Based on this information, staff concluded that the facilities have provided a substantially consistent high level of care as defined in New York State Public Health Law 2810(a)(3) and 10NYCRR 600.2 during the past 10 years.

Conclusion

The above reviews revealed nothing which would reflect adversely upon the applicant’s character and competence or standing in the community.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Assignment and Assumption Agreement

Date: January 1, 2011
Agreements: QEASC, LLC Administrative Service Agreement
QEASC, LLC Development Agreement.
Assignor: Omnicare MSO, LLC
Assignee: Frontier Healthcare Management Services, LLC

According to the applicant Omnicare MSO, LLC was the company that organized the physicians into QEASC and was partially owned by Jordan Fowler, an investor in the FASC.

Omnicare MSO, LLC is no longer in existence and all agreements have been assigned to Frontier Healthcare Management Services, LLC, a company equally owned by the FASC's two investing members, Jordan Fowler and Oleg Gutnik, M.D.

Development Service Agreement

The applicant has submitted a draft development services agreement, as summarized below:

Client: The proposed eight practicing physicians in Gastroenterology, which are the third through tenth proposed members shown above.
Contractor: Frontier Healthcare Management Services, LLC
Services Provided: Phase One pre-development activities: determine project objective; develop long-term viability analysis; develop initial financial analysis; structure parameters including, members, financing, physical plant size, location, management, time frame, and equipment needs; ownership parameters including economics, capitalization/financing needs and confirmation of ability to satisfy; review regulatory issues, define material terms; develop joint-venture term sheet; and establish the time-line for completing phases two and three. Phase Two focuses on developing the Certificate of Need and securing its approval. The following services will be provided; development of a business plan, which will include; mission statement, legal organization, market assessment, member profile, demographics, organizational chart, scope of services, identifying competing centers, hospital relationship, geographic markets/service areas, projected volumes, and percentage of business by participating payers. Also obtaining Medicare certification. Phase Three includes operational activities: satisfying contingencies, construction and operational development, and the preparation for State and Federal site-surveys.
Fee: Fee \$150,000 (to be paid equally over 24 months)

Administrative Services Agreement

The applicant has submitted a draft administrative services agreement, as summarized below:

Facility: QEASC, LLC
Contractor: Frontier Healthcare Management Services, LLC
Services Provided: Provide oversight to following functions: staffing & scheduling; accounting, which includes: accounts payable, cashier and banking; purchasing protocols; compliance with policies & procedures; compliance with medical staff by-laws/rules; accreditation; nursing; and administration. Assess business office's policies & procedures. As directed by the company: develop payor contracting strategy, payors' credentialing, negotiate third party contracts and their renewals. Provide summary statistics of all signed contracts and the analysis of payors compliance and performance. Recommend an annual marketing plan with corresponding budget. When requested, conduct an annual strategic planning session. Assist in the preparation of the annual business plan & budget. Provide survey tools to measure and report; patient, employee and surgeon satisfaction to the Board of Managers with follow up on negative feedback. Prepare reports for and attend

Board of Managers meetings. Familiarize Center's staff with the clinical policies and procedures as adopted by the Board of Managers. Through the administrator, attend regular meetings including clinical, operations, patient care and other advisory committees and report the actions and findings of such committees to the Board of Managers. Monitor and report: clinical benchmarks, in coordination with the administrator & director of nursing, monitor quality of care indicators, clinical staffing patterns and risk management program. Educate staff on regulatory and accreditation requirements; assist the administrator in monitoring the completeness of physician credentialing statistics, files and documentation and in credentialing and re-credentialing medical staff members.

Term: 1 year – renewable for three additional one (1) year term
Fee: Annual Fee \$150,000 (1/12 to be paid monthly = \$12,500)

Lease Rental Agreement

The applicant has submitted a letter of interest to lease the proposed site, as summarized below:

Premises: 8,000 gross square feet located at 175-15 Horace Harding Expressway, 1st and 2nd Floors, Fresh Meadows, New York
Landlord: Lana Estates, Inc.
Lessee: QEASC, LLC
Term: 1-15 years at \$256,000 per year (\$32.00 per sq. ft)
Provisions: Utilities

Two letters from licensed real estate agents have been submitted which attest to the rent's reasonableness.

Total Project Cost and Financing

Total project costs for renovation and acquisition of moveable equipment is estimated at \$2,061,465, itemized as follows:

| | |
|----------------------------|---------------|
| Renovation & Demolition | \$1,051,500 |
| Design Contingency | 105,150 |
| Construction Contingency | 105,150 |
| Architect/Engineering Fees | 109,400 |
| Other Fees | 223,000 |
| Movable Equipment | 454,000 |
| CON Application Fee | 2,000 |
| CON Processing Fee | <u>11,265</u> |
| Total Project Cost | \$2,061,465 |

Project costs are based on an October 1, 2011 start date with a five month construction period.

The applicant's financing plan appears as follows:

| | |
|-------------------------------|------------------|
| Cash Equity (Applicant) | \$206,465 |
| Bank Loan (4.5%, 5-year term) | <u>1,855,000</u> |
| Total | \$2,061,465 |

A letter of interest has been provided from TD Bank

Operating Budget

The applicant has submitted first and third years operating budgets, in 2011 dollars, as summarized below:

| | <u>Year One</u> | <u>Year Three</u> |
|-----------|-----------------|-------------------|
| Revenues | \$4,529,443 | \$4,982,387 |
| Expenses: | | |
| Operating | \$2,205,583 | \$2,494,874 |
| Capital | <u>635,131</u> | <u>581,481</u> |

| | | |
|---------------------------|-------------|-------------|
| Total Expenses | \$2,840,714 | \$3,076,355 |
| Net Income or (Loss) | \$1,688,729 | \$1,906,032 |
| Utilization: (procedures) | 10,065 | 11,071 |
| Cost Per Procedure | \$282.24 | \$277.88 |

Utilization by payor source for the first and third years is anticipated as follows:

| | |
|--------------------------|--------|
| Medicaid Fee-For-Service | 1.43% |
| Medicaid Managed Care | 14.47% |
| Medicare Fee-For-Service | 19.85% |
| Medicare Manage Care | 1.44% |
| Commercial Manage Care | 60.21% |
| Private Pay | .10% |
| Charity | 2.50% |

Utilization projections are based upon members' current procedure volume being performed in their office-based-practices, which will be relocated to the more appropriate FASC setting. Each of the practicing physicians has submitted letters in support of their projections. Expense assumptions are based upon staffing patterns appropriate for the projected volume and members' experience in working with similar facilities. The breakeven point is approximately 63% of projected utilization, or 6,350 procedures in the first year and 6,975 procedures in the third year.

Capability and Feasibility

The total project cost of \$2,061,465 will be satisfied by the proposed members contributing \$206,465 from their personal resources, with the balance of \$1,855,000 being provided through a loan from TD Bank at the above stated terms.

Working capital requirements are estimated at \$512,726, which appears reasonable based on two months of third year expenses. The applicant has submitted a letter of interest from TD Bank to finance half of the working capital, or \$256,363 with a five year pay back period at a 3.75% estimated interest rate. The remaining \$256,363 in working capital will come from the members' own financial resources. Presented as BFA Attachment A, are the applicant's personal net worth statements, which indicate sufficient liquid resources to meet the equity and working capital requirements. Presented as BFA Attachment B is QEASC, LLC pro-forma balance sheet that shows operations will start off with \$550,000 in equity, approximately \$87,000 higher than the estimated minimum.

QEASC, LLC projects an operating excess of \$1,688,729 and \$1,906,031 in the first and third years, respectively. Revenues for Medicare and Medicaid were calculated by categorizing the procedures into the appropriate category or group and applying the regionally adjusted rate to the projected volume. The revenues for managed care and commercial payers were based upon obtaining current rate schedules. The budget appears reasonable.

It appears that the applicant has demonstrated the capability to proceed in a financially feasible manner; and contingent approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Architectural Analysis

Background

- Cellar floor (3,320 sf renovation)

The cellar floor will consist of approximately 3,320 sf and will include the reception and filing area, patient waiting area, exam room, pre-admittance area with patient change area and locker room, admitting offices, conference room, staff lounge with lockers, patient and staff toilet rooms, and a storage room.

- First floor (3,320 sf renovation)

The first floor will consist of approximately 3,320 sf and will include (4) procedure rooms, pre-op and recovery area with (8) bays, a centrally located nurse station for visual observance of patients, a decontamination room, scope processing room, scope storage room, other storage rooms, and patient and staff toilet rooms.

Environmental Review

The Department has deemed this project to be a TYPE II Action and will not have a significant effect on the environment. An Environmental Impact Statement is not required. However, any agency that has an interest in this project may make their own independent determination of significance and necessity for an EIS in accordance with the procedures specified within Part 97.8 of Title 10: Rules and Regulations.

Recommendation

From an architectural perspective, approval is recommended.

Attachments

| | |
|------------------|--|
| BFA Attachment A | Personal Net Worth Statement of Proposed Members of QEASC, LLC |
| BFA Attachment B | Pro- forma Balance Sheet of QEASC, LLC |
| BFA Attachment C | Establishment Checklist for Ambulatory Care Sites |
| BHFP Attachment | Map |

Supplemental Information

Outreach

Below are presented summaries of responses by hospitals to letters from the Department asking for information on the impact of the proposed ambulatory surgery center (ASC) in their service areas. There follows a summary of the applicant's response to DOH's request for information on the proposed facility's volume of surgical cases, the sources of those cases, and on how staff will be recruited and retained by the ASC.

Facility: Flushing Hospital and Medical Center
45th Avenue and Parsons Blvd.
Flushing, NY 11355

No response.

Facility: New York Hospital Medical Center of Queens
56-45 Main Street
Flushing, NY 11355

No response.

Facility: Queens Hospital Center
82-68 164th Street
Jamaica, NY 11432

No response.

Supplemental Information from Applicant

- Need and Sources of Cases

Cases will be drawn solely from the current volume of cases now done in each of the participating physicians' office-based surgery practices. Once the facility is established, the physicians will no longer be performing office-based procedures and will perform all cases at the proposed ASC. The applicant also proposes to develop a formal outreach program directed to members of the local community, including area physicians. The purpose of the program will be to inform these groups of the benefits derived from, and the latest advances made in, colon cancer screening, treatment and prevention. The proposed ASC will dedicate a portion of its revenues for the implementation of this program and for charitable care.

- Staff Recruitment and Retention

Measures to recruit and retain skilled staff and counter staff turnover will include attractive compensation and benefits packages, continuing education opportunities, recognition and appreciation programs to reward high performers, and an open work atmosphere that encourages staff involvement and continuous improvement.

- Office-Based Cases

Fully 100 percent of the projected cases for the ASC will be drawn from cases currently performed in office-based settings.

OHSM Comment

The absence of comments from hospitals in the proposed service area provides no basis for reversal or modification of the recommendation for five-year limited life approval of the proposed ASC based on public need, financial feasibility and operator character and competence.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 21st day of July, 2011, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a freestanding single-specialty ambulatory surgery center providing gastroenterological services, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

111076-B

FACILITY/APPLICANT:

QEASC, LLC

APPROVAL CONTINGENT UPON:

Approval for a limited life of 5 years from the date of issuance of an operating certificate is recommended contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the Department of Health beginning in the second year of operation. Said reports shall include:
 - Data showing actual utilization including procedures;
 - Data showing breakdown of visits by payor source;
 - Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
 - Data showing number of emergency transfers to a hospital;
 - Data showing percentage of charity care provided, and
 - Number of nosocomial infections recorded during the year in question. [RNR]
3. Submission by the governing body of the ambulatory surgery center of an organizational Mission Statement, which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations such as racial and ethnic minorities, women, and handicapped persons and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
4. Submission of a statement from the applicant, acceptable to the Department, that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with consultation of the legal counsel, and it is concluded that proceeding with the proposal is acceptable. [RNR]
5. Submission of a loan commitment acceptable to the Department. [BFA]
6. Submission of a working capital loan commitment acceptable to the Department. [BFA]
7. Submission of an executed lease agreement acceptable to the Department. [BFA, CSL]
8. Submission of an executed administrative services agreement acceptable to the Department. [BFA]
9. Submission of an executed development services agreement acceptable to the Department. [BFA]
10. Submission of a completed Schedule 3B of the certificate of need application which is acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. Staff of the facility must be separate and distinct from staff of other entities. [HSP]
2. Signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
3. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
4. The clinical space must be used exclusively for the approved purposes. [HSP]
5. The submission of State Hospital Code (SHC) Drawings for review, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
6. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the start of construction. [AER]
7. The applicant shall complete construction by May 1, 2013. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York 12180-2299



Public Health and Health Planning Council

Project # 111165-B
Queens Boulevard GI, LLC

County: Queens (Forest Hills)
Purpose: Establishment and Construction

Program: Ambulatory Surgery Center
Submitted: January 31, 2011

Executive Summary

Description

Queens Boulevard GI, LLC, (Queens Boulevard), a limited liability company to be renamed Queens Boulevard ASC, LLC, requests approval to establish and construct a single-specialty ambulatory surgery center to perform endoscopy and colonoscopy services. The center will be located in leased space at 79-25 Queens Boulevard, Forest Hills. The new surgery center will include four procedure rooms accommodating the current and future needs of the community.

The proposed members of Queens Boulevard GI, LLC are shown below:

| <u>Proposed Members</u> | |
|-------------------------------------|-----|
| Thomas Izquierdo, M.D. | 46% |
| Azeem Kahn, M.D. | 46% |
| Frontier Healthcare Associates, LLC | 8% |
| -- Jordan C. Fowler (50%) | |
| -- Oleg Gutnik, M.D. (50%) | |

No responses were received to the Department's inquiry to local hospitals regarding the impact of the proposed ASC in the service area.

Total project costs are estimated at \$1,769,545.

DOH Recommendation

Contingent approval for a 5-year limited life.

Need Summary

The projected number of procedures is 6,546 in year one and 7,754 in year two. All of the procedures to be done at the center are presently performed in the participating physicians' offices. Each of the practicing physicians at the ASC will continue to perform inpatient and outpatient gastroenterological procedures that are

more appropriately performed in a general hospital setting at the hospitals at which they now are affiliated.

Program Summary

The information reviewed revealed nothing which would reflect adversely upon the applicant's character and competence or standing in the community.

Emergency, in-patient and back-up support services will be provided by New York Hospital Medical Center of Queens, which is 3.1 miles or 10 minutes in travel time from the Center.

Financial Summary

Project costs will be met with \$179,545 in cash and a \$1,590,000 bank loan at 4.96% for 5 years.

| | | |
|----------------|---------------------|------------------|
| Year 3 Budget: | <i>Revenues:</i> | \$ 3,368,835 |
| | <i>Expenses:</i> | <u>2,842,087</u> |
| | <i>Gain/(Loss):</i> | \$ 526,748 |

Subject to noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Architectural Summary

The proposed single specialty freestanding ambulatory surgery center will be located in approximately 6,000 SF in a single-story building. The facility will have four endoscopic procedure rooms, a pre-op and recovery area with eight recovery bays. An exam room and patient change areas are provided in the pre-admittance area with centrally-located nurse station for visual observance of patients.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval for a limited life of 5 years from the date of issuance of an operating certificate is recommended contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the Department of Health beginning in the second year of operation. Said reports shall include:
 - Data showing actual utilization including procedures;
 - Data showing breakdown of visits by payor source;
 - Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
 - Data showing number of emergency transfers to a hospital;
 - Data showing percentage of charity care provided, and
 - Number of nosocomial infections recorded during the year in question. [RNR]
3. Submission by the governing body of the ambulatory surgery center of an organizational Mission Statement, which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations such as racial and ethnic minorities, women, and handicapped persons and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
4. Submission of a statement from the applicant, acceptable to the Department, that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with consultation of the legal counsel, and it is concluded that proceeding with the proposal is acceptable. [RNR, CSL]
5. Submission of a loan commitment acceptable to the Department. [BFA]
6. Submission of an executed building lease acceptable to the Department. [BFA, CSL]
7. Submission of Articles of Organization that are acceptable to the Department. [CSL]
8. Submission of an Operating Agreement that is acceptable to the Department. [CSL]
9. Submission of an organizational chart that is acceptable to the Department. [CSL]
10. Submission of copies of existing or proposed arrangements showing the contractual restrictions, existing or proposed, on the ability of owners of the applicant to assign, transfer or sell their ownership interest or voting rights in the applicant. [CSL]

Approval conditional upon:

1. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
2. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
3. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
4. The applicant shall complete construction by March 1, 2014. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]
5. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
6. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]

Council Action Date

August 4, 2011.

Need Analysis

Background

Queens Boulevard ASC, LLC will to provide gastroenterological (colonoscopy and endoscopy) procedures and will have four endoscopic procedure rooms.

The projected number of procedures is 6,546 in year one and 7,754 in year two.

All of the procedures to be done at the center are presently performed in the participating physicians' offices. Each of the practicing physicians at the ASC will continue to perform inpatient and outpatient gastroenterological procedures that are more appropriately performed in a general hospital setting at the hospitals at which they now are affiliated.

The center will operate five days per week, 8:00 a.m. to 6:00 p.m.

Queens Boulevard ASC is committed to developing a formal outreach program directed to members of the local community, including area physicians, and will enter into a transfer and affiliation agreement with New York Hospital Medical Center of Queens for the provision of backup services.

Queens Boulevard ASC will serve all persons in need of endoscopic care without regard to race, sex, age, religion, creed, sexual orientation, ability to pay, source of payment or other personal characteristics. As evidence of the commitment, the operating budget is projecting 2.5 percent for charity care provision.

Analysis

The service area includes 11372, 11373, 11374, 11375, 11418, and 11415.

The total population of the primary service area is 348,951. Approximately 26 % or 89,753 persons, are Medicaid recipients. Of these Medicaid recipients, 59 percent are enrolled in HMOs, and the remaining 42 percent are enrolled in the fee-for-service Medicaid plan.

The fee-for-service Medicaid patients had 4.6 primary care visits per person per year vs. the statewide average of 5.77 visits per year. (Medicaid Data 2008).

| 111165 QUEENS BLVD -GI Population 348,951 | | | | | |
|--|--|---------------------------|--|---|---|
| ZIP CODE | Total Medicaid Recipients | HMO Enrollment | MA Fee for Service Recipients | Annual Primary Care Visits | Primary Care Use per eligible Year |
| 11372 | 21,450 | 13,723 | 7,727 | 33,290 | 4.31 |
| 11373 | 32,924 | 20,286 | 12,638 | 45,820 | 3.63 |
| 11374 | 10,388 | 4,799 | 5,589 | 33,730 | 6.04 |
| 11375 | 9,761 | 4,332 | 5,429 | 30,284 | 5.58 |
| 11415 | 4,241 | 2,286 | 1,955 | 11,386 | 5.82 |
| 11418 | 10,989 | 7,070 | 3,919 | 18,030 | 4.6 |
| Total | 89,753 | 52,496 | 37,257 | 172,540 | 4.63 |
| Statewide | | | | | 5.77 |
| M-Caid Recipients as % of Serv Area Pop. | | | | | 25.7% |
| HMO Enroll as % of Total M-Caid recipients | | | | | 58.5% |
| MA Fee for Serv as % of Total M-Caid recipients | | | | | 41.5% |

Medicaid Data 2008

In Queens, the 2008 rate of colon cancer screening is lower at 44 percent than the Take Care NY (TCNY) target of 60 percent. (Source: 'Your Community Your Health,' NYCDOHMH, 2008.)

Queens County has a total of 16 facilities providing ambulatory surgery services as follows:

| <u>Type of Facility</u> | <u>Single Specialty</u> | <u>Multi-Specialty</u> |
|-------------------------|-------------------------|------------------------|
| D/TC | 1-Gastroenterology | 0 |
| D/TC | 1-Ophthalmology | 0 |
| D/TC | 0 | 4 |
| Hospital-Based | 0 | 10 |
| Total | 2 | 14 |
| Source: HFIS | | |

An overview of diagnoses for gastroenterology ambulatory procedures in Queens County for 2008 and 2009 is given below. The data show an increase of about 3% between 2008 and 2009.

| Ambulatory Surgery Queens County : SPARCS 2008-09 | | |
|--|-----------------|-------------|
| <u>Clinical Classification (CCS) Diagnosis Category</u> | Patients | |
| | <u>2008</u> | <u>2009</u> |
| Cancer of colon | 193 | 171 |
| Cancer of esophagus | 28 | 36 |
| Cancer of other GI organs; peritoneum | 16 | 8 |
| Cancer of rectum and anus | 158 | 113 |
| Cancer of stomach | 51 | 40 |
| Gastritis and duodenitis | 2,636 | 2,780 |
| Gastroduodenal ulcer (except hemorrhage) | 142 | 129 |
| Gastrointestinal hemorrhage | 946 | 1,012 |
| Total | 4,170 | 4,289 |
| % Change 2008-09 | | 2.9% |

Based on the current volume of procedures in the applicant physicians' office-based practices and on the number of procedures projected for the proposed ASC, contingent approval for a limited life of five years is recommended.

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Background

Queens Boulevard GI, a limited liability company comprised of four individuals, requests approval to establish a diagnostic and treatment center which will also be federally certified as an ambulatory surgical center at 79-25 Queens Boulevard, Forest Hills. Upon approval the applicant will change their name to Queens Boulevard ASC, LLC.

The list of procedures provided reflects the proposed services are consistent with the specialties of the physicians that have expressed interest in practicing at this Center. The Center intends to review this list annually and as needed to determine the appropriateness of adding new procedures consistent with individual physician expertise.

Staffing will consist of 7 FTEs including registered nurses and technicians, under the supervision of the Center's medical director, Azeem Khan. Staffing is expected to increase to 11 FTEs by the third year of operation.

Emergency, in-patient and back-up support services will be provided by New York Hospital Medical Center of Queens, which is 3.1 miles or 10 minutes in travel time from the Center. An on-call service will be available to address patient concerns during hours when the facility is closed.

Compliance with Applicable Codes, Rules and Regulations

The medical staff will ensure that procedures performed at the Center conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and/or expertise. The Center's admissions policy will include anti-discrimination regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures will be performed in accordance with all applicable federal and state codes, rules and regulations, including standards for credentialing, anesthesiology services, nursing, patient admission and discharge, a medical records system, emergency care, quality assurance and data requirements.

A sliding fee scale will be in place for those without insurance, and provisions will be made for those who cannot afford services. The governing body intends on using a patient satisfaction measurement tool, and discussions with their patients, to reflect responsiveness to community need, as well as provide continuous, ongoing feedback to the organization for the total quality management improvement program.

Character and Competence

The members of the LLC are as follows:

| | |
|-------------------------------------|-----|
| Thomas Izquierdo, MD | 46% |
| Azeem Khan, MD | 46% |
| Frontier Healthcare Associates, LLC | 8% |

The members of Frontier Healthcare Associates, LLC are as follows:

| | |
|------------------|-----|
| Jordan C. Fowler | 50% |
| Oleg Gutnik, MD | 50% |

Each of the four individuals is also a manager.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's and relatives' ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management (relative to Medicaid fraud and abuse), the Office of Professional Medical Conduct, and the Education Department databases.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action. Based on this information, staff concluded that the facilities have provided a substantially consistent high level of care as defined in New York State Public Health Law 2810(a)(3) and 10NYCRR 600.2 during the past 10 years.

The above reviews revealed nothing which would reflect adversely upon the applicant's character and competence or standing in the community.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Background

Presented as BFA Attachment A, are net worth statements for the individuals comprising Queens Boulevard GI, LLC.

Dr. Oleg Gutnik, one of the proposed new members, also has ownership interest in an additional Article 28 ASC facility named Digestive Diseases Diagnostic & Treatment Center LLC. He has only had ownership interest in the facility since April 2009. At this time, the facility has only their draft financial statements for 2010, which are presented as BFA Attachment D. The financials show that the facility has been able to achieve both, a positive working capital and net asset positions as well as a positive net income of \$905,082 for 2010.

The facility will enter into an administrative services agreement with Frontier Healthcare Management LLC to provide services as shown below.

Administrative Services Agreement

Queens Boulevard GI, LLC will enter into an administrative services agreement with Frontier Healthcare Management, LLC. The consultant would provide development, consulting and administrative services for the development of an outpatient endoscopy center.

The applicant has submitted a proposed Administrative Services agreement, which is summarized below:

| | |
|----------------------------------|---|
| <i>Date:</i> | March 3, 2011 |
| <i>Facility:</i> | Queens Boulevard GI, LLC |
| <i>Contractor:</i> | Frontier Healthcare Management, LLC |
| <i>Term:</i> | \$150,000 for administrative services plus an additional 1.5% per year. |
| <i>Adjustment:</i> | Administrative term 1 year with possible 3 year renewal. |
| <i>Duties of the Consultant:</i> | Frontier Healthcare Management, LLC, Inc. as a consultant will provide the following: |

Administrative Services

While Frontier Healthcare Management, LLC will be providing all of the below mentioned services, the Facility retains ultimate control in all of the final decisions associated with the services.

1. Provide executive oversight for the day to day management of the center, which includes oversight of:
(1) Staffing/Scheduling; (2) Accounting, A/P, Cashier, Banking; (3) Ordering/Purchasing Protocols; (4) Compliance with Policies & Procedures; (5) Compliance with Medical Staff By-Laws/Rules; (6) Medical staff Application; (7) Credentialing, Privileging Development; (8) Accreditation; (9) Physical Plant/Materials Management Purchasing; (10) Nursing; (11) Administration; and (12) Billing Department.
2. Provide management of revenue cycle services (billing and collections):
(1) Assessing business office policies and procedures that outline routine daily and month-end processes. (2) Develop payor contracting reimbursement and contracting strategy. (3) Initiate third-party payor contracts negotiations as directed by Company. (4) Ensure completion of process of establishing payor contracts, Center provider credentialing with payors and application of existing contract rates. (5) Coordinate contract renewal and re-negotiation processes with company and third party payor. (6) Provide summary statistics of all signed payor contracts and terms. (7) Provide analysis of payor compliance and performance. (8) Annually make change master increase recommendations to the board of managers and ensure that payors are notified per contract requirements.
3. Provide marketing and network services:
(1) Recommend an annual Center marketing plan with corresponding budget for adoption by company. (2) If requested, conduct an annual strategic planning session with the Board of managers

to determine priorities and direction for the Center. (3) Assist the administrator in the preparation of an annual business plan and budget to be adopted by Company. (4) Provide a survey tool to periodically measure patient satisfaction, tabulate results and report results to the Board of Managers, and follow up on negative feedback as requested by the Board of managers. (5) Provide a survey tool to periodically measure employee satisfaction, tabulate results and report results to the Board of Managers. (6) Provide a survey tool to periodically measure surgeon satisfaction, tabulate results and report results to the Board of Managers, and follow up on negative feedback as requested by the Board of Managers.

4. Attend Board of Managers meetings and prepare reports for meetings, as requested.

5. Provide quality improvement management:

(1) Familiarize the Center staff with the clinical policies and procedures as adopted by the Board of managers. (2) Through the Administrator, attend regular meetings of the clinical, operations, patient care, or other advisory committees to be formed by the Board of managers relating to the day-to-day operations of the center, and report actions and findings of such committees to the Board of Managers. (3) Monitor and report clinical benchmarks of the Center to the Board of Managers. (4) In coordination with Administrator and Director of Nursing, monitor quality of care indicators for the Center. (5) Familiarize the Director of Nursing with appropriate clinical staffing patterns and levels, and monitor clinical hours per case on a monthly basis. (6) Support on-site center management team in educating Center staff regarding regulatory and accreditation requirements of the center. (7) Through the Director of Nursing, monitor the risk management program. (8) Assist the Administrator and staff in monitoring the completeness of physician credentialing statistics, files, and documentation and in credentialing and recredentialing medical staff members as required by the Center's Medical Staff Bylaws. (9) Through the Director of Nursing, ensure that physician preference cards are established and maintained and that necessary supplies and equipment are available, consistent with Company's policies. (10) Emphasize importance of customer service to all center staff members. (11) Maintain open lines of communication between the Center staff, physicians, and physicians' office staffs.

6. Provide strategic planning.

Lease Rental Agreement

The applicant will lease 8,000 square feet at the ground floor of the building at 79-25 Queens Blvd., Elmhurst, New York, under the terms of the lease agreement summarized below:

| | |
|--------------------|---|
| <i>Lessor:</i> | B&S Property Management Group, LLC |
| <i>Lessee:</i> | Queens Boulevard GI, LLC |
| <i>Term:</i> | 10 years plus (1) 10 year renewal term |
| <i>Rental:</i> | \$280,000 Per Year (\$35 per square foot) \$23,333 per month |
| <i>Provisions:</i> | Tenant shall be responsible for utilities, taxes and operating costs. |

Total Project Cost and Financing

Total project costs for renovations and the acquisition of movable equipment is estimated at \$1,769,545, broken down as follows:

| | |
|----------------------------|--------------------|
| Renovation & Demolition | \$1,000,000 |
| Design Contingency | 100,000 |
| Construction Contingency | 100,000 |
| Architect/Engineering Fees | 104,500 |
| Other Fees | 146,975 |
| Movable Equipment | 306,402 |
| Application Fee | 2,000 |
| Additional Processing Fee | 9,668 |
| Total Project Cost | <u>\$1,769,545</u> |

Project costs are based on an October 1, 2011 construction start date and a six month construction period. The applicant's financing plan appears as follows:

| | |
|---------------------------------------|-----------|
| Equity | \$179,545 |
| TD Bank Loan- 4.95% for a 5 year term | 1,590,000 |

Operating Budget

The applicant has submitted an operating budget in 2011 dollars, for the first and third years of operation, summarized below:

| | <u>Year One</u> | <u>Year Three</u> |
|--------------------------|----------------------|----------------------|
| Revenues: | \$2,844,098 | \$3,368,835 |
| Expenses: | | |
| Operating | \$1,663,530 | \$2,168,019 |
| Interest | 143,324 | 96,566 |
| Depreciation and Rent | <u>560,450</u> | <u>577,502</u> |
| Total Expenses | \$2,367,304 | \$2,842,087 |
| Net Income | <u>\$476,794</u> | <u>\$526,748</u> |
| Utilization: (Visit) | 6,546 | 7,754 |
| Cost Per Visit | \$361.64 | \$366.53 |

Utilization by payor source for the first and third years is as follows:

| | |
|--------------------------|--------|
| Commercial Managed Care | 66.59% |
| Medicare Fee For Service | 4.90% |
| Medicare Managed Care | .12% |
| Medicaid Fee-For-Service | 7.80% |
| Medicaid Managed Care | 18.09% |
| Charity Care | 2.50% |

Expense assumptions are based on the experience of two of the members of the LLC; (Mr. Jordan Fowler and Dr. Oleg Gutnik) with similar centers in New York State. Utilization for the first year of operation is based on the participating physicians' volume of cases that the physicians are currently performing.

Capability and Feasibility

The initiation of operations as a financially viable entity will be provided by a loan from TD Bank for \$1,590,000 at the above stated terms. The remainder, \$179,545, will be provided as equity by the proposed members.

Working capital requirements, estimated at \$473,681, appear reasonable based on two months of third year expenses. The facility will provide the total working capital for this project from cash on hand. Presented as BFA Attachment A, is a summary of net worth statement of the proposed members of Queens Boulevard GI, LLC, which indicates the availability of sufficient funds for the stated levels of equity.

Presented as BFA Attachment B, is the pro-forma balance sheet of Queens Boulevard GI, LLC as of the first day of operation, which indicates positive member's equity position of \$379,545. The submitted budget indicates a net income of \$476,794 and \$526,748 would be maintained during the first and third years of operation, respectively.

Subject to the noted contingency, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and contingent approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Architectural Analysis

Background

The proposed single specialty freestanding ambulatory surgery center will be located in approximately 6000 SF in a single story building. The facility will have four endoscopic procedure rooms, a pre-op and recovery area with eight recovery bays. An exam room and patient change areas are provided in the pre-admittance area with centrally located nurse station for visual observance of patients. A waiting area and reception with offices for the admittance of patients is provided with ADA accessible toilet rooms. Ancillary facilities including staff lounge, clean and soiled work rooms and rooms for processing and sterilization of endoscopes will be provided.

Environmental Review:

The Department has deemed this project to be a TYPE II Action and will not have a significant effect on the environment. An Environmental Impact Statement is not required. However, any agency that has an interest in this project may make their own independent determination of significance and necessity for an EIS in accordance with the procedures specified within Part 97.8 of Title 10: Rules and Regulations.

Recommendation

From an architectural perspective, approval is recommended.

Attachments

| | |
|------------------|--|
| BFA Attachment A | Summary Net Worth Statement of Proposed Members of Queens Boulevard GI, LLC |
| BFA Attachment B | Pro-forma Balance Sheet of Queens Boulevard GI, LLC |
| BFA Attachment C | Organization Chart for Queens Boulevard GI, LLC |
| BFA Attachment D | 2010 Draft Financial Statements for Digestive Disease Diagnostic & Treatment Center, LLC |
| BFA Attachment E | Establishment Checklist for Ambulatory Care Sites |
| BHFP Attachment | Map |

Supplemental Information

Outreach

Below are presented summaries of responses by hospitals to letters from the Department asking for information on the impact of the proposed ambulatory surgery center (ASC) in their service areas. There follows a summary of the applicant's response to DOH's request for information on the proposed facility's volume of surgical cases, the sources of those cases, and on how staff will be recruited and retained by the ASC.

Facility: Forest Hills Hospital
102-01 66th Road
Forest Hills, NY 11375

No response.

Facility: City Hospital Center of Elmhurst
79-01 Broadway
Elmhurst, NY 11373

No response.

Facility: New York Hospital Medical Center of Queens
56-45 Main Street
Flushing, NY 11355

No response.

Facility: Queens Hospital Center
82-68 164th Street
Jamaica, NY 11432

No response.

Supplemental Information from Applicant

- Need and Sources of Cases

Cases will be drawn solely from the current volume of cases now done in each of the participating physicians' office-based surgery practices. Once the facility is established, the physicians will no longer be performing office-based procedures and will perform all cases at the proposed ASC. The applicant also proposes to develop a formal outreach program directed to members of the local community, including area physicians. The purpose of the program will be to inform these groups of the benefits derived from, and the latest advances made in, colon cancer screening, treatment and prevention. The proposed ASC will dedicate a portion of its revenues for the implementation of this program and for charitable care.

- Staff Recruitment and Retention

Measures to recruit and retain skilled staff and counter staff turnover will include attractive compensation and benefits packages, continuing education opportunities, recognition and appreciation programs to reward high performers, and an open work atmosphere that encourages staff involvement and continuous improvement.

- Office-Based Cases

Fully 100 percent of the projected cases for the ASC will be drawn from cases currently performed in office-based settings.

OHSM Comment

The absence of comments from hospitals in the proposed service area provides no basis for reversal or modification of the recommendation for five-year limited life approval of the proposed ASC based on public need, financial feasibility and operator character and competence.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 21st day of July, 2011, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a single-specialty ambulatory surgery center to perform endoscopy and colonoscopy services, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

111165-B

FACILITY/APPLICANT:

Queens Boulevard GI, LLC

APPROVAL CONTINGENT UPON:

Approval for a limited life of 5 years from the date of issuance of an operating certificate is recommended contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the Department of Health beginning in the second year of operation. Said reports shall include:
 - Data showing actual utilization including procedures;
 - Data showing breakdown of visits by payor source;
 - Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
 - Data showing number of emergency transfers to a hospital;
 - Data showing percentage of charity care provided, and
 - Number of nosocomial infections recorded during the year in question. [RNR]
3. Submission by the governing body of the ambulatory surgery center of an organizational Mission Statement, which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations such as racial and ethnic minorities, women, and handicapped persons and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
4. Submission of a statement from the applicant, acceptable to the Department, that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with consultation of the legal counsel, and it is concluded that proceeding with the proposal is acceptable. [RNR, CSL]
5. Submission of a loan commitment acceptable to the Department. [BFA]
6. Submission of an executed building lease acceptable to the Department. [BFA, CSL]
7. Submission of Articles of Organization that are acceptable to the Department. [CSL]
8. Submission of an Operating Agreement that is acceptable to the Department. [CSL]
9. Submission of an organizational chart that is acceptable to the Department. [CSL]
10. Submission of copies of existing or proposed arrangements showing the contractual restrictions, existing or proposed, on the ability of owners of the applicant to assign, transfer or sell their ownership interest or voting rights in the applicant. [CSL]

APPROVAL CONDITIONAL UPON:

1. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
2. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
3. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
4. The applicant shall complete construction by March 1, 2014. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]
5. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
6. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York 12180-2299



Public Health and Health Planning Council

Project # 111196-B Syracuse Surgery Center, LLC

County: Onondaga (Syracuse)
Purpose: Establishment and Construction

Program: Ambulatory Surgery Center
Submitted: February 8, 2011

Executive Summary

Description

Syracuse Surgery Center, LLC, a to-be-formed limited liability company, requests approval to establish and construct a single-specialty freestanding ambulatory surgery center (FASC), in the practice of ophthalmology, to serve the residents of Onondaga County. The Center will be located in leased space at 3400 Vickery Road, Syracuse, and will consist of two operating rooms.

Syracuse Surgery Center, LLC will be formed as a single-member LLC owned by Thomas A. Bersani, M.D., an oculoplastic surgeon. Dr. Bersani is recruiting two new oculoplastic surgeons for his practice to meet the demand for oculoplastic surgical services in the area.

No responses were received to the Department's inquiry to local hospitals regarding the impact of the proposed ASC in the service area.

Total project costs are estimated at \$2,094,003.

DOH Recommendation

Contingent approval for a 5-year limited life.

Need Summary

Onondaga County does not have an ambulatory surgery center specializing in ophthalmology and oculoplastic surgery. Currently, there is at least a four-month wait for an initial office visit, and another two-month wait for the procedure to be performed.

The number of projected visits is as follows:

| | |
|---------------|-------|
| Current Year: | 0 |
| Year 1: | 1,900 |
| Year 3: | 2,014 |

Program Summary

The information reviewed revealed nothing which would reflect adversely upon the applicant's character and competence or standing in the community.

Syracuse Surgery Center has entered into a transfer and affiliation agreement for backup services with Crouse Hospital, which is 6.2 miles or twelve minutes away.

Financial Summary

Project costs will be met as follows: bank loan of \$1,316,000, equipment loan of \$268,000 and equity of \$510,003.

| | | |
|----------------|---------------------|------------------|
| Year 3 Budget: | <i>Revenues:</i> | \$ 1,752,525 |
| | <i>Expenses:</i> | <u>1,072,252</u> |
| | <i>Gain/(Loss):</i> | \$ 680,273 |

Subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Architectural Summary

This project involves the construction of a 5,300 SF freestanding single specialty ambulatory surgery center. The facility will be constructed in space located on the ground floor of an existing one-story office building. It will be designed to meet the life safety requirements applicable to an ambulatory health care occupancy.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval for a limited life of 5 years from the date of issuance of an operating certificate is recommended contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the Department of Health beginning in the second year of operation.
Said reports should include:
 - Data showing actual utilization including procedures;
 - Data showing breakdown of visits by payor source;
 - Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
 - Data showing number of emergency transfers to a hospital;
 - Data showing percentage of charity care provided, and
 - Number of nosocomial infections recorded during the year in question. [RNR]
3. Submission by the governing body of the ambulatory surgery center of an organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women, and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
4. Submission of the statement from the applicant, acceptable to the Department, that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with consultation of the legal counsel, and if it is concluded that proceeding with the proposal is acceptable. [RNR]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of a bank loan that is acceptable to the Department. [BFA]
7. Submission of an equipment loan that is acceptable to the Department. [BFA]
8. Submission of a working capital loan that is acceptable to the Department of Health. [BFA]

Approval conditional upon:

1. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
2. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
3. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
4. The clinical space must be used exclusively for the approved purpose. [HSP]
5. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01 (AER). This submission must resolve the outstanding issue itemized in a letter to the applicant dated June 20, 2011. [AER]
6. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
7. The applicant shall complete construction by October 1, 2013. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

State Council Recommendation

August 4, 2011

Need Analysis

Background

Syracuse Surgery Center (SSC) proposes to establish a single-specialty ambulatory surgery center specializing in ophthalmology and oculoplastic surgery services to be located at 3400 Vickery Road, Syracuse in Onondaga County.

The applicant reports that recruitment of such subspecialists to the upstate New York area is highly competitive. Competing practices in more "geographically desirable" areas than Syracuse offer recruits the opportunity for ownership in a surgical facility owned or affiliated with the practice. Dr Bersani is establishing this surgery center to be able to offer an equity position to new physicians.

The proposed project's service area runs from the Canadian border to northern Pennsylvania and from Geneva to Utica, including the cities of Watertown, Auburn, Binghamton, Syracuse and Utica. The majority of patients are likely to reside in Onondaga County. SSC expects to draw patients from many counties within the Northern and Southern Tier Regions, since Dr. Bersani is the only oculoplastic specialist in the above referenced service area.

Analysis

There are a total of six free standing single specialty ambulatory surgery centers in Onondaga County providing gastroenterology, endoscopic, and orthopedic services. The County also has two multi-specialty ambulatory surgery centers and three multi-specialty hospital extension clinics.

The number of surgeries performed by Dr. Bersani increased from 2005 to 2007, remained stable in 2008, and decreased in 2009 and 2010. However, there was an overall increase from 2,934 in 2005 to 3,013 in 2010. See the table below.

| <i>Number of Surgical Procedures Performed by Dr. Bersani</i> | | | | | | |
|--|-------------|-------------|-------------|-------------|-------------|-------------|
| | <i>2005</i> | <i>2006</i> | <i>2007</i> | <i>2008</i> | <i>2009</i> | <i>2010</i> |
| Syracuse Surgery Center | 2,934 | 3,190 | 3,312 | 3,310 | 3,142 | 3,013 |
| % Change from Previous Year | | 8.7% | 3.8% | -0.1% | -5.1% | -4.1% |

Source CON

The applicant commits to treating all patients regardless of the source of payment.

Conclusion

Information provided by the applicant indicates that the development of the Center and the recruitment of two new oculoplastic surgeons will expand the availability of these services to area residents.

Recommendation

From a need perspective, contingent approval is recommended for a limited life of five years.

Programmatic Analysis

Background

This freestanding single-specialty ambulatory surgery center proposes to provide surgical services in the area of ophthalmology, utilizing two operating rooms. The Center will be in operation Monday through Friday and from 7:00 a.m. to 4:00 p.m.

The list of procedures provided reflects the proposed services are consistent with the specialties of the physicians that have expressed interest in practicing at this Center. The Center intends to review this list annually and as needed to determine the appropriateness of adding new procedures consistent with individual physician expertise.

Staffing will consist of 10 FTEs, including registered nurses and technicians, under the supervision of the Center's owner and medical director, Thomas A. Bersani.

Emergency, in-patient and back-up support services is expected to be provided by Crouse Hospital which is 6.2 miles and 12 minutes in travel time from the Center. An answering service, with access to the On Call physician, will be provided to address patient concerns during hours when the facility is closed.

Compliance with Applicable Codes, Rules and Regulations

The medical staff will ensure that procedures performed at the Center conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and/or expertise. The Center's admissions policy will include anti-discrimination regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures will be performed in accordance with all applicable federal and state codes, rules and regulations, including standards for credentialing, anesthesiology services, nursing, patient admission and discharge, a medical records system, emergency care, quality assurance and data requirements.

A sliding fee scale will be in place for those without insurance, and provisions will be made for those who cannot afford services.

Character and Competence

The sole member/manager of the LLC is Thomas A. Bersani, MD.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's and relatives' ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management (relative to Medicaid fraud and abuse), the Office of Professional Medical Conduct, and the Education Department databases.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action. Based on this information, staff concluded that the facilities have provided a substantially consistent high level of care, as defined in New York State Public Health Law 2810(a)(3) and 10NYCRR 600.2, during the past 10 years.

Conclusion

The above reviews revealed nothing which would reflect adversely upon the applicant's character and competence or standing in the community.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Lease Agreement

The applicant has submitted an executed lease rental agreement for the site to be occupied, the terms of which are summarized below:

| | |
|------------------|--|
| <i>Premises:</i> | 5,800 sq. ft. located at 3400 Vickery Road, Syracuse, New York |
| <i>Lessor:</i> | Vickery Realty, LLC |
| <i>Lessee:</i> | Syracuse Surgery Center, LLC |
| <i>Term:</i> | Ten years with a two additional five year term |
| <i>Rental</i> | Year 1-5- \$116,000 (\$20.00 per sq.ft.) |
| | Year 6-10- \$127,600 (\$22.00 per sq.ft.) |
| | First Renewal Term- \$140,360 (\$24.20 per sq. ft.) |

Second Renewal Term- \$154,570 (\$26.65 per sq. ft.)
Provisions: The lessee shall be responsible for utilities and real estate taxes.

The applicant has indicated that this will be a non-arm's length lease arrangement. Two letters from licensed Real Estate agents have been submitted that support the per square foot rental.

Total Project Cost and Financing

Total project cost for renovations and the acquisition of moveable equipment for the ambulatory surgery center, is estimated at \$2,094,003 broken down as follows:

| | |
|-----------------------------|---------------|
| Renovation and Demolition | \$1,258,400 |
| Design Contingency | 125,840 |
| Construction Contingency | 125,840 |
| Planning Consultant Fees | 78,000 |
| Architect/ Engineering Fees | 135,000 |
| Other Fees (Consultant) | 30,000 |
| Moveable Equipment | 268,000 |
| Financing Costs | 20,000 |
| Interim Interest Expense | 39,480 |
| CON Fee | 2,000 |
| Additional Processing Fee | <u>11,443</u> |
| Total Project Cost | \$2,094,003 |

Project costs are based on an October 1, 2011 construction start date and a four month construction period. The applicant's financing plan appears as follows:

| | |
|--|-----------|
| Equity | \$510,003 |
| Bank Loan (6.00% interest rate for a fifteen year term) | 1,316,000 |
| Equipment Loan (6.00% interest rate for a five year term) | 268,000 |

Operating Budget

The applicant has submitted an operating budget, in 2011 dollars, for the first and third years of operation, summarized below:

| | <u>Year One</u> | <u>Year Three</u> |
|---------------------------|-----------------|-------------------|
| Revenues: | \$1,652,810 | \$1,752,525 |
| Expenses: | | |
| Operating: | \$757,669 | \$803,810 |
| Capital: | <u>283,477</u> | <u>268,442</u> |
| Total Expenses: | \$1,041,146 | \$1,072,252 |
| Net Income: | \$611,664 | \$680,273 |
| Utilization: (Procedures) | 1,900 | 2,014 |
| Cost Per Procedure: | \$547.97 | \$532.39 |

Utilization by payor source for the first and third years is as follows:

| | <u>Year One</u> | <u>Year Three</u> |
|----------------------------|-----------------|-------------------|
| Medicaid Fee-For-Service | 2.00% | 2.00% |
| Medicare Fee-For-Service | 38.00% | 37.98% |
| Commercial Fee-For-Service | 50.00% | 50.04% |
| Commercial Managed Care | 6.00% | 6.00% |
| Charity Care | 4.00% | 3.98% |

Expense assumptions are based on the staffing model to be used and the input from a consultant based on his experience in developing and operating specialty eye centers. Utilization assumptions are based on Dr. Bersani's current and projected surgical volume. The applicant has submitted physician referral letters in support of utilization projections. Presented as BFA Attachment D, is a summary of the detailed budget.

Capability and Feasibility

The applicant will finance \$1,316,000 at an interest rate of 6% for a fifteen year term. The applicant will also finance \$268,000 via an equipment loan at an interest rate of 6% for a five year term. The remainder, \$510,003, will be met via equity from the proposed member's personal resources. Appropriate letters of interest have been provided.

Working capital requirements are estimated at \$178,726, which appears reasonable based on two months of third year expenses. The applicant will finance \$89,363 at an interest rate of 6% for a five year term. The remainder, \$89,363, will be provided via equity from the proposed member's personal resources. Presented as BFA Attachment A, is the personal net worth statement of the proposed member of Syracuse Surgery Center, which indicates the availability of sufficient funds to meet the equity contributions. Presented as BFA Attachment B, is the pro-forma balance sheet of Syracuse Surgery Center, LLC as of the first day of operation, which indicates a positive member's equity position of \$599,366.

The submitted budget projects a net income of \$611,664 and \$680,273 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for ambulatory surgery services.

Subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Architectural Analysis

Background

Syracuse Surgery Center, LLC is requesting approval to construct a new freestanding single specialty ambulatory surgery center. The proposed facility will be 5,300 SF and is to be located within an existing, multiple tenant office building. The facility will include a waiting/registration area, 2 operating rooms, 6 flexible pre-op/post-op bays with nurse station, 1 exam/discharge room, and 1 laser treatment room. It will also include 1 office, staff locker room and lounge, clean and soiled workrooms, and the required medical, staff, and building support spaces.

Environmental Review

The Department has deemed this project to be a TYPE II Action and will not have a significant effect on the environment. An Environmental Impact Statement is not required. However, any agency that has an interest in this project may make their own independent determination of significance and necessity for an EIS in accordance with the procedures specified within Part 97.8 of Title 10: Rules and Regulations.

Outstanding Issue

The intent and purpose of the sterilization workroom must be confirmed prior to plan approval relative to instrument processing and flash sterilization

Recommendation

From an architectural perspective, approval is recommended.

Attachments

| | |
|------------------|---|
| BFA Attachment A | Personal Net Worth Statement Of Proposed Member of Syracuse Surgery Center, LLC |
| BFA Attachment B | Pro Forma Balance Sheet of Syracuse Surgery Center |
| BFA Attachment C | Establishment Checklist |

Supplemental Information

Outreach

Below are presented summaries of responses by hospitals to letters from the Department asking for information on the impact of the proposed ambulatory surgery center (ASC) in their service areas. There follows a summary of the applicant's response to DOH's request for information on the proposed facility's volume of surgical cases, the sources of those cases, and on how staff will be recruited and retained by the ASC.

Facility: Crouse Hospital
736 Irving Avenue
Syracuse, NY 13210

No response.

Facility: St. Joseph's Hospital Health Center
301 Prospect Avenue
Syracuse, NY 13203

No response.

Facility: University Hospital SUNY Health Science Center
750 East Adams Street
Syracuse, NY 13210

No response.

Supplemental Information from Applicant

- Need and Sources of Cases

The applicant states that the applicant physician is the only oculoplastic surgeon serving several counties in the Central New York region. Unmet need in the community is evinced by the fact that patients must wait four months for an initial appointment and an additional two months to undergo a procedure. This need is only expected to increase as the population in the area ages.

The applicant states that the proposed ASC will enable the applicant physician to recruit and retain new oculoplastic surgeons to an area where recruitment of subspecialists is difficult. This will increase the availability of oculoplastic services for residents of the area..

- Staff Recruitment and Retention

Employees will be recruited from accredited schools and training programs and through advertisements in local newspapers and professional publications. The proposed ASC may also hire some of its nursing staff from the applicant physician's medical practice.

- Office-Based Cases

The applicant states that none of the current cases of the applicant physician are being performed in the office-based setting. However, the applicant also states that none of the increased number of cases to be performed in the proposed ASC and resulting from the recruitment of new oculoplastic surgeons to work in the facility are currently being performed in either hospitals or office-based practices. They thus will represent a net gain in service capacity for the area.

OHSM Comment

The absence of comments from hospitals in the proposed service area provides no basis for reversal or modification of the recommendation for five-year limited life approval of the proposed ASC based on public need, financial feasibility and operator character and competence.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 21st day of July, 2011, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a single-specialty freestanding ambulatory surgery center for ophthalmology services, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

111196-B

FACILITY/APPLICANT:

Syracuse Surgery Center, LLC

APPROVAL CONTINGENT UPON:

Approval for a limited life of 5 years from the date of issuance of an operating certificate is recommended contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the Department of Health beginning in the second year of operation.
Said reports should include:
 - Data showing actual utilization including procedures;
 - Data showing breakdown of visits by payor source;
 - Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
 - Data showing number of emergency transfers to a hospital;
 - Data showing percentage of charity care provided, and
 - Number of nosocomial infections recorded during the year in question. [RNR]
3. Submission by the governing body of the ambulatory surgery center of an organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women, and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
4. Submission of the statement from the applicant, acceptable to the Department, that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with consultation of the legal counsel, and if it is concluded that proceeding with the proposal is acceptable. [RNR]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of a bank loan that is acceptable to the Department. [BFA]
7. Submission of an equipment loan that is acceptable to the Department. [BFA]
8. Submission of a working capital loan that is acceptable to the Department of Health. [BFA]

APPROVAL CONDITIONAL UPON:

1. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
2. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
3. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
4. The clinical space must be used exclusively for the approved purpose. [HSP]
5. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01 (AER). This submission must resolve the outstanding issue itemized in a letter to the applicant dated June 20, 2011. [AER]
6. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
7. The applicant shall complete construction by October 1, 2013. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York 12180-2299



Public Health and Health Planning Council

Project # 081059-B
Menorah Campus Health Services, Inc.

County: Erie (Amherst)

Program: Diagnostic and Treatment Center

Purpose: Establishment and Construction

Submitted: February 12, 2008

Executive Summary

Description

Menorah Campus Health Services, Inc., an existing not-for-profit business corporation, is requesting approval to establish and construct a diagnostic and treatment center (D&TC) to be located on John James Audubon Parkway, Amherst. The proposal is part of an initiative undertaken by the parent, Menorah Campus, Inc. to implement a program of all inclusive care for the elderly (PACE).

Total Aging in Place Program, Inc. is a to-be-formed PACE program with oversight by Menorah Campus, Inc., d/b/a The Harry and Jeanette Weinberg Campus. Menorah Campus Health Services, Inc. must be approved prior to Total Aging in Place Program, Inc.'s approval as a PACE Program.

The PACE program is a fully integrated Medicare/Medicaid program model serving people 55 years of age or older who are eligible for nursing home placement. The reimbursement for the program is capitated by both Medicare and Medicaid. All medically necessary services are included in the benefit package including: inpatient hospital, nursing home, physician services (both primary and specialty), prescription drugs, therapies, home care, personal care, transportation, medical supplies and equipment, dental care, vision care, podiatry, day care, mental health, and social and environmental supports.

Menorah Campus Health Services, Inc. is seeking to lease approximately 2,090 square feet to provide the following PACE D&TC services: primary medical care, podiatry, physical therapy, occupational therapy, speech language pathology, psychological, dental and radiology services.

DOH Recommendation
Contingent approval.

Need Summary

The clinic will primarily serve the 150 members of the PACE program, but will also serve the 750+ other residents of the Weinberg Campus on an incidental basis as needed.

Program Summary

Based on the information reviewed, staff concluded that the facilities have provided a substantially consistent high level of care as defined in New York State Public Health Law Section 2810(a)(3) and 10 NYCRR 600.2 during the past 10 years.

The above reviews revealed nothing which would reflect adversely upon the applicant's character and competence or standing in the community.

A transfer and affiliation agreement for emergency, inpatient and back-up support services has been negotiated with Millard Fillmore Suburban Hospital that is 15 minutes or five miles from the Center.

Financial Summary

There are no project costs associated with this application other than the CON fee.

| | | |
|---------|---------------------|----------------|
| Budget: | <i>Revenues:</i> | \$ 913,800 |
| | <i>Expenses:</i> | <u>871,265</u> |
| | <i>Gain/(Loss):</i> | \$ 42,535 |

Subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Architectural Summary

The proposed D&TC will be conveniently located on the main level of the Total Aging in Place-Day/PACE Center and will be fully accessible and designed to provide ease of access and circulation to program areas.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed Administrative Services Agreement that is acceptable to the Department. [BFA]
3. Submission of an executed building lease acceptable to the Department. [BFA, CSL]
4. Submission of an executed Professional Service Agreement that is acceptable to the Department. [BFA, CSL]
5. Submission of a photocopy of the applicant's executed certificate of incorporation, which is acceptable to the Department. [CSL]
6. Submission of a photocopy of Menorah Campus, Inc.'s executed amendment to its certificate of incorporation, which is acceptable to the Department. [CSL]
7. Submission of a photocopy of executed Menorah Campus Inc.'s bylaws, which are acceptable to the Department. [CSL]

Approval conditional upon:

1. This extension clinic is primarily intended to serve the PACE program. The clinic should be certified with a limited life, conditional on the continued operation of the PACE program. If the PACE program ends, the clinic's certification also may end at the department's discretion. [RNR]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. This project has been conditionally approved based on an Architects Letter of Certification for Existing Buildings submitted by Kenneth S. MacKay, of Kenneth MacKay Architecture, dated July 7, 2008. [AER]

Council Action Date

August 4, 2011.

Need Analysis

Staffing

| <u>Type of Practitioner</u> | <u>Current Year</u> | <u>FTE</u> | |
|---------------------------------------|---------------------|-------------------|-------------------|
| | | <u>First Year</u> | <u>Third Year</u> |
| Physician | 0 | 0.8 | 0.9 |
| Physical Therapist and Assistants | 0 | 1.0 | 1.0 |
| Occupational Therapist and Assistants | 0 | 0.5 | 0.5 |
| Speech Therapist and Assistants | 0 | 0.5 | 0.75 |

Services to be provided

The applicant seeks to certify the following services at the new site:

- Audiology,
- Electrocardiography,
- Health Education,
- Family Practice, Internal Medicine,
- Speech Language Pathology,
- Occupational Therapy, and
- Physical Therapy

Optometry, Ophthalmology, Psychology, Dental Services, Podiatry, Diagnostic Radiology and Respiratory Therapy are provided to MLTC/PACE enrollees through a contract between Total Aging in Place and network providers. This contract does not involve the D&TC and these services will not be provided within the walls of the D&TC. Therefore, these services will not appear on the D&TC certificate.

Service volume is projected in the following table:

| <u>Service</u> | <u>Current Year</u> | <u>Visits</u> | |
|-----------------------------------|---------------------|-------------------|-------------------|
| | | <u>First Year</u> | <u>Third Year</u> |
| Family Practice Internal Medicine | 0 | 2,450 | 2,800 |
| Nursing | 0 | 3,150 | 3,600 |
| Physical Therapy | 0 | 4,389 | 5,016 |
| Occupational Therapy | 0 | 2,646 | 3,175 |
| Speech Therapy | 0 | 1,785 | 2,400 |
| Total Visits | | 14,420 | 16,991 |

Population to be served

This facility will serve elderly enrollees in the PACE program, which is intended as a less expensive alternative to residential care in a nursing home.

Recommendation

This application should be approved for the following reasons:

- The PACE program at this site is approved by the DOH Bureau of Continuing Care Initiatives,
- The PACE program needs Article 28 status to provide full range of services required, and

- Although DOH rules normally discourage clinics that target “captive” special populations, this extension clinic is an integral and essential part of a larger long term care program.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

Menorah Campus Health Services, Inc., an existing not-for-profit, is seeking establishment approval for a diagnostic and treatment center (DTC) to be located on John James Audubon Parkway in Amherst to support their PACE program.

The Center will be in operation Monday through Friday from 9:00 AM to 4:00 P.M. Staff, under the supervision of Elizabeth Kyger, as medical director will initially consist of 5.3 FTEs and is projected to expand to 5.8 FTEs by the end of the third year. Included will be physicians, therapists, and nurses.

A transfer and affiliation agreement for emergency, inpatient and back-up support services has been negotiated with Millard Fillmore Suburban Hospital, which is 15 minutes or five miles from the Center. An answering machine, with access to center staff, will be provided to address patient concerns during hours when the facility is closed.

Compliance with Applicable Codes, Rules and Regulations

The applicant has attested to compliance with the following: the governing body and medical staff will develop, maintain, and periodically review a list of policies and procedures that will ensure that services performed at the facility will conform with generally accepted standards of practice. The Center’s admissions policy will include anti-discrimination provisions regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, and source of payment. All services will be performed in compliance with all applicable federal and state rules, including standards for credentialing, nursing, patient admission and discharge, a medical records system, emergency care, quality assurance and data requirements.

Character and Competence

The Board of Directors and offices held are as follows:

| <u>Name</u> | <u>Office Held</u> |
|---------------------|-----------------------|
| David Dunkelman | President & CEO |
| Jonathan Rodwin | Chair |
| Samuel Shapiro | Vice-Chair |
| Richard Gordon | Secretary & Treasurer |
| Stuart Barzman, DDS | Member |
| Todd Benderson | Member |
| Lawrence Cohen | Member |
| Leonard Katz, MD | Member |
| Cindy Komm | Member |
| Hyman Polakoff | Member |
| Kenneth Rogers | Member |
| Jonathan Schechter | Member |
| Eugene Setel | Member |
| Janet Wisbaum | Member |

Eleven of the fourteen board members are board members of Menorah Campus Health Services. Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant’s and relatives’ ownership interest in other health care facilities. Licensed individuals were

checked against the Office of Medicaid Management (relative to Medicaid fraud and abuse), the Office of Professional Medical Conduct, and the Education Department databases.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action. Based on this information, staff concluded that the applicant have provided a substantially consistent high level of care as defined in New York State Public Health Law 2810(a)(3) and 10NYCRR 600.2 during the past 10 years.

The above reviews revealed nothing which would reflect adversely upon the applicant’s character and competence or standing in the community.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Administrative Services Agreement

The applicant has submitted a draft administrative services agreement, the terms of which are summarized below:

- Provider:* Menorah Campus Inc.
- Facility Operator:* Menorah Campus Health Services, Inc
- Services Provided:* Administrative personnel; clinical services as well as make recommendations for a medical director; processing of credentials for allied health professionals for privileges, and credentialing; financial services to include maintenance of general ledger; preparation of financial statements; coordination of audits; preparation and submission of cost reports; implementation and oversight of a quality assurance program; provide and maintain all information services and provide general liability insurance, professional liability insurance, directors and officers liability insurance as appropriate.
- Term:* One year from effective date, renewed automatically for successive one year periods as long as Menorah Campus Health Services, Inc is licensed to operate a PACE program.
- Compensation:* \$60,359 annually

The applicant indicates that the financial management and oversight duties will be performed by the Finance Director, who will be an employee of the DTC. The licensed operator will retain exclusive authority and control of all management responsibilities.

Professional Services Agreement

The applicant has submitted a draft professional services agreement, the terms of which are summarized below:

- Provider:* Menorah Campus Health Services, Inc.
- Participant:* Total Aging in Place Program, Inc.
- Services Provided:* The Participant will provide professional services to and treat all participants of the Provider.
- Compensation:* \$760,319 annually
- Term:* Agreement shall commence on the first day of operation and shall continue for one year from the effective date automatically renewing for one year successive terms for as long as Total Aging in Place Program, Inc. is licensed to operate a PACE Program.

Lease Rental Agreement

The applicant has submitted a draft lease agreement for the site that they will occupy, as summarized below:

Premises: 2,090 square feet located at 461 John James Audubon Parkway, Amherst, New York
Lessor: Total Aging in Place Program, Inc.
Lessee: Menorah Campus Health Services, Inc.
Term: 10 Years
Rental: \$50,222 (\$24.03 per sq. ft.)
Provisions: The lessor shall be responsible for maintenance and utilities.

The lease agreement is a non-arm's length arrangement as there is a relationship between Menorah Campus, Inc., parent of Total Aging in Place Program, Inc. and Menorah Campus Health Services, Inc. (Sublessee). The landlord is the parent organization. A Letter of Opinion from a Licensed Commercial Real Estate Broker has been submitted indicating rent reasonableness.

Operating Budget

The applicant has submitted an operating budget, in 2010 dollars, for the first and third years of operation, summarized below:

| | <u>Year One</u> | <u>Year Three</u> |
|--------------------------------|-----------------|-------------------|
| Revenues: | \$760,319 | \$913,800 |
| Expenses: | | |
| Operating | \$702,768 | \$800,539 |
| Capital | <u>69,218</u> | <u>70,726</u> |
| Total Expenses: | \$771,986 | \$871,265 |
| Excess Revenues over Expenses: | \$(11,667) | \$42,535 |
| Utilization: (Visits) | 14,462 | 16,888 |
| Cost Per Visit: | \$53.38 | \$51.59 |

The DTC charges a flat yearly fee based on a provider service agreement. Fees are based on projected utilization assumptions.

Capability and Feasibility

The issue of capability centers on the applicant's ability to satisfy project cost and working capital requirements, and initiate operations as a viable entity. Working capital requirements are estimated at \$145,210, which appears to be reasonable based on two months of third year expenses. The applicant will meet the working capital requirements via equity of \$145,210 from Menorah Campus, Inc., the parent corporation of Total Aging in Place Program (PACE). Presented as BFA Attachment C, is the pro-forma balance sheet of Menorah Campus Health Services, Inc., which indicates a positive net asset position of \$145,210 as of the first day of operation.

The issue of feasibility is centered on the applicant's ability to offset expenses with revenues.

The submitted budget projects an excess of revenues over expenses of (\$11,667) and \$42,435 for the first and third years, respectively. Revenues are based on the prevailing reimbursement methodologies and capitated rates of payment for existing PACE programs. The budget appears reasonable.

As shown on BFA Attachment A, Menorah Campus, Inc. has maintained an average positive working capital and an average positive net asset position, and generated an average annual operating excess expenses over revenues of \$806,812 during the period shown.

The applicant has indicated that the reasons for the losses are the following: lack of adequate internal controls over accounts receivable collections have caused excessive bad debt. Also, worker's compensation and health insurance expense cost increased more than budgeted, and higher payroll expenses. The Menorah Campus, Inc. has improved operations by implementing the following steps: improved census-occupancy, realistic budgets using conservative methods of accounting, and improved methods for collecting on past monies owed for services delivered.

Presented as BFA Attachment B, is the December 31, 2010 internal financial statements of Menorah Campus, Inc. The facility had a positive working capital position and a positive net asset position for the period shown. As shown, the facility incurred an operating loss of expenses over revenues of \$1,236,530 during the year 2010. The applicant has indicated the reasons for the losses are the following: higher salary's expense than anticipated due to overtime use, which is currently being reviewed. Increased benefits expense more than budgeted, such as healthcare. Staffing services increased more than budget due to lack of position controls. These operational improvements are being reviewed for key operational improvements and realistic budget improvement.

Subject to the noted contingencies it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner and approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Architectural Analysis

Background

The D&TC will occupy 2,090 SF of the main level in space that has already been constructed and will include 5 exam rooms, clean holding room, soiled holding room, nursing work area, physician office, medical records office and storage, administrative support space, rehab therapy space, handicapped accessible bathroom and waiting area. The facility will be efficient and accessible for seniors, maximizing patient convenience and comfort, and will provide an enhanced quality of care through greater access to, and interaction with physicians, nurses, PT and OT staff, Interdisciplinary team, Care Managers and support staff. The space to be used for the D&T C was built in compliance with all applicable codes when the building was constructed. This space is currently vacant and will be available for immediate use. Parking will be provided in areas in front of and adjacent to the Day/PACE Center with a van drop off area located at the main entrance.

Environmental Review:

The Department has deemed this project to be an UNLISTED ACTION and has determined that for its purposes an Environmental Impact Statement (EIS) is not required. However, any agency that has an interest in this project may make their own independent determination of significance and necessity for an EIS in accordance with the procedures specified within Part 97.8 of Title 10: Rules and Regulations.

Recommendation

From an architectural perspective, approval is recommended.

Attachments

| | |
|------------------|---|
| BFA Attachment A | Financial Summary – 2008-2009 Certified financial statement of Menorah Campus, Inc. |
| BFA Attachment B | Financial Summary – December 31, 2010 Internal financial statements of Menorah Campus, Inc. |
| BFA Attachment C | Pro-forma Balance Sheet |

| | |
|------------------|-------------------------|
| BFA Attachment D | Organizational Chart |
| BFA Attachment E | Establishment Checklist |
| BHFP Attachment | Map |

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 21st day of July, 2011, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a multi-specialty diagnostic and treatment center as part of the proposal by the parent, Menorah Campus, Inc., to implement a program of all inclusive care for the elderly (PACE). Total Aging in Place Program, Inc., is a to-be-formed PACE program with oversight by Menorah Campus, Inc., d/b/a The Harry and Jeanette Weinberg Campus. Menorah Campus Health Service, Inc., must be approved prior to Total Aging in Place Program, Inc's., approval as a PACE program, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

081059-B

Menorah Campus Health Services, Inc.

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed Administrative Services Agreement that is acceptable to the Department. [BFA]
3. Submission of an executed building lease acceptable to the Department. [BFA, CSL]
4. Submission of an executed Professional Service Agreement that is acceptable to the Department. [BFA, CSL]
5. Submission of a photocopy of the applicant's executed certificate of incorporation, which is acceptable to the Department. [CSL]
6. Submission of a photocopy of Menorah Campus, Inc.'s executed amendment to its certificate of incorporation, which is acceptable to the Department. [CSL]
7. Submission of a photocopy of executed Menorah Campus Inc.'s bylaws, which are acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. This extension clinic is primarily intended to serve the PACE program. The clinic should be certified with a limited life, conditional on the continued operation of the PACE program. If the PACE program ends, the clinic's certification also may end at the department's discretion. [RNR]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. This project has been conditionally approved based on an Architects Letter of Certification for Existing Buildings submitted by Kenneth S. MacKay, of Kenneth MacKay Architecture, dated July 7, 2008. [AER]

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York 12180-2299



Public Health and Health Planning Council

Project # 102454-E
Compassionate Care Hospice of New York, Inc.

County: Bronx (Bronx)
Purpose: Establishment

Program: Hospice Services
Submitted: December 10, 2010

Executive Summary

Description

Compassionate Care Hospice of New York, LLC (Compassionate Care), an existing Article 40 Hospice program serving Bronx and Kings Counties, requests approval for a change of ownership of 90% membership. Compassionate Care's operations will not change as a result of this application.

Judith I. Grey is currently the sole member of Compassionate Care Hospice of New York, LLC. By this application Ms. Grey will transfer 90% of the Compassionate Care membership interests to Ms. Bella Heching through an assignment and assumption agreement. Ms. Grey will continue to be the Chief Executive Officer. There will be no programmatic changes made as a result of the change of ownership.

Ownership of the operation of Compassionate Care before and after the requested change is as follows:

| <u>Current</u> | <u>Proposed</u> |
|-----------------------|----------------------|
| Judith I. Grey – 100% | Judith I. Grey – 10% |
| | Bella Heching – 90% |

The applicant indicates that the consideration will be the applicant's financial acumen and capital availability to Compassionate Care, as well as the assumption of ongoing liabilities.

The applicant has demonstrated the capability to proceed in a financially feasible manner.

Architectural Summary

This project is for Establishment action only, therefore; no Architectural recommendation is required.

DOH Recommendation

Contingent approval.

Program Summary

A review of all personal qualifying information indicates there is nothing in the background of the two members / managers of the LLC to adversely effect their positions in the organization. The applicant has the appropriate character and competence under Article 40 of the Public Health Law.

Financial Summary

There will be no purchase price for the change in membership interests.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of an amended Operating Agreement, acceptable to the Department of Health. [CSL]
2. Submission of documentation of the transfer of membership interest, acceptable to the Department. [CSL]

Council Action Date

August 4, 2011.

Programmatic Analysis

Background

Compassionate Care Hospice of New York, LLC, a for-profit limited liability company, was established in 2004 to operate an Article 40 hospice in New York State, serving Bronx and Kings Counties. The hospice operates from its main parent office location at 6661-6663 Broadway, Bronx, New York 10471, and its approved satellite office location at 174 Highlawn Avenue, Suite 1-A, Brooklyn, New York 11223. The LLC corporate office is located at 600 Highland Drive, Suite 624, Westhampton, New Jersey 08060. The current proposal seeks approval for the transfer of 90% of the ownership from Judith Grey to Bella Heching. Ms. Grey will retain 10% of the ownership and the title of Chief Operating Officer. No programmatic changes affecting the hospice will occur as a result of this transaction.

The current sole member of the LLC, with 100% ownership, is Judith Grey. Pursuant to an Assignment and Assumption Agreement signed by both Ms. Grey and Bella Heching, Ms. Grey will assign, and Ms. Heching will assume, 90% of the membership interest in the LLC. Following the transaction, the membership, managers, and officers of the LLC will be as follows:

Judith I. Grey, RN (NYS and NJ), Licensed Assisted Living Administrator (NJ)

Managing Member – 10%

Owner and Chief Operating Officer

Compassionate Care Hospice of New York, LLC

Affiliations: None

Bella Heching

Managing Member – 90%

Owner and Manager

Lincolnwood Fund / Lincolnwood Advisors (Hedge Fund / Investment Portfolios)

Affiliations: None

Although neither Ms. Grey nor Ms. Heching have any ownership interest, LLC membership, partnership, managing membership, stock ownership, board membership, corporate officer, voting rights, or any controlling interest in any other health care facilities, Ms. Grey and Ms. Heching do disclose that Ms. Grey is also employed (as a paid employee only) as the Chief Operating Officer in 26 other home care and hospice agencies, located in 14 other states, that are owned solely by Ms. Heching's husband.

A search of the above named members, managers, and affiliations revealed no matches on either the Medicaid Disqualified Provider List or the Office of the Inspector General's Provider Exclusion List.

The Division of Home and Community Based Services reviewed the compliance history of Compassionate Care Hospice of New York, LLC. It has been determined that the hospice has exercised sufficient supervisory responsibility to protect the health, safety, and welfare of patients and to prevent the recurrence of code violations. When code violations did occur, it was determined that the operator investigated the circumstances surrounding the violation, and took steps appropriate to the gravity of the violation that a reasonably prudent operator would take to promptly correct and prevent the recurrence of the violation.

A review of all personal qualifying information indicates there is nothing in the background of the two members / managers of the LLC to adversely effect their positions in the organization. The applicant has the appropriate character and competence under Article 40 of the Public Health Law.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Assignment and Assumption Agreement

The applicant provided an executed Assignment and Assumption Agreement (agreement) dated November 29, 2010. The agreement assigns 90% membership interest from Ms. Judith I. Grey to Ms. Bella Heching. As previously noted, no monetary consideration is involved. As stated within the agreement the consideration is that the assignee shall contribute personal assets as needed, to help assume any ongoing liabilities of Compassionate Care.

Capability and Feasibility

There is no purchase price associated with this application and as a result there are no issues of capability. There are no issues of feasibility associated with this application as only membership interests for Compassionate Care are changing.

Presented as BFA Attachment A, is the 2008, 2009 and 2010 internal financial statements of Compassionate Care Hospice of New York, LLC. As shown on Attachment A, the facility had an average negative working capital position and an average positive net asset position during 2008 through 2010. Also, the facility achieved an average operating income of \$725,462 during 2008 through 2010. To reverse the 2008 loss of \$179,395, Compassionate Care took a number of initiatives, including the appointment of a program director for each of its two New York City locations, appointment of a regional manager, and increased marketing efforts and hiring of marketing staff. These changes helped result in an increase in overall census, and improved cost controls. In 2009 and 2010 the facility returned to profitability averaging net income of \$1,268,891 for 2009 and 2010.

Based on the preceding, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner; and approval is recommended.

Recommendation

From a financial perspective, approval is recommended.

Attachments

| | |
|------------------|---|
| BFA Attachment A | Financial Summary- Compassionate Care Hospice of New York, LLC – (2008, 2009, 2010 internal financial statements) |
| BFA Attachment B | Net Worth Statement – Proposed Members |
| BFA Attachment C | Organizational Chart – Before and After Membership Change |

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 21st day of July, 2011, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application for a 90% change in ownership, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

102454-E

FACILITY/APPLICANT:

Compassionate Care Hospice of New York,
Inc.

APPROVAL CONTINGENT UPON:

1. Submission of an amended Operating Agreement, acceptable to the Department of Health. [CSL]
2. Submission of documentation of the transfer of membership interest, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

N/A

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York 12180-2299



Public Health and Health Planning Council

Project # 092035-E
Park Avenue Operating Co., LLC
d/b/a Park Avenue Extended Care Facility

County: Nassau (Long Beach)
Purpose: Establishment

Program: Residential Health Care Facility
Submitted: August 18, 2009

Executive Summary

Description

Park Avenue Operating Co., LLC d/b/a Park Avenue Extended Care Facility, a 240-bed proprietary residential health care facility (RHCF) located at 425 National Boulevard, Long Beach, requests approval to add 25 new members and delete 7 members from the LLC, increase the percentage ownership of 1 member and decrease the percentage ownership of 7 members for a total change of 35.75%.

The change in the membership percentage would diversify ownership of the facility. There will be no programmatic changes made as a result of the transfers. The facility commenced operation in July 2004.

DOH Recommendation
Approval.

Need Summary

There is currently an unmet need of 1,353 beds in Nassau and Suffolk Counties (Long Island). Both the facility and the county showed an increase in occupancy from 2006 to 2008, then a slight decrease in 2009.

Program Summary

There are no proposed changes in either the program or physical environment of the facility.

Park Avenue Operating Co. LLC has entered into a consulting services agreement with Sentosa Care, LLC.

Financial Summary

There are no project costs associated with this proposal. The purchase price for 35.75% ownership interest in the RHCF is \$2,368,438; this amount has already been paid.

| | | |
|---------|---------------------|-------------------|
| Budget: | <i>Revenues:</i> | \$ 28,100,712 |
| | <i>Expenses:</i> | <u>25,536,331</u> |
| | <i>Gain/(Loss):</i> | \$ 2,564,381 |

It appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Architectural Summary

This project is for Establishment action only; therefore, no Architectural recommendation is required.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval.

Council Action Date

August 4, 2011.

Need Analysis

Background

Park Avenue Extended Care Facility (PAECF), a 240-bed residential health care facility (RHCF), located at 425 National Boulevard, Long Beach, seeks approval to add 25 new members and delete 7 members from the LLC, increase the percentage ownership of 1 member and decrease the percentage ownership of 7 members for a total change of 35.75 percent.

Analysis

| <u>RHCF Bed Need</u> | <u>Long Island</u> |
|-------------------------|--------------------|
| 2016 Projected Need | 16,962 |
| Current Beds | 16,000 |
| Beds Under Construction | - 391 |
| Total Resources | 16,571 |
| Unmet Need | 1,353 |

Park Avenue Extended Care Facility, an existing Article 28 RHCF, has utilization above that of Nassau County as shown in the table below:

| <u>RHCF Occupancy</u> | <u>2007</u> | <u>2008</u> | <u>2009</u> |
|------------------------------------|-------------|-------------|-------------|
| Park Avenue Extended Care Facility | 98.0% | 98.3% | 97.1% |
| Nassau County | 93.3% | 95.2% | 93.4% |

The facility's occupancy is above the county's average each year under consideration and surpassed the 97 percent planning optimum for 2007 and 2008. At the end of January, 2010, the facility's Case Mix index was 1.2, with 1 Physical A.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Facility Information

| | <u>Existing</u> | <u>Proposed</u> |
|------------------------------|--|----------------------------|
| <i>Facility Name</i> | Park Avenue Extended Care Facility | same |
| <i>Address</i> | 425 National Boulevard Long Beach, NY 11561 | same |
| <i>RHCF Capacity</i> | 240 | same |
| <i>ADHC Program Capacity</i> | 30 | same |
| <i>Type Of Operator</i> | Limited Liability Company | same |
| <i>Class Of Operator</i> | Proprietary | same |
| <i>Operator</i> | Park Avenue Operating Co., LLC | same |
| | <u>CONTINUING MEMBERS:</u> | <u>CONTINUING MEMBERS:</u> |
| | Bent Philipson 24.50% | Bent Philipson 11.25% |
| | Anthony Bacchi 10.00% | Anthony Bacchi 10.00% |
| | Martin Farbenblum 10.00% | Martin Farbenblum 10.00% |
| | Esther Farkovitz 7.00% | Esther Farkovitz 9.25% |
| | Pinchus Hoffman 7.00% | Pinchus Hoffman 4.00% |

| | | | |
|---------------------------|-------|---------------------------|-------|
| Mayer Fischl | 7.00% | Mayer Fischl | 3.00% |
| George Klein | 3.50% | George Klein | 1.00% |
| Ruth Hirsch | 3.00% | Ruth Hirsch | 3.00% |
| Larry Klein | 3.00% | Larry Klein | 0.50% |
| Andrew Freundlich | 2.00% | Andrew Freundlich | 2.00% |
| Chana Lerner | 2.00% | Chana Lerner | 2.00% |
| Michael Schwartz | 2.00% | Michael Schwartz | 0.50% |
| Moshe Sirkis | 2.00% | Moshe Sirkis | 2.00% |
| George Adler | 1.00% | George Adler | 1.00% |
| Aaron Becher | 1.00% | Aaron Becher | 1.00% |
| David Hoffman | 1.00% | David Hoffman | 1.00% |
| William Korn | 1.00% | William Korn | 1.00% |
| Irina Kostetsky | 1.00% | Irina Kostetsky | 1.00% |
| Girshas Minster | 1.00% | Girshas Minster | 1.00% |
| Laurie Netzer | 1.00% | Laurie Netzer | 0.50% |
| David Bloom | 0.50% | David Bloom | 0.50% |
| Ira Cammeyer | 0.50% | Ira Cammeyer | 0.50% |
| Leslie Shafranek | 0.50% | Leslie Shafranek | 0.50% |
| <u>DEPARTING MEMBERS:</u> | | <u>DEPARTING MEMBERS:</u> | |
| Sigmund Freundlich | 4.00% | Sigmund Freundlich | 0.00% |
| Gabor Adler | 1.00% | Gabor Adler | 0.00% |
| Shelly Nakdimen | 1.00% | Shelly Nakdimen | 0.00% |
| Nat Sherman | 1.00% | Nat Sherman | 0.00% |
| Robyn Weiss | 1.00% | Robyn Weiss | 0.00% |
| Neal Einhorn | 0.50% | Neal Einhorn | 0.00% |
| | | <u>NEW MEMBERS:</u> | |
| | | Benjamin Fishoff | 5.00% |
| | | Edward Farbenblum | 3.00% |
| | | Anne Gottlieb | 2.50% |
| | | Mayer Rispler | 2.00% |
| | | Ronald Stern | 2.00% |
| | | Naomi Tessler | 2.00% |
| | | Alan Chopp | 1.00% |
| | | Abraham Fishoff | 1.00% |
| | | Donald Fishoff | 1.00% |
| | | Norman Gold | 1.00% |
| | | Meryl Gross | 1.00% |
| | | Rhea Gutman | 1.00% |
| | | Alexander Hoffman | 1.00% |
| | | Francine Joseph | 1.00% |
| | | Tibor Lebovich | 1.00% |
| | | Theodore Pollack | 1.00% |
| | | Berish Rubenstein | 1.00% |
| | | Martha Sweet | 1.00% |
| | | Elisa Taub | 1.00% |
| | | Cynthia Treff | 1.00% |
| | | Regina Weinstock | 1.00% |
| | | Sandra Busell | 0.50% |
| | | Jeffrey Goldstein | 0.50% |
| | | Theresa Pocchia | 0.50% |
| | | Jennifer Strauss | 0.50% |

Character and Competence

- FACILITIES REVIEWED:

Residential Health Care Facilities

| | |
|--|--------------------|
| Golden Gate Rehabilitation and Health Care Center | 6/2002 to present |
| Avalon Gardens Rehabilitation and Health Care Center | 5/2003 to present |
| Bayview Nursing and Rehabilitation Center | 4/2003 to present |
| Susquehanna Nursing and Rehabilitation Center, LLC | 1/2005 to present |
| The Hamptons Center for Rehabilitation and Nursing | 11/2007 to present |
| Meadow Park Rehabilitation and Health Care Center, LLC | 6/2001 to present |
| Nathan Miller Center for Nursing | 10/2004 to 2/7/11 |
| White Plains Center for Nursing | 10/2004 to present |
| Brookhaven Rehabilitation and Health Care Center | 6/2001 to present |
| Eastchester Rehabilitation and Health Care Center | 9/2003 to present |

- INDIVIDUAL BACKGROUND REVIEW:

Benjamin Fishoff has been retired since 2001, having previously been employed from 1956 to 2001 as President of Inter-Ocean Corporation, an import/export company located in Lodi, New Jersey. Mr. Fishoff discloses ownership in The Hamptons Center for Rehabilitation and Nursing since November 20, 2007.

Edward Farbenblum is currently employed (since 2004) by Martin Farbenblum Family Partnership, LLP, an investment company located in Garden City, NY. Mr. Farbenblum discloses ownership interest in Susquehanna Nursing & Rehabilitation Center since January, 2005.

Anne Gottlieb is a licensed nursing home administrator in good standing, and is currently employed as Chief Financial Officer at Garden Care Center. Ms. Gottlieb discloses ownership interests in Meadow Park Rehabilitation and Health Care Center since December 22, 1999 and Nathan Miller Center for Nursing and White Plains Center for Nursing since October 27, 2004.

Mayer Rispler is a New York State Certified Public Account with license in good standing, and is the principal in Mayer Rispler and Company CPA's PC. Mr. Rispler discloses an ownership interest with Golden Gate Rehabilitation and Health Care Center since June 6, 2002.

Ronald Stern is currently employed by Balticwood USA, a wood flooring importer located in Newark, NJ. Mr. Stern discloses ownership interest in The Hamptons Center for Rehabilitation and Nursing since November 20, 2007.

Naomi Tessler is employed as a managing pharmacist by Medical Arts Chemists/F&D Pharmacy, Inc., a pharmacy located in Brooklyn. Ms. Tessler indicates she holds no ownership interests in health care facilities.

Alan Chopp is a licensed nursing home administrator in good standing in the States of New York, New Jersey and New Hampshire. Mr. Chopp is employed as the Compliance/HIPAA/Risk Management Officer for Sentosa Care LLC. Mr. Chopp was previously employed as the administrator of record at Golden Gate Rehabilitation and Health Care Center from 1974 to 2001. Mr. Chopp has held several interim administrator positions including Bayview Nursing and Rehab Center from May 29 2003 to July 1, 2003, West Lawrence Care Center from November 24, 2003 to February 2, 2004 and Franklin Center for Rehabilitation and Nursing from December 15, 2008 to January 26, 2009. Mr. Chopp discloses he holds ownership interests in Avalon Gardens Rehabilitation and Health Care Center since May 12, 2003, and Bayview Nursing and Rehabilitation Center since April 6, 2003. Mr. Chopp also discloses an ownership interest in Golden Gate Rehabilitation and Health Care, LLC from 1974 to June 30, 2001.

Abraham Fishoff is the chief executive officer of City Lights, a real estate development company. Mr. Fishoff indicates he holds no ownership interests in health care facilities.

Donald Fishoff is the current president of Inter-Ocean Investments, LLC, a trade company located in Brooklyn. Mr. Fishoff indicates he holds no ownership interests in health care facilities.

Norman Gold is the owner of Madelaine Chocolate Novelties, and is a Certified Public Accountant with license in good standing. Mr. Gold indicates he holds no ownership interests in health care facilities.

Meryl Gross has been retired since 2007, having been employed previously by Inter-Ocean Corporation, an import/export company located in Lodi, New Jersey, from 1991 to 2006. Ms. Gross indicates she holds no ownership interests in health care facilities.

Rhea Guttman has been retired since 1991. Ms. Guttman indicates she holds no ownership interests in health care facilities.

Alexander Hoffman is the manager of ITL Properties, a real estate company. Mr. Hoffman indicates he holds no health facility interests.

Francine Joseph is a homemaker residing in Pomona, NY. Ms. Joseph indicates she holds no ownership interests in health care facilities.

Tibor Lebovich is retired, having previously been employed as the President/Sales for Continental JC, a manufacturing company located in Long Island City. Mr. Lebovich discloses ownership interest in Bayview Nursing and Rehabilitation Center since April 6, 2003 and Susquehanna Nursing & Rehabilitation Center since January, 2005.

Theodore Pollak is the owner of PKK LLC, an investment company located in Monsey, New York. Mr. Pollak discloses ownership interests in Meadow Park Rehabilitation and Health Care Center since December 22, 1999 and Brookhaven Rehabilitation and Health Care Center since April 26, 2000.

Berish Rubenstein is employed as Director of Human Resources by Prompt Nursing Employment, an employment agency located in Brooklyn. Mr. Rubenstein indicates he holds no ownership interests in health care facilities.

Martha Sweet is a licensed nursing home administrator in good standing, and has served as administrator of record at Grace Plaza Nursing and Rehabilitation Center since 2002. Ms. Sweet formerly served on the New York State Board of Examiners of Nursing Home Administrators. Ms. Sweet is also licensed as a Registered Nurse, in good standing. Ms. Sweet indicates she holds no ownership interests in health care facilities.

Elisa Taub is employed as a waste and recycling broker in Flushing, New York. Ms. Taub indicates she holds no ownership interests in health care facilities.

Cynthia Treff is employed as a bookkeeper by Future Care Consultants, a billing agency located in Brooklyn. Ms. Treff indicates she holds no ownership interests in health care facilities.

Regina Weinstock is employed as a consultant with Sentosa Care LLC. Ms. Weinstock discloses an ownership interest in Eastchester Rehabilitation and Health Care Center since September 13, 2003.

Sandra Busell is an attorney in good standing practicing law with Busell & Stier, PLLC. Ms. Busell is also a licensed Certified Public Accountant and indicates she holds no ownership interests in health care facilities.

Jeffrey Goldstein is a licensed nursing home administrator in good standing, and is employed as the Operations Manager at Throgs Neck Extended Care Facility, Bay Park Center for Nursing and White Plains Center for Nursing. According to Mr. Goldstein's resume, in this position he provides assistance in financial management and regulatory compliance to the operator and administrator, and is employed directly by the operator of each facility. Mr. Goldstein is also employed as fiscal manager at The Hamptons Center for Rehabilitation and Nursing. Mr. Goldstein was previously employed as Administrator of Record at White Plains Center for Nursing from November 10, 2009 to January 11, 2010, and Wedgewood Nursing Home from 2002 to 2004. Mr. Goldstein discloses a .5% ownership interest in The Hamptons Center for Rehabilitation and Nursing, since November 20, 2007.

Teresa Pocchia is a licensed nursing home administrator in good standing, and has served as administrator of record at Park Avenue Extended Care Center since 2004. Ms. Pocchia is also licensed as a Registered Nurse. Ms. Pocchia indicates she holds no ownership interests in health care facilities.

Jennifer Strauss is employed as a bookkeeper by Sterling Care Consultants, a billing agency located in Howell, NJ. Ms. Strauss indicates she holds no ownership interests in health care facilities.

Character and Competence – Analysis:

Jeffrey Goldstein was cited for practicing nursing home administration without a valid nursing home administrator registration from January 1, 2010 to January 11, 2010. Mr. Goldstein was employed as administrator of record at White Plains Center for Nursing Care during this period and failed to submit his 2011- 2012 nursing home administrator registration renewal in a timely fashion.

No adverse information for the other proposed new members has been received.

A review of the operations of Meadow Park Rehabilitation and Health Care Center, LLC, Park Avenue Extended Care Facility and White Plains Center for Nursing for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the operations of Golden Gate Rehabilitation and Health Care Center for the period reveals the following:

- The facility was fined \$20,000 pursuant to a Stipulation and Order issued July 9, 2009 for surveillance findings on June 27, 2008. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents and 415.26 Organization and Administration.

The review of operations of Golden Gate Rehabilitation and Health Care Center results in a conclusion of a substantially consistent high level of care, since there were no repeat enforcements.

A review of the operations of Avalon Gardens Rehabilitation and Health Care Center for the period reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order issued April 21, 2009 for surveillance findings on May 23, 2008. Deficiencies were found under 10 NYCRR 415.12(h)(1)&(2) Quality of Care: Accidents.

The review of operations of Avalon Gardens Rehabilitation and Health Care Center results in a conclusion of a substantially consistent high level of care, since there were no repeat enforcements.

A review of the operations of Bayview Nursing and Rehabilitation Center for the period reveals the following:

- The facility was fined \$7,000 pursuant to a Stipulation and Order issued September 29, 2005 for surveillance findings on November 16, 2004. Deficiencies were found under 10 NYCRR 415.5(h)(2) Quality of Life: Environment, 415.12 Quality of Care, 415.12(c)(1) Pressure Sores and 415.12(h)(2) Quality of Care- Accidents.
- The facility was fined \$2,000 pursuant to a Stipulation and Order issued June 13, 2007 for surveillance findings on December 2, 2005. Deficiencies were found under 10 NYCRR 415.11(c)(3) Comprehensive Care Plans.

The review of operations of Bayview Nursing and Rehabilitation Center results in a conclusion of a substantially consistent high level of care, since there were no repeat enforcements.

A review of the operations of Susquehanna Nursing and Rehabilitation for the noted period reveals the following:

- The facility was fined \$1,500 pursuant to a Stipulation and Order on January 31, 2007 for surveillance findings on September 25, 2006. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accidents and 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.

The review of operations of Susquehanna Nursing and Rehabilitation Center, LLC results in a conclusion of a substantially consistent high level of care, since there were no repeat enforcements.

A review of the operations of The Hamptons Center for Rehabilitation and Nursing for the period reveals the following:

- The facility was fined \$3,000 pursuant to a Stipulation and Order issued June 12, 2007 for surveillance findings on February 9, 2007. Deficiencies were found under 10 NYCRR 415.12 Quality of Care, 415.12(a)(2) Quality of Care: Activities of Daily Living and 10 NYCRR 415.12(j) Hydration.
- The facility was fined \$8,000 pursuant to a Stipulation and Order issued June 1, 2009 for surveillance findings on April 21, 2009. Deficiencies were found under 10 NYCRR 415.4(b)(1)(ii) Resident Behavior and Facility Practices: Staff Treatment of Residents, NYCRR 415.12(h)(2) Quality of Care: Accidents and 415.26 Organization and Administration.
- The facility was fined \$4,000 pursuant to a Stipulation and Order issued December 6, 2010 for surveillance findings on September 16, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents & Supervision and 415.26 Administration.
- The facility was fined \$10,000 pursuant to a Stipulation and Order issued May 24, 2011 for surveillance findings on July 30, 2010. Deficiencies were found under 10 NYCRR 415.12 Provide Care and Services for the Highest Well Being.

The review of operations of The Hamptons Center for Rehabilitation and Nursing results in a conclusion of a substantially consistent high level of care, since there were no repeat enforcements

A review of the operations of Nathan Miller Center for Nursing for the noted period reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order on November 4, 2009 for surveillance findings on November 24, 2008. Deficiencies were found under 10 NYCRR 415.29 Physical Environment.

The review of operations of Nathan Miller Center for Nursing results in a conclusion of a substantially consistent high level of care, since there were no repeat enforcements. Nathan Miller Center for Nursing closed on February 7, 2011.

A review of the operations of Brookhaven Rehabilitation and Health Care Center, LLC for the noted period reveals the following:

- The facility was fined \$2000 pursuant to a Stipulation and Order on April 3, 2009 for surveillance findings on April 25, 2008. Deficiencies were found under 415.12 Quality of Care.

The review of operations of Brookhaven Rehabilitation and Health Care Center, LLC results in a conclusion of a substantially consistent high level of care, since there were no repeat enforcements.

A review of the operations of Eastchester Rehabilitation and Health Care Center for the noted period reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order on August 9, 2008 for surveillance findings on January 15, 2008. Deficiencies were found under 10 NYCRR 415.4 (b)(1)(ii) Resident Behavior and Facility Practices: Staff Treatment of Residents.

The review of operations of Eastchester Rehabilitation and Health Care Center results in a conclusion of a substantially consistent high level of care, since there were no repeat enforcements.

There are no proposed changes in either the program or physical environment of the facility. Park Avenue Operating Co. LLC has entered into a consulting services agreement with Sentosa Care, LLC.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Membership Purchase Agreement

The applicant has submitted an executed membership purchase agreement for the change of 35.75% membership interest of Park Avenue Operating Company, LLC, the terms of which are summarized below:

| | |
|-----------------------------------|---|
| <i>Purpose:</i> | The sale of 35.75% membership interests of Park Avenue Operating Company, LLC. |
| <i>Sellers:</i> | Gabor Adler (1%), Neal Einhorn (.5%), Mayer Fischl (4%), Sigmund Freunlich (4%), George Klein (2.5%), Larry Klein (2.5%), Laurie Netzer (.5%), Bent Philipson (13.25%), Michael Schwartz (1.5%), Nachum Sherman (1%), Robyn Weiss (1%), Pinchus Hoffman (3%) and Shelly Nakdimen (1%) |
| <i>Purchasers:</i> | Sandra Busell (.5%), Alan Chopp (1%), Edward Farbenblum (3%), Abraham Fishoff (1%), Benjamin Fishoff (5%), Donald Fishoff (1%), Norman Gold (1%), Jeffrey Goldstein (.5%), Anne Gottlieb (2.5%), Meryl Gross (1%), Francine Joseph (1%), Tibor Levovich (1%), Teresa Pocchia (.5%), Theodore Pollack (1%), Mayer Rispler (2%), Berish Rubinstein (1%), Ronald Stern (2%), Jennifer Strauss (.5%), Martha Sweet (1%), Naomi Tessler (2%), Cynthia Treff (1%), Regina Weinstock (1%), Rhea Gutman (1%), Esther Farkovits (2.25%), Alexander Hoffman (1%), and Elisa Taub (1%) |
| <i>Purchase Price:</i> | \$2,368,438 (\$66,250 per percent) |
| <i>Payment of Purchase Price:</i> | The full payment has already been made to the facility. |

Capability and Feasibility

The issue of capability centers on the applicant's ability to meet the purchase price for their respective ownership percentages. Presented as BFA Packet A, Net Worth 1, is the summary net worth statement for the proposed members.

Several of the current members and the proposed members have provided affidavits that state they will cover any of the members unmet equity requirements.

The issue of feasibility is centered on the applicants' ability to offset expenses with revenue and maintain a viable operating entity. The submitted budget indicated an excess of revenues over expenses of \$2,564,381 during the first and third years of operation. The budget appears reasonable.

Please see BFA Packet A for the Net Worth Statement for this project, as well as all of the financial summaries and the explanations for the financial summaries.

Based on the preceding, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner and approval is recommended.

Recommendation

From a financial perspective, approval is recommended.

Attachments

| | |
|------------------|---|
| BFA Attachment A | Establishment Checklist for Nursing Homes |
| BFA Packet A | Net Worth Statements |
| BHFP Attachment | Map |

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of section 2801-a of the Public Health Law, on this 21st day of July, 2011, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby approves the following application to add 25 new members and delete seven (7) members from the LLC, increase the percentage ownership of one (1) member and decrease the percentage ownership of seven (7) members for a total change of 35.75%, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

092035-E

FACILITY/APPLICANT:

Park Avenue Operating Co., LLC d/b/a
Park Avenue Extended Care Facility



Public Health and Health Planning Council

Project # 092037-E
Nassau Operating Co., LLC
d/b/a Nassau Extended Care Facility

County: Nassau (Hempstead)
Purpose: Establishment

Program: Residential Health Care Facility
Submitted: August 18, 2009

Executive Summary

Description

Nassau Operating Co., LLC d/b/a Nassau Extended Care Facility (Nassau), a 280-bed proprietary residential health care facility (RHCF) located at One Greenwich Street, Hempstead, requests approval to add 25 new members and delete 7 members from the LLC, increase the percentage ownership of 1 member and decrease the percentage ownership of 7 members for a total change of 35.75%.

The change in the membership percentages would diversify ownership of the facility. There will be no programmatic changes made as a result of the transfers. The facility commenced operation in July 2004.

DOH Recommendation
Approval.

Need Summary

There is currently an unmet need of 1,353 beds in Nassau and Suffolk Counties (Long Island). Occupancy at NECF has remained consistent at 95% percent from 2007 to 2009, with a slight increase to 96.5% in 2008.

Program Summary

There are no proposed changes in either the program or physical environment of the facility.

Nassau Operating Co., LLC has entered into a consulting services agreement with Sentosa Care, LLC.

Financial Summary

There are no project costs associated with this proposal. The purchase price for 35.75% ownership interest in the Nursing home is \$2,368,438. The payment has already been made.

| | | |
|---------|---------------------|-------------------|
| Budget: | <i>Revenues:</i> | \$ 33,243,677 |
| | <i>Expenses:</i> | <u>31,422,300</u> |
| | <i>Gain/(Loss):</i> | \$ 1,812,377 |

It appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Architectural Summary

This project is for Establishment action only; therefore, no Architectural recommendation is required.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval.

Council Action Date

August 4, 2011.

Need Analysis

Background

Nassau Extended Care Facility (NECF), a 280 bed residential health care facility, located at One Greenwich Street Hempstead in Nassau County seeks approval to add 25 new members and delete 7 members from the LLC, increase the percentage ownership of 1 member and decrease the percentage ownership of 7 members for a total change of 35.75%.

Analysis

| <u>RHCF Bed Need</u> | <u>Long Island</u> |
|-------------------------|--------------------|
| 2016 Projected Need | 16,962 |
| Current Beds | 16,000 |
| Beds Under Construction | - 391 |
| Total Resources | 16,571 |
| Unmet Need | 1,353 |

Nassau Extended Care Facility has utilization above that of Nassau County for all years in question as shown in the table below:

| <u>RHCF Occupancy</u> | <u>2007</u> | <u>2008</u> | <u>2009</u> |
|-------------------------------|-------------|-------------|-------------|
| Nassau Extended Care Facility | 95.5% | 96.5% | 95.0% |
| Nassau County | 94.5% | 94.8% | 93.4% |

At the end of 2010, the facility's RUG score was 1.21, 3 were Physical A's and 1 Physical B's.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Facility Information

| | <u>Existing</u> | <u>Proposed</u> |
|------------------------------|---|----------------------------|
| <i>Facility Name</i> | Nassau Extended Care Facility | same |
| <i>Address</i> | One Greenwich Street Hempstead, NY 11550 | same |
| <i>RHCF Capacity</i> | 280 | same |
| <i>ADHC Program Capacity</i> | 50 | same |
| <i>Type Of Operator</i> | Limited Liability Company | same |
| <i>Class Of Operator</i> | Proprietary | same |
| <i>Operator</i> | Nassau Operating Co., LLC | same |
| | <u>CONTINUING MEMBERS:</u> | <u>CONTINUING MEMBERS:</u> |
| | Bent Philipson 24.50% | Bent Philipson 11.25% |
| | Anthony Bacchi 10.00% | Anthony Bacchi 10.00% |
| | Martin Farbenblum 10.00% | Martin Farbenblum 10.00% |
| | Esther Farkovitz 7.00% | Esther Farkovitz 9.25% |
| | Pinchus Hoffman 7.00% | Pinchus Hoffman 4.00% |
| | Mayer Fischl 7.00% | Mayer Fischl 3.00% |
| | George Klein 3.50% | George Klein 1.00% |
| | Ruth Hirsch 3.00% | Ruth Hirsch 3.00% |

| | | | | |
|--|---------------------------|-------|---------------------------|-------|
| | Larry Klein | 3.00% | Larry Klein | 0.50% |
| | Andrew Freundlich | 2.00% | Andrew Freundlich | 2.00% |
| | Chana Lerner | 2.00% | Chana Lerner | 2.00% |
| | Michael Schwartz | 2.00% | Michael Schwartz | 0.50% |
| | Moshe Sirkis | 2.00% | Moshe Sirkis | 2.00% |
| | George Adler | 1.00% | George Adler | 1.00% |
| | Aaron Becher | 1.00% | Aaron Becher | 1.00% |
| | David Hoffman | 1.00% | David Hoffman | 1.00% |
| | William Korn | 1.00% | William Korn | 1.00% |
| | Irina Kostetsky | 1.00% | Irina Kostetsky | 1.00% |
| | Girshas Minster | 1.00% | Girshas Minster | 1.00% |
| | Laurie Netzer | 1.00% | Laurie Netzer | 0.50% |
| | David Bloom | 0.50% | David Bloom | 0.50% |
| | Ira Cammeyer | 0.50% | Ira Cammeyer | 0.50% |
| | Leslie Shafranek | 0.50% | Leslie Shafranek | 0.50% |
| | <u>DEPARTING MEMBERS:</u> | | <u>DEPARTING MEMBERS:</u> | |
| | Sigmund Freundlich | 4.00% | Sigmund Freundlich | 0.00% |
| | Gabor Adler | 1.00% | Gabor Adler | 0.00% |
| | Shelly Nakdimen | 1.00% | Shelly Nakdimen | 0.00% |
| | Nat Sherman | 1.00% | Nat Sherman | 0.00% |
| | Robyn Weiss | 1.00% | Robyn Weiss | 0.00% |
| | Neal Einhorn | 0.50% | Neal Einhorn | 0.00% |
| | | | <u>NEW MEMBERS:</u> | |
| | | | Benjamin Fishoff | 5.00% |
| | | | Edward Farbenblum | 3.00% |
| | | | Anne Gottlieb | 2.50% |
| | | | Mayer Rispler | 2.00% |
| | | | Ronald Stern | 2.00% |
| | | | Naomi Tessler | 2.00% |
| | | | Alan Chopp | 1.00% |
| | | | Abraham Fishoff | 1.00% |
| | | | Donald Fishoff | 1.00% |
| | | | Norman Gold | 1.00% |
| | | | Meryl Gross | 1.00% |
| | | | Rhea Gutman | 1.00% |
| | | | Alexander Hoffman | 1.00% |
| | | | Francine Joseph | 1.00% |
| | | | Tibor Lebovich | 1.00% |
| | | | Theodore Pollack | 1.00% |
| | | | Berish Rubenstein | 1.00% |
| | | | Martha Sweet | 1.00% |
| | | | Elisa Taub | 1.00% |
| | | | Cynthia Treff | 1.00% |
| | | | Regina Weinstock | 1.00% |
| | | | Sandra Busell | 0.50% |
| | | | Jeffrey Goldstein | 0.50% |
| | | | Theresa Pocchia | 0.50% |
| | | | Jennifer Strauss | 0.50% |

Character and Competence

- FACILITIES REVIEWED:

Residential Health Care Facilities

| | |
|--|--------------------|
| Golden Gate Rehabilitation and Health Care Center | 6/2002 to present |
| Avalon Gardens Rehabilitation and Health Care Center | 5/2003 to present |
| Bayview Nursing and Rehabilitation Center | 4/2003 to present |
| Susquehanna Nursing and Rehabilitation Center, LLC | 1/2005 to present |
| The Hamptons Center for Rehabilitation and Nursing | 11/2007 to present |
| Meadow Park Rehabilitation and Health Care Center, LLC | 6/2001 to present |
| Nathan Miller Center for Nursing | 10/2004 to 2/7/11 |
| White Plains Center for Nursing | 10/2004 to present |
| Brookhaven Rehabilitation and Health Care Center | 6/2001 to present |
| Eastchester Rehabilitation and Health Care Center | 9/2003 to present |

- INDIVIDUAL BACKGROUND REVIEW:

Benjamin Fishoff has been retired since 2001, having previously been employed from 1956 to 2001 as President of Inter-Ocean Corporation, an import/export company located in Lodi, New Jersey. Mr. Fishoff discloses ownership in The Hamptons Center for Rehabilitation and Nursing since November 20, 2007.

Edward Farbenblum is currently employed (since 2004) by Martin Farbenblum Family Partnership, LLP, an investment company located in Garden City, NY. Mr. Farbenblum discloses ownership interest in Susquehanna Nursing & Rehabilitation Center since January, 2005.

Anne Gottlieb is a licensed nursing home administrator in good standing, and is currently employed as Chief Financial Officer at Garden Care Center. Ms. Gottlieb discloses ownership interests in Meadow Park Rehabilitation and Health Care Center since December 22, 1999 and Nathan Miller Center for Nursing and White Plains Center for Nursing since October 27, 2004.

Mayer Rispler is a New York State Certified Public Account with license in good standing, and is the principal in Mayer Rispler and Company CPA's PC. Mr. Rispler discloses an ownership interest with Golden Gate Rehabilitation and Health Care Center since June 6, 2002.

Ronald Stern is currently employed by Balticwood USA, a wood flooring importer located in Newark, NJ. Mr. Stern discloses ownership interest in The Hamptons Center for Rehabilitation and Nursing since November 20, 2007.

Naomi Tessler is employed as a managing pharmacist by Medical Arts Chemists/F&D Pharmacy, Inc., a pharmacy located in Brooklyn. Ms. Tessler indicates she holds no ownership interests in health care facilities.

Alan Chopp is a licensed nursing home administrator in good standing in the States of New York, New Jersey and New Hampshire. Mr. Chopp is employed as the Compliance/HIPAA/Risk Management Officer for Sentosa Care LLC. Mr. Chopp was previously employed as the administrator of record at Golden Gate Rehabilitation and Health Care Center from 1974 to 2001. Mr. Chopp has held several interim administrator positions including Bayview Nursing and Rehab Center from May 29 2003 to July 1, 2003, West Lawrence Care Center from November 24, 2003 to February 2, 2004 and Franklin Center for Rehabilitation and Nursing from December 15, 2008 to January 26, 2009. Mr. Chopp discloses he holds ownership interests in Avalon Gardens Rehabilitation and Health Care Center since May 12, 2003, and Bayview Nursing and Rehabilitation Center since April 6, 2003. Mr. Chopp also discloses an ownership interest in Golden Gate Rehabilitation and Health Care, LLC from 1974 to June 30, 2001.

Abraham Fishoff is the chief executive officer of City Lights, a real estate development company. Mr. Fishoff indicates he holds no ownership interests in health care facilities.

Donald Fishoff is the current president of Inter-Ocean Investments, LLC, a trade company located in Brooklyn. Mr. Fishoff indicates he holds no ownership interests in health care facilities.

Norman Gold is the owner of Madelaine Chocolate Novelties, and is a Certified Public Accountant with license in good standing. Mr. Gold indicates he holds no ownership interests in health care facilities.

Meryl Gross has been retired since 2007, having been employed previously by Inter-Ocean Corporation, an import/export company located in Lodi, New Jersey, from 1991 to 2006. Ms. Gross indicates she holds no ownership interests in health care facilities.

Rhea Guttman has been retired since 1991. Ms. Guttman indicates she holds no ownership interests in health care facilities.

Alexander Hoffman is the manager of ITL Properties, a real estate company. Mr. Hoffman indicates he holds no health facility interests.

Francine Joseph is a homemaker residing in Pomona, NY. Ms. Joseph indicates she holds no ownership interests in health care facilities.

Tibor Lebovich is retired, having previously been employed as the President/Sales for Continental JC, a manufacturing company located in Long Island City. Mr. Lebovich discloses ownership interest in Bayview Nursing and Rehabilitation Center since April 6, 2003 and Susquehanna Nursing & Rehabilitation Center since January, 2005.

Theodore Pollak is the owner of PKK LLC, an investment company located in Monsey, New York. Mr. Pollak discloses ownership interests in Meadow Park Rehabilitation and Health Care Center since December 22, 1999 and Brookhaven Rehabilitation and Health Care Center since April 26, 2000.

Berish Rubenstein is employed as Director of Human Resources by Prompt Nursing Employment, an employment agency located in Brooklyn. Mr. Rubenstein indicates he holds no ownership interests in health care facilities.

Martha Sweet is a licensed nursing home administrator in good standing, and has served as administrator of record at Grace Plaza Nursing and Rehabilitation Center since 2002. Ms. Sweet formerly served on the New York State Board of Examiners of Nursing Home Administrators. Ms. Sweet is also licensed as a Registered Nurse, in good standing. Ms. Sweet indicates she holds no ownership interests in health care facilities.

Elisa Taub is employed as a waste and recycling broker in Flushing, New York. Ms. Taub indicates she holds no ownership interests in health care facilities.

Cynthia Treff is employed as a bookkeeper by Future Care Consultants, a billing agency located in Brooklyn. Ms. Treff indicates she holds no ownership interests in health care facilities.

Regina Weinstock is employed as a consultant with Sentosa Care LLC. Ms. Weinstock discloses an ownership interest in Eastchester Rehabilitation and Health Care Center since September 13, 2003.

Sandra Busell is an attorney in good standing practicing law with Busell & Stier, PLLC. Ms. Busell is also a licensed Certified Public Accountant and indicates she holds no ownership interests in health care facilities.

Jeffrey Goldstein is a licensed nursing home administrator in good standing, and is employed as the Operations Manager at Throgs Neck Extended Care Facility, Bay Park Center for Nursing and White Plains Center for Nursing. According to Mr. Goldstein's resume, in this position he provides assistance in financial management and regulatory compliance to the operator and administrator, and is employed directly by the operator of each facility. Mr. Goldstein is also employed as fiscal manager at The Hamptons Center for Rehabilitation and Nursing. Mr. Goldstein was previously employed as Administrator of Record at White Plains Center for Nursing from November 10, 2009 to January 11, 2010, and Wedgewood Nursing Home from 2002 to 2004. Mr. Goldstein discloses a .5% ownership interest in The Hamptons Center for Rehabilitation and Nursing, since November 20, 2007.

Teresa Pocchia is a licensed nursing home administrator in good standing, and has served as administrator of record at Park Avenue Extended Care Center since 2004. Ms. Pocchia is also licensed as a Registered Nurse. Ms. Pocchia indicates she holds no ownership interests in health care facilities.

Jennifer Strauss is employed as a bookkeeper by Sterling Care Consultants, a billing agency located in Howell, NJ. Ms. Strauss indicates she holds no ownership interests in health care facilities.

Character and Competence – Analysis:

Jeffrey Goldstein was cited for practicing nursing home administration without a valid nursing home administrator registration from January 1, 2010 to January 11, 2010. Mr. Goldstein was employed as administrator of record at White Plains Center for Nursing Care during this period and failed to submit his 2011- 2012 nursing home administrator registration renewal in a timely fashion.

No adverse information for the other proposed new members has been received.

A review of the operations of Meadow Park Rehabilitation and Health Care Center, LLC, Park Avenue Extended Care Facility and White Plains Center for Nursing for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the operations of Golden Gate Rehabilitation and Health Care Center for the period reveals the following:

- The facility was fined \$20,000 pursuant to a Stipulation and Order issued July 9, 2009 for surveillance findings on June 27, 2008. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents and 415.26 Organization and Administration.

The review of operations of Golden Gate Rehabilitation and Health Care Center results in a conclusion of a substantially consistent high level of care, since there were no repeat enforcements.

A review of the operations of Avalon Gardens Rehabilitation and Health Care Center for the period reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order issued April 21, 2009 for surveillance findings on May 23, 2008. Deficiencies were found under 10 NYCRR 415.12(h)(1)&(2) Quality of Care: Accidents.

The review of operations of Avalon Gardens Rehabilitation and Health Care Center results in a conclusion of a substantially consistent high level of care, since there were no repeat enforcements.

A review of the operations of Bayview Nursing and Rehabilitation Center for the period reveals the following:

- The facility was fined \$7,000 pursuant to a Stipulation and Order issued September 29, 2005 for surveillance findings on November 16, 2004. Deficiencies were found under 10 NYCRR 415.5(h)(2) Quality of Life: Environment, 415.12 Quality of Care, 415.12(c)(1) Pressure Sores and 415.12(h)(2) Quality of Care- Accidents.
- The facility was fined \$2,000 pursuant to a Stipulation and Order issued June 13, 2007 for surveillance findings on December 2, 2005. Deficiencies were found under 10 NYCRR 415.11(c)(3) Comprehensive Care Plans.

The review of operations of Bayview Nursing and Rehabilitation Center results in a conclusion of a substantially consistent high level of care, since there were no repeat enforcements.

A review of the operations of Susquehanna Nursing and Rehabilitation for the noted period reveals the following:

- The facility was fined \$1,500 pursuant to a Stipulation and Order on January 31, 2007 for surveillance findings on September 25, 2006. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accidents and 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.

The review of operations of Susquehanna Nursing and Rehabilitation Center, LLC results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of the operations of The Hamptons Center for Rehabilitation and Nursing for the period reveals the following:

- The facility was fined \$3,000 pursuant to a Stipulation and Order issued June 12, 2007 for surveillance findings on February 9, 2007. Deficiencies were found under 10 NYCRR 415.12 Quality of Care, 415.12(a)(2) Quality of Care: Activities of Daily Living and 10 NYCRR 415.12(j) Hydration.
- The facility was fined \$8,000 pursuant to a Stipulation and Order issued June 1, 2009 for surveillance findings on April 21, 2009. Deficiencies were found under 10 NYCRR 415.4(b)(1)(ii) Resident Behavior and Facility Practices: Staff Treatment of Residents, NYCRR 415.12(h)(2) Quality of Care: Accidents and 415.26 Organization and Administration.
- The facility was fined \$4,000 pursuant to a Stipulation and Order issued December 6, 2010 for surveillance findings on September 16, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents & Supervision and 415.26 Administration.
- The facility was fined \$10,000 pursuant to a Stipulation and Order issued May 24, 2011 for surveillance findings on July 30, 2010. Deficiencies were found under 10 NYCRR 415.12 Provide Care and Services for the Highest Well Being.

The review of operations of The Hamptons Center for Rehabilitation and Nursing results in a conclusion of a substantially consistent high level of care, since there were no repeat enforcements

A review of the operations of Nathan Miller Center for Nursing for the noted period reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order on November 4, 2009 for surveillance findings on November 24, 2008. Deficiencies were found under 10 NYCRR 415.29 Physical Environment.

The review of operations of Nathan Miller Center for Nursing results in a conclusion of substantially consistent high level of care since there were no repeat enforcements. Nathan Miller Center for Nursing closed on February 7, 2011.

A review of the operations of Brookhaven Rehabilitation and Health Care Center, LLC for the noted period reveals the following:

- The facility was fined \$2000 pursuant to a Stipulation and Order on April 3, 2009 for surveillance findings on April 25, 2008. Deficiencies were found under 415.12 Quality of Care.

The review of operations of Brookhaven Rehabilitation and Health Care Center, LLC results in a conclusion of a substantially consistent high level of care, since there were no repeat enforcements.

A review of the operations of Eastchester Rehabilitation and Health Care Center for the noted period reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order on August 9, 2008 for surveillance findings on January 15, 2008. Deficiencies were found under 10 NYCRR 415.4 (b)(1)(ii) Resident Behavior and Facility Practices: Staff Treatment of Residents.

The review of operations of Eastchester Rehabilitation and Health Care Center results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

There are no proposed changes in either the program or physical environment of the facility. Nassau Operating Co. LLC has entered into a consulting services agreement with Sentosa Care, LLC.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Membership Purchase Agreement

The applicant has submitted an executed membership purchase agreement for the change of 35.75% membership interest of Nassau Operating Co., LLC, the terms of which are summarized below:

Purpose: The sale of 35.75% membership interests of Nassau Operating Co., LLC.
Sellers: Gabor Adler (1%), Neal Einhorn (.5%), Mayer Fischl (4%), Sigmund Freunlich (4%), George Klein (2.5%), Larry Klein (2.5%), Laurie Netzer (.5%), Bent Philipson (13.25%), Michael Schwartz (1.5%), Nachum Sherman (1%), Robyn Weiss (1%), Pinchus Hoffman (3%) and Shelly Nakdimen (1%)
Purchasers: Sandra Busell (.5%), Alan Chopp (1%), Edward Farbenblum (3%), Abraham Fishoff (1%), Benjamin Fishoff (5%), Donald Fishoff (1%), Norman Gold (1%), Jeffrey Goldstein (.5%), Anne Gottlieb (2.5%), Meryl Gross (1%), Francine Joseph (1%), Tibor Levovich (1%), Teresa Pocchia (.5%), Theodore Pollack (1%), Mayer Rispler (2%), Berish Rubinstein (1%), Ronald Stern (2%), Jennifer Strauss (.5%), Martha Sweet (1%), Naomi Tessler (2%), Cynthia Treff (1%), Regina Weinstock (1%), Rhea Gutman (1%), Esther Farkovits (2.25%), Alexander Hoffman (1%), and Elisa Taub (1%)
Purchase Price: \$2,368,438 (\$66,250 per percent)
Payment of Purchase Price: The full payment has already been made to the facility.

Capability and Feasibility

The issue of capability centers on the applicant's ability to meet the purchase price for their respective ownership percentages. Presented as Packet A, Net Worth 1, is the summary net worth statement for the proposed members.

Several of the current members and the proposed members have provided affidavits that state they will cover any of the members unmet equity requirements.

The issue of feasibility is centered on the applicant's ability to offset expenses with revenue and maintain a viable operating entity. The submitted budget indicated an excess of revenues over expenses of \$1,812,377 during the first and third years of operation. The budget appears reasonable.

Please see BFA Packet A for the Net Worth Statements for this project, as well as all of the financial summaries and the explanations of the financial summaries.

Based on the preceding, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner and approval is recommended.

Recommendation

From a financial perspective, approval is recommended.

Attachments

| | |
|------------------|---|
| BFA Attachment A | Establishment Checklist for Nursing Homes |
| BFA Packet A | Net Worth Statements |

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of section 2801-a of the Public Health Law, on this 21st day of July, 2011, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby approves the following application to add 25 new members and delete seven (7) members from the LLC, increase the percentage ownership of one (1) member and decrease the percentage ownership of seven (7) members for a total change of 35.75%, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

092037-E

FACILITY/APPLICANT:

Nassau Operating Co., LLC d/b/a
Nassau Extended Care Facility



Public Health and Health Planning Council

Project # 092038-E
Townhouse Operating Co. LLC
d/b/a Townhouse Center for Rehabilitation and Nursing

County: Nassau (Uniondale)
Purpose: Establishment

Program: Residential Health Care Facility
Submitted: August 18, 2009

Executive Summary

Description

Townhouse Operating Co., LLC d/b/a Townhouse Extended Care Facility, a 280-bed proprietary residential health care facility (RHCF) located at 755 Hempstead Turnpike, Uniondale, requests approval to add 25 new members and delete 7 members from the LLC, increase the percentage ownership of 1 member and decrease the percentage ownership of 7 members for a total change of 35.75%.

The change in the membership percentages would diversify ownership of the facility. There will be no programmatic changes made as a result of the transfers. The facility commenced operation in July 2004.

DOH Recommendation
Contingent approval.

Need Summary

Both the facility and the county showed an increase in occupancy from 2007 to 2008, and then a slight decrease in 2009. The new members have experience in long-term care services which will enhance the quality of care and services provided at Townhouse Extended Care Facility.

Program Summary

There are no proposed changes in either the program or physical environment of the facility.

Townhouse Operating Co. LLC has entered into a consulting services agreement with Sentosa Care, LLC.

Financial Summary

There are no project costs associated with this proposal. The purchase price for 35.75% ownership interest in the RHCF is \$2,368,438; this amount has already been paid.

| | | |
|---------|---------------------|-------------------|
| Budget: | <i>Revenues:</i> | \$ 33,315,840 |
| | <i>Expenses:</i> | <u>32,470,277</u> |
| | <i>Gain/(Loss):</i> | \$ 845,563 |

It appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Architectural Summary

This project is for Establishment action only, therefore; no Architectural recommendation is required.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval contingent upon:

1. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]

Council Action Date

August 4, 2011.

Need Analysis

Background

Townhouse Center for Rehabilitation and Nursing (TCRN), a 280 bed residential health care facility RHCF), located at 755 Hempstead Turnpike, Uniondale, seeks approval to add 25 new members and delete 7 members from the LLC, increase the percentage ownership of 1 member and decrease the percentage ownership of 7 members for a total change of 35.75%.

Analysis

| <u>RHCF Bed Need</u> | <u>Long Island</u> |
|-------------------------|--------------------|
| 2016 Projected Need | 18,962 |
| Current Beds | 16,000 |
| Beds Under Construction | - 391 |
| Total Resources | 16,571 |
| Unmet Need | 1,353 |

Townhouse Center for Rehabilitation and Nursing, an existing Article 28 RHCF, has utilization above that of Nassau County for all years in question as shown in Table 1 below:

| <u>RHCF Occupancy</u> | <u>2007</u> | <u>2008</u> | <u>2009</u> |
|---|-------------|-------------|-------------|
| Townhouse Center for Rehabilitation and Nursing | 96.5% | 96.5% | 95.2% |
| Nassau County | 93.3% | 95.2% | 93.4% |

At the end of 2010, the facility's case mix index (CMI) was 1.23 for residents of whom 1 were Physical A and 4 Physical B's.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Facility Information

| | <i>Existing</i> | <i>Proposed</i> |
|------------------------------|---|----------------------------|
| <i>Facility Name</i> | Townhouse Extended Care Center | same |
| <i>Address</i> | 755 Hempstead Turnpike Uniondale, NY | same |
| <i>RHCF Capacity</i> | 280 | same |
| <i>ADHC Program Capacity</i> | 0 | same |
| <i>Type of Operator</i> | Limited Liability Company | same |
| <i>Class of Operator</i> | Proprietary | same |
| <i>Operator</i> | Townhouse Operating Co., LLC | same |
| | <u>CONTINUING MEMBERS:</u> | <u>CONTINUING MEMBERS:</u> |
| | Bent Philipson 24.50% | Bent Philipson 11.25% |
| | Anthony Bacchi 10.00% | Anthony Bacchi 10.00% |
| | Martin Farbenblum 10.00% | Martin Farbenblum 10.00% |
| | Esther Farkovitz 7.00% | Esther Farkovitz 9.25% |
| | Pinchus Hoffman 7.00% | Pinchus Hoffman 4.00% |
| | Mayer Fischl 7.00% | Mayer Fischl 3.00% |

| | | | |
|---------------------------|-------|---------------------------|-------|
| George Klein | 3.50% | George Klein | 1.00% |
| Ruth Hirsch | 3.00% | Ruth Hirsch | 3.00% |
| Larry Klein | 3.00% | Larry Klein | 0.50% |
| Andrew Freundlich | 2.00% | Andrew Freundlich | 2.00% |
| Chana Lerner | 2.00% | Chana Lerner | 2.00% |
| Michael Schwartz | 2.00% | Michael Schwartz | 0.50% |
| Moshe Sirkis | 2.00% | Moshe Sirkis | 2.00% |
| George Adler | 1.00% | George Adler | 1.00% |
| Aaron Becher | 1.00% | Aaron Becher | 1.00% |
| David Hoffman | 1.00% | David Hoffman | 1.00% |
| William Korn | 1.00% | William Korn | 1.00% |
| Irina Kostetsky | 1.00% | Irina Kostetsky | 1.00% |
| Girshas Minster | 1.00% | Girshas Minster | 1.00% |
| Laurie Netzer | 1.00% | Laurie Netzer | 0.50% |
| David Bloom | 0.50% | David Bloom | 0.50% |
| Ira Cammeyer | 0.50% | Ira Cammeyer | 0.50% |
| Leslie Shafranek | 0.50% | Leslie Shafranek | 0.50% |
| <u>DEPARTING MEMBERS:</u> | | <u>DEPARTING MEMBERS:</u> | |
| Sigmund Freundlich | 4.00% | Sigmund Freundlich | 0.00% |
| Gabor Adler | 1.00% | Gabor Adler | 0.00% |
| Shelly Nakdimen | 1.00% | Shelly Nakdimen | 0.00% |
| Nat Sherman | 1.00% | Nat Sherman | 0.00% |
| Robyn Weiss | 1.00% | Robyn Weiss | 0.00% |
| Neal Einhorn | 0.50% | Neal Einhorn | 0.00% |
| | | <u>NEW MEMBERS:</u> | |
| | | Benjamin Fishoff | 5.00% |
| | | Edward Farbenblum | 3.00% |
| | | Anne Gottlieb | 2.50% |
| | | Mayer Rispler | 2.00% |
| | | Ronald Stern | 2.00% |
| | | Naomi Tessler | 2.00% |
| | | Alan Chopp | 1.00% |
| | | Abraham Fishoff | 1.00% |
| | | Donald Fishoff | 1.00% |
| | | Norman Gold | 1.00% |
| | | Meryl Gross | 1.00% |
| | | Rhea Gutman | 1.00% |
| | | Alexander Hoffman | 1.00% |
| | | Francine Joseph | 1.00% |
| | | Tibor Lebovich | 1.00% |
| | | Theodore Pollack | 1.00% |
| | | Berish Rubenstein | 1.00% |
| | | Martha Sweet | 1.00% |
| | | Elisa Taub | 1.00% |
| | | Cynthia Treff | 1.00% |
| | | Regina Weinstock | 1.00% |
| | | Sandra Busell | 0.50% |
| | | Jeffrey Goldstein | 0.50% |
| | | Theresa Pocchia | 0.50% |
| | | Jennifer Strauss | 0.50% |

Character and Competence

- FACILITIES REVIEWED:

Residential Health Care Facilities

| | |
|--|--------------------|
| Golden Gate Rehabilitation and Health Care Center | 6/2002 to present |
| Avalon Gardens Rehabilitation and Health Care Center | 5/2003 to present |
| Bayview Nursing and Rehabilitation Center | 4/2003 to present |
| Susquehanna Nursing and Rehabilitation Center, LLC | 1/2005 to present |
| The Hamptons Center for Rehabilitation and Nursing | 11/2007 to present |
| Meadow Park Rehabilitation and Health Care Center, LLC | 6/2001 to present |
| Nathan Miller Center for Nursing | 10/2004 to 2/7/11 |
| White Plains Center for Nursing | 10/2004 to present |
| Brookhaven Rehabilitation and Health Care Center | 6/2001 to present |
| Eastchester Rehabilitation and Health Care Center | 9/2003 to present |

- INDIVIDUAL BACKGROUND REVIEW:

Benjamin Fishoff has been retired since 2001, having previously been employed from 1956 to 2001 as President of Inter-Ocean Corporation, an import/export company located in Lodi, New Jersey. Mr. Fishoff discloses ownership in The Hamptons Center for Rehabilitation and Nursing since November 20, 2007.

Edward Farbenblum is currently employed (since 2004) by Martin Farbenblum Family Partnership, LLP, an investment company located in Garden City, NY. Mr. Farbenblum discloses ownership interest in Susquehanna Nursing & Rehabilitation Center since January, 2005.

Anne Gottlieb is a licensed nursing home administrator in good standing, and is currently employed as Chief Financial Officer at Garden Care Center. Ms. Gottlieb discloses ownership interests in Meadow Park Rehabilitation and Health Care Center since December 22, 1999 and Nathan Miller Center for Nursing and White Plains Center for Nursing since October 27, 2004.

Mayer Rispler is a New York State Certified Public Account with license in good standing, and is the principal in Mayer Rispler and Company CPA's PC. Mr. Rispler discloses an ownership interest with Golden Gate Rehabilitation and Health Care Center since June 6, 2002.

Ronald Stern is currently employed by Balticwood USA, a wood flooring importer located in Newark, NJ. Mr. Stern discloses ownership interest in The Hamptons Center for Rehabilitation and Nursing since November 20, 2007.

Naomi Tessler is employed as a managing pharmacist by Medical Arts Chemists/F&D Pharmacy, Inc., a pharmacy located in Brooklyn. Ms. Tessler indicates she holds no ownership interests in health care facilities.

Alan Chopp is a licensed nursing home administrator in good standing in the States of New York, New Jersey and New Hampshire. Mr. Chopp is employed as the Compliance/HIPAA/Risk Management Officer for Sentosa Care LLC. Mr. Chopp was previously employed as the administrator of record at Golden Gate Rehabilitation and Health Care Center from 1974 to 2001. Mr. Chopp has held several interim administrator positions including Bayview Nursing and Rehab Center from May 29 2003 to July 1, 2003, West Lawrence Care Center from November 24, 2003 to February 2, 2004 and Franklin Center for Rehabilitation and Nursing from December 15, 2008 to January 26, 2009. Mr. Chopp discloses he holds ownership interests in Avalon Gardens Rehabilitation and Health Care Center since May 12, 2003, and Bayview Nursing and Rehabilitation Center since April 6, 2003. Mr. Chopp also discloses an ownership interest in Golden Gate Rehabilitation and Health Care, LLC from 1974 to June 30, 2001.

Abraham Fishoff is the chief executive officer of City Lights, a real estate development company. Mr. Fishoff indicates he holds no ownership interests in health care facilities.

Donald Fishoff is the current president of Inter-Ocean Investments, LLC, a trade company located in Brooklyn. Mr. Fishoff indicates he holds no ownership interests in health care facilities.

Norman Gold is the owner of Madelaine Chocolate Novelties, and is a Certified Public Accountant with license in good standing. Mr. Gold indicates he holds no ownership interests in health care facilities.

Meryl Gross has been retired since 2007, having been employed previously by Inter-Ocean Corporation, an import/export company located in Lodi, New Jersey, from 1991 to 2006. Ms. Gross indicates she holds no ownership interests in health care facilities.

Rhea Guttman has been retired since 1991. Ms. Guttman indicates she holds no ownership interests in health care facilities.

Alexander Hoffman is the manager of ITL Properties, a real estate company. Mr. Hoffman indicates he holds no health facility interests.

Francine Joseph is a homemaker residing in Pomona, NY. Ms. Joseph indicates she holds no ownership interests in health care facilities.

Tibor Lebovich is retired, having previously been employed as the President/Sales for Continental JC, a manufacturing company located in Long Island City. Mr. Lebovich discloses ownership interest in Bayview Nursing and Rehabilitation Center since April 6, 2003 and Susquehanna Nursing & Rehabilitation Center since January, 2005.

Theodore Pollak is the owner of PKK LLC, an investment company located in Monsey, New York. Mr. Pollak discloses ownership interests in Meadow Park Rehabilitation and Health Care Center since December 22, 1999 and Brookhaven Rehabilitation and Health Care Center since April 26, 2000.

Berish Rubenstein is employed as Director of Human Resources by Prompt Nursing Employment, an employment agency located in Brooklyn. Mr. Rubenstein indicates he holds no ownership interests in health care facilities.

Martha Sweet is a licensed nursing home administrator in good standing, and has served as administrator of record at Grace Plaza Nursing and Rehabilitation Center since 2002. Ms. Sweet formerly served on the New York State Board of Examiners of Nursing Home Administrators. Ms. Sweet is also licensed as a Registered Nurse, in good standing. Ms. Sweet indicates she holds no ownership interests in health care facilities.

Elisa Taub is employed as a waste and recycling broker in Flushing, New York. Ms. Taub indicates she holds no ownership interests in health care facilities

Cynthia Treff is employed as a bookkeeper by Future Care Consultants, a billing agency located in Brooklyn. Ms. Treff indicates she holds no ownership interests in health care facilities.

Regina Weinstock is employed as a consultant with Sentosa Care LLC. Ms. Weinstock discloses an ownership interest in Eastchester Rehabilitation and Health Care Center since September 13, 2003.

Sandra Busell is an attorney in good standing practicing law with Busell & Stier, PLLC. Ms. Busell is also a licensed Certified Public Accountant and indicates she holds no ownership interests in health care facilities.

Jeffrey Goldstein is a licensed nursing home administrator in good standing, and is employed as the Operations Manager at Throgs Neck Extended Care Facility, Bay Park Center for Nursing and White Plains Center for Nursing. According to Mr. Goldstein's resume, in this position he provides assistance in financial management and regulatory compliance to the operator and administrator, and is employed directly by the operator of each facility. Mr. Goldstein is also employed as fiscal manager at The Hamptons Center for Rehabilitation and Nursing. Mr. Goldstein was previously employed as Administrator of Record at White Plains Center for Nursing from November 10, 2009 to January 11, 2010, and Wedgewood Nursing Home from 2002 to 2004. Mr. Goldstein discloses a .5% ownership interest in The Hamptons Center for Rehabilitation and Nursing, since November 20, 2007.

Teresa Pocchia is a licensed nursing home administrator in good standing, and has served as administrator of record at Park Avenue Extended Care Center since 2004. Ms. Pocchia is also licensed as a Registered Nurse. Ms. Pocchia indicates she holds no ownership interests in health care facilities.

Jennifer Strauss is employed as a bookkeeper by Sterling Care Consultants, a billing agency located in Howell, NJ. Ms. Strauss indicates she holds no ownership interests in health care facilities.

Character and Competence – Analysis:

Jeffrey Goldstein was cited for practicing nursing home administration without a valid nursing home administrator registration from January 1, 2010 to January 11, 2010. Mr. Goldstein was employed as administrator of record at White Plains Center for Nursing Care during this period and failed to submit his 2011- 2012 nursing home administrator registration renewal in a timely fashion.

No adverse information for the other proposed new members has been received.

A review of the operations of Meadow Park Rehabilitation and Health Care Center, LLC, Park Avenue Extended Care Facility and White Plains Center for Nursing for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the operations of Golden Gate Rehabilitation and Health Care Center for the period reveals the following:

- The facility was fined \$20,000 pursuant to a Stipulation and Order issued July 9, 2009 for surveillance findings on June 27, 2008. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents and 415.26 Organization and Administration.

The review of operations of Golden Gate Rehabilitation and Health Care Center results in a conclusion of a substantially consistent high level of care, since there were no repeat enforcements.

A review of the operations of Avalon Gardens Rehabilitation and Health Care Center for the period reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order issued April 21, 2009 for surveillance findings on May 23, 2008. Deficiencies were found under 10 NYCRR 415.12(h)(1)&(2) Quality of Care: Accidents.

The review of operations of Avalon Gardens Rehabilitation and Health Care Center results in a conclusion of a substantially consistent high level of care, since there were no repeat enforcements.

A review of the operations of Bayview Nursing and Rehabilitation Center for the period reveals the following:

- The facility was fined \$7,000 pursuant to a Stipulation and Order issued September 29, 2005 for surveillance findings on November 16, 2004. Deficiencies were found under 10 NYCRR 415.5(h)(2) Quality of Life: Environment, 415.12 Quality of Care, 415.12(c)(1) Pressure Sores and 415.12(h)(2) Quality of Care- Accidents.
- The facility was fined \$2,000 pursuant to a Stipulation and Order issued June 13, 2007 for surveillance findings on December 2, 2005. Deficiencies were found under 10 NYCRR 415.11(c)(3) Comprehensive Care Plans.

The review of operations of Bayview Nursing and Rehabilitation Center results in a conclusion of a substantially consistent high level of care, since there were no repeat enforcements.

A review of the operations of Susquehanna Nursing and Rehabilitation for the noted period reveals the following:

- The facility was fined \$1,500 pursuant to a Stipulation and Order on January 31, 2007 for surveillance findings on September 25, 2006. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accidents and 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.

The review of operations of Susquehanna Nursing and Rehabilitation Center, LLC results in a conclusion of a substantially consistent high level of care, since there were no repeat enforcements.

A review of the operations of The Hamptons Center for Rehabilitation and Nursing for the period reveals the following:

- The facility was fined \$3,000 pursuant to a Stipulation and Order issued June 12, 2007 for surveillance findings on February 9, 2007. Deficiencies were found under 10 NYCRR 415.12 Quality of Care, 415.12(a)(2) Quality of Care: Activities of Daily Living and 10 NYCRR 415.12(j) Hydration.
- The facility was fined \$8,000 pursuant to a Stipulation and Order issued June 1, 2009 for surveillance findings on April 21, 2009. Deficiencies were found under 10 NYCRR 415.4(b)(1)(ii) Resident Behavior and Facility Practices: Staff Treatment of Residents, NYCRR 415.12(h)(2) Quality of Care: Accidents and 415.26 Organization and Administration.
- The facility was fined \$4,000 pursuant to a Stipulation and Order issued December 6, 2010 for surveillance findings on September 16, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents & Supervision and 415.26 Administration.
- The facility was fined \$10,000 pursuant to a Stipulation and Order issued May 24, 2011 for surveillance findings on July 30, 2010. Deficiencies were found under 10 NYCRR 415.12 Provide Care and Services for the Highest Well Being.

The review of operations of The Hamptons Center for Rehabilitation and Nursing results in a conclusion of a substantially consistent high level of care, since there were no repeat enforcements.

A review of the operations of Nathan Miller Center for Nursing for the noted period reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order on November 4, 2009 for surveillance findings on November 24, 2008. Deficiencies were found under 10 NYCRR 415.29 Physical Environment.

The review of operations of Nathan Miller Center for Nursing results in a conclusion of a substantially consistent high level of care, since there were no repeat enforcements. Nathan Miller Center for Nursing closed on February 7, 2011.

A review of the operations of Brookhaven Rehabilitation and Health Care Center, LLC for the noted period reveals the following:

- The facility was fined \$2000 pursuant to a Stipulation and Order on April 3, 2009 for surveillance findings on April 25, 2008. Deficiencies were found under 415.12 Quality of Care.

The review of operations of Brookhaven Rehabilitation and Health Care Center, LLC results in a conclusion of a substantially consistent high level of care, since there were no repeat enforcements.

A review of the operations of Eastchester Rehabilitation and Health Care Center for the noted period reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order on August 9, 2008 for surveillance findings on January 15, 2008. Deficiencies were found under 10 NYCRR 415.4 (b)(1)(ii) Resident Behavior and Facility Practices: Staff Treatment of Residents.

The review of operations of Eastchester Rehabilitation and Health Care Center results in a conclusion of a substantially consistent high level of care, since there were no repeat enforcements.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Background

BFA Packet A presents a summary net worth statement of the proposed new members, shown as Net Worth 1. Several of the proposed new members have ownership interest in additional RHCF facilities; their financial summaries are presented as the financial summaries in BFA Packet A, are as follows: Avalon Gardens Rehab and Health Care Center, Susquehanna Nursing and Rehab, Brookhaven Rehab and Health Care Center, Eastchester Rehab and Health Care Center, Woodmere Rehab and Health Care Center, Garden Care Center, Golden Gate Rehab and Health

Care Center, The Hamptons Center for Nursing and Rehab, Meadowpark Care Center, White Plains, Nathan Miller and Bayview Nursing and Rehab. BFA Packet A also presents the Financial Summary for Townhouse Extended Care Facility.

Membership Purchase Agreement

The applicant has submitted an executed membership purchase agreement for the change of 35.75% membership interest of Townhouse Operating Company, LLC, the terms of which are summarized below:

Purpose: The sale of 35.75% membership interests of Townhouse Operating Company, LLC.
Sellers: Gabor Adler (1%), Neal Einhorn (.5%), Mayer Fischl (4%), Sigmund Freunlich (4%), George Klein (2.5%), Larry Klein (2.5%), Laurie Netzer (.5%), Bent Philipson (13.25%), Michael Schwartz (1.5%), Nachum Sherman (1%), Robyn Weiss (1%), Pinchus Hoffman (3%) and Shelly Nakdimen (1%)
Purchasers: Sandra Busell (.5%), Alan Chopp (1%), Edward Farbenblum (3%), Abraham Fishoff (1%), Benjamin Fishoff (5%), Donald Fishoff (1%), Norman Gold (1%), Jeffrey Goldstein (.5%), Anne Gottlieb (2.5%), Meryl Gross (1%), Francine Joseph (1%), Tibor Levovich (1%), Teresa Pocchia (.5%), Theodore Pollack (1%), Mayer Rispler (2%), Berish Rubinstein (1%), Ronald Stern (2%), Jennifer Strauss (.5%), Martha Sweet (1%), Naomi Tessler (2%), Cynthia Treff (1%), Regina Weinstock (1%), Rhea Gutman (1%), Esther Farkovits (2.25%), Alexander Hoffman (1%), and Elisa Taub (1%)
Purchase Price: \$2,368,438 (\$66,250 per percent)
Payment of Purchase Price: The full payment has already been made to the facility

Capability and Feasibility

The issue of capability centers on the applicant's ability to meet the purchase price for their respective ownership percentages. Presented as BFA Packet A, Net Worth 1, is the summary net worth statement for the proposed members. Several of the current members and the proposed members have provided affidavits that state they will cover any of the members unmet equity requirements.

The issue of feasibility is centered on the applicant's ability to offset expenses with revenue and maintain a viable operating entity. The submitted budget indicated an excess of revenues over expenses of \$845,563 during the first and third years of operation. The budget appears reasonable.

Please see BFA Packet A for the Net Worth Statement for this project, as well as all of the financial summaries and the explanations for the financial summaries.

Based on the preceding, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner and approval is recommended.

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A Establishment Checklist for Nursing Homes

BFA Packet A Net Worth Statements

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 21st day of July, 2011, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to add 25 new members and delete seven (7) members from the LLC, increase the percentage ownership of one (1) member and decrease the percentage ownership of seven (7) members for a total change of 35.75%, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

092038-E

FACILITY/APPLICANT:

Townhouse Operating Co., LLC d/b/a
Townhouse Center for Rehabilitation and
Nursing

APPROVAL CONTINGENT UPON:

1. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions.
[RNR]

APPROVAL CONDITIONAL UPON:

N/A

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York 12180-2299



Public Health and Health Planning Council

Project # 092041-E
Throgs Neck Operating Co., LLC
d/b/a Throgs Neck Extended Care Facility

County: Bronx (Bronx)
Purpose: Establishment

Program: Residential Health Care Facility
Submitted: August 18, 2009

Executive Summary

Description

Throgs Neck Operating Co., LLC d/b/a Throgs Neck Extended Care Facility, a 205-bed proprietary residential health care facility (RHCF) located in the Bronx, requests approval to add 25 new members and delete 7 members from the LLC, increase the percentage ownership of 1 member and decrease the percentage ownership of 7 members for a total change of 35.75%.

The change in the membership percentages would diversify ownership of the facility. There will be no programmatic changes made as a result of the transfers. The facility commenced operation in July, 2004.

DOH Recommendation
Approval.

Need Summary

Occupancy at Throgs Neck Extended Care Facility for the years 2007-2009, was 94.4%, 98.7% and 96.8%, respectively.

Program Summary

There are no proposed changes in either the program or physical environment of the facility.

Throgs Neck Operating Co., LLC has entered into a consulting services agreement with Sentosa Care, LLC.

Financial Summary

There are no project costs associated with this proposal. The purchase price for 35.75% ownership interest in the Nursing home is \$2,368,438. The payment has already been made.

| | | |
|--------|---------------------|-------------------|
| Budget | <i>Revenues:</i> | \$ 21,866,800 |
| | <i>Expenses:</i> | <u>20,891,214</u> |
| | <i>Gain/(Loss):</i> | \$ 975,586 |

It appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Architectural Summary

This project is for Establishment action only; therefore, no Architectural recommendation is required.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval.

Council Action Date

August 4, 2011.

Need Analysis

Background

Throgs Neck Operating Company, LLC d/b/a Throgs Neck Extended Care Facility, a 205-bed residential health care facility (RHCF), located at 707 Throgs Neck Expressway, Bronx, NY 10465, seeks approval to add twenty-five new members to the Limited Liability Company. The applicant also proposes to delete certain existing members and increase the operating percentage of certain members, while decreasing the percentage of others.

Throgs Neck Extended Care Facility, located in Bronx County, is certified for RHCF baseline services.

Analysis

| <i>RHCF Bed Need</i> | <i>New York City</i> |
|-------------------------|----------------------|
| 2016 Projected Need | 51,071 |
| Current RHCF Beds | 43,454 |
| Beds Under Construction | 635 |
| Total Resources | 44,089 |
| Unmet Need | 6,982 |

| <i>RHCF Utilization</i> | <i>2007</i> | <i>2008</i> | <i>2009</i> |
|------------------------------------|-------------|-------------|-------------|
| Throgs Neck Extended Care Facility | 94.4% | 98.7% | 96.8% |
| Bronx County | 92.5% | 95.6% | 96.1% |
| New York City | 93.6% | 94.2% | 94.8% |

Utilization at Throgs Neck showed an increase of 3.48 percent between 2006 and 2008; Bronx County also showed a miniscule increase in utilization over the same period.

At the end of January 2010, the case mix index (CMI) for the residents in the facility at the time was 1.1829; there were 1 (one) Physical A and 3 Physical B's.

Conclusion

Throgs Neck Operating Company, LLC is seeking approval for a change in the establishment for Throgs Neck Extended Care Facility. This change in the make-up of the membership of the Limited Liability Company will allow the addition of new members as well as the increase in percentage of others; some members will withdraw from the Company.

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Facility Information

| | <i>Existing</i> | <i>Proposed</i> |
|------------------------------|---|-----------------|
| <i>Facility Name</i> | Throgs Neck Extended Care Facility | same |
| <i>Address</i> | 707 Throgs Neck Expressway Bronx, NY 10465 | same |
| <i>RHCF Capacity</i> | 205 | same |
| <i>ADHC Program Capacity</i> | 0 | same |
| <i>Type Of Operator</i> | Limited Liability Company | same |
| <i>Class Of Operator</i> | Proprietary | same |

| | | |
|----------|---|---|
| Operator | Throgs Neck Operating Co., LLC | same |
| | <u>CONTINUING MEMBERS:</u> Bent Philipson 24.50% Anthony Bacchi 10.00% Martin Farbenblum 10.00% Esther Farkovitz 7.00% Pinchus Hoffman 7.00% Mayer Fischl 7.00% George Klein 3.50% Ruth Hirsch 3.00% Larry Klein 3.00% Andrew Freundlich 2.00% Chana Lerner 2.00% Michael Schwartz 2.00% Moshe Sirkis 2.00% George Adler 1.00% Aaron Becher 1.00% David Hoffman 1.00% William Korn 1.00% Irina Kostetsky 1.00% Girshas Minster 1.00% Laurie Netzer 1.00% David Bloom 0.50% Ira Cammeyer 0.50% Leslie Shafranek 0.50% | <u>CONTINUING MEMBERS:</u> Bent Philipson 11.25% Anthony Bacchi 10.00% Martin Farbenblum 10.00% Esther Farkovitz 9.25% Pinchus Hoffman 4.00% Mayer Fischl 3.00% George Klein 1.00% Ruth Hirsch 3.00% Larry Klein 0.50% Andrew Freundlich 2.00% Chana Lerner 2.00% Michael Schwartz 0.50% Moshe Sirkis 2.00% George Adler 1.00% Aaron Becher 1.00% David Hoffman 1.00% William Korn 1.00% Irina Kostetsky 1.00% Girshas Minster 1.00% Laurie Netzer 0.50% David Bloom 0.50% Ira Cammeyer 0.50% Leslie Shafranek 0.50% |
| | <u>DEPARTING MEMBERS:</u> Sigmund Freundlich 4.00% Gabor Adler 1.00% Shelly Nakdimen 1.00% Nat Sherman 1.00% Robyn Weiss 1.00% Neal Einhorn 0.50% | <u>DEPARTING MEMBERS:</u> Sigmund Freundlich 0.00% Gabor Adler 0.00% Shelly Nakdimen 0.00% Nat Sherman 0.00% Robyn Weiss 0.00% Neal Einhorn 0.00% |
| | | <u>NEW MEMBERS:</u> Benjamin Fishoff 5.00% Edward Farbenblum 3.00% Anne Gottlieb 2.50% Mayer Rispler 2.00% Ronald Stern 2.00% Naomi Tessler 2.00% Alan Chopp 1.00% Abraham Fishoff 1.00% Donald Fishoff 1.00% Norman Gold 1.00% Meryl Gross 1.00% Rhea Gutman 1.00% Alexander Hoffman 1.00% Francine Joseph 1.00% Tibor Lebovich 1.00% Theodore Pollack 1.00% Berish Rubenstein 1.00% Martha Sweet 1.00% Elisa Taub 1.00% Cynthia Treff 1.00% Regina Weinstock 1.00% Sandra Busell 0.50% |

| | | | |
|--|--|-------------------|-------|
| | | Jeffrey Goldstein | 0.50% |
| | | Theresa Pocchia | 0.50% |
| | | Jennifer Strauss | 0.50% |

Character and Competence

- FACILITIES REVIEWED:

Residential Health Care Facilities

| | |
|--|--------------------|
| Golden Gate Rehabilitation and Health Care Center | 6/2002 to present |
| Avalon Gardens Rehabilitation and Health Care Center | 5/2003 to present |
| Bayview Nursing and Rehabilitation Center | 4/2003 to present |
| Susquehanna Nursing and Rehabilitation Center, LLC | 1/2005 to present |
| The Hamptons Center for Rehabilitation and Nursing | 11/2007 to present |
| Meadow Park Rehabilitation and Health Care Center, LLC | 6/2001 to present |
| Nathan Miller Center for Nursing | 10/2004 to 2/7/11 |
| White Plains Center for Nursing | 10/2004 to present |
| Brookhaven Rehabilitation and Health Care Center | 6/2001 to present |
| Eastchester Rehabilitation and Health Care Center | 9/2003 to present |

- INDIVIDUAL BACKGROUND REVIEW:

Benjamin Fishoff has been retired since 2001, having previously been employed from 1956 to 2001 as President of Inter-Ocean Corporation, an import/export company located in Lodi, New Jersey. Mr. Fishoff discloses ownership in The Hamptons Center for Rehabilitation and Nursing since November 20, 2007.

Edward Farbenblum is currently employed (since 2004) by Martin Farbenblum Family Partnership, LLP, an investment company located in Garden City, NY. Mr. Farbenblum discloses ownership interest in Susquehanna Nursing & Rehabilitation Center since January, 2005.

Anne Gottlieb is a licensed nursing home administrator in good standing, and is currently employed as Chief Financial Officer at Garden Care Center. Ms. Gottlieb discloses ownership interests in Meadow Park Rehabilitation and Health Care Center since December 22, 1999 and Nathan Miller Center for Nursing and White Plains Center for Nursing since October 27, 2004.

Mayer Rispler is a New York State Certified Public Account with license in good standing, and is the principal in Mayer Rispler and Company CPA's PC. Mr. Rispler discloses an ownership interest with Golden Gate Rehabilitation and Health Care Center since June 6, 2002.

Ronald Stern is currently employed by Balticwood USA, a wood flooring importer located in Newark, NJ. Mr. Stern discloses ownership interest in The Hamptons Center for Rehabilitation and Nursing since November 20, 2007.

Naomi Tessler is employed as a managing pharmacist by Medical Arts Chemists/F&D Pharmacy, Inc., a pharmacy located in Brooklyn. Ms. Tessler indicates she holds no ownership interests in health care facilities.

Alan Chopp is a licensed nursing home administrator in good standing in the States of New York, New Jersey and New Hampshire. Mr. Chopp is employed as the Compliance/HIPAA/Risk Management Officer for Sentosa Care LLC. Mr. Chopp was previously employed as the administrator of record at Golden Gate Rehabilitation and Health Care Center from 1974 to 2001. Mr. Chopp has held several interim administrator positions including Bayview Nursing and Rehab Center from May 29 2003 to July 1, 2003, West Lawrence Care Center from November 24, 2003 to February 2, 2004 and Franklin Center for Rehabilitation and Nursing from December 15, 2008 to January 26, 2009. Mr. Chopp discloses he holds ownership interests in Avalon Gardens Rehabilitation and Health Care Center since May 12, 2003, and Bayview Nursing and Rehabilitation Center since April 6, 2003. Mr. Chopp also discloses an ownership interest in Golden Gate Rehabilitation and Health Care, LLC from 1974 to June 30, 2001.

Abraham Fishoff is the chief executive officer of City Lights, a real estate development company. Mr. Fishoff indicates he holds no ownership interests in health care facilities.

Donald Fishoff is the current president of Inter-Ocean Investments, LLC, a trade company located in Brooklyn. Mr. Fishoff indicates he holds no ownership interests in health care facilities.

Norman Gold is the owner of Madelaine Chocolate Novelties, and is a Certified Public Accountant with license in good standing. Mr. Gold indicates he holds no ownership interests in health care facilities.

Meryl Gross has been retired since 2007, having been employed previously by Inter-Ocean Corporation, an import/export company located in Lodi, New Jersey, from 1991 to 2006. Ms. Gross indicates she holds no ownership interests in health care facilities.

Rhea Guttman has been retired since 1991. Ms. Guttman indicates she holds no ownership interests in health care facilities.

Alexander Hoffman is the manager of ITL Properties, a real estate company. Mr. Hoffman indicates he holds no health facility interests.

Francine Joseph is a homemaker residing in Pomona, NY. Ms. Joseph indicates she holds no ownership interests in health care facilities.

Tibor Lebovich is retired, having previously been employed as the President/Sales for Continental JC, a manufacturing company located in Long Island City. Mr. Lebovich discloses ownership interest in Bayview Nursing and Rehabilitation Center since April 6, 2003 and Susquehanna Nursing & Rehabilitation Center since January, 2005.

Theodore Pollak is the owner of PKK LLC, an investment company located in Monsey, New York. Mr. Pollak discloses ownership interests in Meadow Park Rehabilitation and Health Care Center since December 22, 1999 and Brookhaven Rehabilitation and Health Care Center since April 26, 2000.

Berish Rubenstein is employed as Director of Human Resources by Prompt Nursing Employment, an employment agency located in Brooklyn. Mr. Rubenstein indicates he holds no ownership interests in health care facilities.

Martha Sweet is a licensed nursing home administrator in good standing, and has served as administrator of record at Grace Plaza Nursing and Rehabilitation Center since 2002. Ms. Sweet formerly served on the New York State Board of Examiners of Nursing Home Administrators. Ms. Sweet is also licensed as a Registered Nurse, in good standing. Ms. Sweet indicates she holds no ownership interests in health care facilities.

Elisa Taub is employed as a waste and recycling broker in Flushing, New York. Ms. Taub indicates she holds no ownership interests in health care facilities

Cynthia Treff is employed as a bookkeeper by Future Care Consultants, a billing agency located in Brooklyn. Ms. Treff indicates she holds no ownership interests in health care facilities.

Regina Weinstock is employed as a consultant with Sentosa Care LLC. Ms. Weinstock discloses an ownership interest in Eastchester Rehabilitation and Health Care Center since September 13, 2003.

Sandra Busell is an attorney in good standing practicing law with Busell & Stier, PLLC. Ms. Busell is also a licensed Certified Public Accountant and indicates she holds no ownership interests in health care facilities.

Jeffrey Goldstein is a licensed nursing home administrator in good standing, and is employed as the Operations Manager at Throgs Neck Extended Care Facility, Bay Park Center for Nursing and White Plains Center for Nursing. According to Mr. Goldstein's resume, in this position he provides assistance in financial management and regulatory compliance to the operator and administrator, and is employed directly by the operator of each facility. Mr. Goldstein is also employed as fiscal manager at The Hamptons Center for Rehabilitation and Nursing. Mr. Goldstein was previously employed as Administrator of Record at White Plains Center for Nursing from November 10, 2009 to January 11, 2010, and Wedgewood Nursing Home from 2002 to 2004. Mr. Goldstein discloses a .5% ownership interest in The Hamptons Center for Rehabilitation and Nursing, since November 20, 2007.

Teresa Pocchia is a licensed nursing home administrator in good standing, and has served as administrator of record at Park Avenue Extended Care Center since 2004. Ms. Pocchia is also licensed as a Registered Nurse. Ms. Pocchia indicates she holds no ownership interests in health care facilities.

Jennifer Strauss is employed as a bookkeeper by Sterling Care Consultants, a billing agency located in Howell, NJ. Ms. Strauss indicates she holds no ownership interests in health care facilities.

Character and Competence-Analysis:

Jeffrey Goldstein was cited for practicing nursing home administration without a valid nursing home administrator registration from January 1, 2010 to January 11, 2010. Mr. Goldstein was employed as administrator of record at White Plains Center for Nursing Care during this period and failed to submit his 2011- 2012 nursing home administrator registration renewal in a timely fashion.

No adverse information for the other proposed new members has been received.

A review of the operations of Meadow Park Rehabilitation and Health Care Center, LLC, Park Avenue Extended Care Facility and White Plains Center for Nursing for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the operations of Golden Gate Rehabilitation and Health Care Center for the period reveals the following:

- The facility was fined \$20,000 pursuant to a Stipulation and Order issued July 9, 2009 for surveillance findings on June 27, 2008. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents and 415.26 Organization and Administration.

The review of operations of Golden Gate Rehabilitation and Health Care Center results in a conclusion of a substantially consistent high level of care, since there were no repeat enforcements.

A review of the operations of Avalon Gardens Rehabilitation and Health Care Center for the period reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order issued April 21, 2009 for surveillance findings on May 23, 2008. Deficiencies were found under 10 NYCRR 415.12(h)(1)&(2) Quality of Care: Accidents.

The review of operations of Avalon Gardens Rehabilitation and Health Care Center results in a conclusion of a substantially consistent high level of care, since there were no repeat enforcements.

A review of the operations of Bayview Nursing and Rehabilitation Center for the period reveals the following:

- The facility was fined \$7,000 pursuant to a Stipulation and Order issued September 29, 2005 for surveillance findings on November 16, 2004. Deficiencies were found under 10 NYCRR 415.5(h)(2) Quality of Life: Environment, 415.12 Quality of Care, 415.12(c)(1) Pressure Sores and 415.12(h)(2) Quality of Care- Accidents.
- The facility was fined \$2,000 pursuant to a Stipulation and Order issued June 13, 2007 for surveillance findings on December 2, 2005. Deficiencies were found under 10 NYCRR 415.11(c)(3) Comprehensive Care Plans.

The review of operations of Bayview Nursing and Rehabilitation Center results in a conclusion of a substantially consistent high level of care, since there were no repeat enforcements.

A review of the operations of Susquehanna Nursing and Rehabilitation for the noted period reveals the following:

- The facility was fined \$1,500 pursuant to a Stipulation and Order on January 31, 2007 for surveillance findings on September 25, 2006. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accidents and 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.

The review of operations of Susquehanna Nursing and Rehabilitation Center, LLC results in a conclusion of a substantially consistent high level of care, since there were no repeat enforcements.

A review of the operations of The Hamptons Center for Rehabilitation and Nursing for the period reveals the following:

- The facility was fined \$3,000 pursuant to a Stipulation and Order issued June 12, 2007 for surveillance findings on February 9, 2007. Deficiencies were found under 10 NYCRR 415.12 Quality of Care, 415.12(a)(2) Quality of Care: Activities of Daily Living and 10 NYCRR 415.12(j) Hydration.
- The facility was fined \$8,000 pursuant to a Stipulation and Order issued June 1, 2009 for surveillance findings on April 21, 2009. Deficiencies were found under 10 NYCRR 415.4(b)(1)(ii) Resident Behavior and Facility Practices: Staff Treatment of Residents, NYCRR 415.12(h)(2) Quality of Care: Accidents and 415.26 Organization and Administration.
- The facility was fined \$4,000 pursuant to a Stipulation and Order issued December 6, 2010 for surveillance findings on September 16, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents & Supervision and 415.26 Administration.
- The facility was fined \$10,000 pursuant to a Stipulation and Order issued May 24, 2011 for surveillance findings on July 30, 2010. Deficiencies were found under 10 NYCRR 415.12 Provide Care and Services for the Highest Well Being.

The review of operations of The Hamptons Center for Rehabilitation and Nursing results in a conclusion of a substantially consistent high level of care, since there were no repeat enforcements

A review of the operations of Nathan Miller Center for Nursing for the noted period reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order on November 4, 2009 for surveillance findings on November 24, 2008. Deficiencies were found under 10 NYCRR 415.29 Physical Environment.

The review of operations of Nathan Miller Center for Nursing results in a conclusion of a substantially consistent high level of care, since there were no repeat enforcements. Nathan Miller Center for Nursing closed on February 7, 2011.

A review of the operations of Brookhaven Rehabilitation and Health Care Center, LLC for the noted period reveals the following:

- The facility was fined \$2000 pursuant to a Stipulation and Order on April 3, 2009 for surveillance findings on April 25, 2008. Deficiencies were found under 415.12 Quality of Care.

The review of operations of Brookhaven Rehabilitation and Health Care Center, LLC results in a conclusion of a substantially consistent high level of care, since there were no repeat enforcements.

A review of the operations of Eastchester Rehabilitation and Health Care Center for the noted period reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order on August 9, 2008 for surveillance findings on January 15, 2008. Deficiencies were found under 10 NYCRR 415.4 (b)(1)(ii) Resident Behavior and Facility Practices: Staff Treatment of Residents.

The review of operations of Eastchester Rehabilitation and Health Care Center results in a conclusion of a substantially consistent high level of care, since there were no repeat enforcements.

There are no proposed changes in either the program or physical environment of the facility.

Throgs Neck Operating Co. LLC has entered into a consulting services agreement with Sentosa Care, LLC.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Membership Purchase Agreement

The applicant has submitted an executed membership purchase agreement for the change of 35.75% membership interest of Throgs Neck Operating Co, LLC, the terms of which are summarized below:

Purpose: The sale of 35.75% membership interests of Throgs Neck Operating Co, LLC
Sellers: Gabor Adler (1%), Neal Einhorn (.5%), Mayer Fischl (4%), Sigmund Freunlich (4%), George Klein (2.5%), Larry Klein (2.5%), Laurie Netzer (.5%), Bent Philipson (13.25%), Michael Schwartz (1.5%), Nachum Sherman (1%), Robyn Weiss (1%), Pinchus Hoffman (3%) and Shelly Nakdimen (1%)
Purchasers: Sandra Busell (.5%), Alan Chopp (1%), Edward Farbenblum (3%), Abraham Fishoff (1%), Benjamin Fishoff (5%), Donald Fishoff (1%), Norman Gold (1%), Jeffrey Goldstein (.5%), Anne Gottlieb (2.5%), Meryl Gross (1%), Francine Joseph (1%), Tibor Levovich (1%), Teresa Pocchia (.5%), Theodore Pollack (1%), Mayer Rispler (2%), Berish Rubinstein (1%), Ronald Stern (2%), Jennifer Strauss (.5%), Martha Sweet (1%), Naomi Tessler (2%), Cynthia Treff (1%), Regina Weinstock (1%), Rhea Gutman (1%), Esther Farkovits (2.25%), Alexander Hoffman (1%), and Elisa Taub (1%)
Purchase Price: \$2,368,438 (\$66,250 per percent)
Payment of Purchase Price: The full payment has already been made to the facility.

Capability and Feasibility

The issue of capability centers on the applicant's ability to meet the purchase price for their respective ownership percentages. Presented as BFA Packet A, Net Worth 1, is the summary net worth statement for the proposed members. Several of the current members and the proposed members have provided affidavits that state they will cover any of the members unmet equity requirements.

The issue of feasibility is centered on the applicant's ability to offset expenses with revenue and maintain a viable operating entity. The submitted budget indicated an excess of revenues over expenses of \$975,586 during the first and third years of operation. The budget appears reasonable.

Please see BFA Packet A for the Net Worth Statement for this project, as well as all the financial summaries and the explanations to the financial summaries.

Based on the preceding, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner and approval is recommended.

Recommendation

From a financial perspective, approval is recommended.

Attachments

| | |
|------------------|---|
| BFA Attachment A | Establishment Checklist for Nursing Homes |
| BFA Packet A | Net Worth Statements |
| BHFP Attachment | Map |

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of section 2801-a of the Public Health Law, on this 21st day of July, 2011, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby approves the following application to add 25 new members and delete seven (7) members from the LLC, increase the percentage ownership of one (1) member and decrease the percentage ownership of seven (7) members for a total change of 35.75%, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

092041-E

FACILITY/APPLICANT:

Throgs Neck Operating Co., LLC d/b/a
Throgs Neck Extended Care Facility



Public Health and Health Planning Council

Project # 092077-E Bayview Nursing and Rehabilitation Center

County: Nassau (Island Park)
Purpose: Establishment

Program: Residential Health Care Facility
Submitted: September 21, 2009

Executive Summary

Description

Bayview Nursing and Rehabilitation Center (Bayview), a 185-bed proprietary residential health care facility (RHCF) located at One Long Beach Road, Island Park, requests approval for a change in 33% of the membership ownership of the facility. The facility is seeking approval to add two new members, delete 6 existing members, and increase the percentage of 6 members.

The ownership of the facility, before and after the proposed transaction, is as follows:

| <u>Current w/Percentages</u> | | <u>Proposed w/Percentages</u> | |
|------------------------------|------|-------------------------------|-------|
| Bent Philipson | 16.5 | Bent Philipson | 27.00 |
| Benjamin Landa | 23.5 | Benjamin Landa | 24.00 |
| Anthony Bacchi, MD | 6.25 | Anthony Bacchi, M.D. | 10.00 |
| Martin Farbenblum | 6.25 | Martin Farbenblum | 10.00 |
| Tibor Lebovich | 5.00 | Tibor Lebovich | 9.00 |
| Mayer Fischl | 2.00 | Ronald Stern | 6.00 |
| Philip Bacchi | 2.50 | Mayer Fischl | 5.00 |
| Girshas Minster | 2.00 | Philip Bacchi | 2.50 |
| Alan Chopp | 1.00 | Girshas Minster | 2.00 |
| Simona Golman | 1.00 | Irina Kostetsky | 1.50 |
| Frank Iannucci | 1.00 | Alan Chopp | 1.00 |
| Teddy Pollack | 10.0 | Simona Golman | 1.00 |
| Ahron Hersh | 8.00 | Frank Iannucci | 1.00 |
| Isaac Hersh | 4.00 | | |
| Stephen Hersh | 4.00 | | |
| Judith Hersh-Paritzky | 4.00 | | |
| Gerson Bassman | 3.00 | | |

The change in the membership percentage would diversify ownership of the facility. There will be no change in beds or services upon approval as a result of the transfers.

Bayview Manor, LLC has entered into a consulting services agreement with Sentosa Care, LLC.

DOH Recommendation
Contingent approval.

Need Summary

There is currently an unmet need of 1,353 beds on Long Island (Nassau and Suffolk Counties). There has been increased occupancy at the facility from 2007 to 2009, increasing from 91.4% to 97.2%.

Program Summary

No negative information has been received concerning the character and competence of the applicants.

Financial Summary

There are no project costs associated with this proposal. The purchase price for 33% ownership interest in the Nursing home is \$1,419,000. The payment has already been made and is being held in an escrow account by facility until such time as the CON is approved upon approval.

| | | |
|---------|-------------------|-------------------|
| Budget: | <i>Revenues:</i> | \$ 17,919,100 |
| | <i>Expenses:</i> | <u>17,684,232</u> |
| | <i>Gain/Loss:</i> | \$ 234,868 |

It appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Architectural Summary

This project is for Establishment action only; therefore, no Architectural recommendation is required.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of a photocopy of the original Operating Agreement indicating as members only those persons established by the Public Health Council (PHC), pursuant to CON application number 021157-E, and executed by each such established member, which must be acceptable to the Department of Health. [CSL]
2. Submission of photocopies of documents related to the submission, and approval by the Department, of a 90-day notice in 2008, pursuant to which Helen Webster and Chava Webster voluntarily withdrew from the facility as members, which must be acceptable to the Department. [CSL]
3. Submission of original affidavits from each of Ahron Hersh, Isaac Hersh, Stephen Hersh and Judith Hersh-Paritzky indicating that they were members of the facility from the time they were established as such by the PHC, which must be acceptable to the Department. [CSL]
4. Submission of photocopies of documents, currently dated, from each of the persons noted in item 3 above, of their withdrawal from the facility, which must be acceptable to the Department. [CSL]
5. Submission of original affidavits from each of Moshe Mendlowitz, Jack Janklowicz, Ronald Stern and Irena Kostetsky attesting that they are not now, and have never been, members of the facility; that they have not exercised any voting rights; and that they have not received any distributions, which must be acceptable to the Department. [CSL]
6. Submission of photocopies of documentation from Ronald Stern and Irena Kostetsky, currently dated, that they will be bound by the terms and conditions of the Operating Agreement once properly established as members through this CON application, which must be acceptable to the Department. [CSL]

Council Action Date

August 4, 2011.

Need Analysis

Background

Bayview Nursing and Rehabilitation Center is an existing 185-bed Article 28 residential health care facility located in Island Park, Nassau County.

| <u>RHCF Bed Need</u> | <u>Long Island</u> |
|-------------------------|--------------------|
| 2016 Projected Need | 16,962 |
| Current Beds | 16,000 |
| Beds Under Construction | -391 |
| Total Resources | 15,609 |
| Unmet Need | 1,353 |

Bayview Nursing and Rehabilitation Center has utilization above that of Nassau County for 2008 and 2009, but was slightly below the county rate in 2007 as shown in the table below:

| <u>RHCF Utilization</u> | <u>2007</u> | <u>2008</u> | <u>2009</u> |
|---|-------------|-------------|-------------|
| Bayview Nursing and Rehabilitation Center | 91.4% | 97.0% | 97.2% |
| Nassau County | 93.6% | 95.0% | 94.2% |

Recommendation.

From a need perspective, approval is recommended.

Programmatic Analysis

Facility Information

| | <i>Existing</i> | <i>Proposed</i> |
|------------------------------|--|-----------------|
| <i>Facility Name</i> | Bayview Nursing and Rehabilitation Center | same |
| <i>Address</i> | One Long Beach Road Island Park, NY 11558 | same |
| <i>RHCF Capacity</i> | 185 | same |
| <i>ADHC Program Capacity</i> | 0 | same |
| <i>Type of Operator</i> | Limited Liability Company | same |
| <i>Class of Operator</i> | Proprietary | same |

| | | | | |
|---------------------------|----------------------------|---------------------|----------------------------|--------|
| <i>Operator</i> | Bayview Manor, LLC | | | |
| | <u>CONTINUING MEMBERS:</u> | | <u>CONTINUING MEMBERS:</u> | |
| | Bent Philipson | 16.50% | Bent Philipson | 27.00% |
| | Benjamin Landa | 23.50% | Benjamin Landa | 24.00% |
| | Anthony Bacchi | 6.25% | Anthony Bacchi | 10.0% |
| | Martin Farbenblum | 10.00% | Martin Farbenblum | 10.0% |
| | Tibor Lebovich | 5.00% | Tibor Lebovich | 5.00% |
| | Philip Bacchi | 2.50% | Philip Bacchi | 2.50% |
| | Mayer Fischl | 2.00% | Mayer Fischl | 5.00% |
| | Girshas Minster | 2.00% | Girshas Minster | 2.00% |
| Alan Chopp | 1.00% | Alan Chopp | 1.00% | |
| Simona Golman | 1.00% | Simona Golman | 1.00% | |
| Frank Iannucci | 1.00% | Frank Iannucci | 1.00% | |
| <u>DEPARTING MEMBERS:</u> | | <u>NEW MEMBERS:</u> | | |
| Theodore Pollack | 10.00% | Ronald Stern | 6.00% | |
| Ahron Hersh | 8.00% | Irina Kostetsky | 1.50% | |
| Isaac Hersh | 4.00% | | | |
| Stephen Hersh | 4.00% | | | |
| Judith Hersh- | 4.00% | | | |
| Gerson Basman | 3.00% | | | |

Character and Competence

- FACILITIES REVIEWED:

Residential Health Care Facilities

| | |
|--|--------------------|
| The Hamptons Center for Rehabilitation and Nursing | 11/7/07 to present |
| Nassau Extended Care Center | 7/2004 to present |
| Park Avenue Extended Care Center | 7/2004 to present |
| Throgs Neck Extended Care Facility | 7/2004 to present |
| Townhouse Extended Care Facility | 7/2004 to present |

Diagnostic and Treatment Centers

| | |
|----------------------------|-----------------|
| Century Medical and Dental | 2002 to present |
|----------------------------|-----------------|

- INDIVIDUAL BACKGROUND REVIEW

Ronald Stern is currently employed as President of Balticwood USA, a wood flooring importer located in Newark, NJ. Mr. Stern discloses the following ownership interest:

| | |
|--|---------------------|
| The Hamptons Center for Rehabilitation and Nursing | 11/20/07 to present |
|--|---------------------|

Irina Kostetsky is employed as an owner of Century Medical and Dental, Inc., an Article 28 diagnostic and treatment center. Ms. Kostetsky discloses the following ownership interests:

| | |
|------------------------------------|-------------------|
| Nassau Extended Care Center | 7/2004 to present |
| Park Avenue Extended Care Center | 7/2004 to present |
| Throgs Neck Extended Care Facility | 7/2004 to present |
| Townhouse Extended Care Facility | 7/2004 to present |
| Century Medical and Dental | 2002 to present |

Character and Competence – Analysis:

No negative information has been received concerning the character and competence of the applicants.

A review of the operations of Park Avenue Extended Care Facility and Throgs Neck Extended Care Facility for the periods indicated results in a conclusion that a substantially consistent high level of care has been provided since there were no enforcements.

A review of the operations of Nassau Extended Care Center for the period reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order issued March 25, 2004 for surveillance findings on July 25, 2001. Deficiencies were found under 10 NYCRR 415.12 Quality of Care.

The review of operations of Nassau Extended Care Center results in a conclusion of a substantially consistent high level of care, since there were no repeat enforcements.

A review of the operations of Townhouse Extended Care Center for the period reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order issued March 25, 2004 for surveillance findings on August 31, 2004. Deficiencies were found under 10 NYCRR 415.2 Quality of Care and 415.12(c) Quality of Care: Pressure Sores.

The review of operations of Townhouse Extended Care Center results in a conclusion of a substantially consistent high level of care, since there were no repeat enforcements.

A review of the operations of The Hamptons Center for Rehabilitation and Nursing for the period reveals the following:

- The facility was fined \$3,000 pursuant to a Stipulation and Order issued June 12, 2007 for surveillance findings on February 9, 2007. Deficiencies were found under 10 NYCRR 415.12(a)(2) Quality of Care-Activities of Daily Living and 10 NYCRR 415.12(j) Hydration.
- The facility was fined \$8,000 pursuant to a Stipulation and Order issued June 1, 2009 for surveillance findings on April 21, 2009. Deficiencies were found under 10 NYCRR 415.4(b)(1)(ii) Resident Behavior and Facility Practices, NYCRR 415.12(h)(2) Quality of Care-Accidents and 415.26 Administration.
- The facility was fined \$4,000 pursuant to a Stipulation and Order issued December 6, 2010 for surveillance findings on September 16, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care-Accidents & Supervision and 415.26 Administration.
- The facility was fined \$10,000 pursuant to a Stipulation and Order issued May 24, 2011 for surveillance findings on July 30, 2010. Deficiencies were found under 10 NYCRR 415.12 Provide Care and Services for the Highest Well Being.

The review of operations of The Hamptons Center for Rehabilitation and Nursing results in a conclusion of a substantially consistent high level of care, since there were no repeat enforcements

A review of the operations of Century Medical and Dental reveals the facility has no enforcement history, with a conclusion of a substantially consistent high level of care.

Project Review

There are no proposed changes in either the program or physical environment of the facility.

Bayview Manor, LLC has entered into a consulting services agreement with Sentosa Care, LLC.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Background

BFA Packet A presents a summary net worth statement of the proposed new members, shown as Net Worth 2. Several of the proposed new members and current members increasing their ownership have ownership interest in additional RHC facilities; their financial summaries are presented as attachments in BFA Packet A and are as follows: Avalon Gardens Rehab and Health Care Center, Susquehanna Nursing and Rehab, Brookhaven Rehab and Health Care Center, Eastchester Rehab and Health Care Center, Woodmere Rehab and Health Care Center, Golden Gate Rehab and Health Care Center, The Hamptons Center for Nursing and Rehab, White Plains Center for Nursing, Fort Tryon Center for Rehab and Nursing, New Franklin Center for Rehab and Nursing, Park Avenue Extended Care Center, Nassau Extended Care Center, Nathan Miller Center for Nursing, Throgs Neck Extended Care Center, Townhouse Extended Care Center, West Lawrence Care Center, and Split Rock Rehabilitation and Health Care Center. BFA Packet A also presents the Financial Summary for Bayview Nursing and Rehabilitation Center.

Membership Purchase Agreement

The applicant has submitted an executed membership purchase agreement for the change of 33% membership interest of Bayview Manor., LLC, the terms of which are summarized below:

| | |
|-----------------------------------|---|
| <i>Purpose:</i> | The sale of 33% membership interests of Bayview Manor, LLC |
| <i>Sellers:</i> | Teddy Pollack (10%), Ahron Hersh (8%), Isaac Hersh (4%), Stephen Hersh (4%), Judith Hersh-Paritzky (4%), Gerson Bassman (3%). |
| <i>Purchasers:</i> | New members: Ronald Stern (6%), Irina Kostetsky (1.5%). Current Members gaining interest: Bent Philipson (+10.5%), Benjamin Ianda (+.5%), Anthony Bacchi, M.D. (+3.75%), Martin Farbenblum (+3.75%), Tibor Lebovich (+4%), Mayer Fischl (+3%) |
| <i>Purchase Price:</i> | \$1,419,000 (\$43,000 per percent) |
| <i>Payment Of Purchase Price:</i> | The full payment has already been made to the facility and is being held in escrow by the facility until such time as the CON is approved. Upon approval, the monies will be distributed to the sellers. |

Capability and Feasibility

The issue of capability centers on the applicant's ability to meet the purchase price for their respective ownership percentages. Presented as BFA Packet A, Net Worth 3, is the summary net worth statement for the proposed members. Several of the current members and the proposed members have provided affidavits that state they will cover any of the members' unmet equity requirements.

The issue of feasibility is centered on the applicant's ability to offset expenses with revenue and maintain a viable operating entity. The submitted budget indicated an excess of revenues over expenses of \$234,868 during the first and third years of operation. The budget appears reasonable.

Please see BFA Packet A for the Net Worth Statement for this project, as well as all of the Financial Summaries and the explanations to the financial summaries.

Based on the preceding, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and approval is recommended.

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A Establishment Checklist for Nursing Homes

BFA Packet A Financial Summary Documents

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 21st day of July, 2011, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application for a change in 33% of the membership ownership, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

092077-E

Bayview Nursing and Rehabilitation Center

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of the original Operating Agreement indicating as members only those persons established by the Public Health Council (PHC), pursuant to CON application number 021157-E, and executed by each such established member, which must be acceptable to the Department of Health. [CSL]
2. Submission of photocopies of documents related to the submission, and approval by the Department, of a 90-day notice in 2008, pursuant to which Helen Webster and Chava Webster voluntarily withdrew from the facility as members, which must be acceptable to the Department. [CSL]
3. Submission of original affidavits from each of Ahron Hersh, Isaac Hersh, Stephen Hersh and Judith Hersh-Paritzky indicating that they were members of the facility from the time they were established as such by the PHC, which must be acceptable to the Department. [CSL]
4. Submission of photocopies of documents, currently dated, from each of the persons noted in item 3 above, of their withdrawal from the facility, which must be acceptable to the Department. [CSL]
5. Submission of original affidavits from each of Moshe Mendlowitz, Jack Janklowicz, Ronald Stern and Irena Kostetsky attesting that they are not now, and have never been, members of the facility; that they have not exercised any voting rights; and that they have not received any distributions, which must be acceptable to the Department. [CSL]
6. Submission of photocopies of documentation from Ronald Stern and Irena Kostetsky, currently dated, that they will be bound by the terms and conditions of the Operating Agreement once properly established as members through this CON application, which must be acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

N/A

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York 12180-2299



Public Health and Health Planning Council

Project # 111132-E

Amerifalls, LLC

d/b/a Niagara Rehabilitation and Nursing Center

County: Niagara (Niagara Falls)
Purpose: Establishment

Program: Residential Health Care Facility
Submitted: January 5, 2011

Executive Summary

Description

Amerifalls, LLC, a limited liability company, is seeking approval for a change in ownership of Niagara Rehabilitation and Nursing Center, a 160-bed proprietary residential health care facility (RHCF) located at 822 Cedar Avenue, Niagara Falls.

The real estate ownership will not change. The current operator will assign their interests in the existing lease agreement.

Niagara Operating Co., LLC, an unrelated party to Amerifalls, LLC, entered into an Asset Purchase Agreement with Niagara Geriatric Center, Inc. to acquire the operating interests and the real estate of Niagara Rehabilitation and Nursing Center. Prior to moving forward to submitting the CON, Niagara Operating Co., LLC decided not to pursue the application and the agreement was transferred to Amerifalls, LLC. Niagara Operating Co., LLC purchased the real estate still.

DOH Recommendation
Contingent approval.

Need Summary

There is currently a surplus of 159 beds in Niagara County. Niagara Rehabilitation and Nursing Center had occupancy rates of 92.5% and 85.6% in 2008 and 2009, respectively.

Program Summary

No changes in program have been proposed for the residents of the nursing facility.

Financial Summary

The purchase price for operations will be \$50,000 and will be met via equity.

| | | |
|---------|------------|------------------|
| Budget: | Revenues | \$10,057,637 |
| | Expenses | <u>9,671,207</u> |
| | Net Income | \$386,430 |

Architectural Summary

This project is for Establishment action only; therefore, no Architectural recommendation is required.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of an executed lease rental agreement that is acceptable to the Department of Health. [BFA]
2. Submission of updated budgets, with all assumptions noted, that include the impact of the State's 2011- 2012 Budget and continuing to demonstrate financial feasibility, acceptable to the Department. [BFA]
3. Submission of a working capital loan commitment that is acceptable to the Department. [BFA]
4. Submission of a copy of the Real Property Transfer Agreement, acceptable to the Department. [CSL]
5. Submission of a legible copy of the 1972 lease agreement, acceptable to the Department. [CSL]
6. Submission of an amendment to the first amendment of the lease, acceptable to the Department. [CSL]
7. Submission of executed copies of all agreements attached to the application, in a form that is acceptable to the Department. [CSL]
8. Submission of amended Articles of Organization for the operator LLC, acceptable to the Department. [CSL]
9. Submission of an amended Operating Agreement for the operator LLC, acceptable to the Department. [CSL]
10. Submission of amended Articles of Organization and Operating Agreement for the second level member LLC, acceptable to the Department. [CSL]
11. Submission of an amended Medicaid Affidavit, acceptable to the Department. [CSL]
12. Submission of a list of the managers for the second level LLC as required by CON Schedule 14B. [CSL]

Council Action Date

August 4, 2011.

Need Analysis

Background

Niagara Rehabilitation and Nursing Center (Center), a 160 bed RHCf located at 822 Cedar Avenue, Niagara Falls New York 14301. The Center is currently operated by Niagara Geriatric Center, Inc. The applicant seeks approval to make Amerifalls, LLC the operator of the Center.

The Center will continue to offer medical, nursing, social work, rehabilitation, recreational therapy, nutritional, pharmaceutical and dental services in a comprehensive and coordinated manner to ensure that individualized care is given to all residents.

The Center will maintain the existing admission policy of non-discrimination based on ethnic background or financial circumstance. The facility is committed to accepting hospitalized patients on alternate level of care status on a priority basis.

Analysis

| <i>RHCf Bed Need</i> | <i>Niagara County</i> |
|-------------------------|-----------------------|
| 2016 Projected Need | 1,377 |
| Current Beds | 1,536 |
| Beds Under Construction | 0 |
| Total Resources | 1,536 |
| Unmet Need | -159 |

There will be no change in beds or services upon approval.

Niagara Rehabilitation and Nursing Center has utilization below that of Niagara County for 2007 through 2009 as shown in the table below:

| <i>RHCf Occupancy</i> | <i>2007</i> | <i>2008</i> | <i>2009</i> |
|---|----------------|-------------|-------------|
| Niagara Rehabilitation and Nursing Center | Did Not Report | 92.5% | 85.6% |
| Niagara County | 95.8% | 96.6% | 95.62% |

The facility's occupancy was below the county's average for each year under consideration. At the end of 2010, the facility's RUG score was .89; 19 residents were Physical A's and 12 Physical B's.

Conclusion

There will be no change to the services currently offered by the Center, and the new owners of the facility plan to improve living conditions for residents through staff recruitment and training as well through the implementation of a quality improvement program to monitor and assess the quality and appropriateness of care.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Facility Information

| | <i>Existing</i> | <i>Proposed</i> |
|----------------------|---|---|
| <i>Facility Name</i> | Niagara Rehabilitation and Nursing Center | Amerifalls, LLC d/b/a Niagara Rehabilitation and Nursing Center |
| <i>Address</i> | 822 Cedar Avenue Niagara Falls, NY 14301 | Same |

| | |
|---|------------------------|
| Absolut Center for Nursing and Rehabilitation at Eden | May 1, 2007 to present |
| Absolut Center for Nursing and Rehabilitation at Endicott | May 1, 2007 to present |
| Absolut Center for Nursing and Rehabilitation at Gasport | May 1, 2007 to present |
| Absolut Center for Nursing and Rehabilitation at Houghton | May 1, 2007 to present |
| Absolut Center for Nursing and Rehabilitation at Orchard Park | May 1, 2007 to present |
| Absolut Center for Nursing and Rehabilitation at Salamanca | May 1, 2007 to present |
| Absolut Center for Nursing and Rehabilitation at Three Rivers | May 1, 2007 to present |
| Absolut Center for Nursing and Rehabilitation at Westfield | May 1, 2007 to present |

Jeffrey Goldstein is a licensed nursing home administrator in good standing, and is employed as the Operations Manager at Throgs Neck Extended Care Facility, Bay Park Center for Nursing and White Plains Center for Nursing. According to Mr. Goldstein's resume, in this position he provides assistance in financial management and regulatory compliance to the operator and administrator, and is employed directly by the operator of each facility. Mr. Goldstein is also employed as fiscal manager at The Hamptons Center for Rehabilitation and Nursing. Mr. Goldstein was previously employed as Administrator of Record at White Plains Center for Nursing from November 10, 2009 to January 11, 2010, and Wedgewood Nursing Home from 2002 to 2004. Mr. Goldstein discloses a .5% ownership interest in The Hamptons Center for Rehabilitation and Nursing, since November 20, 2007.

Israel Sherman is a licensed nursing home administrator in good standing, and was previously employed as the administrator of Franklin Center for Rehabilitation and Nursing from November 1, 2002 to May 1, 2007.

Mr. Sherman discloses the following ownership interests:

| | |
|---|------------------------|
| Sunharbor Manor | April, 2006 to present |
| Absolut Center for Nursing and Rehabilitation at Alleghany | May 1, 2007 to present |
| Absolut Center for Nursing and Rehabilitation at Aurora Park | May 1, 2007 to present |
| Absolut Center for Nursing and Rehabilitation at Dunkirk | May 1, 2007 to present |
| Absolut Center for Nursing and Rehabilitation at Eden | May 1, 2007 to present |
| Absolut Center for Nursing and Rehabilitation at Endicott | May 1, 2007 to present |
| Absolut Center for Nursing and Rehabilitation at Gasport | May 1, 2007 to present |
| Absolut Center for Nursing and Rehabilitation at Houghton | May 1, 2007 to present |
| Absolut Center for Nursing and Rehabilitation at Orchard Park | May 1, 2007 to present |
| Absolut Center for Nursing and Rehabilitation at Salamanca | May 1, 2007 to present |
| Absolut Center for Nursing and Rehabilitation at Three Rivers | May 1, 2007 to present |
| Absolut Center for Nursing and Rehabilitation at Westfield | May 1, 2007 to present |
| Avalon Gardens Rehabilitation and Health Care Center, Inc | May, 2003 to present |

Alexander Sherman is an attorney in good standing accepted to practice law by the New York and New Jersey Bars. Mr. Sherman is employed full-time as the Assistant Administrator at Sunharbor Manor. Mr. Sherman also provides legal services to Absolut Care Facilities Management, which oversees a number of nursing homes in western New York. Mr. Sherman indicates he holds no ownership interests in health care facilities.

Esther (Sherman) Mendlowitz is an occupational therapist with license in good standing working as a contract therapist. Ms. Mendlowitz indicates she holds no ownership interests in health care facilities.

Yehuda B Sherman is a second year law student at St. John's University School of Law in Queens. Mr. Sherman has worked summers as an administrative assistant at Sunharbor Manor. Mr. Sherman indicates he holds no ownership interests in health facilities.

Character and Competence – Analysis:

Jeffrey Goldstein was cited for practicing nursing home administration without a valid nursing home administrator registration from January 1, 2010 to January 11, 2010. Mr. Goldstein was employed as administrator of record at White Plains Center for Nursing Care during this period and failed to submit his 2011- 2012 nursing home administrator registration renewal in a timely fashion.

July 30, 2007 Alexander Sherman was convicted of disorderly conduct and received a sentence of seven days community service, which was completed. Mr. Sherman was originally issued five summons under the New York City

Administrative Code relating to his failure to have a valid permit to use a rifle in New York City. The summons were issued for:

1. Section 10-131(i)3-Possession of Ammunition
2. Section 10-131(h)2-Possession of Gun Carrying Case
3. Section 10-131(i)6-Possession of Machine Gun Clip
4. Section 10-131(b)-Possession of Rifle
5. Section 10-303-Possession of Rifle without a Permit

No adverse information for the other five proposed members has been received.

A review of the operations for Sunharbor Manor for the period reveals the following:

- The facility was fined \$10,000 pursuant to a Stipulation and Order issued September 28, 2010 for surveillance findings of November 23, 2009. Deficiencies were found under 10 NYCRR 415.12 Quality of Care.

The review of operations for Sunharbor Manor results in a conclusion of a substantially consistent high level of care, since there were no repeat enforcements.

A review of the operations for Absolut Center for Nursing and Rehabilitation at Endicott, LLC for the period reveals the following:

- The facility was fined \$16,000 pursuant to a Stipulation and Order issued July 27, 2009 for surveillance findings of December 5, 2007. Deficiencies were found under 10 NYCRR 415.12 Quality of Care, 415.12(c) Quality of Care: Pressure Sores, 415.12(h)(1)(2) Quality of Care: Accidents, 415.15(a) Medical Services: Medical Director and 415.27 Quality Assessment and Assurance.
- The facility was fined \$2,000.00 pursuant to a Stipulation and Order issued May 24, 2011 for surveillance findings of July 22, 2009. Deficiencies were found under 10 NYCRR 415.12(j) Quality of Care: Hydration.

The review of operations for Absolut Center for Nursing and Rehabilitation at Endicott, LLC results in a conclusion of a substantially consistent high level of care, since there were no repeat enforcements.

A review of the operations of The Hamptons Center for Rehabilitation and Nursing for the period reveals the following:

- The facility was fined \$3,000 pursuant to a Stipulation and Order issued June 12, 2007 for surveillance findings on February 9, 2007. Deficiencies were found under 10 NYCRR 415.12 Quality of Care, 415.12(a)(2) Quality of Care: Activities of Daily Living and 10 NYCRR 415.12(j) Hydration.
- The facility was fined \$8,000 pursuant to a Stipulation and Order issued June 1, 2009 for surveillance findings on April 21, 2009. Deficiencies were found under 10 NYCRR 415.4(b)(1)(ii) Resident Behavior and Facility Practices: Staff Treatment of Residents, NYCRR 415.12(h)(2) Quality of Care: Accidents and 415.26 Organization and Administration.
- The facility was fined \$4,000 pursuant to a Stipulation and Order issued December 6, 2010 for surveillance findings on September 16, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents & Supervision and 415.26 Administration.
- The facility was fined \$10,000 pursuant to a Stipulation and Order issued May 24, 2011 for surveillance findings on July 30, 2010. Deficiencies were found under 10 NYCRR 415.12 Provide Care and Services for the Highest Well Being.

The review of operations for The Hamptons Center for Rehabilitation and Nursing results in a conclusion of a substantially consistent high level of care, since there were no repeat enforcements.

A review of the operations for Avalon Gardens Rehabilitation and Health Care Center for the period reveals that the facility was fined \$2,000 pursuant to a Stipulation and Order issued April 21, 2009 for surveillance findings of May 23, 2008. Deficiencies were found under 10 NYCRR 415.12(h)(1)&(2) Quality of Care: Accidents.

The review of operations for Avalon Gardens Rehabilitation and Health Care Center results in a conclusion of a substantially consistent high level of care, since there were no repeat enforcements.

There are no proposed changes in either the program or physical environment of the facility.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Background

Ownership of the operation of Niagara Rehabilitation and Nursing Center before and after the requested change is as follows:

| <u>Current Owner</u> | | <u>Proposed Owner</u> | |
|--------------------------------|-----|------------------------|-----|
| Niagara Geriatric Center, Inc. | | Amerifalls, LLC | |
| <u>Shareholders:</u> | | <u>Members:</u> | |
| Cornelius Sigety | 31% | Samuel Sherman | 25% |
| William Pascoello | 20% | Jeffrey Goldstein | 25% |
| Elizabeth Marcus | 20% | Israel Sherman | 10% |
| Kinne Yon | 20% | Sherman Family | 40% |
| Israel Sherman | 9% | Niagara Investors, LLC | |

Sherman Family Niagara Investors, LLC will be owned by the following members:

| | |
|-------------------|--------|
| Alexander Sherman | 33.34% |
| Esther Mendlowitz | 33.33% |
| Yehuda Sherman | 33.33% |

The real estate is owned by Niagara Falls Realty Co., LLC, which is owned by the following members: Mark Friedman, Neil Einhorn and Israel Minzer.

Presented as BFA Attachments D through Q are the financial summaries of the other entities that the proposed members of Amerifalls, LLC have ownership interests in: Sunharbor Manor; Absolut Center for Nursing & Rehab @ Alleghany; Absolut Center for Nursing & Rehab @ Aurora Park; Absolut Center for Nursing & Rehab @ Dunkirk; Absolut Center for Nursing & Rehab @ Eden; Absolut Center for Nursing & Rehab @ Endicott; Absolut Center for Nursing & Rehab @ Gasport; Absolut Center for Nursing & Rehab @ Houghton; Absolut Center for Nursing & Rehab @ Orchard Park; Absolut Center for Nursing & Rehab @ Salamanca; Absolut Center for Nursing & Rehab @ Three Rivers; Absolut Center for Nursing & Rehab @ Westfield; The Hamptons Center for Rehab & Nursing and Avalon Gardens Rehabilitation & Health Care.

Subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and approval is recommended.

Asset Purchase Agreement

The change in operational ownership will be effectuated in accordance with an executed asset purchase agreement; the terms are summarized as follows:

| | |
|----------------------------|---|
| <i>Date:</i> | June 16, 2010 |
| <i>Seller:</i> | Niagara Geriatric Center, Inc. |
| <i>Buyer:</i> | Niagara Operating Co., LLC |
| <i>Assets Transferred:</i> | The business and operation of the Facility, except for the Excluded Assets; the Lease; all leasehold improvements, furniture, fixtures, equipment, furnishings, computers and other tangible personal property, which are used in connection with |

the operation of the Facility; all inventory, supplies and other articles of personal property; resident funds held in trust; the name "Niagara Rehabilitation and Nursing Center" and any and all other trade names, logos, trademarks and service marks associated with the Facility and the Basic Assets; all security deposits and prepayments for future services held by Seller, to the extent useable by Buyer; all menus, policy and procedures manual and computer software; all telephone numbers, fax numbers and email addresses; copies of all financial books and records in Seller's possession relating to the Facility; all employee and payroll records; goodwill; the Retirement Plans; Seller's Medicaid and Medicare provider numbers and provider reimbursement agreements under the Medicare Program, Medicaid Program and any other third party payor programs provided the same are transferrable and assumed by Buyer; all licenses and permits held or owned by Seller relating to the ownership or operation of the Facility and the Basic Assets; all cash, accounts receivable, deposits, cash equivalents, marketable securities and accrued interest and dividend thereon and all other assets of Seller relating to the Facility other than the Excluded Assets.

Excluded Assets: Personal property; all retroactive rate increases, resulting from rate appeals, audits or otherwise, with respect to third party payments, from any source, which become effective after the Effective Date for services rendered by the Facility prior to the Effective Date and all accounts receivable of Seller for the period up to and including the day prior to the Effective Date.

Assumed Liabilities: Buyer shall assume at the Closing the following liabilities of Seller: the ongoing obligations of Seller arising on and after the Effective Date with respect to the Basic Assets and the Current Liabilities.

Purchase Price: \$50,000

Payment of

Purchase Price: \$25,000 upon signing of this agreement.
\$25,000 in cash at Closing.

The reason for the low operating purchase price is that in the original purchase contract Niagara Operating Co., LLC was acquiring the operating interests and the real estate interest facility. The agreement with Niagara Geriatric Center, Inc., and Niagara Operating Co., LLC and Niagara Falls Realty Co., LLC listed the acquisition of the operating interests at \$50,000 for tax purposes. The interest in the real estate was valued higher and is the basis for the lease agreement between Niagara Operating Co., LLC and Amerifalls, LLC. Niagara Operating Co., LLC decided not to move forward with the acquisition of the operating interests, it assigned its acquisition agreement to Amerifalls, LLC at the agreed upon amount specified in the agreement between Niagara Geriatric Center, Inc. and Niagara Operating Co., LLC.

The following is the agreement assigning the asset purchase agreement to Amerifalls, LLC, which is summarized below:

Date: November 22, 2010

Seller: Niagara Operating Co., LLC

Purchaser: Amerifalls, LLC

Assets Acquired: Upon Closing, the Seller shall assign to Purchaser all of Seller's rights to purchase all of the Basic Assets as defined in the Asset Purchase Agreement and all of Seller's right, title and interest in the Escrow Deposit referred to in the Asset Purchase Agreement and the Purchaser shall accept assignment of the Assigned Basic Assets and shall assume all of the obligations and liabilities of Buyer under the Asset Purchase Agreement, including, but not limited to, paying the \$25,000 purchase price balance due at Closing.

Purchase Price: \$25,000 in addition to the \$25,000 that the Purchaser will assume at Closing.

The applicant will provide equity from the proposed members' personal resources.

The applicant has submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges,

assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility.

Lease Rental Agreement

The applicant has submitted a draft lease rental agreement for the site that they will occupy, of which the terms are summarized below:

Premises: 822 Cedar Avenue, Niagara Falls, New York
Lessor: Niagara Operating Co., LLC
Lessee: Amerifalls, LLC
Term: The initial term will expire on April 30, 2042. Provided Lessee is not in default of this Lease, Lessee will have the rights, upon not less than one year but not much more than two years prior written notice to Lessor, to extend the term of this Lease for an additional 33 year period.
Rental: 2011 through 2013 - \$376,000 annually
 2014 through 2016 - \$389,760 annually
 2017 through 2019 - \$403,795 annually
 2020 through 2021 - \$418,111 annually
 2022- \$418,411 annually
 2023 through 2025 - \$423,713 annually
 2026 through 2028 - \$447,607 annually
 2029 through 2032 - \$462,799 annually
 2033 through 2036 - \$478,295 annually
 2037 through 2040 - \$494,101 annually
 2041 through 2042 - \$510,223 annually

Currently, the facility's Medicaid capital reimbursement is based on the lease rental reimbursement methodology. After the change in ownership, reimbursement will continue to be based on the lease rental reimbursement methodology.

Operating Budget

The applicant has submitted an operating budget, in 2011 dollars, for the first year subsequent to the change in ownership:

| | <u>Per Diem</u> | <u>Total</u> |
|-----------------------------|-----------------|----------------|
| Revenues: | | |
| Medicaid | \$160.96 | \$7,816,969 |
| Medicare | \$347.05 | 1,331,978 |
| Private Pay | \$302.90 | <u>908,690</u> |
| Total Revenues | | \$10,057,637 |
| Expenses: | | |
| Operating | \$156.64 | \$8,678,151 |
| Capital | <u>17.92</u> | <u>993,056</u> |
| Total Expenses | \$174.56 | \$9,671,207 |
| Net Income | | \$386,430 |
| Utilization: (patient days) | | 55,400 |
| Occupancy | | 94.86% |

The following is noted with respect to the following RHCF operating budget:

- Expenses include lease rental.

- Budgeted case mix of .8252 was utilized by the facility at the time of CON filing for change in ownership, which is consistent with historical experience.
- The capital component will be based on the lease rental reimbursement methodology.
- Overall utilization for year one is projected at 94.86% which is a slight increase from 2010 occupancy. Utilization by payor source is expected as follows:

| | |
|-------------|--------|
| Medicaid | 87.65% |
| Medicare | 6.92% |
| Private Pay | 5.43% |

- Breakeven occupancy is projected as 91.18%.

Capability and Feasibility

The purchase price of \$50,000 will be paid from the proposed members personal resources.

Working capital requirements are estimated at \$1,611,868, based on two months of first year expenses. The applicant will finance \$805,934 at an interest rate of 6.25% for a five year term. A letter of interest has been submitted in regard to the working capital loan. The remainder, \$805,934, will be provided via equity to be derived from the proposed members' personal net worth statement. Israel Sherman provided an affidavit indicating that he is willing to contribute resources; however, not in proportion to his ownership percentage.

Presented as BFA Attachment A, is the personal net worth statements of the proposed members of Amerifalls, LLC. Israel Sherman provided an affidavit indicating that he will provide equity disproportionate to his ownership interests. Presented as BFA Attachment C, is the pro-forma balance sheet of Amerifalls, LLC. As shown, the facility will initiate operations with \$855,934 in members' equity.

It is noted that assets include \$50,000 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Thus, the net asset position would be a positive \$805,934 from a Medicaid perspective.

The submitted budget indicates a net income of \$386,430. The applicant's budget appears reasonable. Following, is a comparison of historical and projected revenues and expenses:

| | |
|-------------------------|------------------|
| 2010 Historical Income | \$9,181,952 |
| 2010 Historical Expense | <u>9,508,834</u> |
| 2010 Net Income | \$(326,882) |
| Incremental Revenues | \$875,685 |
| Incremental Expenses | <u>162,373</u> |
| Incremental Net Income | \$713,312 |
| Projected Net Income | \$386,430 |

Incremental income includes a slight increase in overall utilization from 2010, and an increase in Medicare (1.30%), Private Pay utilization (1.48%), and trended Medicare and Private Pay reimbursement rates. The reason for the increase in Medicare and Private Pay utilization is because of the change in admission practices which led to an increase in Medicare and Private Pay utilization.

Incremental expenses include rent expense and the difference between the current year and average historical levels.

Presented as BFA Attachment B, is a financial summary of Niagara Rehabilitation and Nursing Center from 2008 through 2010.

As shown on Attachment B, the facility had an average positive working capital position and an average positive net asset position. The applicant incurred an average net loss of \$463,053 from 2008 through 2010. The applicant has indicated that the reason for the 2008 and 2009 loss is that the facility anticipated receiving rebased rates based on 2002 base year costs for 2008 and 2009, but those rates were not fully implemented, resulting in the 2008 loss and the 2009 loss, which is related to a significant decrease in revenue of \$1,108,877 from 2008 to 2009, causing the 2009 operating loss and a significant decline in occupancy in 2009 due to the current operator focusing on other business matters. The facility reduced the operating loss in 2010 because they increased their occupancy.

The facility has to reduce expenses in the area of supplies and purchased services in order to manage the facility's expenses more prudently. Also, the facility recently added Israel Sherman, a member of Amerifalls, LLC, as a shareholder of the facility in order to assist in the operating of the facility and help to rectify the decrease in occupancy and to institute more effective controls on maintaining the facility's operating expenses.

Presented as BFA Attachment D, is a financial summary of Sunharbor Manor from 2008 through 2010. As shown on Attachment D, the facility had an average negative working capital position and an average positive net asset position. Also, the facility achieved an average net income of \$517,963 from the period 2008 through 2010.

Presented as BFA Attachment E, is the financial summary of Absolut Center for Nursing & Rehab @ Alleghany from 2008 through 2010. As shown on Attachment E, the facility had an average positive working capital position and an average positive net asset position. The facility has achieved an average net income of \$172,680 from 2008 through 2010.

Presented as BFA Attachment F, is the financial summary of Absolut Center for Nursing & Rehab @ Aurora Park from 2008 through 2010. As shown on Attachment F, the facility had an average positive working capital position and average positive net asset position. Also, the facility achieved an average net income of \$1,205,827 from 2008 through 2010.

Presented as BFA Attachment G, is the financial summary of Absolut Center for Nursing & Rehab @ Dunkirk from 2008 through 2010. As shown on Attachment G, the facility had an average positive working capital position and an average positive net asset position. Also, the facility achieved an average net income of \$19,803 from 2008 through 2010. The applicant has indicated that the operating loss in 2008 was the result of a small change in volume that was not offset by expense reductions.

The facility has improved its marketing efforts, volume has improved, and there has not been an operating loss since 2008.

Presented as BFA Attachment H, is the financial summary of Absolut Center for Nursing & Rehab @ Eden from 2008 through 2010. As shown on Attachment H, the facility had an average positive working capital position and an average negative net asset position. The facility incurred an average net loss of \$258,068 during the period 2008 through 2010. The applicant has indicated that the reason for the historical losses is the result of a 40 bed facility being highly susceptible to changes in volume and case mix due to its size. The facility has reduced operating expenses based on a budgeted system that reduces expenses, along with improvements in payer mix and case mix.

Presented as BFA Attachment I is the financial summary of Absolut Center for Nursing & Rehab @ Endicott from 2008 through 2010. As shown on Attachment I, the facility had an average positive working capital position and an average negative net asset position. Also, the facility incurred an average net loss of \$787,198 during the period 2008 through 2010. The applicant has indicated that the facility has had environmental deficiencies that required the facility to make substantial capital improvements and change management in order to correct the deficiencies. A new quality assurance nurse has been hired to monitor the corrective plans and the facility's volume and CMI are improving.

Presented as BFA Attachment J, is the financial summary of Absolut Center for Nursing & Rehab @ Gasport from 2008 through 2010. As shown on Attachment J, the facility had an average negative working capital position and an average negative net asset position. Also, the facility incurred an average net loss of \$126,388 during the period 2008 through 2010. The applicant has indicated that the reason for the losses is that the facility has had poor working relationships with community physicians. As a result, the facility changed the Medical Director in 2008 in order to establish a better working relationship with community physicians, which improved the facility's volume and CMI.

Presented as BFA Attachment K, is the financial summary of Absolut Center for Nursing & Rehab @ Houghton from 2008 through 2010.

As shown on Attachment K, the facility had an average negative working capital position and an average negative net asset position. Also, the facility incurred an average net loss of \$94,115 during the period 2008 through 2010. The applicant has indicated that the facility is located in a economically distressed rural area of New York State and the facility's payer mix has a significant impact on its financial status.

The facility hired a new administrator to improve the referral network from area hospitals and improve the financial performance of the facility by increasing admissions of Medicare and commercial residents.

Presented as BFA Attachment L, is the financial summary of Absolut Center for Nursing & Rehab @ Orchard Park from 2008 through 2010. As shown on Attachment L, the applicant had an average positive working capital position and an average negative net asset position. Also, the facility incurred an average net loss of \$205,990 during the period 2008 through 2010. The applicant has indicated that the loss in 2008 and 2010 was the result of occupancy and case mix issues and prior revenue adjustments in 2010. The facility improved operations by initiating a budgeted system that reduces expenses when volume and CMI decrease or increase.

Presented as BFA Attachment M, is the financial summary of Absolut Center for Nursing & Rehab @ Salamanca from 2008 through 2010. As shown on Attachment M, the applicant had an average positive working capital position and an average positive net asset position. Also, the facility achieved an average net income of \$294,536 during the period 2008 through 2010. The applicant has indicated that the loss in 2008 was attributed to low occupancy in 2008, and no adjustments were made to the facility's operating expenses. The facility changed administrators in 2008 and reduced expenses and increased revenues, resulting in positive net income in 2009 and 2010.

Presented as BFA Attachment N, is the financial summary of Absolut Center for Nursing & Rehab @ Three Rivers from 2008 through 2010. As shown on Attachment N, the applicant had an average positive working capital position and an average positive net asset position during the period 2008 through 2010. Also, the applicant achieved an average net income of \$242,972 during the period 2008 through 2010.

Presented as BFA Attachment O, is the financial summary of Absolut Center of Nursing & Rehab @ Westfield from 2008 through 2010. As shown on Attachment O, the applicant had an average positive working capital position and an average positive net asset position. The applicant achieved an average net income of \$864,166 during the period 2008 through 2010.

Presented as BFA Attachment P, is the financial summary of The Hamptons Center for Rehab & Nursing from 2008 through November 31, 2010. As shown on Attachment P, the facility had an average negative working capital position and an average negative net asset position. Also, the facility incurred an average net loss of \$4,174,677 during the period 2008 through November 31, 2010.

The applicant has indicated that the reason for the historical losses were the result of a protracted start-up of operations and during most of this period, its Medicaid reimbursement was based on a budgeted rate and not a cost based rate. The facility has since received its cost based rate.

Presented as BFA Attachment Q, is the financial summary of The Avalon Gardens from 2008 through November 31, 2010. As shown on BFA Attachment Q, the facility had an average negative working capital position and average positive net asset position. Also, the applicant achieved an average net income of \$2,005,288 during the period 2008 through November 31, 2010. The applicant has indicated that the reason for the average negative working capital is because the facility was awaiting its rebased Medicaid rate and was carrying a Medicaid receivable of \$3,232,026, which required the facility's members to loan the facility \$3,435,000 from the realty company in order to provide working capital to the nursing home.

Subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

| | |
|------------------|---|
| BFA Attachment A | Personal Net Worth Statement |
| BFA Attachment B | Financial Summary for Niagara Rehabilitation and Nursing Center |
| BFA Attachment C | Pro-forma Balance Sheet |
| BFA Attachment D | Financial Summary for Sunharbor Manor |
| BFA Attachment E | Financial Summary for Absolut Center for Nursing & Rehab @ Alleghany |
| BFA Attachment F | Financial Summary for Absolut Center for Nursing & Rehab @ Aurora Park |
| BFA Attachment G | Financial Summary for Absolut Center for Nursing & Rehab @ Dunkirk |
| BFA Attachment H | Financial Summary for Absolut Center for Nursing & Rehab @ Eden |
| BFA Attachment I | Financial Summary for Absolut Center for Nursing & Rehab @ Endicott |
| BFA Attachment J | Financial Summary for Absolut Center for Nursing & Rehab @ Gasport |
| BFA Attachment K | Financial Summary for Absolut Center for Nursing & Rehab @ Houghton |
| BFA Attachment L | Financial Summary for Absolut Center for Nursing & Rehab @ Orchard Park |
| BFA Attachment M | Financial Summary for Absolut Center for Nursing & Rehab @ Salamanca |
| BFA Attachment N | Financial Summary for Absolut Center for Nursing & Rehab @ Three Rivers |
| BFA Attachment O | Financial Summary for Absolut Center for Nursing & Rehab @ Westfield |
| BFA Attachment P | Financial Summary for The Hampton Center for Rehab & Nursing |
| BFA Attachment Q | Financial Summary for The Avalon Gardens |
| BFA Attachment R | Establishment Checklist |

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 21st day of July, 2011, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application for a change in ownership of Niagara Rehabilitation and Nursing Center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

111132-E

FACILITY/APPLICANT:

Amerifalls, LLC d/b/a Niagara Rehabilitation
and Nursing Center

APPROVAL CONTINGENT UPON:

1. Submission of an executed lease rental agreement that is acceptable to the Department of Health. [BFA]
2. Submission of updated budgets, with all assumptions noted, that include the impact of the State's 2011- 2012 Budget and continuing to demonstrate financial feasibility, acceptable to the Department. [BFA]
3. Submission of a working capital loan commitment that is acceptable to the Department. [BFA]
4. Submission of a copy of the Real Property Transfer Agreement, acceptable to the Department. [CSL]
5. Submission of a legible copy of the 1972 lease agreement, acceptable to the Department. [CSL]
6. Submission of an amendment to the first amendment of the lease, acceptable to the Department. [CSL]
7. Submission of executed copies of all agreements attached to the application, in a form that is acceptable to the Department. [CSL]
8. Submission of amended Articles of Organization for the operator LLC, acceptable to the Department. [CSL]
9. Submission of an amended Operating Agreement for the operator LLC, acceptable to the Department. [CSL]
10. Submission of amended Articles of Organization and Operating Agreement for the second level member LLC, acceptable to the Department. [CSL]
11. Submission of an amended Medicaid Affidavit, acceptable to the Department. [CSL]
12. Submission of a list of the managers for the second level LLC as required by CON Schedule 14B. [CSL]

APPROVAL CONDITIONAL UPON:

N/A

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York 12180-2299



Public Health and Health Planning Council

Project # 111170-E

JOPAL, Bronx, LLC

County: Bronx (Bronx)
Purpose: Establishment

Program: Residential Health Care Facility
Submitted: January 28, 2011

Executive Summary

Description

JOPAL, Bronx, LLC, a proprietary limited liability company, is seeking approval for a change in ownership of Workmen's Circle Multicare Center, a 524-bed not-for-profit residential health care facility (RHCF) located at 3155 Grace Avenue, Bronx. Ownership of the operation before and after the requested change is as follows:

| <u>Current</u> | <u>Proposed</u> |
|--|--|
| Workmen's Circle Home & Infirmary for the Aged, Inc. 100% | JOPAL, Bronx, LLC MEMBERS: -- Joseph Carillo II 25% -- Alexander Solovey 25% -- Pasq. DeBenedictis 25% -- Soloman Rutenberg 25% |

JOPAL, Bronx, LLC will enter into a long-term lease for the parcel of land located at 3155 Grave Avenue, Bronx, with Workmen's Circle and Infirmary Foundation for the Aged, New York State Branches, Inc.

Joseph Carillo II has ownership interests in Barnwell Nursing & Rehabilitation Center (a 236-bed RHCF in Valatie), East Neck Nursing & Rehabilitation Center (a 300-bed RHCF in West Babylon), St. James Plaza Nursing Facility (a 250-bed RHCF in St. James) and Carillon Nursing and Rehabilitation Center (a 315-bed RHCF in Huntington), while Pasquale DeBenedictis and Alex Solovey have ownership interests in St. James Plaza Nursing Facility, East Neck Nursing & Rehabilitation Center and Barnwell Nursing & Rehabilitation.

DOH Recommendation
 Contingent Approval.

Need Summary

This application is a change in ownership only. There will be no change in beds or services.

Program Summary

No negative information has been received concerning the character and competence of the applicants. The review of operations for Workmen's Circle Multicare Center results in a conclusion of a substantially consistent high level of care, since there were no repeat enforcements.

Financial Summary

As part of the purchase consideration JOPAL, Bronx will pay assumed liabilities less assumed assets. This consideration includes a promissory note totaling \$6,554,587 and \$5,850,000 for the difference in assumed liabilities and assumed assets, making the total purchase price approximately \$12,404,587.

| | | |
|---------|---------------------|-------------------|
| Budget: | <i>Revenues:</i> | \$ 59,464,666 |
| | <i>Expenses:</i> | <u>55,323,077</u> |
| | <i>Gain/(Loss):</i> | \$ 4,141,589 |

Subject to noted contingencies, the applicant has demonstrated the capability to proceed in a financially feasible manner.

Architectural Summary

This project is for Establishment action only; therefore, no Architectural recommendation is required.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval contingent upon:

1. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily limited to, ways in which the facility will:
 - i) Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - ii) Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - iii) Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; and
 - iv) Submit an annual report for two years to the DOH, which demonstrates substantial progress with the implement of the plan. The plan should include but not be limited to:
 - (a) Information on activities relating to a-c above; and
 - (b) Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - (c) Other factors as determined by the applicant to be pertinent.

The Department of Health reserves the right to require continued reporting beyond the two year period. [RNR]

3. Submission of an executed lease agreement acceptable to the Department. [BFA]
4. Submission of an executed working capital loan commitment acceptable to the Department. [BFA]
5. Submission of updated budgets, with all assumptions noted, that include the impact of the State's 2011-12 Budget and continues to demonstrate financial feasibility, acceptable to the Department. [BFA]
6. Submission of a photocopy of the Articles of Organization of JOPAL Bronx, LLC that were filed on October 28, 2010 and any amendments thereto, acceptable to the Department. [CSL]
7. Submission of a photocopy of the finalized and executed Operating Agreement of JOPAL Bronx, LLC, acceptable to the Department. [CSL]
8. Submission of a photocopy of the executed Certificate of Assumed Name of JOPAL Bronx, LLC, indicating its intent to do business as Workmen's Circle Multicare Center, acceptable to the Department. [CSL]
9. Submission of evidence of site control, acceptable to the Department. [CSL]
10. Submission of a photocopy of the executed Certificate of Amendment of the Certificate of Incorporation of Workmen's Circle Home and Infirmary Foundation for the Aged, New York State Branches, Inc., acceptable to the Department. [CSL]

Council Action Date

August 4, 2011.

Need Analysis

Background

JOPAL, Bronx, LLC is submitting this application seeking approval to become the new owner operator of Workman's Circle Multicare Center, a 524-bed not for profit RHCF located at 3155 Grace Avenue, Bronx.

| <u>RHCF Need – NYC</u> | |
|-------------------------------|--------|
| 2016 Projected Need | 51,071 |
| Current Beds | 43,454 |
| Beds Under Construction | 635 |
| Total Resources | 44,089 |
| Unmet Need | 6,882 |

| <u>RHCF/NYC Workman's Circle Multicare Center</u> | | | |
|--|-------------|-------------|-------------|
| <u>Occupancy Rates</u> | | | |
| <u>Facility/County/Region</u> | <u>2007</u> | <u>2008</u> | <u>2009</u> |
| Workman's Circle | 85.7% | 90.4% | 93.4% |
| NYC | 93.6% | 94.2% | 94.8% |

Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patients admissions is at least 75% of the planning area percentage or health Systems Agency percentage, whichever is applicable.

Medicaid admissions at Workman's Circle Multicare Center were above the 75 percent planning average for 2008 but were not in 2009. The 75 percent planning averages for Bronx County were 39.6 percent in 2008 and 16.4 percent in 2009. The facility reported Medicaid admissions of 57.1 percent in 2008 and 11.5 percent in 2009, which represents 70 percent of the rate for the planning region. The facility did not exceed the Medicaid Access Standard for 2009.

Conclusion

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Facility Information

| | <i>Existing</i> | <i>Proposed</i> |
|------------------------------|--------------------------------------|-----------------|
| <i>Facility Name</i> | Workmen's Circle Multicare Center | Same |
| <i>Address</i> | 3155 Grace Avenue Bronx, NY 10469 | Same |
| <i>RHCF Capacity</i> | 524 | Same |
| <i>ADHC Program Capacity</i> | N/A | Same |

| | | |
|--------------------------|---|---|
| <i>Type of Operator</i> | Voluntary | Proprietary |
| <i>Class of Operator</i> | Not for Profit | Limited Liability Company |
| <i>Operator</i> | Workmen's Circle Home & Infirmary for the Aged Inc. | JOPAL Bronx, LLC d/b/a Workmen's Circle Multicare Center <u>Members</u> -- Joseph Carillo II 25% -- Pasquale DeBenedictis 25% -- Alex Solovey 25% -- Soloman Rutenberg 25% |

Character and Competence

- FACILITIES REVIEWED:

Residential Health Care Facilities

| | |
|---|---------------------|
| Barnwell Nursing and Rehabilitation Center | 6/1/03 to present |
| East Neck Nursing and Rehabilitation Center | 2/1/05 to present |
| Carillon Nursing and Rehabilitation Center | 6 /29/01 to present |
| Workmen's Circle Multicare Center | 6/1/06 to present |
| Mills Pond Nursing and Rehabilitation Center (formerly St. James Plaza) | |

- INDIVIDUAL BACKGROUND REVIEW:

Joseph Carillo, II is a nursing home administrator with license in good standing. Mr. Carillo is employed as the administrator of record at Carillon Nursing and Rehabilitation Center, located in Huntington, NY. Mr. Carillo discloses the following nursing home ownership interests.

| | |
|--|--------------------|
| Carillon Nursing and Rehabilitation Center | 2/1/99 to present |
| JOPAL,LLC d/b/a Barnwell Nursing and Rehabilitation Center | 6/1/03 to present |
| PALJR, LLC d/b/a East Neck Nursing and Rehabilitation Center | 2/1/05 to present |
| JOPAL at St. James, LLC d/b/a Mills Pond Nursing and Rehabilitation Ctr. | 10/1/10 to present |

Pasquale DeBenedictis is trained in accounting and currently employed as the Director of Finance at Carillon Nursing and Rehabilitation Center. Mr. DeBenedictis also acts as a consultant in accounting and finance for Theradynamics Physical Rehabilitation PC, an outpatient rehabilitation center located in the Bronx. Mr. DeBenedictis discloses nursing home ownership interests in JOPAL, LLC, PALJR, LLC and JOPAL at St. James, LLC.

Alex Solovey is a physical therapist with license in good standing. Mr. Solovey is employed as the Director of Rehabilitation at Theradynamics Physical Therapy Rehabilitation, PC, a physical rehabilitation center located in the Bronx. Mr. Solovey discloses nursing home ownership interests in JOPAL, LLC, PALJR, LLC and JOPAL at St. James, LLC.

Soloman Rutenberg is employed as the Chief Executive Officer of Workmen's Circle Multicare Center, the nursing home which is the of the subject of this change of ownership application. Previously Mr. Rutenberg was employed as Assistant Administrator at Kingsbridge Heights Rehabilitation and Care Center. Mr. Rutenberg indicates he holds no ownership interests in health care facilities.

Character and Competence – Analysis:

No negative information has been received concerning the character and competence of the applicants.

The review of operations for Barnwell Nursing and Rehabilitation Center, Carillon Nursing and Rehabilitation Center, East Neck Nursing and Rehabilitation Center and Mills Pond Nursing and Rehabilitation Center, formerly St. James Plaza Nursing Facility, results in a conclusion of a substantially consistent high level of care, since there were no enforcements.

A review of the operations for Workmen's Circle Multicare Center for the period reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order issued June 29, 2007 for surveillance findings on October 11, 2005. Deficiencies were found under 10 NYCRR 415.4(b)(1)(ii) Resident Behavior and Facility Practices: Staff Treatment of Residents and 10 NYCRR 415.12(h)(2) Quality of Care-Accidents.
- The facility was fined \$2,000 pursuant to a Stipulation and Order issued August 30, 2007 for surveillance findings on February 8, 2007. Deficiencies were found under 10 NYCRR 415.12(a)(1) Quality of Care: Activities of Daily Living and 10 NYCRR 415.12(c)1 Quality of Care: Pressure Sores.

The review of operations for Workmen's Circle Multicare Center results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement, the terms of which are summarized below:

- Date:* November 30, 2010
- Seller:* Workmen's Circle Home and Infirmary Foundation for the Aged, New York State Branches, Inc.
- Buyer:* JOPAL, Bronx, LLC
- Assets Transferred:*
- All cash, deposits, and cash equivalents;
 - all prepayments, deposits and prepaid expenses of the seller;
 - all marketable securities and accrued interest and dividends thereon;
 - all scheduled and disclosed oral and written contracts and other agreements to which the seller is a party or by which its assets are bound relating to the operation of the nursing home;
 - all security deposits; any and all major, minor or other equipment, furniture and furnishings located in or on the real property;
 - the inventory of food and related dietary supplies, paper goods, housekeeping supplies, kitchen supplies, office and maintenance and cleaning supplies, nursing supplies, rehabilitation supplies, and pharmacy stock;
 - all of the seller's interest in all licenses and permits held by seller relating to the ownership, development and operation of the nursing home;
 - all computer software, programs and similar systems owned by or licenses to seller or used in connection with the operation of the nursing home;
 - all claims, causes of action, suits and rights of seller to federal, state and local tax refunds, tax refund claims, credits, deductions or other tax benefits;
 - all retroactive rate increases and/or lump sum payments resulting from rate appeals, audit or otherwise, with respect to third party payments, from any source, for services provided by the seller before the closing date;
 - all proceeds of any appeals relating to services provided by seller prior to closing which are paid by a payor after the closing date;
 - all payments or equivalent cash credits relating to the nursing home resulting from claims, insurance premium rate reductions or

insurance or other dividends paid or accruing for periods before the closing date;

- all accounts and loans receivable, whether or not actually billed, with respect to services provided at the nursing home before closing date and all proceeds of the collections of such receivables;
 - all claims against third parties arising from acts or omissions occurring prior to the closing date;
 - all telephone numbers and fax numbers associated with the operation of the nursing home;
 - all Medicare and Medicaid provider numbers of seller;
 - all documents and records of the nursing home, including equipment records, medical/administrative libraries, catalogs, books, files, operating manuals, the records of each resident of the nursing home and the personnel records of the retained employees;
 - seller's goodwill in connection with the nursing home; and
 - the general accounting ledger of the seller, books of account, and all payables records and files and all financial and tax records of the nursing home with respect to all pre-closing date periods.
- Excluded Assets:*
- All ownerships rights in and to the land;
 - all ownership rights in the ground lease;
 - the trade name Workmen's Circle Multicare Center and all variations of such name;
 - all rights to receive mail and other communications addressed to the seller relating to any of the excluded assets;
 - all books, records, files, documents and correspondence and lists of seller relating to the corporate organization of seller;
 - the seller's corporate seal, corporate records, stock books, and taxpayer identification numbers;
 - any rights of seller under this agreement, the ground lease, or any other documents entered into on or after the closing date or any document delivered for the benefit of seller in connection with this agreement; all claims, caused of action, suits and rights relating to excluded assets, excluded contracts and or excluded liabilities;
 - any loans, advances, receivables or other amounts owing to seller by any of seller's stockholders, members, directors, officers or employees; and
 - all insurance policies, whether or not transferable, however the right to receive payments under such policies, including the right to receive any refunds on any premiums paid by buyer, belongs to the buyer to the extent it is required to pay any insured claims that have been assumed by buyer, provided that seller retains all rights to such policies to the extent seller is liable for a claim insured under such policies.

Assumed Liabilities: All liabilities of the seller accruing or arising prior to, on or after the closing date. To include accounts payable, welfare fund payable, accrued payroll and related expenses, loans payable, mortgages payable, due to third party payors and resident funds and deposits.

Excluded Liabilities: None

Purchase Price: Assumed liabilities less assumed assets, which will be approximately \$12,404,587 at time of closing.

Payment: Applicant is assuming the HUD mortgage from the seller and continuing payments at its current terms.

Upon the closing of the Asset Transfer Agreement, JOPAL, Bronx will be the owner of all improvements and the personal property used in connection with the operation of the facility.

As part of the purchase consideration JOPAL, Bronx will pay assumed liabilities less assumed assets.

This consideration includes a promissory note totaling \$6,554,587 for payments due to the IRS, Worker's Compensation Board and NYC Department of Environmental Protection and an approximate total of \$5,850,000 for the difference in assumed liabilities and assumed assets.

JOPAL, Bronx will make all required mortgage payments. On December 7, 1999, Workmen's Circle obtained an FHA insured mortgage in the principal amount of \$51,779,400 in order to finance the cost of their renovation and modernization project. In December 2003, a supplemental FHA issued mortgage was obtained in the principal amount of \$14,598,600 to finance various project cost increases. In June of 2008, another FHA issued mortgage was obtained in the principal amount of \$5,507,900 for further project cost increases. The mortgage is through Berkadia Finance Inc., with a blended principal of approximately \$71,885,900 for 30 years at an interest rate of 7.66%.

The applicant has provided an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health law, with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility.

Lease Rental Agreement

The applicant has submitted a draft lease agreement, the terms of which are summarized below:

| | |
|--------------------|---|
| <i>Landlord:</i> | Workmen's Circle Home and Infirmary Foundation for the Aged, New York State Branches, Inc. |
| <i>Leesee:</i> | JOPAL, Bronx, LLC |
| <i>Premises:</i> | Parcel of land located at 3155 Grace Avenue, Bronx |
| <i>Rental:</i> | \$500,000 in year one, increasing 2% yearly. |
| <i>Term:</i> | 25 years with the option to renew for 2 additional terms of 10 years each. |
| <i>Provisions:</i> | The lessee shall be responsible for taxes, maintenance, utilities and insurance. |

The lease agreement is an arms-length transaction since neither party is related.

Operating Budget

The applicant has submitted an operating budget, in 2011 dollars, for the first year subsequent to change in ownership:

| | |
|---------------------------|-------------------|
| Revenue: | \$59,464,666 |
| Expenses: | |
| Operating | \$44,255,626 |
| Capital | <u>11,067,451</u> |
| Total Expenses: | \$55,323,077 |
| Net Income: | \$4,141,589 |
| Utilization(patient days) | 189,351 |
| Occupancy | 99.0% |

The following is noted with respect to the submitted RHCF operating budget:

- Expenses include lease rental.
- Pending impact of the 2010 CMI changes on the Medicaid rate was estimated to be a reduction of approximately \$20 per day.

- Proposed 2011-2012 budget changes which apply to budget include; 1.2% increase in cash receipt assessment rate, bed hold payments eliminated and the elimination of the 1.7% 2011 trend factor.
- Medicare and private pay assume current rates of payment.
- Utilization by payor source for year one is expected as follows:

| | |
|-------------------|-------|
| Commercial | 7.2% |
| Medicare | 14.8% |
| Medicaid | 76.7% |
| Private Pay/Other | 1.3% |

- Breakeven occupancy is projected at 92.1%

Capability and Feasibility

As part of the purchase consideration JOPAL, Bronx will pay assumed liabilities less assumed assets. This consideration includes a promissory note totaling \$6,554,587 and \$5,850,000 for the difference in assumed liabilities and assumed assets, making the total purchase price approximately \$12,404,587.

Working capital requirements are estimated at \$9,220,513, based on two months of the first year expenses. The applicant will finance \$4,500,000 at an interest rate of 7% over 5 years, for which a letter of interest has been provided by Capital One Bank.

The remaining \$4,720,513 will be provided as equity from the proposed members. Presented as BFA Attachment A are the net worth statements of the proposed members which indicates the availability of sufficient funds.

The proposed members have signed affidavits stating they are willing to contribute resources disproportionate to ownership percentage. Presented as BFA Attachment B, is the pro-forma balance sheet of JOPAL, Bronx. As shown, the facility will initiate operation with \$1,000,000 members' equity. It is noted that assets include \$10,525,000 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Thus members' equity would be negative \$9,525,000.

The submitted budget indicates a net income of \$4,141,589 for the first year subsequent to change in ownership. DOH staff has noted that the increase in patient overall utilization between 2009 and 2010 was due to building renovations, which were completed in July of 2009. Projected income includes the applicant's estimated impact of the 2011-2012 State Budget changes to RHCF Medicaid rates. The budget appears reasonable.

Review of Attachment C, financial summary for Workmen's Circle Multicare Center, indicates that the facility has experienced an average negative working capital and negative equity. The negative working capital in 2008 and 2009 was a result of a long renovation project. During this extended renovation, there were long periods of time when the facility was forced to close nursing units, leaving occupancy well below current levels. With the completion of the renovation project in 2010, the facility was able to recover census to full capacity, which caused a significant increase in net income. In 2010, the applicant experienced positive working capital and saw an improvement in equity. The applicant experienced an average net income of \$12,769,970 for the period shown.

Review of Attachment D, financial summary for Carillon Nursing and Rehabilitation Center, indicates that the facility has maintained positive working capital and positive equity and experienced an average net income of \$536,231 for the period shown.

Review of BFA Attachment E, financial summary for St. James Plaza Nursing Facility, indicates that the facility has maintained positive working capital and positive equity and experienced an average net income of \$431,077 for the period shown.

Review of BFA Attachment F, financial summary for East Neck Nursing and Rehabilitation Center, indicates that the facility has maintained positive working capital and positive equity and experienced an average net income of \$785,346 for the period shown.

Review of BFA Attachment G, financial summary for Barnwell Nursing and Rehabilitation Center, indicates that the facility has maintained positive working capital and positive equity and experienced an average net income of \$377,025 for the period shown.

Based on the preceding, and subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

| | |
|------------------|--|
| BFA Attachment A | Personal Net Worth Statement |
| BFA Attachment B | Pro-forma Balance Sheet |
| BFA Attachment C | Financial Summary, Workmen's Circle Multicare Center |
| BFA Attachment D | Financial Summary, Carillon Nursing and Rehabilitation Center |
| BFA Attachment E | Financial Summary, St. James Plaza Nursing Facility |
| BFA Attachment F | Financial Summary, East Neck Nursing and Rehabilitation Center |
| BFA Attachment G | Financial Summary, Barnwell Nursing and Rehabilitation Center |
| BFA Attachment H | Establishment Checklist |

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 21st day of July, 2011, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish JOPAL, Bronx, LLC as the operator of Workmen's Circle Multicare Center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

111170-E

JOPAL, Bronx, LLC

APPROVAL CONTINGENT UPON:

1. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily limited to, ways in which the facility will:
 - i) Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - ii) Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - iii) Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; and
 - iv) Submit an annual report for two years to the DOH, which demonstrates substantial progress with the implement of the plan. The plan should include but not be limited to:
 - (a) Information on activities relating to a-c above; and
 - (b) Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - (c) Other factors as determined by the applicant to be pertinent.

The Department of Health reserves the right to require continued reporting beyond the two year period. [RNR]

3. Submission of an executed lease agreement acceptable to the Department. [BFA]
4. Submission of an executed working capital loan commitment acceptable to the Department. [BFA]
5. Submission of updated budgets, with all assumptions noted, that include the impact of the State's 2011-12 Budget and continues to demonstrate financial feasibility, acceptable to the Department. [BFA]
6. Submission of a photocopy of the Articles of Organization of JOPAL Bronx, LLC that were filed on October 28, 2010 and any amendments thereto, acceptable to the Department. [CSL]
7. Submission of a photocopy of the finalized and executed Operating Agreement of JOPAL Bronx, LLC, acceptable to the Department. [CSL]
8. Submission of a photocopy of the executed Certificate of Assumed Name of JOPAL Bronx, LLC, indicating its intent to do business as Workmen's Circle Multicare Center, acceptable to the Department. [CSL]
9. Submission of evidence of site control, acceptable to the Department. [CSL]
10. Submission of a photocopy of the executed Certificate of Amendment of the Certificate of Incorporation of Workmen's Circle Home and Infirmary Foundation for the Aged, New York State Branches, Inc., acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:


N/A

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York 12180-2299

New York State Department Of Health
Memorandum

TO: Public Health and Health Planning Council

FROM: James E. Dering, General Counsel 

DATE: July 13, 2011

SUBJECT: Proposed Dissolution of MTC Senior Housing, Inc.

MTC Senior Housing, Inc. ("MTC") requests Public Health and Health Planning Council approval of its proposed Dissolution in accordance with the requirements of Not-For-Profit Corporation Law §1002(c) and §1003, as well as 10 NYCRR Part 650.

MTC was established under Article 28 of the Public Health Law in 2006 to operate a nursing home as part of a continuing care retirement community in Queens County that was to be known as Skyline Commons. In 2009, MTC's Board of Directors determined that proceeding with the development of the continuing care retirement community was no longer financially feasible. MTC returned to the prospective residents the reservation deposits and fees paid by them, and surrendered to the Department the Certificate of Authority and Certificate of Authorization issued to it by the Continuing Care Retirement Community Council. Therefore, there is no longer a reason for MTC to exist. MTC has no assets to distribute.

Attached are a copy of the duly executed proposed Certificate of Dissolution, a letter from MTC's attorney explaining the need for the proposed Dissolution, a proposed Plan of Dissolution, and a proposed Verified Petition seeking the Attorney General's approval of MTC's Certificate of Dissolution.

The Certificate of Dissolution is in legally acceptable form.

Attachments

CERTIFICATE OF DISSOLUTION

OF

MTC SENIOR HOUSING, INC.

UNDER SECTION 1003 OF THE NOT-FOR-PROFIT CORPORATION LAW

I, the undersigned, the President of MTC Senior Housing, Inc., hereby certify:

1. The name of the corporation is MTC Senior Housing, Inc. (the "Corporation").
2. The Certificate of Incorporation of the Corporation was filed by the Department of State of the State of New York on July 17, 2001.
3. The names and addresses of each of the officers and directors of the Corporation and the title of each are as follows:

| <u>NAME</u> | <u>TITLE</u> | <u>ADDRESS</u> |
|------------------|------------------------|---|
| Michael Potack | Chairman and Director | 16411 Chapin Parkway Jamaica, New York 11432 |
| Michael Fassler | President and Director | 16411 Chapin Parkway Jamaica, New York 11432 |
| Robert Levine | Treasurer and Director | 16411 Chapin Parkway Jamaica, New York 11432 |
| Eva Marie Tausig | Secretary and Director | 16411 Chapin Parkway Jamaica, New York 11432 |
| Robert Pins | Director | 16411 Chapin Parkway Jamaica, New York 11432 |

4. Dissolution of the Corporation was authorized by a majority vote of the Board of Directors at a meeting duly called and held on March 9, 2010 at which a quorum was present. Dissolution of the Corporation was approved by the sole member of the Corporation at a meeting of its Board of Directors duly called and held on September 21, 2010 at which a quorum was present.

5. The Corporation elects to dissolve.

6. At the time of the dissolution, the Corporation is a Type C corporation as defined under the Not-for-Profit Corporation Law.

7. A certified copy of the Plan of Dissolution has been duly filed with the Attorney General of the State of New York.

8. The Plan of Dissolution filed with the Attorney General included a statement that at the time of the dissolution the Corporation had no assets or liabilities.

9. At the time of authorization of its Plan of Dissolution and the Corporation did not hold any assets which are legally required to be used for a particular purpose pursuant to the Not-for-Profit Corporation Law.

~~10. Prior to the filing of this Certificate with the Department of State, the endorsement of the Attorney General and the approval of the Public Health and Health Planning Council will be attached.~~

11. IN WITNESS WHEREOF, the undersigned has signed this Certificate of Dissolution this 21 day of APRIL, 2011 under the penalties of perjury.



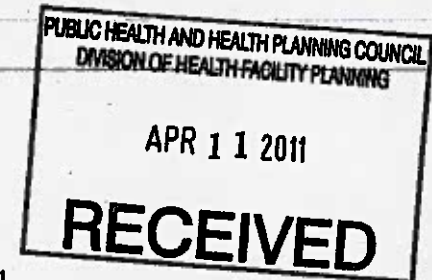
Michael Fassler
President

CADWALADER

Cadwalader, Wickersham & Taft LLP
New York London Charlotte Washington Beijing

One World Financial Center, New York, NY 10281
Tel 212 504 6000 Fax 212 504 6666
www.cadwalader.com

April 7, 2011



Ms. Colleen Frost
Executive Secretary
New York State Public Health and Health Planning Council
New York State Department of Health
Hedley Building
433 River Street--6th Floor
Troy, New York 12180

Re: MTC Senior Housing, Inc.

Dear Ms. Frost:

MTC Senior Housing, Inc. (the "Corporation") has elected to voluntarily dissolve as it was unable to establish and operate a continuing care retirement community pursuant to Article 46 of the Public Health Law (the "CCRC") as set forth in its Certificate of Incorporation.

By way of background, the Corporation requested approval (a "Certificate of Authorization") from the New York State Continuing Care Retirement Community Council (the "CCRC Council") to commence a priority deposit program whereby prospective CCRC residents would pay a fully-refundable deposit in exchange for receipt of a priority number. The Corporation simultaneously filed for a Certificate of Authority from the CCRC Council to establish the CCRC. On August 9, 2007, the CCRC Council issued the Corporation a Certificate of Authorization to commence its priority deposit program, and a Certificate of Authority to establish the CCRC. On December 18, 2008, the Corporation amended and restated its Certificate of Incorporation to change the corporate purposes so that it could operate a CCRC and the other programs to be offered at the CCRC, specifically a residential health care facility as defined in Article 28 of the Public Health Law, an enriched housing program as defined in Section 2(28) of the Social Services Law, and an assisted living residence with a special needs assisted living certificate, as those terms are defined in Sections 4651 and 4655 of the Public Health Law. Subsequently, the Board of Directors of the Corporation determined that the CCRC project was not financially feasible in the then-current economic environment. Accordingly, on January 26, 2009 in a letter to Ms. Linda Gowdy of the Department of Health, the Corporation surrendered the Certificate of Authority and the Certificate of Authorization issued by the CCRC Council. I have enclosed the letter to Ms.

C A D W A L A D E R

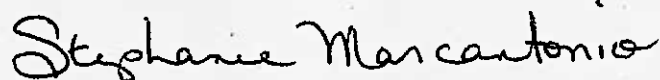
Ms. Colleen Frost

April 7, 2011

Gowdy for your information. In addition, the Corporation arranged for the return of the ~~entrance-fee-deposits and priority-reservation-fees, with-applicable-interest, to all-prospective~~ residents of the CCRC who paid such deposits and fees. The Corporation has no remaining assets or liabilities.

The Corporation seeks Commissioner of Health consent to its dissolution. Please call me at (212) 504-6749 if you have any questions or comments. Thank you for your assistance.

Sincerely yours,



Stephanie Marcantonio

SM/mls
Enclosures

**PLAN OF DISSOLUTION
OF
MTC SENIOR HOUSING, INC.
A NEW YORK NOT-FOR-PROFIT CORPORATION**

The Board of Directors of MTC Senior Housing, Inc. (the "Corporation") at a duly called and held meeting on March 9, 2010, pursuant to notice given in accordance with the law, a quorum being present at all times, having considered the advisability of voluntarily dissolving the Corporation, and it being the majority opinion of the Board of Directors that dissolution is advisable and is in the best interests of the Corporation, and the Board of Directors having adopted, by majority vote, a plan for voluntary dissolution of the Corporation, does hereby recommend to the sole corporate member for authorization that the Corporation be dissolved in accordance with the following plan:

- (1) Upon resolution of the Board of Directors adopting a Plan of Dissolution, the Board shall submit the plan to a vote of the sole corporate member for approval.
 - (2) No approvals of the dissolution of the Corporation are required by any government agency or officer other than the endorsement of the Attorney General and the approval of the Public Health and Health Planning Council.
 - (3) The Corporation has no assets or liabilities.
 - (4) Within ten (10) days after the authorization of the Plan of Dissolution by the Board of Directors and by the sole corporate member, a certified copy of the Plan shall be filed with the Attorney General of the State of New York pursuant to New York State Not-for-Profit Corporation Law Section 1002(d).
 - (5) A Certificate of Dissolution shall be executed and all approvals required under Section 1003 of the Not-for-Profit Corporation Law shall be attached thereto.
-

-----X
 :
 In the Matter of the Application of :
 MTC Senior Housing, Inc. :
 For Approval of a Certificate of :
 Dissolution pursuant to :
 Section 1002 of the Not-for-Profit :
 Corporation Law. :
 :
 -----X

**VERIFIED PETITION FOR
 APPROVAL OF CERTIFICATE
 OF DISSOLUTION**

TO:
 THE ATTORNEY GENERAL OF THE STATE OF NEW YORK
 OFFICE OF THE ATTORNEY GENERAL
 CHARITIES BUREAU
 120 BROADWAY, 3RD FLOOR
 NEW YORK, NEW YORK 10271-0332

Petitioner, MTC Senior Housing, Inc. (the "Corporation") by Michael Fassler, the President of the Corporation, for its Verified Petition, respectfully alleges:

1. Petitioner, MTC Senior Housing, Inc., is a corporation incorporated under the New York Not-for-Profit Corporation Law on July 17, 2001, with its principal office at 164-11 Chapin Parkway, Jamaica, New York 11432. A copy of the Certificate of Incorporation is attached as Exhibit A.

2. The name, addresses and titles of the Corporation's officers and directors are as follows:

| <u>NAME</u> | <u>TITLE</u> | <u>ADDRESS</u> |
|------------------|------------------------|--|
| Michael Potack | Chairman and Director | 164-11 Chapin Parkway Jamaica, New York 11432 |
| Michael Fassler | President and Director | 164-11 Chapin Parkway Jamaica, New York 11432 |
| Robert Levine | Treasurer and Director | 164-11 Chapin Parkway Jamaica, New York 11432 |
| Eva Marie Tausig | Secretary and Director | 164-11 Chapin Parkway Jamaica, New York 11432 |
| Robert Pins | Director | 164-11 Chapin Parkway Jamaica, New York 11432 |

3. The purposes for which the Corporation was organized are as follows:

- (a) provide housing, healthcare and related services to older adults as an operator of (w) a continuing care retirement community pursuant to Article 46 of the Public Health Law; (x) a residential health care facility as defined in Article 28 of the Public Health Law; (y) an enriched housing program as defined in Section 2(28) of the Social Services Law and (z) an assisted living residence with a special needs assisted living certificate, as those terms are defined in Sections 4651 and 4655 of the Public Health Law; provided however, that the Corporation will not operate any such community, facility or program without the prior written approval of the regulatory agency or agencies with jurisdiction over such activities;
- (b) do any other act or thing incidental to or in connection with the foregoing purposes or in the advancement thereof.

4. The Corporation is a Type C corporation.

5. On January 26, 2009 the Corporation surrendered the Certificate of Authority and Certificate of Authorization issued by the New York State Continuing Care Retirement Community Council on August 9, 2007 with respect to the continuing care retirement community that was to be known as Skyline Commons (the "CCRC") because the Corporation determined that the project was not financially feasible in the then-current economic environment. The Corporation arranged for the return of the entrance fee deposits and priority reservation fees, with applicable interest, to all prospective residents of the Corporation who paid such deposits and fees.

6. A meeting of the Board of Directors of the Corporation was held pursuant to duly given notice on March 9, 2010 at which a resolution was duly passed by a majority vote adopting a Plan of Dissolution and authorizing the filing of a Certificate of Dissolution in accordance with Section 1003 of the Not-for-Profit Corporation Law. A copy of the Plan, certified by the Senior Vice President of the Corporation, is attached hereto as Exhibit B.

7. The Plan of Dissolution of the Corporation was approved by the sole member of the Corporation at a meeting of its Board of Directors duly called and held on March 9, 2010, at which a quorum was present. A copy of the certified resolution of the member approving the Plan of Dissolution is attached hereto as Exhibit C.

8. A certified copy of the Corporation's Plan of Dissolution was filed with the Office of the Attorney General.

9. MTC Senior Housing, Inc. has no assets or liabilities and its final report showing zero assets has been filed with the Attorney General.

10. Approval of the dissolution of the Corporation has been obtained from the New York State Public Health and Health Planning Council and a copy of such approval is attached as Exhibit D.

~~11. With this Petition, the original Certificate of Dissolution is being submitted to the Attorney General for approval pursuant to Not-for-Profit Corporation Law Section 1003.~~

WHEREFORE, petitioner requests that the Attorney General approve the Certificate of Dissolution of MTC Senior Housing, Inc., a not-for-profit corporation, pursuant to Not-for-Profit Corporation Law Section 1003.

~~IN WITNESS WHEREOF, the Corporation has caused this Petition to be~~
executed this ____ day of _____, 2011 by Michael Fassler, its President.

Michael Fassler
President
MTC Senior Housing, Inc.

Verification

STATE OF NEW YORK)
 : ss.:
COUNTY OF BRONX)

I, the undersigned, Michael Fassler, being duly sworn, depose and say:

I am the President of MTC Senior Housing, Inc., the corporation named in the above Petition. I make this verification at the direction of its Board of Directors. I have read the foregoing Petition and know the contents thereof to be true of my own knowledge.

Michael Fassler

Sworn to before me this
____ day of _____, 2011

Notary Public

EXHIBIT A

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 21st day of July, 2011, approves the filing of the Certificate of Dissolution of MTC Senior Housing, Inc., dated April 13, 2011.

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Jules Home HealthCare, Inc
Address: Bronx
County: Bronx
Structure: For-Profit
Application Number: 1708-L

Description of Project:

Jules Home HealthCare, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 142 shares of stock, which are owned as follows:

Julie I Riesa – 108 Shares

Clement O. Ojevwe – 4 Shares

Oghenerukevwe Riesa – 10 Shares

58 shares remain unissued.

The board members of Jules Home Health Care, Inc, are:

Julie I Riesa, President
Retired

Clement O. Ojevwe, RN, Director of Patient Services
Field Nurse, Metropolitan Jewish Healthcare System
Field Nurse, Rain Home Attendant Services

Oghenerukevwe Riesa,
Director of Quality Assurance
Law Student

The Office of the Professions of the State Education Department indicates no issues with the licensure of the health professional associated with this application.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 2303 White Plains Road, Bronx, New York, 10467:

Bronx
Westchester

Kings

New York

Queens

The applicant proposes to provide the following health care services:

| | | | |
|----------------------|---------------------|------------------|---------------------------|
| Nursing | Home Health Aide | Personal Care | Medical Social Services |
| Occupational Therapy | Respiratory Therapy | Physical Therapy | Speech-Language Pathology |
| Audiology | Nutrition | Homemaker | Housekeeper |

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: June 17, 2011

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Tradition, LLC
Address: Brooklyn
County: Kings
Structure: Limited Liability Company
Application Number: 1731-L

Description of Project:

Tradition, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The sole member of Tradition, LLC comprises the following individual:

Jacob Spitzer, President
Founder/Owner/President/Chief Executive Officer,
Revival Home Health Care

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 1663 47th Street, Brooklyn, New York 11204:

| | | | |
|----------|-------|----------|--------|
| Bronx | Kings | New York | Queens |
| Richmond | | | |

The applicant proposes to provide the following health care services:

| | | | |
|----------------------|------------------|---------------|---------------------------|
| Nursing | Home Health Aide | Personal Care | Speech-Language Pathology |
| Occupational Therapy | Physical Therapy | | |

A review of the operations of the Revival Home Health Care was performed as part of this review.

The information provided by the Bureau of Quality Assurance and Licensure has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: June 6, 2011

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Caring Hands Home Care Services, Inc.
Address: Brooklyn
County: Kings
Structure: For Profit Corporation
Application Number: 1849-L

Description of Project:

Caring Hands Home Care Services, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Caring Hands Home Care Services, Inc. has authorized 200 shares of stock which are owned as follows: Yuri Birbrayer, 40 shares, Elena Yakubov, 40 shares, Concetta Mignone, 40 shares. The remaining 80 shares are unissued.

The members of the Board of Directors of Caring Hands Home Care Services, Inc. comprise the following individuals:

| | |
|---|--|
| Yuri Birbayer, M.D., President Attending Physician, Staten Island University Hospital | Elena Yakubov, R.N., Vice President Healthcare Recruiter, Vesna Medical Staffing Legal Nurse Consultant, Law Offices of Andrew Walle, Jr., PC |
|---|--|

Concetta Mignone, C.P.A., Secretary/Treasurer
Adjunct Assistant Professor, Long Island University

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department, the New York Physician Profile and the Office of Professional Medical Conduct, where appropriate, indicates no issues with the licenses of the health care professionals associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 6721 14th Avenue, Brooklyn, New York 11219:

| | | |
|-------------------|-----------------|--------------------|
| New York Kings | Bronx Queens | Richmond Nassau |
|-------------------|-----------------|--------------------|

The applicant proposes to provide the following health care services:

| | | |
|---------------------------|----------------------|-------------------------|
| Nursing | Home Health Aide | Personal Care |
| Physical Therapy | Occupational Therapy | Respiratory Therapy |
| Speech-Language Pathology | Audiology | Medical Social Services |
| Nutrition | Homemaker | Housekeeper |
| Medical Services | | |

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: June 23, 2011

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: 1st Aide Home Care, Inc.
Address: Brooklyn
County: Kings
Structure: For Profit
Application Number: 1892-L
Description of Project:

1st Aide Home Care, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

1st Aide Home Care, Inc. has authorized 200 shares of stock which are owned solely by Takhir Krasikov.

The members of the Board of Directors of 1st Aide Home Care, Inc. comprise the following individual:

Takhir Krasikov, Chairperson, Treasurer
PCA/HHA, Welcome Care, Inc.

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 2647 Brown Street, Brooklyn, New York 11235:

| | | |
|----------|--------|----------|
| New York | Bronx | Richmond |
| Kings | Queens | |

The applicant proposes to provide the following health care services:

| | | |
|---------------------|----------------------|---------------------------|
| Nursing | Home Health Aide | Personal Care |
| Physical Therapy | Occupational Therapy | Speech-Language Pathology |
| Homemaker | Housekeeper | Medical Social Services |
| Respiratory Therapy | Audiology | Nutrition |

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: June 21, 2011

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Caring Touch Homecare, Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 1918-L

Description of Project:

Caring Touch Homecare, Inc., a for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock, which are owned as follows:

Elsa Crick, RN – 200 Shares

The proposed Board Member of Caring Touch Homecare, Inc. comprises the following individual:

Elsa Crick, RN – President, Treasurer and Secretary
Administrator/Director of Patient Services, Lutheran Augustana Center

The Office of the Professions of the State Education Department, and the Office of Professional Medical Conduct, indicates no issues with the licensure of the health professional associated with this application.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 847 Prospect Place, Brooklyn, New York 11216:

| | | | |
|--------|----------|--------|----------|
| Bronx | Kings | Nassau | New York |
| Queens | Richmond | | |

The applicant proposes to provide the following health care services:

| | | | |
|----------------------|------------------|---------------|---------------------------|
| Nursing | Home Health Aide | Personal Care | Medical Social Services |
| Occupational Therapy | Physical Therapy | Nutrition | Speech-Language Pathology |
| Homemaker | Housekeeper | Audiology | Respiratory Therapy |

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: June 22, 2011

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: JARME Home and Healthcare Services Corporation
Address: Bronx
County: Bronx
Structure: For Profit
Application Number: 1931-L

Description of Project:

JARME Home and Healthcare Services Corporation, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

JARME Home and Healthcare Services Corporation has authorized 200 shares of stock which are owned solely by Gladys Aideyan, R.N.

The members of the Board of Directors of JARME Home and Healthcare Services Corporation comprise the following individuals:

| | |
|--|---|
| Gladys Aideyan, R.N., President and Treasurer Staff nurse, Mt. Sinai Hospital | Andrew Aideyan, Vice President and Secretary Assistant Borough Director, NYC Parks and Recreation |
|--|---|

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 806 Elton Avenue, Bronx, New York 10451:

| | | |
|--------|-------------|----------|
| Kings | Bronx | Richmond |
| Queens | Westchester | |

The applicant proposes to provide the following health care services:

| | | |
|------------------|----------------------|---------------------------|
| Nursing | Home Health Aide | Personal Care |
| Physical Therapy | Occupational Therapy | Speech-Language Pathology |
| Homemaker | Housekeeper | Medical Social Services |
| Nutrition | | |

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: June 22, 2011

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Signature Care, LLC
Address: Brooklyn
County: Kings
Structure: Limited Liability Company
Application Number: 1924-L

Description of Project:

Signature Care, LLC, a limited liability company, requests approval for a change in ownership of Leveridge Home Care Agency, Inc., a licensed home care services agency under Article 36 of the Public Health Law.

Leveridge Home Care Agency, Inc. was previously approved as a licensed home care services agency by the Public Health Council at its May 12, 2006 meeting and subsequently licensed as 1307L001.

In the proposed transaction Prestige Home Care, LLC, which later assigned its interest to Signature Care, LLC, entered into an Asset Purchase Agreement with Leveridge Home Care Agency, Inc. Signature Care, LLC has entered into an interim consultative agreement with Leveridge Home Care Agency, Inc. and has submitted a Management Agreement that is currently under review by the Department.

The members of Signature Care, LLC are as follows:

Sholom Eisen, Member and President, 50%
Administrator, Mega Staffing NY, Inc.
(health care staffing)
Affiliations: Sutton Park Center for
Nursing and Rehabilitation

Michael Lefkowitz, Member, 50%
Administrator, High View Travel
(travel agency)
Affiliations: none

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 5317 13th Avenue, Brooklyn, New York 11219:

Bronx
New York

Kings
Queens

Nassau
Richmond

The applicant proposes to provide the following health care services:

Nursing
Occupational Therapy
Housekeeper

Home Health Aide
Speech-Language Pathology

Personal Care
Medical Social Services

Physical Therapy
Homemaker

A review of the operations of Sutton Park Center for Nursing and Rehabilitation was performed for the period of November 2008 to present.

The Bureau of Quality Assurance and Surveillance has indicated that Sutton Park Center for Nursing and Rehabilitation was fined \$10,000 pursuant to a stipulation and order dated May 24,

2011 for surveillance findings of January 19, 2010. Deficiencies were found under 10 NYCRR 415.12 (c)(1) Quality of Care: Pressure Sores.

The information provided by the Bureau of Quality Assurance and Surveillance has indicated that the residential health care facility has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval

Date: June 6, 2011

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Direct Home Care, Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit
Application Number: 1580-L

Description of Project:

Direct Home Care, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock, which are owned as follows:

| | |
|---|--|
| Yechiel Kaufman, President – 199 shares Executive Director, Boro Park Jewish Community Council | Yocheved L. Lustig, RN – 1 share Registered Nurse, North Eastern Anesthesia |
|---|--|

The sole board member of Direct Home Care, Inc. is:

Yechiel Kaufman, President
(Previously Disclosed)

The Office of the Professions of the State Education Department and the Office of Professional Medical Conduct indicate no issues with the licensure of the health professional associated with this application.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 1461 40th Street, Brooklyn, New York, 11218:

| | | | |
|--------|-------|----------|----------|
| Bronx | Kings | New York | Richmond |
| Queens | | | |

The applicant proposes to provide the following health care services:

| | | | |
|----------------------|---------------------|------------------|---------------------------|
| Nursing | Home Health Aide | Personal Care | Medical Social Services |
| Occupational Therapy | Respiratory Therapy | Physical Therapy | Speech-Language Pathology |
| Audiology | Nutrition | Homemaker | |

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: June 15, 2011

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Reliable Choice Home Health Care, Inc.
Address: East Rockaway
County: Nassau
Structure: For-Profit
Application Number: 1737-L

Description of Project:

Reliable Choice Home Health Care, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock, which are owned as follows:

Laurence F. Abrams, NHA – 100 Shares Simon Becker – 100 Shares

The members of Reliable Choice Home Health Care, Inc. are:

Laurence F. Abrams – President Simon Becker – Secretary/Treasurer
Nursing Home Administrator, Workmen's Circle Real Estate Broker, Simon Sez Realty
Multicare Center

The Bureau of Professional Credentialing has indicated that Laurence Abrams NHA license #04430 holds a NHA license. Laurence Abrams, was fined \$300.00 for failing to apply and qualify for registration as a nursing home administrator before the beginning of the registration period of January 1, 2002 to December 31, 2003. He continued to practice as nursing home administrator at Fulton Common Care Center without a certificate of registration from January 1, 2002 to January 11, 2002.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 87 Main Street, East Rockaway, New York, 11518:

Nassau Queens Suffolk

The applicant proposes to provide the following health care services:

| | | | |
|----------------------|---------------------|------------------|---------------------------|
| Nursing | Home Health Aide | Personal Care | Medical Social Services |
| Occupational Therapy | Respiratory Therapy | Physical Therapy | Speech-Language Pathology |
| Audiology | Nutrition | Homemaker | Housekeeper |

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: June 21, 2011

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Elite Home Services, LLC
Address: New York
County: New York
Structure: Limited Liability Company
Application Number: 1806-L

Description of Project:

Elite Home Services, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. Elite Home Services, LLC is an existing non-medical companion care agency.

Elite Home Services, LLC is composed of the following member:

Diane B. Schottenstein, Esq., 100%
President, Elite Home Services, LLC

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A Certificate of Good Standing has been received for the attorney.

The applicant proposes to serve the residents of the following counties from an office located at 165 West End Avenue, Suite 4C, New York, New York 10023:

| | | |
|----------|----------|-------------|
| New York | Kings | Queens |
| Bronx | Richmond | Westchester |

The applicant proposes to provide the following services:

| | | |
|------------------|----------------------|---------------------------|
| Nursing | Home Health Aide | Personal Care |
| Physical Therapy | Occupational Therapy | Speech-Language Pathology |
| Homemaker | Respiratory Therapy | Medical Social Services |
| Nutrition | Housekeeper | Audiology |

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: July 7, 2011

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: ADJ Wisdom Home Care, Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 1916-L

Description of Project:

ADJ Wisdom Home Care, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock, which are owned as follows:

| | |
|--|---|
| Ducarmel Sagesse – 100 Shares Contract Manager, Senior Health Partners, Inc. | Wildor J. Merivil – 35 Shares Senior Engineer, AT&T |
| Monclas Noel – 35 Shares Analyst System Ground Operations, JetBlue Airways Corp. | Stanley J. Ferol – 30 Shares Teacher, R.E.N.A Learning Success |

The proposed Board Members of ADJ Wisdom Home Care, Inc. comprise the following individuals:

| | |
|---|---|
| Ducarmel Sagesse, MSHA – Director/President Previously Disclosed | Vena Laurent-Hilaire, RN, MSN – Secretary/Treasurer Affiliations: President/Owner, Rishavena Home Health Care, Inc. (February 5, 2008 – Present) |
|---|---|

The Office of the Professions of the State Education Department, and the Office of Professional Medical Conduct, indicate no issues with the licensure of the health professional associated with this application.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 2006 Ralph Avenue, STE 1F, Brooklyn, New York 11234:

| | | | |
|--------|----------|--------|----------|
| Bronx | Kings | Nassau | New York |
| Queens | Richmond | | |

The applicant proposes to provide the following health care services:

| | | | |
|----------------------|------------------|---------------|---------------------------|
| Nursing | Home Health Aide | Personal Care | Medical Social Services |
| Occupational Therapy | Physical Therapy | Nutrition | Speech-Language Pathology |
| Homemaker | Housekeeper | | |

A review of the operations of Rishavena Home Health Care, Inc. was performed as part of this review from February 5, 2008 – Present.

The information provided by the Bureau of Quality Assurance, and Licensure has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval

Date: July 1, 2011

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Maplewood Home Care, LLC
d/b/a Maplewood Home Care
Address: Webster
County: Monroe
Structure: Limited Liability Company
Application Number: 1930-L

Description of Project:

Maplewood Home Care, LLC, d/b/a Maplewood Home Care, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Maplewood Home Care, LLC, d/b/a Maplewood Home Care, is composed of the following member:

Gregory J. Chambery, NHA, sole member
Nursing Home Administrator/Owner, Maplewood Nursing Home

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Bureau of Professional Credentialing indicated that Gregory J. Chambery holds a Nursing Home Administrator license in good standing. He was fined \$250 pursuant to a stipulation and order dated August 5, 2008 for failing to apply and qualify for registration as a nursing home administrator before the beginning of the January 1, 2008 to December 31, 2009 registration period and his continued practice as nursing home administrator at Maplewood Nursing Home without a certificate of registration for the period from January 1, 2008 to January 9, 2008.

The applicant proposes to serve the residents of the following counties from an office located at 100 Daniel Drive, Webster, New York 14580:

| | | |
|------------|---------|---------|
| Monroe | Wayne | Ontario |
| Livingston | Orleans | |

The applicant proposes to provide the following health care services:

| | | |
|------------------|----------------------|---------------------------|
| Nursing | Home Health Aide | Personal Care |
| Physical Therapy | Occupational Therapy | Speech-Language Pathology |
| Homemaker | Respiratory Therapy | Medical Social Services |
| Nutrition | Housekeeper | Audiology |

A ten year review of Maplewood Nursing Home was performed as part of this review.

The Bureau of Quality Assurance and Surveillance has indicated that the following residential health care facility was enforced as described below.

Maplewood Nursing Home was fined \$2,000.00 pursuant to a stipulation and order dated April 23, 2002 for surveillance findings of October 11, 2001. Deficiencies were found under 10 NYCRR 415.12(c) Quality of Care: Pressure Sores.

Maplewood Nursing Home was fined \$1,000.00 pursuant to a stipulation and order dated November 20, 2006 for surveillance findings of October 18, 2002. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.

The information provided by the Bureau of Quality Assurance and Surveillance has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval

Date: June 6, 2011

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Glorious Home Care Agency
Address: Bronx
County: Bronx
Structure: Partnership
Application Number: 1942-L

Description of Project:

Glorious Home Care Agency, a partnership, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The proposed partners of Glorious Home Care Agency comprise the following individuals:

| | |
|---|--|
| Essie Baidoo, RN – President – 50% Field Nurse, Visiting Nursing Service of New York | Winifred Dankwah – Administrator – 50% Unemployed |
|---|--|

The Office of the Professions of the State Education Department indicates no issues with the licensure of the health professional associated with this application.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 20 W Mosholu Parkway, Apt 10, Bronx, New York 10468:

| | | | |
|----------|-------------|----------|--------|
| Bronx | Kings | New York | Queens |
| Richmond | Westchester | | |

The applicant proposes to provide the following health care services:

| | | | |
|-------------|------------------|---------------|-----------|
| Nursing | Home Health Aide | Personal Care | Homemaker |
| Housekeeper | | | |

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: June 8, 2011

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Liberty Resources, Inc.
Address: Syracuse
County: Onondaga
Structure: Not-for-Profit Corporation
Application Number: 1948-L

Description of Project:

Liberty Resources, Inc., a not-for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. Liberty Resources, Inc. is an existing human services agency providing a wide array of residential and non-residential services including Mental Health, Mental Retardation and Developmental Disabilities, services for individuals living with HIV/AIDS, families and youth involved in the child welfare system, domestic violence services, services to persons in recovery, TBI services and diversified case management services. Liberty Resources, Inc. is applying for LHCSA licensure so that it can provide home and community support services under the TBI Waiver Program.

The members of the Board of Directors of Liberty Resources, Inc. are as follows:

David Harris, President
Project Manager/Process Analyst,
Syracuse University

Robert Toole, Jr. Secretary/Treasurer
Owner, Kona HR Consulting

David Bowles, CPA
Partner, Kane, Bowles & Moore, PC

William Conole, NHA
Administrator, Crouse Community Center, Inc.

Michael Madigan, CPA
VP Finance, 3 PD, Inc. (logistics)

Daniel Manning
Partner, JCM Architectural Association

Nancy Mudrick
Professor, Syracuse University

Robert Stone
Retired

Leo Lawrence Tully, Esq.
Retired
Part time Professor, Empire State College
Affiliation: Community Memorial Hospital

David Van Slyke
Professor, Syracuse University

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Bureau of Professional Credentialing has indicated that William Conole, Nursing Home Administrator (NHA) license # 03244, holds a NHA license in good standing and the Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or his license.

The Office of the Professions of the State Education Department indicates no issues with the licenses of the financial professionals associated with this application.

A ten year review of the operations of the following facility was performed as part of this review:

Community Memorial Hospital

A review of the above listed hospital by the Division of Certification and Surveillance has determined that the facility has exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations.

The applicant proposes to serve the residents of the following counties from an office located at 1045 James Street, Syracuse, New York 13203:

| | | |
|----------|----------|--------------|
| Broome | Cayuga | Chenango |
| Cortland | Herkimer | Jefferson |
| Lewis | Madison | Oneida |
| Onondaga | Oswego | St. Lawrence |
| Tioga | Tompkins | |

The applicant proposes to serve the residents of the following counties from an office located at 471 Broadway, Newburgh, New York 12550:

| | | |
|-------------|----------|--------|
| Dutchess | Orange | Putnam |
| Rockland | Sullivan | Ulster |
| Westchester | | |

The applicant proposes to provide the following health care services:

| | | |
|------------------|----------------------|---------------|
| Nursing | Physiatrist | Personal Care |
| Physical Therapy | Occupational Therapy | |

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: June 27, 2011

Division of Home & Community Based Care
Character and Competence Staff Review

Name of Agency: Greater Harlem Nursing Home and Rehabilitation Center, Inc.
d/b/a Greater Harlem Licensed Home Care Services Agency
Address: New York
County: New York
Structure: Not-For-Profit
Application Number: 1908-L

Description of Project:

Greater Harlem Nursing Home and Rehabilitation Center, Inc. d/b/a Greater Harlem Licensed Home Care Services Agency, a not-for-profit corporation, requests approval to obtain licensure as a home care agency under Article 36 of the Public Health Law.

This application is requesting approval to establish a licensed home care services agency (LHCSA) associated with a new Assisted Living Program (ALP). This LHCSA will be associated with Greater Harlem Nursing Home and Rehabilitation Center, Inc. to be known as Greater Harlem Assisted Living Program. This project is part of an approved HEAL-NY Phase 12 grant application.

The Board of Greater Harlem Nursing Home and Rehabilitation Center, Inc. comprises the following individuals:

Rodney Alexander – President
Executive Director, Manhattan Educational Opportunity Center
Affiliations:

- Greater Harlem Nursing Home and Rehab. Ctr. (2/1990-present)

Eugene Giscombe – Vice-President
President/CEO, Giscombe Realty Group, LLC
Affiliations:

- Greater Harlem Nursing Home and Rehab. Ctr. (4/2001-present)

Michael D. Haynes – Treasurer
Retired
Affiliations:

- Greater Harlem Nursing Home and Rehab. Ctr. (2/2002-present)

Muriel Petioni, MD – Secretary
Retired
Affiliations:

- Greater Harlem Nursing Home and Rehab. Ctr. (10/1988-present)

Carolyn S. Bowman, LMSW – Member
Retired
Affiliations:

- Greater Harlem Nursing Home and Rehab. Ctr. (7/1997-present)

Roscoe C. Brown, Jr. – Member
Consultant, City University of New York Graduate Center
Affiliations:

- Greater Harlem Nursing Home and Rehab. Ctr. (1985-present)

Marcella Maxwell – Member
Supervisor, Brooklyn College School of Education
Affiliations:

- Greater Harlem Nursing Home and Rehab. Ctr. (3/10-present)

The Office of the Professions of the State Education Department, where appropriate, indicates no issues with the licensure of the health professionals associated with this application.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the following counties from an office located at 30 West 138th Street, New York, New York 10037.

Bronx
New York

Kings
Queens

Richmond
Westchester

The applicant proposes to provide the following health care services:

Nursing

Physical Therapy

Speech-Language Pathology

Nutrition

Home Health Aide

Occupational Therapy

Audiology

Homemaker

Personal Care

Respiratory Therapy

Medical Social Services

Housekeeper

A 10 year review of the operations of the following facility was performed as part of this review (unless otherwise noted):

- Greater Harlem Nursing Home and Rehabilitation Center f/k/a Greater Harlem Nursing Home Company, Inc.

The Bureau of Quality Assurance and Surveillance has indicated that the following Residential Health Care Facility was referred for enforcement:

- Greater Harlem Nursing Home Company, Inc. was referred for enforcement for a February 8, 2006 survey. The enforcement action resulted in a Stipulation and Order being signed on April 16, 2007 and a payment of a one thousand dollar (\$1,000) fine. Deficiencies were found under 10 NYCRR 415.12 Quality of Care.
- Greater Harlem Nursing Home Company, Inc. was referred for enforcement for a August 8, 2006 survey. The enforcement action resulted in a Stipulation and Order being signed on January 8, 2008 and a payment of a six thousand dollar (\$6,000) fine. Deficiencies were found in the following under 10 NYCRR 415.12(f)(1) Quality of Care: Mental and Psychological Functioning, 10 NYCRR 415.12(h)(2) Quality of Care: Accidents and 10 NYCRR 415.15(a) Medical Services: Medical Director

A review of the above listed facility has determined that the facility has exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations. When code violations have occurred, it was determined that the operator investigated the circumstances surrounding the violation and took steps appropriate to the gravity of the violation which a reasonably prudent operator would take to promptly correct and prevent the recurrence of the violation.

The proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval

Date: June 23, 2011

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: AZA Home Health Care, LLC
Address: New York
County: New York
Structure: Limited Liability Company
Application Number: 1722-L

Description of Project:

AZA Home Health Care, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The proposed member of AZA Home Health Care, LLC comprises the following individual:

Amy L. Monroe, RN – Owner/Operator – 100%
Director of Patient Services, Emanuel Services, Inc.

The Office of the Professions of the State Education Department indicates no issues with the licensure of the health professional associated with this application.

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 615 East 11th Street, Suite B3, New York, New York 10009:

| | | | |
|--------|----------|--------|----------|
| Bronx | Kings | Nassau | New York |
| Queens | Richmond | | |

The applicant proposes to provide the following health care services:

| | | | |
|---------------------|----------------------|---------------|---------------------------|
| Nursing | Home Health Aide | Personal Care | Speech-Language Pathology |
| Physical Therapy | Occupational Therapy | Audiology | Medical Social Services |
| Respiratory Therapy | Nutrition | Homemaker | Housekeeper |

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: July 8, 2011

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Light 101, Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 1974-L

Description of Project:

Light 101, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are owned solely by Alexander Margulis.

The Board of Directors of Light 101, Inc. comprises the following individual:

Alexander Margulis, President
Program Director, Allhealth Diagnostic and Treatment Center
Program Administrator, Amerimed Early Intervention Program
Program Administrator, Amerimed Kids, LLC

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 2528 East 17th Street, Apartment 3C, Brooklyn, New York 11235:

| | | | |
|-------------|----------|--------|-------|
| New York | Kings | Queens | Bronx |
| Westchester | Richmond | | |

The applicant proposes to provide the following health care services:

| | | |
|---------------------------|----------------------|-------------------------|
| Nursing | Home Health Aide | Personal Care |
| Physical Therapy | Occupational Therapy | Respiratory Therapy |
| Speech Language Pathology | Audiology | Medical Social Services |
| Nutrition | Homemaker | Housekeeper |

Review of the Disclosure Information indicates that the applicant has no affiliations with other health care facilities.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval

Date: July 13, 2011

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Doral Investor's Group, LLC DBA House Calls Home Care
Address: Brooklyn
County: Kings
Structure: Limited Liability Company
Application Number: 1926-L

Description of Project:

Doral Investor's Group, LLC DBA House Calls Home Care, a limited liability company, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Emergency Staffing, Inc. DBA House Calls was previously approved as a home care services agency by the Public Health Council at its March 10, 2006 meeting and subsequently licensed as 1369L001.

Emergency Staffing, Inc. DBA House Calls has proposed to enter into a management agreement with The Doral Investor's Group, LLC DBA House Calls Home Care which is currently under review by the Department of Health.

The purpose of this application is the purchase of Emergency Staffing, Inc. DBA House Calls by Doral Investor's Group, LLC DBA House Calls Home Care.

The proposed members of Doral Investor's Group, LLC DBA House Calls Home Care comprise the following individuals:

| | |
|--|--------------------------------------|
| David Lipschitz, NHA – President – 50% Assistant Administrator, River Manor Care Center | Rachel Lipschitz – 50% Unemployed |
|--|--------------------------------------|

Affiliations:

- Partner, Huntington Hills Center for Health and Rehabilitation

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

David Lipschitz holds a NYS Nursing Home Administrator license #04534, issued January 1, 1997. He is currently registered and in good standing. The Board of Examiners has never taken disciplinary action against this individual or his license. The license is registered through December 31, 2011.

The applicant will continue to serve the residents of the following counties from an office located at 2400 Fulton Street, Brooklyn, New York 11223:

| | | | |
|----------|-------------|----------|--------|
| Bronx | Kings | New York | Queens |
| Richmond | Westchester | | |

The applicant will continue to provide the following health care services:

| | | |
|---------|------------------|---------------|
| Nursing | Home Health Aide | Personal Care |
|---------|------------------|---------------|

A 10 year review of the operations of Huntington Hills Center for Health and Rehabilitation was performed as part of this review.

Huntington Hills Center for Health and Rehabilitation was fined four thousand dollars (\$4,000.00) pursuant to a stipulation and order dated March 23, 2009 for inspection findings of July 30, 2008 for violations 10 NYCRR Section 415.12 – Quality of Care; 415.15(a) – Medical Services: Medical Director.

The Information provided by the Bureau of Quality and Surveillance for Nursing Homes has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval

Date: July 12, 2011

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 21st day of July, 2011, having considered any advice offered by the staff of the New York State Department of Health and the Establishment and Project Review Committee of the Council, and after due deliberation, hereby approves the following applications for licensure, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

| <u>NUMBER:</u> | <u>FACILITY:</u> |
|----------------|--|
| 1708 L | Jules Home HealthCare, Inc. (Bronx, Westchester, Kings, New York and Queens Counties) |
| 1731 L | Tradition, LLC (Bronx, Richmond, Kings, New York and Queens Counties) |
| 1849 L | Caring Hands Home Care Services, Inc. (New York, Kings, Bronx, Queens, Richmond, and Nassau Counties) |
| 1892 L | 1 st Aide Home Care, Inc. (New York, Kings, Bronx, Queens, and Richmond Counties) |
| 1918 L | Caring Touch Homecare, Inc. (Bronx, Queens, Kings, Richmond, Nassau and New York Counties) |
| 1931 L | JARME Home and Healthcare Services Corporation (Kings, Queens, Bronx, Westchester, and Richmond Counties) |

Counties)

- 1990 L Meadowbrook Terrace, Inc.
(Jefferson County)
- 1966 L Chautauqua County Department of Health
(Chautauqua County)
- 2024 L Schuyler County Public Health Department
(Schuyler County)
- 2025 L Lewis County Public Health Licensed Home Care
Service Agency
(Lewis County)
- 1924 L Signature Care, LLC
(Bronx, New York, Kings, Queens, Nassau and
Richmond Counties)
- 1580 L Direct Home Care, Inc.
(Bronx, Queens, Kings, New York and Richmond
Counties)
- 1737 L Reliable Choice Home Health Care, Inc.
(Nassau, Queens and Suffolk Counties)
- 1806 L Elite Home Services, LLC
(New York, Bronx, Kings, Richmond, Queens and
Westchester Counties)
- 1916 L ADJ Wisdom Home Care, Inc.
(Bronx, Queens, Kings, Richmond, Nassau and New
York Counties)
- 1930 L Maplewood Home Care, LLC d/b/a Maplewood Home
Care
(Monroe, Livingston, Wayne, Orleans, and Ontario
Counties)
- 1942 L Glorious Home Care Agency
(Bronx, Richmond, Kings, Westchester, New York, and
Queens)

- 1948 L Liberty Resources, Inc.
(Broome, Cortland, Lewis, Onondaga, Tioga, Cayuga, Herkimer, Madison, Oswego, Tompkins, Chenango, Jefferson, Oneida, St. Lawrence, Dutchess, Rockland, Westchester, Orange, Sullivan, Putman, and Ulster Counties)
- 1884 L Crestwood Health Care Center, Inc. d/b/a Elderwood Assisted Living at Crestwood
(Niagara County)
- 1910 L Heathwood Health Care Center, Inc. d/b/a Elderwood Assisted Living at Heathwood
(Erie County)
- 1981 L Elderwood Assisted Living at Riverwood, Inc.
(Erie County)
- 1908 L Greater Harlem Nursing Home and Rehabilitation Center, Inc., d/b/a Greater Harlem Licensed Home Care Services Agency
(Bronx, New York, Kings, Queens, Richmond and Westchester Counties)
- 1722-L AZA Home Health Care, LLC
(Bronx, Queens, Kings, Richmond, Nassau and New York Counties)
- 1974-L Light 101, Inc.
(New York, Westchester, Kings, Richmond, Queens, and Bronx Counties)
- 1926-L Doral Investor's Group, LLC d/b/a House Calls Home Care
(Bronx, Richmond, Kings, Westchester, New York and Queens Counties)

**New York State Department of Health
Public Health and Health Planning Council**

August 4, 2011

**B. APPLICATIONS FOR ESTABLISHMENT AND
CONSTRUCTION OF HEALTH CARE FACILITIES**

CATEGORY 6: Applications for Individual Consideration/Discussion

Diagnostic and Treatment Centers – Establish/Construct

Exhibit #18

| | <u>Number</u> | <u>Applicant/Facility</u> | <u>E.P.R.C. Recommendation</u> |
|----|----------------------|---|---------------------------------------|
| 1. | 102159 B | Parcare Community Health Network (Kings County) Recusal – Mr. Fensterman | No Recommendation |

Dialysis Services – Establish/Construct

Exhibit #19

| | <u>Number</u> | <u>Applicant/Facility</u> | <u>E.P.R.C. Recommendation</u> |
|----|----------------------|---|---------------------------------------|
| 1. | 092072 B | Mohawk Valley Dialysis Center, Inc. (Montgomery County) | Contingent Approval |



Public Health and Health Planning Council

Project # 102159-B ParCare Community Health Network

County: Kings (Brooklyn)

Program: Diagnostic and Treatment Center

Purpose: Establishment and Construction

Submitted: August 31, 2010

Executive Summary

Description

ParCare Community Health Network (ParCare), requests approval for the purchase of ownership of an existing private practice operated by Parkville Medical, P.C., located at 445 Park Avenue, Brooklyn, and converting it to an Article 28 diagnostic and treatment center (D&TC). The applicant, upon approval, will apply for Federally Qualified Healthcare Center (FQHC) designation.

The change in ownership will allow ParCare to provide expanded primary care services to include: radiology (ultrasound); speech therapy; nephrology (medical only); rheumatology; neurology; medical social services; nutritional evaluations; ophthalmology services; optometry outpatient, pediatrics outpatient, physical and occupational therapy, well child care; health education; electrocardiogram; and cardiac stress tests (non-nuclear); primary medical care; psychology outpatient; and urology. Also, the location of this facility will remain in the same space that it currently occupies.

Total project costs are estimated at \$22,625.

DOH Recommendation

Contingent approval for a 5-year limited life.

Need Summary

ParCare Community Health Network requests approval to establish and construct a D&TC to serve the Bushwick/Williamsburg and Central Brooklyn service areas. All 107 census tracts of this area are designated as Health Professional Shortage Areas (HPSAs) for primary medical care.

Asthma, cancer, diabetes, heart disease, and stroke

are the leading causes of death and disability in this service area.

Program Summary

Based on the information reviewed, staff have found nothing which would reflect adversely upon the applicant's character and competence or standing in the community.

Financial Summary

Total project costs are for legal and consulting fees, and will be met via cash of \$2,263 and a loan of \$20,362 (7 yrs. @ 8%). Also, ParCare Services, Inc. will contribute assets worth \$1,200,000, composed of equipment. To ParCar Community Health Network.

| | | |
|---------|--------------|------------------|
| Budget: | Revenues: | \$ 2,811,388 |
| | Expenses: | <u>2,745,458</u> |
| | Gain/(Loss): | \$ 65,930 |

Subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Architectural Summary

The applicant seeks approval to establish and construct a D&TC in 5,000 SF on the 1st floor at 445 Park Avenue, Brooklyn, within the Williamsburg community. This space comprises an existing physician's practice.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval for a limited life of 5 years from the date of issuance of an operating certificate is recommended contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the Department of Health beginning in the second year of operation. Said reports shall include:
 - Data showing actual utilization including procedures;
 - Data showing breakdown of visits by payor source;
3. Submission of a written commitment that at least 5 percent of the facility's total visits annually will be uninsured or under-insured patients by the second year of operation. [RNR]
4. Submission of a written agreement that the percentage of total visits annually by Medicaid managed care and fee-for-service beneficiaries, in the aggregate, will be at least 60 percent. [RNR]
5. Submission of a written commitment that at least 50 percent of total visits will be for primary care. [RNR]
6. Written acknowledgement, executed by the governing body, that the third year of operation the facility will achieve at least Level 1 practice certification under the NCQA Patient-Centered Medical Home standards and guidelines. [RNR]
7. Submission of a comprehensive plan to achieve the "Prevention Agenda's 2013 Objectives" in the identified service area. [RNR]
8. Submission of a letter of agreement to provide annual reports to the Department beginning in the second year of operation that track the applicant's progress in achieving the "Prevention Agenda's 2013 Objectives". [RNR]
9. Submission of an executed building lease acceptable to the Department. [BFA]
10. Submission of a loan commitment acceptable to the Department. [BFA]
11. Submission of a working capital loan commitment acceptable to the Department. [BFA]
12. Submission of a photocopy of a fully executed and dated Certificate of Amendment to the applicant's Certificate of Incorporation, which must be acceptable to the Department. [CSL]

Approval conditional upon:

1. This project has been conditionally approved based on an Architect's/Engineer's Letter of Certification for Inspecting Existing Buildings signed and submitted Mr. Francis C. Gunther, RA, of Perkins Eastman, dated October 18, 2010 and schematic drawings dated October 18, 2010.
2. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01 (AER).
3. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's request for, and Department's granting approval for the start of construction (AER).
4. The applicant shall complete construction by December 1, 2013. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner.

Council Action Date

August 4, 2011.

Need Analysis

Background

The proposed service area consists of the following zip codes: 11205, 11206, 11211, 11216, and 11221, that constitutes the Williamsburg/Bushwick/Central Brooklyn community.

The services to be provided include:

| | |
|--------------------------------------|---------------------------|
| Primary Medical Care | Prenatal Care |
| Medical Social Work | Psychology |
| Nutrition | Diagnostic Radiology |
| Ophthalmology | Occupational Therapy |
| Optometry | Physical Therapy |
| Pediatrics | Speech Language Pathology |
| Physical Medicine and Rehabilitation | Well Child Care |
| Podiatry | |

Parkville Medical, P.C. started operations in October 2008 to help meet the healthcare needs of the local residents and to build a patient base as a step toward the goal of establishing a D&TC and receiving designation as a Federally Qualified Health Center (FQHC). The private practice currently provides primary medical services, sleep disorder services, and physical therapy services. This project proposes the conversion of the private practice to a D&TC.

The applicant states that the sleep disorder services will not be part of the project.

Analysis

In the first full calendar year of operations (2009), the private practice experienced 28,934 patient visits (excluding sleep disorder services). A total of 17,734 of these patient visits, 61 percent, were for Medicaid patients.

The applicant states that through this application they will implement expanded services and programs that the P.C. cannot afford to offer at current reimbursement levels in the private practice of medicine. The proposed expanded services include:

1. Improved access for medically underserved populations, including persons covered by Medicaid.
2. Implementation of the "Patient-Centered Medical Home" (PCMH) model of care.
3. Implementation of a "Chronic Care Model" as part of the PCMH.
4. Development of a "Wellness Center" as part of the PCMH.
5. Development of a "Women's Health Initiative" program.
6. Enhanced number of physicians and other support staff.
7. Expansion of the number of primary medical sub-specialties at the site.
8. Expansion of the hours of operation for the site.
9. Increased collaboration with the local community.

Parcare reports that the proposed primary service area (PSA) consists of five zip codes (11205, 11206, 11211, 11216, and 11221) with a population of 351,608. ParCare states that its target population is the PSA's low-income population (<200% of the Federal Poverty Level-FPL) with a focus on the needs of the bilingual and culturally unique members of the medically underserved population subgroups.

The applicant reports that the low-income population of the five combined zip codes is 189,904, which was 60.2 percent in 2000 (Source: HRSA Geospatial website). The low-income population is ParCare's target population for providing comprehensive preventive and primary medical care. If the percentage of the low-income population has remained the same since 2000, applying this percentage to the Claritas population estimates for 2010 equals a total PSA population of 351,608 and a low-income population of 211,668 for 2010.

The total population and low-income population for the five (5) targeted zip codes as shown on HRSA's Geospatial website are as follows:

| <i>Zip Code</i> | <i>Total Pop</i> | <i>Low Income Pop 2000</i> | <i>% Low Income Pop</i> |
|------------------------|-------------------------|-----------------------------------|--------------------------------|
| 11221 | 75,309 | 43,118 | 58.3% |
| 11216 | 56,635 | 28,349 | 50.5% |
| 11211 | 84,913 | 55,210 | 65.2% |
| 11206 | 69,385 | 45,024 | 66.6% |
| 11205 | 35,226 | 18,203 | 54.7% |
| <i>Summary</i> | <i>341,468</i> | <i>189,904</i> | <i>60.2%</i> |

SOURCE: HRSA

Relative to census tract delineation and federal designations, the PSA is comprised of 107 census tracts in total. Ninety-two of the total census tracts, or 86 percent, are federally-designated by HRSA's Shortage Designation Branch (SDB) as Medically Underserved Areas (MUA), of which MUA/P is the base tenet for FQHC development (Source: HRSA Geospatial website). Further, all 107 census tracts are federally-designated as Health Professional Shortage Areas-Geographic Area (HPSA) for Primary Medical Care relative to the total, general civilian population, not any specific population group. Clearly, with MUA and HPSA designations throughout the PSA, there is a void in primary medical care access, and there continues to be an insufficient number of primary care providers as indicated by both MUA and HPSA designations. ParCare's service site at 445 Park Avenue in Brooklyn, New York, 11205, is located in census tract 237.00, which is both MUA and HPSA-designated.

Prevention Quality Indicators

The PQI's are the rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease.

The overall PQI admission rate in the PSA is 3,363 admissions per 100,000 compared to the statewide rate of 1,854 admissions per 100,000. The PQI admission rate in the PSA is 181 percent higher than the statewide rate.

| <i>Prevention Quality Indicator (PQI) Statistics for the PSA</i> | | | | | | |
|---|--------------|-------------------------------|--|--|------------------------|---------------------|
| <i>PQI Conditions</i> | <i>PQI #</i> | <i>Statewide Rate/100,000</i> | <i>Area Age & Sex Adjusted Rate /100,000</i> | <i>Admissions as % of Expected by Race/Ethnicity</i> | | |
| | | | | <i>Overall</i> | <i>Hispanic</i> | <i>Black</i> |
| <i>All Conditions</i> | | <i>1,854</i> | <i>3,363</i> | <i>181%</i> | <i>120%</i> | <i>216%</i> |
| Acute | | | | | | |
| Bacterial Pneumonia | 11 | 381 | 459 | 121% | 84% | 133% |
| Dehydration | 10 | 116 | 130 | 112% | 57% | 135% |
| Urinary Tract Infection | 12 | 169 | 204 | 121% | 91% | 116% |
| <i>All Acute</i> | | <i>666</i> | <i>793</i> | <i>119%</i> | <i>81%</i> | <i>129%</i> |
| Circulatory | | | | | | |
| Angina | 13 | 50 | 171 | 343% | 140% | 316% |
| Congestive Heart Failure | 8 | 443 | 785 | 177% | 102% | 227% |
| Hypertension | 7 | 61 | 178 | 293% | 159% | 401% |
| All Circulatory | | 554 | 1,149 | 207% | 114% | 257% |
| Diabetes | | | | | | |
| Short-term Complication | 1 | 52 | 89 | 172% | 91% | 253% |
| Long-term Complication | 3 | 155 | 400 | 258% | 191% | 317% |
| Lower Extremity Amputation | 16 | 37 | 85 | 228% | 194% | 256% |
| Uncontrolled Diabetes | 14 | 39 | 139 | 360% | 305% | 446% |
| <i>All Diabetes</i> | | <i>283</i> | <i>709</i> | <i>251%</i> | <i>185%</i> | <i>315%</i> |
| Respiratory | | | | | | |
| Asthma | 15 | 174 | 499 | 287% | 192% | 344% |
| COPD | 5 | 178 | 167 | 94% | 70% | 110% |
| <i>All Respiratory</i> | | <i>351</i> | <i>696</i> | <i>198%</i> | <i>138%</i> | <i>233%</i> |

The PQI admission rate for the Hispanic population is 120 percent higher than the statewide rate. The PQI admission rate for the Black population is 216 percent of the statewide admission rate. ParCare projects that Medicaid will account for 69.9 percent of the proposed utilization, and charity care will account for 2.1 percent of utilization.

| <u>ParCare Community Health Network</u> | |
|--|----------------------|
| <u>Projected Utilization by Payer for 1st Year of Operation</u> | |
| <u>Payer</u> | <u>% Utilization</u> |
| Commercial FFS | 8.6% |
| Medicare FFS | 10.8% |
| Medicare MC | 1.3% |
| Medicaid FFS | 11.0% |
| Medicaid MC | 58.9% |
| Self-Pay | 5.2% |
| Charity Care | 2.1% |
| All Other | 2.1% |
| Total | 100.0% |

| <u>Projected Utilization by Service Category for 1st Year of Operation</u> | |
|---|--------|
| Primary Medical Care O/P | 15,599 |
| Pediatrics O/P | 466 |
| Well Child Care | 930 |
| Prenatal O/P | 4,700 |
| Optometry O/P | 70 |
| Ophthalmology O/P | 499 |
| Physical Medicine & Rehab O/P | 1,226 |
| Podiatry O/P | 2,315 |
| Psychology O/P | 2,605 |
| Medical Social Services O/P | 728 |
| Nutritional O/P | 2,610 |
| Therapy-Physical O/P | 1,703 |
| Therapy-Occupational O/P | 213 |
| Therapy-Speech Language Pathology O/P | 158 |
| Ultrasound | 105 |
| Electrocardiogram | 250 |
| Cardiac Stress Test(non-nuclear) | 62 |
| Health Education | 1,596 |
| Total | 35,835 |

| <u>Target Population by Zip Code</u> | | | | | | | | |
|---|-----------------------|------------------------|------------------------|------------------------|------------------------|------------------------|-----------------------|---------------------|
| | <u>0 to 17</u> | <u>18 to 34</u> | <u>35 to 54</u> | <u>55 to 64</u> | <u>65 to 74</u> | <u>75 to 84</u> | <u>84 plus</u> | <u>Total</u> |
| 11205 | 9,620 | 11,978 | 8,736 | 2,508 | 1,636 | 878 | 266 | 35,622 |
| 11206 | 22,455 | 18,401 | 16,664 | 5,428 | 3,632 | 1,915 | 537 | 69,032 |
| 11211 | 28,441 | 25,606 | 18,900 | 4,679 | 3,876 | 2,766 | 821 | 85,089 |
| 11216 | 15,696 | 14,321 | 15,741 | 4,519 | 3,038 | 1,794 | 666 | 55,775 |
| 11221 | 25,200 | 19,790 | 19,546 | 5,578 | 3,688 | 1,944 | 617 | 76,363 |
| Totals | 101,412 | 90,096 | 79,587 | 22,712 | 15,870 | 9,297 | 2,907 | 321,881 |

Data from the Community Health Profiles of the New York City Department of Health and Mental Hygiene supports the results of the PQI data. The following statistics for Bushwick/Williamsburg, and Central Brooklyn demonstrate the health status of the PSA residents:

- The percentages of residents living at or below the Federal Poverty Level in Bushwick/Williamsburg and Central Brooklyn (38% and 31%, respectively) are higher than in Brooklyn overall (25 percent) and New York City overall (21 percent).
- The overall mortality rates for residents of Bushwick/Williamsburg and Central Brooklyn (877/100,000 and 933/100,000, respectively) are higher than in Brooklyn overall (754/100,000) and New York City overall (718/100,000).
- Of the 42 New York City neighborhoods, the communities of Bushwick/Williamsburg and Central Brooklyn respectively have the 38th and 37th highest rates of avoidable hospitalizations.
- Nearly one-third of the residents of Bushwick/Williamsburg and Central Brooklyn (32 percent and 29 percent respectively) do not have a regular primary care provider or healthcare provider. This lack of access to care causes local residents to experience high preventable hospitalization rates and high disease mortality rates.
- Approximately 14 percent and 13 percent of the residents of Bushwick/Williamsburg and Central Brooklyn, respectively, go to a local Emergency Department (ED) for their regular healthcare, as compared to only 8 percent of the residents of Brooklyn overall and New York City overall. This inappropriate use of the ED demonstrates the need for additional primary care resources in the community.
- Approximately 27 percent and 21 percent of the residents of Bushwick/Williamsburg and Central Brooklyn, respectively, are uninsured, as compared to 18 percent for Brooklyn overall and New York City overall. Individuals who are uninsured often have difficulty accessing healthcare services. The proposed Center will take all patients in need of care, regardless of payer source.

| <u>Zip Code</u> | <u>Total Medicaid</u> | <u>HMO Enrollment</u> | <u>MA Fee for Service</u> | <u>Annual Primary Care Visits</u> | <u>Primary Care Use Per Eligible Year</u> |
|-----------------|-----------------------|-----------------------|---------------------------|-----------------------------------|---|
| 11205 | 13,037 | 83,38 | 4,699 | 37,952 | 8.08 |
| 11206 | 38,312 | 24,949 | 13,363 | 86,922 | 6.50 |
| 11211 | 42,563 | 31,895 | 10,668 | 88,672 | 8.31 |
| 11216 | 21,532 | 13,191 | 8,341 | 48,198 | 5.78 |
| 11221 | 36,380 | 22,429 | 13,951 | 89,032 | 6.38 |
| Total | 151,822 | 100,802 | 51,020 | 350,776 | 6.88 |
| Statewide | 3,878,955 | 2,096,705 | 1,782,250 | 10,279,812 | 5.77 |

SOURCE: OMM data for fee primary care service visits dated from Sep 2003 to Feb 2004.

Existing Services

| | |
|--|-----------|
| Diagnostic & Treatment Center | 6 |
| D&TC Extension Clinic | 6 |
| D&TC School Board Extension Clinic | 6 |
| Hospital Extension Clinic | 4 |
| Hospital School Board Extension Clinic | 3 |
| Total | 25 |

| <u>Facility</u> | <u>Patients</u> | <u>Primary Care Visits</u> | <u>Dental Visits</u> | <u>Other</u> | <u>Total</u> |
|--------------------------------------|-----------------|----------------------------|----------------------|---------------|----------------|
| LaProvidencia Family Health Ctr. | 9,039 | 31,935 | 5,378 | 0 | 37,313 |
| Bedford Stuy Family Care Ctr. | 16,797 | 48,529 | 7,585 | 480 | 56,594 |
| ODA Community Health Ctr. | 17,679 | 53,894 | 11,169 | 4,744 | 69,807 |
| Bedford Medical Family Health Ctr. | 4,547 | 17,925 | 0 | 2,601 | 20,526 |
| Cumberland Neighbor Family Care Ctr. | 25,717 | 49,026 | 6,475 | 55,226 | 110,727 |
| Medcare LLC | 3,651 | 16,187 | 1,195 | 3,350 | 20,732 |
| Total | 77,430 | 217,496 | 31,802 | 66,401 | 315,699 |

SOURCE: NYS Cost Reports, 2008

In this service area there are 54 primary care physicians in private practice.

For this service area there are a total 151,822 Medicaid recipients. Of these, 100,802 are enrolled in a Medicaid Managed Care Plan. This area has a primary care use rate of 6.88 visits per Medicaid recipient. This compares to the statewide use rate of 5.77.

Conclusion

The persistence of poor health status indicators in the service area, despite the presence of a large number of primary care providers and a higher-than-average level of primary care visits per Medicaid client, suggests that primary care resources in the area should focus more on the area's PQI's and other health status indicators, especially those pertaining to chronic diseases. The Department of Health's Prevention Agenda Toward the Healthiest State provides a framework for the targeting of primary care and other health care resources toward the reduction of poor health status indicators identified in individual communities.

Chronic disease prevention is rooted in the modification of risk factors (primary prevention), the detection of chronic diseases in their earliest stages (secondary prevention) and the treatment of chronic diseases and attention to disease management and self-management by diagnosed individuals in order to prevent debilitating and costly complications (tertiary prevention).

In order for the proposed D&TC to have a positive impact on the health status of the residents of this service area, the facility should develop and implement a comprehensive plan with measurable goals and objectives that are consistent with the Prevention Agenda Toward the Healthiest State.

Recommendation

From a need perspective, approval is recommended, contingent upon the applicant's development and implementation of a plan for the improvement of health status indicators consistent with the Prevention Agenda Toward the Healthiest State.

Programmatic Analysis

Background

Services to be provided include: primary medical care, medical social work, nutrition, ophthalmology, optometry, pediatric, physical medicine and rehabilitation, podiatry, prenatal, psychology, diagnostic radiology, occupational therapy, physical therapy, speech language pathology and well child care. The Center will be in operation six days per week. Staff, under the supervision of the medical director, Jeffrey Ben-Zvi, will initially consist of 18.42 FTEs and is projected to expand to 19.32 FTEs by the end of the third year. Included will be 5.75 FTEs physicians, 0.05 FTEs technicians, 0.78 FTEs therapists, 1.76 FTE social workers, and 1.44 FTE nurses.

A transfer and affiliation agreement for emergency, inpatient and back-up support services has been signed with New York Downtown Hospital, which is fifteen minutes and 3.6 miles from the Center. An answering machine, with access to center staff, will be provided to address patient concerns during hours when the facility is closed.

Compliance with Applicable Codes, Rules and Regulations

The applicant has attested to compliance with the following: the governing body and medical staff will develop, maintain, and periodically review a list of policies and procedures that will ensure that services performed at the facility will conform to generally accepted standards of practice. The Center's admissions policy will include anti-discrimination provisions regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, and source of payment. All services will be performed in compliance with all applicable federal and state rules, including standards for credentialing, nursing, patient admission and discharge, a medical records system, emergency care, quality assurance and data requirements.

Characteristics of the governing body reflect responsiveness to community need in the use of a patient satisfaction measurement tool that will provide continuous, ongoing feedback to the organization for the quality improvement program and planning discussions.

Character and Competence

The Board of Directors and offices held are as follows:

| <u>Name</u> | <u>Office Held</u> |
|--------------|--------------------|
| Sara Stern | President |
| Amy Monroe | Secretary |
| Chaye Miller | Treasurer |

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted by the entire Board of Directors regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's and relatives' ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management (relative to Medicaid fraud and abuse), the Office of Professional Medical Conduct, and the Education Department databases.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action. Based on this information, staff concluded that the facilities have provided a substantially consistent high level of care as defined in New York State Public Health Law 2810(a)(3) and 10NYCRR 600.2 during the past 10 years.

The above reviews revealed nothing which would reflect adversely upon the applicant's character and competence or standing in the community.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Total Project Cost and Financing

The total project cost for legal and consulting fees is \$22,265 broken down as follows:

| | |
|--------------------|-----------------|
| Other Fees | \$20,000 |
| Financing Costs | 512 |
| Applicant Fee | 2,000 |
| Processing Fee | 113 |
| Total Project Cost | <u>\$22,625</u> |

Total project cost will be financed via cash of \$2,263 and a loan of \$20,362 at a rate of 8% for seven years.

Lease Rental Agreement

The applicant has submitted a draft lease rental agreement for the site to be occupied, the terms of which are summarized below:

- Premises:* 5,000 square feet located at 445 Park Avenue, New York, Kings County
- Lessor:* 445 Park Ave., LLC
- Lessee:* ParCare Community Health Network, Inc.
- Rental:* \$225,000 annually (\$45.00 per sq. ft.) There is no annual increase in rent stated in the draft lease over the twenty year term.
- Term:* 20 year term
- Provisions:* Utilities are not included in the base rent. Maintenance service, taxes, security services and, hot and cold water, are included in the base rent.

The applicant has provided two letters indicating the rent reasonableness. The applicant has submitted an affidavit indicating that the lease agreement will be an arms length lease agreement.

Operating Budget

The applicant has submitted an operating budget in 2010 dollars, for the first and third years of operation after the change in ownership, summarized below:

| | <u>Year One</u> | <u>Year Three</u> |
|--------------------------------|-----------------|-------------------|
| Revenues: | \$2,496,796 | \$2,649,793 |
| Expenses: | | |
| Operating | \$2,257,190 | \$2,378,214 |
| Capital | <u>239,496</u> | <u>241,460</u> |
| Total Expenses | \$2,496,686 | \$2,619,674 |
| Excess Revenues over Expenses: | \$110 | \$30,119 |
| Utilization: Visits | 34,113 | 35,835 |
| Cost Per Visit: | \$73.20 | \$73.10 |

Utilization by payor source for the first and third year:

| | |
|----------------------------|-----|
| Medicaid Fee-for-Service | 11% |
| Medicaid Managed Care | 59% |
| Medicare Fee-for-Service | 11% |
| Medicare Managed Care | 1% |
| Commercial Fee-for-Service | 9% |
| Private Pay | 5% |
| Charity | 2% |
| Other | 2% |

Expense and utilization assumptions are based on the historical experience of Parkville Medical, P.C. Also, the current Medical Director of Parkville Medical, P.C., Jeffrey Ben-Zvi, MD., will stay on as the Medical Director of ParCare Community Health Network, Inc.

Capability and Feasibility

The project costs of \$22,625 will be met through a cash equity contribution of \$2,263 and a loan of \$20,362 payable over 7 years at a rate of 8%. Presented as BFA Attachment A, is the personal net worth statement for Max Lebowitz who will contribute the equity as indicated from his net worth statement. Also, the applicant will finance the remainder via a loan for which a letter of interest has been provided at the stated terms.

Working capital requirements, estimated at \$436,613, appear reasonable based on two months' of third year expense. The proposed working capital requirement will be met through a loan from East Coast Venture Capital for \$189,324 at a rate of 6% for a term of two years. The balance of \$247,289 will be paid with equity via Max Lebowitz. Presented as Attachment A, is the net worth statement of Max Lebowitz, indicating sufficient working capital equity. Presented as BFA Attachment B, is the pro forma balance sheet of ParCare Community Health Network, Inc., which indicates a positive equity position of \$1,449,551 as of the first day of operation.

Presented as BFA Attachment D, is the detailed budget indicating an excess of revenues over expenses of \$110 and \$30,119 during the first year and third year of operation, respectively. Revenues are based on current reimbursement methodologies.

Subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner; and contingent approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Architectural Analysis

Background

The facility occupies the entire ground floor of an existing two story building. The design situates the main waiting area towards the “front” and the larger therapy rooms towards the “back” with support, exam, and single patient therapy spaces in between.

The facility is approximately 5,000 square feet in size, and includes a lobby, waiting room, main reception desk, two patient toilets that are handicapped-accessible, two administrative offices, soiled holding room, clean supply room, equipment storage room, 10 medical exam rooms, two multi-patient therapy rooms, a lab/medication room, staff break room, one exam center room, one pantry, two staff toilets, a housekeeping closet, clean linen room, telephone closet, and utility closet.

Environmental Review

The Department has deemed this project to be an UNLISTED ACTION and has determined that for its purposes an Environmental Impact Statement (EIS) is not required. However, any agency that has an interest in this project may make their own independent determination of significance and necessity for an EIS in accordance with the procedures specified within Part 97.8 of Title 10: Rules and Regulations.

Recommendation

From an architectural perspective, approval is recommended.

Attachments

| | |
|------------------|---|
| BFA Attachment A | Personal Net Worth Statement- Max Lebowitz |
| BFA Attachment B | Pro Forma Balance Sheet- ParCare Community Health Network, Inc. |
| BFA Attachment C | Establishment Checklist for Ambulatory Care Sites |
| BFA Attachment D | Summary of Detailed Budget |
| BHFP Attachment | Map |

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 21st day of July, 2011, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application for the purchase of ownership of an existing private practice operated by Parkville Medical, P.C., located at 445 Park Avenue Brooklyn, and converting it into an Article 28 diagnostic and treatment center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

102159-B

FACILITY/APPLICANT:

ParCare Community Health Network

APPROVAL CONTINGENT UPON:

Approval for a limited life of 5 years from the date of issuance of an operating certificate is recommended contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the Department of Health beginning in the second year of operation. Said reports shall include:
 - Data showing actual utilization including procedures;
 - Data showing breakdown of visits by payor source;
3. Submission of a written commitment that at least 5 percent of the facility's total visits annually will be uninsured or under-insured patients by the second year of operation. [RNR]
4. Submission of a written agreement that the percentage of total visits annually by Medicaid managed care and fee-for-service beneficiaries, in the aggregate, will be at least 60 percent. [RNR]
5. Submission of a written commitment that at least 50 percent of total visits will be for primary care. [RNR]
6. Written acknowledgement, executed by the governing body, that the third year of operation the facility will achieve at least Level 1 practice certification under the NCQA Patient-Centered Medical Home standards and guidelines. [RNR]
7. Submission of a comprehensive plan to achieve the "Prevention Agenda's 2013 Objectives" in the identified service area. [RNR]
8. Submission of a letter of agreement to provide annual reports to the Department beginning in the second year of operation that track the applicant's progress in achieving the "Prevention Agenda's 2013 Objectives". [RNR]
9. Submission of an executed building lease acceptable to the Department. [BFA]
10. Submission of a loan commitment acceptable to the Department. [BFA]
11. Submission of a working capital loan commitment acceptable to the Department. [BFA]
12. Submission of a photocopy of a fully executed and dated Certificate of Amendment to the applicant's Certificate of Incorporation, which must be acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. This project has been conditionally approved based on an Architect's/Engineer's Letter of Certification for Inspecting Existing Buildings signed and submitted Mr. Francis C. Gunther, RA, of Perkins Eastman, dated October 18, 2010 and schematic drawings dated October 18, 2010.
2. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01 (AER).
3. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's request for, and Department's granting approval for the start of construction (AER).
4. The applicant shall complete construction by December 1, 2013. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner.

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York 12180-2299



Public Health and Health Planning Council

Project # 092072-B
Mohawk Valley Dialysis Center, Inc.

County: Montgomery (Amsterdam)
Purpose: Establishment and Construction

Program: Dialysis Services
Submitted: September 11, 2009

Executive Summary

Description

Mohawk Valley Dialysis Center, Inc. (MVDC) a to-be-formed New York business corporation, requests approval to establish and construct a 13-station end-stage renal dialysis diagnostic and treatment center (D&TC), to be located in leased space at 115 Amsterdam Town Square, Route 30, Amsterdam.

MVDC's shareholders include Amsterdam Nephrology Holdings, LLC, (ANH) a New York limited liability company, and American Renal Associates, LLC, (ARA) a Delaware limited liability company, as shown here:

| <u>Owner</u> | <u>Shares</u> | <u>Pct.</u> |
|---|---------------|-------------|
| American Renal Associates, LLC | 51 | 51% |
| -- American Renal Holdings, Inc. (100%) | | |
| Amsterdam Nephrology Holdings, LLC | 49 | 49% |
| -- Soo Gil Lee, M.D. (50%) | | |
| -- Alexander L. Zimmerman, M.D. (50%) | | |

ANH is owned by 2 nephrologists who practice locally in Montgomery County. ARA is entirely owned by American Renal Holdings, Inc., and through this structure, as of September 30, 2010, ARA owned and operated 88 dialysis clinics, treating more than 6,100 patients in 17 states and the District of Columbia. ARA operates these dialysis clinics under a joint venture model, where they share the ownership and operational responsibilities with their local nephrologist partners. In each joint venture, American Renal Associates, LLC owns a controlling interest of 51%, and the nephrologist partners own the non-controlling interest of 49%.

Total project costs are estimated at \$1,063,230.

DOH Recommendation
Contingent approval.

Need Summary

The central location of this facility near the New York State Thruway will provide service to both Fulton and Montgomery Counties, with additional support to Schenectady and Schoharie Counties. Amsterdam, in Montgomery County, provides a central location for surrounding patients and the appropriate services to back up a new free standing dialysis station.

Program Summary

MVDC will enter into a transfer and affiliation agreement for emergency and back-up services with St. Mary's Hospital at Amsterdam, which is 2.7 miles or 8 minutes in travel time from the Center.

Based on the information reviewed, staff have found nothing which would reflect adversely upon the applicant's character and competence or standing in the community.

Financial Summary

Project costs will be met with \$106,323 in cash and a \$956,907, 5-year self-amortizing intercompany loan at 8.5% from ARA, the applicant's 51% owner.

| | | |
|---------|---------------------|------------------|
| Budget: | <i>Revenues:</i> | \$ 2,902,535 |
| | <i>Expenses:</i> | <u>2,468,155</u> |
| | <i>Gain/(Loss):</i> | \$ 434,380 |

Subject to the noted contingencies, the applicant has demonstrated the capability to proceed in a financially feasible manner.

Architectural Summary

This project involves the renovation of 3,000 SF of an existing shopping center and the construction of a 3,000 SF addition, for a 6,000 SF, 15-station dialysis clinic.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a statement from the applicant, acceptable to the Department, that the proposed financial/referral structure has been assessed with the consultation of legal counsel, in light of anti-kickback and self-referral laws, and it is concluded that proceeding with the proposal is acceptable. [RNR, CSL]
3. Submission of a loan commitment, acceptable to the Department. [BFA]
4. Submission of a working capital loan commitment, acceptable to the Department. [BFA]
5. Submission of an executed assignment and assumption agreement for the lease, leasehold improvements, and equipment, acceptable to the Department. [BFA]
6. Submission of a photocopy of an executed facility lease and an executed ground lease, which are acceptable to the Department. [BFA, CSL]
7. Submission of an executed administrative service agreement, acceptable to the Department. [BFA, CSL]
8. Submission of a photocopy of the applicant's executed proposed certificate of incorporation, which is acceptable to the Department. [CSL]
9. Submission of a photocopy of an executed shareholder agreement, which is acceptable to the Department. [CSL]
10. Submission of a photocopy of an executed transfer and affiliation agreement, which is acceptable to the Department. [CSL]
11. Submission of a photocopy of the certificate of incorporation and any amendments thereto of American Renal Holdings, Inc., which are acceptable to the Department. [CSL]
12. Submission of an organization chart and documentation relating to the direct and indirect owners of the applicant, which are acceptable to the Department. [CSL]

Approval conditional upon:

1. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
2. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER].
3. The applicant shall complete construction by November 2, 2013. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

August 4, 2011.

Need Analysis

Project Description

Mohawk Valley Dialysis Center (MVDC) requests permission to establish and construct a diagnostic and treatment center with a 13-station dialysis unit. The facility would also provide both home hemodialysis and home peritoneal dialysis. The facility would be located at 115 Amsterdam Town Square, Route 30, in Amsterdam.

Public Need Criteria

The need for renal dialysis is assessed as follows:

- One freestanding station delivers 702 treatments per year (2.5 shifts per day x 6 days per week x 52 weeks x 90% = 702). One freestanding station can treat 4.5 patients per year.
- One hospital-based station delivers 499 treatments per year per station (2.0 shifts/day x 6 days/week x 52 weeks x 80% = 499). One hospital-based station can treat 3 patients per year.

Statewide, the majority of stations are freestanding as are the majority of applications for new stations. As such, when calculating the need for additional stations, the Department bases the projected need on the establishment of additional freestanding stations.

Analysis

Although MVDC would be located in Montgomery County, the facility would also serve adjacent Fulton County and portions of Schenectady and Schoharie counties. The largest portion of the facility's patients would come from Fulton County, where the elderly population, who are the highest users of renal dialysis services, is higher than the State average. An additional 20 percent of the facility's patients will come from northwestern Schenectady County and northwestern Schoharie County, with the remainder coming from Montgomery County. The combined projected need for this service area is as follows:

| | <i>Projected Need</i> | | | |
|---|-------------------------------|--------------------------------|---|------------------------------------|
| | 2009 | | 2015 (1% Increase)* | |
| <i>Planning Region: Fulton, Herkimer, Montgomery, Schenectady, and Schoharie Counties</i> | Total Patients Treated | Total Residents Treated | Projected Total Patients Treated | Projected Residents Treated |
| | 290 | 359 | 308 | 381 |
| Freestanding Stations Needed | 65 | 80 | 69 | 85 |
| Existing Freestanding Stations, Including Pipeline | 61 | 61 | 61 | 61 |
| Unmet Need | 4 | 19 | 8 | 24 |

** Based upon a conservative estimate of a 1 percent annual increase and 2009 IPRO numbers*

In the above table, the number of residents treated is higher than the number of patients being treated. This indicates that approximately 69 residents leave the planning region in search of treatment. This is consistent with information from local nephrologists, who report that patients from Fulton and Montgomery County have been forced to leave the area in search of treatment, either because there are no local facilities available or there are no remaining slots or times available with other providers.

Amsterdam, in Montgomery County, is the largest municipality in the proposed service area and is a hub of commercial, medical, and transportation services. Although there is another dialysis provider in Amsterdam, the location of the proposed facility in that city will expand access to renal dialysis services and to training in home hemodialysis and home peritoneal dialysis for the residents of the proposed multi-county service area. Amsterdam is also the home of St. Mary's Hospital, which would be available to provide acute care renal dialysis services to patients

of MVDC when needed. Given that Nathan Littauer Hospital in Fulton County has indicated that it would not have the capacity to provide such back-up service, this is an additional consideration for location of MVDC in Amsterdam.

The applicant intends to develop outreach programs to make residents of the area aware of the services provided by Mohawk Valley Dialysis Center. The center will be a state of the art facility and plans to offer home dialysis training as well as peritoneal dialysis to patients.

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Services

Services to be provided include staff-assisted hemodialysis utilizing high-flux equipment, home hemodialysis training and support, home peritoneal dialysis training and support, and social work and nutritional services to persons who require chronic renal dialysis services. In addition, the supplies and solutions needed for continuous ambulatory peritoneal dialysis will be provided, as well as appropriate training and follow up.

The facility will initially operate three days a week, three shifts per day with additional hours on Saturday as required.

Staff, under the supervision of Soo G. Lee, M.D., a board-certified nephrologist serving as medical director, will initially consist of 8 FTEs and is projected to expand to 14.5 FTEs by the end of the third year. Included will be 3 FTE physicians, 1 FTE technician, a 0.5 FTE social worker, and 1 FTE nurse. The staffing is appropriate to the scope and nature of the proposed services.

Emergency, in-patient and back-up support services will be provided under terms of an affiliation agreement with St. Mary's Hospital at Amsterdam which is 2.7 miles and eight minutes in travel time from the Center. The agreement has been executed. An answering service, with access to center staff, will be provided to address patient concerns during hours when the facility is closed.

Compliance with Applicable Codes, Rules and Regulations

The applicant has attested to compliance with the following: the governing body and medical staff will develop, maintain, and periodically review a list of policies and procedures that will ensure that services performed at the facility will conform with generally accepted standards of practice. The Center's admissions policy will include anti-discrimination provisions regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, and source of payment. All services will be performed in compliance with all applicable federal and state rules, including standards for credentialing, nursing, patient admission and discharge, a medical records system, emergency care, quality assurance and data requirements.

A sliding fee scale will be in place for those without insurance, and provisions will be made for those who cannot afford services. The governing body intends on using a patient satisfaction measurement tool, and discussions with their patients, to reflect responsiveness to community need, as well as provide continuous, ongoing feedback to the organization for the total quality management improvement program.

Character and Competence

The applicant's stockholders are as follows:

| | |
|------------------------------------|-----|
| American Renal Associates, LLC | 51% |
| Amsterdam Nephrology Holdings, LLC | 49% |

The applicant's officers and directors are:

- Joseph A. Carlucci – Director and President
- John McDonough – Director and Treasurer
- Alexander Zimmerman, M.D. – Director, Vice President and Secretary

Each of the officers and directors has over 10 years of experience in providing dialysis services either through dialysis centers or the private practice of medicine.

The sole member of American Renal Associates, LLC is American Renal Holdings, Inc., which is wholly-owned by C.P. Atlas Intermediate Holdings, LLC, which, in turn, is wholly-owned by C.P. Atlas Holdings, Inc. Centerbridge Capital Partners, LP owns 86.6% of the stock of C.P. Atlas Holdings, Inc. Centerbridge Capital Partners is a large, widely-held private equity limited partnership. Each individual investor owns less than 10% of this limited liability partnership.

Amsterdam Nephrology Holdings, LLC members are:

- Soo Gil Lee, M.D.
- Alexander Zimmerman, M.D.

Staff from the Division of Certification and Surveillance reviewed the disclosure information was submitted by the individuals regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's and relatives' ownership interest in other health care facilities. The licensed individuals were checked against the Office of Medicaid Management (relative to Medicaid fraud and abuse), the Office of Professional Medical Conduct, and the Education Department.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections and information from regulatory agencies in states where American Renal operates was reviewed.

American Renal currently operates dialysis centers in: California, Colorado, District of Columbia, Florida, Georgia, Illinois, Louisiana, Maryland, Massachusetts, Michigan, Missouri, Ohio, Pennsylvania, Rhode Island, South Carolina, Texas, Virginia, and Wisconsin.

The review found that any citations were properly corrected with appropriate remedial action. Based on this information, staff concluded that the facilities have provided a substantially consistent high level of care as defined in New York State Public Health Law 2810(a)(3) and 10NYCRR 600.2 during the past 10 years.

The above reviews revealed nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Background

The applicant has submitted a draft administrative services agreement with American Renal Management, LLC which is summarized as follows:

- Provider:* American Renal Management, LLC
- Facility:* Mohawk Valley Dialysis Center, Inc.
- Term:* 3 Years with an automatic renewals of 3-year terms
- Services Provided:* Negotiate center's lease; in center's name apply and maintain licenses, permits, approvals to comply with regulations; provide for center's approval: drafts of manuals, policies and procedures; establish and supervise administrative and accounting services which includes payroll processing, benefits, billing and collections; reimbursement procedure oversight; and payment of center's normal

expenses. Develop training programs; recommend and analyze purchases, leases, equipment, and maintenance programs. Develop and maintain quality control and compliance programs including procedures for handling patient complaints; prepare for center's signature cost reports and other reports needed to obtain reimbursement; present an annual budget for the centers approval; prepare monthly and cumulative financial statements along with analysis; select and administer financial and clinical information systems; advise and assist the center in negotiating and maintaining contracts; procure insurance policies; provide oversight to ensure compliance with center's human resource policies; assist in marketing and strategic planning; develop a plan for assuring fiscal stability, quality of care. The ultimate authority for the operations, care of the patients and regulatory compliance shall remain the responsibility of the center and its governing body.

Compensation: \$110,000 per year and revised annually

There is a common ownership between the administrative services agreement provider and the applicant's 51% owner, American Renal Associates, LLC.

Space and Equipment Lease Agreement

The applicant has submitted a letter of intent to lease the proposed site. The terms of the lease are summarized below:

Premises: 6,000 square feet located at 115 Amsterdam Town Square, Route 30, Amsterdam, New York
Owner/Landlord: Amsterdam Company Limited
Lessee: Mohawk Valley Property Holdings, LLC
Sub-lessee: Mohawk Valley Dialysis Center, Inc.
Rental: \$90,750 (\$15.13 per sq.ft.) with annual increases of 3% per year
Term: Ten-year term with two additional five-year extensions
Provisions: Triple Net

The applicant has indicated that the lease will be an arm's length arrangement between the landlord, (Amsterdam Company, Ltd.), and the lessee, (Mohawk Valley Property Holdings, LLC). The sub-lease arrangement between Mohawk Valley Property Holdings, LLC (lessee) and Mohawk Valley Dialysis Center, Inc. (sub-lessee) is a non-arm's length arrangement. The lessee and sub-lessee are made up of the same owners with the identical ownership percentages (as shown below).

The proposed members of Mohawk Valley Property Holdings, LLC, the lessee, and their ownership percentages are as follows:

| <u>Owner</u> | <u>Percentage</u> |
|---|-------------------|
| American Renal Associates, LLC | 51% |
| -- American Renal Holdings, Inc. (100% owner) | |
| Amsterdam Nephrology Holdings, LLC | 49% |
| -- Soo Gil Lee, M.D. (50% owner) | |
| -- Alexander L. Zimmeman, M.D. (50% owner) | |

It should be noted that Mohawk Valley Property Holdings, LLC, also holds the lease, leasehold improvements, and equipment through an Assign and Assumption Agreement with Mohawk Valley Dialysis Center, Inc.

Total Project Cost and Financing

Total project cost for renovations and the acquisition of moveable equipment is estimated at \$1,063,230, broken down as follows:

| | |
|-------------------------------|--------------------|
| Renovation and Demolition | \$600,000 |
| Site Development | 25,000 |
| Temporary Utilities | 5,000 |
| Design Contingency | 60,000 |
| Construction Contingency | 30,000 |
| Planning Consultant Fees | 25,000 |
| Architect/Engineering Fees | 36,000 |
| Moveable Equipment | 226,225 |
| Telecommunications | 48,200 |
| CON Application Fee | 2,000 |
| CON Additional Processing Fee | <u>5,805</u> |
| Total Project Cost | <u>\$1,063,230</u> |

Project costs are based on a November 1, 2011 construction start date and a six-month construction period.

The applicant's financing plan is as follows:

| | |
|--------------------------|------------|
| Equity contribution | \$ 106,323 |
| Loan (8.5%, 5-year term) | 956,907 |

A letter of interest has been provided by American Renal Associates, LLC. Note, American Renal Associates, LLC is a 51% owner of the applicant.

Operating Budget

The applicant has submitted first and third years operating budgets, in 2010 dollars, as summarized below:

| | <u>Year One</u> | <u>Year Three</u> |
|----------------------------------|-----------------|-------------------|
| Total Revenues* | \$1,614,870 | \$2,902,535 |
| Expenses: | | |
| Operating | \$1,267,168 | \$2,171,274 |
| Capital | <u>322,883</u> | <u>296,881</u> |
| Total Expenses | \$1,590,051 | \$2,468,155 |
| Excess of Revenues over Expenses | <u>\$24,819</u> | <u>\$434,380</u> |
| Utilization: (treatments) | 4,614 | 8,293 |
| Cost Per Treatment | \$344.61 | \$297.62 |

* Includes pharmaceuticals

Utilization by payor source for the first and third years is as follows:

| | |
|----------------------------|--------|
| Medicare Fee-For-Service | 79.10% |
| Commercial Fee-For-Service | 20.90% |

Expense and utilization assumptions are based on the American Renal Associates, LLC historical experiences in operating similar size dialysis clinics.

The number of procedures required to breakeven in the first year is approximately 4,543 treatments, slightly below the number budgeted, but by the third year the breakeven point is expected to be at 7,052 treatments, or 85% of the budgeted volume. The applicant has submitted letters from local hospitals and the town of Amsterdam, New York in support of this project.

Capability and Feasibility

Total project cost of \$1,063,230 will be met through shareholders' equity contribution of \$106,323 with the remaining \$956,907 being provided by a 5-year self-amortizing intercompany loan from American Renal Associates, LLC; the applicant's 51% owner. Presented as BFA Attachments A through C are the shareholders net worth statements, American Renal Holdings, Inc., and Subsidiaries 2008-2009 certified financial summary, and their September 30, 2010 financial summary, which shows adequate resources for meeting their financial obligations.

Working capital requirements are estimated at \$411,360, which appear reasonable based on two months of third year budgeted expenses. The shareholders of Mohawk Valley Dialysis Center will contribute half or \$205,680 from their resources with the balance provided through a 5-year self-amortizing intercompany loan at 8.5% from American Renal Associates, LLC. Presented as BFA Attachment D is the pro-forma balance sheet that shows operations will start off with \$322,534 in equity, slightly higher than required.

The first and third year's financial projections show a net income of \$24,819 and \$434,380, respectively. Revenues reflect current reimbursement methodologies for dialysis services.

Review of BFA Attachment B shows for the years 2008 and 2009 American Renal Holdings Inc., maintained an average positive working capital of position of \$29,932,153, and had an average net income of \$4,389,727.

American Renal Holdings states the average net asset deficit of \$63,772,810 is not the results of operating losses but rather accretion of preferred stock and its redemption in 2004-2005.

On March 22, 2010, American Renal Holdings, Inc. entered into a Contribution and Merger Agreement with C. P. Atlas Holdings, Inc. and several others for the aggregate purchase price of \$415,000,000 plus certain fees, expenses and other adjustments. The purchase price was funded by the equity investment from Centerbridge Capital Partners, L.P. and its affiliates as well as from certain members of management along with the net proceeds of a \$250,000,000 in Senior Secured Notes. The transaction was consummated on May 7, 2010 with American Renal Holdings, Inc., becoming the surviving entity, being the same entity after the merger as they were before. American Renal Holdings, Inc. is now a wholly owned subsidiary of C.P. Atlas Intermediate Holdings, LLC, which is in turn a wholly owned subsidiary of C.P. Atlas Holdings, Inc. As the result of the Merger, all of American Renal Holdings, Inc., issued and outstanding capital stock became owned by C.P. Atlas Intermediate Holdings, LLC which is their only asset. As such the consolidated financial statements of C.P. Atlas Intermediate Holdings, LLC are identical to American Renal Holdings, Inc.

Review of BFA Attachment C shows total assets went from \$173,722,000 as of December 31, 2009 to \$703,483,000 as of September 30, 2010, primarily due to an increase in Goodwill of \$479,162,000. Total liabilities increased during this period by \$140,775,000, primarily due to a new \$250,000,000 in Senior Secured Notes which are due in 2018 and bear an interest rate of 8.375%.

This new obligation was offset by other reductions in liabilities; primarily payments of \$64,261,000 on the long term debt, and the payoff of Series X mandatorily redeemable preferred stock in the amount of \$62,799,000. Total equity increase from December 31, 2009's deficit of \$59,812,000 to a positive equity position of \$329,174,000 comprised of the following: additional paid-in capital of \$188,833,000; noncontrolling interest not subject to put provisions of \$154,633,000 (this represents nephrologists partners equity); and an operating loss for the period between May 8, 2010 and September 30, 2010 of \$14,292,000. It is noted that during this period there were \$14,839,000 in merger and transaction-related costs.

It appears the applicant has demonstrated the capability to proceed in a financially feasible manner; and contingent approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Architectural Analysis

Background

This project will consist of 3,000 SF of new construction and 3,000 SF of renovations to an existing one-story building for a 13-station freestanding dialysis center. The project will include a reception area with waiting room and business office, and a treatment area with 13 dialysis stations, nurse station and patient toilet room. It also includes an exam room, a peritoneal training room, offices, conference room, staff lounge and toilet room, clean and soiled workrooms, an equipment repair room and storage.

Environmental Review

The Department has deemed this project to be a TYPE I Action and the lead agency shall be the county of Montgomery or the authority having jurisdiction.

Recommendation

From an architectural perspective, approval is recommended.

Attachments

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| BFA Attachment A | Net Worth Statements for Proposed Physicians |
| BFA Attachment B | Financial Summary for 2009 and 2008, American Renal Holdings, Inc and Subsidiaries |
| BFA Attachment C | Financial Summary for September 30, 2010, , American Renal Holdings, Inc and Subsidiaries |
| BFA Attachment D | Pro Forma Balance Sheet for Mohawk Valley Dialysis Center, Inc. |
| BFA Attachment E | Organization Chart |
| BFA Attachment F | Organization Chart – Joint Venture Structure |
| BFA Attachment G | Establishment Checklist |
| BHFP Attachment | Map |

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 21st day of July, 2011, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a diagnostic and treatment center with a 13-station dialysis service, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

092072-B

Mohawk Valley Dialysis Center, Inc.

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a statement from the applicant, acceptable to the Department, that the proposed financial/referral structure has been assessed with the consultation of legal counsel, in light of anti-kickback and self-referral laws, and it is concluded that proceeding with the proposal is acceptable. [RNR, CSL]
3. Submission of a loan commitment, acceptable to the Department. [BFA]
4. Submission of a working capital loan commitment, acceptable to the Department. [BFA]
5. Submission of an executed assignment and assumption agreement for the lease, leasehold improvements, and equipment, acceptable to the Department. [BFA]
6. Submission of a photocopy of an executed facility lease and an executed ground lease, which are acceptable to the Department. [BFA, CSL]
7. Submission of an executed administrative service agreement, acceptable to the Department. [BFA, CSL]
8. Submission of a photocopy of the applicant's executed proposed certificate of incorporation, which is acceptable to the Department. [CSL]
9. Submission of a photocopy of an executed shareholder agreement, which is acceptable to the Department. [CSL]
10. Submission of a photocopy of an executed transfer and affiliation agreement, which is acceptable to the Department. [CSL]
11. Submission of a photocopy of the certificate of incorporation and any amendments thereto of American Renal Holdings, Inc., which are acceptable to the Department. [CSL]
12. Submission of an organization chart and documentation relating to the direct and indirect owners of the applicant, which are acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
2. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER].
3. The applicant shall complete construction by November 2, 2013. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York 12180-2299

