

**STATE OF NEW YORK**  
**PUBLIC HEALTH AND HEALTH PLANNING COUNCIL**

**AGENDA**

*October 6, 2011  
10:30 a.m.*

*90 Church Street  
4<sup>th</sup> Floor, Room 4A & 4B  
New York City*

**I. INTRODUCTION OF OBSERVERS**

Dr. William Streck, Chairman

**II. APPROVAL OF MINUTES**

A. June 16, 2011

**Exhibit #1**

B. August 4, 2011

**Under Separate  
Cover**

**III. ADOPTION OF 2012 MEETING**

2012 Meeting Dates

**Exhibit #2**

**IV. PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS**

**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**

**Acute Care Service – Construction**

**Exhibit #3**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	111284 C	Memorial Hospital for Cancer and Allied Diseases (Westchester County)	Contingent Approval

**Residential Health Care Facilities Ventilator Beds – Construction****Exhibit #4**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	071126 C	Wayne Center for Nursing & Rehabilitation, LLC (Bronx County)	Contingent Approval
2.	091039 C	Palm Gardens Care Center, LLC d/b/a Palm Gardens Center for Nursing and Rehabilitation (Kings County)	Contingent Approval
3.	092131 C	Silvercrest Center for Nursing and Rehabilitation (Queens County)	Contingent Approval
4.	101087 C	Flushing Manor Geriatric Center, Inc. d/b/a Dr. William O. Benenson Rehab Pavilion (Queens 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****Residential Health Care Facilities Ventilator Beds – Construction****Exhibit #5**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	111070 C	Isabella Geriatric Center, Inc. (New York County) Dr. Berliner – Recusal	Contingent Approval
2.	091021 C	Parkshore Health Care, LLC d/b/a Four Seasons Nursing and Rehabilitation Center (Kings County) Mr. Fensterman – Recusal	Contingent Approval
3.	092166 C	Eastchester Rehabilitation and Health Care Center, LLC (Bronx County)	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

**Residential Health Care Facilities Ventilator Beds – Construction**

**Exhibit #6**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	031039 C	Bronx Center for Rehabilitation & Health Care, LLC (Bronx County) Mr. Fensterman – Recusal	Disapproval
2..	071010 C	Long Island Care Center, Inc. (Queens County) Mr. Fensterman- Recusal	Disapproval
3.	092002 C	Promenade Nursing Home, Inc. d/b/a Promenade Rehabilitation and Health Care Center (Queens County) Mr. Fensterman – Recusal	Disapproval
4.	101016 C	Fort Tryon Rehabilitation & Health Care Facility, LLC d/b/a Fort Tryon Center for Rehabilitation and Nursing (New York County) Mr. Fensterman – Recusal	Disapproval

5.	111174 C	Sheepshead Nursing & Rehabilitation Center, LLC (Kings County) Mr. Fensterman – Recusal	Disapproval
6.	062217 C	Fieldston Operating, LLC d/b/a Fieldston Lodge Care Center (Bronx County)	Disapproval
7.	062380 C	Cliffside Nursing Home, Inc., d/b/a Cliffside Rehabilitation & Residential Health Care Center (Queens County)	Disapproval
8.	082176 C	Lutheran Augustana Center for Extended Care and Rehabilitation, Inc. (Kings County)	Disapproval

**Cardiac Services – Construction**

**Exhibit #7**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	052112 C	Sisters of Charity Hospital (Erie County)	Disapproval

**CATEGORY 6:** Applications for Individual Consideration/Discussion

**CON Applications**

**Cardiac Services – Construction**

**Exhibit #8**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	102142 C	Mount St. Mary’s Hospital and Health Center (Niagara County) Mr. Booth- Interest	No Recommendation
2.	102143 C	Mercy Hospital of Buffalo (Niagara County) Mr. Booth- Interest	No Recommendation
3.	102151 C	Niagara Falls Memorial Medical Center (Niagara County) Mr. Booth- Interest	No Recommendation

4.	102152 C	Buffalo General Hospital (Erie County) Mr. Booth- Interest	No Recommendation
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**Acute Care Service – Construction**

**Exhibit #9**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	111531 C	Lenox Hill Hospital (New York County) Mr. Fensterman – Recusal Mr. Kraut - Recusal	No Recommendation

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

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

**CON Applications**

**Ambulatory Surgery Centers – Establish/Construct**

**Exhibit #10**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	102452 B	Fromer LLC Eye Surgery Center of New York (Bronx County)	Contingent Approval
2.	111277 B	Avicenna ASC, Inc. (Bronx County)	Contingent Approval
3.	111421 E	Digestive Diseases Diagnostic and Treatment Center (Kings County)	Contingent Approval
4.	111502 B	Hudson Valley Center, LLC (Westchester County)	Contingent Approval

**Residential Health Care Facility – Establish/Construct**

**Exhibit #11**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	111313 B	Samaritan Senior Village (Jefferson County)	

**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 Centers – Establish/Construct**

**Exhibit #12**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	111506 E	NYSCQ, LLC d/b/a New York Surgery Center of Queens (Queens County) Dr. Sullivan – Abstaining	Contingent Approval
2.	101158 B	EMK ASC, LLC d/b/a New York Ambulatory Surgery, LLC (Queens County) Dr. Sullivan – Abstaining	Contingent Approval
3.	111409 B	Flushing GI, LLC (Queens County) Dr. Sullivan - Abstaining	Contingent Approval

**Diagnostic and Treatment Centers – Establish/Construct**

**Exhibit #13**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	111218 B	Jericho Road Ministries, Inc. d/b/a Jericho Road Community Health Center (Erie County) Mr. Booth – Interest	Contingent Approval
2.	111390 B	Christian Health Service of Syracuse (Onondaga County) Mr. Booth - Interest	Contingent Approval

**Dialysis Center – Establish/Construct**

**Exhibit #14**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	111503 B	Park Slope Dialysis Management, LLC d/b/a Prospect Park Dialysis Center (Kings County) Dr. Bhat – Recusal	Contingent Approval

**Residential Health Care Facility – Establish**

**Exhibit #15**

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1. 112014 E	SV Operating Three, LLC d/b/a Verrazano Center for Rehabilitation and Specialty Healthcare (Richmond County) Mr. Fensterman - Recusal	Contingent Approval

**Continuing Care Retirement Community – Establish**

**Exhibit #16**

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1. 111285 E	Woodland Pond at New Paltz (Ulster County) Dr. Berliner – Recusal	Contingent Approval

**HOME HEALTH AGENCY LICENSURES**

**Exhibit #17**

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1717-L	Advanced Home Care Services, Inc. (New York, Kings, Queens, Bronx, and Richmond Counties) Ms. Regan – Interest	Contingent Approval
1903-L	Angel Care, Inc. (New York, Bronx, Richmond, Kings, Queens and Nassau Counties) Ms. Regan – Interest	Contingent Approval
1827-L	Bethesda Elite Care, Inc. (Suffolk, Nassau, Westchester, Queens, Kings, New York, Bronx, and Richmond Counties) Ms. Regan – Interest	Contingent Approval
1794-L	C.P.R. Home Care, Inc. d/b/a City Wide Home Care (Bronx, Kings, New York and Queens Counties) Ms. Regan – Interest	Contingent Approval

1674-L	Ideal Home Health, Inc. (Bronx, Kings, Queens, New York and Richmond Counties) Ms. Regan – Interest	Contingent Approval
2018-L	Longevity Health Services, LLC (Bronx, Kings, Nassau, New York, Queens, and Richmond Counties) Ms. Regan – Interest	Contingent Approval
2007-L	Magic Home Care, LLC (Kings, Queens and Richmond Counties) Ms. Regan – Interest	Contingent Approval
1742-L	Majestic Touch Home Care Services, Inc. (Kings, Queens, New York, Bronx, and Richmond Counties) Ms. Regan – Interest	Contingent Approval
1860-L	Most Excellent Home Care Agency, Inc. (New York, Bronx, Kings, Nassau and Queens Counties) Ms. Regan – Interest	Contingent Approval
1804-L	Nannies for Grannies, Inc. (Nassau, Suffolk and Queens Counties) Ms. Regan – Interest	Contingent Approval
1764-L	New Universal Home Care, Inc. (Bronx, New York, Richmond, Kings and Queens Counties) Ms. Regan – Interest	Contingent Approval
1695-L	Peconic Landing Home Health Services (Suffolk County) Ms. Regan – Interest	Contingent Approval
1825-L	Sweet Sunshine Home Health Care Agency, Inc. (Bronx, Kings, New York, Queens and Richmond Counties) Ms. Regan – Interest	Contingent Approval



2009-L	ZLC Senior Care, Inc. (Nassau, Suffolk and Queens Counties) Ms. Regan – Interest	Contingent Approval
1896-L	Alternate Staffing, Inc. (Bronx, Kings, New York, Queens, and Richmond Counties) Ms. Regan – Interest	Contingent Approval
1879-L	Cudley’s Home Care Services, Inc. (Bronx, Kings, Nassau, New York, Queens and Richmond Counties) Ms. Regan – Interest	Contingent Approval
1871-L	Utopia Home Care, Inc. Nassau, Suffolk, Queens, Kings, Bronx, New York, Richmond, and Westchester Counties) Ms. Regan – Interest	Contingent Approval
1743-L	Innovative Services, Inc., d/b/a Upstate Home Care (See exhibit for counties served) Mr. Booth – Interest Ms. Hines – Interest	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

**Certified Home Health Agencies – Establish/Construct**

**Exhibit #18**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	111529 E	L. Woerner, Inc. d/b/a HCR (Cortland County) Mr. Booth – Recusal Ms. Hines – Recusal	No Recommendation
2.	112025 E	L. Woerner, Inc. d/b/a HCR (Madison County) Mr. Booth – Recusal Ms. Hines – Recusal	No Recommendation

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

**V. REPORT OF DEPARTMENT OF HEALTH ACTIVITIES**

**A. Report of the Department of Health**

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

**B. Report of the Office of Public Health Activities**

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

**C. Report of the Office of Health Systems Management Activities**

Richard Cook, Deputy Commissioner, Office of Health Systems Management

**VI. HEALTH POLICY**

**Report on the Activities of the Committee on Health Planning**

John Rugge, M.D., Chair of the Health Planning Committee

**VII. PUBLIC HEALTH SERVICES**

**Report on the Activities of the Committee on Public Health**

Jo Ivey Boufford, M.D., Chair of the Public Health Committee\

**VIII. REGULATION**

**Report of the Committee on Codes, Regulations and Legislation**

Angel Gutiérrrez, M.D., Chair

**For Emergency Adoption**

Amendment to 10 NYCRR Section 401.2 to permit the Commissioner of the Department of Health to allow an operator of a facility licensed under Public Law Article 28 to operate at a site not designated on its operating certificate on temporary basis due to an emergency **Under Separate Cover**

**IX . PROFESSIONAL**

**Report of the Committee on Health Personnel and Interprofessional Relations**

Dr. Theodore Strange, Chair  
One Case

**X . NEXT MEETING**

November 17, 2011 – Committee Day (Albany Marriott)  
December 8, 2011 – Full Council (Albany Marriott)

**XI. ADJOURNMENT**

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

**Minutes**

**June 16, 2011**

The first meeting of the Public Health and Health Planning Council was held on Friday, June 16, 2011, at the New York State Department of Health, 90 Church Street, Rooms 4A and 4B, New York, New York. Chairman, Dr. William Streck, presided.

**COUNCIL MEMBERS PRESENT:**

Dr. William Streck, Chair  
Dr. Howard Berliner  
Dr. Jodumutt Bhat  
Mr. Michael Fassler  
Mr. Howard Fensterman  
Dr. Carla Boutin-Foster  
Dr. Angel Gutierrez  
Ms. Victoria Hines  
Mr. Robert Hurlbut  
Mr. Art Levin  
Dr. Glenn Martin  
Dr. John Palmer  
Ms. Susan Regan  
Mr. Peter Robinson  
Dr. John Ruge  
Dr. Ann Marie Theresa Sullivan  
Dr. Anderson Torres  
Dr. Patsy Yang  
Commissioner Shah (ex-officio)

**DEPARTMENT OF HEALTH STAFF PRESENT:**

Mr. Charles Abel	Ms. Karen Lipson
Dr. Guthrie Birkhead	Mr. Keith McCarthy (Albany via video)
Mr. Richard Cook	Ms. Allison Muse
Mr. Christopher Delker	Ms. Linda Rush (Albany via video)
Mr. James Dering	Mr. Douglas Sackett (Albany via video)
Ms. Colleen Frost	Mr. Robert Schmidt
Ms. Sandy Haff	Ms. Kelly Seebald
Ms. Mary Ellen Hennessy (Albany via video)	Mr. Michael Stone
Ms. Gloria Jimpson (Albany via video)	Ms. Lisa Thomson
	Ms. Karen Westervelt

**OBSERVERS PRESENT:**

Mr. Andrew Blatt, Pinnacle Health Consultants  
Mr. Irvin Brum, Ruskin, Moscou, Faltischek  
Ms. Joan Camera, NJC Management  
Mr. Frank M. Cicero, Cicero Associates  
Mr. Gregory Grant  
Mr. Jerry Levy, Duane Morris  
Mr. Jackson Knowlton, Empire Health Advisors  
Keith Kinnally, Kinnally Associates  
Ms. Shari Liss  
Ms. Liz Misa, Hinman, Straub  
Ms. Karen Roach, HANYS  
Kim Lee Roldan-Sanchez  
Mr. Thomas Quinn, Community General Hospital  
Mr. Robert Shapiro, Pinnacle Health Consultants  
Ms. Susan Waltman, GNYHA

**INTRODUCTION:**

Dr. Streck called the meeting to order and welcomed Commissioner Shah along with Council members, meeting participants and observers.

Dr. Streck informed the meeting participants that the meeting would be broadcast over the internet which would give greater access to the public.

Next, Dr. Streck reminded the audience that the New York State Temporary Commission on Lobbying is requiring that a form be filled out before entering the meeting room which records their attendance.

**MEETING OVERVIEW:**

Dr. Streck gave a brief overview of what would be covered at the Council meeting.

Dr. Streck then introduced Commissioner Shah to give a report of the Department of Health Activities.

**REPORT OF THE DEPARTMENT OF HEALTH ACTIVITIES:**

Commissioner Shah began his report by welcoming the members and thanking them for their time and effort that is required to attend, prepare and participate in these meetings

## Health Benefit Exchange

Commissioner Shah explained that transforming health care in New York State specifically is particularly important in the context of Federal Health Reform. Federal Health Reform will introduce many more players to the system including a large number of patients now insured under the new policies. On June 13<sup>th</sup>, Governor Cuomo introduced a bill that would establish a health benefit exchange to fulfill New York's commitment under the Federal Affordable Care Act. The Governor's legislation would establish a single exchange in New York that would be centralized, customer service oriented and it would be a marketplace for individuals, small groups to purchase qualified health plans, receive eligibility and subsidy determination, and be enrolled in a wide range of coverage options.

## Major Stages

Commissioner Shah noted where he sees health care moving in this new century. Right now we are experiencing a paradigm shift from a reactive system in health care to a more proactive preventive approach toward providing care. The Department has to recognize that the old model of providing care for the last five decades has failed us on access, quality, and cost. Old medicine focused on the terminal stages of disease, consuming an inordinate amount of health care spending. 25 to 30 percent of all Medicare dollars are spent on the last year of life. We must also consider that behavioral choices account for 40 percent of preventable death. That means, whether we choose to eat, exercise or smoke that results in four out of ten deaths that are preventable in the United States. The Department is working hard to bring that public health and health care delivery system together. In order to build a truly 21 Century health care system, we as a Council, must think about how we can integrate public health priority into how we organize and deliver health care services.

Commissioner Shah stated that he sees the paths of health care delivery in public health each have had three major stages so far. The first stage that I call Health Care 1.0 focused on taking care of the sick and was heavy on emergency department use. This proved to be uncoordinated and fragmented with multiple clinical records and lagging on quality, cost and performance transparency. Health care 2.0, which is where we are now, is focused had on increasing access, coverage and transparency in cost and quality performance. Health care 2.1 is result oriented and features accountable provider network designed around the patient, with a focus on care management and prevention. This is an improvement over the old system, but much work still needs to be done. The next stage, Health Care 3.0, is patient centered, aligned incentive with wellness, coordinates networks with communities, rapidly deploys best practices and integrates the public health perspective in to primary care and prevention. Right now we are moving from Health Care 2.0 to Health Care 3.0 from a less reactive acute inpatient model of care to a more proactive integrated system.

## Medicaid

Next, Commissioner Shah explained that under Governor Cuomo's leadership, the Department has already taken major steps toward transforming the health care system with the redesign of the state Medicaid program. Governor Cuomo had said that New York can no longer do business as usual. He recognized that our state Medicaid system was unsustainable on a long-term, and frankly, on the short-term. It was also clear that New York wasn't getting quality health care commensurate with its investment at more than \$50 billion a year. New York spends more than twice the national average on Medicaid on a per capita basis, and spending per enrollee is the second highest in the nation. The problem is that the state ranks 21st out of all states for an overall health system quality, and ranks last among all states for avoidable hospital use and cost. The Governor's mission is make health care more affordable, efficient and focused on improving health outcomes.

Dr. Shah advised that shortly after taking office in January, the Governor brought together the key stakeholders on the Medicaid Redesign Team, and to create an effective process, more reform that promotes transparency and garners support from New Yorker. A majority of the recommendations were advanced in the state budget this year. Medicaid is the single largest payer for health care services in New York, covering four million New Yorkers, it influences the delivery of care of health care throughout the state and across the system. Medicaid redesign will provide innovative models of care that increase the quality and safe money. Expansion of the Medical Home Model is one example under the new state budget. Over the next three years Medical Home Model of cares will be expanded to include an additional one million patients in the Medicaid program. Over the long-term, enhance reimbursement for Medical Home will be offset by reduced spend associated with better outcomes and fewer avoidable hospitalizations. New York currently spends \$1.4 billion annually on avoidable hospitalization, the highest in the country. The Department expects to get that number down as New Yorkers move to more Medical Homes. The transformation of health care will have an impact not only on how we deliver health care, but where we deliver health care. To a great extent, our current system focuses on acute care centered on the hospitals of yesterday, the tower like multi-story structure that was built with hundreds of accessing patient beds at times. The hospital of the future is changing, hospitals could be an emergency room with an Operating Room above it and an ICU above that. Patients move to the nursing homes of the future, which are not residential facilities, but rehab facilities and they would then move back to their homes as quickly as possible to continue

## Long Term Health Care Services

Commissioner Shah noted that the delivery of the long-term health care services for the elderly and disabled is also changing. More New Yorkers want to receive care in setting that are less medically intensive, such as home care and assisted living. They also need better coordinated care. New York is moving toward the use of managed long-term care plans to improve coordination of care and reduce cost. This is another initiative of the Medicaid Redesign Team. On June 14<sup>th</sup>, the Department posted applications for new and expanded managed long-term care plans. As patients are treated with more integrated coordinated health care, we must also think about what investments we can make in populations to promote health and prevent illness and disease.



## Future Initiatives

Dr. Shah acknowledged that going forward, the Department will support more evidence based programs and policies that address public health priorities such as the prevention and management of chronic diseases like diabetes and asthma. There are many challenges. The Council may be of assistance in addressing these challenges, some of which will take the rest of the system to do. Electronic health records and the patient's front line to understand what really matters to the patient as they interact with the health care system. Dr. Shah outlined a few items that need attention, such as the frequency of testing is another issue, appropriateness is another challenge, workforce issues, which can be addressed to some degree by the Council and expanding primary care work force and to allow people to practice at the top on their license. Lastly, transparency and showing the public data.

Dr. Shah concluded his report by stating that strong partnerships will be critical to achieve this vision for an integrated public health and health care system that best serves New Yorker. In future meetings of this Council, he mentioned that he will provide updates on progress in transforming the health care system, as well as Department activities that highlight the public health efforts.

Dr. Streck asked if Council members had questions or comments for Dr. Shah. To view the Council member's questions please refer to pages 8 through 35 of the attached transcript.

Dr. Streck moved to the next item on the agenda and introduced Mr. Kissinger to give the report on the Activities of the Office of Long Term Care.

## **Report of the Office of Long Term Care Activities**

Mr. Kissinger began his report by stating the Office of Long Term Care (OLTC) has been engaged in a number of activities related to the Medicaid Redesign Team (MRT) implementation. The OLTC has been very actively involved with the with the Certified Home Health Agency community which falls under MRT proposal number 5, the CHHA provider cap. Mr. Kissinger also answered Mr. Fensterman's earlier questions stating there has been a lot of activity internally within the Department with certain Certified Home Health Agencies and managed long-term care plans as well as activities on the Home Care Complaint Hotline that involves specific cases to make sure that people have access to the appropriate home care. The Department has also been working on activities in both the nursing home and home care area in collaboration with our partners. To review Mr. Kissinger's complete report and members questions, refer to pages 35 through 42 of the attached transcript.

Chairman Streck next introduced Dr. Birkhead to give the report on the Office of the Public Health

## **Report of the Office of Public Health Activities**

Dr. Birkhead explained that the Public Health Committee has been formed and builds on the previous Public Health Council's activities specifically public health. There were several ad hoc committees of the old Public Health Council back in 2006 and 2008. There is also an infrastructure report that focused on workforce, sanitary codes, changes around job description and public health workers and information technology. Most recently there was an Ad Hoc Committee chaired by Dr. Boufford that helped support the state's public health improvement initiative of the Prevention Agenda. In addition to a Leadership subcommittee group that contained members of statewide organizations. Dr. Birkhead expressed his appreciation for now having a standing Public Health Committee.

Dr. Birkhead advised that there was a move nationally in public health for accreditation and the Department would like to enlist the help of the Public Health Committee to help work through the issues that the Department will undergo in the strategic planning process and would value input from the Public Health Committee.

Dr. Birkhead explained the Department is applying for the Community Transformation Grant and will be discussing with the Public Committee.

Dr. Birkhead noted spoke about the new CDC grant opportunity called the Community Transformation Grant Process which will move us towards Public Health 3.0 with funding from the Center for Disease Control. It has national solicitation, a competitive solicitation and a five year funding amount of up to \$10 million per year. Within New York the City Health Department and the larger urban counties can apply, New York State will be applying on behalf on the 52 or so non-urban, non-New York City counties. The focus is community and transformation is the changing the environment at the local level. Dr. Birkhead explained where the funding will be distributed.

Dr. Streck thanked Dr. Birkhead and asked if there we questions from the Council members. To review Dr. Birkheads report and questions and comments from Council members, please refer to pages 42 through 48 of the attached transcript.

Dr. Streck moved to the next item on the agenda Health Policy and introduced Dr. Rugge to give a report on the Committee on Health Planning.

## **HEALTH POLICY**

### **Report of the Committee on Health Planning**

Dr. Rugge began his report by stating the Health Planning Council and the Council have an enormous opportunity to make a contribution to somewhat monitor and perhaps even help shape the course of change, several different phases, change which is sure to come. He mentioned a few very preliminary suggestions and the kind of topics that the Committee might choose to address, to invite any comments from members of the Committee or the Council regarding any of the issues.

### Regional Health Planning

Dr. Rugge indicated that it would seem prudent for the Committee to take a look at regional health planning activities and take an inventory and perhaps inviting some of the key people who are succeeding in planning at the regional level.

### New Models of Care Delivery

Dr. Rugge noted that another item is that new models of care delivery are begging for more investigation, thinking of patient center medical homes, for health homes including integration of behavioral health services with visible help and leading on to accountable care organizations and what that might mean in New York especially when the legislation on the books.

### CON Process

Dr. Rugge also discussed looking at the CON process. Reviewing the reviews would be useful to SHRPC prior to the meeting and he was certain that the Public Health Council has had a number of issues were raised that have not really been addressed through the public process.

### Long Term Care Facilities

Dr. Rugge noted that the Council has already heard about from Mr. Kissinger regarding taking a look at the viability of long-term care facilities across the regions of New York may prove important. There are some regions that NCIL are deeply rural, are very concerned about potential loss of all long-term care and services without special attention and perhaps interaction.

### Emergent Technology

Dr. Rugge stated that the Council has heard from Dr. Berliner that he finds new emergent technology might be good to consider, such as proton beam therapy. The Department is already looking forward and looking day-to-day what is necessary to protect a very fragile safety net and thinking what kind of systematic efforts may be required and what kind of monitoring system to ensure those very fragile but incredibly necessary programs are not lost by neglect or inattention.

Dr. Rugge concluded his report by stating the Committee will be looking for more suggestions to try to build on this very preliminary discussion to an active agenda and useful products for the Department and for the state. Dr. Streck thanked Dr. Rugge and inquired if members had questions. To view Dr. Rugge's complete report and members questions and comments, please refer to pages 48 through 56 of the attached transcript.

Dr. Streck moved to the next item and introduced Dr. Gutierrez to give a report on the Committee on Codes, Regulations and Legislation.

## **REGULATION**

### **Report of the Committee on Codes, Regulations and Legislation**

Dr. Gutierrez began his report by indicating that the Department has requested that the regulation pertaining to Public Water Systems be deferred to the next meeting.

For Adoption

10-11 Amendment of Subpart 7-2, Subpart 6-1, and Subpart 6-2 of Title 10 NYCRR (Children's Camps, Swimming Pools, Bathing Beaches)

Dr. Gutierrez introduced 10-11 Amendment of Subpart 7-2, Subpart 6-1, and Subpart 6-2 of Title 10 NYCRR (Children's Camps, Swimming Pools, Bathing Beaches) which was this measure will implement chapter laws pertaining to the confirm of fees, the definition of summer day camp and overnight camps. It will incorporate Public Health Law requirements for students and staff through the state sex offender registry, it also will provide the requirement for camp aquatic directors and lifeguards, certified first-aid and CPR requirements. Dr. Gutierrez motioned for adoption which was seconded by Dr. Berliner and was adopted by the Council. Please refer to pages 57 and 58 of the attached transcript.

09-13 Amendment of Section 2.10 and Part 23 of Title 10 NYCRR (Sexually Transmitted Disease Reporting and Treatment Requirements)

Dr. Gutierrez introduced 09-13 Amendment of Section 2.10 and Part 23 of Title 10 NYCRR (Sexually Transmitted Disease Reporting and Treatment Requirements) and noted that the proposal was presented to the Committee morning and the vote was four in favor, one abstention and one against, so the Committee will not be able to formally present this recommendation to the Council. Dr. Gutierrez as a member of the Council brought the regulation forward to the Council for its consideration and moved for adoption which was seconded by Dr. Yang. Dr. Gutierrez introduced Ms. Muse from the Department to give a brief overview of the regulation.

Ms Muse explained that the revision is bring both community reporting requirements specified in the state's run institutions who operate under Article 28 are required to report communicable diseases to the local health department and the provision states that the responsibility for that reporting is specific to the individual who is in charge of the institution.

Dr. Sullivan stated she had a concern at the Committee meeting and had a chance to talk to Dr. Birkhead. Her main concern was that for certain patients who previously had the availability of getting treatment for free, these patients are now going to be referred somewhere else. She noted that whenever you got that kind of hand off, there is a risk that the patient may not get there even with all the best intention. However, it is clear that major illnesses were still going to be treated, but some were going to be handed off in those categories A, B, C and D. After further comments and questions from Council members the motion to adopt this regulation passed. Please refer to pages 57 through 68 of the attached transcript.

## For Discussion

### Sections 405.1, 700.2, 720.1 and 755.2 (Accreditation Standards)

Dr. Gutierrez briefly described Sections 405.1, 700.2, 720.1 and 755.2 (Accreditation Standards) which is being presented for discussion only. The accreditation standard topic hospital and diagnostic and treatment centers are routinely delayed for compliance with operation of standards. The current provisions authorizes the Commissioner to accept as evidence of compliance with such standard accreditation by the joint commission for the American osteopathic association, and also the accreditation associate for ambulatory care, ambulatory health care for free-standing off-site hospital bases for the surgical centers. While these organizations have been predominantly used over the years, additional accrediting organizations have come into existence and been granted status by the federal centers for Medicare and Medicaid services. Newer accrediting agencies are being utilized by hospitals and other facilities more and more and recognized by CMS for federal surveillance purposes. This provision will remove name references to the station agencies and allow facilities to be accredited by an accreditation agent with CMS advantage which the commission had determined they are accrediting standards are sufficient to ensure the commission of that hospital. The Commissioner can choose to enter into collaborative agreement with such accreditation agency. The department will post on the DOH website a list of accreditation agencies with which the Department has collaborative agreement. Please refer to pages 68 through 70 of the transcript for the full description.

### Section 405.19 (Observation Units)

Dr. Gutierrez explained that Section 405.19 (Observation Units) is being presented for discussion only and is one of several MRT reforms. The MRT proposed the creation of a regulatory framework for observation units and Medicaid rate for observation services. The provision of observation services in the unit under the auspices of the emergency service allowing hospitals to provide focus, assessment and treatment as needed beyond the eight hours permitted for emergency service. The proposed regulations would allow hospitals to create observation units to be used for patient assessment, including diagnostic testing and sterilization for a period of up to 24 hours from the time a patient is assigned to the observation unit, after which time the patient will be admitted, transferred or discharged. Observation unit beds would be limited to a total of five percent of the hospital certified bed capacity, and up to a maximum of 40 beds provided that in a hospital with less than a hundred certified beds and observation unit may be held up to five beds. Appropriate use of observation units can help to avoid unnecessary inpatient admissions, premature discharges from the emergency department and repeated emergency department visits. They can also help improve the efficiency of the emergency service and relieve emergency departments overcrowding. The Department has granted approximately 20 waivers for the use of observation services, this measure would eliminate the need for the waiver process currently required and established a uniform sets of standards. Some commercial payers and Medicare provide reimbursement for observation services effective April 1, 2011. Medicaid will pay for the observation services in approved observation units and units in compliance with the new regulations once they take effect. To review members and staffs comments, please refer to pages 70 through 77 of the attached transcript.

Dr. Streck then moved onto the next agenda item, the Report of the Committee on

Establishment of Health Care Facilities and recognized Mr. Robinson.

**REPORT OF THE COMMITTEE ON ESTABLISHMENT OF HEALTH CARE FACILITIES**

**A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES** Exhibits #1 - 8

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

**CON Applications**

**Ambulatory Surgery Centers – Construction** Exhibit #4

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
1.	102221 C	NYU Hospitals Center (New York County)	Contingent Approval
2.	102364 C	NYU Hospitals Center (New York County)	Contingent Approval
3.	101112 C	Nathan Littauer Hospital Ambulatory Surgery Center (Fulton County)	Contingent Approval

**Residential Health Care Facility - Construction** Exhibit #6

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
2.	102316 C	Hamilton Park Multicare, LLC d/b/a Hamilton Park Nursing and Rehabilitation Center (Kings County)	Contingent Approval

**Transitional Care Units - Construction** Exhibit #7

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
3.	102367 T	St. Francis Hospital (Nassau County)	Contingent Approval
4.	102370 T	<b>DEFERRED AT THE APPLICANTS REQUEST</b> Good Samaritan Hospital of Suffern (Rockland County)	

5.	102371 T	Brookhaven Memorial Hospital Medical Center, Inc. (Suffolk County)	Contingent Approval
7.	102373 T	Northern Westchester Hospital (Westchester County)	Contingent Approval
8.	102374 T	White Plains Hospital Center (Westchester County)	Contingent Approval

Mr. Robinson introduced Category One under Applications for Construction. Mr. Levin motioned for approval which was seconded by Dr. Berliner. The motion to approve applications passed with the noted interest from Mr. Fassler on application 102374 T White Plains Hospital Center and the deferral of application 102370 Good Samaritan Hospital of Suffern. To review the discussion, please refer to pages 77 through 81 of the attached transcript.

**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**

**Acute Care Services – Construction**

**Exhibit #3**

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	102417 C Queens Hospital Center (Queens County) Recusal – Dr. Martin Recusal – Dr. Sullivan	Contingent Approval

Dr. Martin and Dr. Sullivan exited the meeting room. Mr. Robinson introduced application 102417. Mr. Levin motioned for approval which was seconded by Dr. Torres. The motion to approve the application carried with the noted recusals from Dr. Martin and Dr. Sullivan. Dr. Sullivan and Dr. Martin re-entered the meeting room. See pages 81 and 82 of the attached transcript.

**Hospice – Construction**

**Exhibit #5**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	102407 C	Hospice of Orleans, Inc. (Orleans County)	Contingent Approval

**Residential Health Care Facility - Construction**

**Exhibit #6**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	101083 C	Eger Health Care and Rehabilitation Center (Richmond County) Interest – Mr. Fassler	Contingent Approval

**Transitional Care Units - Construction**

**Exhibit #7**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	102365 T	Erie County Medical Center (Erie County)	Contingent Approval
2.	102366 T	South Nassau Communities Hospital (Nassau County)	Contingent Approval
6.	102372 T	Glens Falls Hospital (Warren County)	Contingent Approval

Mr. Robinson briefly explained applications 102407, 101083, 102365, 102366, and 102372 and motioned for approval. The motion to approve was seconded by Dr. Torres. Please see pages 82 through 84 of the attached transcript.

**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**

**Cardiac Services - Construction**

**Exhibit #2**

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 102022 C	New York Methodist Hospital (Kings County) Recusal – Mr. Fensterman Recusal – Ms. Regan	Contingent Approval

Mr. Robinson noted for the record that Mr. Fensterman and Ms. Regan exited the meeting room and Mr. Fassler has declared an interest on application 101022. Mr. Berliner motioned for approval which was seconded by Mr. Levin. The motion to approve carried with the noted recusals and interest. Mr. Fensterman and Ms. Regan re-entered the meeting room. Please see pages 84 through 85 of the attached transcript.

**Acute Care Services – Construction**

**Exhibit #3**

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
2. 111257 C	University Hospital SUNY Health Science Center (Onondaga County)	Contingent Approval

Mr. Robinson introduced application 111257. Dr. Torres made a motion to approve the application which was seconded by Dr. Gutierrez. Dr. Berliner expressed concern over the application relative to labor relations issues that is going on with the merger of the Hospital and stated that he did not see any reason to rush into this application.

Mr. Fensterman inquired what is within the Council's purview as members of the Establishment and Project Review Committee and then as a full Council as it relates to those issues that should be considering when rendering a determination on these applications. Are members permitted to consider any other issues other than considering needs, financial feasibility and character and competence. After a brief discussion, Dr. Streck called for a vote. The motion to approve application 111257 passed. Please see pages 85 through 96 of the attached transcript to review the complete discussion.

**Long Term Home Health Care Program – Construction**

**Exhibit #8**

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 111177 C	Village Center for Care (Bronx County) Interest – Mr. Fassler Abstaining – Dr. Torres	Contingent Approval

Mr. Robinson described application 111177 and made a motion to approve. The motion to approve was seconded by Dr. Gutierrez. The application was open for discussion. Ms. Hines inquired about the inconsistencies of the 85 percent occupancy condition. Ms. Rush explained the condition. Ms. Hines proposed an amended motion to remove the 85 percent condition given that the DAL really answered in a broader perspective what the Department's intent is on long-term home health care programs capacity. Mr. Fassler seconded Ms. Hines amended motion. The amended motion removing the aforementioned condition passed the original motion to approve application 111177 passed with Mr. Fassler's noted interest and Dr. Torres abstention. Please see pages 97 through 103 of the attached transcript.

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

**Exhibits #9 -15**

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

**CON Applications**

**Acute Care Services – Establish/Construct**

**Exhibit #9**

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 101153 E	Catholic Health System of Long Island, Inc. d/b/a St. Joseph's Hospital (Nassau County)	Contingent Approval

**Ambulatory Surgery Center – Establish/Construct****Exhibit #10**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	101134 B	Roosevelt SC, LLC (New York County)	Contingent Approval
4.	101167 B	West Side GI, LLC (New York County)	Contingent Approval
6.	111138 B	Putnam GI, LLC d/b/a Putnam Endoscopy ASC, LLC (Putnam County)	Contingent Approval
7.	111194 B	East Side Endoscopy (New York County)	Contingent Approval
8.	111340 E	EPC, LLC d/b/a Endoscopic Procedure Center (Onondaga County)	Contingent Approval

**Diagnostic and Treatment Centers – Establish/Construct****Exhibit #11**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	082140 E	Ralph Lauren Center for Cancer Care and Prevention (New York County)	Contingent Approval
2.	092199 E	East Coast Rehabilitation, Inc. d/b/a Columbus Center for Medical Rehabilitation (Queens County)	Approval
5.	102256 E	South Brooklyn Medical Administrative Services, Inc. (Kings County)	Contingent Approval
6.	102363 E	<b>REMOVED BEING HANDLED ADMINISTRATIVELY</b> HeartShare Wellness Ltd. – (Kings County)	REMOVED

**Dialysis Services - Establish/Construct****Exhibit #12**

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 091040 B	Palm Gardens Dialysis Center, LLC (Kings County)	Contingent Approval
2. 092072 B	<b>DEFERRED AT THE APPLICANTS REQUEST</b> Mohawk Valley Dialysis Center, Inc. (Montgomery County)	DEFERRED
3. 092169 B	Ditmas Park Dialysis Center, LLC (Kings County)	Contingent Approval

**Residential Health Care Facilities – Establish/Construct****Exhibit #14**

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 062433 B	Brooklyn-Queens Nursing Home (Kings County)	Contingent Approval
7. 102346 E	KFG Operating Two, LLC d/b/a Bensonhurst Center for Rehabilitation and Healthcare (Kings County)	Contingent Approval
8. 111186 E	Autumn View Health Care Facility, LLC (Erie County)	Contingent Approval
9. 111188 E	Brookhaven Health Care Facility, LLC (Suffolk County)	Contingent Approval
10. 111189 E	Garden Gate Health Care Facility (Erie County)	Contingent Approval
11. 111190 E	Harris Hill Nursing Facility, LLC (Erie County)	Contingent Approval
12. 111191 E	North Gate Health Care Facility (Niagara County)	Contingent Approval

- |     |          |  |                     |
|-----|----------|--|---------------------|
| 13. | 111192 E | Seneca Health Care Center<br>(Erie County)   | Contingent Approval |
| 14. | 111248 E | Morningstar Care Center, Inc.<br>d/b/a Morningstar Residential Care<br>Center<br>(Oswego County) | Contingent Approval |

**Certified Home Health Agencies – Establish/Construct**

**Exhibit #15**

- | <u>Number</u> | <u>Applicant/Facility</u>   | <u>Council Action</u> |
|---------------|---|-----------------------|
| 2.            | 101147 B<br><br>Litson Certified Care, Inc., d/b/a<br>WILLCARE<br>(Ulster County) | Contingent Approval   |

**Certificate of Amendment of the Certificate of Incorporation**

**Exhibit #16**

- | <u>Applicant</u>                       | <u>Council Action</u> |
|--|-----------------------|
| 1. UNITE HERE Health Center, Inc.      | Approval              |
| 2. Medina Health Care Foundation, Inc. | Approval              |
| 3. The Guidance Center, Inc.           | Approval              |
| 4. Saratoga Care Family Health Centers | Approval              |

**Certificate of Dissolution**

**Exhibit #17**

- | <u>Applicant</u>                                  | <u>Council Action</u> |
|---|-----------------------|
| 1. Wartburg Diagnostic and Treatment Center, Inc. | Approval              |

**HOME HEALTH AGENCY LICENSURES**

**Exhibit #18**

- | <u>Number</u> | <u>Applicant/Facility</u>   | <u>Council Action</u> |
|---------------|---|-----------------------|
| 1807L         | Angels on Call Homecare, LLC<br>(Dutchess, Rockland, Westchester,<br>Orange, Sullivan, Bronx, Putman,<br>and Ulster Counties) | Contingent Approval   |

1857L	HHDL, Inc. d/b/a Home Helpers #58168 (Saratoga, Albany, Warren, Schenectady and Washington Counties)	Contingent Approval
1927L	Jodi Lee VanNostrand d/b/a Top Quality Home Care Agency (Fulton, Schenectady, Hamilton, Schoharie, Montgomery and Saratoga Counties)	Contingent Approval
1850L	Tender Loving Family Care, Inc. (Monroe, Orleans and Genesee Counties)	Contingent Approval
1883L	Balanced Home Care, LLC d/b/a Balanced Care Licensed Home Care Agency/Hudson Valley Assisted Living Program (Rockland and Orange Counties)	Contingent Approval
1954L	TPPV, LLC d/b/a The Pavilion at Pine Valley (Rockland County)	Contingent Approval
1963L	Cortland County Health Department (Cortland County)	Contingent Approval
1970L	Dutchess County Department of Health (Dutchess County)	Contingent Approval
1945L	Schoharie County Department of Health (Schoharie County)	Contingent Approval
1876L	Cayuga County Health and Human Services (Cayuga County)	Contingent Approval

Mr. Robinson introduced Category #1 application seeking approval for establishment and construction. Dr. Torres seconded the motion to approve applications in Category #1. The motion to approve carried. To review please refer to pages 103 through 122 of the attached transcript to review Council member's comments.

**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**

**Acute Care Services – Establish/Construct**

**Exhibit #9**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
2.	102453 E	North Shore Long Island Jewish Health Care, Inc. (Nassau County) Recusal – Mr. Fensterman Recusal – Mr. Kraut	Contingent Approval

Mr. Robinson briefly introduced application 102453 and noted that Mr. Fensterman and Mr. Kraut have recused themselves from this application and exited the meeting room. Dr. Berliner seconded the motion to approve which was passed with the noted recusals from Mr. Fensterman and Mr. Kraut. Mr. Fensterman and Mr. Kraut re-entered the meeting room. Please refer to pages 122 and 123 of the attached transcript.

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
3.	111074 E	Arnot Health, Inc. (Chemung County) Interest – Mr. Booth	Contingent Approval

Mr. Robinson introduced application 111074 and noted for the record that Mr. Booth who is not present has an interest on this application. Mr. Fassler seconded the motion to approve which passed. Refer to page 123 of the attached transcript.

**Ambulatory Surgery Center – Establish/Construct**

**Exhibit #10**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
2.	101159 E	GRHS, LLC d/b/a Lattimore Community Surgicenter (Monroe County) Recusal – Mr. Robinson Interest – Mr. Booth	Contingent Approval

Mr. Robinson exited the meeting room declaring a conflict on application 101159. Dr. Streck motioned for approval which was seconded by Dr. Boutin-Foster. The motion to approve passed with Mr. Robinson's recusal and Mr. Booth's noted interest. Mr. Robinson re-entered the meeting room. Please refer to pages 123 and 124 of the attached transcript.

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
3.	101160 E	West ASC, LLC d/b/a Camillus Surgery Center (Onondaga County) Interest – Mr. Booth	Contingent Approval
5.	111133 B	Heritage One Day Surgery, LLC (Onondaga County) Interest – Mr. Booth	Contingent Approval

Mr. Robinson described application 101160 and 111133 and motioned for approval. Dr. Berliner seconded the motion to approve. The motion to approve passed with the noted interest by Mr. Booth who was not present at the meeting. Please refer to pages 125 through 127 of the attached transcript.

**Diagnostic and Treatment Centers – Establish/Construct**

**Exhibit #11**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
3.	101103 B	Queens Medical Pavilion, LLC (Queens County) Recusal – Mr. Fensterman	Contingent Approval

Mr. Fensterman exited the meeting room declaring a conflict on application 101103. Mr. Robinson described the application and motioned for approval which was seconded by Dr. Berliner. The motion to approved carried with Mr. Fensterman’s recorded recusal. Mr. Fensterman re-entered the meeting room. Please refer to pages 127 and 128 of the attached transcript.

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
4.	102159 B	<b>DEFERRED AT THE APPLICANTS REQUEST</b> Parcare Community Health Network (Kings County) Recusal – Mr. Fensterman	DEFERRED



**Hospice – Establish/Construct****Exhibit #13**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	082184 B	Visiting Nurse Service of New York Hospice Care (New York County) Recusal – Ms. Regan Interest – Mr. Fassler	Contingent Approval

Ms. Regan exited the meeting room declaring a conflict on application 082184. Mr. Robinson described the application, motioned for approval which was seconded by Dr. Berliner. The motion to approve carried with Ms. Regan’s noted recusal. Ms. Regan re-entered the meeting room. Refer to pages 128 and 129 of the attached transcript.

**Residential Health Care Facilities – Establish/Construct****Exhibit #14**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
2.	092050 E	Woodbury Center for Health Care (Nassau County) Recusal – Mr. Fensterman	Contingent Approval
3.	092056 E	White Plains Center for Nursing Care, LLC (Westchester County) Recusal – Mr. Fensterman Interest – Dr. Torres	Contingent Approval
6.	102234 E	Wedgewood Care Center, Inc. d/b/a Highfield Gardens Care Center of Great Neck (Nassau County) Recusal – Mr. Fensterman Interest – Mr. Kraut	Contingent Approval

Mr. Fensterman exited the meeting room declaring a conflict on application 092050, 092056, and 102234. Mr. Robinson described the applications and motioned for approval. Mr. Fassler seconded the motion to approve. The motion to approve application 092050 carried with Mr. Fensterman’s recusal and application 092056 carried with Mr. Fensterman’s recusal and Dr. Torres’ noted interest. Application 102234 was approved with Mr. Fensterman’s recusal and Mr. Kraut’s noted interest, noted for the record that Mr. Kraut was not present at this meeting. Please refer to pages 129 and 130 of the transcript.

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|----|----------|--|---------------------|
| 4. | 092156 E | Sprain Brook Manor Rehab, Inc.<br>d/b/a Sprain Brook Manor Nursing Home<br>(Westchester County)<br>Interest – Dr. Torres | Contingent Approval |
| 5. | 102048 E | Ozone Acquisitions, LLC d/b/a<br>Central Island Healthcare<br>(Nassau County)<br>Interest – Mr. Kraut                    | Contingent Approval |

**Certified Home Health Agencies – Establish/Construct**

**Exhibit #15**

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	051081 E  Family Aides Certified Services of Nassau, Suffolk Incorporated d/b/a Family Care Certified Services of Nassau (Nassau County) Interest – Ms. Regan	Contingent Approval

Mr. Robinson introduced application 092156, 102048 and 051081 and motioned for approval. The motion to approve was seconded by Dr. Gutierrez. The motion to approve carried with Ms. Regan’s, Mr. Kraut and Dr. Torres’ noted interest. Please refer to pages 130 and 131 of the attached transcript.

**Certified Home Health Agencies – Establish/Construct**

**Exhibit #15**

3.	101156 E  L. Woerner, Inc., d/b/a HCR (Orleans County) Recusal – Ms. Hines Recusal – Mr. Robinson Interest – Mr. Booth	Conditional Approval
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Ms. Hines and Mr. Robinson exited the meeting room declaring a conflict on application 101156 and 102080. Dr. Streck introduced application 101156 and motioned for approval. Dr. Gutierrez seconded the motion. The motion to approve passed with Ms. Hines and Mr. Robinson’s recusal and Mr. Booth’s interest noted for the record. Please refer to page 131 of the attached transcript.

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|----|----------|---|---------------------|
| 4. | 102080 E | Genesee Region Home Care Association d/b/a Lifetime Care (Cayuga County)<br>Recusal – Ms. Hines<br>Recusal – Mr. Robinson | Contingent Approval |
|----|----------|---|---------------------|

Ms. Hines and Mr. Robinson remained outside the meeting room. Dr. Streck described application 102080 and motioned for approval which was seconded by Dr. Gutierrez. The motion to approve carried with Ms. Hines and Mr. Robinson’s recusal. Ms. Hines and Mr. Robinson re-entered the meeting room. Refer to pages 131 and 132 of the attached transcript.

- |    |          |  |                     |
|----|----------|--|---------------------|
| 5. | 102408 E | PTS of Westchester, Inc. (Westchester County)<br>Interest – Mr. Fassler<br>Interest – Ms. Regan<br>Interest – Dr. Torres | Contingent Approval |
| 6. | 102409 E | Personal Touch Home Aides of New York, Inc. (Kings County)<br>Interest – Mr. Fassler<br>Interest – Ms. Regan             | Contingent Approval |

**HOME HEALTH AGENCY LICENSURES**

**Exhibit #18**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
1880L	ACS Home Care, LLC (Nassau, Queens, Suffolk, Westchester, Bronx, Kings, and New York Counties) Interest – Ms. Regan	Contingent Approval
1866L	Bells Homecare, Inc. (Bronx, Queens, Kings, Richmond, Nassau, and New York Counties) Interest – Ms. Regan	Contingent Approval
1955L	Centurion Enterprises, LLC (Westchester County) Interest – Ms. Regan	Contingent Approval

1659L	Courtesy Care, LLC (Bronx, Richmond, Kings, Westchester, Queens and New York Counties) Interest – Ms. Regan	Contingent Approval
1873L	Good Care Agency, Inc. (Bronx, Queens, Kings, Richmond, Nassau and New York Counties) Interest – Ms. Regan	Contingent Approval
1893L	Aquinas, LLC d/b/a Senior Helpers (New York, Richmond, Bronx, Westchester, Kings, and Queens Counties) Interest – Ms. Regan	Contingent Approval
1890L	SIY Home Care, LLC (Kings, New York and Richmond Counties) Interest – Ms. Regan	Contingent Approval
1888L	Senior Care HHA, Inc. (Nassau and Suffolk Counties) Interest – Ms. Regan	Contingent Approval
1902L	Silvervine Homecare Services (Bronx, Queens, Kings, Richmond, Nassau and New York Counties) Interest – Ms. Regan	Contingent Approval
1913L	A&B Enterprises of Long Island, Inc. (Nassau and Queens Counties) Interest – Ms. Regan	Contingent Approval
1912L	Allegiant Home Care, LLC (Bronx, Queens, Kings, Richmond, Nassau and New York Counties) Interest – Ms. Regan	Contingent Approval

1842L	Allpro Home and Health Care Services (Bronx, Richmond, Kings, Westchester, New York and Queens Counties) Interest – Ms. Regan	Contingent Approval
1683L	Coram Healthcare Corporation of Greater New York (See exhibit for counties served) Interest – Ms. Regan	Contingent Approval
1843L	Critical Care Nursing Agency, LLC d/b/a Akshar Nursing Agency (Nassau, Suffolk and Queens Counties) Interest – Ms. Regan	Contingent Approval
1381L	Cudley’s Home Care Services, Inc. (Bronx, Queens, Kings, Richmond, Nassau and New York Counties) Interest – Ms. Regan Interest – Dr. Torres	Contingent Approval
1949L	Personal Touch Home Care of Long Island, Inc. (Nassau, Suffolk and Queens Counties) Interest – Mr. Fassler Interest – Ms. Regan	Contingent Approval
1950L	Personal Touch Home Care of Westchester, Inc. (Putnam, Rockland, Westchester and Bronx Counties) Interest – Mr. Fassler Interest – Ms. Regan	Contingent Approval

1951L	Personal Touch Home Care, Inc. (Bronx, Richmond, Kings, New York, and Queens Counties) Interest – Mr. Fassler Interest – Ms. Regan	Contingent Approval
1914L	Premier Home Health Care Services, Inc. (Nassau, Suffolk and Queens Counties) Interest – Mr. Fassler Interest – Ms. Regan Interest – Dr. Torres	Contingent Approval
1915L	Priority Home Care, Inc. (Bronx, Richmond, Kings, New York and Queens Counties) Interest – Mr. Fassler Interest – Ms. Regan Interest – Dr. Torres	Contingent Approval
1985L	Sterling Glen Care at Home, LLC d/b/a Sterling Glen Care at Home (Nassau, Suffolk, Westchester and Queens Counties) Interest – Ms. Regan	Contingent Approval
1960L	Living Life Home Care, Inc. d/b/a Comfort Keepers #512 (Westchester, Dutchess, Bronx and Putnam Counties) Interest – Ms. Regan	Contingent Approval
1672L	Bryan Skilled Home Care, Inc. (Nassau, Suffolk and Queens Counties) Interest – Ms. Regan	Contingent Approval

Mr. Robinson described application 102408, 102409, and home health agency licensure application 1880, 1866, 1955, 1659, 1873, 1893, 1890, 1888, 1902, 1913, 1912, 1842, 1683, 1843, 1381, 1949, 1950, 1951, 1914, 1915, 1985, 1960, and 1672 and motioned for approval which was seconded by Dr. Gutierrez. The motion to approve carried with the noted interest by Mr. Fassler, Ms. Regan and Dr. Torres. Please see pages 132 through 134 of the attached transcript.

**HOME HEALTH AGENCY LICENSURES**

**Exhibit #18**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
1840L	Heartland Homecare Agency, Inc. (Bronx, Richmond, Kings, Westchester, New York and Queens Counties) Recusal – Mr. Fensterman Interest – Ms. Regan	Contingent Approval
1782L	I & Y Senior Care, Inc. (Bronx, Richmond, Kings, Nassau, New York and Queens Counties) Recusal – Mr. Fensterman Interest – Ms. Regan	Contingent Approval

Mr. Fensterman exited the meeting room and declared a conflict on application 1840 and 1782. Mr. Robinson motioned for approval which was seconded by Dr. Berliner. The motion to approve carried with Mr. Fensterman’s recusal and Ms. Regan’s noted interest. Please see page 134 of the attached transcript.

**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

**NO APPLICATIONS**

**ADJOURNMENT:**

Dr. Streck adjourned the meeting.



August 4, 2011 Minutes

To be sent under separate cover

## Public Health and Health Planning Council

### 2012 Meeting Dates

<b>PHHPC Mailing Date</b>	<b>PHHPC Committee Meeting Dates</b>	<b>PHHPC Full Council Meeting Dates</b>	<b>PHHPC Meeting Location</b>
<b>01/12/12</b>	<b>01/19/12</b>	<b>02/02/12</b>	<b>NYC</b>
<b>03/15/12</b>	<b>03/22/12</b>	<b>04/05/12</b>	<b>Albany</b>
<b>05/17/12</b>	<b>05/24/12</b>	<b>06/07/12</b>	<b>NYC</b>
<b>07/19/12</b>	<b>07/26/12</b>	<b>08/09/12</b>	<b>Albany</b>
<b>09/13/12</b>	<b>09/20/12</b>	<b>10/11/12</b>	<b>NYC</b>
<b>11/08/12</b>	<b>11/15/12</b>	<b>12/06/12</b>	<b>Albany</b>

PHHPC meetings begin @ 10:00 a.m.

Albany, Empire State Plaza, Concourse Level Meeting Room 6  
NYC Location = 90 Church Street, Meeting Rooms A/B, 4<sup>th</sup> Floor, New York, NY

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

**October 6, 2011**

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**A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES**

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

**CON Applications**

**Acute Care Service – Construction**

**Exhibit #3**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	111284 C	Memorial Hospital for Cancer and Allied Diseases (Westchester County)	Contingent Approval

**Residential Health Care Facilities Ventilator Beds – Construction**

**Exhibit #4**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	071126 C	Wayne Center for Nursing & Rehabilitation, LLC (Bronx County)	Contingent Approval
2.	091039 C	Palm Gardens Care Center, LLC d/b/a Palm Gardens Center for Nursing and Rehabilitation (Kings County)	Contingent Approval
3.	092131 C	Silvercrest Center for Nursing and Rehabilitation (Queens County)	Contingent Approval
4.	101087 C	Flushing Manor Geriatric Center, Inc. d/b/a Dr. William O. Benenson Rehab Pavilion (Queens County)	Contingent Approval



# Public Health and Health Planning Council

## Project # 111284-C Memorial Hospital for Cancer and Allied Diseases

**County:** Westchester (Harrison)  
**Purpose:** Construction

**Program:** Acute Care Services  
**Submitted:** February 1, 2011

### Executive Summary

#### Description

Memorial Hospital for Cancer and Allied Diseases (Memorial Hospital), a 514-bed not-for-profit hospital located at 1275 York Avenue, New York, requests approval to certify and construct an extension clinic to be located at 500 Westchester Avenue, Harrison, to be known as MSK Harrison. The proposed MSK Harrison site plans to offer the following services:

- Comprehensive ambulatory oncology services to include: medical, neurologic, and radiation oncology (including 2 linear accelerators), comprehensive diagnostic radiology, surgical oncology consultations, dermatology (including Mohs surgery), genetic counseling, high-risk cancer screening and surveillance, survivorship programs, social work, nutrition, and other support services;
- Imaging technology which would include interventional radiology, utilizing leading-edge technology;
- Chemotherapy treatments delivered in a supportive environment by disease-focused care teams.

Memorial Hospital is a teaching hospital affiliated with Joan and Sanford I. Weill Medical College of Cornell University, and a member of the Memorial Sloan-Kettering Cancer Center (MSKCC) hospital system. MSKCC is a designated "Comprehensive Cancer Center" by the National Cancer Institute, one of 40 in the nation.

Total project costs are estimated at \$142,626,869.

DOH Recommendation  
Contingent approval.

#### Need Summary

MSK Harrison will be part of the MSKCC Regional Care Network (MSK Network). The MSK Network brings outpatient cancer care to communities outside of New

York City, as an alternative for patients who would otherwise need to travel into Manhattan for their care.

The new center will be easily accessible from major highways (I-684 and I-287) and public transportation, making it more convenient to those living in Westchester, Putnam, Dutchess, Orange, and Rockland counties, as well as Fairfield, Connecticut.

#### Program Summary

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

#### Financial Summary

Project costs will be funded with \$38,981,869 in equity and \$103,645,000 in DASNY tax-exempt bonds. Goldman Sachs has started the preliminary work for the financing, and it is anticipated the bonds will be repaid over 25 years at 6% interest.

Incremental Budget:	<i>Revenues:</i>	\$ 67,265,000
	<i>Expenses:</i>	<u>60,119,000</u>
	<i>Gain/(Loss):</i>	\$ 7,146,000

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

#### Architectural Summary

This project will consist of 15,130 SF of new construction, 81,370 SF renovation of an existing 99,000 SF two-story facility, and 17,650 SF of unassigned shell space remaining. The first and second floors of the building will each be approximately 57,000 SF in area. The two-story facility at project completion will consist of approximately 114,000 SF, including unassigned shell space.

## 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 acceptable to the Department of Health. [BFA]
3. Submission of an appraisal on the purchased land and building performed by a member of the Member Appraisal Institute (MAI) acceptable to the Department of Health. [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 June 1, 2016. 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

**October 6, 2011.**

## Need Analysis

### Background

Memorial Hospital for Cancer and Allied Diseases (Memorial) is a 514-bed acute care hospital located at 1275 York Avenue, New York. Memorial is the clinical division of Memorial Sloan Kettering Cancer Center (MSKCC). The applicant seeks CON approval to certify an extension clinic in Harrison New York to serve its oncology patients from the Hudson Valley Region and Fairfield County Connecticut.

<b><u>Memorial Hospital for Cancer and Allied Services</u></b>	
<b><u>Certified Beds by Service</u></b>	
<b><u>Bed Category</u></b>	<b><u>Current Capacity</u></b>
Intensive Care	20
Medical / Surgical	457
Pediatric	37
Total	514

<b><u>Memorial Hospital for Cancer and Allied Services</u></b>	
<b><u>Certified Services</u></b>	
Ambulatory Surgery - Multi Specialty	Audiology O/P
Clinical Laboratory Service	Coronary Care
CT Scanner	Dental O/P
Intensive Care	Linear Accelerator
Magnetic Resonance Imaging	Medical Social Services
Medical/Surgical	Nuclear Medicine - Diagnostic
Nuclear Medicine – Therapeutic	Pediatric
Pharmaceutical Service	Primary Medical Care O/P
Radiology – Diagnostic	Radiology-Theapeutic
Renal Dialysis – Acute	Therapy - Occupational O/P
Therapy - Physical O/P	Therapy - Speech Language Pathology
Transplant - Bone Marrow	

Memorial is authorized to operate 13 extension clinics in Kings, New York, Nassau, Suffolk and Westchester counties. These clinics provide outpatient services such as Diagnostic Radiology, Medical Social Services, Nursing, Pharmaceutical, Primary Medical Care, Psychology, Nutritional, Clinical Laboratory, CT Scanner, Magnetic Resonance Imaging, Physical Medicine and Rehabilitation, and Linear Accelerator.

Services to be provided at the MSKCC-Harrison site are:

- CT Scanner;
- Linear Accelerator;
- Magnetic Resonance Imaging;
- Medical Social Services;
- Nuclear Medicine – Diagnostic;
- Nuclear Medicine – Therapeutic;
- Nutritional;
- Pet Scanner;
- Pharmaceutical Service;
- Physical Medical Rehabilitation;
- Primary Medical Care O/P;
- Radiology – Diagnostic; and
- Therapy - Physical.

MSK Harrison will be open Monday through Friday from 7am to 7pm, and patient care services will be delivered between 8am and 6pm.

The facility states that most cancer care is delivered in the ambulatory setting with treatment typically requiring many visits over an extended period of time. The facility has embraced a commitment to reduce hardship, discomfort and cost of travel experienced by cancer patients. Based on SPARCS inpatient data, almost two-thirds of Memorial's inpatients live outside the five boroughs of New York City. Thus, MSKCC developed its Regional Care Network of facilities to serve its out-of-area clients. These sites were developed as an alternative for patients who would otherwise travel into Manhattan for their outpatient cancer services.

The proposed facility in Harrison will allow Memorial's patients to receive their outpatient cancer care closer to home. This facility will expand the scope and capacity of clinical services offered in the MSKCC Network based on the existing needs of Memorial's patients.

The site is located at the highway crossroads of the catchment area; it is also convenient to major highways, expressways and parkways as well as to the Westchester County Bee-Line bus service. The bus service connects to the Metro North and subway system and stops at the proposed site. The proximity to the aforementioned will enhance and improve access to care for Memorial's patients living in the catchment area but traveled to Manhattan for outpatient cancer services.

The proposed facility will offer a range of cancer care services, including the following:

- Full-time MSKCC Medical Oncologists and collaborating Nurse Practitioners working in disease-focused teams;
- Chemotherapy infusion for MSKCC Harrison patients as well as appropriate MSKCC-Manhattan patients to minimize travel into Manhattan;
- Radiation Therapy, including a CT-Simulator and two linear accelerators with image guided, stereotactic and intensity modulated treatment capabilities. This technology will be supported on site by MSKCC radiation oncologists, physicists, dosimetrists and therapists;
- MSKCC Neuro Oncologist to provide consultations and treatment for patients with primary brain tumors as well as consultations for established Memorial patients with neurological symptoms; and
- MSKCC Surgical oncologists and their care team to provide consultations and peri-operative assessments and care to patients with breast, urologic, gynecologic, head and neck, and thoracic cancers.

#### Analysis

Memorial defined its catchment area of interest as six counties, five in the Hudson Valley Region, and Fairfield County in Connecticut. In 2000, the census counts for the catchment area stood at 2,810,056; by 2010, the region grew by 4.9 percent to 2,947,640.

<b><u>Memorial Hospital for Cancer and Allied Services</u></b>				
<b><u>Catchment Area Population.</u></b>				
<u>State</u>	<u>County</u>	<u>2000</u>	<u>2010</u>	<u>% Change</u> <u>00 vs. 10</u>
Connecticut	Fairfield	882,567	916,829	3.9
New York	Dutchess	280,153	297,488	6.2
	Orange	341,371	372,813	9.2
	Putnam	95,745	99,710	4.1
	Rockland	286,761	311,687	8.7
	Westchester	<u>923,459</u>	<u>949,113</u>	<u>2.8</u>
	Total	2,810,056	2,947,640	4.9

Source: Census 2000 and 2010

During 2003 – 2007, the total new annual average cancer cases diagnosed in Connecticut and New York State were 19,297 and 99,530, respectively. Of these two states' cancer cases, 12.9 percent resided in the proposed catchment area.

**Average Annual Cancer Cases by County**  
**Source: National Cancer Institute, 2003 - 2007.**

<u>County/State</u>	<u>Cases</u>
Fairfield Connecticut	4,957
New York Counties:	
Dutchess	1,462
Orange	1,696
Putnam	525
Rockland	1,546
Westchester	<u>5,181</u>
Total	15,367
New York State	99,530
Connecticut	19,297

Memorial Hospital for Cancer and Allied Services has 514 total inpatient beds. In 2006, the hospital recorded 21,021 total inpatient discharges; by 2010, these discharges increased by 15.5 percent to 24,282.

**Memorial Hospital for Cancer and Allied Services**  
**Distribution of Total Inpatient Discharges.**

<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
21,021	21,725	22,529	23,303	24,282

*Source: SPARCS, 2006 – 2010\*.  
Reporting for 2010 is incomplete.*

In 2006, Memorial provided inpatient care for 1,985 residents from the Hudson Valley catchment area; by 2010, its discharges from this region increased by 11.8 percent, to 2,220. During the same period, inpatient discharges at Memorial with valid Connecticut zip codes increased by 3.9 percent from 763 in 2006 to 793 in 2010 (Table 6).

**Memorial Hospital for Cancer and Allied Services**  
**Inpatient Discharges from Catchment Area.**  
*Source: SPARCS 2006 – 2010.*

<u>County/State</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Dutchess	10	11	12	22	35
Orange	307	319	319	362	372
Putnam	137	125	105	91	105
Rockland	348	354	387	397	478
Westchester	1,183	1,211	1,141	1,153	1,230
Subtotal	<u>1,985</u>	<u>2,020</u>	<u>1,964</u>	<u>2,025</u>	<u>2,220</u>
Connecticut	<u>763</u>	<u>702</u>	<u>750</u>	<u>774</u>	<u>793</u>
Total	2,748	2,722	2,714	2,799	3,013

Memorial provides many outpatient services that are well utilized; for example, in 2005 the facility recorded 42,411 amb/surg procedures, 373,262 clinic visits and 72,539 chemotherapy visits. In 2009, statistics for these services increased 42.6 percent (60,483 amb/surg procedures), 27.9 percent (clinic visits) and 39.7 percent (chemotherapy visits), respectively.

Based on its inpatient utilization from the catchment area, Memorial expects to generate 32,554 total visits during its first year of operation and 55,077 by year three. These visits include services for Magnetic Resonance Imaging,



Nuclear Medicine (Diagnostic and Therapeutic), Primary Medical Care, Radiology (Diagnostic and Therapeutic) and Chemotherapy.

Visit volume projections for the Harrison site resulted from a multi-step process that took into account the incidence of cancer in the defined catchment area and MSK’s historical experience in the greater New York market. The process then projects volume growth into future years as incidence would increase with the aging of the population, along with a slight increase in MSK market share.

The catchment area for the proposed facility consists of Westchester, Putnam, Dutchess, Rockland and Orange Counties in New York and Fairfield County, Connecticut. The following table describes for the year 2010 the incidence of new cancers in each of those counties along with MSK’s market share of newly active patients, whom we refer to as Initial Active Patients or “IAPs”, for 2010.

	<b>Mkt Share (2010)</b>	<b>2010</b>	
		<b>Incidence</b>	<b>IAPs</b>
Dutchess	8.5%	1,816	155
Orange	12.3%	2,001	247
Putnam	14.5%	601	87
Rockland	16.0%	1,755	280
Westchester	14.1%	5,944	839
<i>Subtotal (NY Only)</i>		<i>12,117</i>	<i>1,608</i>
Fairfield (CT)	5.7%	6,317	358
<i>Total</i>		<i>18,434</i>	<i>1,966</i>

While this table represents market shares by county for patients who came to MSKCC, those patients were treated predominantly in Manhattan. Therefore, an additional analysis was needed to project the number of patients who would be treated at the new outpatient center in Harrison.

Market share for the Harrison site was estimated based largely on MSK’s experience with establishing new outpatient centers at Commack on Long Island and Basking Ridge, in northern New Jersey. As with the Harrison catchment area, these two geographic areas also serve populations of approximately 3 million people and contain other cancer care providers. As with the Harrison site, Commack and Basking Ridge are located near major highway intersections for easy access and lie within 35 miles of the MSK Manhattan campus. A more detailed analysis was performed on Westchester County, in which the location, population and current MSK market share of each zip code was considered. Only the western portion of Fairfield County was included in making the projections, as opposed to the whole county. Here are the resulting market shares and “IAPs” for each county for the year 2015:

	<b>2015</b>		
	<b>Incidence</b>	<b>Share</b>	<b>IAPs</b>
Westchester	6138	4.2%	257
Rockland	1847	0.5%	9
Putnam	664	3.0%	20
Orange	2213	0.5%	11
Dutchess	1949	1.0%	19
<i>Subtotal, NY counties only</i>	<i>12810</i>	<i>2.5%</i>	<i>317</i>
Fairfield (CT)	4229	1.5%	63
<i>Total, including Fairfield</i>	<i>17039</i>	<i>2.2%</i>	<i>380</i>

For the medical oncology projections, additional factors were then applied, including the historical ratio of medical oncologist office visits per IAP and number of visits a mature MSK practice can serve as well as the physical constraints of the building. Visit volumes for Neuro-oncology, dermatology and surgical oncology were based on experience at Commack and Basking Ridge where these services are now offered. Finally, it was assumed that these new practices would ramp up in the early years and then begin to level off. The Harrison facility and services plan calls for opening with 4 medical oncologists in 2015 and increasing to a maximum of 6. Here are the projected visits by subspecialty for the first year, the third year and after the 11<sup>th</sup> year.

	<b>Year 1</b>	<b>Year 3</b>	<b>Year 11</b>
	(2015)	(2017)	(2025)
Medical Oncology	5,861	11,871	14,865
Neuro-Oncology	600	1,000	1,377
Dermatology	4,300	5,350	9,000
Surgical Oncology*	3,000	6,000	6,000
<b>Total</b>	<b>13,761</b>	<b>24,221</b>	<b>31,242</b>

*\*Pre and post operative visits, with surgery to take place in a hospital setting.*

Detailed tables of the projections for 2015, 2017 and 2025 are contained in BHFP Attachment 1.

As noted on page 6, MSK projects 32,554 total visits for all services in Year One and 55,077 visits in Year Three.

#### 709.16 Radiation Oncology Need Methodology

Because the proposed facility will operate two linear accelerators, the need for these devices must be evaluated under 10 NYCRR Section 709.16. The factors for determining the public need for megavoltage (MEV) devices used in therapeutic radiology shall include, but not be limited to, the following:

- 1) No equipment other than four or more MEV or cobalt teletherapy units with a source axis distance of 80 or more centimeters and rotational capabilities will be considered appropriate as the primary unit in a multi-unit radiotherapy service or as the sole unit in a smaller radiotherapeutic unit.
- 2) Ninety-five percent of the total population of each health region is within a one-hour mean travel time, adjusted for weather conditions, of a facility providing therapeutic radiology services.
- 3) The expected volume of utilization sufficient to support the need for an MEV machine shall be calculated as follows:
  - i. Each applicant and MEV machine shall provide a minimum of 5,000 treatments per year and have the capacity to provide 6,500 treatments per year. These volumes may be adjusted for the expected case-mix of a specific facility.
  - ii. Sixty percent of the annual incidence of cancer cases in a service area will be candidates for radiation therapy.
  - iii. Fifty percent of radiation therapy patients will be treated for cure with an average course of treatment of 35 treatments and fifty percent of patients will be treated for palliation with an average course of treatment of 15 treatments. These estimates may be adjusted based on the case-mix of a specific facility.

#### Radiation Oncology Need — Westchester County

1. Number of cancer cases per year = 5,054.4
2. 60% will be candidates for radiation therapy = 3,032.6
3. 50% of(2) will be curative patients = 1,516.3
4. 50% of(2) will be palliative patients = 1,516.3
5. The course of treatment for curative patients is 35 treatments = 53,071
6. The course of treatment for palliative patients is 15 treatments = 22,745

- 7. The total number of treatments = 75,816
- 8. Each MEV machine has a capacity for 6,500 treatments = 12

<b><u>Need for Linear Accelerators</u></b>	
<b><u>Westchester County</u></b>	
Existing & Approved Resource	8
Remaining Need	4
<b>Total</b>	<b>12</b>

<b><u>Existing and Approved Resources</u></b>		
<b><u>Westchester County</u></b>		
<i>Facility</i>	<i>Equipment</i>	<i>2008 Utilization</i>
Northern Westchester Hospital	1 linac	8,235
St. John's Riverside Hospital	1 cobalt unit	-
White Plains Hospital	1 linac	12,123
Westchester Medical Center	2 linacs	18,353
Sloan-Kettering at Phelps Memorial	2 linacs	-
Hudson Valley Hospital Center	<u>1 linac</u>	<u>(approved 6/07)</u>
<b>Total</b>		<b>38,711</b>

**Conclusion**

During the ten years between census periods, the population in the catchment area increased by 4.9 percent from 2,810,056 in 2000 to 2,947,640 in 2010. In the catchment area, the average annual cancer cases were 12.9 percent of the total cases diagnosed in New York State and Connecticut.

The number of inpatient discharged by Memorial from the catchment area increased by 9.6 percent from 2,748 in 2006 to 3,013 in 2010. This current market share, along with the projected incidence of cancer cases in the region through 2025, warrants the approval of the proposed MSK Harrison facility.

As part of CON #111284, Memorial Hospital for Cancer and Allied Services also requests approval to acquire two new linear accelerators. Based on the 709.16 need methodology for linear accelerators, there is a remaining need for four linear accelerators in Westchester County. This proposal will help to meet the need for the aforementioned service.

**Recommendation**

**From a need perspective, approval is recommended.**

**Programmatic Analysis**

**Staffing**

Memorial Hospital for Cancer and Allied Diseases, a 514 bed hospital in Manhattan, requests approval to construct a cancer care extension clinic at 500 Westchester Avenue, Harrison, Westchester County.

Staffing will consist of 138.9 FTEs including physicians, registered nurses and technicians. Staffing is expected to increase to 154.8. Licensed services will include Diagnostic Radiology, Diagnostic Nuclear Medicine, Primary Care, Medical Social Services, Nutritional Services, Physical Therapy, and Pharmaceutical Services.

**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.

Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

### Total Project Cost and Financing

Total project cost for new construction, renovation, and equipment is estimated at \$142,626,869, itemized as follows:

Land Acquisition	\$1,800,000
Building Acquisition	7,500,000
New Construction	14,643,445
Renovation & Demolition	50,900,815
Site Development	262,150
Temporary Utilities	235,400
Asbestos Abatement and Removal	1,051,896
Design Contingency	2,516,803
Construction Contingency	1,436,373
Planning Consultant Fees	706,200
Architect/Engineering Fees	5,400,453
Construction Manager Fees	1,679,900
Other Fees (Consultant)	5,906,400
Movable Equipment	30,572,473
Telecommunications	4,276,790
Financing Costs	518,225
Interim Interest Expense	12,437,400
Con Application Fee	2,000
Additional CON Processing Fee	<u>780,146</u>
Total Project Cost	<u>\$142,626,869</u>

Total costs are based on a March 2012 start date with a twenty-six month construction period.

The applicant's financing plan appears as follows:

Equity	\$38,981,869
Tax-exempt DASNY bonds (25 year term @ 6%)	<u>103,645,000</u>
Total	\$142,626,869

Memorial Hospital, which is an Article 28 affiliate of Memorial Sloan-Kettering Cancer Center (MSKCC), and other affiliated corporations have an 'AA' credit rating, which was verified by the Department. If for any reason the bond market cannot be accessed, Memorial Sloan Kettering Cancer Center will loan Memorial Hospital the funds needed to complete the entire project. If this is the case and MSKCC does provide the funding, then Memorial Hospital's terms with MSKCC would be the same as previously stated to the Department of Health. Memorial Hospital is only obligated to pay its inter-corporate loan with MSKCC in the event they generate positive cash flow over the course of any year. Memorial Hospital's payment would be the amount of the excess cash flow. The loan is unsecured, without interest, and has no specific term or final due date. Presented as Attachment A is Memorial Sloan-Kettering Cancer Center and Affiliated Corporations' 2010 Certified Financial Summary that shows over \$3.2 billion in cash, cash equivalents and investments.

According to the applicant, the proposed site at 500 Westchester Avenue in Harrison, NY, was purchased in 2009 at a cost of \$9.3 million. The property consists of 8.2 acres of land that has been given a value of \$1.8 million and the existing 99,000 square foot building that has been given a value of \$7.5 million. The original building is comprised of two connected structures; a two-story concrete frame structure and a two-story steel frame structure. The concrete structure will be gutted and totally renovated to become part of the outpatient cancer center. The steel structure will be minimally improved for storage use.

### Operating Budget

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

	<u>First Year</u>	<u>Third Year</u>
Revenues-Outpatient:	\$30,600,000	\$55,450,000
Other Operating Income (A)	<u>7,582,000</u>	<u>11,815,000</u>
Total Revenues	\$38,182,000	\$67,265,000
Expenses:		
Operating	\$33,814,000	\$46,274,000
Capital	<u>14,079,000</u>	<u>13,845,000</u>
Total Expenses	\$47,893,000	\$60,119,000
 Excess Revenue over Expenses	 <u>(\$9,711,000)</u>	 <u>\$ 7,146,000</u>
 Utilization: (Visits)	 32,554	 55,077
Cost per Visit	\$1,471.19	\$1,091.54

(A) Other Revenues are from Retail Pharmacy sales and Medical Practice revenues. It is estimated that the retail pharmacy sales and Medical Practice revenues will amount to \$1,161,000 and \$6,421,000 in the first year, respectively, and \$1,354,000 and \$10,461,000 in the third year, respectively.

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

	<u>Outpatient</u>
Medicaid Fee -For-Service	3.49%
Medicaid Managed Care	.03%
Medicare Fee-for-Service	36.51%
Medicare Managed Care	.28%
Commercial Fee-For-Service	5.28%
Commercial Manage Care	52.36%
Private & All Other	1.63%
Charity	.42%

Expenses are based upon historical experience in operating similar facilities: adjusted volume, investment, and rising costs. Utilization assumptions are based on historical patterns for the services being provided. MSK Harrison expects 32,554 visits in the first year, or an increase of 3.27% over 2009 data, and 55,077 visits are expected by the third year. According to the applicant in 2009, 9.2% of Memorial Hospital's new cases resided in the six NY and CT counties

making up MSK Harrison catchment area: Westchester, Putnam, Dutchess, Orange, and Rockland Counties in NY and Fairfield, CT.

Memorial Sloan-Kettering Cancer Center has provided a copy of their Financial Assistance Program which discusses how the program assists the uninsured and underinsured patients with a household income up to five times the federal poverty level obtain free and reduced cost care. Memorial Hospital accepts patients regardless of ability to pay and, while it currently does not have a contract with Medicaid Managed Care Plans, it has a process which they go through for securing authorization from Medicaid Managed Care Plans for care provided to enrollees.

The hospital has provided 2009 information showing that in New York State the Medicaid patients are hospitalized for cancer care at less than half the rate of the general population. During 2009, 1% of NYS general population was hospitalized for cancer, and during the same period, .39% of NYS Medicaid population was hospitalized for cancer care. The percentage of Medicaid hospitalization is consistent with the applicant's utilization.

#### Capability and Feasibility

Total project cost of \$142,626,869 will be funded as follows: \$38,981,869 in equity from Memorial Hospital, and \$103,645,000 in tax-exempt bonds at the above stated terms.

Presented as Attachment A and B is Memorial-Sloan-Kettering Cancer Center and Affiliated Corporations' 2009 and 2010 certified financial summary and Memorial Hospital for Cancer and Allied Diseases' historical & projected financial summary for 2009 through 2017, which indicates the availability of sufficient resources for this project.

Working capital requirements are estimated at \$10,019,833, which appear reasonable based on two months of third year budgeted expenses.

Presented as Attachment C is Memorial Hospital for Cancer and Allied Diseases' historical & projected cash flow for 2009 through 2017, which indicates working capital requirements can be met from operations.

The first year incremental budget projects a \$9,711,000 loss and by the third year, the facility is forecasted to generate a \$7,146,000 profit. Review of Attachment B, Memorial Hospital for Cancer and Allied Diseases' historical & projected financial summary for 2009 through 2017, shows Memorial Hospital will have a net income of \$88,866,000 after they absorb the year one loss. Revenues are based on prevailing reimbursement methodologies and current rate schedules. The budget appears reasonable.

As shown on BFA Attachment A, Memorial-Sloan-Kettering Cancer Center and Affiliated Corporations had positive working capital and net asset positions during the period shown. Also, the facility's unrestricted assets increased by \$202,310,000 and \$411,929,000 during 2010 and 2009, respectively.

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

Memorial Hospital for Cancer and Allied Diseases is requesting approval to create a new outpatient diagnostic and treatment center for cancer in Harrison, New York to better serve patients living in the Hudson Valley and nearby Connecticut.

The new facility will include the following medical and radiation oncology services:

- Radiology (14,633 SF)

The Radiology program will consist of an MRI Scanner, Diagnostic CT scanner, PET/CT Scanner, 2 Digital Mammography Units, Ultrasound, Stereotactic Breast Biopsy Unit, DEXA Scanner, General Radiography Unit.

- Radiation Oncology (17,838 SF)

Radiation Oncology will include 2 linear accelerator vaults, CT simulator, 11 exam consultation rooms, 8 offices for Radiation Oncology and Medical Physics faculty and a team workroom.

- Dermatology and Mohs Surgery (5,568 SF)

Dermatology and Mohs Surgery will include 7 exam consultation rooms, 3 offices, 5 treatment rooms, laboratory and 2 team workrooms. Dermatology and Mohs Surgery will operate in a suite model and will require a special room for whole body photography, consult room, small education room, small work room, Mohs procedure rooms, laser room, and a Mohs histopathology laboratory. The Mohs practice will also require separate waiting space for patients once Mohs procedures have begun. This waiting space will be equipped with a television and will be in close proximity to the work space to facilitate observation and monitoring of patients by the RN staff. Physician offices will be located nearby the practice suite.

- IR Procedure Area (2,598 SF)

The IR Area will include a one-room procedure area with a portable C-Arm fluoroscopy unit to be used for low risk Interventional Radiology procedures.

- Medical Oncology (11,988 SF)

The Medical Oncology, Neuro Oncology and the Medical Subspecialty practices will operate in shared space in the facility. Medical Oncology teams will function in clinical practice suites consisting of 27 consultation exam rooms, 8 offices and 4 team workrooms.

- Phlebotomy/Infusion (12,309 SF)

The Chemotherapy Infusion suite will be located adjacent to the Medical Oncology suite. The suite will be organized with 29 individual chemotherapy infusion spaces around the perimeter to provide exterior views and natural light.

- Surgical Oncology (5,058 SF)

The surgical oncology suite will include 2 minor procedure rooms for urologic oncology, gynecologic oncology and head and neck patients. This area will also contain consultation and exam rooms.

- Laboratory/Pharmacy (3,498 SF)

The Pharmacy will be centrally located within the chemotherapy infusion suite for ease of access by nurses. All compounded sterile preparations (CSP) will be prepared in a USP 797 compliant clean room environment utilizing strict aseptic techniques while following applicable OSHA guidelines. Separate space for the storage and handling of investigational drugs will also be provided.

- Lymphedema Therapy (722 SF)

A lymphedema practice with two therapists will be located adjacent to the surgical oncology practice. The practice will include 2 large exam rooms with special tables instead of traditional exam tables and sufficient locking cabinetry for dedicated supplies.

- Public Support (6,220 SF)

Patients will arrive by car at the east side of the building for drop off under a canopy. The main entrance will be located on the upper of the two clinical levels. A Media Center for community meetings and public and provider educational

events will be located inside the front vestibule for the convenience of after-hours community education programs. Patient Resource areas will be located near the waiting areas. Each will have computers, shelving for books and educational materials, small tables and comfortable chairs.

- Administration (5,412 SF)

Administrative office and support spaces will include managerial offices, mail and telephone answering services. A staff lounge will also be provided.

- Environmental Building Maintenance (4,663 SF)

Spaces for housekeeping, storage, waste holding, soiled holding, linens, and other general building supplies will be provided adjacent to the loading dock on the south side of the first floor.

- Basement (5,000 SF)

The basement area will include mechanical space 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 Westchester or the authority having jurisdiction.

#### Recommendation

**From an architectural perspective, approval is recommended.**

## Attachments

BHFP Attachment 1	MSK Harrison – Projected Incidence and Market Share by County and Service
BHFP Attachment 2	Map
BFA Attachment A	Financial Summary for 2010 and 2009, Memorial Sloan-Kettering Cancer Center and Affiliated Corporations
BFA Attachment B	Historical & Project Financial Summary 2009 -2017, Memorial Hospital for Cancer and Allied Diseases
BFA Attachment C	Historical & Project Statement of Cash Flows 2009 -2017, Memorial Hospital for Cancer and Allied Diseases



## MEMORANDUM

**TO:** Members of the Public Health and Health Planning Council  
Establishment and Project Review Committee

**FROM:** Charles P. Abel  
Assistant Director  
DHFP

**DATE:** September 15, 2011

**SUBJECT:** NYC Ventilator Bed Solicitation – Recommendations for Approval

Based on the methodology in Section 709.17 of Title 10, the need for an additional 109 nursing home ventilator beds (“vent beds”) was identified for the planning area consisting of the five boroughs of New York City. In order to meet that need, the Department determined that the 19 vent bed CON applications currently active would be reviewed on a competitive basis. All 19 applicants were sent solicitation letters requesting updated financial and other information, to be submitted to the Department by July 6, 2011.

Applicants were further permitted to submit questions to the Department to seek additional clarification regarding the review process. The Department’s answers were provided to all applicants prior to the submission deadline, to ensure that consistent information was available to all applicants.

Of the 19 applicants sent solicitation letters, two failed to respond with updated information, and two formally withdrew their applications. This left 15 applications to be considered.

The 15 updated applications were then reviewed competitively by the Department. The factors for which each facility’s ventilator program was reviewed included:

- surveillance and enforcement history;
- availability of an emergency generator for ventilator support;
- affiliations and transfer agreements with area hospitals;
- the facility’s staffing plan for ventilator-dependent care;
- the presence of an acceptable weaning program for ventilator patients;
- the physical environment standards contained in Section 713-4.5;

- experience operating a ventilator unit with beds in a discrete space, versus “scattered” throughout the facility in non-contiguous areas;
- occupancy rate of the facility’s ventilator beds;
- ability of the facility to serve hard-to-place ventilator- dependent patients, such as those requiring renal dialysis or bariatric services;
- a comprehensive program to reduce re-hospitalizations for ventilator patients;
- in-house clinical laboratory services;
- in-house radiology services;
- in-house pharmacy;
- presence of a step-down unit adjacent to a certified ventilator unit;
- geographic location central to the target population; and
- cost of ventilator operations.

From this review, applicants were ranked within the group of 15 based on how well their individual proposals addressed each of the aforementioned criteria. The top seven ranked applications have requested a total of 109 ventilator-dependent RHCF beds, matching in full the available need for vent beds in the five-borough New York City planning area, per the vent bed need methodology set forth in 10 NYCRR Section 709.17. All of the awarded vent beds represent conversions of existing RHCF beds, as opposed to additional RHCF capacity. The geographic distribution of the seven awarded applicants is two programs in Queens, two programs in Brooklyn, one program in Manhattan, and two programs in the Bronx.



# Public Health and Health Planning Council

## Project # 071126-C Wayne Center for Nursing & Rehabilitation, LLC

**County:** Bronx (Bronx)  
**Purpose:** Construction

**Program:** Residential Health Care Facility  
**Submitted:** May 31, 2007

### Executive Summary

#### Description

Wayne Center for Nursing & Rehabilitation, LLC, a 243-bed residential health care facility (RHCF) located at 3530 Wayne Avenue, Bronx, requests approval to convert 22 RHCF beds to ventilator-dependent beds ("vent beds") for a total of 40.

Total project costs are estimated at \$5,738,106.

**DOH Recommendation**  
Contingent approval.

#### Need Summary

Based on the methodology in 10 NYCRR Section 709.17, the need for an additional 109 nursing home ventilator beds was identified for the planning area consisting of the five boroughs of New York City. In order to meet that need, the Department determined that the 19 active New York City vent bed CON applications currently acknowledged by the Department would be reviewed on a competitive basis.

All 19 applicants were sent letters requesting that updated financial and other necessary information be submitted to the Department, in accordance with 10 NYCRR Section 710.3(a). Applicants were advised to include a clear and comprehensive justification for the local need for ventilator services.

Fifteen qualifying applications were ultimately reviewed competitively on criteria that included, but were not limited to:

- experience operating a ventilator unit with beds in a discrete space;
- occupancy rate of the facility's ventilator beds;

- ability of the facility to serve hard-to-place ventilator-dependent patients, such as those requiring renal dialysis or bariatric services;
- a comprehensive program to reduce re-hospitalizations for ventilator patients;
- in-house clinical laboratory services;
- in-house radiology services;
- in-house pharmacy;
- presence of a step-down unit adjacent to a certified ventilator unit;
- geographic location central to the target population; and
- cost of ventilator operations.

As a result of this competitive review, seven applicants are being recommended for approval, requesting a total of 109 ventilator beds – matching exactly the total number of ventilator-dependent RHCF beds currently needed in the five-borough New York City planning area.

This CON is one of seven that addressed the review criteria well enough to merit being awarded vent beds, and is therefore recommended for approval.

#### Program Summary

This is an existing 18-bed vent unit with a satisfactory surveillance history, and has a reported established weaning rate of 43%. The facility's vent-dependent occupancy exceeds the number of certified beds on its unit, in order to meet the needs of area hospitals seeking to discharge vent-dependent patients from acute care beds. The applicant is also proposing to develop an on-site dialysis center to meet the needs of dialysis patients and dual-diagnosed dialysis and ventilator dependent patients.

Financial Summary

Project costs will be met as follows: bank loan of \$4,289,000, land appraisal of \$267,000, and equity of \$1,182,106.

Incremental Budget:	<i>Revenues:</i>	\$ 3,981,549
	<i>Expenses:</i>	<u>2,592,417</u>
	<i>(Gain/(Loss):</i>	\$ 1,389,132

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

Architectural Summary

The 22 ventilator dependent beds will be added by a 2-story addition that will also provide dining, recreation and respiratory therapy space for the ventilator dependent unit. The expansion of the 22 ventilator dependent beds will allow the facility to install in-wall oxygen and suctioning to the entire 40-bed ventilator unit during the renovations. The existing emergency generator system will be expanded to include the additional 22 ventilator dependent beds.

## 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 updated budgets, with all assumptions noted, that include the impact of the State's 2011-2012 Budget and continues to demonstrate financial feasibility, acceptable to the Department. [BFA]
3. Submission of a commitment acceptable to the Department for a permanent mortgage from a recognized lending institution at a prevailing rate of interest. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule for both new and refinanced debt. [BFA]
4. Submission of a land appraisal by a member of the Members Appraisal Institute acceptable to the Department. [BFA]
5. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. In addition to the requirements outlined in DSG-01, document compliance with requirements for 20% single bedded rooms, Type 1 EES, and piped oxygen and suction to all program spaces. [AER]

**Approval conditional upon:**

1. 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]
2. The applicant shall complete construction by July 2, 2015. 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. [BFA]

Council Action Date

**October 6, 2011.**

## Need Analysis

### Background

Based on the methodology in 10 NYCRR Section 709.17, the need for an additional 109 ventilator-dependent RHCF beds (“vent beds”) was identified for the planning area consisting of the five boroughs of New York City. In order to meet that need, the Department determined that the 19 active New York City vent bed CON applications currently acknowledged by the Department would be reviewed on a competitive basis.

### Solicitation

All 19 applicants were sent letters requesting that updated financial and other necessary information be submitted to the Department, in accordance with 10 NYCRR Section 710.3(a). Applicants were advised that the review would be conducted on a competitive basis for a limited number of beds and would include only those applications that have already been acknowledged and are currently active. The letter provided such applicants with the opportunity to fully update their applications, due to the importance of ensuring all information reviewed by the Department was as accurate and current as possible. Applicants were specifically instructed to provide a clear and comprehensive justification for the local need for ventilator services, as well as certified financial statements for the last three years and the latest internal financial statements.

Applicants were further permitted to submit questions to the Department to seek additional clarification regarding this process. The Department’s answers were provided to all applicants prior to the submission deadline, to ensure consistent information was shared regarding the process.

### Competitive Review

The updated applications were then reviewed competitively by the Department. The factors for which each facility’s ventilator program was reviewed included:

- surveillance and enforcement history;
- availability of an emergency generator for ventilator support;
- affiliations and transfer agreements with area hospitals;
- the facility’s staffing plan for ventilator-dependent care;
- the presence of an acceptable weaning program for ventilator patients;
- the physical environment standards contained in Section 713-4.5;
- experience operating a ventilator unit with beds in a discrete space, versus “scattered” throughout the facility in non-contiguous areas;
- occupancy rate of the facility’s ventilator beds;
- ability of the facility to serve hard-to-place ventilator- dependent patients, such as those requiring renal dialysis or bariatric services;
- a comprehensive program to reduce re-hospitalizations for ventilator patients;
- in-house clinical laboratory services;
- in-house radiology services;
- in-house pharmacy;
- presence of a step-down unit adjacent to a certified ventilator unit;
- geographic location central to the target population; and
- cost of ventilator operations.

From this review, applicants were ranked amongst the group based on how well their proposal addressed each of the aforementioned criteria. The top seven ranked applications have requested a total of 109 ventilator-dependent RHCF beds, matching in full the available need for vent beds in the five-borough New York City planning area, per NYCRR Section 709.17. All of the awarded vent beds represent conversions of RHCF beds, as opposed to additional RHCF capacity. The geographic distribution of the seven awarded applicants is two programs in Queens, two programs in Brooklyn, one program in Manhattan, and two programs in the Bronx.

This CON is one of seven which addressed the review criteria well enough to merit being awarded vent beds, and is therefore recommended for approval.

Recommendation

**From a need perspective, approval is recommended.**

<h2 style="margin: 0;">Programmatic Analysis</h2>
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Facility Information

	<i>Existing</i>	<i>Proposed</i>
<i>Facility Name</i>	Wayne Center for Nursing and Rehabilitation	Same
<i>Address</i>	3530 Wayne Avenue Bronx, NY 10467-1598	Same
<i>RHCF Capacity</i>	225 RHCF 22 Ventilator Dependent Beds	203 RHCF 40 Ventilator Dependent Beds
<i>Type Of Operator</i>	Limited Liability Company	Same
<i>Class Of Operator</i>	Proprietary	Same
<i>Operator</i>	Wayne Center for Nursing and Rehabilitation, LLC	Same

Program Review

The existing 18-bed ventilator dependent unit is comprised of 12 single bedded rooms, which will allow the 40-bed ventilator unit to exceed the 20% private room requirement. Additionally, the facility has in-wall oxygen and suctioning on the 18-bed ventilator dependent unit, which will be expanded to the additional rooms on the 40-bed unit. The unit also has a ventilator alarm call bell system, which will be available for the expanded 40-bed unit. The existing emergency generator system for the 18-bed unit will be expanded to include the entire 40 bed ventilator dependent unit.

The existing 18-bed ventilator unit has a reported established weaning rate of 43%. The facility’s ventilator dependent occupancy exceeds the number of certified beds on its unit in order to meet the needs of area hospitals seeking to discharge ventilator dependent patients from acute care beds. The ventilator dependent population at the facility averages 28 residents, with only 18 residents admitted to the discrete unit and the remaining ventilator dependent residents admitted to other beds within the facility on a scatter bed basis.

The Wayne Center for Nursing and Rehabilitation is also proposing to develop an on-site dialysis center to meet the needs of dialysis patients and dual diagnosed dialysis and ventilator dependent patients.

Physical Environment

With much of the required infrastructure in place, the major renovations needed to expand the vent unit will revolve around the construction of a two story addition with basement. The primary reason for constructing this addition is to provide needed dining, recreation and respiratory therapy space on the second floor vent unit. The addition will include a new hospital-sized passenger elevator, a new exit stair and a barrier-free toilet, along with an open recreation space. A new exam room and staff conference room will also be created.

On the cellar level, the space will be dedicated primarily to mechanical and storage functions. On the first floor, the facility’s existing therapy suite will be reconfigured and expanded into the new addition. A second elevator, dedicated to freight service will be located within the addition, connecting the existing first floor loading dock with the storage and service areas in the cellar.

To provide the oxygen capacity needed for 40 vent beds, the facilities medical gas manifold system will be replaced by a bulk oxygen storage plant to be located in an existing parking lot abutting the building. A back-up manifold system will be installed in a dedicated equipment room on the first floor to create system redundancy and allow for maintenance of the bulk system. New piped oxygen and suction outlets will be installed at each of the 22 vent expansion beds. The existing vacuum pump and emergency generator have sufficient capacity to handle the respective emergency power and suction load from the 40 vent unit.

**Compliance**

Wayne Center for Nursing and Rehabilitation is currently in substantial compliance with the applicable codes, rules and regulations.

**Conclusion**

This is an existing ventilator unit with a satisfactory surveillance history. It has provided ventilator services in excess of its capacity and has demonstrated an effective weaning program.

**Recommendation**

**From a programmatic perspective, approval is recommended.**

<h2>Financial Analysis</h2>
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**Total Project Cost And Financing**

Total project cost for new construction, renovations and the acquisition of moveable equipment, is estimated at \$5,738,106, itemized as follows:

Land Acquisition	\$ 267,000
New Construction	2,844,312
Renovation and Demolition	892,098
Design Contingency	373,641
Construction Contingency	231,425
Fixed Equipment	222,600
Architect/Engineering Fees	278,708
Other Fees (Consultant)	116,600
Movable Equipment	98,368
Financing Costs	171,560
Interim Interest Expense	223,385
CON Fee	1,250
Additional Processing Fee	17,159
<b>Total Project Cost</b>	<b>\$5,738,106</b>

Project costs are based on a January 2, 2012 construction start date and an eighteen month construction period.

The applicant’s financing plan appears as follows:

Equity	\$1,182,106
Land	\$ 267,000
Bank Loan (6.25% interest rate for a twenty year term)	\$4,289,000



Operating Budget

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

	<u>Years One and Three</u>
Revenues	\$3,981,549
Expenses:	
Operating	\$2,196,805
Capital	<u>395,612</u>
Total Expenses	\$2,592,417
Net Income	\$1,389,132
Utilization: (patient days)	7,227
Cost Per Patient Day	\$358.71

The following is noted with respect to the submitted RHCF operating budget:

- The case mix index (CMI) is 1.505.
- Medicare and Private Pay revenues are based on the facility's current reimbursement rates.
- Medicaid reimbursement rates are based on the facility's 2010 Medicaid rate sheet, with no trend factor to 2011, but adjusted to reflect the increase in capital reimbursement due to the capital cost related to the expansion.
- Utilization by payor source during the first and third years for the additional 22 bed ventilator dependent unit is as follows:

	<u>Years One and Three</u>
Medicaid	70.0%
Medicare	20.0%
Private Pay	10.0%

Expense assumptions are based on the facility's current expense history and the addition of the proposed 22 bed ventilator dependent expansion. Utilization assumptions are based on the facility's potential candidates for ventilator dependent beds and the ongoing need for these beds in the community.

Capability and Feasibility

The applicant will finance \$4,289, 000 at an interest rate of 6.25% for a twenty year term, of which an appropriate letter of interest was provided from HSBC. The remainder, \$1,449,106, will be met with equity of \$1,182,106 from Gunhill Associates, which is a sole proprietorship owned by Alexander Hartmen, a majority member of Wayne Center for Nursing and Rehabilitation and land valued at \$267,000 in which a contingency has been included for an MAI appraisal. Presented as BFA Attachment C, is the financial summary of Gunhill Associates, which indicates the availability of sufficient funds to meet the equity contribution.

The submitted budget projects a net income of \$1,389,312 during the first and third years. Revenues are based on current reimbursement methodologies for ventilator dependent services. The applicant's budget appears reasonable.

As shown on Attachment A, the facility had an average positive working capital position in 2008-2010, an average positive net equity position from 2008 through 2010 and average net profit of \$183,206 from 2008 through 2010.

Presented as BFA Attachment B, is the 2011 internal financial statements of Wayne Center for Nursing and Rehabilitation, which shows the facility had a positive working capital position, a positive net equity position and a net income from operations of \$243,775 through April 30, 2011.

Recommendation

**From a financial perspective, contingent approval is recommended.**

## Architectural Analysis

### Background

The proposed 22 ventilator beds will be on the second floor of the facility, on the same floor as the existing 18 ventilator beds. A two story addition will be constructed to provide needed dining, recreation and respiratory therapy space on the second floor ventilator unit. Also, portions of the first and second floors will be renovated. There will be a new exit stairway and a new passenger elevator connecting the cellar, first and second floors and a new service elevator connecting the cellar and first floors.

- Cellar (2,872 SF new construction)

On the cellar level, the addition will be dedicated primarily to mechanical and storage functions.

- First Floor (2,872 SF new construction, 2,032 SF renovations)

On the first floor, the facility's existing therapy suite will be reconfigured and expanded into the new addition. Several existing offices will be relocated into underutilized, renovated office space on the first floor.

- Second Floor (1,859 SF new construction, 5,645 SF renovations)

On the second floor, the addition will include a recreation and respiratory therapy room, an exam room, staff conference room and patient toilet room for the ventilator unit.

Renovations to the second floor will include a respiratory therapy/rehab room, new closets and sinks will be added to 8 of the double rooms and new accessible toilet rooms will be added to 2 of the existing single rooms.

### Environmental Review

The Department has deemed this project to be a TYPE I Action and the lead agency shall be the City of New York or the authority having jurisdiction.

Recommendation

**From an architectural perspective, contingent approval is recommended.**

## Attachments

BFA Attachment A	Financial Summary of Wayne Center for Nursing and Rehabilitation
BFA Attachment B	Internal April 30, 2011 Financial Statements for Wayne Center for Nursing and Rehabilitation
BFA Attachment C	2010 Draft Financial Summary for Gunhill Associates
BHFP Attachment	Map





# Public Health and Health Planning Council

**Project # 091039-C**  
**Palm Gardens Care Center, LLC**  
**d/b/a Palm Gardens Center for Nursing and Rehabilitation**

**County: Kings (Brooklyn)**  
**Purpose: Construction**

**Program: Residential Health Care Facility**  
**Submitted: February 19, 2009**

## Executive Summary

### Description

Palm Gardens Care Center, LLC d/b/a Palm Gardens Center for Nursing and Rehabilitation, a 240-bed proprietary residential health care facility (RHCF) located at 615 Avenue C, Brooklyn, requests approval to convert 15 RHCF beds to ventilator-dependent beds ("vent beds") for a total of 53.

Total project costs are estimated at \$3,462,962.

DOH Recommendation  
Contingent approval.

### Need Summary

Based on the methodology in 10 NYCRR Section 709.17, the need for an additional 109 nursing home ventilator beds was identified for the planning area consisting of the five boroughs of New York City. In order to meet that need, the Department determined that the 19 active New York City vent bed CON applications currently acknowledged by the Department would be reviewed on a competitive basis.

All 19 applicants were sent letters requesting that updated financial and other necessary information be submitted to the Department, in accordance with 10 NYCRR Section 710.3(a). Applicants were advised to include a clear and comprehensive justification for the local need for ventilator services.

Fifteen qualifying applications were ultimately reviewed competitively on criteria that included, but were not limited to:

- experience operating a ventilator unit with beds in a discrete space;
- occupancy rate of the facility's ventilator beds;

- ability of the facility to serve hard-to-place ventilator-dependent patients, such as those requiring renal dialysis or bariatric services;
- a comprehensive program to reduce re-hospitalizations for ventilator patients;
- in-house clinical laboratory services;
- in-house radiology services;
- in-house pharmacy;
- presence of a step-down unit adjacent to a certified ventilator unit;
- geographic location central to the target population; and
- cost of ventilator operations.

As a result of this competitive review, seven applicants are being recommended for approval, requesting a total of 109 ventilator beds – matching exactly the total number of ventilator-dependent RHCF beds currently needed in the five-borough New York City planning area.

This CON is one of seven that addressed the review criteria well enough to merit being awarded vent beds, and is therefore recommended for approval.

### Program Summary

Palm Gardens Dialysis Center, LLC has been approved (CON #091040-B) to operate a 12-station chronic renal dialysis center on the first floor of the RHCF. Due to their level of impairment in normal functioning, ventilator-dependent patients often suffer from renal failure. The presence of a chronic renal dialysis clinic at Palm Gardens to serve ventilator-dependent residents will greatly enhance the quality of life of these residents and will make needed medical treatment more accessible to these difficult-to-place patients.

Financial Summary

Project costs will be met with equity of \$873,962 and a \$2,589,000 bank loan (10 yrs. @ 8.26%).

Incremental Budget:	Revenues:	\$ 4,458,589
	Expenses:	<u>2,906,764</u>
	Gain/(Loss):	\$ 1,551,825

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 will include renovation of approximately 6,200 SF of existing space on the third floor to create a 15-bed ventilator unit. The unit will consist of 3 single-bedded rooms and 6 double-bedded rooms. There will be no change in the RHCF's total certified bed capacity as a result of this project.

## 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 that is acceptable to the Department. [BFA]
3. Submission of updated budgets, with all assumptions noted, that include the impact of the State's 2011-2012 Budget and continues to demonstrate financial feasibility, acceptable to the Department. [BFA]
4. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. In addition to the requirements outlined in DSG-01, document compliance with requirements for 20% single bedded rooms, Type 1 EES, and piped oxygen and suction to all program spaces. [AER]

**Approval conditional upon:**

1. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
2. The applicant shall complete construction by February 28, 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

**October 6, 2011.**

## Need Analysis

### Background

Based on the methodology in 10 NYCRR Section 709.17, the need for an additional 109 ventilator-dependent RHCF beds (“vent beds”) was identified for the planning area consisting of the five boroughs of New York City. In order to meet that need, the Department determined that the 19 active New York City vent bed CON applications currently acknowledged by the Department would be reviewed on a competitive basis.

### Solicitation

All 19 applicants were sent letters requesting that updated financial and other necessary information be submitted to the Department, in accordance with 10 NYCRR Section 710.3(a). Applicants were advised that the review would be conducted on a competitive basis for a limited number of beds and would include only those applications that have already been acknowledged and are currently active. The letter provided such applicants with the opportunity to fully update their applications, due to the importance of ensuring all information reviewed by the Department was as accurate and current as possible. Applicants were specifically instructed to provide a clear and comprehensive justification for the local need for ventilator services, as well as certified financial statements for the last three years and the latest internal financial statements.

Applicants were further permitted to submit questions to the Department to seek additional clarification regarding this process. The Department’s answers were provided to all applicants prior to the submission deadline, to ensure consistent information was shared regarding the process.

### Competitive Review

The updated applications were then reviewed competitively by the Department. The factors for which each facility’s ventilator program was reviewed included:

- surveillance and enforcement history;
- availability of an emergency generator for ventilator support;
- affiliations and transfer agreements with area hospitals;
- the facility’s staffing plan for ventilator-dependent care;
- the presence of an acceptable weaning program for ventilator patients;
- the physical environment standards contained in Section 713-4.5;
- experience operating a ventilator unit with beds in a discrete space, versus “scattered” throughout the facility in non-contiguous areas;
- occupancy rate of the facility’s ventilator beds;
- ability of the facility to serve hard-to-place ventilator- dependent patients, such as those requiring renal dialysis or bariatric services;
- a comprehensive program to reduce re-hospitalizations for ventilator patients;
- in-house clinical laboratory services;
- in-house radiology services;
- in-house pharmacy;
- presence of a step-down unit adjacent to a certified ventilator unit;
- geographic location central to the target population; and
- cost of ventilator operations.

From this review, applicants were ranked amongst the group based on how well their proposal addressed each of the aforementioned criteria. The top seven ranked applications have requested a total of 109 ventilator-dependent RHCF beds, matching in full the available need for vent beds in the five-borough New York City planning area, per NYCRR Section 709.17. All of the awarded vent beds represent conversions of RHCF beds, as opposed to additional RHCF capacity. The geographic distribution of the seven awarded applicants is two programs in Queens, two programs in Brooklyn, one program in Manhattan, and two programs in the Bronx.

This CON is one of seven which addressed the review criteria well enough to merit being awarded vent beds, and is therefore recommended for approval.

Recommendation

**From a need perspective, approval is recommended.**

<h2 style="margin: 0;">Programmatic Analysis</h2>
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Facility Information

	<i>Existing</i>	<i>Proposed</i>
<i>Facility Name</i>	Palm Gardens Center for Nursing and Rehabilitation	Same
<i>Address</i>	615 Avenue C Brooklyn, NY 11218	Same
<i>RHCF Capacity</i>	202 RHCF 38 Ventilator Dependent Beds	187 RHCF 53 Ventilator Dependent Beds
<i>Type Of Operator</i>	Limited Liability Company	Same
<i>Class Of Operator</i>	Proprietary	Same
<i>Operator</i>	Palm Gardens Care Center, LLC	Same

Program Review

Palm Gardens offers a full range of specialized services. In addition to the ventilator dependent unit, other specialized clinical services at Palm Gardens include a Step Down Unit; Short-Term Rehabilitation Unit; Pain Management Services; Wound Care Management; Respiratory Therapy; Hospice Care; I.V. Therapy; EKG and Laboratory Services; and an Adult Day Health Care Program.

Palm Gardens' ongoing program includes a plan to wean all appropriate residents from dependence upon a mechanical ventilator during the course of treatment in the program.

Palm Gardens Dialysis Center LLC has been approved (CON #091040) to operate a 12 station chronic renal dialysis center on the first floor of the RHCF. Due to their level of impairment in normal functioning, ventilator dependent patients often suffer from renal failure. The presence of a chronic renal dialysis clinic at Palm Gardens to serve ventilator dependent residents will greatly enhance the quality of life of these residents and will make needed medical treatment more accessible to these difficult-to-place patients.

Physical Environment

The proposed 15 bed expansion will be achieved through the conversion of 15 existing RHCF beds on a 40 bed resident care unit located on the third floor of the facility. Although the 40 bed unit will have nine (9) fewer beds as a result of the renovation needed to make the 15 bed ventilator dependent unit code compliant, Palm Gardens will relocate the nine (9) beds to available space on the eighth floor, and will submit a Limited Review Application for that work upon approval of this application. The 15 bed unit will consist of three (3) single bedded rooms and six (6) double bedded rooms.

Compliance

Palm Gardens Center for Nursing and Rehabilitation is currently in substantial compliance with the applicable codes, rules and regulations.

Conclusion

This project is for the expansion of an existing unit with a satisfactory quality history and demonstrated effective weaning program. This facility proposes to serve residents requiring ventilator and dialysis services. This facility has not provided services in excess of its certified capacity.



Recommendation

**From a programmatic perspective, approval is recommended.**

## Financial Analysis

### Total Project Cost and Financing

Total project cost for renovations and the acquisition of moveable equipment, is estimated at \$1,057,219 and itemized as follows:

Renovation and Demolition	\$1,920,291
Asbestos Abatement	53,000
Design Contingency	197,330
Construction Contingency	197,330
Fixed Equipment	106,000
Architect/Engineering Fees	267,908
Other Fees (Consultant)	307,400
Moveable	183,933
Telecommunications	15,900
Financing Costs	77,670
Interim Interest Expense	124,596
CON Fee	1,250
Additional Processing Fee	<u>10,354</u>
Total Project Cost	\$3,462,962

Project costs are based on a May 1, 2012 construction start date and a three month construction period.

The applicant's financing plan appears as follows:

Equity	\$873,962
Bank Loan	\$2,589,000
(8.26% interest rate for a ten year term)	

A letter of interest from a lending institution has been submitted at the stated terms has been submitted.

### 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	\$3,858,819	\$4,458,589
Expenses:		
Operating	\$2,458,623	\$2,507,314
Capital	<u>399,450</u>	<u>399,450</u>
Total Expenses	\$2,858,073	\$2,906,764
Net Income	\$1,000,746	\$1,551,825
Utilization: (patient days)	5,986	7,047
Cost Per Patient Day	\$477.46	\$412.48
Occupancy	82%	97%

The following is noted with respect to the submitted RHCF operating budget:

- Medicare and Private Pay rates are based on the facility's reimbursement rates.
- Medicaid reimbursement rates are based on the facility's 2010 Medicaid rate sheet, with no trend factor to 2011, but adjusted to reflect the increase in capital reimbursement due to the capital cost related to the expansion.
- Utilization by payor source during the first and third years for the additional 20 ventilator dependent beds is as follows:

	<u>Year One</u>	<u>Year Three</u>
Medicaid	74%	73%
Medicare	20%	20%
Private Pay	6%	7%

Expense assumptions are based on the facility's current ventilator dependent unit's expense history and increased to reflect the additional costs associated with the addition of the proposed 20-bed ventilator dependent expansion. Utilization assumptions are based on the facility's existing utilization of ventilator dependent beds and the ongoing need for these beds in the community.

#### Capability and Feasibility

The applicant will finance \$2,589,000 at an interest rate of 8.26% for a ten year term, of which an appropriate letter of interest was provided. The remainder, \$873,962 will be met via equity from accumulated funds of the facility. Presented as BFA Attachment A, is the financial summary of Palm Gardens Care Center, LLC, which indicates the availability of sufficient funds to meet the equity contribution.

The submitted incremental budget projects a net income of \$1,000,746 and \$1,551,825 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for ventilator dependent services. The applicant's budget appears reasonable.

As shown on Attachment A, the facility had an average negative working capital position and an average negative net asset position from 2007 through 2009. Also, the facility incurred an operating loss of \$1,158,355 in 2007. Also, the facility achieved an operating income of \$343,799 and \$200,961 during 2008 and 2009, respectively. The loss in 2007 is attributable to low occupancy of 88.51%, which increased to an average of 96.67% during 2008 and 2009. The applicant has indicated that facility's occupancy rate has increased due to an increase in population and need.

#### Recommendation

**From a financial perspective, contingent approval is recommended.**

## Architectural Analysis

#### Review Summary

Palm Gardens Care Center is requesting approval to construct a 15 bed Adult Vent Unit at the existing facility located in Brooklyn, New York. The total bed capacity for ventilator dependent residents will increase from 38 beds to 53 beds.

#### 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, contingent approval is recommended.**

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## Attachments

BFA Attachment A	Financial Summary- Palm Gardens Center for Nursing and Rehabilitation
BHFP Attachment	Map



# Public Health and Health Planning Council

## Project # 092131-C Silvercrest Center for Nursing and Rehabilitation

**County:** Queens (Jamaica)  
**Purpose:** Construction

**Program:** Residential Health Care Facility  
**Submitted:** November 9, 2009

### Executive Summary

#### Description

Silvercrest Center for Nursing and Rehabilitation (Silvercrest), a 320-bed not-for-profit residential health care facility (RHCF) located at 144-45 87<sup>th</sup> Avenue, Jamaica, requests approval to convert 32 RHCF beds to ventilator-dependent beds ("vent beds") for a total of 80.

Total project costs are estimated at \$332,930.

**DOH Recommendation**  
Contingent approval.

#### Need Summary

Based on the methodology in 10 NYCRR Section 709.17, the need for an additional 109 nursing home ventilator beds was identified for the planning area consisting of the five boroughs of New York City. In order to meet that need, the Department determined that the 19 active New York City vent bed CON applications currently acknowledged by the Department would be reviewed on a competitive basis.

All 19 applicants were sent letters requesting that updated financial and other necessary information be submitted to the Department, in accordance with 10 NYCRR Section 710.3(a). Applicants were advised to include a clear and comprehensive justification for the local need for ventilator services.

Fifteen qualifying applications were ultimately reviewed competitively on criteria that included, but were not limited to:

- experience operating a ventilator unit with beds in a discrete space;
- occupancy rate of the facility's ventilator beds;

- ability of the facility to serve hard-to-place ventilator-dependent patients, such as those requiring renal dialysis or bariatric services;
- a comprehensive program to reduce re-hospitalizations for ventilator patients;
- in-house clinical laboratory services;
- in-house radiology services;
- in-house pharmacy;
- presence of a step-down unit adjacent to a certified ventilator unit;
- geographic location central to the target population; and
- cost of ventilator operations.

As a result of this competitive review, seven applicants are being recommended for approval, requesting a total of 109 ventilator beds – matching exactly the total number of ventilator-dependent RHCF beds currently needed in the five-borough New York City planning area.

This CON is one of seven that addressed the review criteria well enough to merit being awarded vent beds, and is therefore recommended for approval.

#### Program Summary

This is an existing ventilator program with a satisfactory surveillance history and a demonstrated effective weaning program that has provided services in excess of its certified capacity. It has a highly developed program to prevent re-hospitalization of ventilator residents and has provided research and training to the industry.

### Financial Summary

The project cost of \$332,930 is for movable and fixed equipment and will be funded from accumulated resources. No construction cost is necessary to make the proposed additional beds operational.

Incremental Budget:	Revenues:	\$ 2,151,230
	Expenses:	<u>1,461,449</u>
	Gain/(Loss):	\$ 689,781

Subject to the noted contingency, the applicant has demonstrated the capability to proceed in a financially feasible manner.

### Architectural Summary

This project involves the conversion of 32 existing RHCf beds to ventilator beds on the fifth floor. There will be no change in the total bed capacity as a result of this project.

## 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. Section 2802.7 states that all sponsors whose applications require review by the State Hospital Review and 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 floor plans, detailing compliance with 713-4.5 including the requirement for 20% single rooms and adequate on floor dining, activity and respiratory therapy space, acceptable to the Department. [LTC]
3. Submission of updated budgets, with all assumptions noted, that include the impact of the State's 2011-2012 Budget and continues to demonstrate financial feasibility, acceptable to the Department. [BFA]
4. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. In addition to the requirements outlined in DSG-01, document compliance with requirements for 20% single bedded rooms, Type 1 EES, and piped oxygen and suction to all program spaces. [AER]

**Approval conditional upon:**

1. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
2. The applicant shall complete construction by October 8, 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

**October 6, 2011.**

## Need Analysis

### Background

Based on the methodology in 10 NYCRR Section 709.17, the need for an additional 109 ventilator-dependent RHCF beds (“vent beds”) was identified for the planning area consisting of the five boroughs of New York City. In order to meet that need, the Department determined that the 19 active New York City vent bed CON applications currently acknowledged by the Department would be reviewed on a competitive basis.

### Solicitation

All 19 applicants were sent letters requesting that updated financial and other necessary information be submitted to the Department, in accordance with 10 NYCRR Section 710.3(a). Applicants were advised that the review would be conducted on a competitive basis for a limited number of beds and would include only those applications that have already been acknowledged and are currently active. The letter provided such applicants with the opportunity to fully update their applications, due to the importance of ensuring all information reviewed by the Department was as accurate and current as possible. Applicants were specifically instructed to provide a clear and comprehensive justification for the local need for ventilator services, as well as certified financial statements for the last three years and the latest internal financial statements.

Applicants were further permitted to submit questions to the Department to seek additional clarification regarding this process. The Department’s answers were provided to all applicants prior to the submission deadline, to ensure consistent information was shared regarding the process.

### Competitive Review

The updated applications were then reviewed competitively by the Department. The factors for which each facility’s ventilator program was reviewed included:

- surveillance and enforcement history;
- availability of an emergency generator for ventilator support;
- affiliations and transfer agreements with area hospitals;
- the facility’s staffing plan for ventilator-dependent care;
- the presence of an acceptable weaning program for ventilator patients;
- the physical environment standards contained in Section 713-4.5;
- experience operating a ventilator unit with beds in a discrete space, versus “scattered” throughout the facility in non-contiguous areas;
- occupancy rate of the facility’s ventilator beds;
- ability of the facility to serve hard-to-place ventilator- dependent patients, such as those requiring renal dialysis or bariatric services;
- a comprehensive program to reduce re-hospitalizations for ventilator patients;
- in-house clinical laboratory services;
- in-house radiology services;
- in-house pharmacy;
- presence of a step-down unit adjacent to a certified ventilator unit;
- geographic location central to the target population; and
- cost of ventilator operations.

From this review, applicants were ranked amongst the group based on how well their proposal addressed each of the aforementioned criteria. The top seven ranked applications have requested a total of 109 ventilator-dependent RHCF beds, matching in full the available need for vent beds in the five-borough New York City planning area, per NYCRR Section 709.17. All of the awarded vent beds represent conversions of RHCF beds, as opposed to additional RHCF capacity. The geographic distribution of the seven awarded applicants is two programs in Queens, two programs in Brooklyn, one program in Manhattan, and two programs in the Bronx.

This CON is one of seven which addressed the review criteria well enough to merit being awarded vent beds, and is therefore recommended for approval.

Recommendation

**From a need perspective, approval is recommended.**

<h2 style="margin: 0;">Programmatic Analysis</h2>
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Facility Information

	<i>Existing</i>	<i>Proposed</i>
<i>Facility Name</i>	Silvercrest Center for Nursing and Rehabilitation	Same
<i>Address</i>	144-45 87 <sup>th</sup> Avenue Jamaica, NY 11435	Same
<i>RHCF Capacity</i>	272 RHCF Beds 48 Ventilator Dependent Beds	240 RHCF Beds 80 Ventilator Dependent Beds
<i>Type of Operator</i>	Corporation	Same
<i>Class of Operator</i>	Voluntary	Same
<i>Operator</i>	Silvercrest Center for Nursing and Rehabilitation	Same

Background

Silvercrest Center for Nursing and Rehabilitation is a not-for-profit 320 bed residential health care facility (RHCF) located at 144-45 87<sup>th</sup> Avenue, Jamaica, NY 11435. Silvercrest seeks approval to expand its existing 48 bed ventilator dependent program with an additional 32 beds, for a new total of 80 ventilator dependent beds. The proposed 32 bed expansion will be achieved through the conversion of 32 existing RHCF beds on the fifth floor of the facility.

There is no construction required for the ventilator bed expansion. As a result, Silvercrest will be able to bring the new ventilator beds on line almost immediately upon approval of this project.

Silvercrest has developed a successful protocol for the liberation of residents from dependence on ventilators, weaning 33% of patients with wean potential from ventilators in 2010.

New York Hospital Medical Center of Queens, a related entity, has received approval (091032C) to certify a 15 station chronic renal dialysis extension clinic to be located in a one story addition to Silvercrest.

In addition to the dialysis clinic, Silvercrest has plans to insert and maintain Peripherally Inserted Central Catheters (PICC) in the facility, negating the need to transfer patients requiring this intervention. Staff training for this service already underway.

Physical Environment:

There are no renovations required to initiate the additional 32 ventilator beds. The only work required is installation of emergency power outlets to accommodate the new ventilator beds. The facility already has piped-in oxygen in the area where the new proposed beds will be located. The oxygen supply was upgraded to 9,000 gallons, with 1,500 gallons in reserve. The facility has not provided floor plans demonstrating full compliance with 713-4.5 including 20% single rooms, adequate on floor dining, recreation and therapy space for ventilator resident and may have to reduce the total number of ventilator beds requested to achieve full compliance with NYCRR 713-4.5.

Compliance

Silvercrest Center for Nursing and Rehabilitation is currently in substantial compliance with the applicable codes, rules and regulations.



Recommendation

**From a programmatic perspective, contingent approval is recommended.**

## Financial Analysis

Total Project Costs and Financing

Total project costs for moveable and fixed equipment is estimated at \$332,930, broken down as follows:

Fixed Equipment	\$39,780
Other Fees	15,600
Moveable Equipment	274,560
CON Application Fee	2,000
CON Processing Fee	<u>990</u>
Total Project Cost	<b>\$332,930</b>

The applicant's financing plan appears as follows:

Cash Equity	\$332,930
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Operating Budget

The applicant has submitted the ventilator unit's inpatient operating budget, in 2011 dollars, as summarized below:

	<i>Current Year (2010)</i>	<i>Third Year Incremental</i>	<i>Cumulative</i>
<u>Revenues:</u>			
Inpatient*	\$14,940,085	\$2,151,230	\$17,091,315
<u>Expenses:</u>			
Operating	\$ 4,966,007	\$1,420,253	\$6,386,260
Capital	<u>0</u>	<u>41,196</u>	<u>41,196</u>
Total Expenses	\$4,966,007	\$1,461,449	\$6,427,456
 Excess Revenue over Expenses	 <u>\$9,974,078</u>	 <u>\$689,781</u>	 <u>\$10,663,859</u>
 <u>Utilization:</u>			
Patient Days –Vent Beds	21,041	7,081	28,122
% Vent Beds Occupancy	120.1%	60.6%	96.3%
Costs Per Patient Day	\$236.01	\$206.39	\$228,56

\* The \$2,151,230 net inpatient ventilator-dependent services revenues equals the revenue difference on converting 32 RHCF beds to 32 ventilator-dependent beds. The calculation is as follows: (\$4,672,797 ventilator-dependent bed revenues - \$2,521,567 converting 32 skilled nursing beds = \$2,151,230 net ventilator bed revenues).

Medicaid revenues assume no trend factor increase for the 2011 Medicaid rate, and expenses include 1.2% non-reimbursable assessment. Current case-mix index is 1.73.

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

<u>Payor</u>	<u>Inpatient</u>
Medicaid Fee -for-Service	68.40%
Medicare Fee-for-Service	17.10%
Commercial Fee-for-Service	9.60%
Private & All Other	4.90%

As seen above, Silvercrest's current ventilator-dependent bed volume exceeds its current certified bed capacity of 48 beds and according to their cost reports, it has since 2007. The cost reports shows that in 2002 the ventilator unit utilization was at 14,082 inpatient days, or 80.38% occupancy, and by 2009 the unit's utilization grew to 20,862 inpatient days, or 119.08% of the certified capacity. In 2010 the unit's utilization grew to 21,041 inpatient days or 120.1% of the certified capacity. According to the applicant, it has utilized additional ventilator beds on a scatter-bed basis, but has never billed the enhanced Medicaid rate for these patient days. Utilization for the remaining 272 certified beds has declined approximately 7% between 2002 and 2009, going from 99,821 inpatient days at the end of 2002, or just over 100% occupancy, and by the end 2009 utilization was at 92,151 inpatient days, or 92.82% occupancy. The 2010 utilization was at 92,136 inpatient days or 92.80% occupancy. During this timeframe the increase in the ventilator-dependent service nearly offset the drop in the 272 bed inpatient days. At the end of 2009 and 2010 the facility total occupancy was at 96.76% and 96.90%, respectively.

Expenses and utilization are based upon the facility's historical and current experiences in operating the ventilator-dependent unit.

#### Capability and Feasibility

Total project cost of \$332,930 will be provided from accumulated funds. Presented as BFA Attachment A is the Silvercrest Center for Nursing and Rehabilitation and Subsidiaries certified financial statements for 2009 and 2010 which indicates the ability to provide the project's equity.

Working capital requirements should be minimal and any additional needs will be provided from operations.

The third year net incremental budget shows an excess of revenues over expenses of \$689,781, and when combined with the ventilator-dependent unit's current profitable operating results of \$9,874,078, it will bring the unit's total contribution to \$10,663,859. Revenues are based on current payor rates, and reflect revised Medicaid reimbursement adjustments. The applicant's budget appears reasonable.

Review of BFA Attachment A shows Silvercrest had an operating loss of \$1,629,392 in 2010. And according to the applicant, the loss was caused by rapid changes to their Medicaid reimbursement. A corrective action plan was developed and implemented during September 2010 that included: elimination of approximately 16 non-direct care FTE's, renegotiated supplier contracts, and where appropriate, product changes. Presented as BFA Attachment C is Silvercrest Center for Nursing and Rehabilitation April 30, 2011 internal financial summary, which shows that during this period the facility generated a net profit of \$255,720.

During the period between 2008 and April 30, 2011 the facility operated with both a positive working capital and net asset position. As of April 30, 2011 working capital stood at \$4,317,501, and the net assets totaled \$8,537,651.

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

#### Review Summary

This project involves the conversion of 32 existing residential health care facility beds to ventilator beds on the fifth floor. Fifteen double rooms and two single rooms will be converted. There will be no change in the total bed capacity as a result of this project.

#### 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, contingent approval is recommended.**

## Attachments

BFA Attachment A	Financial Statements for 2009 and 2010, The Silvercrest Center for Nursing and Rehabilitation and Subsidiaries
BFA Attachment B	Financial Statements for 2008 and 2009, The Silvercrest Center for Nursing and Rehabilitation and Subsidiaries
BFA Attachment C	Internal Financial Statements for April 30, 2011, The Silvercrest Center for Nursing and Rehabilitation
BFA Attachment D	Financial Summary, Silvercrest Center for Nursing and Rehabilitation
BHFP Attachment	Map



# Public Health and Health Planning Council

Project # 101087-C  
**Flushing Manor Geriatric Center, Inc.**  
**d/b/a Dr. William O. Benenson Rehab Pavilion**

**County: Queens (Flushing)**  
**Purpose: Construction**

**Program: Residential Health Care Facility**  
**Submitted: February 10, 2010**

## Executive Summary

### Description

Flushing Manor Geriatric Center, Inc. d/b/a Dr. William O. Benenson Rehab Pavilion, a 302-bed proprietary residential health care facility (RHCF) located at 36-17 Parsons Boulevard, Flushing, requests approval to convert 10 RHCF beds to ventilator-dependent beds (“vent beds”) for a total of 20.

DOH Recommendation  
Contingent approval.

### Need Summary

Based on the methodology in 10 NYCRR Section 709.17, the need for an additional 109 nursing home ventilator beds was identified for the planning area consisting of the five boroughs of New York City. In order to meet that need, the Department determined that the 19 active New York City vent bed CON applications currently acknowledged by the Department would be reviewed on a competitive basis.

All 19 applicants were sent letters requesting that updated financial and other necessary information be submitted to the Department, in accordance with 10 NYCRR Section 710.3(a). Applicants were advised to include a clear and comprehensive justification for the local need for ventilator services.

Fifteen qualifying applications were ultimately reviewed competitively on criteria that included, but were not limited to:

- experience operating a ventilator unit with beds in a discrete space;
- occupancy rate of the facility’s ventilator beds;

- ability of the facility to serve hard-to-place ventilator-dependent patients, such as those requiring renal dialysis or bariatric services;
- a comprehensive program to reduce re-hospitalizations for ventilator patients;
- in-house clinical laboratory services;
- in-house radiology services;
- in-house pharmacy;
- presence of a step-down unit adjacent to a certified ventilator unit;
- geographic location central to the target population; and
- cost of ventilator operations.

As a result of this competitive review, seven applicants are being recommended for approval, requesting a total of 109 ventilator beds – matching exactly the total number of ventilator-dependent RHCF beds currently needed in the five-borough New York City planning area.

This CON is one of seven that addressed the review criteria well enough to merit being awarded vent beds, and is therefore recommended for approval.

### Program Summary

This existing program has served ventilator-dependent residents in excess of its approved capacity with a satisfactory surveillance history, and has demonstrated an effective weaning program. This unit is in full compliance with NYCRR 713-4.5. The applicant will also serve vent/dialysis residents and has a dialysis unit equipped with piped medical gases.

Financial Summary

There are no project costs associated with this application.

Incremental Budget:	<i>Revenues:</i>	\$ 2,131,120
	<i>Expenses:</i>	<u>1,879,831</u>
	<i>Gain/(Loss):</i>	\$ 251,289

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 proposes to create 10 additional certified ventilator-dependent beds adjacent to the existing 10-bed ventilator-dependent service, within the 2nd floor existing nursing unit. The present building inventory totals 302 beds in an existing ten-story building – the total existing bed count will remain unchanged. This expansion will allow the facility to care for the current over capacity of nursing home patients in need of ventilator beds.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

**Approval contingent upon:**

1. Submission of updated budgets, with all assumptions noted, that include the impact of the State's 2011-2012 Budget and continues to demonstrate financial feasibility, acceptable to the Department of Health. [BFA]
2. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. In addition to the requirements outlined in DSG-01, document compliance with requirements for 20% single bedded rooms, Type 1 EES, and piped oxygen and suction to all program spaces. [AER]

Council Action Date

**October 6, 2011.**

## Need Analysis

### Background

Based on the methodology in 10 NYCRR Section 709.17, the need for an additional 109 ventilator-dependent RHCF beds (“vent beds”) was identified for the planning area consisting of the five boroughs of New York City. In order to meet that need, the Department determined that the 19 active New York City vent bed CON applications currently acknowledged by the Department would be reviewed on a competitive basis.

### Solicitation

All 19 applicants were sent letters requesting that updated financial and other necessary information be submitted to the Department, in accordance with 10 NYCRR Section 710.3(a). Applicants were advised that the review would be conducted on a competitive basis for a limited number of beds and would include only those applications that have already been acknowledged and are currently active. The letter provided such applicants with the opportunity to fully update their applications, due to the importance of ensuring all information reviewed by the Department was as accurate and current as possible. Applicants were specifically instructed to provide a clear and comprehensive justification for the local need for ventilator services, as well as certified financial statements for the last three years and the latest internal financial statements.

Applicants were further permitted to submit questions to the Department to seek additional clarification regarding this process. The Department’s answers were provided to all applicants prior to the submission deadline, to ensure consistent information was shared regarding the process.

### Competitive Review

The updated applications were then reviewed competitively by the Department. The factors for which each facility’s ventilator program was reviewed included:

- surveillance and enforcement history;
- availability of an emergency generator for ventilator support;
- affiliations and transfer agreements with area hospitals;
- the facility’s staffing plan for ventilator-dependent care;
- the presence of an acceptable weaning program for ventilator patients;
- the physical environment standards contained in Section 713-4.5;
- experience operating a ventilator unit with beds in a discrete space, versus “scattered” throughout the facility in non-contiguous areas;
- occupancy rate of the facility’s ventilator beds;
- ability of the facility to serve hard-to-place ventilator- dependent patients, such as those requiring renal dialysis or bariatric services;
- a comprehensive program to reduce re-hospitalizations for ventilator patients;
- in-house clinical laboratory services;
- in-house radiology services;
- in-house pharmacy;
- presence of a step-down unit adjacent to a certified ventilator unit;
- geographic location central to the target population; and
- cost of ventilator operations.

From this review, applicants were ranked amongst the group based on how well their proposal addressed each of the aforementioned criteria. The top seven ranked applications have requested a total of 109 ventilator-dependent RHCF beds, matching in full the available need for vent beds in the five-borough New York City planning area, per NYCRR Section 709.17. All of the awarded vent beds represent conversions of RHCF beds, as opposed to additional RHCF capacity. The geographic distribution of the seven awarded applicants is two programs in Queens, two programs in Brooklyn, one program in Manhattan, and two programs in the Bronx.

This CON is one of seven which addressed the review criteria well enough to merit being awarded vent beds, and is therefore recommended for approval.

Recommendation

**From a need perspective, approval is recommended.**

<h2 style="margin: 0;">Programmatic Analysis</h2>
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Facility Information

	<i>Existing</i>	<i>Proposed</i>
<i>Facility Name</i>	Flushing Manor Geriatric Center, Inc. d/b/a Dr. William O. Benenson Rehabilitation Pavilion	Same
<i>Address</i>	36-17 Parsons Boulevard Flushing, NY 11354	Same
<i>RHCF Capacity</i>	292 RHCF 10 Ventilator Dependent Beds	282 RHCF 20 Ventilator Dependent Beds
<i>Type Of Operator</i>	Corporation	Same
<i>Class Of Operator</i>	Proprietary	Same
<i>Operator</i>	Flushing Manor Geriatric Center, Inc.	Same

Program Review

Benenson’s ventilator dependent service, in operation since 2002, is led by a pulmonologist and a primary care physician in coordination with a respiratory therapist, ventilator trained nurses and certified social workers. The primary goal of the ventilator service is to wean the patient from the respirator, thereby expediting discharge. Each patient receives an individualized treatment plan formulated by the team of professionals mentioned above. Once a resident is stable and weaned off of the ventilator, he or she is relocated to a step-down unit on the third floor of the facility, which has piped-in wall oxygen, suction and air.

The ventilator dependent unit has consistently had need for more than the currently certified capacity of 10 ventilator beds, and during the last several years has had anywhere from an additional 12 to 15 patients (and as high as 20) in need of ventilator care treated on a scatter bed basis. As a result, the facility expects to fill the additional beds almost immediately with patients at the facility in need of this specialty care.

The ventilator unit reports a wean rate of approximately 63%. On average, the Respiratory Department has been successful in weaning about 2.5 candidates per month in 2009 and 2010. As the facility’s experience with ventilator dependent patients has grown, many residents who had previously been described as having “intractable” respiratory failure can now be treated and eventually liberated from dependence on ventilators.

Physical Environment

There is no construction or equipment acquisition necessary to make the proposed additional beds operational. As a result, the Benenson Pavilion will be able to bring the new ventilator beds on line immediately upon approval of this project.

Also located on-site is Flushing Manor Dialysis Center, LLC, a six (6) station renal dialysis clinic, which is a related entity of the applicant. The dialysis clinic is equipped with piped-in oxygen and suctioning for ventilator dependent patients. FMDC submitted a CON application (Project #102019-C) in 2010 proposing to expand the capacity of the dialysis clinic by an additional six (6) stations. That application was contingently approved by the Department on April 22, 2011, and once in operation, will provide 12 total dialysis stations.



Compliance

Flushing Manor Geriatric Center, Inc., d/b/a Dr. William O. Benenson Rehabilitation Pavilion is currently in substantial compliance with the applicable codes, rules and regulations

Conclusion

This request is for an expansion of an existing program that has served ventilator dependent residents in excess of its approved capacity with a satisfactory surveillance history and has demonstrated an effective weaning program. This unit is in full compliance with NYCRR 713-4.5. The applicant will also serve vent/dialysis residents and has a dialysis unit equipped with piped medical gases.

Recommendation

**From a programmatic perspective, approval is recommended.**

**Financial Analysis**

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	\$2,209,716	\$2,326,017
Total Operating Expenses	<u>\$1,771,921</u>	<u>\$1,879,831</u>
Net Income	\$437,795	\$446,186
Utilization: (patient days)	3,468	3,650
Cost Per Patient Day	\$510.93	\$515.02

*\* Staff have adjusted first and third year budgets to reflect 2010 Medicaid rate.*

The following is noted with respect to the submitted RHCF operating budget:

- The 2009 case mix index (CMI) is 1.532, which are fairly consistent with the 2010 case mix of 1.54.
- Medicare and Private Pay revenues are based on the facility's current reimbursement rates.
- Medicaid reimbursement rates are based on the facility's 2009 Medicaid rate sheet, with no trend factor to 2011, but adjusted to reflect the increase in dementia, BMI, TBI adjustment.
- Utilization by payor source during the first and third years for the additional 10-bed ventilator dependent unit is as follows:

	<u>Years One and Three</u>
Medicaid	83.0%
Medicare	12.0%
Private Pay	5.0%

Expense assumptions are based on the facility's current expense history and the addition of the proposed 10-bed ventilator dependent expansion. Utilization assumptions are based on the facility's potential candidates for ventilator dependent beds and the ongoing need for these beds in the community.

### Capability and Feasibility

There are no project costs associated with this application.

The submitted budget projects a net income of \$437,795 and \$446,186 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for ventilator dependent services.

DOH staff has adjusted first and third year budgets to reflect the 2010 Medicaid rate which projects net income to be \$252,604 and \$251,289, respectively. The applicant's adjusted budget appears reasonable.

As shown on Attachment A, the facility had an average positive working capital position in 2008-2009, an average positive net equity position from 2008 through 2010 and average net profit of \$621,502 from 2009 through 2010. The facility experienced a net loss from operations in 2008 and experienced a negative working capital position in 2010.

Presented as BFA Attachment B is the 2011 internal financial statements of Dr. William O. Benenson Pavilion, which shows the facility had a positive working capital position, a positive net equity position and an \$879,275 net income from operations through April 30, 2011.

### Recommendation

**From a financial perspective, contingent approval is recommended.**

## Architectural Analysis

### Review Summary

There are currently 4 double rooms and 2 single rooms as ventilator beds. The proposed 10 additional beds will be created from 4 existing double rooms and 2 existing single rooms. When the existing ten-story building was constructed just prior to 2000, the second floor was piped for oxygen/suction for ventilator dependent residents. No construction work is required for these additional 10 ventilator dependent beds. The oxygen storage and related equipment is existing and is located outside of the building with a reserve on the cellar floor.

### 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, contingent approval is recommended.**

## Attachments

BFA Attachment A	Financial Summary of Dr. William O. Benenson Rehabilitation Pavilion
BFA Attachment B	Internal April 30, 2011 Financial Statements for Dr. William O. Benenson Rehabilitation Pavilion
BHFP Attachment	Map

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

**October 6, 2011**

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**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**

**Residential Health Care Facilities Ventilator Beds – Construction      Exhibit #5**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	111070 C	Isabella Geriatric Center, Inc. (New York County) Dr. Berliner – Recusal	Contingent Approval
2.	091021 C	Parkshore Health Care, LLC d/b/a Four Seasons Nursing and Rehabilitation Center (Kings County) Mr. Fensterman – Recusal	Contingent Approval
3.	092166 C	Eastchester Rehabilitation and Health Care Center, LLC (Bronx County) Mr. Fensterman – Recusal	Contingent Approval

## MEMORANDUM

**TO:** Members of the Public Health and Health Planning Council  
Establishment and Project Review Committee

**FROM:** Charles P. Abel  
Assistant Director  
DHFP

**DATE:** September 15, 2011

**SUBJECT:** NYC Ventilator Bed Solicitation – Recommendations for Approval

Based on the methodology in Section 709.17 of Title 10, the need for an additional 109 nursing home ventilator beds (“vent beds”) was identified for the planning area consisting of the five boroughs of New York City. In order to meet that need, the Department determined that the 19 vent bed CON applications currently active would be reviewed on a competitive basis. All 19 applicants were sent solicitation letters requesting updated financial and other information, to be submitted to the Department by July 6, 2011.

Applicants were further permitted to submit questions to the Department to seek additional clarification regarding the review process. The Department’s answers were provided to all applicants prior to the submission deadline, to ensure that consistent information was available to all applicants.

Of the 19 applicants sent solicitation letters, two failed to respond with updated information, and two formally withdrew their applications. This left 15 applications to be considered.

The 15 updated applications were then reviewed competitively by the Department. The factors for which each facility’s ventilator program was reviewed included:

- surveillance and enforcement history;
- availability of an emergency generator for ventilator support;
- affiliations and transfer agreements with area hospitals;
- the facility’s staffing plan for ventilator-dependent care;
- the presence of an acceptable weaning program for ventilator patients;
- the physical environment standards contained in Section 713-4.5;

- experience operating a ventilator unit with beds in a discrete space, versus “scattered” throughout the facility in non-contiguous areas;
- occupancy rate of the facility’s ventilator beds;
- ability of the facility to serve hard-to-place ventilator- dependent patients, such as those requiring renal dialysis or bariatric services;
- a comprehensive program to reduce re-hospitalizations for ventilator patients;
- in-house clinical laboratory services;
- in-house radiology services;
- in-house pharmacy;
- presence of a step-down unit adjacent to a certified ventilator unit;
- geographic location central to the target population; and
- cost of ventilator operations.

From this review, applicants were ranked within the group of 15 based on how well their individual proposals addressed each of the aforementioned criteria. The top seven ranked applications have requested a total of 109 ventilator-dependent RHCF beds, matching in full the available need for vent beds in the five-borough New York City planning area, per the vent bed need methodology set forth in 10 NYCRR Section 709.17. All of the awarded vent beds represent conversions of existing RHCF beds, as opposed to additional RHCF capacity. The geographic distribution of the seven awarded applicants is two programs in Queens, two programs in Brooklyn, one program in Manhattan, and two programs in the Bronx.



# Public Health and Health Planning Council

Project # 111070-C  
**Isabella Geriatric Center, Inc.**

**County:** New York (New York)  
**Purpose:** Construction

**Program:** Residential Health Care Facility  
**Submitted:** January 6, 2011

## Executive Summary

### Description

Isabella Geriatric Center, Inc., a 705-bed voluntary residential health care facility (RHCF) located at 515 Audubon Avenue, New York, requests approval to convert 16 RHCF beds to ventilator-dependent beds (“vent beds”) for a total of 36. There will be no change in overall bed capacity.

Total project costs are estimated at \$361,275.

**DOH Recommendation**  
Contingent approval.

### Need Summary

Based on the methodology in 10 NYCRR Section 709.17, the need for an additional 109 nursing home ventilator beds was identified for the planning area consisting of the five boroughs of New York City. In order to meet that need, the Department determined that the 19 active New York City vent bed CON applications currently acknowledged by the Department would be reviewed on a competitive basis.

All 19 applicants were sent letters requesting that updated financial and other necessary information be submitted to the Department, in accordance with 10 NYCRR Section 710.3(a). Applicants were advised to include a clear and comprehensive justification for the local need for ventilator services.

Fifteen qualifying applications were ultimately reviewed competitively on criteria that included, but were not limited to:

- experience operating a ventilator unit with beds in a discrete space;
- occupancy rate of the facility’s ventilator beds;

- ability of the facility to serve hard-to-place ventilator-dependent patients, such as those requiring renal dialysis or bariatric services;
- a comprehensive program to reduce re-hospitalizations for ventilator patients;
- in-house clinical laboratory services;
- in-house radiology services;
- in-house pharmacy;
- presence of a step-down unit adjacent to a certified ventilator unit;
- geographic location central to the target population; and
- cost of ventilator operations.

As a result of this competitive review, seven applicants are being recommended for approval, requesting a total of 109 ventilator beds – matching exactly the total number of ventilator-dependent RHCF beds currently needed in the five-borough New York City planning area.

This CON is one of seven that addressed the review criteria well enough to merit being awarded vent beds, and is therefore recommended for approval.

### Program Summary

Isabella Geriatric Center’s dedicated ventilator unit remains the only such unit in Manhattan, operating a program which provides clinical care for the ventilator-dependent, has successful weaning outcomes, and a waiting list for ventilator dependent services. Key features of the program include: aggressive weaning, bilingual family education, state-of-the-art staff training program, therapeutic recreation, counseling service, training and orientation for family members, and excellent discharge planning.

### Financial Summary

The \$361,275 in project cost is primarily for movable equipment and will be funded from accumulated funds of these funds \$78,800 is for leased equipment.

Incremental Budget:	<i>Revenues:</i>	\$3,110,435
	<i>Expenses</i>	<u>\$1,453,823</u>
	<i>Gain/ (Loss)</i>	\$1,656,612

Subject to the noted contingency, the applicant has demonstrated the capability to proceed in a financially feasible manner.

### Architectural Summary

This project involves the renovation of 2,700 SF to the 9<sup>th</sup> floor of an existing 17 story building, in which floors 3 through 11 are skilled nursing. It will expand the existing 20-bed ventilator dependent unit by 16 beds for a total of 36 ventilator dependent beds.

## 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. Section 2802.7 states that all sponsors whose applications require review by the State Hospital Review and 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. The facility must agree to the provision of piped medical gases (oxygen and suction) to the ventilator unit and submit floor plans detailing how it will meet this requirement of 10 NYCRR 713-4.5(a). [BFA, LTC]
3. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. In addition to the requirements outlined in DSG-01, document compliance with requirements for 20% single bedded rooms, Type 1 EES, and piped oxygen and suction to all program spaces. [AER]
4. Submission of updated budgets, with all assumptions noted, that include the impact of the State's 2011-2012 Budget and continues to demonstrate financial feasibility, acceptable to the Department of Health. [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 October 8, 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

**October 6, 2011.**



# Need Analysis

## Background

Based on the methodology in 10 NYCRR Section 709.17, the need for an additional 109 ventilator-dependent RHCF beds (“vent beds”) was identified for the planning area consisting of the five boroughs of New York City. In order to meet that need, the Department determined that the 19 active New York City vent bed CON applications currently acknowledged by the Department would be reviewed on a competitive basis.

## Solicitation

All 19 applicants were sent letters requesting that updated financial and other necessary information be submitted to the Department, in accordance with 10 NYCRR Section 710.3(a). Applicants were advised that the review would be conducted on a competitive basis for a limited number of beds and would include only those applications that have already been acknowledged and are currently active. The letter provided such applicants with the opportunity to fully update their applications, due to the importance of ensuring all information reviewed by the Department was as accurate and current as possible. Applicants were specifically instructed to provide a clear and comprehensive justification for the local need for ventilator services, as well as certified financial statements for the last three years and the latest internal financial statements.

Applicants were further permitted to submit questions to the Department to seek additional clarification regarding this process. The Department’s answers were provided to all applicants prior to the submission deadline, to ensure consistent information was shared regarding the process.

## Competitive Review

The updated applications were then reviewed competitively by the Department. The factors for which each facility’s ventilator program was reviewed included:

- surveillance and enforcement history;
- availability of an emergency generator for ventilator support;
- affiliations and transfer agreements with area hospitals;
- the facility’s staffing plan for ventilator-dependent care;
- the presence of an acceptable weaning program for ventilator patients;
- the physical environment standards contained in Section 713-4.5;
- experience operating a ventilator unit with beds in a discrete space, versus “scattered” throughout the facility in non-contiguous areas;
- occupancy rate of the facility’s ventilator beds;
- ability of the facility to serve hard-to-place ventilator- dependent patients, such as those requiring renal dialysis or bariatric services;
- a comprehensive program to reduce re-hospitalizations for ventilator patients;
- in-house clinical laboratory services;
- in-house radiology services;
- in-house pharmacy;
- presence of a step-down unit adjacent to a certified ventilator unit;
- geographic location central to the target population; and
- cost of ventilator operations.

From this review, applicants were ranked amongst the group based on how well their proposal addressed each of the aforementioned criteria. The top seven ranked applications have requested a total of 109 ventilator-dependent RHCF beds, matching in full the available need for vent beds in the five-borough New York City planning area, per NYCRR Section 709.17. All of the awarded vent beds represent conversions of RHCF beds, as opposed to additional RHCF capacity. The geographic distribution of the seven awarded applicants is two programs in Queens, two programs in Brooklyn, one program in Manhattan, and two programs in the Bronx.

This CON is one of seven which addressed the review criteria well enough to merit being awarded vent beds, and is therefore recommended for approval.

Recommendation

**From a need perspective, approval is recommended.**

**Programmatic Analysis**

Facility Information

	<i>Existing</i>	<i>Proposed</i>
<i>Facility Name</i>	Isabella Geriatric Center	Same
<i>Address</i>	515 Audubon Avenue New York, NY 10032	Same
<i>RHCF Capacity</i>	685 RHCF 20 Vent Dependent	669 RHCF 36 Vent Dependent
<i>ADHC Program Capacity</i>	40	Same
<i>Type of Operator</i>	Proprietary	Same
<i>Class of Operator</i>	LLC	Same
<i>Operator</i>	Isabella Geriatric Center	Same

Background

Isabella Geriatric Center, a 705 bed nursing facility in Northern Manhattan, is submitting this certificate of need application to expand its existing 20 bed ventilator dependent unit by 16 beds, for a total of 36 beds.

Isabella first established a ventilator dependent unit in 1996. Currently, this dedicated unit of 20 beds remains the only designated ventilator unit in Manhattan.

Isabella operates a program which provides clinical care for the ventilator dependent and has successful weaning outcomes, and a waiting list for ventilator dependent services. In addition, the growing, aging and diverse community it serves will continue to require ventilator dependent services. The supply of specialized services is limited in New York County.

Key features of the Program include:

- Aggressive weaning
- Bilingual family education
- State of the art staff training program
- Therapeutic recreation
- Counseling services
- Training and orientation for family members
- Excellent discharge planning

Since 2008, Isabella has successfully helped 20 individuals to return to the community, 30% of whom were aged 80 or older. The facility's weaning rate since the program's inception is 42.4%. In 2010 (through September), the program was weaning 50% of the ventilator dependent residents.

Isabella Home offers many home and community based services, including a licensed home care agency and a licensed child day care program. The nursing facility is the sponsor of a 550 slot long term home health care program, a 40 slot ADHC program, 77 apartments of independent living and several community based programs.

Physical Environment

Isabella Geriatric Center seeks to add 16 ventilator dependent beds to the existing 20 beds on the 9<sup>th</sup> floor of the nursing unit. The rooms are existing bedrooms. The renovation will be mainly the setting up of the new equipment and minor room repairs.

For this proposed project, the new ventilator dependent beds will bring the floor to a total of 36, utilizing all the existing space. The facility proposes to continue to utilize portable oxygen supply equipment. Piped in oxygen and suction is not available in the unit.

The existing dining and lounge areas have sufficient area to meet the requirements of the NYS DOH code. There are adequate bathing facilities to meet the code as well.

All resident rooms on the 9<sup>th</sup> floor of the 525 building are equipped and wired with backup generator capability. This includes the existing 20 bed ventilator program, and the proposed additional 16 ventilator bed expansion through the conversion of RHCF beds.

Compliance

Isabella Geriatric Center is currently in substantial compliance with the applicable codes, rules and regulations.

Conclusion

This is an existing program with a satisfactory surveillance history and a demonstrated effective weaning program. The facility is proposing to continue use of its portable oxygen system and as such will not comply with 10 NYCRR 713-4.5(a) which requires oxygen and suction to be piped to each resident room/area. Therefore, approval can only be recommended with the contingency that oxygen and suction is provided to each resident and resident rooms in compliance with 10 NYCRR 713-4.5(a).

Recommendation

**From a programmatic perspective, contingent approval is recommended.**

**Financial Analysis**

Total Project and Financing Costs

Total project costs for renovations and moveable equipment is estimated at \$361,275, broken down as follows:

Renovation & Demolition	\$37,000
Design Contingency	3,700
Construction Contingency	3,700
Planning Consultant Fees	20,000
Architect/Engineering Fees	20,000
Other Fees	15,000
Moveable Equipment	258,800
CON Application Fee	2,000
CON Processing Fee	<u>1,075</u>
Total Project Cost	\$361,275

The applicant's financing plan appears as follows:

Cash Equity	\$282,475
Leased Equipment (cash equity)	<u>78,800</u>
Total	\$361,275

Operating Budget

The applicant has submitted, in 2011 dollars, an operating budget that includes the conversion of 16 RHCF beds to 16 ventilator-dependent beds, as summarized below:

	<u>Current Year</u>	<u>Third Year Incremental</u>	<u>Cumulative</u>
<b>Revenues:</b>			
Inpatient*	\$87,604,520	\$3,110,435	\$90,714,955
Outpatient	23,384,762	0	23,384,762
Other Operating Income (B)	1,889,754	0	1,889,754
Non-operating Income	<u>157,726</u>	<u>0</u>	<u>157,726</u>
Total Revenues	\$113,036,762	\$3,110,435	\$116,147,197
<b>Expenses:</b>			
Operating	\$101,764,854	\$1,351,990	\$103,116,844
Operating (increase to 2011 \$ - A)	2,947,389	0	2,947,389
Capital	<u>8,665,613</u>	<u>101,833</u>	<u>8,767,446</u>
Total Expenses	\$113,377,856	\$1,453,823	\$114,831,679
Adjusted Excess Revenue over Expenses	<u>(\$341,094)</u>	<u>\$1,656,612</u>	<u>\$1,315,518</u>
<b>Utilization:</b>			
RHCF Beds-Inpatient Days	245,828	(1,825)	244,003
% RHCF Occupancy	98.32%		99.93%
Vent Beds –Inpatient Days	7,091	5,547	12,638
% Vent Beds Occupancy	97.14%		96.18%
Cost per Bed (includes other programs)	\$448.28	\$445.09	\$447.44

\* The \$3,110,435 net inpatient ventilator-dependent services revenues equals the revenue difference of converting 16 RHCF beds to 16 ventilator-dependent beds. The calculation is as follows: (\$3,664,959 ventilator-dependent bed revenues - \$554,524 for the conversion of 16 skilled nursing beds to 16 ventilator-dependent beds = \$3,110,435 net ventilator bed revenues)

(A) Operating Costs were inflated by \$2,947,389, bring them to 2011 dollars.

(B) Other Operating Revenues represents: contributions, interest, rentals and other income.

- Medicaid revenues assume no trend factor increase for the 2011 Medicaid rate and expenses include 1.2% non-reimbursable assessment. Current case-mix index is 1.57.
- Inpatient utilization by payor source as for the first and third years is as follows:

<u>Payor</u>	<u>Inpatient</u>
Medicaid Fee -for-Service	81.75%
Medicaid Manage Care	5.82%
Medicare Fee-for-Service	4.72%
Medicare Manage Care	5.94%
Private & All Other	1.77%

- Expenses and utilization are based upon the facilities historical and current experiences in operating the ventilator-dependent unit.

#### Capability and Feasibility

Total project cost of \$361,275 will be provided from accumulated funds as shown above. Presented as BFA Attachment A is Isabella Geriatric Center, Inc., draft certified financial summary for 2009 and 2010, which indicates the ability to provide the project's equity.

Working capital requirements should be minimal, and any additional needs will be provided from operations.

The third year net incremental budget shows an excess of revenues over expenses of \$1,656,612. The total facility net income is estimated to be \$1,315,518. Revenues are based on current payor rates, and reflect revised Medicaid reimbursement adjustments. The applicant's budget appears reasonable.

Review of BFA Attachment A shows Isabella Geriatric Center had an operating loss of \$1,265,797 in 2010, which was practically offset by investment gains totaling \$893,868, bringing the change in unrestricted assets to a negative \$371,929.

Presented as BFA Attachment B is Isabella Geriatric Center March 31, 2011 internal financial summary which shows the organization generated an operating profit of \$575,872, plus other gains totaling \$263,932, thus increasing unrestricted assets by \$839,804.

Presented as BFA Attachment C is Isabella Geriatric Center certified financial summary for 2009 and 2008 which shows the facility had an operating loss of \$5,322,313 in 2008, and an operating profit of \$2,448,569 in 2009. For 2009, revenues increased \$5,443,458 over 2008, with increases coming from five of the six revenue categories. During the same period, total expenses dropped \$3,070,724 with nine of the thirteen expense categories declining from the 2008 levels, and one in particular (supplies and materials) dropped by \$2,024,499.

During the period between 2008 and March 31, 2011, the facility operated with both a positive working capital and net asset position. At the end of 2010, working capital stood at \$4,823,283 and net assets at \$16,718,751.

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 proposes 2,700 SF of renovations to the 9<sup>th</sup> floor and will include 7 double and 2 single rooms for a total of 16 new ventilator dependent beds. The renovation work will be mainly the setting up of the new equipment required and minor room repairs. The existing floor has adequate dining, lounge and bathing spaces to accommodate the additional 16 ventilator dependent residents. The existing staff support spaces are also adequate.

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, contingent approval is recommended.**

**Attachments**

BFA Attachment A	Financial Summary for 2009 and 2010, Isabella Geriatric Center, Inc.
BFA Attachment B	Internal Financial Summary for March 31, 2011, Isabella Geriatric Center, Inc.
BFA Attachment C	Financial Summary for 2008 and 2009, Isabella Geriatric Center, Inc.
BFA Attachment D	Financial Summary, Isabella Geriatric Center, Inc.
BHFP Attachment	Map





# Public Health and Health Planning Council

Project # 091021-C  
**Parkshore Health Care, LLC**  
**d/b/a Four Seasons Nursing and Rehabilitation Center**

**County: Kings (Brooklyn)**  
**Purpose: Construction**

**Program: Residential Health Care Facility**  
**Submitted: January 29, 2009**

## Executive Summary

### Description

Parkshore Health Care, LLC d/b/a Four Seasons Nursing and Rehabilitation Center, a 270-bed proprietary residential healthcare facility (RHCF) located at 1555 Rockaway Pkwy., Brooklyn, requests approval to convert 10 RHCF beds to ventilator-dependent beds (“vent beds”) for a total of 20.

Total project costs are estimated at \$522,903.

DOH Recommendation  
Contingent approval.

### Need Summary

Based on the methodology in 10 NYCRR Section 709.17, the need for an additional 109 nursing home ventilator beds was identified for the planning area consisting of the five boroughs of New York City. In order to meet that need, the Department determined that the 19 active New York City vent bed CON applications currently acknowledged by the Department would be reviewed on a competitive basis.

All 19 applicants were sent letters requesting that updated financial and other necessary information be submitted to the Department, in accordance with 10 NYCRR Section 710.3(a). Applicants were advised to include a clear and comprehensive justification for the local need for ventilator services.

Fifteen qualifying applications were ultimately reviewed competitively on criteria that included, but were not limited to:

- experience operating a ventilator unit with beds in a discrete space;

- occupancy rate of the facility’s ventilator beds;
- ability of the facility to serve hard-to-place ventilator-dependent patients, such as those requiring renal dialysis or bariatric services;
- a comprehensive program to reduce re-hospitalizations for ventilator patients;
- in-house clinical laboratory services;
- in-house radiology services;
- in-house pharmacy;
- presence of a step-down unit adjacent to a certified ventilator unit;
- geographic location central to the target population; and
- cost of ventilator operations.

As a result of this competitive review, seven applicants are being recommended for approval, requesting a total of 109 ventilator beds – matching exactly the total number of ventilator-dependent RHCF beds currently needed in the five-borough New York City planning area.

This CON is one of seven that addressed the review criteria well enough to merit being awarded vent beds, and is therefore recommended for approval.

### Program Summary

This is an existing vent bed unit with a track record of serving ventilator and ventilator/dialysis residents with an excellent surveillance history and positive outcomes. The unit has been providing vent bed services in excess of its certified capacity and has demonstrated an effective weaning program. The expanded unit will exceed the code requirement for 20% single-rooms, providing 40% singles.

Financial Summary

Project costs will be met with equity of \$163,406 and a \$359,497 bank loan (10 yrs. @ 8.25%).

Incremental Budget:	<i>Revenues:</i>	\$ 1,824,687
	<i>Expenses</i>	<u>905,589</u>
	<i>Gain/(Loss):</i>	\$ 919,098

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 vent bed expansion will be developed through the conversion of 10 existing RHCF beds on the fifth floor of the facility. The remaining 20 beds on the fifth floor will be utilized as a respiratory step-down unit. The new 10 vent beds will consist of five double-bedrooms to be located in existing bedrooms designated for renovation. The project will include renovation of existing bedrooms, toilets and showers to accommodate the new service.



## 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 that is acceptable to the Department of Health. [BFA]
3. Submission of updated budgets, with all assumptions noted, that include the impact of the State's 2011-2012 Budget and continues to demonstrate financial feasibility, acceptable to the Department of Health. [BFA]
4. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. In addition to the requirements outlined in DSG-01, document compliance with requirements for 20% single bedded rooms, Type 1 EES, and piped oxygen and suction to all program spaces. [AER]

**Approval conditional upon:**

1. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER].
2. The applicant shall complete construction on or before October 8, 2013. In accordance with 10 NYCRR Part 710.2(b)(5), if construction is not completed on or before that date, this shall constitute abandonment of the approval. In accordance with Part 710.10(a), this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

**October 6, 2011.**

## Need Analysis

### Background

Based on the methodology in 10 NYCRR Section 709.17, the need for an additional 109 ventilator-dependent RHCF beds (“vent beds”) was identified for the planning area consisting of the five boroughs of New York City. In order to meet that need, the Department determined that the 19 active New York City vent bed CON applications currently acknowledged by the Department would be reviewed on a competitive basis.

### Solicitation

All 19 applicants were sent letters requesting that updated financial and other necessary information be submitted to the Department, in accordance with 10 NYCRR Section 710.3(a). Applicants were advised that the review would be conducted on a competitive basis for a limited number of beds and would include only those applications that have already been acknowledged and are currently active. The letter provided such applicants with the opportunity to fully update their applications, due to the importance of ensuring all information reviewed by the Department was as accurate and current as possible. Applicants were specifically instructed to provide a clear and comprehensive justification for the local need for ventilator services, as well as certified financial statements for the last three years and the latest internal financial statements.

Applicants were further permitted to submit questions to the Department to seek additional clarification regarding this process. The Department’s answers were provided to all applicants prior to the submission deadline, to ensure consistent information was shared regarding the process.

### Competitive Review

The updated applications were then reviewed competitively by the Department. The factors for which each facility’s ventilator program was reviewed included:

- surveillance and enforcement history;
- availability of an emergency generator for ventilator support;
- affiliations and transfer agreements with area hospitals;
- the facility’s staffing plan for ventilator-dependent care;
- the presence of an acceptable weaning program for ventilator patients;
- the physical environment standards contained in Section 713-4.5;
- experience operating a ventilator unit with beds in a discrete space, versus “scattered” throughout the facility in non-contiguous areas;
- occupancy rate of the facility’s ventilator beds;
- ability of the facility to serve hard-to-place ventilator- dependent patients, such as those requiring renal dialysis or bariatric services;
- a comprehensive program to reduce re-hospitalizations for ventilator patients;
- in-house clinical laboratory services;
- in-house radiology services;
- in-house pharmacy;
- presence of a step-down unit adjacent to a certified ventilator unit;
- geographic location central to the target population; and
- cost of ventilator operations.

From this review, applicants were ranked amongst the group based on how well their proposal addressed each of the aforementioned criteria. The top seven ranked applications have requested a total of 109 ventilator-dependent RHCF beds, matching in full the available need for vent beds in the five-borough New York City planning area, per NYCRR Section 709.17. All of the awarded vent beds represent conversions of RHCF beds, as opposed to additional RHCF capacity. The geographic distribution of the seven awarded applicants is two programs in Queens, two programs in Brooklyn, one program in Manhattan, and two programs in the Bronx.

This CON is one of seven which addressed the review criteria well enough to merit being awarded vent beds, and is therefore recommended for approval.

Recommendation

**From a need perspective, approval is recommended.**

<h2 style="margin: 0;">Programmatic Analysis</h2>
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Facility Information

	<i>Existing</i>	<i>Proposed</i>
<i>Facility Name</i>	Four Seasons Nursing and Rehabilitation Center	Same
<i>Address</i>	1555 Rockaway Parkway Brooklyn, NY 11236	Same
<i>RHCF Capacity</i>	260 RHCF 10 Ventilator Dependent Beds	250 RHCF 20 Ventilator Dependent Beds
<i>Type of Operator</i>	Limited Liability Company	Same
<i>Class of Operator</i>	Proprietary	Same
<i>Operator</i>	Parkshore Health Care, LLC	Same

Background

Parkshore Health Care, LLC d/b/a Four Seasons Nursing and Rehabilitation Center (Four Seasons), is a 270-bed residential health care facility (RHCF), located at 1555 Rockaway Parkway, Brooklyn. Four Seasons currently operates a 10-bed ventilator dependent unit on the fifth (5<sup>th</sup>) floor of the facility. Four Seasons proposes to expand its services through the conversion of 10 existing RHCF beds. Upon completion Four Seasons will operate 20 ventilator dependent beds. The remaining 20 beds on the fifth (5<sup>th</sup>) floor will be utilized as a respiratory step down unit.

The existing ventilator unit has successfully in operated for 7 years. Out of a total of 46 ventilator residents in 2009-2010, 31 attempts were made to wean off 67% of the unit and. Four Seasons reports they attained a 48% success rate of weaned residents.

Four Seasons exceeds staffing requirements for the vent unit, and provides 24 hour 7 day a week respiratory therapy coverage. In addition, all nursing staff have been cross-trained in respiratory care for ventilator dependent residents.

Four Seasons established a therapeutic recreation quality of life program where the ventilator dependent residents receive therapeutic recreation services not only in their room one on one, but also in a group setting in the activities room and on the vent unit.

Four Seasons operates a wound care program which was enhanced in May 2010 to include the participation of a wound care consultant (M.D.) as a support to the wound team. To date, the healing rate of chronic pressure ulcers in the ventilator unit has increased by 55%.

The rate of re-hospitalization in the current certified ventilator unit remains at 10% or below for the year to date. The facility continues to exhibit the ability to manage the clinical needs of its ventilator residents in-house. A 20 station chronic renal dialysis center, operated by Gateway Dialysis Center, is located on the first floor of Four Seasons. The chronic renal dialysis center at the facility allows Four Seasons to admit residents requiring both dialysis and ventilator dependent care. Since the opening of the ventilator dependent unit, 11 residents on ventilators have been admitted who require dialysis. Of the 11 residents, four (4) have been successfully weaned off the ventilator.

Physical Environment

The additional 10 ventilator dependent beds will be located in five (5) double-bedded rooms. The combined 20-bed unit will consist of six (6) double-bedded rooms and eight (8) single-bedded rooms. Four Seasons, which routinely has 20 residents, currently has 16 patients in-house who are ventilator-dependent.

Compliance

Four Seasons Nursing and Rehabilitation Center is currently in substantial compliance with the applicable codes, rules and regulations

Recommendation

**From a programmatic perspective, approval is recommended.**

**Financial Analysis**

Total Project Cost and Financing

Total project cost for renovations and the acquisition of moveable equipment, is estimated at \$522,903, broken down as follows:

Renovation and Demolition	\$149,779
Design Contingency	14,978
Construction Contingency	14,978
Architect/Engineering Fees	14,379
Other Fees (Consultant)	30,576
Movable Equipment	286,978
Financing Costs	2,247
Interim Interest Expense	6,179
CON Fee	1,250
Additional Processing Fee	<u>1,560</u>
Total Project Cost	\$522,903

Project costs are based on a November 1, 2011 construction start date and a six month construction period.

The applicant's financing plan appears as follows:

Equity	\$163,406
Bank Loan (8.25% interest rate for a ten year term)	359,497

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	\$1,682,448	\$1,824,687
Expenses:		
Operating	\$830,188	\$834,933
Capital	<u>70,656</u>	<u>70,656</u>
Total Expenses	\$900,844	\$905,589
Net Income	\$781,604	\$919,098

Utilization: (patient days)	2,939	3,302
Occupancy Percentage	80.52%	90.47%
Cost Per Patient Day	\$306.51	\$274.25

The following is noted with respect to the submitted RHCF operating budget:

- Medicare and Private Pay rates are based on the facility's reimbursement rates trended to 2011.
- Medicaid reimbursement rates are based on the facility's 2010 Medicaid rate sheet, with no trend factor to 2011, but adjusted to reflect the increase in capital reimbursement due to the capital cost related to the expansion.
- Utilization by payor source during the first and third years for the additional 10 ventilator dependent beds is as follows:

	<u>Year One</u>	<u>Year Three</u>
Medicaid	55.26%	57.36%
Medicare	44.06%	41.97%
Private Pay	.68%	.67%

Expense assumptions are based on the facility's current ventilator dependent unit's expense history and increased to reflect the additional costs associated with the addition of the proposed 10 bed ventilator dependent expansion. Utilization assumptions are based on the facility's existing utilization of ventilator dependent beds and the ongoing need for these beds in the community.

#### Capability and Feasibility

The applicant will finance \$359,497 at an interest rate of 8.25% for a ten year term, of which an appropriate letter of interest was provided. The remainder, \$163,406, will be met via equity from accumulated funds of the facility. Presented as BFA Attachment A, is the financial summary of Four Seasons Nursing and Rehabilitation Center, which indicates the availability of sufficient funds to meet the equity contribution.

The submitted incremental budget projects a net income of \$781,604 and \$919,098 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for ventilator dependent services. The applicant's budget appears reasonable.

As shown on Attachment A, the facility had an average positive working capital position and an average negative net asset position from 2008 through 2010. Also, the facility incurred an average net income of \$136,629 from 2008 through 2010.

Presented as BFA Attachment B, are the internal financial statements of Four Seasons Nursing and Rehabilitation Center. As shown on Attachment B, the facility had a positive working capital position and a negative net asset position through February 28, 2011. Also, the facility had a net loss of \$46,183 through February 28, 2011.

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 proposed ventilator services expansion will be developed through the conversion of 10 existing nursing home beds to 10 ventilator beds on the fifth floor of the facility. The remaining 20 beds on the fifth floor will be utilized as a respiratory step down unit. The new 10 vent beds will consist of five double bedrooms to be located in existing bedrooms designated for renovation. The project will include renovation of existing bedrooms, toilets and showers to accommodate the new service.

### 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, contingent approval is recommended.**

## Attachments

BFA Attachment A	Financial Summary - Four Seasons Nursing and Rehabilitation Center
BFA Attachment B	Internal Financial Statements - Four Seasons Nursing and Rehabilitation Center
BHFP Attachment	Map



# Public Health and Health Planning Council

## Project # 092166-C Eastchester Rehabilitation and Health Care Center, LLC

**County:** Bronx (Bronx)  
**Purpose:** Construction

**Program:** Residential Health Care Facility  
**Submitted:** December 7, 2009

### Executive Summary

#### Description

Eastchester Rehabilitation and Health Care Center, LLC, a 200-bed proprietary residential health care facility (RHCF) located at 2700 Eastchester Road, Bronx, requests approval to convert 4 RHCF beds to ventilator-dependent beds ("vent beds") for a total of 20 vent beds in the facility.

Total project costs are estimated at \$726,614.

DOH Recommendation  
Contingent approval.

#### Need Summary

Based on the methodology in 10 NYCRR Section 709.17, the need for an additional 109 nursing home ventilator beds was identified for the planning area consisting of the five boroughs of New York City. In order to meet that need, the Department determined that the 19 active New York City vent bed CON applications currently acknowledged by the Department would be reviewed on a competitive basis.

All 19 applicants were sent letters requesting that updated financial and other necessary information be submitted to the Department, in accordance with 10 NYCRR Section 710.3(a). Applicants were advised to include a clear and comprehensive justification for the local need for ventilator services.

Fifteen qualifying applications were ultimately reviewed competitively on criteria that included, but were not limited to:

- experience operating a ventilator unit with beds in a discrete space;

- occupancy rate of the facility's ventilator beds;
- ability of the facility to serve hard-to-place ventilator-dependent patients, such as those requiring renal dialysis or bariatric services;
- a comprehensive program to reduce re-hospitalizations for ventilator patients;
- in-house clinical laboratory services;
- in-house radiology services;
- in-house pharmacy;
- presence of a step-down unit adjacent to a certified ventilator unit;
- geographic location central to the target population; and
- cost of ventilator operations.

As a result of this competitive review, seven applicants are being recommended for approval, requesting a total of 109 ventilator beds – matching exactly the total number of ventilator-dependent RHCF beds currently needed in the five-borough New York City planning area.

This CON is one of seven that addressed the review criteria well enough to merit being awarded vent beds, and is therefore recommended for approval.

#### Program Summary

The bed breakdown will include 4 private rooms and 8 double-rooms. The expansion of the 4 ventilator dependent beds will allow the facility to install in-wall oxygen and suctioning to the entire 20 bed ventilator unit during the renovations. The existing emergency generator system will be expanded to include the additional 4 ventilator dependent beds.

Financial Summary

Project costs will be with equity of \$206,614 and a \$525,000 bank loan (10 yrs. @ 7.25%).

Incremental Budget:	<i>Revenues:</i>	\$ 910,073
	<i>Expenses:</i>	<u>484,345</u>
	<i>Gain/(Loss):</i>	\$ 425,728

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

Architectural Summary

There will be no proposed net increase or decrease in the total number of beds in the facility. The proposed expansion of the ventilator dependent service will result in a 40 bed resident care unit, which currently is the location of the existing 16-bed ventilator dependent program. There will be no net increase or decrease to the facility's certified capacity as a result of this project. This project will include approximately 3,500 SF of renovations to the second floor of the existing fully sprinklered five-story building.



## 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. The facility must submit floor plans detailing compliance with 10NYCRR 713-4.5 including adequate dining/activity and therapy space on the unit. [LTC]
3. Submission of updated budgets, with all assumptions noted, that include the impact of the State's 2011-2012 Budget and continues to demonstrate financial feasibility, acceptable to the Department of Health. [BFA]
4. 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. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
5. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]

**Approval conditional upon:**

1. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [(AER)]
2. The applicant shall complete construction on or before September 30, 2014. In accordance with 10 NYCRR Part 710.2(b)(5), if construction is not completed on or before that date, this shall constitute abandonment of the approval. In accordance with Part 710.10(a), this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

**October 6, 2011.**

# Need Analysis

## Background

Based on the methodology in 10 NYCRR Section 709.17, the need for an additional 109 ventilator-dependent RHCF beds (“vent beds”) was identified for the planning area consisting of the five boroughs of New York City. In order to meet that need, the Department determined that the 19 active New York City vent bed CON applications currently acknowledged by the Department would be reviewed on a competitive basis.

## Solicitation

All 19 applicants were sent letters requesting that updated financial and other necessary information be submitted to the Department, in accordance with 10 NYCRR Section 710.3(a). Applicants were advised that the review would be conducted on a competitive basis for a limited number of beds and would include only those applications that have already been acknowledged and are currently active. The letter provided such applicants with the opportunity to fully update their applications, due to the importance of ensuring all information reviewed by the Department was as accurate and current as possible. Applicants were specifically instructed to provide a clear and comprehensive justification for the local need for ventilator services, as well as certified financial statements for the last three years and the latest internal financial statements.

Applicants were further permitted to submit questions to the Department to seek additional clarification regarding this process. The Department’s answers were provided to all applicants prior to the submission deadline, to ensure consistent information was shared regarding the process.

## Competitive Review

The updated applications were then reviewed competitively by the Department. The factors for which each facility’s ventilator program was reviewed included:

- surveillance and enforcement history;
- availability of an emergency generator for ventilator support;
- affiliations and transfer agreements with area hospitals;
- the facility’s staffing plan for ventilator-dependent care;
- the presence of an acceptable weaning program for ventilator patients;
- the physical environment standards contained in Section 713-4.5;
- experience operating a ventilator unit with beds in a discrete space, versus “scattered” throughout the facility in non-contiguous areas;
- occupancy rate of the facility’s ventilator beds;
- ability of the facility to serve hard-to-place ventilator- dependent patients, such as those requiring renal dialysis or bariatric services;
- a comprehensive program to reduce re-hospitalizations for ventilator patients;
- in-house clinical laboratory services;
- in-house radiology services;
- in-house pharmacy;
- presence of a step-down unit adjacent to a certified ventilator unit;
- geographic location central to the target population; and
- cost of ventilator operations.

From this review, applicants were ranked amongst the group based on how well their proposal addressed each of the aforementioned criteria. The top seven ranked applications have requested a total of 109 ventilator-dependent RHCF beds, matching in full the available need for vent beds in the five-borough New York City planning area, per NYCRR Section 709.17. All of the awarded vent beds represent conversions of RHCF beds, as opposed to additional RHCF capacity. The geographic distribution of the seven awarded applicants is two programs in Queens, two programs in Brooklyn, one program in Manhattan, and two programs in the Bronx.

This CON is one of seven which addressed the review criteria well enough to merit being awarded vent beds, and is therefore recommended for approval.

Recommendation

**From a need perspective, approval is recommended.**

**Programmatic Analysis**

Facility Information

	<i>Existing</i>	<i>Proposed</i>
<i>Facility Name</i>	Eastchester Rehabilitation and Health Care Center	Same
<i>Address</i>	2700 Eastchester Road Bronx, NY 10469	Same
<i>RHCF Capacity</i>	184 RHCF 16 Vent	180 RHCF 20 Vent
<i>Type Of Operator</i>	Proprietary	Same
<i>Class Of Operator</i>		Same
<i>Operator</i>	Eastchester Rehabilitation and Health Care Center, LLC	Same

Program Review

The entire of continuum of services delivered in the current ventilator dependent program is integrated with all services of Eastchester Rehabilitation and Health Care Center. The delivery of each component of the program is coordinated with similar activities in the general resident population.

The ongoing program plan includes a goal to wean all appropriate residents from dependence upon a mechanical ventilator during the course of treatment in the program, based on established criteria.

Physical Environment

The existing 16-bed ventilator dependent unit is comprised of seven (7) double-bedded rooms, and two (2) single-bedded rooms. The proposed 20-bed ventilator dependent unit will be comprised of eight (8) double-bedded rooms and four (4) single-bedded rooms, which will allow the 20-bed ventilator dependent unit to meet the 20% private room requirement. Additionally, the facility will install in-wall oxygen and suctioning on the 20-bed ventilator dependent unit, as part of the expansion project. The existing emergency generator system for the 16-bed unit will be expanded to include the entire 20-bed ventilator dependent unit. The facility must submit floor plans detailing adequate on floor dining/activity/therapy space.

Compliance

Eastchester Rehabilitation and Health Care Center is currently in substantial compliance with the applicable codes, rules and regulations

Conclusion

This is an existing ventilator unit with a satisfactory surveillance history and demonstrated effective weaning program. However, the facility must submit plans detailing adequate dining/activity and therapy space on the unit.

Recommendation

**From a programmatic perspective, contingent approval is recommended.**

## Financial Analysis

### Total Project Cost and Financing

Total project cost for renovations and the acquisition of moveable equipment, is estimated at \$726,614, broken down as follows:

Renovation and Demolition	\$454,272
Design Contingency	45,427
Construction Contingency	45,427
Architect/Engineering Fees	68,151
Other Fees (Consultant)	30,160
Movable Equipment	58,885
Financing Costs	6,434
Interim Interest Expense	14,438
CON Fee	1,250
Additional Processing Fee	<u>2,170</u>
Total Project Cost	\$726,614

Project costs are based on a April 1, 2012 construction start date and a six month construction period.

The applicant's financing plan appears as follows:

Equity	\$201,614
Bank Loan (7.25% interest rate for a ten year term)	\$525,000

### 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	\$710,541	\$910,073
Expenses:		
Operating	\$386,800	\$400,319
Capital	<u>84,026</u>	<u>84,026</u>
Total Expenses	\$470,826	\$484,345
Net Income	\$239,715	\$425,728
Utilization: (patient days)	1,105	1,397
Cost Per Patient Day	\$426.09	\$346.70

The following is noted with respect to the submitted RHCF operating budget:

- The case mix index (CMI) is 1.6825.
- Medicare and Private Pay revenues are based on the facility's current reimbursement rates.
- Medicaid reimbursement rates are based on the facility's 2010 Medicaid rate sheet, with no trend factor to 2011, but adjusted to reflect the increase in capital reimbursement due to the capital cost related to the expansion.

- Utilization by payor source during the first and third years for the additional 16 bed ventilator dependent unit is as follows:

	<u>Year One</u>	<u>Year Three</u>
Medicaid	96.02%	96.85%
Medicare	2.17%	1.72%
Private Pay	1.81%	1.43%

Expense assumptions are based on the facility's current expense history and the addition of the proposed 4 bed ventilator dependent expansion. Utilization assumptions are based on the facility's potential candidates for ventilator dependent beds and the ongoing need for these beds in the community.

#### Capability and Feasibility

The applicant will finance \$525, 000 at an interest rate of 7.25% for a ten year term, of which an appropriate letter of interest was provided. The remainder, \$201,614, will be met with equity from accumulated funds of the facility. Presented as BFA Attachment A, is the financial summary of Eastchester Rehabilitation and Health Care Center, which indicates the availability of sufficient funds to meet the equity contribution.

The submitted budget projects a net income of \$239,715 and \$425,728 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for ventilator dependent services. The applicant's budget appears reasonable.

As shown on Attachment A, the facility had an average positive working capital position in 2009-2010, an average positive net equity position from 2008 through 2010 and average net profit of \$605,522 from 2008 through 2010. The applicant had a negative working capital position in 2008 due to the posting of a related party payable (Eastchester Realty) as a current liability which had no maturity date or interest expense. This was corrected in 2009.

Presented as BFA Attachment B is the 2011 internal financial statements of Eastchester Rehabilitation and Health Care Center which shows the facility had a negative working capital position, a positive net equity position and a net income from operations of \$332,737 through May 31, 2011. The negative working capital was due to the posting of a related party payable (Eastchester Realty) as a current liability and will be corrected before the end of the year.

#### Recommendation

**From a financial perspective, contingent approval is recommended.**

## Architectural Analysis

#### Review Summary

Eastchester Rehabilitation and Health Care Center is requesting approval to expand its existing 16-bed vent unit to a 20-bed vent unit to better serve the surrounding Bronx County communities.

The existing vent unit to be expanded is located on the second floor of Eastchester Rehabilitation and Health Care Center, a 200 bed skilled nursing facility located in the Eastchester section of Bronx County.

This project will include approximately 3,500 SF of renovations to the second floor of the existing fully sprinklered five-story building. There will be no proposed net increase or decrease in the total number of beds in the facility. The bed breakdown will include 4 private rooms and 8 double rooms. This project will provide a piped oxygen and suction system to serve all 20 beds.

An existing nursing office located on the second floor will be relocated to the ground floor. The space subsequently vacated will be converted into a 2-bedded resident room. Two existing 2-bedded rooms will be converted into private rooms to increase the ratio of private rooms within the vent unit to 20% and maintain the existing number of beds on the second floor.

The building's nurse call & fire protection systems will be modified to accommodate the new partition arrangements. The building's emergency electrical system has been modified to comply with NFPA 99 requirements.

#### Environmental Review

The Department has deemed this project to be a TYPE II Action which 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, contingent approval is recommended.**

## Attachments

BFA Attachment A	Financial Summary of Eastchester Rehabilitation and Health Care Center
BFA Attachment B	Internal May 31, 2011 Financial Statements for Eastchester Rehabilitation and Health Care Center
BHFP Attachment	Map

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

**October 6, 2011**

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**A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES**

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

**Residential Health Care Facilities Ventilator Beds – Construction      Exhibit #6**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	031039 C	Bronx Center for Rehabilitation & Health Care, LLC (Bronx County) Mr. Fensterman – Recusal	Disapproval
2..	071010 C	Long Island Care Center, Inc. (Queens County) Mr. Fensterman- Recusal	Disapproval
3.	092002 C	Promenade Nursing Home, Inc. d/b/a Promenade Rehabilitation and Health Care Center (Queens County) Mr. Fensterman – Recusal	Disapproval
4.	101016 C	Fort Tryon Rehabilitation & Health Care Facility, LLC d/b/a Fort Tryon Center for Rehabilitation and Nursing (New York County) Mr. Fensterman – Recusal	Disapproval
5.	111174 C	Sheepshead Nursing & Rehabilitation Center, LLC (Kings County) Mr. Fensterman – Recusal	Disapproval

- |    |          |   |             |
|----|----------|---|-------------|
| 6. | 062217 C | Fieldston Operating, LLC d/b/a<br>Fieldston Lodge Care Center<br>(Bronx County)   | Disapproval |
| 7. | 062380 C | Cliffside Nursing Home, Inc.,<br>d/b/a Cliffside Rehabilitation<br>& Residential Health Care<br>Center<br>(Queens County) | Disapproval |
| 8. | 082176 C | Lutheran Augustana Center for<br>Extended Care and<br>Rehabilitation, Inc.<br>(Kings County)                              | Disapproval |

**Cardiac Services – Construction**

**Exhibit #7**

	<u><b>Number</b></u>	<u><b>Applicant/Facility</b></u>	<u><b>E.P.R.C. Recommendation</b></u>
1.	052112 C	Sisters of Charity Hospital (Erie County)	Disapproval





# Public Health and Health Planning Council

Project # 031039-C

## Bronx Center for Rehabilitation & Health Care, LLC

**County:** Bronx (Bronx)  
**Purpose:** Construction

**Program:** Residential Health Care Facility  
**Submitted:** February 4, 2003

### Executive Summary

#### Description

Bronx Center for Rehabilitation & Health Care, LLC, a proprietary 200-bed residential health care facility (RHCF) located at 1010 Underhill Avenue, Bronx, requests approval to certify a 16-bed ventilator-dependent (“vent bed”) service.

DOH Recommendation  
Disapproval.

#### Need Summary

Based on the methodology in 10 NYCRR Section 709.17, the need for an additional 109 nursing home ventilator beds was identified for the planning area consisting of the five boroughs of New York City. In order to meet that need, the Department determined that the 19 active New York City vent bed CON applications currently acknowledged by the Department would be reviewed on a competitive basis.

All 19 applicants were sent letters requesting that updated financial and other necessary information be submitted to the Department, in accordance with 10 NYCRR Section 710.3(a). Applicants were advised to include a clear and comprehensive justification for the local need for ventilator services.

Fifteen qualifying applications were ultimately reviewed competitively on criteria that included, but were not limited to:

- experience operating a ventilator unit with beds in a discrete space;
- occupancy rate of the facility’s ventilator beds;

- ability of the facility to serve hard-to-place ventilator-dependent patients, such as those requiring renal dialysis or bariatric services;
- a comprehensive program to reduce re-hospitalizations for ventilator patients;
- in-house clinical laboratory services;
- in-house radiology services;
- in-house pharmacy;
- presence of a step-down unit adjacent to a certified ventilator unit;
- geographic location central to the target population; and
- cost of ventilator operations.

As a result of this competitive review, seven applicants are being recommended for approval, requesting a total of 109 ventilator beds – matching exactly the total number of ventilator-dependent RHCF beds currently needed in the five-borough New York City planning area.

This CON is one of eight that did not address the review criteria well enough to merit being awarded vent beds, and is therefore recommended for disapproval.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

**Disapproval.**

Council Action Date

**October 6, 2011.**

## Need Analysis

### Background

Based on the methodology in 10 NYCRR Section 709.17, the need for an additional 109 ventilator-dependent RHCF beds (“vent beds”) was identified for the planning area consisting of the five boroughs of New York City. In order to meet that need, the Department determined that the 19 active New York City vent bed CON applications currently acknowledged by the Department would be reviewed on a competitive basis.

### Solicitation

All 19 applicants were sent letters requesting that updated financial and other necessary information be submitted to the Department, in accordance with 10 NYCRR Section 710.3(a). Applicants were advised that the review would be conducted on a competitive basis for a limited number of beds and would include only those applications that have already been acknowledged and are currently active. The letter provided such applicants with the opportunity to fully update their applications, due to the importance of ensuring all information reviewed by the Department was as accurate and current as possible. Applicants were specifically instructed to provide a clear and comprehensive justification for the local need for ventilator services, as well as certified financial statements for the last three years and the latest internal financial statements.

Applicants were further permitted to submit questions to the Department to seek additional clarification regarding this process. The Department’s answers were provided to all applicants prior to the submission deadline, to ensure consistent information was shared regarding the process.

### Competitive Review

The updated applications were then reviewed competitively by the Department. The factors for which each facility’s ventilator program was reviewed included:

- surveillance and enforcement history;
- availability of an emergency generator for ventilator support;
- affiliations and transfer agreements with area hospitals;
- the facility’s staffing plan for ventilator-dependent care;
- the presence of an acceptable weaning program for ventilator patients;
- the physical environment standards contained in Section 713-4.5;
- experience operating a ventilator unit with beds in a discrete space, versus “scattered” throughout the facility in non-contiguous areas;
- occupancy rate of the facility’s ventilator beds;
- ability of the facility to serve hard-to-place ventilator- dependent patients, such as those requiring renal dialysis or bariatric services;
- a comprehensive program to reduce re-hospitalizations for ventilator patients;
- in-house clinical laboratory services;
- in-house radiology services;
- in-house pharmacy;
- presence of a step-down unit adjacent to a certified ventilator unit;
- geographic location central to the target population; and
- cost of ventilator operations.

From this review, applicants were ranked amongst the group based on how well their proposal addressed each of the aforementioned criteria. The top seven ranked applications have requested a total of 109 ventilator-dependent RHCF beds, matching in full the available need for vent beds in the five-borough New York City planning area, per NYCRR Section 709.17. All of the awarded vent beds represent conversions of RHCF beds, as opposed to additional RHCF capacity. The geographic distribution of the seven awarded applicants is two programs in Queens, two programs in Brooklyn, one program in Manhattan, and two programs in the Bronx.

This CON is one of eight which did not address the review criteria well enough to merit being awarded vent beds, and is therefore recommended for disapproval.

Recommendation

**From a need perspective, disapproval is recommended.**

## Attachments

BHFP Attachment

Map



# Public Health and Health Planning Council

Project # 071010-C

## Long Island Care Center, Inc.

**County:** Queens (Flushing)  
**Purpose:** Construction

**Program:** Residential Health Care Facility  
**Submitted:** January 26, 2007

### Executive Summary

#### Description

Long Island Care Center, Inc., a proprietary 200-bed residential health care facility (RHCF) located at 144-61 38<sup>th</sup> Avenue, Flushing, requests approval to convert 30 RHCF beds to ventilator-dependent beds ("vent beds") for a total of 40.

DOH Recommendation  
Disapproval.

#### Need Summary

Based on the methodology in 10 NYCRR Section 709.17, the need for an additional 109 nursing home ventilator beds was identified for the planning area consisting of the five boroughs of New York City. In order to meet that need, the Department determined that the 19 active New York City vent bed CON applications currently acknowledged by the Department would be reviewed on a competitive basis.

All 19 applicants were sent letters requesting that updated financial and other necessary information be submitted to the Department, in accordance with 10 NYCRR Section 710.3(a). Applicants were advised to include a clear and comprehensive justification for the local need for ventilator services.

Fifteen qualifying applications were ultimately reviewed competitively on criteria that included, but were not limited to:

- experience operating a ventilator unit with beds in a discrete space;
- occupancy rate of the facility's ventilator beds;

- ability of the facility to serve hard-to-place ventilator-dependent patients, such as those requiring renal dialysis or bariatric services;
- a comprehensive program to reduce re-hospitalizations for ventilator patients;
- in-house clinical laboratory services;
- in-house radiology services;
- in-house pharmacy;
- presence of a step-down unit adjacent to a certified ventilator unit;
- geographic location central to the target population; and
- cost of ventilator operations.

As a result of this competitive review, seven applicants are being recommended for approval, requesting a total of 109 ventilator beds – matching exactly the total number of ventilator-dependent RHCF beds currently needed in the five-borough New York City planning area.

This CON is one of eight that did not address the review criteria well enough to merit being awarded vent beds, and is therefore recommended for disapproval.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

**Disapproval.**

Council Action Date

**October 6, 2011.**

# Need Analysis

## Background

Based on the methodology in 10 NYCRR Section 709.17, the need for an additional 109 ventilator-dependent RHCF beds (“vent beds”) was identified for the planning area consisting of the five boroughs of New York City. In order to meet that need, the Department determined that the 19 active New York City vent bed CON applications currently acknowledged by the Department would be reviewed on a competitive basis.

## Solicitation

All 19 applicants were sent letters requesting that updated financial and other necessary information be submitted to the Department, in accordance with 10 NYCRR Section 710.3(a). Applicants were advised that the review would be conducted on a competitive basis for a limited number of beds and would include only those applications that have already been acknowledged and are currently active. The letter provided such applicants with the opportunity to fully update their applications, due to the importance of ensuring all information reviewed by the Department was as accurate and current as possible. Applicants were specifically instructed to provide a clear and comprehensive justification for the local need for ventilator services, as well as certified financial statements for the last three years and the latest internal financial statements.

Applicants were further permitted to submit questions to the Department to seek additional clarification regarding this process. The Department’s answers were provided to all applicants prior to the submission deadline, to ensure consistent information was shared regarding the process.

## Competitive Review

The updated applications were then reviewed competitively by the Department. The factors for which each facility’s ventilator program was reviewed included:

- surveillance and enforcement history;
- availability of an emergency generator for ventilator support;
- affiliations and transfer agreements with area hospitals;
- the facility’s staffing plan for ventilator-dependent care;
- the presence of an acceptable weaning program for ventilator patients;
- the physical environment standards contained in Section 713-4.5;
- experience operating a ventilator unit with beds in a discrete space, versus “scattered” throughout the facility in non-contiguous areas;
- occupancy rate of the facility’s ventilator beds;
- ability of the facility to serve hard-to-place ventilator- dependent patients, such as those requiring renal dialysis or bariatric services;
- a comprehensive program to reduce re-hospitalizations for ventilator patients;
- in-house clinical laboratory services;
- in-house radiology services;
- in-house pharmacy;
- presence of a step-down unit adjacent to a certified ventilator unit;
- geographic location central to the target population; and
- cost of ventilator operations.

From this review, applicants were ranked amongst the group based on how well their proposal addressed each of the aforementioned criteria. The top seven ranked applications have requested a total of 109 ventilator-dependent RHCF beds, matching in full the available need for vent beds in the five-borough New York City planning area, per NYCRR Section 709.17. All of the awarded vent beds represent conversions of RHCF beds, as opposed to additional RHCF capacity. The geographic distribution of the seven awarded applicants is two programs in Queens, two programs in Brooklyn, one program in Manhattan, and two programs in the Bronx.

This CON is one of eight which did not address the review criteria well enough to merit being awarded vent beds, and is therefore recommended for disapproval.

Recommendation

**From a need perspective, disapproval is recommended.**

## Attachments

BHFP Attachment

Map





# Public Health and Health Planning Council

Project # 092002-C

## **Promenade Nursing Home, Inc. d/b/a Promenade Rehabilitation and Health Care Center**

**County:** Queens (Rockaway Park)  
**Purpose:** Construction

**Program:** Residential Health Care Facility  
**Submitted:** July 9, 2009

### Executive Summary

#### Description

Promenade Nursing Home, Inc. d/b/a Promenade Rehabilitation and Health Care Center, a proprietary 240-bed residential health care facility (RHCF) located at 140 Beach 114<sup>th</sup> Street, Rockaway Park, requests approval to convert 20 RHCF beds to ventilator-dependent beds ("vent beds") for a total of 40.

DOH Recommendation  
Disapproval.

#### Need Summary

Based on the methodology in 10 NYCRR Section 709.17, the need for an additional 109 nursing home ventilator beds was identified for the planning area consisting of the five boroughs of New York City. In order to meet that need, the Department determined that the 19 active New York City vent bed CON applications currently acknowledged by the Department would be reviewed on a competitive basis.

All 19 applicants were sent letters requesting that updated financial and other necessary information be submitted to the Department, in accordance with 10 NYCRR Section 710.3(a). Applicants were advised to include a clear and comprehensive justification for the local need for ventilator services.

Fifteen qualifying applications were ultimately reviewed competitively on criteria that included, but were not limited to:

- experience operating a ventilator unit with beds in a discrete space;
- occupancy rate of the facility's ventilator beds;

- ability of the facility to serve hard-to-place ventilator-dependent patients, such as those requiring renal dialysis or bariatric services;
- a comprehensive program to reduce re-hospitalizations for ventilator patients;
- in-house clinical laboratory services;
- in-house radiology services;
- in-house pharmacy;
- presence of a step-down unit adjacent to a certified ventilator unit;
- geographic location central to the target population; and
- cost of ventilator operations.

As a result of this competitive review, seven applicants are being recommended for approval, requesting a total of 109 ventilator beds – matching exactly the total number of ventilator-dependent RHCF beds currently needed in the five-borough New York City planning area.

This CON is one of eight that did not address the review criteria well enough to merit being awarded vent beds, and is therefore recommended for disapproval.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

**Disapproval.**

Council Action Date

**October 6, 2011.**

# Need Analysis

## Background

Based on the methodology in 10 NYCRR Section 709.17, the need for an additional 109 ventilator-dependent RHCF beds (“vent beds”) was identified for the planning area consisting of the five boroughs of New York City. In order to meet that need, the Department determined that the 19 active New York City vent bed CON applications currently acknowledged by the Department would be reviewed on a competitive basis.

## Solicitation

All 19 applicants were sent letters requesting that updated financial and other necessary information be submitted to the Department, in accordance with 10 NYCRR Section 710.3(a). Applicants were advised that the review would be conducted on a competitive basis for a limited number of beds and would include only those applications that have already been acknowledged and are currently active. The letter provided such applicants with the opportunity to fully update their applications, due to the importance of ensuring all information reviewed by the Department was as accurate and current as possible. Applicants were specifically instructed to provide a clear and comprehensive justification for the local need for ventilator services, as well as certified financial statements for the last three years and the latest internal financial statements.

Applicants were further permitted to submit questions to the Department to seek additional clarification regarding this process. The Department’s answers were provided to all applicants prior to the submission deadline, to ensure consistent information was shared regarding the process.

## Competitive Review

The updated applications were then reviewed competitively by the Department. The factors for which each facility’s ventilator program was reviewed included:

- surveillance and enforcement history;
- availability of an emergency generator for ventilator support;
- affiliations and transfer agreements with area hospitals;
- the facility’s staffing plan for ventilator-dependent care;
- the presence of an acceptable weaning program for ventilator patients;
- the physical environment standards contained in Section 713-4.5;
- experience operating a ventilator unit with beds in a discrete space, versus “scattered” throughout the facility in non-contiguous areas;
- occupancy rate of the facility’s ventilator beds;
- ability of the facility to serve hard-to-place ventilator- dependent patients, such as those requiring renal dialysis or bariatric services;
- a comprehensive program to reduce re-hospitalizations for ventilator patients;
- in-house clinical laboratory services;
- in-house radiology services;
- in-house pharmacy;
- presence of a step-down unit adjacent to a certified ventilator unit;
- geographic location central to the target population; and
- cost of ventilator operations.

From this review, applicants were ranked amongst the group based on how well their proposal addressed each of the aforementioned criteria. The top seven ranked applications have requested a total of 109 ventilator-dependent RHCF beds, matching in full the available need for vent beds in the five-borough New York City planning area, per NYCRR Section 709.17. All of the awarded vent beds represent conversions of RHCF beds, as opposed to additional RHCF capacity. The geographic distribution of the seven awarded applicants is two programs in Queens, two programs in Brooklyn, one program in Manhattan, and two programs in the Bronx.

This CON is one of eight which did not address the review criteria well enough to merit being awarded vent beds, and is therefore recommended for disapproval.

Recommendation

**From a need perspective, disapproval is recommended.**

## Attachments

BHFP Attachment

Map



# Public Health and Health Planning Council

Project # 101016-C

## **Fort Tryon Rehabilitation & Health Care Facility, LLC d/b/a Fort Tryon Center for Rehabilitation and Nursing**

**County:** New York (New York)  
**Purpose:** Construction

**Program:** Residential Health Care Facility  
**Submitted:** January 26, 2010

### Executive Summary

#### Description

Fort Tryon Rehabilitation & Health Care Facility, LLC d/b/a Fort Tryon Center for Rehabilitation and Nursing, a proprietary 205-bed residential health care facility (RHCF) located at 801 W. 190<sup>th</sup> Street, New York, requests approval to certify a 15-bed ventilator-dependent (“vent bed”) service.

DOH Recommendation  
Disapproval.

#### Need Summary

Based on the methodology in 10 NYCRR Section 709.17, the need for an additional 109 nursing home ventilator beds was identified for the planning area consisting of the five boroughs of New York City. In order to meet that need, the Department determined that the 19 active New York City vent bed CON applications currently acknowledged by the Department would be reviewed on a competitive basis.

All 19 applicants were sent letters requesting that updated financial and other necessary information be submitted to the Department, in accordance with 10 NYCRR Section 710.3(a). Applicants were advised to include a clear and comprehensive justification for the local need for ventilator services.

Fifteen qualifying applications were ultimately reviewed competitively on criteria that included, but were not limited to:

- experience operating a ventilator unit with beds in a discrete space;
- occupancy rate of the facility’s ventilator beds;

- ability of the facility to serve hard-to-place ventilator-dependent patients, such as those requiring renal dialysis or bariatric services;
- a comprehensive program to reduce re-hospitalizations for ventilator patients;
- in-house clinical laboratory services;
- in-house radiology services;
- in-house pharmacy;
- presence of a step-down unit adjacent to a certified ventilator unit;
- geographic location central to the target population; and
- cost of ventilator operations.

As a result of this competitive review, seven applicants are being recommended for approval, requesting a total of 109 ventilator beds – matching exactly the total number of ventilator-dependent RHCF beds currently needed in the five-borough New York City planning area.

This CON is one of eight that did not address the review criteria well enough to merit being awarded vent beds, and is therefore recommended for disapproval.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

**Disapproval.**

Council Action Date

**October 6, 2011.**

# Need Analysis

## Background

Based on the methodology in 10 NYCRR Section 709.17, the need for an additional 109 ventilator-dependent RHCF beds (“vent beds”) was identified for the planning area consisting of the five boroughs of New York City. In order to meet that need, the Department determined that the 19 active New York City vent bed CON applications currently acknowledged by the Department would be reviewed on a competitive basis.

## Solicitation

All 19 applicants were sent letters requesting that updated financial and other necessary information be submitted to the Department, in accordance with 10 NYCRR Section 710.3(a). Applicants were advised that the review would be conducted on a competitive basis for a limited number of beds and would include only those applications that have already been acknowledged and are currently active. The letter provided such applicants with the opportunity to fully update their applications, due to the importance of ensuring all information reviewed by the Department was as accurate and current as possible. Applicants were specifically instructed to provide a clear and comprehensive justification for the local need for ventilator services, as well as certified financial statements for the last three years and the latest internal financial statements.

Applicants were further permitted to submit questions to the Department to seek additional clarification regarding this process. The Department’s answers were provided to all applicants prior to the submission deadline, to ensure consistent information was shared regarding the process.

## Competitive Review

The updated applications were then reviewed competitively by the Department. The factors for which each facility’s ventilator program was reviewed included:

- surveillance and enforcement history;
- availability of an emergency generator for ventilator support;
- affiliations and transfer agreements with area hospitals;
- the facility’s staffing plan for ventilator-dependent care;
- the presence of an acceptable weaning program for ventilator patients;
- the physical environment standards contained in Section 713-4.5;
- experience operating a ventilator unit with beds in a discrete space, versus “scattered” throughout the facility in non-contiguous areas;
- occupancy rate of the facility’s ventilator beds;
- ability of the facility to serve hard-to-place ventilator- dependent patients, such as those requiring renal dialysis or bariatric services;
- a comprehensive program to reduce re-hospitalizations for ventilator patients;
- in-house clinical laboratory services;
- in-house radiology services;
- in-house pharmacy;
- presence of a step-down unit adjacent to a certified ventilator unit;
- geographic location central to the target population; and
- cost of ventilator operations.

From this review, applicants were ranked amongst the group based on how well their proposal addressed each of the aforementioned criteria. The top seven ranked applications have requested a total of 109 ventilator-dependent RHCF beds, matching in full the available need for vent beds in the five-borough New York City planning area, per NYCRR Section 709.17. All of the awarded vent beds represent conversions of RHCF beds, as opposed to additional RHCF capacity. The geographic distribution of the seven awarded applicants is two programs in Queens, two programs in Brooklyn, one program in Manhattan, and two programs in the Bronx.

This CON is one of eight which did not address the review criteria well enough to merit being awarded vent beds, and is therefore recommended for disapproval.

Recommendation

**From a need perspective, disapproval is recommended.**

## Attachments

BHFP Attachment

Map





# Public Health and Health Planning Council

## Project # 111174-C Sheepshead Nursing & Rehabilitation Center, LLC

**County:** Kings (Brooklyn)  
**Purpose:** Construction

**Program:** Residential Health Care Facility  
**Submitted:** January 20, 2011

### Executive Summary

#### Description

Sheepshead Nursing & Rehabilitation Center, LLC, a proprietary 200-bed residential health care facility (RHCF) located at 2840 Knapp Street, Brooklyn, requests approval to convert 20 RHCF beds to ventilator-dependent (“vent bed”) service.

DOH Recommendation  
Disapproval.

#### Need Summary

Based on the methodology in 10 NYCRR Section 709.17, the need for an additional 109 nursing home ventilator beds was identified for the planning area consisting of the five boroughs of New York City. In order to meet that need, the Department determined that the 19 active New York City vent bed CON applications currently acknowledged by the Department would be reviewed on a competitive basis.

All 19 applicants were sent letters requesting that updated financial and other necessary information be submitted to the Department, in accordance with 10 NYCRR Section 710.3(a). Applicants were advised to include a clear and comprehensive justification for the local need for ventilator services.

Fifteen qualifying applications were ultimately reviewed competitively on criteria that included, but were not limited to:

- experience operating a ventilator unit with beds in a discrete space;
- occupancy rate of the facility’s ventilator beds;

- ability of the facility to serve hard-to-place ventilator-dependent patients, such as those requiring renal dialysis or bariatric services;
- a comprehensive program to reduce re-hospitalizations for ventilator patients;
- in-house clinical laboratory services;
- in-house radiology services;
- in-house pharmacy;
- presence of a step-down unit adjacent to a certified ventilator unit;
- geographic location central to the target population; and
- cost of ventilator operations.

As a result of this competitive review, seven applicants are being recommended for approval, requesting a total of 109 ventilator beds – matching exactly the total number of ventilator-dependent RHCF beds currently needed in the five-borough New York City planning area.

This CON is one of eight that did not address the review criteria well enough to merit being awarded vent beds, and is therefore recommended for disapproval.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

**Disapproval.**

Council Action Date

**October 6, 2011.**

## Need Analysis

### Background

Based on the methodology in 10 NYCRR Section 709.17, the need for an additional 109 ventilator-dependent RHCF beds (“vent beds”) was identified for the planning area consisting of the five boroughs of New York City. In order to meet that need, the Department determined that the 19 active New York City vent bed CON applications currently acknowledged by the Department would be reviewed on a competitive basis.

### Solicitation

All 19 applicants were sent letters requesting that updated financial and other necessary information be submitted to the Department, in accordance with 10 NYCRR Section 710.3(a). Applicants were advised that the review would be conducted on a competitive basis for a limited number of beds and would include only those applications that have already been acknowledged and are currently active. The letter provided such applicants with the opportunity to fully update their applications, due to the importance of ensuring all information reviewed by the Department was as accurate and current as possible. Applicants were specifically instructed to provide a clear and comprehensive justification for the local need for ventilator services, as well as certified financial statements for the last three years and the latest internal financial statements.

Applicants were further permitted to submit questions to the Department to seek additional clarification regarding this process. The Department’s answers were provided to all applicants prior to the submission deadline, to ensure consistent information was shared regarding the process.

### Competitive Review

The updated applications were then reviewed competitively by the Department. The factors for which each facility’s ventilator program was reviewed included:

- surveillance and enforcement history;
- availability of an emergency generator for ventilator support;
- affiliations and transfer agreements with area hospitals;
- the facility’s staffing plan for ventilator-dependent care;
- the presence of an acceptable weaning program for ventilator patients;
- the physical environment standards contained in Section 713-4.5;
- experience operating a ventilator unit with beds in a discrete space, versus “scattered” throughout the facility in non-contiguous areas;
- occupancy rate of the facility’s ventilator beds;
- ability of the facility to serve hard-to-place ventilator- dependent patients, such as those requiring renal dialysis or bariatric services;
- a comprehensive program to reduce re-hospitalizations for ventilator patients;
- in-house clinical laboratory services;
- in-house radiology services;
- in-house pharmacy;
- presence of a step-down unit adjacent to a certified ventilator unit;
- geographic location central to the target population; and
- cost of ventilator operations.

From this review, applicants were ranked amongst the group based on how well their proposal addressed each of the aforementioned criteria. The top seven ranked applications have requested a total of 109 ventilator-dependent RHCF beds, matching in full the available need for vent beds in the five-borough New York City planning area, per NYCRR Section 709.17. All of the awarded vent beds represent conversions of RHCF beds, as opposed to additional RHCF capacity. The geographic distribution of the seven awarded applicants is two programs in Queens, two programs in Brooklyn, one program in Manhattan, and two programs in the Bronx.

This CON is one of eight which did not address the review criteria well enough to merit being awarded vent beds, and is therefore recommended for disapproval.

Recommendation

**From a need perspective, disapproval is recommended.**

## Attachments

BHFP Attachment

Map



# Public Health and Health Planning Council

Project # 062217-C  
**Fieldston Operating, LLC**  
**d/b/a Fieldston Lodge Care Center**

**County: Bronx (Bronx)**  
**Purpose: Construction**

**Program: Residential Health Care Facility**  
**Submitted: July 24, 2006**

## Executive Summary

### Description

Fieldston Operating, LLC d/b/a Fieldston Lodge Care Center, a proprietary 200-bed residential health care facility (RHCF) located at 666 Kappock Street, Bronx, requests approval to convert 6 RHCF beds to ventilator-dependent beds (“vent beds”) for a total of 16.

DOH Recommendation  
Disapproval.

### Need Summary

Based on the methodology in 10 NYCRR Section 709.17, the need for an additional 109 nursing home ventilator beds was identified for the planning area consisting of the five boroughs of New York City. In order to meet that need, the Department determined that the 19 active New York City vent bed CON applications currently acknowledged by the Department would be reviewed on a competitive basis.

All 19 applicants were sent letters requesting that updated financial and other necessary information be submitted to the Department, in accordance with 10 NYCRR Section 710.3(a). Applicants were advised to include a clear and comprehensive justification for the local need for ventilator services.

Fifteen qualifying applications were ultimately reviewed competitively on criteria that included, but were not limited to:

- experience operating a ventilator unit with beds in a discrete space;
- occupancy rate of the facility’s ventilator beds;

- ability of the facility to serve hard-to-place ventilator-dependent patients, such as those requiring renal dialysis or bariatric services;
- a comprehensive program to reduce re-hospitalizations for ventilator patients;
- in-house clinical laboratory services;
- in-house radiology services;
- in-house pharmacy;
- presence of a step-down unit adjacent to a certified ventilator unit;
- geographic location central to the target population; and
- cost of ventilator operations.

As a result of this competitive review, seven applicants are being recommended for approval, requesting a total of 109 ventilator beds – matching exactly the total number of ventilator-dependent RHCF beds currently needed in the five-borough New York City planning area.

This CON is one of eight that did not address the review criteria well enough to merit being awarded vent beds, and is therefore recommended for disapproval.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

**Disapproval.**

Council Action Date

**October 6, 2011.**

## Need Analysis

### Background

Based on the methodology in 10 NYCRR Section 709.17, the need for an additional 109 ventilator-dependent RHCF beds (“vent beds”) was identified for the planning area consisting of the five boroughs of New York City. In order to meet that need, the Department determined that the 19 active New York City vent bed CON applications currently acknowledged by the Department would be reviewed on a competitive basis.

### Solicitation

All 19 applicants were sent letters requesting that updated financial and other necessary information be submitted to the Department, in accordance with 10 NYCRR Section 710.3(a). Applicants were advised that the review would be conducted on a competitive basis for a limited number of beds and would include only those applications that have already been acknowledged and are currently active. The letter provided such applicants with the opportunity to fully update their applications, due to the importance of ensuring all information reviewed by the Department was as accurate and current as possible. Applicants were specifically instructed to provide a clear and comprehensive justification for the local need for ventilator services, as well as certified financial statements for the last three years and the latest internal financial statements.

Applicants were further permitted to submit questions to the Department to seek additional clarification regarding this process. The Department’s answers were provided to all applicants prior to the submission deadline, to ensure consistent information was shared regarding the process.

### Competitive Review

The updated applications were then reviewed competitively by the Department. The factors for which each facility’s ventilator program was reviewed included:

- surveillance and enforcement history;
- availability of an emergency generator for ventilator support;
- affiliations and transfer agreements with area hospitals;
- the facility’s staffing plan for ventilator-dependent care;
- the presence of an acceptable weaning program for ventilator patients;
- the physical environment standards contained in Section 713-4.5;
- experience operating a ventilator unit with beds in a discrete space, versus “scattered” throughout the facility in non-contiguous areas;
- occupancy rate of the facility’s ventilator beds;
- ability of the facility to serve hard-to-place ventilator- dependent patients, such as those requiring renal dialysis or bariatric services;
- a comprehensive program to reduce re-hospitalizations for ventilator patients;
- in-house clinical laboratory services;
- in-house radiology services;
- in-house pharmacy;
- presence of a step-down unit adjacent to a certified ventilator unit;
- geographic location central to the target population; and
- cost of ventilator operations.

From this review, applicants were ranked amongst the group based on how well their proposal addressed each of the aforementioned criteria. The top seven ranked applications have requested a total of 109 ventilator-dependent RHCF beds, matching in full the available need for vent beds in the five-borough New York City planning area, per NYCRR Section 709.17. All of the awarded vent beds represent conversions of RHCF beds, as opposed to additional RHCF capacity. The geographic distribution of the seven awarded applicants is two programs in Queens, two programs in Brooklyn, one program in Manhattan, and two programs in the Bronx.

This CON is one of eight which did not address the review criteria well enough to merit being awarded vent beds, and is therefore recommended for disapproval.

Recommendation

**From a need perspective, disapproval is recommended.**

## Attachments

BHFP Attachment

Map





# Public Health and Health Planning Council

Project # 062380-C

**Cliffside Nursing Home, Inc.**

**d/b/a Cliffside Rehabilitation & Residential Health Care Center**

**County: Queens (Flushing)**

**Purpose: Construction**

**Program: Residential Health Care Facility**

**Submitted: October 30, 2006**

## Executive Summary

### Description

Cliffside Nursing Home, Inc. d/b/a Cliffside Rehabilitation & Residential Health Care Center, a proprietary 218-bed residential health care facility (RHCF) located at 119-19 Graham Court, Flushing, requests approval to convert 20 RHCF beds to ventilator-dependent beds ("vent beds") for a total of 58.

DOH Recommendation  
Disapproval.

### Need Summary

Based on the methodology in 10 NYCRR Section 709.17, the need for an additional 109 nursing home ventilator beds was identified for the planning area consisting of the five boroughs of New York City. In order to meet that need, the Department determined that the 19 active New York City vent bed CON applications currently acknowledged by the Department would be reviewed on a competitive basis.

All 19 applicants were sent letters requesting that updated financial and other necessary information be submitted to the Department, in accordance with 10 NYCRR Section 710.3(a). Applicants were advised to include a clear and comprehensive justification for the local need for ventilator services.

Fifteen qualifying applications were ultimately reviewed competitively on criteria that included, but were not limited to:

- experience operating a ventilator unit with beds in a discrete space;

- occupancy rate of the facility's ventilator beds;
- ability of the facility to serve hard-to-place ventilator-dependent patients, such as those requiring renal dialysis or bariatric services;
- a comprehensive program to reduce re-hospitalizations for ventilator patients;
- in-house clinical laboratory services;
- in-house radiology services;
- in-house pharmacy;
- presence of a step-down unit adjacent to a certified ventilator unit;
- geographic location central to the target population; and
- cost of ventilator operations.

As a result of this competitive review, seven applicants are being recommended for approval, requesting a total of 109 ventilator beds – matching exactly the total number of ventilator-dependent RHCF beds currently needed in the five-borough New York City planning area.

This CON is one of eight that did not address the review criteria well enough to merit being awarded vent beds, and is therefore recommended for disapproval.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

**Disapproval.**

Council Action Date

**October 6, 2011.**

## Need Analysis

### Background

Based on the methodology in 10 NYCRR Section 709.17, the need for an additional 109 ventilator-dependent RHCF beds (“vent beds”) was identified for the planning area consisting of the five boroughs of New York City. In order to meet that need, the Department determined that the 19 active New York City vent bed CON applications currently acknowledged by the Department would be reviewed on a competitive basis.

### Solicitation

All 19 applicants were sent letters requesting that updated financial and other necessary information be submitted to the Department, in accordance with 10 NYCRR Section 710.3(a). Applicants were advised that the review would be conducted on a competitive basis for a limited number of beds and would include only those applications that have already been acknowledged and are currently active. The letter provided such applicants with the opportunity to fully update their applications, due to the importance of ensuring all information reviewed by the Department was as accurate and current as possible. Applicants were specifically instructed to provide a clear and comprehensive justification for the local need for ventilator services, as well as certified financial statements for the last three years and the latest internal financial statements.

Applicants were further permitted to submit questions to the Department to seek additional clarification regarding this process. The Department’s answers were provided to all applicants prior to the submission deadline, to ensure consistent information was shared regarding the process.

### Competitive Review

The updated applications were then reviewed competitively by the Department. The factors for which each facility’s ventilator program was reviewed included:

- surveillance and enforcement history;
- availability of an emergency generator for ventilator support;
- affiliations and transfer agreements with area hospitals;
- the facility’s staffing plan for ventilator-dependent care;
- the presence of an acceptable weaning program for ventilator patients;
- the physical environment standards contained in Section 713-4.5;
- experience operating a ventilator unit with beds in a discrete space, versus “scattered” throughout the facility in non-contiguous areas;
- occupancy rate of the facility’s ventilator beds;
- ability of the facility to serve hard-to-place ventilator- dependent patients, such as those requiring renal dialysis or bariatric services;
- a comprehensive program to reduce re-hospitalizations for ventilator patients;
- in-house clinical laboratory services;
- in-house radiology services;
- in-house pharmacy;
- presence of a step-down unit adjacent to a certified ventilator unit;
- geographic location central to the target population; and
- cost of ventilator operations.

From this review, applicants were ranked amongst the group based on how well their proposal addressed each of the aforementioned criteria. The top seven ranked applications have requested a total of 109 ventilator-dependent RHCF beds, matching in full the available need for vent beds in the five-borough New York City planning area, per NYCRR Section 709.17. All of the awarded vent beds represent conversions of RHCF beds, as opposed to additional RHCF capacity. The geographic distribution of the seven awarded applicants is two programs in Queens, two programs in Brooklyn, one program in Manhattan, and two programs in the Bronx.

This CON is one of eight which did not address the review criteria well enough to merit being awarded vent beds, and is therefore recommended for disapproval.

Recommendation

**From a need perspective, disapproval is recommended.**

## Attachments

BHFP Attachment

Map



# Public Health and Health Planning Council

Project # 082176-C

## Lutheran Augustana Center for Extended Care and Rehabilitation, Inc.

**County:** Kings (Brooklyn)  
**Purpose:** Construction

**Program:** Residential Health Care Facility  
**Submitted:** December 18, 2008

### Executive Summary

#### Description

Lutheran Augustana Center for Extended Care & Rehabilitation, Inc., a voluntary 240-bed residential health care facility (RHCF) located at 5434 Second Avenue, Brooklyn, requests approval to convert 12 RHCF beds to ventilator-dependent ("vent bed") service.

DOH Recommendation  
Disapproval.

#### Need Summary

Based on the methodology in 10 NYCRR Section 709.17, the need for an additional 109 nursing home ventilator beds was identified for the planning area consisting of the five boroughs of New York City. In order to meet that need, the Department determined that the 19 active New York City vent bed CON applications currently acknowledged by the Department would be reviewed on a competitive basis.

All 19 applicants were sent letters requesting that updated financial and other necessary information be submitted to the Department, in accordance with 10 NYCRR Section 710.3(a). Applicants were advised to include a clear and comprehensive justification for the local need for ventilator services.

Fifteen qualifying applications were ultimately reviewed competitively on criteria that included, but were not limited to:

- experience operating a ventilator unit with beds in a discrete space;
- occupancy rate of the facility's ventilator beds;

- ability of the facility to serve hard-to-place ventilator-dependent patients, such as those requiring renal dialysis or bariatric services;
- a comprehensive program to reduce re-hospitalizations for ventilator patients;
- in-house clinical laboratory services;
- in-house radiology services;
- in-house pharmacy;
- presence of a step-down unit adjacent to a certified ventilator unit;
- geographic location central to the target population; and
- cost of ventilator operations.

As a result of this competitive review, seven applicants are being recommended for approval, requesting a total of 109 ventilator beds – matching exactly the total number of ventilator-dependent RHCF beds currently needed in the five-borough New York City planning area.

This CON is one of eight that did not address the review criteria well enough to merit being awarded vent beds, and is therefore recommended for disapproval.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

**Disapproval.**

Council Action Date

**October 6, 2011.**

## Need Analysis

### Background

Based on the methodology in 10 NYCRR Section 709.17, the need for an additional 109 ventilator-dependent RHCF beds (“vent beds”) was identified for the planning area consisting of the five boroughs of New York City. In order to meet that need, the Department determined that the 19 active New York City vent bed CON applications currently acknowledged by the Department would be reviewed on a competitive basis.

### Solicitation

All 19 applicants were sent letters requesting that updated financial and other necessary information be submitted to the Department, in accordance with 10 NYCRR Section 710.3(a). Applicants were advised that the review would be conducted on a competitive basis for a limited number of beds and would include only those applications that have already been acknowledged and are currently active. The letter provided such applicants with the opportunity to fully update their applications, due to the importance of ensuring all information reviewed by the Department was as accurate and current as possible. Applicants were specifically instructed to provide a clear and comprehensive justification for the local need for ventilator services, as well as certified financial statements for the last three years and the latest internal financial statements.

Applicants were further permitted to submit questions to the Department to seek additional clarification regarding this process. The Department’s answers were provided to all applicants prior to the submission deadline, to ensure consistent information was shared regarding the process.

### Competitive Review

The updated applications were then reviewed competitively by the Department. The factors for which each facility’s ventilator program was reviewed included:

- surveillance and enforcement history;
- availability of an emergency generator for ventilator support;
- affiliations and transfer agreements with area hospitals;
- the facility’s staffing plan for ventilator-dependent care;
- the presence of an acceptable weaning program for ventilator patients;
- the physical environment standards contained in Section 713-4.5;
- experience operating a ventilator unit with beds in a discrete space, versus “scattered” throughout the facility in non-contiguous areas;
- occupancy rate of the facility’s ventilator beds;
- ability of the facility to serve hard-to-place ventilator- dependent patients, such as those requiring renal dialysis or bariatric services;
- a comprehensive program to reduce re-hospitalizations for ventilator patients;
- in-house clinical laboratory services;
- in-house radiology services;
- in-house pharmacy;
- presence of a step-down unit adjacent to a certified ventilator unit;
- geographic location central to the target population; and
- cost of ventilator operations.

From this review, applicants were ranked amongst the group based on how well their proposal addressed each of the aforementioned criteria. The top seven ranked applications have requested a total of 109 ventilator-dependent RHCF beds, matching in full the available need for vent beds in the five-borough New York City planning area, per NYCRR Section 709.17. All of the awarded vent beds represent conversions of RHCF beds, as opposed to additional RHCF capacity. The geographic distribution of the seven awarded applicants is two programs in Queens, two programs in Brooklyn, one program in Manhattan, and two programs in the Bronx.

This CON is one of eight which did not address the review criteria well enough to merit being awarded vent beds, and is therefore recommended for disapproval.

Recommendation

**From a need perspective, disapproval is recommended.**

## Attachments

BHFP Attachment

Map





# Public Health and Health Planning Council

Project # 052112-C

## **Sisters of Charity Hospital**

**County:** Erie (Buffalo)  
**Purpose:** Construction

**Program:** Cardiac Services  
**Submitted:** October 5, 2005

## Executive Summary

### Description

Sisters of Charity Hospital requests approval to certify an adult percutaneous coronary intervention (PCI) capable cardiac catheterization laboratory to serve communities in Buffalo and Northern Erie County whose residents choose to utilize the Catholic Health System's (CHS) services. The proposed laboratory would be located at the hospital's main site at 2157 Main Street, Buffalo.

Though the CAC did not review this application in particular, the Department's determination is consistent with the CAC's recommendation for other PCI-capable cardiac catheterization laboratory applications recently proposed for the Western New York region.

DOH Recommendation  
Disapproval.

### Need Summary

Based on the factors governing public need for PCI-capable cardiac catheterization set forth in 10 NYCRR Section 709.14 – travel time, and capacity and volume at existing laboratories – residents of the region have sufficient access to sufficient PCI-capable cardiac catheterization services. There is therefore no need to add a PCI-capable laboratory at Sisters of Charity Hospital in Buffalo.

In addition, current capacity and volume at existing cardiac laboratories in the region, including those in the Catholic Health System, make it doubtful that the PCI-capable laboratory proposed for Sisters of Charity Hospital would approach the full-utilization guidelines recommended by the Cardiac Advisory Committee (CAC).

The public health statistics and Prevention Quality Indicators (PQI's) for heart disease in the Buffalo and Northern Erie County area would be better addressed through more aggressive outreach and primary care services to the county's population.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

**Disapproval.**

Council Action Date

**October 6, 2011.**

# Need Analysis

## Background

Sisters of Charity Hospital is certified for the following beds and services:

<b><u>Certified Beds</u></b>	
Coronary Care	10
Intensive Care	16
Maternity	40
Medical/Surgical	189
Neonatal Continuing Care	2
Neonatal Intensive Care	12
Neonatal Intermediate Care	6
Physical Medicine and Rehabilitation	15
<b>Total</b>	<b>290</b>

<b><u>Licensed Services</u></b>	
Ambulatory Surgery-Multi Specialty	Neonatal Intermediate Care
Audiology O/P	Nuclear Medicine-Diagnostic
CT Scanner	Nuclear Medicine-Therapeutic
Chemical Dependence-Rehabilitation O/P	Pediatric O/P
Clinic Part Time Services	Pharmaceutical Services
Clinical Laboratory Service	Physical Medical Rehabilitation
Coronary Care	Physical Medicine and Rehabilitation O/P
Dental O/P	Podiatry O/P
Emergency Department	Prenatal O/P
Health Fairs O/P	Primary Medical Care O/P
Intensive Care	Psychology O/P
Magnetic Resonance Imaging	Radiology-Diagnostic
Maternity	Renal Dialysis-Acute
Medical Social Services	Therapy-Occupational O/P
Medical/Surgical	Therapy-Physical O/P
Neonatal Continuing Care	Therapy-Speech Language Pathology
Neonatal Intensive Care	Therapy-Vocational Rehabilitation O/P

Sisters of Charity Hospital is a subsidiary of the Catholic Health System of Western New York (CHS). The CHS is the sole corporate member of Mercy Hospital of Buffalo, Kenmore Mercy Hospital, and Sisters of Charity Hospital.

## Project Description

Sisters of Charity Hospital requests approval to certify an adult percutaneous coronary intervention (PCI) capable cardiac catheterization laboratory to serve communities in Buffalo and Northern Erie County whose residents choose to utilize the Catholic Health System's (CHS) services. The proposed laboratory would be located at the hospital's main site at 2157 Main Street, Buffalo.

## 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.

Existing Services

Providers and Volume

The data reported in the tables that follow reflect that which has been reported to the Department of Health by the respective hospitals. The Department does not separately distinguish laboratories that may be used for other procedures, e. g., electrophysiology (EP), in addition to coronary angiography. Even adjusting for such scenarios, the Department continues to find that a need for additional cardiac catheterization laboratories in the area is not demonstrated based on 24/7 ability. Because all laboratories at PCI-capable catheterization centers must now operate on a 24/7 basis, former standards for an optimum or maximum volume of procedures per laboratory that may have been applied in the past are no longer relevant. Further, the Department has not established that what hospitals indicate is a "dedicated EP laboratory" is not in fact a shared laboratory that is used when needed for diagnostic and PCI procedures.

<b>Adult Cardiac Catheterization Programs Western New York, 2009</b>					
<b><i>Facility</i></b>	<b><i>Cath Labs</i></b>	<b><i>Cardiac Caths (a)</i></b>	<b><i>PCI (b)</i></b>	<b><i>Total Vol. (a+2b)<sup>1</sup></i></b>	<b><i>Volume per Lab</i></b>
Buffalo General	6	5,646	1,562	8,770	1,462
Erie County M.C	3	1,011	173	1,357	452
Mercy Hospital	3	2,368	607	3,582	1,194
Millard Fillmore Gates	3	3,047	912	4,871	1,624
Women's Christian Assoc.	1	377	0	377	377
<b>Total</b>	<b>16</b>	<b>12,449</b>	<b>3,254</b>	<b>18,957</b>	<b>1,184</b>

The CHS operates four cardiac catheterization laboratories, all located at Mercy Hospital of Buffalo. In 2009, these laboratories performed 2,369 cardiac catheterizations, and 607 PCI procedures.

The applicant reports that Sisters of Charity Hospital refers 100 patients per year for cardiac diagnostic procedures and that the cardiac catheterization laboratory at Mercy Hospital is currently operating at capacity. However, Mercy Hospital, with an average of 896 cardiac procedures per catheterization laboratory, is well below the Western New York average. Mercy Hospital appears to have the physical capacity for additional utilization.

Trends in Utilization

Since the publication of the Clinical Outcomes Utilizing Revascularization and Aggressive Drug Evaluation (COURAGE) trial in April, 2007, percutaneous coronary intervention (PCI) utilization has declined. The COURAGE investigators concluded that PCI did not reduce the chances of death or myocardial infarction (MI) in patients with stable coronary artery disease and mild symptoms.<sup>2</sup> In 2008, Hannan et al. found that risk-adjusted mortality for multi-vessel coronary disease was less for coronary artery bypass grafting (CABG) than PCI with drug-eluting stents in the New York State registry.<sup>3</sup> These studies and others have led to a decrease in PCI use, in New York State, and in the United States as a whole.<sup>4</sup>

Available data show a five-year decline in PCI utilization in Western New York:

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

<sup>2</sup> Boden, W.D., et. al. "Optimal Medical Therapy With or Without PCI for Stable Coronary Disease" New England Journal of Medicine, 2007; 356: 1503-1516.

<sup>3</sup> Hannan, EL, et. al. "Drug-Eluting Stents vs. Coronary – Bypass Grafting in Multi-Vessel Coronary Disease" New England Journal of Medicine, 2008; 358: 331-341.

<sup>4</sup> O'Neill, W. W. "A Case Against Low-Volume Percutaneous Coronary Intervention Centers." Circulation. 2009: 546-548.

<b>PCI Utilization for Western NY, 2005-2009</b>					
<b><i>Facility</i></b>	<b><i>2005</i></b>	<b><i>2006</i></b>	<b><i>2007</i></b>	<b><i>2008</i></b>	<b><i>2009</i></b>
Buffalo General Hospital	1561	1580	1398	1522	1535
Erie County M.C.	384	367	266	228	170
Mercy Hospital	722	699	577	603	593
Millard Fillmore Gates	974	988	890	1039	893
<b>Total</b>	<b>3,641</b>	<b>3,634</b>	<b>3,131</b>	<b>3,392</b>	<b>3,191</b>

SOURCE: Cardiac Services Program

From 2005 through 2009, the volume of PCI procedures in Western New York declined by 12.4 percent. The volume of PCI procedures at Mercy Hospital declined by 17.9 percent.

From 2005 through 2009, the volume of PCI procedures in New York State declined from 56,058 to 54,915, a decline of 2.0 percent.

Distance and Travel Time\*:

<i>From:</i>	Sisters of Charity Hospital
<i>To:</i>	Mercy Hospital of Buffalo
<i>Distance:</i>	11.28 miles
<i>Time:</i>	19 minutes

<i>From:</i>	Sisters of Charity Hospital
<i>To:</i>	Buffalo General Hospital
<i>Distance:</i>	3.78 miles
<i>Time:</i>	7 minutes

\*SOURCE: Mapquest

The proposed catheterization laboratory at Sisters of Charity Hospital would be less than the planning standard of one hour's travel time from the catheterization laboratories at Mercy Hospital and Buffalo General Hospital. The average travel time to Mercy Hospital is 19 minutes. The average travel time to Buffalo General Hospital is 7 minutes.

Analysis

The 16 existing cardiac catheterization laboratories in the region are, in the aggregate, below the full-utilization guidelines recommended by the Cardiac Advisory Committee. In addition, of the 15 of these laboratories that are PCI-capable, none operates at full PCI capacity, and the PCI proficiency of several, including the Catholic Health System's Mercy Hospital, would likely increase with higher volumes of PCI service. These circumstances of capacity and volume at existing cardiac laboratories make it doubtful that the PCI-capable laboratory proposed for Sisters of Charity Hospital would approach the minimum annual volume prescribed by section 709.14 to provide assurance of proficiency in PCI services. In addition, all cardiac catheterization laboratories within the region are within one hour's average travel time of one or more other catheterization laboratories; and this would also be true of the laboratory proposed for Sisters of Charity Hospital in this application. These several factors indicate that the public need criteria for PCI-capable cardiac catheterization laboratories as set forth in 10 NYCRR Section 709.14 have been met in the region, and that no additional laboratories should be approved. The declining trend in PCI volume in the region only strengthens this assessment.

Recommendation

**From a need perspective, disapproval is recommended.**

**Attachments**

BHFP Attachment

Map

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

**October 6, 2011**

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**A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES**

**CATEGORY 6:** Applications for Individual Consideration/Discussion

**CON Applications**

**Cardiac Services – Construction**

**Exhibit #8**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	102142 C	Mount St. Mary's Hospital and Health Center (Niagara County) Mr. Booth- Interest	No Recommendation
2.	102143 C	Mercy Hospital of Buffalo (Niagara County) Mr. Booth- Interest	No Recommendation
3.	102151 C	Niagara Falls Memorial Medical Center (Niagara County) Mr. Booth- Interest	No Recommendation
4.	102152 C	Buffalo General Hospital (Erie County) Mr. Booth- Interest	No Recommendation

**Acute Care Service – Construction**

**Exhibit #9**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	111531 C	Lenox Hill Hospital (New York County) Mr. Fensterman – Recusal Mr. Kraut - Recusal	No Recommendation



# Public Health and Health Planning Council

Project # 102142-C  
**Mount St. Mary's Hospital and Health Center**

**County:** Niagara (Lewiston)  
**Purpose:** Construction

**Program:** Cardiac Services  
**Submitted:** August 17, 2010

## Executive Summary

### Description

Mount St. Mary's Hospital and Health Center (MSMHHC) requests approval to certify a percutaneous coronary intervention (PCI) capable cardiac catheterization laboratory that will be jointly-operated with Mercy Hospital of Buffalo, to be located at 5300 Military Road, Lewiston.

The public health statistics and Prevention Quality Indicators (PQI's) for heart disease in Niagara County would be better addressed through more aggressive outreach and primary care services to the county's population.

DOH Recommendation  
Disapproval.

This determination is consistent with the Cardiac Advisory Committee's (CAC) recommendation for this application.

### Need Summary

Based on the factors governing public need for PCI-capable cardiac catheterization set forth in 10 NYCRR Section 709.14 – travel time, and capacity and volume at existing laboratories – residents of the region, including Niagara County, have sufficient access to PCI-capable cardiac catheterization services. There is therefore no need to add a PCI-capable Laboratory at MSMHHC in Lewiston.

Based further on 10 NYCRR 709.14, a PCI-capable catheterization laboratory should have a minimum of 200 PCI cases per year within two years of start up. In 2009, Niagara County residents received a total of 722 PCI procedures. Mercy Hospital of Buffalo performed 13 PCI procedures on residents of Niagara County, compared to the 668 PCI procedures performed by the Kaleida Hospitals (Buffalo General Hospital and Millard Fillmore Hospital).

These referral patterns indicate that the proposed jointly-certified PCI capable catheterization laboratory between Mount St. Mary's Hospital and Health Center and Mercy Hospital of Buffalo would not meet the minimum PCI utilization standard of 200 cases per year within two years.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

**Disapproval.**

Council Action Date

**October 6, 2011.**



# Need Analysis

## Background

Mount St. Mary's Hospital and Health Center (MSMHHC) is certified for the following beds and services:

<b><u>Certified Beds</u></b>	
Chemical Dependence-Rehabilitation	20
Coronary Care	6
Intensive Care	6
Maternity	10
Medical/Surgical	133
<b>Total</b>	<b>175</b>

<b><u>Licensed Services</u></b>	
Ambulatory Surgery-Multi Specialty	Maternity
CT Scanner	Medical Social Services
Chemical Dependence-Rehabilitation O/P	Medical/Surgical
Chemical Dependence-Withdrawal O/P	Nuclear Medicine-Diagnostic
Clinic Part Time Services	Nuclear Medicine-Therapeutic
Clinical Laboratory Service	Pharmaceutical Services
Coronary Care	Primary Medical Care O/P
Emergency Department	Radiology-Diagnostic
Health Fairs O/P	Renal Dialysis-Acute
Intensive Care	Therapy-Occupational O/P
Magnetic Resonance Imaging	Therapy-Speech Language Pathology
<i>Other Authorized Locations: 3</i>	

## Project Description

MSMHHC requests approval to certify a PCI-capable cardiac catheterization laboratory at 5300 Military Road, Lewiston, NY, 14092. The applicant states that the proposed PCI-capable cardiac catheterization laboratory will improve access to cardiac catheterization services for the residents of Niagara County.

MSMHHC proposes to enter into an agreement with Mercy Hospital of Buffalo (MHB) in which MHB will provide the capital to construct the cardiac catheterization laboratory and furnish the clinical, support, on-call and administrative services at the facility.

## 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.

Existing Services

Providers and Volume

The data reported in the tables that follow reflect that which has been reported to the Department of Health by the respective hospitals. The Department does not separately distinguish laboratories that may be used for other procedures, e. g., electrophysiology (EP), in addition to coronary angiography. Even adjusting for such scenarios, the Department continues to find that a need for additional cardiac catheterization laboratories in the area is not demonstrated based on 24/7 ability. Because all laboratories at PCI-capable catheterization centers must now operate on a 24/7 basis, former standards for an optimum or maximum volume of procedures per laboratory that may have been applied in the past are no longer relevant. Further, the Department has not established that what hospitals indicate is a “dedicated EP laboratory” is not in fact a shared laboratory that is used when needed for diagnostic and PCI procedures.

<b>Adult Cardiac Catheterization Programs Western New York, 2009</b>					
<b><i>Facility</i></b>	<b><i>Cath Labs</i></b>	<b><i>Cardiac Caths (a)</i></b>	<b><i>PCI (b)</i></b>	<b><i>Total Vol. (a+2b)<sup>1</sup></i></b>	<b><i>Volume per Lab</i></b>
Buffalo General	6	5,646	1,562	8,770	1,462
Erie County M.C	3	1,011	173	1,357	452
Mercy Hospital	3	2,368	607	3,582	1,194
Millard Fillmore Gates	3	3,047	912	4,871	1,624
Women’s Christian Assoc.	1	377	0	377	377
<b>Total</b>	<b>16</b>	<b>12,449</b>	<b>3,254</b>	<b>18,957</b>	<b>1,184</b>

Mercy Hospital of Buffalo has four cardiac catheterization laboratories, which performed 2,368 cardiac catheterizations and 607 PCI procedures in 2009.

<b>PCI Procedures for Residents of Niagara County 2005-2009</b>					
	<b><i>2005</i></b>	<b><i>2006</i></b>	<b><i>2007</i></b>	<b><i>2008</i></b>	<b><i>2009</i></b>
<b><i>Buffalo Area</i></b>					
Buffalo General Hosp	476	450	377	441	476
Erie County Med Ctr	80	91	58	52	32
Mercy Hosp	3	33	19	10	13
Millard Fillmore Hosp	169	181	191	232	192
<b>Region Total</b>	<b>728</b>	<b>755</b>	<b>645</b>	<b>735</b>	<b>713</b>
<b><i>Rochester Area</i></b>					
Rochester General Hosp		6	4	1	2
Strong Memorial Hosp	1	2		1	6
Unity Hosp				1	
<b>Region Total</b>	<b>1</b>	<b>8</b>	<b>4</b>	<b>3</b>	<b>8</b>
<b><i>Syracuse Area</i></b>					
Crouse Hosp		1		1	
St. Josephs Hosp					1
<b>Region Total</b>		<b>1</b>		<b>1</b>	<b>1</b>
<b>Statewide Total</b>	<b>729</b>	<b>764</b>	<b>649</b>	<b>739</b>	<b>722</b>

SOURCE: Cardiac Services Reporting System

From 2007 through 2009, Mercy Hospital of Buffalo performed an average of 14 PCI procedures per year on residents of Niagara County. This compares to the Kaleida Hospitals (Buffalo General and Millard Fillmore Hospital) which performed a three-year average of 636 PCI procedures, on residents of Niagara County. This equals 92.5 percent of the Niagara PCI market.

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

Available data show a five-year decline in PCI utilization in Western New York:

<b>PCI Utilization for Western NY, 2005-2009</b>					
<b>Facility</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>
Buffalo General Hospital	1561	1580	1398	1522	1535
Erie County M.C.	384	367	266	228	170
Mercy Hospital	722	699	577	603	593
Millard Fillmore Gates	974	988	890	1039	893
<b>Total</b>	<b>3,641</b>	<b>3,634</b>	<b>3,131</b>	<b>3,392</b>	<b>3,191</b>

SOURCE: Cardiac Services Program

Since the publication of the Clinical Outcomes Utilizing Revascularization and Aggressive Drug Evaluation (COURAGE) trial in April, 2007, percutaneous coronary intervention (PCI) utilization has declined. The COURAGE investigators concluded that PCI did not reduce the chances of death or myocardial infarction (MI) in patients with stable coronary artery disease and mild symptoms.<sup>2</sup> In 2008, Hannan et. al. found that risk-adjusted mortality for multi-vessel coronary disease was less for coronary artery bypass grafting (CABG) than PCI with drug-eluting stents in the New York State registry.<sup>3</sup> These studies and others have led to a decrease in PCI use, in New York State, and in the United States as a whole.<sup>4</sup>

From 2005 through 2009, the volume of PCI procedures in Western New York declined by 12.4 percent. The volume of PCI procedures at Mercy Hospital declined by 17.9 percent.

From 2005 through 2009, the volume of PCI procedures in New York State declined from 56,058 to 54,915, a decline of 2.0 percent.

Distance and Travel Time

<i>From:</i>	Mount St. Mary's
<i>To:</i>	Mercy Hospital of Buffalo
<i>Distance:</i>	27.4 miles
<i>Time:</i>	37 minutes

The proposed catheterization laboratory at MSMHHC would be less than the planning standard of one hour's travel time from the catheterization laboratories at MHB.

Analysis

The 16 existing cardiac catheterization laboratories in the region are, in the aggregate, below the full-utilization guidelines recommended by the Cardiac Advisory Committee. In addition, of the 15 of these laboratories that are PCI-capable, none operates at full PCI capacity, and the PCI proficiency of several, including the Catholic Health System's Mercy Hospital, would likely increase with higher volumes of PCI service. These circumstances of capacity and volume at existing cardiac laboratories make it doubtful that the PCI-capable laboratory proposed for Mount St. Mary's Hospital would approach the minimum annual volume prescribed by section 709.14 to provide assurance of proficiency in PCI services. In addition, all cardiac catheterization laboratories within the region are within one hour's average travel time of one or more other catheterization laboratories; and this would also be true of the laboratory proposed for Mount St. Mary's Hospital in this application. These several factors indicate that the public need criteria for PCI-capable cardiac catheterization laboratories as set forth in 10 NYCRR Section 709.14 have been met in the region, and that no additional laboratories should be approved. The declining trend in PCI volume in the region only strengthens this assessment.

Furthermore, in 2009, there were 722 PCI procedures performed on residents of Niagara County. Mercy Hospital of Buffalo performed 13 PCI procedures on residents of Niagara County while, as noted, the Kaleida Hospitals served

<sup>2</sup> Boden, W.D., et. al. "Optimal Medical Therapy With or Without PCI for Stable Coronary Disease" New England Journal of Medicine, 2007; 356: 1503-1516.

<sup>3</sup> Hannan, EL, et. al. "Drug-Eluting Stents vs. Coronary – Bypass Grafting in Multi-Vessel Coronary Disease" New England Journal of Medicine, 2008; 358: 331-341.

<sup>4</sup> O'Neill, W. W. "A Case Against Low-Volume Percutaneous Coronary Intervention Centers." Circulation. 2009: 546-548.

92.5 percent of Niagara County residents receiving PCI catheterization. These referral patterns indicate that the proposed jointly certified PCI-capable cardiac catheterization laboratory between Mount St. Mary's Hospital and Health Center and Mercy Hospital of Buffalo would not meet the minimum PCI utilization standards of 200 cases per year required to assure proficiency in PCI treatment.

Given the presence of adequate and accessible PCI-capable cardiac catheterization laboratories in the region, the well-founded concern of MHB and MSMHHC hospitals to improve cardiac-related PQI's in the MSMHHC service area would be better addressed by more aggressive outreach and primary care services targeted to at-risk groups in the MSMHHC area and throughout the county. These efforts would both reduce the number of area residents needing PCI catheterization services and result in more efficient use of existing PCI resources over the longer term.

This determination is consistent with the Cardiac Advisory Committee (CAC) recommendation for disapproval of this application.

Recommendation

**From a need perspective, disapproval is recommended.**

## Attachments

BHFP Attachment

Map



# Public Health and Health Planning Council

Project # 102143-C  
**Mercy Hospital of Buffalo**

**County:** Niagara (Lewiston)  
**Purpose:** Construction

**Program:** Cardiac Services  
**Submitted:** August 17, 2010

## Executive Summary

### Description

Mount St. Mary's Hospital and Health Center (MSMHHC) requests approval to certify a percutaneous coronary intervention (PCI) capable cardiac catheterization laboratory that will be jointly-operated with Mercy Hospital of Buffalo, to be located at 5300 Military Road, Lewiston.

The public health statistics and Prevention Quality Indicators (PQI's) for heart disease in Niagara County would be better addressed through more aggressive outreach and primary care services to the county's population.

DOH Recommendation  
Disapproval.

This determination is consistent with the Cardiac Advisory Committee's (CAC) recommendation for this application.

### Need Summary

Based on the factors governing public need for PCI-capable cardiac catheterization set forth in 10 NYCRR Section 709.14 – travel time, and capacity and volume at existing laboratories – residents of the region, including Niagara County, have sufficient access to PCI-capable cardiac catheterization services. There is therefore no need to add a PCI-capable laboratory at MSMHHC in Lewiston.

Based further on 10 NYCRR 709.14, a PCI-capable catheterization laboratory should have a minimum of 200 PCI cases per year within two years of start up. In 2009, Niagara County residents received a total of 722 PCI procedures. Mercy Hospital of Buffalo performed 13 PCI procedures on residents of Niagara County, compared to the 668 PCI procedures performed by the Kaleida Hospitals (Buffalo General Hospital and Millard Fillmore Hospital).

These referral patterns indicate that the proposed jointly-certified PCI capable catheterization laboratory between Mount St. Mary's Hospital and Health Center and Mercy Hospital of Buffalo would not meet the minimum PCI utilization standard of 200 cases per year within two years.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

**Disapproval.**

Council Action Date

**October 6, 2011.**

# Need Analysis

## Applicant Background

Mercy Hospital of Buffalo (MHB) is certified for the following beds and services:

<u>Certified Beds</u>	
Coronary Care	17
Intensive Care	18
Maternity	34
Medical/Surgical	256
Neonatal Continuing Care	3
Neonatal Intensive Care	6
Neonatal Intermediate Care	6
Pediatric	22
Physical Medicine and Rehabilitation	25
<b>Total</b>	<b>387</b>

<u>Licensed Services</u>	
Ambulance	Neonatal Continuing Care
Ambulatory Surgery-Multi Specialty	Neonatal Intensive Care
Audiology O/P	Neonatal Intermediate Care
CT Scanner	Nuclear Medicine-Diagnostic
Cardiac Catheterization-Adult Intervention Elective	Outpatient Surgery
Cardiac Surgery-Adult	Pediatric
Certified Mental Health Services O/P	Pediatric O/P
Clinic Part Time Services	Pharmaceutical Services
Clinical Laboratory Service	Physical Medical Rehabilitation
Coronary Care	Physical Medicine and Rehabilitation O/P
Dental O/P	Podiatry O/P
Emergency Department	Prenatal O/P
Family Planning O/P	Primary Medical Care O/P
Health Fairs O/P	Radiology-Diagnostic
Intensive Care	Renal Dialysis-Acute
Magnetic Resonance Imaging	Respiratory Care
Maternity	Therapy-Occupational O/P
Medical Social Services	Therapy-Physical O/P
Medical/Surgical	Therapy-Speech Language Pathology

## Project Description

Mount St. Mary's Hospital and Health Center (MSMHCC) requests approval to certify a PCI-capable cardiac catheterization laboratory at 5300 Military Road, Lewiston. The applicant states that the proposed PCI-capable cardiac catheterization laboratory will improve access to cardiac catheterization services for the residents of Niagara County.

Mercy Hospital of Buffalo (MHB), proposes to enter into an agreement with MSMHCC, in which MHB will provide the capital to construct the cardiac catheterization laboratory and furnish the clinical, support, on-call and administrative services at the facility.

## 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.

Existing Services

Providers and Volume

The data reported in the tables that follow reflect that which has been reported to the Department of Health by the respective hospitals. The Department does not separately distinguish laboratories that may be used for other procedures, e. g., electrophysiology (EP), in addition to coronary angiography. Even adjusting for such scenarios, the Department continues to find that a need for additional cardiac catheterization laboratories in the area is not demonstrated based on 24/7 ability. Because all laboratories at PCI-capable catheterization centers must now operate on a 24/7 basis, former standards for an optimum or maximum volume of procedures per laboratory that may have been applied in the past are no longer relevant. Further, the Department has not established that what hospitals indicate is a "dedicated EP laboratory" is not in fact a shared laboratory that is used when needed for diagnostic and PCI procedures.

<b>Adult Cardiac Catheterization Programs Western New York, 2009</b>					
<b><i>Facility</i></b>	<b><i>Cath Labs</i></b>	<b><i>Cardiac Caths (a)</i></b>	<b><i>PCI (b)</i></b>	<b><i>Total Vol. (a+2b)<sup>1</sup></i></b>	<b><i>Volume per Lab</i></b>
Buffalo General	6	5,646	1,562	8,770	1,462
Erie County M.C	3	1,011	173	1,357	452
Mercy Hospital	3	2,368	607	3,582	1,194
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Women's Christian Assoc.	1	377	0	377	377
<b>Total</b>	<b>16</b>	<b>12,449</b>	<b>3,254</b>	<b>18,957</b>	<b>1,184</b>

Mercy Hospital of Buffalo has three cardiac catheterization laboratories, which performed 2,368 cardiac catheterizations and 607 PCI procedures in 2009.

<b>PCI Procedures for Residents of Niagara County 2005-2009</b>					
	<b><u>2005</u></b>	<b><u>2006</u></b>	<b><u>2007</u></b>	<b><u>2008</u></b>	<b><u>2009</u></b>
<b><u>Buffalo Area</u></b>					
Buffalo General Hosp	476	450	377	441	476
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<b>Region Total</b>	<b>728</b>	<b>755</b>	<b>645</b>	<b>735</b>	<b>713</b>
<b><u>Rochester Area</u></b>					
Rochester General Hosp		6	4	1	2
Strong Memorial Hosp	1	2		1	6
Unity Hosp				1	
<b>Region Total</b>	<b>1</b>	<b>8</b>	<b>4</b>	<b>3</b>	<b>8</b>
<b><u>Syracuse Area</u></b>					
Crouse Hosp		1		1	
St. Josephs Hosp					1
<b>Region Total</b>		<b>1</b>		<b>1</b>	<b>1</b>
<b>Statewide Total</b>	<b>729</b>	<b>764</b>	<b>649</b>	<b>739</b>	<b>722</b>

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



SOURCE: Cardiac Services Reporting System

From 2007 through 2009, Mercy Hospital of Buffalo performed an average of 14 PCI procedures per year on residents of Niagara County. This compares to the Kaleida Hospitals (Buffalo General and Millard Fillmore Hospital) which performed a three-year average of 636 PCI procedures annually on residents of Niagara County. This equals 92.5 percent of the Niagara PCI market.

Available data show a five-year decline in PCI utilization in Western New York:

<u>Facility</u>	<u>PCI Utilization for Western NY, 2005-2009</u>				
	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
Buffalo General Hospital	1561	1580	1398	1522	1535
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Mercy Hospital	722	699	577	603	593
Millard Fillmore Gates	974	988	890	1039	893
<b>Total</b>	<b>3,641</b>	<b>3,634</b>	<b>3,131</b>	<b>3,392</b>	<b>3,191</b>

SOURCE: Cardiac Services Program

Since the publication of the Clinical Outcomes Utilizing Revascularization and Aggressive Drug Evaluation (COURAGE) trial in April, 2007, percutaneous coronary intervention (PCI) utilization has declined. The COURAGE investigators concluded that PCI did not reduce the chances of death or myocardial infarction (MI) in patients with stable coronary artery disease and mild symptoms.<sup>2</sup> In 2008, Hannan et al. found that risk-adjusted mortality for multi-vessel coronary disease was less for coronary artery bypass grafting (CABG) than PCI with drug-eluting stents in the New York State registry.<sup>3</sup> These studies and others have led to a decrease in PCI use, in New York State, and in the United States as a whole.<sup>4</sup>

From 2005 through 2009, the volume of PCI procedures in Western New York declined by 12.4 percent. The volume of PCI procedures at Mercy Hospital declined by 17.9 percent.

From 2005 through 2009, the volume of PCI procedures in New York State declined from 56,058 to 54,915, a decline of 2.0 percent.

#### Distance and Travel Time

<i>From:</i>	Mount St. Mary's
<i>To:</i>	Mercy Hospital of Buffalo
<i>Distance:</i>	27.4 miles
<i>Time:</i>	37 minutes

The proposed catheterization laboratory at MSMHHC would be less than the planning standard of one hour's travel time from the catheterization laboratories at MHB.

#### Analysis

The 16 existing cardiac catheterization laboratories in the region are, in the aggregate, below the full-utilization guidelines recommended by the Cardiac Advisory Committee. In addition, of the 15 of these laboratories that are PCI-capable, none operates at full PCI capacity, and the PCI proficiency of several, including the Catholic Health System's Mercy Hospital, would likely increase with higher volumes of PCI service. These circumstances of capacity and volume at existing cardiac laboratories make it doubtful that the PCI-capable laboratory proposed for Mount St. Mary's Hospital would approach the minimum annual volume prescribed by section 709.14 to provide assurance of proficiency in PCI services. In addition, all cardiac catheterization laboratories within the region are within one hour's average travel time of one or more other catheterization laboratories; and this would also be true of the laboratory proposed for Mount St. Mary's Hospital in this application. These several factors indicate that the public need criteria

<sup>2</sup> Boden, W.D., et. al. "Optimal Medical Therapy With or Without PCI for Stable Coronary Disease" New England Journal of Medicine, 2007; 356: 1503-1516.

<sup>3</sup> Hannan, EL, et. al. "Drug-Eluting Stents vs. Coronary – Bypass Grafting in Multi-Vessel Coronary Disease" New England Journal of Medicine, 2008; 358: 331-341.

<sup>4</sup> O'Neill, W. W. "A Case Against Low-Volume Percutaneous Coronary Intervention Centers." Circulation. 2009: 546-548.

for PCI-capable cardiac catheterization laboratories as set forth in 10 NYCRR Section 709.14 have been met in the region, and that no additional laboratories should be approved. The declining trend in PCI volume in the region only strengthens this assessment.

Furthermore, in 2009, there were 722 PCI procedures performed on residents of Niagara County. Mercy Hospital of Buffalo performed 13 PCI procedures on residents of Niagara County while, as noted, the Kaleida Hospitals served 92.5 percent of Niagara County residents receiving PCI catheterization. These referral patterns indicate that the proposed jointly certified PCI-capable cardiac catheterization laboratory between Mount St. Mary's Hospital and Health Center and Mercy Hospital of Buffalo would not meet the minimum PCI utilization standards of 200 cases per year required to assure proficiency in PCI treatment.

Given the presence of adequate and accessible PCI-capable cardiac catheterization laboratories in the region, the well-founded concern of MHB and MSMHHC hospitals to improve cardiac-related PQI's in the MSMHHC service area would be better addressed by more aggressive outreach and primary care services targeted to at-risk groups in the MSMHHC area and throughout the county. These efforts would both reduce the number of area residents needing PCI catheterization services and result in more efficient use of existing PCI resources over the longer term.

This determination is consistent with the Cardiac Advisory Committee (CAC) recommendation for disapproval of this application.

Recommendation

**From a need perspective, disapproval is recommended.**

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## Attachments

BHFP Attachment

Map



# Public Health and Health Planning Council

Project # 102151-C

## Niagara Falls Memorial Medical Center

**County:** Niagara (Niagara Falls)  
**Purpose:** Construction

**Program:** Cardiac Services  
**Submitted:** August 16, 2010

### Executive Summary

#### Description

Buffalo General Hospital (BGH) requests approval to relocate a percutaneous coronary intervention (PCI) capable cardiac catheterization laboratory from BGH to Niagara Falls Memorial Medical Center (NFMMC).

This determination is consistent with the Cardiac Advisory Committee (CAC) recommendation for this application.

DOH Recommendation  
Disapproval.

#### Need Summary

Based on the factors governing public need for PCI-capable cardiac catheterization set forth in 10 NYCRR Section 709.14 – travel time, and volume and capacity at existing laboratories – residents of the region, including Niagara County, have sufficient access to PCI-capable cardiac catheterization services. There is therefore no need to relocate a PCI-capable laboratory to Niagara Falls, nor to establish a new laboratory in that location.

In addition, the proposed relocation and associated division of PCI procedures and follow-up services between staff of the two hospitals would be less efficient than the continued operation of all of its existing PCI-capable laboratories at BGH. It would be more cost-effective to strengthen ambulance services in the Niagara Falls area to provide transportation to BGH or other PCI laboratories than to relocate an existing PCI laboratory from BGH to NFMMC.

The concern to improve public health statistics and Patient Quality Indicators (PQI) for heart disease in the service area would be better addressed by more aggressive outreach and primary care services to the county's population.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

**Disapproval.**

Council Action Date

**October 6, 2011.**

# Need Analysis

## Applicant Background

Niagara Falls Memorial Medical Center (NFMMC) is certified for the following beds and services:

<b><u>Certified Beds</u></b>	
Intensive Care	12
Maternity	16
Medical/Surgical	85
Phys Med/Rehab	4
Psychiatric	54
<b>Total</b>	<b>171</b>

<b><u>Licensed Services</u></b>	
Ambulatory Surgery-Multi Specialty	Medical Social Services
Audiology O/P	Medical/Surgical
CT Scanner	Nuclear Medicine-Diagnostic
Certified Mental Health Services O/P	Nuclear Medicine-Therapeutic
Clinic Part Time Services	Pediatric
Clinical Laboratory Service	Pharmaceutical Services
Coronary Care	Psychiatric
Emergency Department	Radiology-Diagnostic
Intensive Care	Radiology-Therapeutic
Lithotripsy	Psychiatric
Magnetic Resonance Imaging	Renal Dialysis-Acute
Maternity	Respiratory Care

## Project Description

Niagara Falls Memorial Medical Center (NFMMC) proposes to accommodate the relocation of an existing Buffalo General Hospital (BGH) cardiac catheterization laboratory at NFMMC. The Kaleida Hospitals (BGH and Millard Fillmore Hospital) currently have an existing resource of nine cardiac catheterization labs. Under this proposal, BGH will transfer one of the cardiac catheterization labs and decertify one of its existing catheterization laboratories, which will result in eight catheterization labs at the Kaleida Hospitals and one catheterization lab at NFMMC. The applicant states that the relocation of the catheterization laboratory from BGH to NFMMC will improve access to cardiac catheterization services for residents of Niagara County.

Under the proposed arrangement, NFMMC will be licensed to provide diagnostic cardiac catheterizations, PCI procedures, and electrophysiology (EP) procedures. BGH will staff the proposed laboratory, providing outpatient cardiac catheterization procedures, including pre- and post-operative care. Any patients requiring hospitalization will be transferred to BGH. Buffalo General will also provide catheterization procedures for inpatients of NFMMC. In these latter instances, NFMMC will bill for the appropriate DRG and will reimburse BGH for the cardiac catheterization procedure.

BGH (Kaleida Health) will lease renovated space from NFMMC for the catheterization laboratory and pre/post operative space.

## 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.

Existing Services

Providers and Volume

The data reported in the tables that follow reflect that which has been reported to the Department of Health by the respective hospitals. The Department does not separately distinguish laboratories that may be used for other procedures, e. g., electrophysiology (EP), in addition to coronary angiography. Even adjusting for such scenarios, the Department continues to find that a need for additional cardiac catheterization laboratories in the area is not demonstrated based on 24/7 ability. Because all laboratories at PCI-capable catheterization centers must now operate on a 24/7 basis, former standards for an optimum or maximum volume of procedures per laboratory that may have been applied in the past are no longer relevant. Further, the Department has not established that what hospitals indicate is a "dedicated EP laboratory" is not in fact a shared laboratory that is used when needed for diagnostic and PCI procedures.

<b>Adult Cardiac Catheterization Programs Western New York, 2009</b>					
<b><i>Facility</i></b>	<b><i>Cath Labs</i></b>	<b><i>Cardiac Caths (a)</i></b>	<b><i>PCI (b)</i></b>	<b><i>Total Vol. (a+2b)<sup>1</sup></i></b>	<b><i>Volume per Lab</i></b>
Buffalo General	6	5,646	1,562	8,770	1,462
Erie County M.C	3	1,011	173	1,357	452
Mercy Hospital	3	2,368	607	3,582	1,194
Millard Fillmore Gates	3	3,047	912	4,871	1,624
Women's Christian Assoc.	1	377	0	377	377
<b>Total</b>	<b>16</b>	<b>12,449</b>	<b>3,254</b>	<b>18,957</b>	<b>1,184</b>

The Kaleida Hospitals (Buffalo General and Millard Fillmore Gates) performed a total of 8,693 diagnostic catheterizations and 2,474 PCI procedures in 2009. Kaleida accounts for 69.8 percent of the diagnostic catheterizations performed in Western New York and 76 percent of the PCI procedures performed in Western New York.

<b>PCI Procedures for Residents of Niagara County 2005-2009</b>					
	<b><i>2005</i></b>	<b><i>2006</i></b>	<b><i>2007</i></b>	<b><i>2008</i></b>	<b><i>2009</i></b>
<b><i>Buffalo Area</i></b>					
Buffalo General Hosp	476	450	377	441	476
Erie County Med Ctr	80	91	58	52	32
Mercy Hosp	3	33	19	10	13
Millard Fillmore Hosp	169	181	191	232	192
<b>Region Total</b>	<b>728</b>	<b>755</b>	<b>645</b>	<b>735</b>	<b>713</b>
<b><i>Rochester Area</i></b>					
Rochester General Hosp		6	4	1	2
Strong Memorial Hosp	1	2		1	6
Unity Hosp				1	
<b>Region Total</b>	<b>1</b>	<b>8</b>	<b>4</b>	<b>3</b>	<b>8</b>
<b><i>Syracuse Area</i></b>					
Crouse Hosp		1		1	
St. Josephs Hosp					1
<b>Region Total</b>		<b>1</b>		<b>1</b>	<b>1</b>

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

<b>Statewide Total</b>	<b>729</b>	<b>764</b>	<b>649</b>	<b>739</b>	<b>722</b>
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SOURCE: Cardiac Services Reporting System

There were a total of 722 PCI procedures performed on the residents of Niagara County. In 2009 Kaleida (BGH and Millard Fillmore Hospital) performed 668 of those procedures. This equals 92.5 percent of the Niagara County PCI market.

Trends in Utilization

<b>PCI Utilization for Western NY, 2005-2009</b>					
<b>Facility</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>
Buffalo General Hospital	1561	1580	1398	1522	1535
Erie County M.C.	384	367	266	228	170
Mercy Hospital	722	699	577	603	593
Millard Fillmore Gates	974	988	890	1039	893
<b>Total</b>	<b>3,641</b>	<b>3,634</b>	<b>3,131</b>	<b>3,392</b>	<b>3,191</b>

SOURCE: Cardiac Services Program

Since the publication of the Clinical Outcomes Utilizing Revascularization and Aggressive Drug Evaluation (COURAGE) trial in April, 2007, percutaneous coronary intervention (PCI) utilization has declined. The COURAGE investigators concluded that PCI did not reduce the chances of death or myocardial infarction (MI) in patients with stable coronary artery disease and mild symptoms.<sup>2</sup> In 2008, Hannan et al. found that risk-adjusted mortality for multi-vessel coronary disease was less for coronary artery bypass grafting (CABG) than PCI with drug-eluting stents in the New York State registry.<sup>3</sup> These studies and others have led to a decrease in PCI use, in New York State, and in the United States as a whole.<sup>4</sup>

From 2005 through 2009, the volume of PCI procedures in Western New York declined by 12.4 percent.

From 2005 through 2009, the volume of PCI procedures in New York State declined from 56,058 to 54,915, a decline of 2.0 percent.

Distance and Travel Time

<i>From:</i>	Niagara Falls MMC
<i>To:</i>	Buffalo General Hospital
<i>Distance:</i>	21.22 miles
<i>Time:</i>	31 minutes

The proposed catheterization laboratory at NFMCC would be less than the planning standard of one hour's travel time from the catheterization laboratories at BGH.

Analysis

Existing PCI-capable cardiac catheterization laboratories in the region are each expected to continue to perform at least 300 PCI procedures per year, well enough above the 200-procedure minimum prescribed by section 709.14 to provide assurance of proficiency. Although the aggregate volume of the nine cardiac catheterization laboratories operated by the Kaleida hospitals (BGH and Millard Fillmore – Gates) is slightly above the Cardiac Advisory Committee's full-utilization guidelines, the eight remaining catheterization laboratories in the region are well below volume. In addition, all cardiac catheterization laboratories within the region are within one hour's average travel time of one or more other catheterization laboratories; and this would also be true of the laboratory proposed for NFMCC in this application.

Based on the factors governing public need for PCI-capable cardiac catheterization set forth in 10 NYCRR Section 709.14 – travel time, and volume and capacity at existing laboratories – residents of the region, including Niagara

<sup>2</sup> Boden, W.D., et. al. "Optimal Medical Therapy With or Without PCI for Stable Coronary Disease" New England Journal of Medicine, 2007; 356: 1503-1516.

<sup>3</sup> Hannan, EL, et. al. "Drug-Eluting Stents vs. Coronary – Bypass Grafting in Multi-Vessel Coronary Disease" New England Journal of Medicine, 2008; 358: 331-341.

<sup>4</sup> O'Neill, W. W. "A Case Against Low-Volume Percutaneous Coronary Intervention Centers." Circulation. 2009: 546-548.

County, have sufficient access to PCI-capable cardiac catheterization services. There is therefore no need to relocate a PCI-capable laboratory to Niagara Falls, nor to establish a new laboratory in that location. The declining trend in PCI volume in the region only strengthens this assessment.

The rotation of physicians from BGH to NFMMC to operate the relocated laboratory proposed in this application and the associated division of care between BGH physicians performing catheterization procedures and NFMMC personnel providing follow-up care would also be less efficient than the continued operation of all four PCI-capable laboratories at BGH. It would be more cost-effective to strengthen ambulance services in the Niagara Falls area to provide transportation to BGH or other PCI laboratories than to relocate an existing PCI laboratory from BGH to NFMMC.

Given the presence of adequate and accessible PCI-capable cardiac catheterization laboratories in the region, the well-founded concern of BGH and NFMMC hospitals to improve cardiac-related PQI's in the NFMMC service area would be better addressed by more aggressive outreach and primary care services targeted to at-risk groups in the city of Niagara Falls and throughout the county. These efforts would both reduce the number of area residents needing PCI catheterization services and result in more efficient use of existing PCI resources over the longer term.

This determination is consistent with the Cardiac Advisory Committee (CAC) recommendation for disapproval of this application.

Conclusion

**From a need perspective, disapproval is recommended.**

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## Attachments

BHFP Attachment

Map





# Public Health and Health Planning Council

Project # 102152-C

## Buffalo General Hospital

**County:** Erie (Buffalo)  
**Purpose:** Construction

**Program:** Cardiac Services  
**Submitted:** August 16, 2010

## Executive Summary

### Description

Buffalo General Hospital (BGH) requests approval to relocate a percutaneous coronary intervention (PCI) capable cardiac catheterization laboratory from BGH to Niagara Falls Memorial Medical Center (NFMMC).

This determination is consistent with the Cardiac Advisory Committee (CAC) recommendation for this application.

DOH Recommendation  
Disapproval.

### Need Summary

Based on the factors governing public need for PCI-capable cardiac catheterization set forth in 10 NYCRR Section 709.14 – travel time, and volume and capacity at existing laboratories – residents of the region, including Niagara County, have sufficient access to PCI-capable cardiac catheterization services. There is therefore no need to relocate a PCI-capable laboratory to Niagara Falls, nor to establish a new laboratory in that location.

In addition, the proposed relocation and associated division of PCI procedures and follow-up services between staff of the two hospitals would be less efficient than the continued operation of all of its existing PCI-capable laboratories at BGH. It would be more cost-effective to strengthen ambulance services in the Niagara Falls area to provide transportation to BGH or other PCI laboratories than to relocate an existing PCI laboratory from BGH to NFMMC.

The concern to improve public health statistics and Patient Quality Indicators (PQI) for heart disease in the service area would be better addressed by more aggressive outreach and primary care services to the county's population.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

**Disapproval.**

Council Action Date

**October 6, 2011.**

# Need Analysis

## Applicant Background

Buffalo General Hospital (BGH) is certified for the following beds and services:

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

<b><u>Licensed Services</u></b>	
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>	

## Project Description

Buffalo General Hospital (BGH) proposes to relocate one of its existing cardiac catheterization laboratories, including associated equipment, to Niagara Falls Memorial Medical Center (NFMCC). The Kaleida Hospitals (BGH and Millard Fillmore Hospital) currently have an existing resource of nine cardiac catheterization labs. Under this proposal, BGH will transfer one of the cardiac catheterization labs and decertify one of its existing catheterization laboratories, which will result in eight catheterization labs at the Kaleida Hospitals and one catheterization lab at NFMCC. The applicant states that the relocation of the catheterization laboratory from BGH to NFMCC will improve access to cardiac catheterization services for residents of Niagara County.

Under the proposed arrangement, NFMCC will be licensed to provide diagnostic cardiac catheterizations, PCI procedures, and electrophysiology (EP) procedures. BGH will staff the proposed laboratory, providing outpatient cardiac catheterization procedures, including pre- and post-operative care. Any patients requiring hospitalization will be transferred to BGH. Buffalo General will also provide catheterization procedures for inpatients of NFMCC. In these latter instances, NFMCC will bill for the appropriate DRG and will reimburse BGH for the cardiac catheterization procedure.

BGH (Kaleida Health) will lease renovated space from NFMCC for the catheterization laboratory and pre/post operative space.

## 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.

Existing Services

Providers and Volume

The data reported in the tables that follow reflect that which has been reported to the Department of Health by the respective hospitals. The Department does not separately distinguish laboratories that may be used for other procedures, e. g., electrophysiology (EP), in addition to coronary angiography. Even adjusting for such scenarios, the Department continues to find that a need for additional cardiac catheterization laboratories in the area is not demonstrated based on 24/7 ability. Because all laboratories at PCI-capable catheterization centers must now operate on a 24/7 basis, former standards for an optimum or maximum volume of procedures per laboratory that may have been applied in the past are no longer relevant. Further, the Department has not established that what hospitals indicate is a "dedicated EP laboratory" is not in fact a shared laboratory that is used when needed for diagnostic and PCI procedures.

<b>Adult Cardiac Catheterization Programs Western New York, 2009</b>					
<b><i>Facility</i></b>	<b><i>Cath Labs</i></b>	<b><i>Cardiac Caths (a)</i></b>	<b><i>PCI (b)</i></b>	<b><i>Total Vol. (a+2b)<sup>1</sup></i></b>	<b><i>Volume per Lab</i></b>
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<b>PCI Procedures for Residents of Niagara County 2005-2009</b>					
	<b><u>2005</u></b>	<b><u>2006</u></b>	<b><u>2007</u></b>	<b><u>2008</u></b>	<b><u>2009</u></b>
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Buffalo General Hosp	476	450	377	441	476
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<b>Region Total</b>	<b>728</b>	<b>755</b>	<b>645</b>	<b>735</b>	<b>713</b>
<b><u>Rochester Area</u></b>					
Rochester General Hosp		6	4	1	2
Strong Memorial Hosp	1	2		1	6
Unity Hosp				1	
<b>Region Total</b>	<b>1</b>	<b>8</b>	<b>4</b>	<b>3</b>	<b>8</b>
<b><u>Syracuse Area</u></b>					
Crouse Hosp		1		1	

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

St. Josephs Hosp					1
<b>Region Total</b>		1		1	1
<b>Statewide Total</b>	<b>729</b>	<b>764</b>	<b>649</b>	<b>739</b>	<b>722</b>

SOURCE: Cardiac Services Reporting System

There were a total of 722 PCI procedures performed on the residents of Niagara County. In 2009 Kaleida (BGH and Millard Fillmore Hospital) performed 668 of those procedures. This equals 92.5 percent of the Niagara County PCI market.

### Trends in Utilization

<b>PCI Utilization for Western NY, 2005-2009</b>					
<b>Facility</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>
Buffalo General Hospital	1561	1580	1398	1522	1535
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<b>Total</b>	<b>3,641</b>	<b>3,634</b>	<b>3,131</b>	<b>3,392</b>	<b>3,191</b>

SOURCE: Cardiac Services Program

Since the publication of the Clinical Outcomes Utilizing Revascularization and Aggressive Drug Evaluation (COURAGE) trial in April, 2007, percutaneous coronary intervention (PCI) utilization has declined. The COURAGE investigators concluded that PCI did not reduce the chances of death or myocardial infarction (MI) in patients with stable coronary artery disease and mild symptoms.<sup>2</sup> In 2008, Hannan et al. found that risk-adjusted mortality for multi-vessel coronary disease was less for coronary artery bypass grafting (CABG) than PCI with drug-eluting stents in the New York State registry.<sup>3</sup> These studies and others have led to a decrease in PCI use, in New York State, and in the United States as a whole.<sup>4</sup>

From 2005 through 2009, the volume of PCI procedures in Western New York declined by 12.4 percent.

From 2005 through 2009, the volume of PCI procedures in New York State declined from 56,058 to 54,915, a decline of 2.0 percent.

### Distance and Travel Time

<i>From:</i>	Niagara Falls MMC
<i>To:</i>	Buffalo General Hospital
<i>Distance:</i>	21.22 miles
<i>Time:</i>	31 minutes

The proposed catheterization laboratory at NFMCC would be less than the planning standard of one hour's travel time from the catheterization laboratories at BGH.

### Analysis

Existing PCI-capable cardiac catheterization laboratories in the region are each expected to continue to perform at least 300 PCI procedures per year, well enough above the 200-procedure minimum prescribed by section 709.14 to provide assurance of proficiency. Although the aggregate volume of the nine cardiac catheterization laboratories operated by the Kaleida hospitals (BGH and Millard Fillmore – Gates) is slightly above the Cardiac Advisory Committee's full-utilization guidelines, the eight remaining catheterization laboratories in the region are well below volume. In addition, all cardiac catheterization laboratories within the region are within one hour's average travel time of one or more other catheterization laboratories; and this would also be true of the laboratory proposed for NFMCC in this application.

<sup>2</sup> Boden, W.D., et. al. "Optimal Medical Therapy With or Without PCI for Stable Coronary Disease" New England Journal of Medicine, 2007; 356: 1503-1516.

<sup>3</sup> Hannan, EL, et. al. "Drug-Eluting Stents vs. Coronary – Bypass Grafting in Multi-Vessel Coronary Disease" New England Journal of Medicine, 2008; 358: 331-341.

<sup>4</sup> O'Neill, W. W. "A Case Against Low-Volume Percutaneous Coronary Intervention Centers." Circulation. 2009; 546-548.

Based on the factors governing public need for PCI-capable cardiac catheterization set forth in 10 NYCRR Section 709.14 – travel time, and volume and capacity at existing laboratories – residents of the region, including Niagara County, have sufficient access to PCI-capable cardiac catheterization services. There is therefore no need to relocate a PCI-capable laboratory to Niagara Falls, nor to establish a new laboratory in that location. The declining trend in PCI volume in the region only strengthens this assessment.

The rotation of physicians from BGH to NFMMC to operate the relocated laboratory proposed in this application and the associated division of care between BGH physicians performing catheterization procedures and NFMMC personnel providing follow-up care would also be less efficient than the continued operation of all four PCI-capable laboratories at BGH. It would be more cost-effective to strengthen ambulance services in the Niagara Falls area to provide transportation to BGH or other PCI laboratories than to relocate an existing PCI laboratory from BGH to NFMMC.

Given the presence of adequate and accessible PCI-capable cardiac catheterization laboratories in the region, the well-founded concern of BGH and NFMMC to improve cardiac-related PQI's in the NFMMC service area would be better addressed by more aggressive outreach and primary care services targeted to at-risk groups in the city of Niagara Falls and throughout the county. These efforts would both reduce the number of area residents needing PCI catheterization services and result in more efficient use of existing PCI resources over the longer term.

This determination is consistent with the Cardiac Advisory Committee (CAC) recommendation for disapproval of this application.

Conclusion

**From a need perspective, disapproval is recommended.**

## Attachments

BHFP Attachment

Map



# Public Health and Health Planning Council

Project # 111531-C

**Lenox Hill Hospital**

**County: New York (New York)**  
**Purpose: Construction**

**Program: Acute Care Services**  
**Submitted: June 23, 2011**

## Executive Summary

### Description

Lenox Hill Hospital, a 652-bed not-for-profit hospital located at 100 East 77<sup>th</sup> Street, New York, requests approval to certify a 2-bed hospital division at 30 Seventh Avenue, New York, to provide 24-hour Emergency Department care and other medical services. The facility will be known as the Center for Comprehensive Care (Center), and will be located in the historic landmarked National Maritime Building (also known as O'Toole Pavilion), which is across the street from where the former St. Vincent's Catholic Medical Center Hospital operated.

Contingent approval was granted by the Public Health and Health Planning Council on June 16, 2011 (CON #102453-E) to authorize the addition of Franklin Hospital, Huntington Hospital, Lenox Hill Hospital, Southside Hospital and Staten Island University Hospital to the North Shore Long Island Jewish Health Care, Inc. Obligated Group. The Department issued final approval on August 23, 2011.

Lenox Hill Hospital is proposing to develop a hybrid model of care, which incorporates the emergency access and ambulatory surgery elements of a community hospital with specialized diagnostic and treatment services. This model of care is bound to its community through information technology and an inter-operable health record so it can serve as the "new front door" to community access and coordination of health services.

Total project costs are estimated at \$125,621,357.

DOH Recommendation  
Contingent approval

### Need Summary

The hospital division's Emergency Department will be complemented by a full service imaging center, an

ambulatory surgery facility, ambulance transport services and ancillary support services in order to provide health care services to the residents of the service area.

### Program Summary

Based on the most recent surveillance information, Lenox Hill Hospital is deemed to be currently operating in substantial compliance with all applicable State and Federal codes, rules and regulations.

### Financial Summary

Project costs will be met with \$115,621,357 in accumulated funds from Lenox Hill Hospital, and \$10,000,000 pledge as a contribution from Rudin Development, LLC.

Incremental Budget:	<i>Revenues:</i>	\$ 33,644,700
	<i>Expenses:</i>	<u>32,462,300</u>
	<i>Gain/(Loss):</i>	\$ 1,182,400

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

### Architectural Summary

The existing 160,886 SF building, built in 1964, currently comprises six stories plus a cellar. The proposal includes the gut renovation of the cellar, 1<sup>st</sup> and 5<sup>th</sup> floors. Structural demolition will occur at portions of the 1<sup>st</sup>, 2<sup>nd</sup> and 6<sup>th</sup> floors. Some additional space will be enclosed at the 1<sup>st</sup> floor level. Interior demolition of the 2<sup>nd</sup> and 4<sup>th</sup> floors will provide shell space for future private practice areas and additional uses not yet determined at this time, in order to consider and potentially incorporate some recommendations of the West Village Community Health Needs Assessment Study. The resultant building area will be reduced by 20,042 SF to 140,844 SF. There will be no disruption to patient care as the building is unoccupied.

## 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 documentation of the pledge from Rudin Development, LLC to be used as a source of financing acceptable to the Department of Health. [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 start of construction. [AER]
3. The applicant shall complete construction on or before November 1, 2015. In accordance with 10 NYCRR Part 710.2(b)(5), if construction is not completed on or before that date, this shall constitute abandonment of the approval. In accordance with Part 710.10(a), this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

**October 6, 2011.**



## Need Analysis

### Background

Lenox Hill Hospital and the Center for Comprehensive Care certified beds and services:

<b>Certified Beds</b>					
	<i>Lenox Hill</i>			<i>Center for Comprehensive Care</i>	
<u>Category</u>	<u>Current</u>	<u>Proposed</u>	<u>Upon Completion</u>	<u>Proposed</u>	<u>Upon Completion</u>
AIDS	12		12		
Coronary Care	27		27		
Intensive Care	15		15		
Maternity	33		33		
Medical / Surgical	478	-2	476	+2	2
Neonatal Continuing Care	10		10		
Neonatal Intensive Care	10		10		
Neonatal Intermediate Care	8		8		
Pediatric	32		32		
Psychiatric	27		27		
<b>Total Beds</b>	<b>652</b>	<b>-2</b>	<b>650</b>	<b>+2</b>	<b>2</b>

<b>Certified Services</b>		
<u>Services</u>	<u>Lenox Hill</u>	<u>Center for Comprehensive Care</u>
AIDS	✓	
AIDS Center	✓	
Ambulance	✓	✓
Ambulatory Surgery - Multi Specialty	✓	✓
Audiology O/P	✓	
Cardiac Catheterization - Adult Diagnostic	✓	
Cardiac Catheterization - Electrophysiology (EP)	✓	
Cardiac Catheterization - Percutaneous Coronary Intervention (PCI)	✓	
Cardiac Surgery - Adult	✓	
Certified Mental Health Services O/P	✓	
Clinical Laboratory Service	✓	✓
Coronary Care	✓	
CT Scanner	✓	
Dental O/P	✓	
Emergency Department	✓	✓
Intensive Care	✓	
Magnetic Resonance Imaging	✓	✓
Maternity	✓	
Medical Social Services	✓	✓
Medical/Surgical	✓	
Neonatal Continuing Care	✓	

<b>Certified Services</b>		
<i>Services</i>	<i>Lenox Hill</i>	<i>Center for Comprehensive Care</i>
Neonatal Intensive Care	✓	
Neonatal Intermediate Care	✓	
Nuclear Medicine - Diagnostic	✓	
Nuclear Medicine - Therapeutic	✓	
Pediatric	✓	
Pharmaceutical Service	✓	✓
Psychiatric	✓	
Radiology - Diagnostic	✓	✓
Radiology-Therapeutic	✓	
Renal Dialysis - Acute	✓	
Therapy - Physical O/P	✓	
Therapy - Speech Language Pathology	✓	

Lenox Hill Hospital is authorized to operate four hospital extension clinics providing care such as Certified Mental Health Services, Psychology, Medical Social Services, Dental, Primary Medical Care, Speech Language Pathology, Audiology, Ambulatory Surgery - Multi Specialty, Lithotripsy, Optometry, Immunology, Nursing, Venereal Disease Prevention, Well Child Care, Health Education, and Multiphasic Screening.

State Designations:

- AIDS Center;
- Level 3 Perinatal Center; and
- Stroke Center

#### Elements of the Proposal

In August 2010, a number of elected officials and community leaders came together to initiate the West Village Community Health Needs Assessment (Needs Assessment). North Shore-LIJ volunteered to make available its community health planning resources to the community, as North Shore-LIJ had reviewed relevant community health data used to prepare its proposal to DOH to operate an Urgent Care Center. The Assessment Study evaluated the demographics of the community, the health status of residents, availability of current health care resources, access to care and historic utilization patterns. The goal of the study is to identify opportunities to improve the delivery system to meet the needs of the communities affected by the closure of St Vincent's. The study has produced some initial results profiling the health status of the community, and documented where patients sought inpatient and emergency care pre- and post-closure.

The Needs Assessment is ongoing; however, the need to access health care on an emergency basis is a recurring theme in all interactions with the community.

The Center for Comprehensive Care will be established as a hospital division of Lenox Hill Hospital. It will focus on meeting the emergency and medical needs of the surrounding communities. This hybrid model of care will be anchored by a 24-hour Emergency Department. The Emergency Department will be complemented by a full-service Imaging Center, an Ambulatory Surgery facility, ambulance transport services and ancillary support services.

Lenox Hill Hospital intends to provide emergency medical care that is efficient, readily accessible and linked to a continuum of care. Care will be provided to patients without regard to insurance status. Patients and the community will also benefit from:

- 24-hour access to Board-Certified Emergency Medicine Physicians, as well as about 30 specially trained nurses and other staff experienced in treating a wide range of symptoms and conditions;

- 24-hour access to specialist consultations through the network of North Shore-LIJ physicians in order to provide additional clinical resources to determine the best course of treatment;
- Access to an observation and clinical decision unit that provides clinicians the ability to follow patients under less than 24 hours care, ensuring that their condition is properly evaluated and that safe, informed judgments are made before they are treated and discharged;
- Two (2) inpatient beds for patients requiring observation and/or treatment for 24 hours or greater;
- When indicated, rapid transfer to an appropriate local physician or hospital chosen by the patient or by the emergency room physician's assessment of the best location for treatment;
- The ability for patients to actively participate in their care and decide which doctors or hospitals they will go to for follow-up care;
- The presence of on-site imaging, diagnostic and laboratory testing capabilities, which will enable staff to respond more rapidly in caring for its patients and reduce waiting times;
- A multi-slice CT scanner for rapid detection or exclusion of cardiac blockages;
- A picture archiving and communication system (PACS) that will transmit images to Lenox Hill Hospital/North Shore-LIJ system radiologists, who will quickly interpret results;
- Coordinated follow-up care to either the patient's physician, a neighboring primary care provider or a range of specialists;
- For those returning home and require in-home assistance, access to the home care provider of their choice or services provided through the North Shore-LIJ Home Care Network;
- Follow-up referrals to manage a patient's chronic conditions or other medical issues discovered during the course of treatment;
- Referrals to preventative care or education and support programs that will help avoid illnesses or injuries from worsening;
- An inter-operable electronic medical record accessible to all providers in the Health System's network who provide post-visit care to the patient; and
- An emergency care center that is accountable and meets all the same regulatory standards as traditional on-site hospital Emergency Departments (The Joint Commission Accreditation, NYS Article 28 and U.S. Centers for Medicare and Medicaid Services).

The applicant indicates that with few exceptions, its proposed hospital division will offer emergent care services and diagnostic capabilities similar to that of a community hospital, including advanced life support services. The emergency clinicians will be able to treat a full range of illnesses and injuries, including-but not limited to-the following:

- Chest pain and other cardiac symptoms;
- Early-onset stroke;
- Shortness of breath;
- Respiratory illnesses (asthma, pneumonia, chronic bronchitis and emphysema);
- Concussions;
- Fractures and joint injuries;
- Motor vehicle injuries;
- Severe cuts;
- Mild to moderate burns;
- Abdominal pain;
- Allergic reactions;
- Ear infections;
- Gastrointestinal illnesses;
- Influenza (flu);
- Occupational injuries;
- Sports injuries; and
- Behavioral health issues.

North Shore-LIJ has undertaken a significant effort to inform and educate community leaders about this project and address a myriad of questions that were been posed.

The new Emergency Department will be designed to accommodate over 30,000 emergency patient visits annually. It will serve as a 911 receiving facility and possess the expertise, facilities and equipment to provide care to the majority of patients seen at most community hospitals without a trauma center. Physicians who are board-certified in either

adult or pediatric emergency medicine will staff it. Patients requiring diagnostic or interventional cardiac catheterization, electrophysiology studies, cardiac bypass surgery, complex neurosurgery, or major orthopedic or microsurgery will be evaluated, stabilized and then transferred to a hospital of the patient's choice or to Lenox Hill Hospital, which provides all of these services.

The facility will be able to access the clinical expertise at Lenox Hill Hospital and the resources available throughout North Shore-LIJ Health System and community providers. The Center will enter into affiliation and transfer agreements with neighboring hospitals such as:

- Beth Israel;
- Roosevelt Hospital;
- New York Downtown;
- NYU; and
- Bellevue.

Specifically, relationships will be developed with Bellevue Hospital for major trauma and with New York Presbyterian Hospital and Staten Island University Hospital for burn patients.

In the event an admission is required, community residents will have the ability to be transferred to the institution and physician of their choice. If a patient has no physician, one will be made available at Lenox Hill Hospital.

From a patient safety and quality standpoint, a major benefit of the facility is its inclusion in North Shore-LIJ's investment in an Electronic Health Record system that automates inpatient and outpatient records in all medical settings.

North Shore-LIJ states that they will work closely with DOH and FDNY Emergency Medical Services to develop protocols based on the capabilities and limitations of the facility. These protocols will serve to guide medical control decisions about when to bring a patient to the Center or another facility. An ambulance will be available at the facility to provide for the rapid transport of patients to a higher level of care.

### **Hours of Operation**

The hours of operations for the programs at the Center for Comprehensive Care are:

- Emergency Department: 24 hours 7 days a week;
- Diagnostic Imaging:
  - Outpatient 8AM-6PM Monday-Friday (May be adjusted to accommodate patient care needs and preferences).
  - Emergency Department: 24/7 - CT, X-ray, and Ultrasound located within ED; MRI after outpatient hours on call.
- Ambulatory Surgery: 7AM-6PM Monday-Friday (May be adjusted to accommodate patient care needs and preferences).

### **Transfer Agreements**

The Center will enter into transfer agreements as required by regulation or for services that would be needed at area hospitals including:

- Trauma - HHC Bellevue Hospital (1.3 miles);
- Burns - SIUH (11.5 miles) and NYP- Weill Cornell (3.0 miles);
- Level 3 Perinatal- Beth Israel (0.9 miles);
- Stroke Center- Beth Israel (0.9 miles);
- New York University Medical Center (1.4 miles);
- New York Downtown (1.8 miles);
- St. Luke's Roosevelt- Roosevelt Hospital (2.4 miles); and
- Other Area Hospitals (as needed)

**Service Area**

The Center for Comprehensive Care will be located in the Greenwich Village community of Manhattan at the site of the former St. Vincent's O'Toole Building, also referred to as the National Maritime Building. The facility's service area was based on a patient origin analysis conducted for the Community Health Assessment Steering Committee. Thus, the applicant utilized the Service Area boundaries as described by the community believed most impacted by the closure of St. Vincent's. The service area as defined by the Steering Committee is comprised of the following communities:

- 10001 - Herald Square;
- 10002 - Knickerbocker;
- 10003 - Cooper;
- 10009 - Peter Stuyvesant;
- 10011 - Old Chelsea;
- 10012 - Prince;
- 10013 - Canal Street;
- 10014 - Village; and
- 10038 - Peck Slip;

The service area is comprised of 385,792 residents. The service area is racially and ethnically diverse with 45% non-White. One in four residents is Asian (25.4%), followed by Hispanic (12.0%), Black (4.1 %), Multiracial (2.5%) and Other (0.6%). The aging population in the services area is expected to increase in the next five years by 12.1%. This age group uses emergency services at a higher rate and demand for emergency care will be increasing as the population ages.

**Prevention Quality Indicators**

The Prevention Quality Indicators (PQIs), developed by the federal Agency for Healthcare Research and Quality (AHRQ), are used in assessing the quality of outpatient care for "ambulatory care sensitive conditions (ACSCs). ACSCs are conditions for which good and timely outpatient care can potentially prevent the need for hospitalization or for which early intervention can prevent complications or more severe disease. PQIs measures are expressed as rates of admission to the hospital for these conditions in a given population. The PQIs can be used as a "screening tool" to help flag potential health care quality problem areas that need further investigation; identify unmet community health care needs; monitor complications from a number of common conditions that are being avoided in the outpatient setting, and compare performance of local health care system across communities.

For the service area, there are higher rates of PQIs for Dehydration, Bacterial Pneumonia, Urinary Tract Infection, and Chronic Obstructive Pulmonary Disease (COPD). These conditions are most prominently found in the elderly whether living at home or in a skilled nursing home setting. The service area also had high rates of hospitalization for Congestive Heart Failure, Adult Asthma and Diabetes Long-Term Complications although these conditions did not have higher rates when compared to the rest of Manhattan (Table 1).

<b><i>PQI Conditions</i></b>	<b><i>Service Area</i></b>	<b><i>Rest of Manhattan</i></b>
Dehydration	122.0	121.0
Bacterial Pneumonia	418.0	391.0
Urinary Tract Infection	179.0	174.0
Hypertension	55.0	70.0
Congestive Heart Failure	343.0	442.0
Angina without Procedure	32.0	34.0
Diabetes Short-Term Complications	40.0	60.0
Diabetes Long-Term Complications	159.0	201.0
Uncontrolled Diabetes	34.0	48.0
Lower Extremity Amputation among Patients with Diabetes	36.0	44.0
Chronic Obstructive Pulmonary Disease	131.0	125.0
Adult Asthma	193.0	232.0

**Emergency Services Utilization**

In 2008, residents of the service area recorded 111,422 total Emergency Department visits; by 2009, said visits increased by 2.7 percent to 114,438 and stood at 110,471 in 2010. During this period, about 80.0 percent of the total ED visits from the service area were treat and released. In 2008 and 2009, the last full years of operation, about 20.7 percent of the residents from the service area in need of ED care utilized the Emergency Department at St. Vincent’s Hospital.

**Service Area Demand for Emergency Services**

In response to a New York State DOH request for applications to create an urgent care center (UCC) in the Greenwich Village community, a HEAL 16 grant (RGA #. 1004071212) was awarded to North Shore Long Island Jewish Health Care Inc, the parent to Lenox Hill Hospital. North Shore-LIJ formed a partnership with longtime community healthcare provider, Village Care of NY, which provided a temporary location for the UCC at 121A West 20th Street, New York 10011. The UCC provides services utilizing the primary care facilities of Village Care Community Health Center during hours it is not operational. As a result, there is now 24/7 health care coverage at the site. The UCC opened on March 8, 2011 and is operational at the following times: Monday through Friday 7pm-8am; Saturday 5pm-8am; Sunday 8am-Monday 8am).

Once the proposed Center has become formally established as a part of the health care delivery infrastructure of the community and demonstrates high quality and patient satisfaction. The total visit volume for the first and third years of operation is 60,522 and 85,331, respectively. These visits are expected to be distributed thus:

- ED Treat and Release - 33%;
- Clinical Decision Unit - 1 %;
- Ambulatory Surgery - 4%; and
- Imaging - 62%.

LHH will build 22 treatment spaces for the Emergency Department. The ED will be able to accommodate the projected volume based upon the DOH utilization standard of 1,500 visits per treatment bay. The Center will provide a critical public health resource in a densely populated geographic region of the city.

**New Housing Development**

The service area is an attractive housing option in Manhattan and several significant residential projects are planned to be developed in the years ahead. The applicant indicates that the New York City Department of City Planning, anticipates that 12,900 new residential housing units are being proposed in and around the immediate service area. Some of these developments include: Hudson Yards, located in the northwest portion of the service area; the redevelopment of St. Vincent’s site located across the street from the Center which would add 300 housing units; and additional projects in the West Chelsea portion of the service area referred to as the High Line. Research conducted by Reis, Inc. a provider of real estate development information identified 16,307 units that are either under construction, newly constructed or in development since 2009. Using an average household size of 2.3 this would indicate that the potential exists that between 30,000 and 38,000 residents may move into the service area over the next several years. When the projected additional population is applied to the 2009 emergency department visit rate of 280 per 1,000 population there may be an additional demand for between 8,000 and 10,000 more emergency department visits. This volume represents an additional five to seven treatment bays of emergency department activity. The planned housing development would further tax the current emergency department capacity of the neighboring hospitals. The availability of the Center for Comprehensive Care would provide an additional resource to accommodate a portion of the projected demand generated by residential development within the service area.

**Surge Capacity to Manage Public Health Crises**

With the closure of St. Vincent’s, the community lost a resource that would have otherwise been able to respond to a public health emergency. The Center would become a new resource, which could assume a vital role in accommodating the need for city-wide inoculations, triaging volume away from other emergency departments during disaster scenarios with multiple trauma or mass casualties or the need to rapidly treat large volumes of patients without otherwise disrupting inpatient operations of neighboring facilities.

### **Ambulatory – Surgery**

The Center is also proposing to perform ambulatory surgery which will fill a gap in access to this level of care left by the closure of St. Vincent's. There are no Article 28 ambulatory surgery centers operating in the lower west side of Manhattan. The St. Vincent's 2008 Institutional Cost Report stated that, 13,525 ambulatory surgeries were performed at the hospital. Using SPARCS ambulatory surgery data for St. Vincent's, 23% or 3,110 of St. Vincent's ambulatory surgery patients came from the service area. According to SPARCS, the service area residents accounted for over 28,000 ambulatory surgery discharges. The Center will have two multi-specialty operating rooms able to accommodate the volume of service area patients who had ambulatory surgery at St. Vincent's.

### **Diagnostic Imaging**

In the Lower West Side there is one Article 28 comprehensive diagnostic imaging center, the former St. Vincent's Comprehensive Cancer Center site at 325 W. 15th Street, which is currently being operated by Beth Israel. In its 2008 Institutional Cost Report, St. Vincent's reported it performed 2,857 MRIs and 3,688 CT scans on an ambulatory basis, however, it is not possible to separate the number of ambulatory scans by site of care.

The Center for Comprehensive Care will have state-of-the-art imaging in the emergency department and a dedicated area for physician referred ambulatory imaging. The emergency department imaging will have 2 digital x-ray rooms and one multi-slice CT scanner. The multi-slice CT will be able to be used for routine CT emergency department examinations and for cardiac imaging to quickly rule out problems related to cardiac insufficiency (heart attacks or blockages). The ambulatory imaging center will possess a comprehensive array of imaging modalities including CT, 3T MRIs, ultrasound, digital x-ray, and mammography. A PACS System will be located in the emergency department and the Ambulatory Imaging Center to quickly retrieve previous images and transmit images to radiologists at Lenox Hill Hospital or other facilities across the Health System for immediate consultation by the appropriate specialist (e.g., musculo-skeletal, neurological).

### **Community Need**

Lenox Hill Hospital's Community Service Plan places a strong emphasis on community involvement and community education. Lenox Hill Hospital and the North Shore-LIJ Health System have reached out and increased community involvement in the lower west side. Their first action was to open a new urgent care center followed by sharing information and knowledge with community leaders about the health status and needs of the community.

Education will be an integral part of this model. Through specific programs, this model will seek to influence the following audiences:

- Residents/Patients - Community programs will education residents and patients about the new level of care available and the importance of seeking care appropriate to their medical needs. Patients will also be made aware of the benefits of follow-up care and compliance with medical advice;
- Community Physicians - Physicians practicing in the community will be encouraged to refer their patients needing care after-hours to this facility. They will be confident that the service will be available 24/7 and that the care available will meet their patients' needs. They will also benefit from enhanced communication through the availability of interoperable medical information; and
- FDNY-EMS and Local Ambulance and Rescue Squads - Emergency responders will learn that a significant portion of emergency care particularly for those conditions which predominantly result in a treat and release visit can be safely provided in this setting.

### **Conclusion**

Lenox Hill Hospital seeks CON approval to establish a 2-bed hospital division to provide 24-hour Emergency Department care and other medical services in lower Manhattan. The new facility will fill the outpatient services need in the community that was created by the closure of St. Vincent's Hospital. The proposed model of health care access will strengthen the collegial and institutional relationships which will be established with partner organizations that are bound by their unifying mission to serve the residents of lower Manhattan.

### **Recommendation**

**From a need perspective, approval is recommended.**

# Programmatic Analysis

## Background

The construction of a new division of Lenox Hill Hospital, to be called the Center for Comprehensive Care, is in response to the closure of St. Vincent's Catholic Medical Center in April 2010. The division will include:

- 2 medical surgical beds,
- emergency department,
- diagnostic radiology (including MRI and CT),
- ambulatory surgery,
- pharmaceutical service,
- clinical laboratory service,
- medical social services, and
- ambulance transportation service

The division will operate a 24 hour/7 days a week emergency department, with two beds for observation and/or treatment requiring a longer than 24-hour stay, prior to transfer. Patients requiring inpatient care will be transferred to a hospital chosen by the patient or by the emergency room physician's assessment of the best location for treatment. The division will enter into transfer agreements with several area hospitals for specialized services including trauma, burns, perinatal, and stroke.

Upon completion of the project the main site of Lenox Hill Hospital will decertify two medical surgical beds.

## Staffing

Staffing will consist of 175 FTEs in Year One, and 202 FTEs in Year Three.

## Compliance with Applicable Codes, Rules and Regulations

The medical staff will ensure that procedures performed at the hospital conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and/or expertise. The hospital'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.

## 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

### Assignment of Contract Of Sale (As Amended and Restated)

On June 7, 2007, the United States Bankruptcy Court Order approved a Memorandum of Understanding between SVCMC and Rudin Development, LLC, regarding the related real estate. Rudin Development, LLC is one of the largest companies in the New York City area to develop and manage real estate holdings. On March 9, 2011, an amended and restated contract of sale was executed between SVCMC (seller) and RSV, LLC (purchaser) whereas the O'Toole Building was assigned to NS-LIJ assuming all rights and obligations of Purchaser under the agreement. RSV, LLC is an affiliate of Rudin Development, LLC and Rudin can act through an affiliate.

### Total Project Costs

Total project costs for renovations and the acquisition of movable equipment is estimated at \$125,621,357, broken down as follows:

Renovation & Demolition	\$79,728,300
Site Development	175,000
Asbestos Abatement or Removal	4,039,503
Surveys and Test Borings	70,000
Design Contingency	5,300,000
Construction Contingency	4,000,004
Planning Consultant Fees	1,457,104
Architect/Engineering Fees	6,157,822
Pre-Construction Manager Fees	435,000
Other Fees (Consultant)	6,886,137
Movable Equipment	16,751,157
Application Fee	2,000
Additional Processing Fee	<u>619,330</u>
Total Project Cost	<u>\$125,621,357</u>

Project costs are based on a February 1, 2012 construction start date and a twenty-two month construction period. Lenox Hill Hospital will finance total project costs through accumulated funds and a \$10 million contribution from Rudin Development, LLC.

The Bureau of Architectural and Engineering Facility Planning has determined that this project includes shell space costs of \$12,394,556 for future expansion. As a result, the total approved project cost for reimbursement purposes shall be limited to \$113,226,801 until such time as the shell space is approved for use (under a future CON) by the Department.

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:	\$24,016,700	\$33,644,700
Expenses:		
Operating	\$21,065,300	\$26,210,100
Depreciation and Rent	<u>6,252,200</u>	<u>6,252,200</u>
Total Expenses	\$27,317,500	\$32,462,300
 Net Income	 <u>\$(3,300,800)</u>	 <u>\$1,182,400</u>
 Utilization: Inpatient Discharges	 242	 363
Outpatient Visits	60,522	85,331

Utilization for the first and third years is as follows:

Inpatient Cases

<u>Payor</u>	<u>Years One and Three</u>
Medicaid Fee-For-Service	18.5%
Medicaid Managed Care	13.2%
Medicare Fee-For-Service	8.2%
Medicare Managed Care	2.9%
Commercial Managed Care	34.8%
Private Pay	22.4%

Outpatient Visits

<u>Payor</u>	<u>Year One</u>	<u>Year Three</u>
Medicaid Fee-For-Service	6.6%	6.9%
Medicaid Managed Care	7.2%	7.5%
Medicare Fee-For-Service	18.3%	17.8%
Medicare Managed Care	6.4%	6.3%
Commercial Managed Care	53.5%	53.1%
Private Pay	8.0%	8.4%

Expense assumptions are based on the historical experience of Lenox Hill Hospital inpatients and outpatients. Utilization assumptions are based on both the historical utilization of the former St. Vincent's Catholic Medical Center, as well as a recently conducted community health assessment.

Feasibility Study

NS-LIJ has provided internal feasibility assumptions relative to this project regarding the new Division of Lenox Hill Hospital known as The Center for Comprehensive Care. BFA Attachments present forecasted results pertaining to the hospital's utilization and financial performance. Following are significant assumptions.

**Demand**

Lenox Hill Hospital is requesting to certify at this Division, two Medical/Surgical beds to adequately accommodate future demand; the two beds will be transferred from Lenox Hill Hospital's current licensed medical surgical beds on its operating certificate.

In projecting the demand for the Emergency Department, the following factors were taken into consideration: the historic utilization and market share of service area residents who used the St. Vincent's Emergency Department; an estimate for the percent of patients that would require inpatient care (based on normative admission percentages of existing Emergency Departments), and an annual growth rate.

**Inpatient Utilization**

BFA Attachment I presents forecasted demand for inpatient services, based on the following assumptions:

- Increases in discharges are based on a methodology that takes into account population and growth trends in the market area.
- Increases in inpatient cases from 2014 to 2016 are attributed to the start up of the new division and are projected to remain constant from 2016 to 2018. Inpatients will be discharged from the Center or transferred to Lenox Hill Hospital or neighboring facilities.

**Outpatient Utilization**

BFA Attachment H presents forecasted demand for outpatient services, based on the following assumptions:

- Projected visits are based on a conservative 22.3% share of area residents who sought services from SVCMC and 3% growth trends in the market area for the five year period.

- Increases in outpatient cases from 2014 to 2016 are attributed to the start up of the new division and are projected to remain constant from 2016 to 2018 as a conservative approach.

**Managed Care Penetration**

The hospital has managed care contracts in place with several major managed care companies operating in the hospital's service area, and also accepts volume from all managed care payors for out of network patients.

**Forecasted Financial Statements**

Presented as BFA Attachment F and G, are statements of forecasted revenues, expenses, and forecasted cash flows for Lenox Hill Hospital. Each statement's underlying results and assumptions are summarized below:

**Balance Sheet**

- As shown on Attachment F, the hospital's net assets increase annually due to forecasted positive operating results.
- Debt service coverage ratios on outstanding debt for 2010 audited and in the final two years of the projection period:

<u>2010</u>	<u>2015</u>	<u>2016</u>
3.3	6.5	6.8

**Forecasted Statement of Revenue and Expenses**

**Revenues:**

- Revenues for all payors have been projected based on existing methodologies and current rates at Lenox Hill Hospital and are not trended between 2014 and 2018. Revenues increase based on volume.
- For the proposed Emergency Department, the applicant provided historical data for ED admissions, and treat and release, for both the service area residents and St. Vincent's Hospital. The applicant chose to use St. Vincent's payor mix for ED treat and release, as it both reflects the payor mix of the community for those residents from out-of-the service area who are likely to use the ED and the likelihood of patients who would be brought to the center by FDNY ambulance.
- For the payor mix of the ambulatory surgery and imaging services, the applicant used the historical St. Vincent's Hospital payor mix for these services as reflected in the hospital's most recent Institutional Cost Report.

**Expenses:**

- Expenses are forecasted based on historical experience of Lenox Hill Hospital and adjusted for future trends. Expenses remain constant with revenues and increase due to volume.

**Statement of Forecasted Cash Flows**

- As shown on Attachment H, Lenox Hill Hospital's cash position decreases in 2012 and 2014, due to significant cash outflows for capital expenditures related to the Center. The level of capital expenditures decrease and cash flow provided from operational activities result in an increase in cash from 2015 to 2016 during the forecasted budgeted period.

**Capability and Feasibility**

Total project cost of \$125,621,357 will be funded through \$10,000,000 in a pledge from Rudin Development, LLC, and the remaining \$115,621,357 as equity from the hospital. Presented as BFA Attachment D, is the 2009-2010 financial summary of Lenox Hill Hospital, which indicates the availability of sufficient resources for this project.

The hospital projects an excess of revenues over expenses of \$1,182,400 by the third year. As shown on BFA Attachment D, the hospital has maintained average positive working capital and net asset positions during the period shown, and generated a net operating revenue excess of \$2,308,000 between May 19, 2010, and December 31, 2010, when Lenox Hill Hospital became a member of the NS-LIJ Health System. Lenox Hill Hospital has had

significant and growing net operating losses during 2009, and prior year 2008. This was the key reason that Lenox Hill issued a request for proposals from several larger health systems for affiliation and ultimately chose NS-LIJ as its preferred partner. The operating losses resulted from a combination of many factors including declining patient volumes, a relatively weak negotiating position with managed care payers as a stand-alone acute care hospital, a limited primary care network; need to upgrade systems and processes for managing revenue cycle and the supply chain issues.

All of these are being addressed since Lenox Hill joined the NS-LIJ health system in May 2010, and NS-LIJ management expects that improvements will continue on multiple fronts over the next several years.

Recommendation

**From a financial perspective, contingent approval is recommended.**

## Architectural Analysis

### Background

The applicant is proposing to establish a new facility to be located in an existing building at the former St Vincent's Catholic Medical Center to provide Emergency and Ambulatory Care Services. The existing building is currently 160,886 SF and comprises six stories plus cellar. The proposal includes the gut renovation of the interior of the building, demolition of portions of the first, second and sixth floors, and an addition at the first floor level. Areas of existing floor slab will be removed at interim floor levels to accommodate new elevator systems. The resultant building area will be 140,844 SF. The building's construction classification is non-combustible Type II (222). Bulk oxygen is to be provided in new vender supplied tanks placed in an existing storage structure located directly across 12<sup>th</sup> Street. A new service line will be installed within an existing trench below the street.

### **First Floor** (28,870 SF renovation, 4642 SF addition\*, 1609 SF removed)

*\*Additional occupiable floor area enclosed within the existing structure.*

The total proposed area of the First floor is 28,870 SF. The first floor will accommodate a new Emergency Department and small inpatient unit. The ED program will provide twenty-two patient modules, including three CDU beds, two resuscitation beds, one psych bed and sixteen exam/treatment rooms for ob/gyn, isolation, pediatrics, ophthalmology, forensic and general. In addition, the ED will provide one 320 slice CT room and two X-Ray rooms. The inpatient unit will provide two patient bedrooms, one of which will accommodate bariatric patients. The ED walk in entrance will be located to provide a drop off for cars, taxis and mass transportation. Reception, triage and patient waiting are located adjacent to this entrance. A three-bay covered ambulance driveway and entrance will be provided. A separate loading dock is also provided. A separate public lobby, including reception/concierge, will serve ambulatory surgery, diagnostic radiology and future private practice space. Reconfiguration of the plan will result in the elimination of 1609 SF of existing floor area.

### **Second Floor**

The Second floor includes 14,777 SF and is designated for the fit-out of private practices facilities and is not included in this project. Sprinklers and egress lighting will be installed, and structural modifications will include removing a portion of floor slab to extend the ceiling height at the first floor level within the ED.

### **Third Floor**

The usable floor area of the Third floor is 6,391 SF. Existing partitions are to be removed to provide shell space for future development. An area of floor slab is to be removed to provide access from the Second level. Sprinklers and egress lighting are to be provided.

### **Fourth Floor**

This floor includes 27,286 SF designated for the future fit-out of private practice space not included in this project. Sprinklers and egress lighting will be provided.

### **Fifth Floor** (30,274 SF renovated)

The total floor area of the Fifth floor is 30,274 SF and includes diagnostic radiology, ambulatory surgery, shared

prep/recovery, and administration offices. Radiology includes two MRI's (one initial plus one future), one CT scan, two X-ray (one initial plus one future), two ultra-sound and one mammography room. In addition, a mobile C-arm will be provided. Ambulatory surgery will include two operating rooms with sterile core and associated support spaces as well as two exam rooms, one consultation room, and a prep/recovery area with 14 stations.

**Cellar** (26,118 SF renovated, 794 SF removed)

The Cellar is 26,118 SF and currently houses a parking garage. This space is to be renovated and repurposed for clinical support spaces, core building systems, building support services, ED support, and MEP and other utility services. A 6,373 SF area is designated for future support functions not included in this project. Sprinklers and egress lighting will be provided. Removal of an access ramp and other modifications will result in a loss of 794 SF of enclosed floor area.

Clinical support functions include stat laboratory, blood refrigerator, materials management, waste management (universal, infectious waste, hazardous and other waste) and food services. Building support services include environmental services, soiled linen, receiving and materials management, sterile processing and storage, building staff lockers/toilet/lounge, and maintenance facilities. Mechanical/Electrical spaces include IT and UPS rooms and also fuel oil storage for the emergency generator.

**Sixth Floor** (3,700 SF renovated, 12,488 SF removed)

The proposed floor area of the Sixth floor is 3,700 SF. Some existing administrative and conference facilities will be demolished. New construction will include rooftop air handling units, cooling tower and an emergency generator. A total of 12,488 SF of existing interior floor space will be removed or partitioned so as to not be usable.

The existing building is a designated landmark constructed in 1964. Extensive renovations are needed to properly support the LHH Center for Comprehensive Care program, and are intended to comply with LEED Silver standards.

The interior will be completely gutted, and all MEP systems, all elevators and one stair will be replaced. One additional exit stair will be added. A total of three elevators will be provided under this project, including two for patients and one for service. The interior of each floor will be completely reconstructed for code compliance. The entire building will be sprinklered. New electrical and IT closets will be provided at each floor. Radiation shielding will be provided for X-ray and CT-scan at the first floor and for MRI, CT-scan, X-ray, ultrasound and the operating rooms on the Fifth floor.

Extensive exterior renovation will also be performed to update the building to the new program. With landmark designation status, the building will therefore be subject to review by the New York City Landmarks Preservation Commission from whom a 'Certificate of Appropriateness' will be requested. Existing ceramic tile cladding will be removed, allowing for the restoration of an original precast concrete panel facade. Bronze window walls on levels 4 and 5 will be replaced with an energy efficient curtain wall system. An extensive existing 12" glass block wall at ground level will be replaced with energy efficient glass block and thereby allowing the use of adjacent interior space for the ED.

Environmental Review

The Department has deemed this project to be a TYPE I Action and the lead agency shall be the City Planning Commission, City of New York.

Recommendation

**From an architectural perspective, approval is recommended.**

## Attachments

BFA Attachment A	NS-LIJ Organizational Chart
BFA Attachment B	2009-2010 Financial Summary, North Shore-Long Island Jewish Health System, Inc.
BFA Attachment C	June 30, 2011 Internal Financials for North Shore-Long Island Jewish Health System, Inc.
BFA Attachment D	2009-2010 Financial Summary, Lenox Hill Hospital
BFA Attachment E	June 30, 2011 Internal Financials for Lenox Hill Hospital
BFA Attachment F	Forecasted Balance Sheet
BFA Attachment G	Forecasted Statement of Revenues and Expenses
BFA Attachment H	Forecasted Statement of Cash Flows
BFA Attachment I	Forecasted Statistics, Ratios and Payor Mix
BFA Attachment J	Projected Inpatient and Outpatient Volume
BFA Attachment K	Financial Cost Analysis
BHFP Attachment	Map

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

**October 6, 2011**

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

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

**CON Applications**

**Ambulatory Surgery Centers – Establish/Construct**

**Exhibit #10**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	102452 B	Fromer LLC Eye Surgery Center of New York (Bronx County)	Contingent Approval
2.	111277 B	Avicenna ASC, Inc. (Bronx County)	Contingent Approval
3.	111421 E	Digestive Diseases Diagnostic and Treatment Center (Kings County)	Contingent Approval
4.	111502 B	Hudson Valley Center, LLC (Westchester County)	Contingent Approval

**Residential Health Care Facility – Establish/Construct**

**Exhibit #11**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	111313 B	Samaritan Senior Village (Jefferson County)	



# Public Health and Health Planning Council

## Project # 102452-B Fromer LLC Eye Surgery Center of New York

**County:** Bronx (Bronx)

**Program:** Ambulatory Surgery Center

**Purpose:** Establishment and Construction

**Submitted:** December 9, 2010

### Executive Summary

#### Description

Fromer LLC Eye Surgery Center of New York, a proposed limited liability company, is seeking approval for to establish and construct a free-standing ambulatory surgery center (FASC) for ophthalmology, to be located in leased space at 3031 Grand Concourse, Bronx. The Center will provide surgical services in the single-specialty of ophthalmology, utilizing three operating rooms and one minor procedure room for laser procedures.

The ownership of Fromer LLC Eye Surgery Center of New York will be held by 1 ophthalmologist, as follows:

Member	Interest
Dr. Mark Fromer	100%

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 \$2,698,817.

#### DOH Recommendation

Contingent approval for a 5-year limited life.

#### Need Summary

Fromer LLC Eye Surgery Center of New York plans to receive eye surgery referrals from the existing Fromer Eye Center in the Bronx, Queens, and Manhattan. These three eye centers generated 98,581 patient visits in 2010.

The proposed ambulatory surgery center estimates that the four ophthalmologists will perform 4,000 procedures in the first year and 6,000 procedures in the third year. A large portion of these will be for clients eligible for Medicaid, which will constitute 40

percent of the facility's revenues by the third year of operation.

#### Program Summary

Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

#### Financial Summary

Project costs will be met with cash equity of \$400,000, a \$379,996 equipment lease, and mortgage of \$1,918,821 (15 yrs. @ 4.61%).

Year 3 Budget:	<i>Revenues:</i>	\$ 6,232,500
	<i>Expenses:</i>	<u>4,821,970</u>
	<i>Gain/(Loss):</i>	\$ 1,410,530

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

#### Architectural Summary

The proposed facility will be located in an 8-story mixed-use residential building. The facility will consist of approximately 4,500 SF of new interior construction and include a waiting area, reception and filing area, office, medical records room, stretcher storage, patient and staff toilets. The surgical suite will include 3 procedure rooms, laser room, exam room, clean and soiled instrument processing rooms, soiled workroom, storage room, staff lounge with lockers, storage, mechanical rooms, medical gas room, janitor's closet.



## 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 needed 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 it is concluded that proceeding with the proposal is acceptable. [RNR]
5. Submission of an executed building lease that is acceptable to the Department. [BFA]
6. Submission of a commitment for the landlord 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 its approval of final plans and specifications and prior to the start of construction, such commitment to be acceptable to the Department. [BFA]
7. Submission of a fully executed equipment lease that is acceptable to the Department. [BFA, CSL]
8. Submission of Restated Articles of Organization 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 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 request for, and Department's granting approval for the start of construction. [AER]
7. The applicant shall complete construction on or before July 31, 2013. In accordance with 10 NYCRR Part 710.2(b)(5), if construction is not started on or before the start date, this shall constitute abandonment of the approval. In accordance with Part 710.10(a), this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

**October 6, 2011.**

# Need Analysis

## Background

Fromer LLC Eye Surgery Center of New York requests approval to establish and construct a single-specialty ambulatory surgery center specializing in ophthalmology at 3031 Grand Concourse, Bronx in Bronx County.

## Analysis

The Fromer LLC Eye Surgery Center will draw referrals from three ophthalmology practices owned by Fromer Eye Centers in the Bronx, Queens, and Manhattan.

The applicant reports that the Fromer Eye Center ophthalmologists provided comprehensive treatment for vision problems, age-related macular degeneration, glaucoma, cataracts, diabetic retinopathy, corneal disease, and a host of other ophthalmologic disorders.

The Fromer physicians currently perform 2,000 eye surgeries per year. The Eye Surgery Center is projected to perform 4,000 surgeries in the first year and 6,000 in the third year.

The locations of the three existing Fromer Eye Centers are:

1. 550 Park Avenue, New York, New York
2. 109-33 71<sup>st</sup> Road, Forest Hills, Queens
3. 3130 Grand Concourse, Bronx, New York

The Grand Concourse site will be the site of the proposed ambulatory surgery center.

The Fromer Eye Care Centers report the following utilization:

	<u>September 2010</u>	<u>September 2009</u>	<u>Percent Change</u>
Patient Visits	98,581	82,494	+19.5%

The applicant states that recent reports predict that the number of Americans with diabetes will double within 25 years. As individuals develop diabetes earlier and live longer, they will experience more diabetic complications that require treatment. These trends are expected to increase the need for retina specialists and shift the burden of managing early-stage diabetic retinopathy to comprehensive ophthalmologists.

<b><u>Physicians to Practice at Fromer LLC Eye Surgery Center of New York</u></b>	
<u>Name</u>	<u>Specialty</u>
Mark Fromer, M.D.	Ophthalmology
Susan Fromer, M.D.	Ophthalmology
Brian Brazzo, M.D.	Ophthalmology
Maeyan Keshet, M.D.	Ophthalmology

<b><u>Existing Freestanding Ambulatory Surgery Centers-Bronx County</u></b>	
<u>Facility</u>	<u>2010 Procedures</u>
Advanced Endoscopy Center	8,802
Ambulatory Surgery Center of Greater NY	10,453
New York GI Center, LLC	7,442
Surgicare ASC of New York	1,779

SOURCE: SPARCS

There are no freestanding ophthalmological ASC's in the Bronx, where the facility will be located and which has large portions of African-American and Latino populations, who experience high levels of eye disease. The proposed ASC's location in the Central Bronx and the fact that the applicant's three private practice offices already treat patients from

among the most medically underserved areas in New York City suggest that the facility will significantly expand access to ophthalmological surgical care to underserved groups in the Bronx and other areas where the applicant physicians practice. This is further attested to by the applicant's projection that Medicaid will constitute 40 percent of the ASC's revenues by the third year of its operation

Recommendation

**From a need perspective, contingent approval is recommended for a limited life of five years.**

<b>Programmatic Analysis</b>
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Background

Establish a diagnostic and treatment center that will also be federally certified as an ambulatory surgery center.

<b>Proposed Operator</b>	<b>Mark Fromer</b>
Operator Type	LLC
Doing Business As	Eye Surgery Center of New York
Site Address	3031 Grand Concourse, Bronx
Surgical Specialties	Ophthalmology
Operating Rooms	3
Procedure Rooms	1
Hours of Operation	Monday through Friday, 8:00 am to 5:00 pm (Extended as necessary to accommodate patient needs).
Staffing (1 <sup>st</sup> Year / 3 <sup>rd</sup> Year)	17.5 FTEs / 35.5 FTEs
Medical Director(s)	Susan Fromer
Emergency, In-Patient and Backup Support Services Agreement	Will be provided by St. Barnabas Hospital
Distance	1 mile and 5 minutes in travel time
On-call service	Access to the facility's on-call physician during hours when the facility is closed.

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.

Compliance with Applicable Codes, Rules and Regulations

The medical staff will ensure that procedures performed at the Center conform with 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

Mark Fromer, MD is the sole member and manager.

Staff from the Division of Certification and Surveillance reviewed the disclosure information submitted by Dr. Fromer 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. Dr. Fromer was 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. Fromer revealed no associated facilities.

Based on this information, staff concluded that the applicant has provided a substantially consistent high level of care as defined in New York State Public Health Law 2801(a)(3) and 10NYCRR 600.2 during the past 10 years.

Conclusion

Based on the information reviewed, staff found 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**

Lease Agreement

The Center will occupy approximately 4,522 square feet of leased space, in accordance with the terms of a proposed lease agreement summarized as follows:

- Landlord:* 3130 Grand Concourse, LLC
- Lessee:* Mark Fromer, LLC
- Premises:* 4,522 square feet of leasable improved space located in an approximately square foot building at 3031 Grand Concourse, Bronx, New York
- Term:* 15 years with 2 (5) year extension periods
- Rental:* Year 1 \$113,800, Year 2 \$116,645, Year 3 \$119,560, Year 4 \$122,550, Year 5 \$125,600, Year 6 \$128,750, Year 7 \$131,975, Year 8 \$135,275, Year 9 \$138,650, Year 10 \$142,120, Year 11 \$145,675, Year 12 \$149,300, Year 13 \$153,000, Year 14 \$156,875 and Year 15 \$160,800
- Other:* Triple Net

The landlord 3130 Grand Concourse, LLC is owned by Dr. Mark Fromer and his wife, Lisa Fendell. Dr. Fromer is a proposed member of Fromer LLC Eye Surgery Center of New York. The applicant has stated that the lease will be done on an arms-length basis and has provided the Department with three rent reasonableness letters, which show that the lease amount is within the fair market value for the area. The landlord, 3130 Grand Concourse, LLC has acquired the space in which the FASC’s structure will be constructed.

Total Project Cost and Financing

Total project cost to renovation and movable equipment for the FASC is estimated at \$2,698,811, broken down as follows:

Renovation and Demolition	\$1,312,000
Design Contingency	131,000
Construction Contingency	131,000
Planning Consultant Fees	100,000
Architectural/Engineering Fees	30,000
Construction Manager Fees	144,750
Movable Equipment	800,000
Interim Interest Expense	40,000
CON Application Fee	2,000
Additional CON Fees	<u>8,067</u>
Total Project Cost	\$2,698,817

Project costs are based on a construction start date of 4/1/2013, and a six-month construction period. The submitted financing plan is as follows:

Cash Equity	\$ 400,000
Mortgage, 15 year term @ 4.61% interest	1,918,821
Equipment Lease	379,996

The proposed member of Fromer LLC Eye Surgery Center of New York is responsible for providing the cash equity and securing the equipment lease and the mortgage.

The landlord, 3130 Grand Concourse, LLC, has acquired the space in which the FASC' s structure will be constructed.

#### Operating Budget

The applicant has provided an operating budget, in 2011 dollars, for years one and three, summarized as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$4,081,250	\$6,232,500
Expenses:		
Operating	\$3,677,600	\$4,571,970
Capital	<u>250,000</u>	<u>250,000</u>
Total	\$3,927,600	\$4,821,970
 Net Profit/(Loss)	 <u>\$153,650</u>	 <u>\$1,410,530</u>
 Procedures	 3,900	 6,000
 Average Cost/Procedure	 <u>\$1,007.07</u>	 <u>\$803.66</u>

Utilization by payor source for years one and three is projected as follows:

	<u>Year 1</u>	<u>Year 3</u>
Medicaid Fee For Service	10.26%	10.00%
Medicaid Managed Care	28.21%	30.00%
Medicare Fee For Service	15.38%	15.00%
Medicare Fee For Service	15.38%	15.00%
Commercial Fee For Service	17.95%	16.67%
Commercial Managed Care	8.97%	8.33%
Other	3.85%	5.00%

Expenses are based on the surgeons' experience performing procedures, as well as the experience of similar facilities in the area. Utilization assumptions reflect physician letters of support.

#### Capability and Feasibility

The issue of capability centers on the applicant's ability to meet project cost and working capital requirements, and initiate operations as a financially viable entity. Letters of Intent have been provided relative to the mortgage and equipment lease. Project cost equity of \$400,000 will be provided by the proposed member.

The applicant has provided a financing plan for \$803,662 of working capital funding. The proposed members will provide 100% as cash equity.

Review of BFA Attachment A indicates the availability of sufficient funds for stated levels of equity. Review of BFA Attachment B reveals that Fromer LLC Eye Surgery Center of New York will initiate operations with positive members' equity of \$1,000,000.

The issue of feasibility centers on the applicant's ability to meet expenses with revenues and maintain a viable ongoing entity. The submitted budget indicates that Fromer, LLC Eye Surgery Center of New York will generate a net profit of approximately \$153,650 in year 1, and \$1,410,530 by the third year of operation. Revenues from Medicaid

and Medicare are based on prevailing reimbursement methodologies for ambulatory surgery services. All other revenues are based on the experience of similar facilities in the area, and include provisions for a sliding fee scale. The budget appears reasonable.

Based on the preceding, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Recommendation

**From a financial perspective, contingent approval is recommended.**

## Architectural Analysis

Background

The proposed facility will be located in an 8 story mixed use residential building and providing services as a freestanding Ambulatory Eye Surgery Center. The facility will consist of approximately 4,500 SF of new interior construction and include a waiting area, reception and filing area, office, medical records room, stretcher storage, patient and staff toilets.

The surgical suite will include 3 procedure rooms, laser room, exam room, clean and soiled instrument processing rooms, soiled workroom, storage room, staff lounge with lockers, storage, mechanical rooms, medical gas room, janitor's closet.

Environmental Review

The Department has deemed this project to be a TYPE II Action that 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	Net Worth of Proposed Member
BFA-Attachment B	Pro-forma Balance Sheet
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:** Bronx-Lebanon Hospital Center  
650 Grand Concourse  
Bronx, New York 10457

No response.

**Facility:** St. Barnabas Hospital  
4422 Third Avenue  
Bronx, New York 10457

No response.

**Facility:** North Central Bronx Hospital  
3424 Kossuth Avenue & 210<sup>th</sup> Street  
Bronx, New York 10467

No response.

**Facility:** Montefiore Medical Center  
111 East 210<sup>th</sup> Street  
Bronx, New York 10467

No response.

#### Supplemental Information from Applicant

- Need and Sources of Cases

The applicant states that the proposed ASC will draw patients from referrals from the three private practice locations of the current Fromer Eye Centers in the Bronx, Queens and Manhattan. The applicant states that the three service areas to be served by the proposed ASC have experienced a growth rate 10,000 eye surgeries annually; and that these are among the most medically underserved areas in New York City. The ASC itself will also be located in the Bronx, which has large portions of African-American and Latino populations, who experience high levels of eye disease.

- Staff Recruitment and Retention

Employees will be recruited from the Fromer Eye Center's three existing locations and from the community at large. Career ladders, opportunities for advancement, and assistance with training and development will facilitate retention of staff.

- Office-Based Cases

The applicant states that none of the procedures projected for the ASC are derived from patients currently seen or treated in an office-based setting. The ASC's cases will be patients that require the specialized functionality of the ASC setting.

#### 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 6<sup>th</sup> day of October, 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 free-standing ambulatory surgery center for ophthalmology to be located in leased space at 3031 Grand Concourse, Bronx, 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:

102452-B

FACILITY/APPLICANT:

Fromer LLC Eye Surgery Center of New York



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 needed 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 it is concluded that proceeding with the proposal is acceptable. [RNR]
5. Submission of an executed building lease that is acceptable to the Department. [BFA]
6. Submission of a commitment for the landlord 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 its approval of final plans and specifications and prior to the start of construction, such commitment to be acceptable to the Department. [BFA]
7. Submission of a fully executed equipment lease that is acceptable to the Department. [BFA, CSL]
8. Submission of Restated Articles of Organization 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 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 request for, and Department's granting approval for the start of construction. [AER]
7. The applicant shall complete construction on or before July 31, 2013. In accordance with 10 NYCRR Part 710.2(b)(5), if construction is not started on or before the start date, this shall constitute abandonment of the approval. In accordance with Part 710.10(a), 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



## 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 needed 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 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 development and administrative services agreement that is acceptable to the Department. [BFA, CSL]
8. A photocopy of an executed Certificate of Amendment to the Certificate of Incorporation for Avicenna ASC, Inc., that is acceptable to the Department. [CSL]
9. Clarification as to whether an assumed name will be used and, if so, submission of a photocopy of a certificate of assumed name, 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 May 1, 2015. 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

**October 6, 2011.**

# Need Analysis

## Background

Avicenna ASC, Inc. proposes to establish and construct an Article 28 diagnostic and treatment center (Center), to be certified as a multi-specialty, freestanding ambulatory surgery center (FASC). The Center will have two (2) operating rooms and two (2) procedure rooms that will be located at 2522 Hughes Avenue, Bronx.

## Need Summary

The Center projects that the number of visits will be 6,252 in the first year and 6,633 in the third year. The number of ambulatory surgery patients from Bronx County increased 10.5% from 2008 to 2009 and 5.3% from 2009 to 2010. The Center is located in a Primary Care Health Professional Shortage Area (HPSA).

The Center has executed a hospital transfer and affiliation agreement for backup and emergency services with Bronx-Lebanon Hospital Center, which is 10 minutes' driving time from the proposed FASC.

The applicant reports that all of the procedures projected for the Center are currently being performed in office-based settings or in other FASCs and that this proposal would result in no migration of procedures to the proposed Center from local hospitals.

Bronx County has two single specialty free-standing D&TCs, two free-standing multi-specialty D&TCs and one multi-specialty D&TC extension clinic providing ambulatory surgery services. Bronx County also has ten hospitals providing multi-specialty ambulatory surgery services.

<b><u>Type of Facility-Bronx County</u></b>	<b><u>Single Specialty</u></b>	<b><u>Multi-Specialty</u></b>
D&TC	Total 2: 1-Endoscopy 1-Gastroenterology	2
D&TC-Extension Clinics	0	1
Total Above	2	3
Hospitals	0	10

*Source: HFIS*

## Analysis

The primary service area is zip code 10458 that is the proposed location of the ASC in Bronx County. The secondary service area has the following zip codes in Bronx County: 10453, 10457, 10460, 10462, 10467, and 10468.

The proposed ASC is located in a Primary Care HPSA area.

The Center is committed to serving all persons in need of surgery regardless of age, sex, sexual orientation, race, creed, religion, disability, source of payment or any other personal characteristics.

The applicant proposes to provide the following surgical specialties:

<b><u>Projected Procedures by Surgical Specialty</u></b>			
<b><u>Surgical Specialty</u></b>	<b><u>Current</u></b>	<b><u>Year 1</u></b>	<b><u>Year 3</u></b>
Gastroenterology,	0	792	841
Gynecology,	0	238	253
Neurology,	0	462	490
Orthopedic Surgery,	0	792	840
Podiatry Surgery,	0	395	419
Urology,	0	581	616

Dermatology,	0	1,210	1,283
Ophthalmology,	0	792	841
Vascular Surgery, and	0	330	350
Pain Management.	0	660	700
<i>Total</i>	<i>0</i>	<i>6,252</i>	<i>6,633</i>

The table below presents information on the number of ambulatory surgery patients at the two Bronx County freestanding ambulatory surgery centers. It shows that the number of patients continued to go up from 2007 to 2009. From 2008 to 2009, the increase was nearly 22 percent at NY GI Center, LLC and 14 percent at Advanced Endoscopy Center.

<b>Ambulatory Surgery Patients – Bronx County</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>% Change 2008-09</b>
New York GI Center, LLC	4,340	7,066	8,606	21.8%
Advanced Endoscopy Center	3,809	7,144	8,140	13.9%

The table below presents data on the number of Bronx County residents using the Bronx County Facilities for ambulatory surgery services. It reveals that the number of ambulatory surgery patients from Bronx County going to the Bronx County ambulatory surgery facilities increased nearly nine (9) percent from 2007 to 2008 and another seven (7) percent from 2008 to 2009.

<b>Patient from Bronx County, Going to Bronx County Centers</b>		<b>Change</b>	
<i>Year</i>	<i># of Ambulatory Surgery Patients</i>	<i>From-To</i>	<i>% Change</i>
2007	71,562		
2008	77,901	2007-08	8.9%
2009	83,192	2008-09	6.8%

Source: SPARCS 2007-09

The table below presents information on the number of ambulatory surgery patients that were Bronx County residents that went to a facility/s in NYS Counties. The number of Bronx County residents increased 13 percent between 2007 and 2008 and another 11 percent between 2008 and 2009.

<b>Patients from Bronx County Using Ambulatory Surgery Facilities in All NYS Counties</b>		<b>Change</b>	
<i>Year</i>	<i># of Ambulatory Surgery Patients</i>	<i>From-To</i>	<i>% Change</i>
2007	107,174		
2008	120,685	2007-08	12.6%
2009	133,371	2008-09	10.5%

Source: SPARCS 2007-09

#### Conclusion

The overall number of ambulatory surgery patients in Bronx County is increasing. This suggests that there will be a continuing need for ambulatory surgery in the county.

The applicant's proposed change from performing ambulatory surgery procedures in a private practice to a newly constructed FASC operating under the provisions of Article 28 will help ensure a higher quality of care.

Recommendation

**From a need perspective, contingent approval is recommended for a limited life of five years from the date of the issuance of an operating certificate.**

<b>Programmatic Analysis</b>
------------------------------

Background

Establish a diagnostic and treatment center that will also be federally certified as an ambulatory surgery center.

<b>Proposed Operator</b>	<b>Avicenna ASC</b>
Operator Type	Business Corporation
Site Address	2522 Hughes Avenue, Bronx
Surgical Specialties	Orthopaedic Ophthalmology Podiatric Dermatology Urology Neurology Gynecology Gastroenterology Vascular Pain Management
Operating Rooms	2
Procedure Rooms	2
Hours of Operation	Monday through Friday from 6:00 am to 6:00 pm (Extended as necessary to accommodate patient needs).
Staffing (1 <sup>st</sup> Year / 3 <sup>rd</sup> Year)	27.48 FTEs / 29.0 FTEs
Medical Director(s)	Eteri Tetrok
Emergency, In-Patient and Backup Support Services Agreement	Will be provided by Bronx-Lebanon Hospital
Distance	2.4 miles and 10 minutes travel time
On-call service	Access to the facility's on-call physician during hours when the facility is closed.

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.

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 president and sole shareholder is Shahin Daneshvar. Mr.Daneshvar is the current owner/operator of Medalliance Medical Health Services, an Article 28 diagnostic and treatment center and was previously a member of Surgicare Ambulatory Surgery Center of New York, an Article 28 licensed ambulatory surgery center.

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 has 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

Based on the information reviewed, staff found 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**

Development and Administrative Service Agreement

The applicant has submitted a draft development and administrative services agreement; the terms are summarized below:

- Dated:* January 1, 2011
- Client:* Avicenna ASC, Inc.
- Contractor:* Percon Med Management Group, Inc.
- Development Services Provided:* Development responsibilities: coordinate formation of operating entities including working with counsel to document, register and license them; assist with site qualification and selection; assist with lease negotiation; coordinate Facility design and equipment, including coordination of installing patient IS systems; facility set-up; recruitment of staff; drafting of policies, procedures, and other governing and/or procedural documents required for the Facility’s operation, state licensure and Medicare certification; coordinate staff training ; preparation of Medicare and Medicaid application documents; and assist with all the Facility’s financing.
- Development Service Fee:* Fee \$100,000 ( to be paid in four installment of \$25,000 over the development period)
- Administrative Services Provided:* Per direction from Avicenna ASC (Company), Percon Med Management Group (the Administrative Service Provider) services will include: instituting cost containment polices and procedures; assist with fee schedules and manage care contracting opportunities; implement financial accounting and management reporting systems. Assist in the development for Board of



Manager's approval, departmental policies, systems, procedures and annual budgets; assist in the development of an organization structure, written bylaws, policies, procedures and protocols to facilitate a efficient and legal operation of the Company.

*Administrative  
Service Term:*

12 years – three (3) renewals for additional three (3) year term

*Administrative  
Service Fee:*

Annual Fee \$120,000 (1/12 to be paid monthly=\$10,000) and a four percent (4%) annual increase

*Billing and  
Collection*

*Services Provided:*

Review the accuracy of patient registration, input of insurance information. Answer questions to help in collecting payment. Key in information provided by the doctors and received from the facility, including CPT and related ICD-p codes. Responsible for timely and properly submitting claims, resolve payment issues, positing payments to patient's account, reconcile payments to supporting detail and financial records. Communicate to facility's staff and administrator common errors and claim denials and recommend changes. Provide training.

*Billing and  
Collection Service*

*Term:*

12 years – three (3) renewals for additional three (3) year term

*Billing and  
Collection Service*

*Fee:*

\$30 per procedure (paid monthly)

There is common ownership between the applicant, Avicenna ASC, Inc., and the service provider, Percon Med Management Group, Inc. Both entities are owned by Mr. Shahin Daneshvar.

#### Lease Rental Agreement

The applicant has executed a lease for the proposed site; the terms are summarized below:

*Dated:* August 21, 2010

*Premises:* 9,100 gross square feet located at 2522 Hughes Avenue, basement level, Bronx, New York

*Landlord:* 625 Fordham, LLC

*Lessee:* Avicenna ASC, INC.

*Term:* 5 years and one renewal of a 5-year term

*Rental:* 1<sup>st</sup> year \$409,500 per year (\$45 per sq. ft.) for years 2-10 rate will increase by 4% per year

*Provisions:* Taxes, Utilities, Insurance, & Maintenance

The applicant has provided an affidavit stating that the lease is a non-arm's length arrangement. According to a letter dated June 21, 2011, the landlord, 625 Fordham, LLC, is 80% owned by Shahin Daneshvar, the applicant's sole shareholder, and 20% by his wife, Diana Daneshvar. Realtor letter's attesting to the rental rate as being of fair market value has been provided.

#### Total Project Cost and Financing

Total project costs for renovation and acquisition of fixed and moveable equipment is estimated at \$6,027,240, broken down as follows:

Renovation & Demolition	\$1,918,600
Design Contingency	191,860
Construction Contingency	191,860

Fixed Equipment	1,564,015
Architect/Engineering Fees	153,488
Construction Manager Fees	115,116
Other Fees	75,000
Movable Equipment	1,461,343
Financing Costs	53,500
Interim Interest Expense	267,500
CON Application Fee	2,000
CON Processing Fee	<u>32,958</u>
Total Project Cost	\$6,027,240

Project costs are based on a November 1, 2011 start date with an eighteen month construction period.

The applicant's financing plan appears as follows:

Cash Equity (Applicant)	\$677,240
Loan (6%, 7-year term)	<u>5,350,000</u>
Total	\$6,027,240

A letter of interest has been provided by MEI Healthcare Capital, LLC.

#### 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	\$5,080,585	\$5,389,993
Expenses:		
Operating	\$3,453,736	\$3,637,787
Capital	<u>1,335,341</u>	<u>1,288,261</u>
Total Expenses	\$4,789,077	\$4,926,048
Net Income or (Loss)	\$291,508	\$463,945
Utilization: (procedures)	6,252	6,633
Cost Per Procedure	\$766.00	\$742.66

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

Medicaid Fee-For-Service	10.0%
Medicaid Managed Care	55.0%
Medicare Fee-For-Service	18.0%
Medicare Manage Care	2.0%
Commercial Fee-For-Service	2.0%
Commercial Manage Care	7.0%
Private Pay	2.0%
Charity	4.0%

The applicant states all of the projected procedures are currently being performed in office-based settings or in other FASCs, and each of the practicing physicians has submitted a letter supporting the facility's first year projection.

The number and mix of staff were determined by the experience of the participating surgeons in providing healthcare services, through their private practice or at other FASCs, and according to industry norms. The operating expenses are based on the participating providers' experience and other FASCs in New York State.

The breakeven point is approximately 95.7% of projected utilization, or 5,985 procedures in the first year, and 92.9%, or 6,160 procedures by the third year.

Capability and Feasibility

The total project cost of \$6,027,240 will be satisfied from the sole shareholder contributing \$677,240 in personal resources, with the remaining balance of \$5,350,000 being financed through MEI Healthcare Capital, LLC at the above stated terms.

Working capital requirements are estimated at \$821,008, which appears reasonable based on two months of third year expenses. The applicant has submitted a letter of interest from MEI Healthcare Capital, LLC to finance half of the working capital or \$410,504 with a five year pay back period at an estimated 4% interest rate. The remaining \$410,504 in working capital will come from the sole shareholder’s own financial resources.

Presented as BFA Attachment A is Mr. Shahin Daneshvar’s net worth statement, which indicates sufficient liquid resources to meet the equity and working capital requirements. Presented as BFA Attachment B is Avicenna ASC, Inc. pro-forma balance sheet that shows operations will start off with \$1,087,744 in equity.

Avicenna ASC, Inc., projects an operating surplus of \$291,508 and \$463,945 in the first and third years, respectively. Reimbursement rates reflect current and projected federal and state government rates, with private payers reflecting adjustments based on experience in the region. Operating revenues by payor are based on the experience from participating providers and other FASCs in the region and New York State. The applicant’s budgets appear to be 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

The applicant is seeking approval to construct a multi-specialty, freestanding ambulatory surgery center.

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 for Avicenna ASC, Inc., Proposed Sole Shareholder

BFA Attachment B      Pro-forma Balance Sheet of Avicenna ASC, Inc.

BFA Attachment C	Financial Summary for 2009 and 2010, Medalliance Medical Health Services, Inc.
BFA Attachment D	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:** Bronx-Lebanon Hospital Center  
650 Grand Concourse  
Bronx, New York 10457

No response.

**Facility:** St. Barnabas Hospital  
4422 Third Avenue  
Bronx, New York 10457

No response.

**Facility:** Jacobi Medical Center  
Pelham Parkway and Eastchester Road  
Bronx, New York 10461

No response.

**Facility:** Montefiore Medical Center  
Jack D. Weiler Hospital of Einstein College Division  
1825 Eastchester Road  
Bronx, New York 10461

No response.

### Supplemental Information from Applicant

- Need and Sources of Cases

The applicant states that all of the projected caseload of the proposed ASC will come from procedures that would otherwise be performed in the participating physicians' private offices or in other freestanding ASC's. The applicant also cites growing local demand for ambulatory surgical procedures, as evinced by SPARCS data showing an increase of 256% in ambulatory surgery cases for freestanding facilities in Bronx County between 2000 and 2010, including a 10 percent compound growth rate per year, on average, during this period.

The applicant also estimates that Medicaid will cover some 65% of the ASC's projected visits. Because of its location directly adjacent to Medalliance Medical Health Services, an Article 28 diagnostic and treatment center that experienced nearly 100,000 patient visits in 2010, the ASC will draw many of its cases from the same population served by that facility. This will help ensure access to surgical procedures and continuity of care for Medalliance's patients.

- Staff Recruitment and Retention

The applicant states that initial recruitment will be of selected staff currently employed by the member physicians in their private practices, particularly the nursing and technical staff. Staff will also be recruited through accredited schools, newspaper advertisements, training programs, local recruiters and, if needed, job fairs. Competitive salaries and benefits are expected to aid in the recruitment and retention of skilled employees, as are a positive work environment and flexible working hours. The applicant also expects that nurses and technicians currently employed by hospitals who choose to augment their income will be able to find supplemental employment at the proposed ASC because of the flexible work schedule, without cutting back on or abandoning their hospital employment.

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 6th day of October, 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 freestanding ambulatory surgery center at 2522 Hughes Avenue, Bronx, 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:

111277-B

FACILITY/APPLICANT:

Avicenna ASC, Inc.

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 needed 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 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 development and administrative services agreement that is acceptable to the Department. [BFA, CSL]
8. A photocopy of an executed Certificate of Amendment to the Certificate of Incorporation for Avicenna ASC, Inc., that is acceptable to the Department. [CSL]
9. Clarification as to whether an assumed name will be used and, if so, submission of a photocopy of a certificate of assumed name, 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 May 1, 2015. 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 # 111421-E  
**Digestive Diseases Diagnostic and Treatment Center**

**County:** Kings (Brooklyn)  
**Purpose:** Establishment

**Program:** Ambulatory Surgery Center  
**Submitted:** May 13, 2011

## Executive Summary

### Description

Digestive Diseases Diagnostic and Treatment Center, LLC (Digestive Diseases), an existing proprietary Article 28 freestanding ambulatory surgery center (FASC) located at 214 Avenue P. Brooklyn, requests approval to transfer 23% membership interest from current member Oleg Gutnik, M.D. to two new proposed members – 13 % to Jay Weissbluth, M.D. and 10% to Beth Israel Ambulatory Care Services Corp. (BIACSC).

Digestive Diseases was approved as an FASC for a single-specialty of gastroenterology by the Public Health Council on March 16, 2009, and began operation in 2010. In June 2010, the center was certified for lithotripsy services.

The proposed issuance of new membership interests to Dr. Weissbluth and BIACSC, when combined with issuances over the past year, would in aggregate exceed 25% within five years, requiring Public Health and Health Planning Council approval. These transactions were made with prior notice to the Department in accordance with Public Health Law Section 2801-a(4)(b).

The proposed membership interest is as shown below:

Member	Current	Proposed
Oleg Gutnik, M.D.	68.5%	45.5%
Zhanna Gutnik, M.D.	9.0%	9.0%
Alexander Shapsis, M.D.	4.5%	4.5%
Mark Chu, M.D.	4.5%	4.5%
Danny Chu, M.D.	4.5%	4.5%
Lawrence Ottaviano, M.D.	4.5%	4.5%
Mr. Jordan Fowler	4.5%	4.5%
Jay Weissbluth, M.D.	0%	13%
BIACSC	0%	10%

BIACSC, an Article 28 not-for-profit corporation whose officers and board of trustees are officers of Beth Israel Medical Center, was formed to operate, manage or administer one or more diagnostic and treatment centers

throughout the New York Metropolitan area. BIACSC is also a member of SSNY Planning, LLC, approved by the Public Health Council on March 18, 2010.

The facility will enter into an administrative service agreement with Frontier Healthcare Management Services, LLC to provide services including but not limited to staffing, marketing, nursing, budgeting, credentialing, billing and physician scheduling.

DOH Recommendation  
 Contingent approval.

### Need Summary

This project includes a transfer of membership without any changes in services provided to patients. The applicant commits that all patients will continue to be treated on the basis of need, without ability to pay.

### Program Summary

Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

### Financial Summary

Membership purchase prices are \$156,000 and \$200,000 for Dr. Weissbluth and BIACSC, respectively, which will be paid from member's equity.

Incremental Budget:	<i>Revenues:</i>	\$ 1,353,227
	<i>Expenses:</i>	<u>984,732</u>
	<i>Gain/(Loss):</i>	\$ 368,495

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 amended operating agreement of Digestive Diseases Diagnostic & Treatment Center, LLC, acceptable to the Department. [CSL]
2. Submission of a photocopy of the amended administrative services agreement between Frontier Healthcare Management Service, LLC and the applicant, acceptable to the Department. [CSL]

Council Action Date

**October 6, 2011.**

## Need Analysis

### Background

Digestive Diseases Diagnostic and Treatment Center, LLC (Digestive Diseases) is an existing, Article 28 freestanding ambulatory surgery center (FASC) that provides gastroenterology procedures and lithotripsy services. The Center is located at 214 Avenue P, Brooklyn. It became operational in 2010 and has received accreditation from the American Association for Accreditation of Ambulatory Surgery Facilities.

### Analysis

The primary service area for FASC is Kings County. The following zip codes are located within two mile radius of zip code 11204, where Digestive Diseases is located:

- 11219
- 11230
- 11228
- 11218
- 11214
- 11223

The population of the zip codes is 526,820.

<u>Zip Code</u>	<u>Total Medicaid Recipients</u>	<u>HMO Enrollment</u>	<u>MA Fee for Service Recipients</u>	<u>Annual Primary Care Visits</u>	<u>Primary Care Use per eligible Year</u>
11204	26,793	16,716	10,077	59,164	5.87
11214	28,588	14,894	13,694	96,304	7.03
11218	27,743	18,538	9,205	66,754	7.25
11219	41,092	30,103	10,989	69,168	6.29
11223	25,220	14,651	10,569	70,460	6.67
11228	7,450	4,383	3,067	14,728	4.8
11230	27,763	16,168	11,595	84,712	7.31
Total	184,649	115,453	69,196	461,290	6.58
Statewide					5.77

M-Caid Recipients as % of Serv Area Pop.	35.0%
HMO Enroll as % of Total M-Caid recipients	62.5%
MA Fee for Serv as % of Total M-Caid recipients	37.5%

Thirty-five percent of the population in the service area are Medicaid recipients. Of these Medicaid recipients, 63 percent are enrolled in HMOs and the remaining 37 percent are enrolled in the fee-for-service Medicaid plan.

The fee-for-service Medicaid patients had 6.58 primary care visits per person per year vs. the statewide average of 5.77 visits per year. (Medicaid Data 2008).

The projected number of procedures to perform is as follows:

Current Year: 1,560  
 First Year: 3,564  
 Third Year: 3,769

Conclusion

This project includes a transfer of membership without any changes in services provided to patients.

Recommendation

**From a need perspective, approval is recommended.**

**Programmatic Analysis**

Background

Digestive Diseases requests approval to transfer partial interest from one existing member to two new members. Upon approval Jay Weissbluth will become the center's Medical Co-Director. Other than the change in medical co-directors, there are no programmatic changes as a result of this request.

Character and Competence

Dr. Oleg Gutnik, an existing 68.5% member will transfer 23% of his interest as follows:

<u>Name</u>	
Jay Weissbluth, MD	13%
Beth Israel Ambulatory Care Services Corp.	10%
John J. Collura	
Gail F. Donovan	
Adam Henick (Manager)	

Beth Israel Ambulatory Care Services Corp. (BIACSC) is an existing not-for-profit corporation whose officers and trustees are officers of Continuum Health Partners, the passive parent of Beth Israel Medical Center, St. Luke's Roosevelt Hospital, and New York Eye and Ear Infirmary. BIACSC owns or has a membership interest in two operational ambulatory surgery centers. Additionally, BIACSC has a membership interest in two pending certificate of need applications for new ambulatory surgery centers.

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 State 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.

Conclusion

Based on the information reviewed, staff found 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

### Membership Purchase Agreements

The applicant has submitted executed membership purchase agreements from the proposed members, the terms of which are summarized below:

*Purpose:* Purchase 13% membership interest  
*Company:* Digestive Diseases Diagnostic & Treatment Center, LLC  
*Seller:* Oleg Gutnik, M.D.  
*Purchaser:* Jay Weissbluth, M.D.  
*Purchase Price:* \$156,000  
*Payment:* \$5,000 down payment with the remainder due upon approval.

*Purpose:* Purchase 10% membership interest  
*Company:* Digestive Diseases Diagnostic & Treatment Center, LLC  
*Seller:* Oleg Gutnik, M.D.  
*Purchaser:* Beth Israel Ambulatory Care Services Corporation  
*Purchase Price:* \$200,000  
*Payment:* \$5,000 down payment with the remainder due upon approval.

### Administrative Services Agreement

Digestive Diseases Diagnostic & Treatment Center will enter into an Administrative Services Agreement with Frontier Healthcare Management Services, LLC. The consultant would provide certain professional business and administrative services to the diagnostic and treatment center relating to the operation of the facility.

The applicant has submitted an executed agreement, which is summarized below:

*Facility:* Digestive Diseases Diagnostic & Treatment Center, LLC  
*Contractor:* Frontier Healthcare Management Services, LLC  
*Duties of the Contractor:* Frontier Healthcare Management Services, LLC, as the contractor, will provide oversight for staffing; scheduling; accounting; billing and collections; ordering and purchasing protocols; compliance; medical staff application, credentialing and privileging development; accreditation; nursing; administration; marketing and networking services; quality improvement management and strategic planning.  
*Term:* 1 year, with the option to renew for an additional 3 years.  
*Compensation:* \$120,000 per year with a 1.5% increase yearly

The proposed members, Oleg Gutnik, M.D. and Jordan Fowler are the owners of Frontier Healthcare Management Services, LLC. Therefore, the administrative services agreement is a non-arms length agreement.

### Operating Budget

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:	\$1,224,292	\$1,353,227
Expenses:		
Operating	\$626,073	\$682,874
Capital	<u>269,494</u>	<u>301,858</u>
Total Expenses:	\$895,567	\$984,732
Net Income:	\$328,725	\$368,495

Utilization: (visits)	2,004	2,209
Cost per visit	\$446.89	\$445.78

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

	<u>Years One and Three</u>
Commercial Managed Care	34.6%
Medicare Fee for Service	17.4%
Medicare Managed Care	2.0%
Medicaid Fee for Service	4.1%
Medicaid Managed Care	37.2%
Charity Care	4.7%

Expense and utilization assumptions are based on the historical experience of current services within the center and services provided by the proposed physician member in his private practice.

#### Capability and Feasibility

There are no project costs associated with this application.

The purchase prices of \$156,000 and \$200,000 will be met by each of the proposed members through equity. Beth Israel Medical Center has guaranteed to fund BIACSC's purchase price of \$200,000. As shown on BFA Attachment A & B, the proposed members have sufficient resources to meet the purchase prices.

The submitted budget indicates a net income of \$328,725 and \$368,495 during the first and third years of operation, respectively. Reimbursement will be determined on an average rate by ambulatory surgery center and region, enhanced by the applicable service intensity weight (SIW). The budget appears reasonable.

Presented as BFA Attachment E is the internal financial summary of Digestive Diseases Diagnostic and Treatment Center, LLC, they have maintained positive working capital and member's equity and experienced net income of \$742,769 through December 31, 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	Net Worth Statement, Jay Weissbluth, M.D.
BFA Attachment B	Financial Summary, Beth Israel Medical Center
BFA Attachment C	Financial Summary, Beth Israel Ambulatory Care Services Corporation
BFA Attachment D	Internal Financial Summary as of June 30, 2011, Beth Israel Ambulatory Care Services Corporation
BFA Attachment E	Internal Financial Summary as of December 31, 2010, Digestive Diseases Diagnostic & Treatment Center, LLC
BFA Attachment F	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 6th day of October, 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 transfer 23% membership interest from current member Oleg Gutnick, M.D. to two new proposed members, 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:

111421-E

FACILITY/APPLICANT:

Digestive Diseases Diagnostic and Treatment  
Center

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of the amended operating agreement of Digestive Diseases Diagnostic & Treatment Center, LLC, acceptable to the Department. [CSL]
2. Submission of a photocopy of the amended administrative services agreement between Frontier Healthcare Management Service, LLC and the applicant, 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 # 111502-B Hudson Valley Center, LLC

**County:** Westchester (Cortlandt Manor)      **Program:** Ambulatory Surgery Center  
**Purpose:** Establishment and Construction      **Submitted:** June 10, 2011

### Executive Summary

#### Description

Hudson Valley Center, LLC, a limited liability company to be renamed Hudson Valley Center for Digestive Health, LLC, requests approval to establish and construct a single-specialty freestanding ambulatory surgery center (FASC) to perform gastroenterological procedures relating to endoscopy and colonoscopy services. The FASC will be located at 1968 Crompond Road, Cortlandt Manor, on the campus of Hudson Valley Hospital Center which will serve as the backup hospital.

The proposed members of Hudson Valley Center, LLC consist of three Classes: Class A consists of five individual physicians, Class B consists of four individuals, and Class C is GI Ventures, Inc. Their membership interest is as shown below:

Class A	78%
Class B	10%
Class C	12%

No opposition was expressed to the Department, in response to its inquiry to local hospitals regarding the impact of the proposed ASC in the service area. A letter was received from Phelps Memorial Hospital, specifically stating it had no objection to this application.

Total project costs are estimated at \$2,504,175.

DOH Recommendation  
Contingent approval for a 5-year limited life.

#### Need Summary

Hudson Valley Center, LLC (Hudson Valley Center) will consolidate two private practices into one Article 28 entity, and will be open Monday through Friday, 7:00

am to 5:00 pm. Hudson Valley Center will treat all patients regardless of ability to pay.

The projected number of procedures to perform is as follows:

First Year:	3,828
Third Year:	4,220

#### Program Summary

Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

#### Financial Summary

Project costs will be met with equity of \$254,175 and a \$2,250,000 bank loan (6 yrs. @ 6.0%).

Budget:	<i>Revenues:</i>	\$ 2,760,937
	<i>Expenses:</i>	<u>2,208,140</u>
	<i>Gain/(Loss):</i>	\$ 552,797

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

#### Architectural Summary

The proposed space is located on the second floor of an existing three-story commercial building in the west area of the hospital campus. The floor area to be renovated is approximately 4,600 sf. The program will have two procedure rooms, along with a pre-op and recovery area with seven bays.

## 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 loan commitment for project costs acceptable to the Department of Health. [BFA]
6. Submission of a working capital loan commitment acceptable to the Department of Health. [BFA]
7. Provision of an administrative services agreement that is acceptable to the Department (fee for entity that has not received establishment approval may not be related to facility revenue). [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 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 start of construction. [AER]
7. The applicant shall complete construction by June 30, 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

**October 6, 2011.**

## Need Analysis

### Background

The Center will be known as Hudson Valley Center for Digestive Health, LLC, and will be located on the campus of Hudson Valley Hospital Center, at 1968 Crompond Road, Cortlandt Manor in Westchester County.

### Analysis

Hudson Valley Center will consolidate two private practices into one Article 28 entity and will be open Monday through Friday, 7:00 am to 5:00 pm. The service area is Westchester County.

Hudson Valley Center has executed a Transfer Agreement for backup and emergency services with Hudson Valley Hospital Center and will be located on Hudson Valley Hospital Center's campus, approximately 56 feet from the main Hospital building.

Hudson Valley Center is committed to serving all persons in need without regard to their ability to pay, source of payment or other personal characteristics.

Westchester County has one freestanding ambulatory surgery center-single specialty providing gastroenterology services as follows:

<u>Type of Facility</u>	<u>Single Specialty</u>	<u>Multi-Specialty</u>
D&TC	1-Gastroenterology	
D&TC	1-Ophthalmology	
D&TC		3
Hospitals	0	11
<b>Total</b>	<b>2</b>	<b>14</b>

Source: HFIS

An overview of some of the gastroenterology ambulatory procedures in Westchester County for 2008 and 2009 is given below. It shows an increase of about six (6) percent between 2008 and 2009.

<u>Clinical Classification (CCS) Diagnosis Category</u>	<u>2008</u>	<u>2009</u>
Cancer of colon	183	128
Cancer of esophagus	58	54
Cancer of other GI organs; peritoneum	23	14
Cancer of rectum and anus	104	79
Cancer of stomach	49	56
Gastritis and duodenitis	2,547	2,763
Gastroduodenal ulcer (except hemorrhage)	102	124
Gastrointestinal hemorrhage	515	565
<b>Total</b>	<b>3,581</b>	<b>3,783</b>
<b>% Change 2008-09</b>		<b>5.6%</b>

SOURCE: SPARCS 2008-09

### Conclusion

Hudson Valley Center will address the needs of patients currently served in 2 private, office-based settings. None of the projected procedures will be taken from any hospital. Hudson Valley Center will serve all patients regardless of ability to pay.

Recommendation

From a need perspective, contingent approval is recommended for a limited life of five (5) years.

**Programmatic Analysis**

Facility Information

Establish a diagnostic and treatment center which will also be federally certified as an ambulatory surgery center.

<b>Proposed Operator</b>	<b>Hudson Valley Center</b> (Upon approval will change name to Hudson Valley Center for Digestive Health)
Operator Type	LLC
Site Address	1968 Crompond Road, Cortlandt Manor
Surgical Specialties	Gastroenterology
Operating Rooms	0
Procedure Rooms	2
Hours of Operation	Monday through Friday from 7:00 am to 5:00 pm (Extended as necessary to accommodate patient needs).
Staffing (1 <sup>st</sup> Year / 3 <sup>rd</sup> Year)	11 FTEs / 11.75 FTEs
Medical Director(s)	Herman Kleinbaum and Eric Teitel
Emergency, In-Patient and Backup Support Services Agreement	Hudson Valley Hospital Center
Distance	On the same campus (0 miles)
On-call service	Access to the facility's on-call physician during hours when the facility is closed.

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.

Compliance with Applicable Codes, Rules and Regulations

The medical staff will ensure that procedures performed at the facility conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and/or expertise. The facility'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 members of Hudson Valley Center, LLC are:

<b><u>Class A</u></b>			
David Genn, MD	15.6%		
Mitchell Josephs, MD	15.6%		
Herman Kleinbaum, MD	15.6%	Manager	
David Lin, MD	15.6%		
Eric Teitel, MD	15.6%	Manager	

**Class B**

John Poisson	2.5%	Manager
Frank Principati	2.5%	
Karen Sablyak	2.5%	
W. Barry Tanner	2.5%	

**Class C**

GI Ventures, Inc.	12%	
John Federspiel		
John Testa		
Mark Webster		Manager

GI Ventures, Inc. is a not-for-profit corporation which was incorporated by Hudson Valley Hospital Center for the purpose of participating in this facility. The directors of GI Ventures are all board members or executive staff of Hudson Valley Hospital Center.

The Class B members are all members of Physicians Endoscopy, LLC which is a national provider of administrative and consulting services to gastroenterological practices. The four Class B members are also members of other ambulatory surgery centers operating in New York State.

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.

- Hudson Valley Hospital Center was fined \$10,000 for a 2007 complaint. Based on the investigation of a death from malignant hyperthermia following a rapid cycle detoxification (RCD) procedure, it was determined that the facility failed to monitor a patient under deep anesthesia, failed to train staff in RCD, failed to follow procedures to treat malignant hyperthermia and that the physician was not credentialed to perform an RCD.

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.

Conclusion

Based on the information reviewed, staff found 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.**

<h2>Financial Analysis</h2>
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Background

The proposed members in Class A of Hudson Valley Center, LLC are local board certified physicians specializing in gastroenterology. Each physician has a membership interest of 15.6%. The proposed members of Class B of Hudson Valley Center, LLC each have a membership interest of 2.5%.

Presented as BFA Attachment A, is the Organization Chart of Hudson Valley Center, LLC. Presented as Attachment B are the net worth statements for the Class A physicians and Class B individuals comprising Hudson Valley Center, LLC.

The three classes of proposed members are utilized in order to allow for ease of future membership interest transfer and for allocation of rights under the Operating Agreement. They do not have any differences in relation to voting rights or other ownership rights in the LLC.

Class A members must be physicians who meet the eligibility requirements per the Operating Agreement.

Class B members must be persons or entities who are not eligible physicians and who satisfy other Article 28 requirements. The Class B proposed members currently hold positions at Physicians Endoscopy, LLC (PELL); John Poisson currently serves as the Executive Vice President, Frank Principati serves as Chief Operating Officer, Karen Sablyak serves as Chief Financial Officer and William Tanner serves as President. PELL is the proposed contractor through the Development and Administrative Services Agreement.

Class B proposed members, John Poisson, Karen Sablyak and William Tanner are also members of the following Endoscopy Centers that have been approved by the Public Health Council; Advanced Endoscopy Center, LLC, Endoscopy Center of Western New York, LLC and Long Island Center Digestive Health, LLC, and Carnegie Hill Endo, LLC. Carnegie Hill Endo, LLC is currently under construction. Mr. Poisson is also a member of East Side Endoscopy, LLC which was approved by the Public Health Council on June 4, 2009, and became operational on January 25, 2010. Presented as BFA Attachments C through F are the 2010 certified financial summaries of the affiliated Endoscopy Centers.

The Class C proposed member is GI Ventures, a not-for-profit corporation formed by Hudson Valley Hospital Center specifically to participate in this joint venture. Hudson Valley Hospital Center has guaranteed to fund GI Ventures proportionate share of equity required for project costs and working capital. Presented as BFA Attachment G, is the financial summary of Hudson Valley Hospital Center, which indicates the availability of sufficient funds.

The facility will enter into a development and administrative services agreement with Physicians Endoscopy, LLC to provide services including but not limited to budgeting, credentialing, billing, physician scheduling and physics.

#### Development and Administrative Services Agreement

Hudson Valley Center, LLC will enter to into a Development and Administrative Services Agreement with Physicians Endoscopy, LLC, whose members are John Poisson, Frank Principati, Karen Sablyak and William Tanner. The consultant will provide certain non-professional business and administrative services to the ambulatory surgery center relating to the operation of the facility.

The applicant has submitted an executed agreement, which is summarized below:

<i>Date:</i>	March 1, 2011
<i>Facility:</i>	Hudson Valley Center, LLC
<i>Contractor:</i>	Physicians Endoscopy, LLC
<i>Administrative Term:</i>	12 years with the option to renew for up to three additional 3 year terms.
<i>Compensation:</i>	\$100,000 for development services, \$105,000 per year (\$8,750/month) for administrative services subject to an annual adjustment. Billing and collection services are \$42 per procedure.

Services to be provided by Physicians Endoscopy, LLC, as the contractor, will include the following:

#### **Development Services**

- Coordination of legal formation of operating entities including working with counsel to document, register and license such entities;
- Coordination of Facility design;
- Facility set-up;

- Development and recommendation of facility policies, procedures, quality assurance, utilization review, and other governing and /or procedural documents required for facility operation, state licensure, and Medicare/Medicaid certification, subject to approval by Company;
- Initial staff training and coordination of in-services as required;
- Preparation of Medicare and Medicaid application documents;

**Administrative Services**

While PELL will be providing all of the following services, the facility retains ultimate control of the final decisions associated with the services.

- Financial Management Services
- Strategic Planning and Development
- Policies and Procedures
- Contracting Services
- Personnel
- Supplies
- Utilities/Waste Management
- Operating Licenses
- Banking
- Billing and Collection Services.

**Sublease Rental Agreement**

The applicant will lease approximately 4,587 square feet of space on the second floor of an existing three story building on the campus of Hudson Valley Hospital Center under the terms of the executed sublease agreement summarized below:

*Date:* April 27, 2011  
*Sublessor:* Hudson Valley Hospital Center  
*Sublessee:* Hudson Valley Center, LLC  
*Term:* 10 years with the option to renew for two additional five year terms.  
*Rental:* \$176,868 (\$39.00 per sq. ft.) for the first year adjusted yearly based on the consumer price index for the month immediately preceding the adjustment date.  
*Provisions:* The sublessee will be responsible for insurance, maintenance, taxes and utilities.

The applicant has indicated that the lease will be a non-arm’s length lease agreement, and letters of opinion from Licensed Commercial Real Estate Brokers have been submitted indicating rent reasonableness.

**Total Project Cost and Financing**

Total project costs for renovations and the acquisition of movable equipment is estimated at \$2,504,175, broken down as follows:

Renovation & Demolition	\$1,004,853
Design Contingency	100,485
Construction Contingency	100,485
Architect/Engineering Fees	90,437
Consultant Fees	127,083
Movable Equipment	914,235
Telecommunications	89,035
Financing Costs	22,500
Interim Interest Expense	39,375
Application Fee	2,000
Additional Processing Fee	13,687
Total Project Cost	\$2,504,175

Project costs are based on a February 1, 2012 construction start date and a five month construction period. The applicant's financing plan appears as follows:

Equity	\$254,175
Loan (6%, 6 years)	\$2,250,000

A letter of interest has been submitted by Olympus America, Inc. who is a United States subsidiary of Olympus Corporation, an international manufacturer and supplier of optical, medical and surgical equipment. Hudson Valley Center, LLC expects to purchase endoscopy scopes and related equipment from Olympus Surgical Products, a division of Olympus America, Inc. Olympus Financial Services which is also a division of Olympus America, Inc is expected to provide financing for \$2,250,000 in project costs.

#### 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:	\$2,506,490	\$2,760,937
Expenses:		
Operating	\$1,614,550	\$1,661,301
Capital	<u>406,730</u>	<u>546,839</u>
Total Expenses:	\$2,021,280	\$2,208,140
Net Income:	\$485,210	\$552,797
Utilization: (procedures)	3,828	4,220
Cost per procedure:	\$528.03	\$523.26

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	18.0%	17.6%
Commercial Managed Care	58.0%	58.4%
Medicare Fee for Service	16.0%	15.4%
Medicare Manage Care	3.0%	3.4%
Medicaid Fee for Service	1.0%	1.0%
Medicaid Managed Care	2.0%	2.2%
Charity Care	2.0%	2.0%

Expense and utilization assumptions are based on the combined historical experience of the Class B members of Hudson Valley Center, LLC with similar centers within New York State. The applicant has submitted physician referral letters in support of utilization projections.

#### Capability and Feasibility

The applicant will finance the project costs through a loan from Olympus America for \$2,250,000 at stated terms, with the remaining \$254,175 from proposed member's equity.

Working capital needs are estimated at \$368,023, based on two months of third year expenses. The applicant will finance \$184,000 of the working capital at an interest rate of 6% over 5 years for which a letter of interest has been provided by Olympus America. The remaining \$184,023 will be provided as equity by the proposed members. Presented as BFA Attachment H, is the pro-forma balance sheet of Hudson Valley Center, LLC as of the first day of operation, which indicates positive member's equity of \$438,198.

The submitted budget indicates a net income of \$485,210 and \$552,797 during the first and third years of operation, respectively. Reimbursement will be determined on an average rate by ambulatory surgery center and region enhanced by the applicable service intensity weight (SIW). The budget appears reasonable.



Presented as BFA Attachments C through F are the financial summaries of the facilities currently operated by proposed members. As shown, Advanced Endoscopy Center, LLC, Endoscopy Center of Western New York, LLC, Long Island Center for Digestive Health, LLC and East Side Endoscopy, LLC, maintained positive equity and net income for 2009 and 2010. Advanced Endoscopy Center, LLC, Endoscopy Center of Western New York, LLC and East Side Endoscopy, LLC maintained positive working capital for 2009 and 2010 while Long Island Center for Digestive Health, LLC experienced negative working capital for 2009 and 2010.

The negative working capital was due to a potential liability in the settlement of a claim. As required by GAAP, the facility must keep this potential liability on the books.

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.**

## Architectural Analysis

Background

The project will consist of new interior construction of approximately 4,600 SF on the second floor and will include (2) procedure rooms, a recovery area comprised of (4) recovery bays, (3) admission/holding bays, a nursing station and all required support areas. These support areas include a waiting area and reception with (2) check-in desks, a consultation room, an office, patient and staff toilet rooms, a staff break room, men's & women's locker rooms, clean and soiled holding rooms, and storage rooms. Rooms for processing, sterilization, and storage of endoscopes are also 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	Organizational Chart of Hudson Valley Center, LLC
BFA Attachment B	New worth of proposed members
BFA Attachment C	Financial Summary, Advanced Endoscopy Center, LLC
BFA Attachment D	Financial Summary, Endoscopy Center of Western New York, LLC
BFA Attachment E	Financial Summary, Long Island Center for Digestive Health, LLC
BFA Attachment F	Financial Summary, East Side Endoscopy, LLC
BFA Attachment G	Financial Summary, Hudson Valley Hospital Center

BFA Attachment H	Pro-forma Balance Sheet
BFA Attachment I	Establishment Checklist
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:** Phelps Memorial Hospital  
701 North Broadway  
Sleepy Hollow, New York 10703

The hospital responded with a letter stating it had no objection to the application.

**Facility:** Westchester Medical Center  
Grasslands Reservation  
Valhalla, New York 10595

No response.

**Facility:** Northern Westchester Hospital  
400 East Main Street  
Mount Kisco, New York 10549

No response.

### Supplemental Information from Applicant

- Need and Sources of Cases

The applicant states that all of the projected caseload will come from office-based procedures currently performed in the private practice of the physicians who have committed to perform cases at the proposed ASC. The applicant also cites SPARCS data showing a 958% increase in ambulatory surgical procedures in freestanding ASC's in the Hudson Valley for the years 2000 through 2010, including a 25% per year compound growth rate in such procedures during this period.

The applicant further states the performing cases in a facility that is under the control of the member physicians, who have practices in the local community, and which is responsive to the needs of the participating physicians, will result in greater convenience and efficiency for patients and physicians, which will encourage utilization of the proposed ASC.

The applicant also states that is committed to the development of a formal outreach program directed to members of the local community, including local physicians. The purpose of this program will be to inform these groups of the

benefits derived from, and the latest advances 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

The applicant states that initial recruitment will be of selected staff currently employed by the member physicians in their private practices, particularly the nursing and technical staff. Staff will also be recruited through accredited schools, newspaper advertisements, training programs, local recruiters and, if needed, job fairs. Competitive salaries and benefits are expected to aid in the recruitment and retention of skilled employees, as are a positive work environment and flexible working hours. The applicant also expects that nurses and technicians currently employed by hospitals who choose to augment their income will be able to find supplemental employment at the proposed ASC because of the flexible work schedule, without cutting back on or abandoning their hospital employment.

OHSM Comment

The absence of any comments in opposition to this application 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 6th day of October, 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 to perform gastroenterological procedures, 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:

111502-B

FACILITY/APPLICANT:

Hudson Valley 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 loan commitment for project costs acceptable to the Department of Health. [BFA]
6. Submission of a working capital loan commitment acceptable to the Department of Health. [BFA]
7. Provision of an administrative services agreement that is acceptable to the Department (fee for entity that has not received establishment approval may not be related to facility revenue). [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 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 start of construction. [AER]
7. The applicant shall complete construction by June 30, 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 # 111313-B Samaritan Senior Village

**County:** Jefferson (Watertown)      **Program:** Residential Health Care Facility  
**Purpose:** Establishment and Construction      **Submitted:** March 24, 2011

### Executive Summary

#### Description

Samaritan Senior Village, a to-be-formed not-for-profit corporation, requests approval to establish and construct a 168-bed residential health care facility (RHCF), to be located at 19322 US Route 11/1 Summit Drive, Watertown. The sole member of Samaritan Senior Village will be Samaritan Medical Center.

Samaritan Senior Village will consist of an “assisted living” complex comprised of 80 Assisted Living Program (ALP) beds and 40 enhanced assisted living residence (EALR) beds in addition to the 168-bed RHCF.

The applicant submitted a limited review via Samaritan Medical Center for site development work. The costs for the limited review are included in this CON.

Total project costs are estimated at \$43,708,053.

DOH Recommendation  
Contingent approval.

#### Need Summary

Although the RHCF bed need in Jefferson County is 76, Samaritan Medical Center will be closing Mercy of Northern New York upon the opening of Samaritan Senior Village. This will create a need in the county of 300 RHCF beds. The patients of Mercy of Northern New York will be re-located to facilities in the community. The vast majority will be absorbed into Samaritan Senior Village.

<i>County RHCF Bed Need</i>	<i>Jefferson</i>
2016 Projected Need	692
Current Beds	616
Beds Under Construction	0
Total Resources	616
Unmet Need	76

#### Program Summary

Samaritan Senior Village will address an urgent need for supportive and stable skilled nursing care in Jefferson County’s senior population, and plays an integral role in the continuum of care. The new facility will greatly enhance the quality of life of the nursing home residents, while the additional beds will replace the scheduled closing of Mercy of Northern New York. The effect upon closure will be a net reduction of skilled nursing beds.

No adverse information has been received concerning the character and competence of any of the applicants.

#### Financial Summary

Project costs will be met via equity of \$11,208,053 and a tax-exempt mortgage of \$32,500,000 (30 yrs. @ 6.00%).

Budget:	<i>Revenues:</i>	\$ 14,493,436
	<i>Expenses:</i>	<u>14,071,032</u>
	<i>Gain/(Loss):</i>	\$ 422,400

Subject to the noted contingency, the applicant has demonstrated the capability to proceed in a financially feasible manner.

#### Architectural Summary

This project involves the construction of a 168-bed, 108,400 SF RHCF and a 37,137 SF commons building. Also on this site is an assisted living facility which will share the commons building. The land acquisition, site development and foundation work has already been approved in Limited Review Application project # 111304-L.

## 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. The submission of a commitment signed by the applicant which indicates that, within two years from the date of 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]
3. Submission of, and acceptable programmatic review and approval of final floor plans. [LTC]
4. Submission of updated budgets, with all assumptions noted, that include the impact of the State's 2011-2012 Budget and continues to demonstrate financial feasibility, acceptable to the Department of Health. [BFA]
5. Submission of an executed land purchase agreement that is acceptable to the Department of Health. [BFA]
6. Submission of a working capital loan commitment that is acceptable to the Department of Health. [BFA]
7. 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 Department of Health, 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 sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
8. Submission of an executed land transfer agreement between Samaritan Medical Center and Samaritan Senior Village that is acceptable to the Department of Health. [BFA]
9. Applicant shall submit a revision to Limited Review Application 111304 Samaritan Medical Center Build a loop road, site parking and a foundation for the Samaritan Senior Village to reflect a \$0 Total Project Cost. [CCC]
10. Submission of evidence of site control, acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant's executed certificate of incorporation and any amendments thereto, acceptable to the Department. [CSL]
12. Submission of a photocopy of the certificate of incorporation of Samaritan Medical Center, the sole member of the applicant, and any amendments thereto, acceptable to the Department. [CSL]
13. Submission of a photocopy of the bylaws of Samaritan Medical Center, acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The Department of Health and the applicant will agree to an acceptable allocation of shared space between the nursing home and the ALP for reimbursement purposes. [BFA]
2. The approval of the site change modification to the limited certificate of need project # 111304. [AER]
3. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
4. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
5. The applicant shall complete construction by December 15, 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.

Council Action Date

**October 6, 2011.**



## Need Analysis

### Background

Samaritan Medical Center is a 294-bed not for profit hospital which operates Samaritan Keep Nursing Home, a 272-bed RHCf, and manages a 50-bed Adult Home in Jefferson County. Samaritan is also the receiver of Mercy of Northern New York, a 294-bed RHCf. Samaritan has received a HEAL 20 grant to establish Samaritan Senior Village, a skilled nursing and assisted living facility which consists of 168 RHCf beds, 80 ALP beds, 40 assisted living residence beds/EALR. The facility is to be located at 19320 US Route 11 Summit Drive, Watertown in Jefferson County.

### Analysis

Utilization in Jefferson County was at or above the 97% planning optimum for all years in question. Currently there are four RHCf facilities in Jefferson County: Carthage Area Hospital, Mercy of Northern New York, Samaritan Keep Nursing Home Inc, and Country Manor Nursing and Rehabilitation Center. Samaritan is the receiver of Mercy of Northern New York, a 294 bed RHCf located in Watertown. The receivership agreement allows Samaritan to close Mercy upon completion of this project.

<i>RHCf Occupancy</i>	<u>2007</u>	<u>2008</u>	<u>2009</u>
Samaritan Senior Village	New Facility	New Facility	New Facility
Samaritan Keep Nursing	98.9%	98.0%	97.7%
River Hospital	98.9%	99.0%	98.5%
Carthage Area Hospital	97.0%	92.4%	92.4%
The County Manor Nursing	Did Not Report	93.2%	95.1%
<b>Jefferson County</b>	<b>98.7%</b>	<b>97%</b>	<b>97%</b>

### Access

10 NYCRR Part 709.3 indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the planning region. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

RHCf applicants are required to make appropriate adjustments in its admission policies and practices to meet this requirement. In 2008 and 2009, 75% of Jefferson County Medicaid admissions was 20.76% and 8.88%, respectively.

### Conclusion

Samaritan has taken responsibility of a struggling facility and has developed a plan to provide quality long term care to local residents in an efficient manner by downsizing appropriately and offering different levels of care to meet patient needs.

### Recommendation

**From a need perspective, contingent approval is recommended.**

## Programmatic Analysis

### Facility Information

	<i>Existing</i>	<i>Proposed</i>
<i>Facility Name</i>	N/A	Samaritan Senior Village
<i>Address</i>		19322 US Route 11/ 1 Summit Drive Watertown, New York 13601
<i>RHCf Capacity</i>		168

<i>ADHC Program Capacity</i>		N/A
<i>Type of Operator</i>		Voluntary
<i>Class of Operator</i>		Corporation
<i>Operator</i>		Samaritan Senior Village  <u>Sole Corporate Member</u> Samaritan Medical Center  <u>Board Members</u> Joan Treadwell Woods, Chairman Paul A. Kraeger, Treasurer Colleen Dare Alexander Thomas H. Carman Katherine F. Fenlon Thomas F. Hanley Collins F. Kellogg, Jr. MD Daniel J. Villa Peter L. Walton Addison F. Vars III

Character and Competence

- FACILITIES REVIEWED:

<u>Residential Health Care Facilities</u> Samaritan Keep Nursing Home	1/2001 to present
<u>Receivership</u> Mercy of Northern New York	10/18/2010 to present
<u>Acute Care Facilities</u> Cortland Memorial Hospital Samaritan Medical Center	1/2001 to 4/1/2004 1/2001 to present
<u>Diagnostic and Treatment Centers</u> North Country Children's Clinic Inc. Northern Oswego County Health Services, Inc.	6/2010 to present 11/2002 to 4/2004
<u>Hospices</u> Hospice of Jefferson County	1/2001 to present

- INDIVIDUAL BACKGROUND REVIEW:

**Joan Treadwell Woods**, is the chairperson of the Board, and is currently retired. Ms. Woods was formerly employed by the IBM Corporation in North Carolina. Ms Woods is the Vice-President of the Board of Samaritan Keep Home, and has served as trustee since April 27, 2004.

**Paul Anthony Kraeger** is the treasurer of the Board. Mr. Kraeger is employed by Samaritan Medical Center as Senior Vice President for Finance and Administrative Services/CFO. Mr. Burke has served as the Treasurer of the Boards of Samaritan Medical Center, Samaritan Keep Home and EJ Noble Hospital of Alexandria Bay, New York, the receiver for Mercy of Northern New York, since December 7, 1999. Mercy of Northern New York will be replaced by the proposed nursing home. Mr. Kraeger is also Chairman of the Board of North County Children's Clinic, a diagnostic and treatment center, since June 30, 2010.

**Colleen Dare Alexander** is the Executive Director of Family Counseling Service of Northern New York, Inc., a consultative and educational agency in Watertown. Ms. Alexander was formerly employed by Carthage Area Hospital

as Administrator for Quality and Strategic Growth from December 2008 to March 2009, and the Northern New York Rural Health Care Alliance as Community Development Specialist from December 2005 to December 2008. Ms. Alexander was previously employed as the Director of the Rural Health Network of Oswego County from August 2001 to July 2005. Ms. Alexander served on the Board of Directors of the Northern Oswego County Health Services, Inc. from November 1, 2002 to March 31, 2004.

**Thomas H. Carman** has been employed as the President and CEO of Samaritan Medical Center in Watertown since April 1, 2004. Mr. Carman holds a pharmacist's license, currently inactive, from the State of Maine. Mr. Carman was previously President and CEO of Cortland Memorial Hospital from January 28, 1997 to March 31, 2004. Mr. Carman has served on the Boards of Samaritan Keep Home, and EJ Noble Hospital of Alexandria Bay New York, the receiver for Mercy of Northern New York, since April 1, 2004.

**Katherine F. Fenlon** is currently retired. Ms. Fenlon was previously employed as Vice President for Academic Affairs at Jefferson Community College. Ms. Fenlon has served on the Board of Samaritan Medical Center since April 1, 2006.

**Thomas F. Hanley** is the President and General Manager of the St. Lawrence Valley Educational Television Council, the public broadcasting station in Watertown. Mr. Hanley is the President of the Board of Samaritan Keep Home, and has served on the Board since April 27, 2004.

**Collins F. Kellogg Jr.**, is a New York State licensed physician in good standing, in private practice with Watertown Internists and Watertown Urgent Care, a private physician's office. Dr. Kellogg also serves as a physician adviser for utilization review and clinical documentation at Samaritan Medical Center, and an interpreter of EKG's at River Hospital. Dr. Kellogg has served on the Board of Hospice of Jefferson County since 1997.

**Daniel J. Villa**, a pharmacist with license in good standing, has been employed as Executive Director of the American Red Cross of Northern New York since December 1, 2008. Mr. Villa was previously employed as a pharmacist by Kinney Drugs Inc. Mr. Villa is Chairman of the Board of Samaritan Medical Center, a hospital located in Watertown, and has served since August 25, 2003.

**Peter L. Walton** is an attorney in good standing, in private practice with Conboy, McKay, Bachman & Kendall LLP. Mr. Walton has served on the Board of Samaritan Keep Home since January 1, 1999.

**Addison F. Vars III** is an attorney in good standing, in private practice with Menter, Rudin & Trivelpiece, PC. Mr. Vars served on the Board of Samaritan Medical Center from March 29, 2004 to March 31, 2008.

**Character and Competence – Analysis:**

A review of the operations of Samaritan Keep Nursing Home for the period reveals that the facility was fined \$4,000 pursuant to a Stipulation and Order issued October 13, 2010 for surveillance findings on October 29, 2010. Deficiencies were found under 10 NYCRR 415.12(i) Quality of Care: Nutrition and 10 NYCRR 415.15(b)(2)(i-iii) Medical Services: Physician Services.

The review of operations of Samaritan Keep Nursing Home results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

The review of operations of the remaining facilities/agencies for the time periods indicated revealed that a substantially consistent high level of care has been provided.

No adverse information has been received concerning the character and competence of any of the applicants.

Project Review

- PROGRAM REVIEW:

Samaritan Medical Center is a 294-bed, not-for-profit hospital located at 830 Washington Street, Watertown, New York providing services to Jefferson County and others living in the surrounding areas. Samaritan currently provides Long Term Care services through Samaritan Keep Nursing Home, a 272-bed skilled nursing facility. EJ Noble

Hospital of Alexandria Bay New York, a related company, has served as the Receiver of Mercy of Northern New York, a 224-bed skilled nursing facility since October, 2010.

The sponsor, Samaritan Medical Center, has received a HEAL 20 Grant to establish Samaritan Senior Village, a skilled nursing facility and assisted living program and licensed home care services agency, which is the subject of this application. This proposed project will consist of building a new skilled nursing facility that will provide an additional 168 beds and an Assisted Living Complex that will provide 80 ALP beds and 40 adult home beds. The Samaritan Senior Village (when established) will seek certification for 40 of the adult home beds to become Enhanced Assisted Living Residence beds.

- **PHYSICAL ENVIRONMENT:**

The proposed project will include new construction consisting of the “Commons” building and a four (4) story attached skilled nursing facility. The “Commons” building will house the main entrance (with a drop-off canopy) and lobby as well as a café, an administration suite, chapel, gift shop, a large 4,000 square foot multi-purpose room, a beauty salon, a medical suite, a large private dining room, the employee break room, loading dock, ambulance entrance, and staff entrance on the main level.

The skilled nursing facility will contain two (2), twenty one (21)-bed units per floor for a total of 168 residential health care beds. Each unit will contain one centrally located care/nurses station to provide space for charting and storage of administrative supplies. Each unit has been developed in a neighborhood design and each neighborhood has within it 3 primary social spaces, dining, activity and lounge/living room space.

Each neighborhood will be provided with the required support service areas including but not limited to; the nurses station, staff/visitor toilet room soiled and clean utility rooms, housekeeping closet and a staff office. There will be 7 private rooms and 7 shared (doubles) one each of the units. The rooms are designed with a 5-foot turning circle between the bed and the window seat. The window seat will provide additional seating for visitors and along with the built-in shelving provides residents the ability to personalize their room.

There will be one bariatric room on each floor of the skilled nursing facility across the corridor from the nourishment station, dining room and care base. The bariatric room has an additional 50 square feet. The room will have more space on both sides of an over-sized bariatric bed.

**Project Review – Analysis:**

The establishment and building of Samaritan Senior Village addresses an urgent need for supportive and stable skilled nursing care in Jefferson County’s senior population, and plays an integral role in the continuum of care. The new facility will greatly enhance the quality of life of the nursing home residence, while the additional beds will replace the scheduled closing of Mercy of Northern New York. The effect upon closure will be a net reduction of skilled nursing beds in the area.

Recommendation

**From a programmatic perspective, contingent approval is recommended.**

## Financial Analysis

Land Purchase Agreement

The applicant has submitted an executed land purchase agreement and a draft purchase agreement for the two sites, summarized below:

<i>Premises:</i>	The site will be located at 19322 US Route 11/1 Summit Drive, Watertown, New York
<i>Seller:</i>	Washington Summit Associates, LLC
<i>Purchaser:</i>	Samaritan Medical Center
<i>Purchase Price:</i>	\$0

<i>Premises:</i>	Vacant land
<i>Seller</i>	City of Watertown, New York
<i>Purchaser</i>	Samaritan Medical Center
<i>Purchase Price</i>	\$54,150
<i>Payment of Purchase Price:</i>	Cash at Closing

The applicant has indicated that both pieces of land will be given from Samaritan Medical Center to Samaritan Senior Village.

#### Total Project Cost and Financing

Total project cost for the construction of the nursing home is estimated at \$43,708,053, broken down as follows:

Land Acquisition	\$54,150
New Construction	24,831,937
Site Development	3,004,243
Design Contingency	3,222,000
Construction Contingency	1,611,000
Fixed Equipment	749,733
Planning Consultant Fees	299,044
Architect/Engineering Fees	2,049,321
Construction Manager Fees	1,114,061
Other Fees (Consultant)	291,250
Moveable Equipment	2,015,246
Financing Costs	2,275,000
Interim Interest Expense	1,950,000
CON Fee	2,000
Additional Processing Fee	<u>239,068</u>
Total Project Cost	\$43,708,053

Project costs are based on a December 1, 2011 construction start date and a fourteen-month construction period. Land acquisition costs are based on costs to the applicant. The applicant provided an executed purchase agreement for the Summit Drive site and a draft agreement for the site owned by the City of Watertown.

The Bureau of Architectural and Engineering Facility Planning has determined that the respective costs are within the adjusted bed cost caps.

The applicant's financing plan appears as follows:

Equity	\$11,208,053
Tax-Exempt Mortgage (6.00% interest rate for a 30 year term)	32,500,000

The applicant has indicated that they have not finalized any financing decisions, but intend to finance this project with tax-exempt financing. The applicant provided a letter of interest from a bank. In recent history, Samaritan Medical Center was successful in securing a letter of credit with Key Bank and HSBC and secured tax-exempt bond financing through the Dormitory Authority of the State of New York to fund the construction of a 140,000 SF Patient Pavilion and parking garage.

#### Operating Budget

The applicant has provided an operating budget, in 2011 dollars, for the third year subsequent to the construction of the nursing home. The budget is summarized as follows:

	<u>Per Diem</u>	<u>Total</u>
Revenues:		
Medicaid	\$214.05	\$10,828,575
Medicare	365.00	1,582,640
Private Pay	371.00	1,876,889
Commercial	284.00	<u>205,332</u>
Total Revenues		\$14,493,436
Expenses:		
Operating	\$179.70	\$10,909,384
Capital	<u>52.08</u>	<u>3,161,648</u>
Total Expenses	\$231.78	\$14,071,032
Excess of Revenues over Expenses		\$422,404
Utilization: (patient days)		60,707
Occupancy		99.00%

The following is noted with respect to the submitted RHCF operating budget:

- o The capital component of Medicaid revenues is based on the interest and depreciation reimbursement methodology.
- o Overall utilization for the third year is projected at:

Medicaid	83.33%
Medicare	7.14%
Commercial	1.19%
Private Pay	8.34%

- o Breakeven occupancy is projected at 96.06%.

#### Capability and Feasibility

The applicant will finance \$32,500,000 via an interest rate of 6.00% for a thirty year term. The remainder, \$11,208,053, will be provided via equity from Samaritan Medical Center.

Working capital requirements are estimated at \$2,345,172, which appears reasonable based on two months of third year expenses. The applicant will finance \$1,172,586 via a promissory note from Samaritan Medical Center at an interest rate of prime + 1, which is approximately 4.25% as of 8/17/2011 for a one year term. The remainder, \$1,172,586, will be provided via equity from operations of Samaritan Medical Center.

Presented as BFA Attachment A, is the financial summary of Samaritan Medical Center, which indicates the availability of sufficient funds for the equity contribution for the total project cost and the working capital requirement. Presented as BFA Attachment B, is the pro-forma balance sheet of Samaritan Senior Village, which indicates a positive net asset position of \$12,558,370 as of the first day of operation.

The submitted budget indicates an excess of revenues over expenses of \$422,404 during the third year after project completion. The applicant's budget appears reasonable. As a contingency of approval, the applicant must submit updated budgets, with all assumptions noted that include the impact of the State's 2011-2012 Budget and continues to demonstrate financial feasibility, acceptable to the Department of Health.

As shown on BFA Attachment A, Samaritan Medical Center had an average positive working capital position and an average positive net asset position during the period from 2009 through 2010. Also, the facility achieved an excess of revenues over expenses of \$9,732,601 during the period from 2009 through 2010.

Subject to the noted contingencies and condition, 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

This project will consist of 145,537 SF of new construction and will include a 37,137 SF, 2-story commons building and a 168 bed, 108,400 SF, 4-story with basement skilled nursing facility building. Also on this site is an assisted living facility which will share the commons building. The land acquisition, site development and foundation work has already been approved in limited certificate of need project # 111304.

The commons building will consist of 37,137 SF of new construction and will include two levels. The upper level will include a lobby, sitting area, reception area, administrative offices, a multi-purpose room, a gift shop, a cafe, a meditation room, a beauty salon, a private dining room, a non-Article 28 medical clinic suite, a physical and occupational therapy suite, an employee break room and public bathrooms. The lower level will include a main production kitchen, a laundry suite, building/resident/nursing storage rooms, a maintenance room, a mechanical room, a loading dock and a shipping/receiving room. The assisted living facility will share the commons building in the following proportion: 58% skilled nursing facility and 42% assisted living facility.

The skilled nursing facility building will consist of 108,400 SF of new construction and will include a basement level, ground level and 4 upper levels.

The basement level will consist of 2,290 SF and will include 2 elevators, 1 stairway, a linen room, a trash room and a connector to the commons building.

The first floor will consist of 26,871 SF and will include a connector to the commons building and two, 21-bed neighborhoods. Each neighborhood will consist of 7 private rooms and 7 semi-private rooms, a living room, activity room, parlor, dining room and serving kitchen. Also to be included is a bathing spa, a care station for charting and storage of administrative supplies with a medication room, 2 soiled utility rooms, 1 clean utility room, staff toilet, and 2 cart corrals. The finish kitchen, office, linen room, janitor's closet and trash rooms are shared between 2 neighborhoods.

The second, third and fourth floors will consist of 26,413 SF each and will be identical to the first floor, however, there will be an additional office rather than the connection to the commons building.

Environmental Review

The Department has deemed this project to be a TYPE I Action and the lead agency shall be the county of Jefferson or the authority having jurisdiction.

Recommendation

**From an architectural perspective, contingent approval is recommended.**

**Attachments**

- BFA Attachment A      Financial Summary- Samaritan Medical Center
- BFA Attachment B      Pro-forma Balance Sheet- Samaritan Senior Village.
- 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 6th day of October, 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 168-bed residential health care facility to be located at 19322 US Route 11/1 Summit Drive, Watertown, 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:

111313-B

FACILITY/APPLICANT:

Samaritan Senior Village



## 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. The submission of a commitment signed by the applicant which indicates that, within two years from the date of 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]
3. Submission of, and acceptable programmatic review and approval of final floor plans. [LTC]
4. Submission of updated budgets, with all assumptions noted, that include the impact of the State's 2011-2012 Budget and continues to demonstrate financial feasibility, acceptable to the Department of Health. [BFA]
5. Submission of an executed land purchase agreement that is acceptable to the Department of Health. [BFA]
6. Submission of a working capital loan commitment that is acceptable to the Department of Health. [BFA]
7. 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 Department of Health, 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 sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
8. Submission of an executed land transfer agreement between Samaritan Medical Center and Samaritan Senior Village that is acceptable to the Department of Health. [BFA]
9. Applicant shall submit a revision to Limited Review Application 111304 Samaritan Medical Center Build a loop road, site parking and a foundation for the Samaritan Senior Village to reflect a \$0 Total Project Cost. [CCC]
10. Submission of evidence of site control, acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant's executed certificate of incorporation and any amendments thereto, acceptable to the Department. [CSL]
12. Submission of a photocopy of the certificate of incorporation of Samaritan Medical Center, the sole member of the applicant, and any amendments thereto, acceptable to the Department. [CSL]
13. Submission of a photocopy of the bylaws of Samaritan Medical Center, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The Department of Health and the applicant will agree to an acceptable allocation of shared space between the nursing home and the ALP for reimbursement purposes. [BFA]
2. The approval of the site change modification to the limited certificate of need project # 111304. [AER]
3. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
4. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
5. The applicant shall complete construction by December 15, 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.

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

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

**October 6, 2011**

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**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 Centers – Establish/Construct**

**Exhibit #12**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	111506 E	NYSCQ, LLC d/b/a New York Surgery Center of Queens (Queens County) Dr. Sullivan – Abstaining	Contingent Approval
2.	101158 B	EMK ASC, LLC d/b/a New York Ambulatory Surgery, LLC (Queens County) Dr. Sullivan – Abstaining	Contingent Approval
3.	111409 B	Flushing GI, LLC (Queens County) Dr. Sullivan - Abstaining	Contingent Approval

**Diagnostic and Treatment Centers – Establish/Construct**

**Exhibit #13**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	111218 B	Jericho Road Ministries, Inc. d/b/a Jericho Road Community Health Center (Erie County) Mr. Booth – Interest	Contingent Approval

2.	111390 B	Christian Health Service of Syracuse (Onondaga County) Mr. Booth - Interest	Contingent Approval
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**Dialysis Center – Establish/Construct**

**Exhibit #14**

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	111503 B  Park Slope Dialysis Management, LLC d/b/a Prospect Park Dialysis Center (Kings County) Dr. Bhat – Recusal Mr. Fensterman - Recusal	Contingent Approval

**Residential Health Care Facility – Establish**

**Exhibit #15**

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	112014 E  SV Operating Three, LLC d/b/a Verrazano Center for Rehabilitation and Specialty Healthcare (Richmond County) Mr. Fensterman - Recusal	Contingent Approval

**Continuing Care Retirement Community – Establish**

**Exhibit #16**

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	111285 E  Woodland Pond at New Paltz (Ulster County) Dr. Berliner – Recusal	Contingent Approval

**HOME HEALTH AGENCY LICENSURES**

**Exhibit #17**

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1717-L	Advanced Home Care Services, Inc. (New York, Kings, Queens, Bronx, and Richmond Counties) Ms. Regan – Interest	Contingent Approval

1903-L	Angel Care, Inc. (New York, Bronx, Richmond, Kings, Queens and Nassau Counties) Ms. Regan – Interest	Contingent Approval
1827-L	Bethesda Elite Care, Inc. (Suffolk, Nassau, Westchester, Queens, Kings, New York, Bronx, and Richmond Counties) Ms. Regan – Interest	Contingent Approval
1794-L	C.P.R. Home Care, Inc. d/b/a City Wide Home Care (Bronx, Kings, New York and Queens Counties) Ms. Regan – Interest	Contingent Approval
1674-L	Ideal Home Health, Inc. (Bronx, Kings, Queens, New York and Richmond Counties) Ms. Regan – Interest	Contingent Approval
2018-L	Longevity Health Services, LLC (Bronx, Kings, Nassau, New York, Queens, and Richmond Counties) Ms. Regan – Interest	Contingent Approval
2007-L	Magic Home Care, LLC (Kings, Queens and Richmond Counties) Ms. Regan – Interest	Contingent Approval
1742-L	Majestic Touch Home Care Services, Inc. (Kings, Queens, New York, Bronx, and Richmond Counties) Ms. Regan – Interest	Contingent Approval

1860-L	Most Excellent Home Care Agency, Inc. (New York, Bronx, Kings, Nassau and Queens Counties) Ms. Regan – Interest	Contingent Approval
1804-L	Nannies for Grannies, Inc. (Nassau, Suffolk and Queens Counties) Ms. Regan – Interest	Contingent Approval
1764-L	New Universal Home Care, Inc. (Bronx, New York, Richmond, Kings and Queens Counties) Ms. Regan – Interest	Contingent Approval
1695-L	Peconic Landing Home Health Services (Suffolk County) Ms. Regan – Interest	Contingent Approval
1825-L	Sweet Sunshine Home Health Care Agency, Inc. (Bronx, Kings, New York, Queens and Richmond Counties) Ms. Regan – Interest	Contingent Approval
2009-L	ZLC Senior Care, Inc. (Nassau, Suffolk and Queens Counties) Ms. Regan – Interest	Contingent Approval
1896-L	Alternate Staffing, Inc. (Bronx, Kings, New York, Queens, and Richmond Counties) Ms. Regan – Interest	Contingent Approval
1879-L	Cudley's Home Care Services, Inc. (Bronx, Kings, Nassau, New York, Queens and Richmond Counties) Ms. Regan – Interest	Contingent Approval

1871-L	Utopia Home Care, Inc. Nassau, Suffolk, Queens, Kings, Bronx, New York, Richmond, and Westchester Counties) Ms. Regan – Interest	Contingent Approval
1743-L	Innovative Services, Inc., d/b/a Upstate Home Care (See exhibit for counties served) Mr. Booth – Interest Ms. Hines – Interest	Contingent Approval



# Public Health and Health Planning Council

Project # 111506-E

**NYSCQ, LLC**  
**d/b/a New York Surgery Center of Queens**

**County: Queens (Long Island City)**  
**Purpose: Establishment**

**Program: Ambulatory Surgery Center**  
**Submitted: June 14, 2011**

## Executive Summary

### Description

NYSCQ, LLC d/b/a New York Surgery Center Queens, a to-be-formed limited liability company, requests approval to become the new operator of Boulevard Surgical Center, located at 46-04 31st Avenue, Long Island City. NYSCQ, LLC has proposed to enter into an agreement with Boulevard Surgical Center, the existing Article 28 operator, to purchase the assets and operate at the current site under the d/b/a of New York Surgery Center Queens.

NYSCQ, LLC is a joint-venture comprised of three proposed individual members Dr. Yehuda Kleinman (30%), Dr. Dror Rosenfeld (30%), and Mr. Daniel Lowy (30%), and a proposed New York not-for-profit corporation, Charter Ventures, Inc. (10%), which will be formed by New York Hospital Medical Center of Queens.

In 2008, Boulevard Surgical Center filed for bankruptcy under Chapter 11 in the United States Bankruptcy Court for the Southern District of New York. Mark S. Tulis, Esq, was made the trustee under Chapter 11 and has been operating the Boulevard Surgical Center since 2010. NYSCQ, LLC was the successful bidder for Boulevard's assets at an auction held in the bankruptcy proceeding on January 5, 2011 and entered into a Consulting and Administrative Services Agreement with Mr. Tulis, whereby NYSCQ, LLC agreed to provide certain administrative services to Boulevard Surgical Center during the period of time from the closing of the asset purchase until such time as the Public Health and Health Planning Council renders a determination regarding this application.

New York Hospital Medical Center of Queens supported NYSCQ, LLC's purchase of Boulevard's assets in the bankruptcy, since the Hospital characterizes the

Boulevard Surgical Center as a critical facility in the continuance of its operations with capable management for the benefit of the community.

DOH Recommendation  
Contingent approval.

### Need Summary

NYSCQ, LLC has 12 surgeons who have committed to treat their ambulatory surgery patients at this facility. The center expects to perform 2,820 procedures in the first year of operation. NYSCQ, LLC commits to treat all patients regardless of the ability to pay.

### Program Summary

Based on the information reviewed, staff found nothing that 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.

Budget:	<i>Revenues:</i>	\$ 3,417,637
	<i>Expenses:</i>	<u>3,167,653</u>
	<i>Gain/(Loss):</i>	\$ 249,984

Subject to noted contingencies, it appears 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 an executed Lease Assignment Agreement acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of the executed Amended and Restated Articles of Organization of NYSCQ, LLC, acceptable to the Department. [CSL]
3. Submission of a photocopy of the executed Amended and Restated Operating Agreement of NYSCQ, LLC, acceptable to the Department. [CSL]
4. Submission of a photocopy of the executed Certificate of Incorporation of Charter Ventures, Inc., acceptable to the Department. [CSL]
5. Submission of a photocopy of the adopted bylaws of Charter Ventures, Inc., acceptable to the Department. [CSL]
6. Submission of evidence of site control, 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]

Council Action Date

**October 6, 2011.**

## Need Analysis

### Background

Boulevard Surgical Center has served the residents of Queens County since 1989. NYSCQ, LLC will continue to be located at 46-04 31<sup>st</sup> Avenue, Long Island city (Queens County), New York 11103.

Boulevard Surgical Center filed for Chapter 11 bankruptcy in 2008. On January 13, 2011, the Bankruptcy Court approved the sale of Boulevard's assets to NYSCQ. NYSCQ has been providing administrative services to the center since January, 2011. NYSCQ now requests a change of ownership to become the established operator of Boulevard Surgical Center.

The applicant reports that in 2007, the year before Boulevard filed for bankruptcy, the center performed 4,700 surgical procedures. By 2010, the number of surgical procedures performed dropped to 1,760. NYSCQ's goal is to restore the surgical procedure volume to the pre-bankruptcy level. The applicant has provided letters of commitment from 12 physicians who plan to perform 2,820 surgical procedures at the center in the first year of operation.

The center has an existing transfer and affiliation agreement for backup and emergency services with the New York Hospital Medical Center of Queens.

All services will be offered to those in need of care regardless of the ability to pay.

The projected procedures for the first year of operation are 2,820 procedures and 2,992 procedures for the third year of operation.

The center will continue as a multi-specialty freestanding ambulatory surgery center (FASC) that provides the following services: orthopedic surgery, ENT, ophthalmology, podiatric surgery, pain management, plastic surgery, general surgery, gastroenterology, urology, oral surgery, and dental surgery.

<u>Existing FASCs – Queens County</u>	<u>Procedures</u>
Boulevard Surgical Center	2,959
Choices Women's Medical Center	9,641
Hillside D&TC	1,309
Mackool Eye Institute	7,001
Physician's Choices Surgicenter	1,164
Queens Surgi-Center	5,525

SOURCE: SPARCS, 2009

### Conclusion

NYSCQ, LLC will continue to provide access to ambulatory surgery services in Western Queens.

### Recommendation

**From a need perspective, approval is recommended.**

## Programmatic Analysis

### Program Proposal

Change in ownership of Boulevard Surgical Center, an existing multi-specialty ambulatory surgery center. There will be no fundamental programmatic changes concurrent with the approval.

<b>Proposed Operator</b>	<b>NYSCQ</b> (Upon approval will change name to New York Surgery Center Queens)
Operator Type	LLC

Site Address	46-04 31 <sup>st</sup> Avenue, Long Island City
Hours of Operation	Monday through Friday, 9:00 am to 5:00 pm (Extended as necessary to accommodate patient needs).
Medical Director(s)	Yehuda Kleinman
Emergency, In-Patient and Backup Support Services Agreement	Will be provided by New York Hospital Medical Center Queens
Distance	7.2 miles and 14 minutes travel time
On-call service	Access to the facility's on-call physician 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 members of NYSCQ, LLC are as follows:

<b><u>Name</u></b>		
Daniel Lowey	30%	Member/Manager
Yehuda Kleinman, MD	30%	Member/Manager/Medical Director
Dror Rosenfeld, MD	30%	Member/Manager
Charter Ventures, Inc.	10%	
Arthur D. Dawson		
George F. Heinrich, MD		Manager
Jeffrey E. Rosen, MD		

Charter Ventures is a to-be-formed not-for-profit with New York Hospital Medical Center Queens (MYHMCQ) as the passive sole corporate member. The three directors of Charter Ventures are officers and/or directors of NYHMCQ. 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.

#### Conclusion

Based on the information reviewed, staff found 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

### 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:

*Date:* January 5, 2011  
*Seller:* Mark S. Tulis as Chapter 11 Trustee of Boulevard Surgical Center, Inc. and Capitol Health Management, Inc.  
*Buyer:* NYSCQ, LLC  
*Assets Purchased:* All assets used in operation of the facility; inventory, sellers rights to title and interest and warranties in leasehold improvements and assigned contracts, equipment; supplies and inventory; prepaid expenses and security deposits; policy and procedural manuals; computer software and hardware; telephone numbers; copies of medical records and related patient financial accounts of the Facility as Buyer may request in accordance with the law. Accounts Receivables; cash, deposits; marketable securities; retroactive rate increases; appeal proceeds relating to periods prior to closing; Medicare and Medicaid provider numbers and agreements and agreements with other third-party payors.  
*Assets Excluded:* All contracts, leases or other agreements which are not Assumed Contracts, all claims against Purchaser arising under the connection with this Agreement; claims related solely to Excluded liabilities and any claims or actions arising under Sections 544, 545, 547-551 of the Bankruptcy Code.  
*Liabilities Assumed:* None.  
*Purchase Price:* \$1,000,000; \$995,000 to Boulevard Surgical Center, Inc. and \$5,000 to Capitol Health Management, Inc.  
*Payment of Purchase Price:* To be paid at the Closing.

Capitol Health Management Inc. was owned by Robert Aquino, M.D. who also owned Boulevard Surgical Center and jointly filed for Chapter 11 bankruptcy protection in 2008.

The proposed members have 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 interest, without releasing the transferor of its liability and responsibility.

### Lease Agreement To Be Assigned

The applicant has submitted an executed lease agreement between current Landlord and Tenant to be assigned to NYSCQ, LLC upon approval of the CON application by PHHPC for the first floor (15,000 square feet) located at 46-04 31<sup>st</sup> Avenue, the terms of which are summarized below:

*Date:* August 30, 2007  
*Premises:* 46-04 31<sup>st</sup> Avenue, Long Island City, N.Y.  
*Landlord:* New York School of Urban Ministry, Inc.  
*Lessee:* Mark S. Tulis as Chapter 11 Trustee of Boulevard Surgical Center, Inc.

*Rental:* Year 1-\$345,000/year (\$23.00 per sq. ft.); Year 2- \$350,175/year (\$23.34 per sq. ft.); Year 3-\$355,427/year (\$23.70 per sq. ft.); Year 4- \$360,759.60/year (\$24.05 per sq. ft.); Year 5- \$366,170.38/year (\$24.41 per sq. ft.); Year 6- \$371,662.93/year (\$24.78 per sq. ft.); Year 7- \$377,237.87/year (\$25.14 per sq. ft.); Year 8- \$382,896.43/year (\$25.53 per sq. ft.); Year 9- \$388,639.87/year (\$25.91 per sq. ft.); Year 10- \$394,469.46/year (\$26.30 per sq. ft.)

*Term:* Ten Year Term, which began on 1/1/2008 with a five year renewal option to December 31, 2022.

*Provisions:* The lessee shall be responsible for utilities, maintenance, taxes, and insurance.

The proposed lease agreement is an arm's length transaction since the parties are not related.

#### 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:	\$3,221,626	\$3,417,637
Expenses:		
Operating	\$2,528,673	\$2,729,890
Depreciation and Rent	<u>407,216</u>	<u>437,763</u>
Total Expenses	\$2,935,889	\$3,167,653
 Net Income	 <u>\$285,737</u>	 <u>\$249,984</u>
 Utilization: (visits)	 2,820	 2,992
Cost Per treatment	\$1041.10	\$1058.71

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

Commercial-Fee-For-Service	10.0%
Commercial-Managed Care	45.0%
Medicare-Fee-For-Service	4.0%
Medicare-Managed Care	6.0%
Medicaid Fee-For-Service	6.0%
Medicaid Managed Care	9.0%
Self Pay	18.0%
Charity Care	2.0%

Expense and utilization assumptions are based on the historical experience of the Boulevard Surgical Center.

#### Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements, estimated at \$489,315, appear reasonable based on two months of first year expenses. An affidavit from Mr. Lowy, an applicant member has been submitted which states that he is willing to contribute resources disproportionate to his ownership percentages on behalf of his fellow proposed members. The applicant has sufficient equity as shown on the proposed members net worth statements and financial summary. Presented as BFA Attachment C, is the proposed members network statements. Presented as BFA Attachment A and B are the financial Summaries of New York Medical Center of Queens. Presented as BFA Attachment D, is the pro-forma balance sheet of the New York Surgery Center Queens as of the first day of operation, which indicates positive member's equity position of \$1,113,667.

Presented as BFA Attachment A is the 2009-2010 financial summaries for New York Hospital Medical Center of Queens which has maintained positive working capital, net asset positions and net income from operations for the years shown. New York Hospital Medical Center of Queens will maintain 10% proposed membership under Charter Ventures, Inc. for the ambulatory surgery center. The change in management, ownership and organizational structure is necessary to develop physician loyalty and stable utilization patterns in order to achieve profitability.

The submitted budget indicates a net income of \$285,737 and \$249,984 during the first and third years of operation, respectively. Revenues are based on current reimbursement methodologies for ambulatory surgery services. The Medicaid outpatient reforms have been approved by the Federal government and implemented to change the reimbursement methodology as of September 1, 2009 and is phased in over a four year period. Reimbursement is determined on an average rate by free standing ambulatory surgery centers and region enhanced by the applicable service intensity weight (SIW). The budget appears reasonable.

Recommendation

**From a financial perspective, contingent approval is recommended.**

## Attachments

BFA Attachment A	Financial Summary of New York Hospital Medical Center of Queens, 2009-2010
BFA Attachment B	Internal Financial Summary of New York Hospital Medical Center of Queens as of June 30, 2011
BFA Attachment C	Networth Statements of Proposed Members
BFA Attachment D	Pro-forma Balance Sheet of Center, LLC
BFA Attachment E	Establishment Checklist for Ambulatory Care Sites
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 6th day of October, 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 NYSCQ, LLC as the new operator Boulevard Surgical Center, an existing multi-specialty freestanding ambulatory surgery 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:

11506-E

FACILITY/APPLICANT:

NYSCQ, LLC d/b/a New York Surgery Center  
of Queens

APPROVAL CONTINGENT UPON:

1. Submission of an executed Lease Assignment Agreement acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of the executed Amended and Restated Articles of Organization of NYSCQ, LLC, acceptable to the Department. [CSL]
3. Submission of a photocopy of the executed Amended and Restated Operating Agreement of NYSCQ, LLC, acceptable to the Department. [CSL]
4. Submission of a photocopy of the executed Certificate of Incorporation of Charter Ventures, Inc., acceptable to the Department. [CSL]
5. Submission of a photocopy of the adopted bylaws of Charter Ventures, Inc., acceptable to the Department. [CSL]
6. Submission of evidence of site control, 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]

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 # 101158-B

**EMK ASC, LLC**  
**d/b/a New York Ambulatory Surgery, LLC**

**County:** Queens (Elmhurst)  
**Purpose:** Establishment and Construction

**Program:** Ambulatory Surgery Center  
**Submitted:** June 25, 2010

## Executive Summary

### Description

EMK ASC, LLC, an existing New York State limited liability company comprised of four members, requests approval to establish and construct a diagnostic and treatment center at 90-02 Queens Boulevard, Elmhurst. This site was the former home of St. John's Queens Hospital. EMK ASC, LLC will change its name to New York Ambulatory Surgery, LLC, and be certified as a multi-specialty freestanding ambulatory surgery center (FASC) to provide the following services: Orthopedic Surgery, Ophthalmology, Otolaryngology (ENT), Podiatric Surgery, Plastic Surgery, Pain Management, General Surgery, and Gastroenterology.

The purpose of this project is for the applicant and its participating physicians to bring back surgical cases that were relocated outside of Queens County due to the 2009 closures of St. John's Queens Hospital and Mary Immaculate Hospital, which were both part of the former Caritas Health Care system, as well as the closures of Parkway Hospital and St. Joseph's Hospital.

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 \$9,929,500.

### DOH Recommendation

Contingent approval for a 5-year limited life.

### Need Summary

The proposed FASC includes 14 surgeons, who will perform 6,940 procedures in four operating rooms and one procedure room. The expected volume of procedures is based on the procedures currently performed by these physicians.

### Program Summary

The applicant will enter into a transfer and affiliation agreement for emergency and back-up services with Wyckoff Heights Medical Center, which is four miles or 12 minutes in travel time from the Center.

Based on the information reviewed, staff 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 from the members investing \$992,950 in cash and borrowing \$8,936,550 from DJL Ventures, LLC, a company solely-owned by the proposed member, Daniel J. Lowy. In turn DJL Ventures, LLC will borrow the funds from LFG America, Inc., a private investment company associated with Mr. Lowy's father. The amount and terms of the loan from LFG America, Inc., to DJL Ventures, LLC are identical as those between DJL Ventures, LLC and the applicant (7 yrs. @ 8%).

Budget:	<i>Revenues:</i>	\$ 7,203,624
	<i>Expenses:</i>	<u>6,524,025</u>
	<i>Gain/(Loss)</i>	\$ 679,599

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

### Architectural Summary

The FASC will be located in 15,000 SF of leased space on the first floor of a six-story building. In addition to the 4 operating rooms and 1 procedure room, it will include: offices, pre- and post-operative rooms, recovery room, patient lockers, staff lounges and locker rooms, dressing rooms, scopes room, decontamination room, clean workroom, mechanical room, storage room, janitor's closet and toilets.

## 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 of Health to provide annual reports to the Department 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 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, between New York Ambulatory Surgery, LLC and a local acute care hospital. [HSP]
6. Submission of a photocopy of a fully executed and dated proposed lease between the applicant, as Tenant, and 89-52 Queens, LLC, as Landlord, which must be acceptable to the Department. [BFA, CSL]
7. Submission of a photocopy of the applicant's fully executed and dated Amended and Restated Articles of Organization, which must be acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's fully executed and dated Amended and Restated Operating Agreement, which must be acceptable to the Department. [CSL]
9. Submission of fully executed and dated subscription agreements and/or contribution agreements, if any, between the applicant and each of its members, which must be acceptable to the Department. [CSL]
10. Submission of photocopies of any and all fully executed and dated documents related to the loan between LFG America and DJL Ventures, LLC, including, but not limited to, a loan agreement, promissory note, option agreement(s), convertible debenture(s), and security agreement(s), which must be acceptable to the Department. [CSL, BFA]
11. Submission of photocopies of any and all fully executed and dated documents related to the loan between DJL Ventures, LLC and the applicant, including, but not limited to, a loan agreement, promissory note, option agreement(s), convertible debenture(s), and security agreement(s), which must be acceptable to the Department. [CSL, 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]
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]

Council Action Date

**October 6, 2011.**

## Need Analysis

### Background

New York Ambulatory Surgery, LLC (NYAS) plans to establish and construct a multi-specialty freestanding ambulatory surgery center (FASC) with four operating rooms and one procedure room at 90-02 Queens Boulevard, Elmhurst, Queens. The proposed site is the location of the former St. John's Queens Hospital that closed in 2009.

The surgical specialties to be provided at the center include: orthopedic surgery, ENT, ophthalmology, podiatric surgery, pain management, plastic surgery, general surgery, and gastroenterology.

The applicant plans to bring back the surgical cases that migrated outside of Queens County due to the 2009 closures of St. John's Queens Hospital and Mary Immaculate Hospital as well as the closures of Parkway Hospital and St. Joseph's Hospital.

### Analysis

NYAS states that there will be no migration of procedures to the proposed center from local hospitals. The applicant states that all of the projected procedures for the center are currently being performed at sites outside of Queens County.

The center projects that I will serve 6,940 surgical procedures in the first year.

<u>Surgeon</u>	<u>Specialty</u>	<u>Annual Procedures</u>
Yehuda Kleinman, MD	Orthopedics	400
Neo Stefanides, MD	Orthopedics	100
Evan Schwartz, MD	Orthopedics	100
Daniel O'Connor, MD	Orthopedics	200
Josh Steinvurzel, MD	Orthopedics	100
Jesu Jacob, MD	Orthopedics	100
Dan Samadi, MD	ENT	1,300
Moshe Szelechter, MD	Retinal surgery	600
John Kim, MD	Ophthalmology	1,000
Avraham Ciment, MD	Podiatry	65
Robert Locastro, MD	Podiatry	75
Gregory Kozlkowski, MD	Pain Management	1,400
Nachman Rosenfeld, MD	Plastic Surgery	1,000
Steven S. Weinstein, MD	Gastroenterology	500
<i>Total</i>		<u>6,940</u>

NYAS includes 14 surgeons that plan to perform 6,940 procedures in the first year of operation. The projected utilization is based on the current volume of procedures performed by these physicians.

<u>FASCs – Queens County</u>	<u>#ORs</u>	<u># Procedure Rooms</u>	<u>2009 Utilization</u>
Boulevard Surgical Center	5		2,959
Choices Women's Medical Center	4		9,641
Hillside D&TC	1	2	1,309
Mackool Eye Institute	4	1	7,001
Physician Choice Surgicenter	2		1,164
Queens Surgi-Center	5		5,525

SOURCE: SPARCS

### Conclusion

Based on their ability to improve access to gastroenterology services, approval is recommended for a limited life of five years from the date of the issuance of an operating certificate

### Recommendation

**From a need prospective, contingent approval is recommended for a limited life of five years.**

## Programmatic Analysis

### Background

New York Ambulatory Surgery proposes to establish a diagnostic and treatment center that will also be certified as an ambulatory surgery center.

<b>Proposed Operator</b>	EMK ASC Upon approval will change name to New York Ambulatory Surgery, LLC
<b>Operator Type</b>	LLC
<b>Site Address</b>	90-02 Queens Boulevard, Elmhurst
<b>Surgical Specialties</b>	Orthopedics, otolaryngology, ophthalmology, podiatry, pain management, plastic surgery, general surgery and gastroenterology
<b>Operating Rooms</b>	4
<b>Procedure Rooms</b>	1
<b>Hours of Operation</b>	Monday through Friday from 7:00am to 5:00 pm (Extended as necessary to accommodate patient need.)
<b>Staffing in FTEs (1<sup>st</sup>/3<sup>rd</sup> Years)</b>	29.1 / 30.72
<b>Medical Director</b>	Yehuda Kleinman
<b>Emergency, In-patient and Backup Support Services Agreement</b>	Expected to be provided by Wyckoff Heights Medical Center
<b>Distance to Backup Facility</b>	4 miles 12 minutes travel time
<b>On-call Service</b>	Access to the facility's on-call physician during hours when the facility is closed.

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.

### Compliance with Applicable Codes, Rules and Regulations

The medical staff will ensure that procedures performed at the Center conform with 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 Members are as follows:

Yehuda Kleinman, M.D.	30%	Member/Manager/Medical Director
Daniel Lowy	30%	Member/Manager
Dror Rosenfeld	30%	Member Manager
Charter Ventures Inc.	10%	
<i>Arthur D. Dawson</i>		
<i>George Heinrich, MD</i>		
<i>Jeffrey E. Rosen, MD</i>		<i>Manager</i>

Charter Ventures is a to-be-formed not-for-profit corporation with New York Hospital Medical Center Queens (NYHMCQ) as the passive sole corporate member. The three directors of Charter Ventures are officers and/or directors of NYHMCQ.

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 applicant expects all their cases will come from outside of Queens County and not affect the local hospitals. Between November 2008 and March 2009 three Queens County hospitals were closed, St. John's Queens, Mary Immaculate, and Parkway hospitals. The closing of these hospitals have caused some physicians to relocate their surgical procedures to areas outside of Queens County, primarily due to capacity issues. New York Ambulatory Surgery expects some of the relocated surgery cases will migrate back as the result of the proposed FASC's added surgical capacity. The applicant has submitted letters from fourteen surgeons supporting their first year's projections of 6,940 procedures. Also, Well Care Health Plans, Inc. has provided written support for this project.

New York Hospital Medical Center of Queens, which is one of the proposed members, has provided a letter of interest to enter into a transfer and affiliation agreement. The hospital is about 6 minutes and 3.4 miles away.

The proposed members of New York Ambulatory Surgery, LLC and their ownership percentages are as follows:

<u>Proposed Members</u>	<u>Ownership</u>
Daniel J. Lowy	30.0%
Yehuda E. Kleinman, M.D.	30.0%
Dror Rosenfeld, M.D.	30.0%
Charter Ventures, Inc.	10.0%
<i>Total</i>	<i>100.0%</i>

Charter Ventures, Inc. is a proposed New York State not-for-profit corporation that will have New York Medical Hospital of Queens as its passive sole corporate member.

New York Ambulatory Surgery, LLC will seek accreditation from either, the Accreditation Association for Ambulatory Health Care (AAAHC) or the American Association for the Accreditation of Ambulatory Surgery Facilities, Inc. (AAAASF) within two (2) years of becoming operational.

**Lease Rental Agreement**

The applicant has submitted a letter of interest to lease the proposed site, the terms are summarized below:

- Premises:* 15,000 gross square feet located at 90-02 Queens Boulevard, 1<sup>st</sup> floor, Elmhurst, New York
- Landlord:* 89-52 Queens, LLC
- Lessee:* New York Ambulatory Surgery, LLC
- Term:* 15 years at \$450,000 per year (\$30.00 per sq. ft) Renewal – two 10-year terms
- Provisions:* Utilities, Taxes and Insurance

The applicant has provided an affidavit stating the proposed lease is an arm’s length arrangement. Also, they have provided realtor letter’s attesting to the rental rate as being of fair market value.

**Total Project Cost and Financing**

Total project costs for construction and the acquisition of moveable equipment is estimated at \$9,929,500, broken down as follows:

Renovation & Demolition	\$4,695,000
Design Contingency	469,500
Construction Contingency	469,500
Architect/Engineering Fees	375,600
Construction Manager Fees	187,800
Other Fees	75,000
Movable Equipment	3,161,380
Telecommunications	52,167
Financing Costs	89,365
Interim Interest Expense	297,885
CON Application Fee	2,000
CON Processing Fee	<u>54,303</u>
Total Project Cost	\$9,929,500

Total costs are based on January 1, 2012 start date with a six month construction period.

The applicant’s financing plan appears as follows:

Cash Equity (Applicant)	\$992,950
Loan (8% 7-year term) from DJL Ventures, LLC which is solely owned and controlled by Daniel J. Lowy, a member of the applicant.	<u>8,936,550</u>
Total	\$9,929,500

DJL Ventures, LLC is a newly created limited liability company that was established by Daniel J. Lowy to provide New York Ambulatory Surgery, LLC with their financing. Through DJL Ventures the proposed facility will borrow 90% of the capital requirements or \$8,936,550 and 50% of the needed working capital or \$543,669. In turn DJL Ventures, LLC will borrow these funds from LFG America, Inc. Letters of interest have been provided for these transactions. The terms from LFG America, Inc., to DJL Ventures, LLC are identical as those between DJL Ventures, LLC and the applicant, New York Ambulatory Surgery, LLC.

The capital loan of \$8,936,550 will have terms of 8% with a 7-year payback period, and the working capital loan of \$543,669 will have terms of 8% with a 5-year payback period. LFG America, Inc. is a private investment company associated with Mr. Daniel J. Lowy’s father. Ernst & Young states LFG America, Inc., is a wholly owned subsidiary of LFG Holdings Pty Limited whose net assets at June 30, 2010 were in excess of \$A350 million Australian Dollars or approximately \$374 542,000 USD as of 09/01/11. Ernst & Young further states under Australian Accounting

Standards LFG Holdings Pty Limited is not required to prepare consolidated accounts. If they had, the net assets would have been in excess of \$A1billion as of June 30, 2010 or approximately \$1,070,120,000 USD as of 09/01/11.

Mr. Daniel J. Lowy has provided the following information concerning the family's commitment to healthcare:

- LFG Holdings Ltd. has provided a mezzanine loan to Ambea Group, one of the largest healthcare services providers in the Nordic region;
- Lowy family members helped establish the following in Australia: The Lowy Medical Institute Ltd.; The Lowy Cancer Research Center; The Lowy-Packer building at the Victor Chang Cardiac Institute, which is part of St. Vincent's Hospital; and The Sydney Children's Hospital;
- The Lowy Medical Research Institute Ltd. is sponsor of the MacTel Project. Its' purpose is to identify the causes and appropriate treatments for the blinding conditions of the retina.

#### 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>
Revenues	\$6,790,106	\$7,203,624
Expenses:		
Operating	\$4,069,912	\$4,300,272
Capital	<u>2,373,857</u>	<u>2,223,753</u>
Total Expenses	\$6,443,769	\$6,524,025
Net Income or (Loss)	\$346,337	\$679,599
Utilization: (procedures)	6,940	7,363
Cost per Procedure	\$928.50	\$886.06

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

Medicaid Fee-For-Service	6.0%
Medicaid Managed Care	9.0%
Medicare Fee-For-Service	35.0%
Medicare Manage Care	2.0%
Commercial Fee-For-Service	10.0%
Commercial Manage Care	34.0%
Private Pay	1.0%
Charity	3.0%

Expense and utilization assumptions are based on combined experiences from: New York Ambulatory Surgery participating surgeons and other FASCs in New York State. A sensitively analysis was performed and illustrates all costs were covered in the first year at 94.9% of budget or 6,586 procedures and by the third year the breakeven point drops to 90.6% of the budget.

#### Capability and Feasibility

The total project cost of \$9,929,500 will be satisfied by the proposed members contributing \$992,950 with the balance of \$8,936,550 being loaned through DJL Ventures, LLC at the above stated terms. DJL Ventures is owned and controlled solely by Mr. Daniel J. Lowy, a member of the applicant, who in turn is borrowing the same amount under like terms from LFG America, Inc. Mr. Daniel J. Lowy's father is associated with LFG America Inc., a private investment company with substantial net assets.



Working capital requirements are estimated at \$1,087,338, which appears reasonable based on two months of third year expenses. Half of the working capital or \$543,669 will be contributed from the members' assets and the balance of \$543,669 will be loaned through DJL Ventures, LLC at an 8% interest rate with a five year re-payment schedule. Like the capital loan, the working capital loan will initiate from LFG America, Inc. and pass through DJL Ventures to New York Ambulatory Surgery with like terms and amount. Presented as BFA Attachment A and B are applicants' personal net worth statements and the 2010 certified financial summary for the The New York Hospital Medical Center of Queens, the passive sole corporate member of Charter Ventures, Inc. A review of attachments A and B indicates there are sufficient liquid resources to meet the equity and working capital requirements. Presented as BFA Attachment C is New York Ambulatory Surgery, LLC pro-forma balance sheet that shows operations will start off with \$1,536,619 in equity.

New York Ambulatory Surgery is projecting an operating excess of \$346,337 and \$679,599 in the first year and third years, respectively. Revenues are based on current and projected federal and state governmental reimbursement methodologies while commercial payers are based on experience.

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 free standing ambulatory surgery center, will have four (4) operating rooms and one (1) procedure room and will be located within 15,000 square feet of leased space on the first floor of a six-(6)-story building. The proposed FASC site will also include pre-operative holding, post-operative consultation, offices, recovery room, staff lounges, patient lockers, women's staff locker room, men's staff locker room, dressing rooms, scopes room, decontamination room, clean workroom, mechanical room, storage room, janitor's closet and toilets.

This project will respond to the regional demand for ambulatory surgery procedures in a facility that will be in compliance with appropriate Federal, State and local code requirements.

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 New York Ambulatory Surgery, LLC
BFA Attachment B	Financial Summary for 2010, The New York Hospital Medical Center of Queens
BFA Attachment C	Pro-Forma Balance Sheet of New York Ambulatory Surgery, LLC
BFA Attachment D	Establishment Checklist for Ambulatory Care Sites
BFA Attachment E	Organization Chart
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:** City Hospital at Elmhurst  
79-01 Broadway  
Elmhurst, NY 11373

No response.

**Facility:** Forest Hills Hospital  
102-01 66<sup>th</sup> Road  
Forest Hills, NY 11375

No response.

**Facility:** New York Hospital Medical Center of Queens  
56-45 Main Street  
Flushing, NY 11355

No response.

**Facility:** Jamaica Hospital Medical Center  
89th Avenue and Van Wyck Expressway  
New Hyde Park, NY 11418

No response.

**Facility:** Queens Hospital Center  
82-68 164<sup>th</sup> Street  
Jamaica, NY 11432

No response.

### Supplemental Information from Applicant

- Need and Sources of Cases

The applicant states that the majority of its projected cases will come from two sources: the recapture of cases that outmigrated outside of Queens County due to the closures of St. John's Queens Hospital and Mary Immaculate Hospital, as well as the closures of Parkway Hospital and St. Joseph's Hospital; and from procedures currently

performed by the participating physicians in office-based settings. The remainder will come from the facility's affiliation with Well Care, a managed care organization that provides services exclusively for government-sponsored health care programs, with a strong focus on Medicaid and Medicare. The applicant also anticipates that projected high growth rates of the borough's total population, including significant growth of its 45 year-old and older population, will help the facility achieve and sustain its projected volume of cases.

- Staff Recruitment and Retention

The applicant states that staff will be recruited from private physician practices as well as accredited schools and training programs. A small and close-knit working environment with focused hours of operation and offering competitive salaries, benefits and continuing education will help ensure staff retention.

- Office-Based Cases

The applicant reports that 40 percent of the 6,940 procedures to be performed at the facility annually are currently performed in office-based settings.

## 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 6th day of October, 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 at 90-02 Queens Boulevard, this site was the former home of St. John's Queens Hospital, 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:

101158-B

FACILITY/APPLICANT:

EMK ASC, LLC d/b/a New York Ambulatory  
Surgery, 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 of Health to provide annual reports to the Department 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 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, between New York Ambulatory Surgery, LLC and a local acute care hospital. [HSP]
6. Submission of a photocopy of a fully executed and dated proposed lease between the applicant, as Tenant, and 89-52 Queens, LLC, as Landlord, which must be acceptable to the Department. [BFA, CSL]
7. Submission of a photocopy of the applicant's fully executed and dated Amended and Restated Articles of Organization, which must be acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's fully executed and dated Amended and Restated Operating Agreement, which must be acceptable to the Department. [CSL]
9. Submission of fully executed and dated subscription agreements and/or contribution agreements, if any, between the applicant and each of its members, which must be acceptable to the Department. [CSL]
10. Submission of photocopies of any and all fully executed and dated documents related to the loan between LFG America and DJL Ventures, LLC, including, but not limited to, a loan agreement, promissory note, option agreement(s), convertible debenture(s), and security agreement(s), which must be acceptable to the Department. [CSL, BFA]

11. Submission of photocopies of any and all fully executed and dated documents related to the loan between DJL Ventures, LLC and the applicant, including, but not limited to, a loan agreement, promissory note, option agreement(s), convertible debenture(s), and security agreement(s), which must be acceptable to the Department. [CSL, 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]
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 # 111409-B

## Flushing GI, LLC

**County:** Queens (Flushing)

**Program:** Ambulatory Surgery Center

**Purpose:** Establishment and Construction

**Submitted:** May 6, 2011

### Executive Summary

#### Description

Flushing GI, LLC requests approval to establish and construct a single-specialty freestanding ambulatory surgery center providing gastroenterological (colonoscopy and endoscopy) procedures. Upon approval, an amendment to the articles of organization will be filed for Flushing GI, LLC to change its name and operate as Flushing Endoscopy Center, LLC. The facility will be located at 37-02 Main Street, Flushing, and will be a consolidation of the ambulatory surgery component of private practices that are now being performed in an office-based setting.

The ownership of Flushing GI, LLC is as follows:

King-Chen Hon, MD.	9.00%
Alan Yao, MD.	12.00%
Michael Li, MD.	34.00%
Jackson Kuan, MD.	9.00%
Sing Chan, MD.	21.00%
Che-Nan Chuang, MD.	10.00%
Frontier Healthcare Associates, LLC	5.00%

The applicant will enter into an administrative services agreement with Frontier Healthcare Management Services, LLC. Frontier Healthcare Associates will be owned equally by Jordan Fowler and Oleg Gutnik, MD. Flushing GI, LLC (Center) will enter into a transfer and affiliation agreement with New York Hospital Queens.

No opposition was received to the Department's inquiry to local hospitals regarding the impact of the proposed ASC in the service area. A letter was received from Queens Hospital Center, specifically stating it would not oppose this application due to need in the proposed service area.

Total project costs are estimated at \$3,736,981.

#### DOH Recommendation

Contingent approval for a 5-year limited life.

#### Need Summary

The Center projects 18,360 visits in year one and 20,400 in year three. All of the procedures to be done at the Center are presently performed in the participating physicians' offices and can be better provided in a structured ambulatory surgery center (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.

#### Program Summary

Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

#### Financial Summary

Project costs will be met with equity of \$370,699 and a bank loan of \$3,366,282 (5 yrs. @ 4.95%).

Budget:	Revenues:	\$ 9,186,299
	Expenses:	<u>5,074,627</u>
	Gain/(Loss):	\$ 4,111,672

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 is requesting approval to construct a new diagnostic and treatment center as a single specialty freestanding ambulatory surgery center for the provision of endoscopy procedures. The proposed space is located on the fourth floor of an existing four-story commercial office building in Queens, NY. The floor area to be renovated is approximately 11,000 sf. The program will have (6) endoscopic procedure rooms, along with a pre-op and recovery area with (12) recovery bays.



## 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 needed 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 it is concluded that proceeding with the proposal is acceptable. [RNR]
5. Submission of an executed lease rental agreement that is acceptable to the Department. [BFA, CSL]
6. Submission of a bank loan that is acceptable to the Department. [BFA]
7. Submission of a working capital loan that is acceptable to the Department. [BFA]
8. Submission of a photocopy of the executed Articles of Organization and the Operating Agreement for Flushing Endoscopy Center, LLC, that are acceptable to the Department. [CSL]
9. Submission of a photocopy of the executed Articles of Organization and Operating Agreement for Frontier Healthcare Associates, LLC, that are acceptable to the Department. [CSL]
10. Submission of a photocopy of the executed administrative services contract, that is acceptable to the Department. [BFA, 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 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]
7. The applicant shall complete construction by June 30, 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

**October 6, 2011.**

## Need Analysis

### Background

The projected number of visits to be performed at the proposed facility is 18,360 visits in year one and 20,400 in year three.

All of the procedures to be done at the center are presently performed in the participating physicians' offices and can be better provided in a structured ambulatory surgery center (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.

Flushing Endoscopy Center will operate five days per week from 8:00 a.m. to 6:00 p.m and will have six endoscopic procedure rooms. The Center will enter into a transfer and affiliation agreement with New York Hospital Queens for provision of backup services.

Flushing Endoscopy Center 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.

### Analysis

The service area includes zip codes 11354, 11355, 11368, 11367, 11358, and 11357 in Queens County.

The total population of the primary service area is 352,805. Approximately 27 percent, 96,341, of the population are Medicaid recipients. Of these Medicaid recipients, 58 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 4.71 primary care visits per person per year compared with the statewide average of 5.77 visits per year.

<b>Zip Code</b>	<b>Total Medicaid Recipients</b>	<b>HMO Enrollment</b>	<b>MA Fee for Service Recipients</b>	<b>Annual Primary Care Visits</b>	<b>Primary Care Use per eligible Year</b>
11354	14,233	6,531	7,702	40,024	5.20
11355	25,910	13,830	12,080	47,884	3.96
11357	3,637	1,527	2,110	9,300	4.41
11358	5,193	2,877	2,316	7,814	3.37
11367	9,568	5,715	3,853	19,578	5.08
11368	37,800	25,585	12,215	65,238	5.34
Total	96,341	56,065	40,276	189,838	4.71
Statewide					5.77

Medicaid Recipients as % of Serv Area Pop.	27.3%
HMO Enroll as % of Total Medicaid recipients	58.2%
MA Fee for Serv as % of Total Medicaid recipients	41.8%

SOURCE: Medicaid Data 2008

In Queens, the 2008 rate of colon cancer screening is 44 percent. According to the New York City Department of Health and Mental Hygiene, the Take Care NY (TCNY) target is 60 percent, indicating a need for more services to increase accessibility in an Article 28 setting.

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
Hospital-Based		4
		10
Total	2	14

Source: HFIS

An overview of the gastroenterology ambulatory procedures in Queens County for 2008 and 2009 is given below. It was an increase of 2.9 percent in these procedures between 2008 and 2009.

<b>Ambulatory Surgery Queens County</b>		
<b>Clinical Classification (CCS) Diagnosis Category</b>	<b>2008 Patients</b>	<b>2009 Patients</b>
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’s physician’s office-based practices and on the number of procedures projected for the proposed ASC, this facility will contribute to meeting the need in the service area for gastroenterological services in an Article 28 setting. Increased colon cancer screening is needed in the region. Contingent approval is recommended for a limited life of five years from the date of issuance of an operating certificate.

**Recommendation**

**From a need perspective, approval is recommended for a limited life of five years from the date of issuance of an operating certificate.**

**Programmatic Analysis**

**Background**

Establish a diagnostic and treatment center that will also be federally certified as an ambulatory surgery center.

<b>Proposed Operator</b>	<b>Flushing GI</b> (Upon approval will change its name to Flushing Endoscopy Center, LLC)
Operator Type	LLC

Site Address	37-02 Main Street, Flushing
Surgical Specialties	Gastroenterology
Operating Rooms	0
Procedure Rooms	6
Hours of Operation	Monday through Friday from 8:00 am to 6:00 pm (Extended as necessary to accommodate patient needs).
Staffing (1 <sup>st</sup> Year / 3 <sup>rd</sup> Year)	27.0 FTEs / 27.0 FTEs
Medical Director(s)	Michael Li
Emergency, In-Patient and Backup Support Services Agreement	Will be provided by New York Hospital Medical Center of Queens
Distance	1 mile and 2 minutes travel time
On-call service	Access to the facility's on-call physician during hours when the facility is closed.

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.

#### 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 members of the LLC are:

<b>Name</b>	<b>Percentage Ownership</b>
King-Chen Hon, MD	9%
Alan C. Yao, MD	12%
Michael Li, MD	34%
Jackson Kuan, MD	9%
Sing Chan, MD	21%
Che-Nan Chuang, MD	10%
Frontier Healthcare Associates, LLC	5%
Jordan Fowler (50%)	
Oleg Gutnik, MD (50%)	

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 members 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

Based on the information reviewed, staff found 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

#### Lease Rental Agreement

The applicant has submitted a draft lease arrangement for the site that they will occupy, which is summarized below:

*Premises:* 12,500 square feet located at 37-02 Main Street, Flushing, New York  
*Lessor:* Mehran Realty Corp.  
*Lessee:* Flushing GI, LLC  
*Term:* 15 years  
*Rental:* Year 1- \$250,000 (\$20.00 per sq. ft.)  
Year 2- \$275,000 (\$22.00 per sq. ft.)  
Year 3- \$300,000 (\$24.00 per sq. ft.)  
Year 4- \$375,000 (\$30.00 per sq. ft.)  
The rental will increase 4% per year thereafter beginning in Year 5.  
*Provisions:* The lessee shall be responsible for utilities and 25% of real estate taxes and insurance over the base year 2010/2011.

The applicant has indicated via an affidavit that the lease arrangement will be an arm's length lease arrangement. The applicant has submitted letters from licensed real estate brokers attesting to the reasonableness of the rental.

#### Administrative Services Agreement

The applicant has submitted a draft administrative services agreement, which is summarized below:

*Facility:* Flushing Endoscopy Center, LLC  
*Contractor:* Frontier Healthcare Management Services, LLC  
*Services Provided:* The Contractor shall advise the Company regarding requisitions for supplies and materials; the Contractor shall exercise diligence in assisting the Company in keeping costs of the Center to a minimum; the Contractor shall participate in the preparation of operation and capital budgets for the Center; the Contractor shall notify the President of all announced or unannounced surveys and inspections of the Center; the Contractor shall notify the President of all announced or unannounced visits or phone calls to the Center by the media or community groups and the Contractor agrees to cooperate with the Company and to provide reasonable assistance to the company so that the Company will be able to meet the requirements for participation and payment associated with such third party payment programs.  
*Term:* 1 year and may be renewed under like contract provisions for additional three year terms.

*Compensation:* \$150,000 annually for management services with a 3% increase each year. Also, the Contractor shall be paid \$20 per claim billed, which shall include, among other things, all software and revenue cycle process expenses for billing.

**Total Project Cost and Financing**

Total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$3,736,981, further broken down as follows:

Renovation and Demolition	\$2,137,500
Design Contingency	213,750
Construction Contingency	213,750
Architect/Engineering Fees	179,500
Other Fees (Consultant)	215,000
Moveable Equipment	755,051
CON Fee	2,000
Additional Processing Fee	<u>20,430</u>
Total Project Cost	\$3,736,981

Project costs are based on a January 1, 2012 construction start date and a six month construction period.

The applicant's financing plan appears as follows:

Equity	\$370,699
Bank Loan (4.95% interest rate for a 5 year term)	3,366,282

**Operating Budget**

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

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$8,267,669	\$9,186,299
Expenses:		
Operating	\$3,945,113	\$4,203,379
Capital	<u>890,435</u>	<u>871,248</u>
Total Expenses	\$4,835,548	\$5,074,627
Net Income	\$3,432,121	\$4,111,672
Utilization: (Procedures)	18,360	20,400
Cost Per Procedure	\$263.37	\$248.76

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	1.39%	1.40%
Medicaid Managed Care	14.49%	14.50%
Medicare Fee-For-Service	19.79%	19.79%
Medicare Managed Care	1.39%	1.40%
Commercial Managed Care	60.20%	60.20%
Private Pay	.20%	.20%
Charity Care	2.54%	2.51%

Expense and utilization assumptions are based on the historical experience of the private practices. Presented as BFA Attachment C, is a summary of the detailed budget.

Capability and Feasibility

The applicant will finance \$3,366,282 at an interest rate of 4.95% for a five year term. The remainder, \$370,699, will be met via equity from the proposed members' personal resources. An appropriate letter of interest has been provided.

Working capital requirements are estimated at \$845,772, which appears reasonable based on two months of third year expenses. The applicant will finance \$350,000 at an interest rate of 4.50% for a five year term, of which a letter of interest has been provided.

The remainder, \$495,772, will be provided by the proposed members of Flushing Endoscopy Center, LLC. Presented as BFA Attachment A, is the personal net worth statement of the proposed members of Flushing Endoscopy Center, LLC, which indicates the availability of sufficient funds to meet the equity contributions. Presented as BFA Attachment B, is the pro-forma balance sheet of Flushing GI, LLC as of the first day of operation, which indicates a positive members' equity position of \$866,471.

The submitted budget projects a net income of \$3,432,121 and \$4,111,672 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for ambulatory surgery services.

Recommendation

**From a financial perspective, contingent approval is recommended.**

**Architectural Analysis**

Background

The project will consist of new interior construction of approximately 11,000 sf on the fourth floor and will include (6) endoscopic procedure rooms, a patient pre-consultation and recovery area with (12) recovery bays. An exam room and patient change areas are provided in the pre-consultation area with centrally located nurse station for visual observance of patients in recovery. A waiting area and reception with offices for admittance of patients is provided with ADA accessible restrooms. Ancillary facilities including staff lounge with lockers, clean and soiled work rooms, and rooms for processing and sterilization of endoscopes are also 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	Personal Net Worth Statement of Proposed Members of Flushing Endoscopy Center, LLC
BFA Attachment B	Pro-forma Balance Sheet of Flushing Endoscopy Center, LLC
BFA Attachment C	Summary of Detailed Budget

## 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 66<sup>th</sup> Road  
                    Forest Hills, New York 11375

No response.

**Facility:**      New York Hospital Medical Center of Queens  
                    56-45 Main Street  
                    Flushing, New York 11355

No response.

**Facility:**      Queens Hospital Center  
                    82-68 164<sup>th</sup> Street  
                    Jamaica, New York 11432

Queens Hospital Center (QHC) responded to the Department's inquiry with a letter stating that because of the hospital's current levels and capacity for performing ambulatory surgery, the projected population growth for the borough, the need to reduce avoidable preventable hospitalizations and maintain and expand outpatient services to the residents of Queens, QHC did not oppose the proposed establishment of Flushing Endoscopy Center, LLC.

**Facility:**      Flushing Hospital Medical Center  
                    45<sup>th</sup> Avenue and Parsons Boulevard  
                    Flushing, New York 11355

No response.

### Supplemental Information from Applicant

- Need and Sources of Cases

The projected volume of cases is based on the current volume of procedures being performed in the office-based practices of the three applicant physicians. 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

Some staff will be recruited from the existing private practices of the applicant physicians. Additional staff recruitment will be directed at the general marketplace. 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 any comments in opposition to this application 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 6th day of October, 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 providing gastroenterological procedures, 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:

111409-B

FACILITY/APPLICANT:

Flushing 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 needed 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 it is concluded that proceeding with the proposal is acceptable. [RNR]
5. Submission of an executed lease rental agreement that is acceptable to the Department. [BFA, CSL]
6. Submission of a bank loan that is acceptable to the Department. [BFA]
7. Submission of a working capital loan that is acceptable to the Department. [BFA]
8. Submission of a photocopy of the executed Articles of Organization and the Operating Agreement for Flushing Endoscopy Center, LLC, that are acceptable to the Department. [CSL]
9. Submission of a photocopy of the executed Articles of Organization and Operating Agreement for Frontier Healthcare Associates, LLC, that are acceptable to the Department. [CSL]
10. Submission of a photocopy of the executed administrative services contract, that is acceptable to the Department. [BFA, 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 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]
7. The applicant shall complete construction by June 30, 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 # 111218-B**  
**Jericho Road Ministries, Inc.**  
**d/b/a Jericho Road Community Health Center**

**County: Erie (Buffalo)**

**Program: Diagnostic and Treatment Center**

**Purpose: Establishment and Construction**

**Submitted: February 15, 2011**

## Executive Summary

### Description

Jericho Road Ministries, Inc., d/b/a Jericho Road Community Health Center (JRCHC), an existing not-for-profit corporation, requests approval to establish and construct an Article 28 diagnostic and treatment center (D&TC) with an extension clinic. The D&TC will occupy the 1<sup>st</sup> and 2<sup>nd</sup> floors of an existing building located at 184 Barton Street, (west side of Buffalo). The proposed extension clinic will be located on the 1<sup>st</sup> floor of a leased building located at 1609 Genesee Street (east side of Buffalo).

The to-be-converted private medical practice, Jericho Road Family Practice, PLLC, (JRFP), has been providing primary medical care to the culturally and linguistically isolated populations (primarily poor and refugee families) since 1997. To help eliminate the language barrier between many of its patients, JRFP employs translators and interpreters as part of its care team.

To implement this project, Jericho Road Ministries, Inc. will purchase certain assets and liabilities of JRFP, which is solely-owned by Myron Glick, MD, a physician who started JRFP in 1997. JRFP has recently received the designation as a Level III Patient-Centered Medical Home from the National Committee for Quality Assurance, which is the highest level attainable.

Total project costs are estimated at \$990,606.

DOH Recommendation  
Contingent approval.

### Need Summary

The main site area and the extension site area are designated as a Health Professional Shortage Area (HPSA) for primary care, mental health care, and dental care services. The applicant intends to seek federal status as a Federally Qualified Health Center.

The prevention quality indicators for many of the conditions for the communities of these two sites, are very poor when compared with those of the State. The fee-for-service Medicaid patients at the main site had 4.9 primary care visits per person/year; the fee-for-service Medicaid patients at the extension clinic site had 4.16 primary care visits per person/year. The statewide average was 5.77 visits/ year.

### Program Summary

Based on the information reviewed, staff found 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 with \$490,606 in equity and \$500,000 from an M&T bank loan (5 yrs. @ 5.5%). The equity contribution is further broken down as follows: \$95,000 grant and \$395,606 board member contribution.

Budget:	<i>Revenues:</i>	\$ 4,542,183
	<i>Expenses:</i>	<u>4,483,033</u>
	<i>Gain/(Loss):</i>	\$ 59,150

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

### Architectural Summary

This proposal includes the provision of two ambulatory care facilities, with space renovations to occur at two locations. The Barton Street facility (main site) is the larger of the two and is comprised of 12,943 SF, has 12 exam/patient rooms, and provides for outpatient services in a two story, multi-occupancy building. The Genesee Street facility (extension clinic) is located in a 2,012 SF, one-story, multi-occupancy building, and includes 4 exam rooms for primary care outpatient services.

## 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 the marketing and advertising plan to the Department detailing information on the community outreach programs. [RNR]
3. Submission of a plan to significantly increase the level of services to Medicaid and uninsured patients in the two proposed site areas. [RNR]
4. Submission of quarterly and annual reports to the DOH beginning in the second year of operation. The information in these reports must include, but not necessarily be limited to the following:
  - i. The number and type of clinical visits by Zip code of patient residence to assist the Department in determining whether services are being provided predominantly to residents of the service area.
  - ii. The number and type of clinical visits by payor to assist the Department in determining the payor mix of the area. [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 asset transfer agreement acceptable to the Department. [BFA]
9. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]

#### **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). Construction drawings shall indicate all exam rooms to be provided with space clearances and areas equal to or exceeding required minimums. Required paths of egress shall be provided and noted, and required fire separations shall be provided, including occupancy separation. Occupancy boundaries shall be indicated, and spaces to be shared will be limited to common egress corridors and existing men's and women's room. Off-street parking required for the clinic shall be identified and use-restricted as necessary. Elevator access shall be provided with direct access to public waiting areas on each level. A dedicated patient toilet shall be convenient to all exam rooms. [AER]
3. The applicant shall complete construction by August 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

**October 6, 2011.**

# Need Analysis

## Background

Jericho Road Ministries, Inc. (JRM), an existing New York State not-for-profit corporation, proposes the establishment and construction of a diagnostic and treatment center (D/TC) and an extension clinic to the proposed D/TC in Buffalo, New York as follows:

- a) Main Site: The proposed D/TC will be located on the 1<sup>st</sup> and 2<sup>nd</sup> floors of the building at 184 Barton Street, Buffalo in Erie County, New York 14213, on the west side of Buffalo.
- b) Extension Clinic Site: The certification of an extension clinic to the proposed D/TC to be located on the 1<sup>st</sup> floor of a building at 1609 Genesee Street, Buffalo in Erie County, New York 14211, on the east side of Buffalo.

The D/TC will do business as Jericho Road Community Health Center. If the proposed project is approved, it is the intent of JRM to apply for Federally Qualified Health Center (FQHC) designation.

The primary service area for the Main Site includes zip codes 14213 and 14201.

The primary service area for the Extension Clinic Site includes zip codes 14211 and 14212.

The applicant reports that these zip codes represent the area on which the D/TC sites are expected to have the most impact, and the geographic area primarily served by the existing private practice.

The D/TC will have transfer and affiliation agreements with both Erie County Medical Center (ECMC) and Kaleida Health (Kaleida). Kaleida operates five hospitals in the region.

## Analysis

The two sites included as part of this project are currently operated through the private practice of medicine by Jericho Road Family Practice, P.L.L.C. (JRFP), an entity that is well-known as a safety net provider in the region, per the applicant.

The applicant reports that the existing private practice is operating at capacity and that it currently turns away approximately 100 patients per week, or 5,200 patients per year, because of the lack of capacity.

The applicant proposes to provide the following services at the main site at 184 Barton Street, Buffalo, NY 14213 (west side) and 1609 Genesee Street, Buffalo, NY 14211 (east side):

<b><u>Proposed Services</u></b>		
	<u>Main Site</u>	<u>Extension Clinic</u>
1 Family Planning O/P	Yes	Yes
2 Health Fairs O/P	Yes	Yes
3 Medical Social Services O/P	Yes	Yes
4 Nutritional O/P	Yes	Yes
5 Pediatrics O/P	Yes	Yes
6 Prenatal O/P	Yes	Yes
7 Primary Medical Care O/P	Yes	Yes
8 Psychology O/P	Yes	Yes
9 Well-Child	Yes	Yes

<b><u>Projected Utilization in Visits - Main Site</u></b>			
	<u>Current</u>	<u>1st Full Yr</u>	<u>3rd Full Yr</u>
Primary Medical Care O/P		21,050	26,300
Prenatal O/P		1,100	1,500
Pediatrics O/P		7,300	10,000
Well-Child		3,000	4,000

Psychology O/P		2,400	3,500
Nutritional O/P		2,800	3,800
Medical Social Services O/P		2,650	3,600
Family Planning O/P		1,400	1,800
Health Fairs O/P		800	2,000
Total		42,500	56,500

<b><i>Projected Utilization in Visits - Extension Clinic</i></b>			
	<i>Current</i>	<i>1st Full Yr</i>	<i>3rd Full Yr</i>
Primary Medical Care O/P		2,450	2,900
Prenatal O/P		100	200
Pediatrics O/P		1,200	1,500
Well-Child		750	950
Psychology O/P		50	150
Nutritional O/P		50	200
Medical Social Services O/P		50	200
Family Planning O/P		250	400
Health Fairs O/P		100	200
Total		5,000	6,700

Additionally, JRFP employs translators and interpreters as part of its care team.

**Available Resources**

The primary service area for the main site has one hospital extension clinic, one School Based Hospital Extension Clinic, and two D/TCs.

The primary service area for the Extension Clinic site has two Hospital Extension Clinics, one D/TC. one D/TC-Extension Clinic, and three School Based Hospital Extension Clinics.

**Population and Prevention Quality Indicators (PQIs)**

**Main Site: Zip Codes: 14201 and 14213**

The population of the service area of the main site is 39,689. Approximately 44 percent, 17,263, of the population are Medicaid recipients. Sixty-six percent are enrolled in HMOs and the remaining 34 percent are enrolled in the fee-for-service Medicaid plan.

The fee-for-service Medicaid patients had 4.9 primary care visits per person per year vs. the statewide average of 5.77 visits per year.

**Extension Clinic Site: Zip Codes: 14211 and 14212**

The population of the service area of the extension clinic site is 44,954. Approximately 37 percent, 16,618, of the population are Medicaid recipients. Sixty-nine percent are enrolled in HMOs and the remaining 31 percent are enrolled in the fee-for-service Medicaid plan.

The fee-for-service Medicaid patients had 4.16 primary care visits per person per year vs. the statewide average of 5.77 visits per year.

Prevention Quality Indicators are a set of measures used with hospital inpatient discharges data to identify ambulatory care sensitive conditions (ACSC). ACSCs are conditions for which hospitalization could potentially be prevented with better outpatient care, or for which early intervention can prevent complications.

PQIs are expressed as annual discharges per 100,000 persons (unless otherwise specified\*).



**Main Site**

The rates for ACSCs are very high for all conditions except for those of hypertension and angina without procedure. These data are presented in the table below.

<u>PQI:</u> <u>Main Site</u>	<u>PQI Description</u>	<u>Adjusted Rate (AR)</u>	<u>Statewide Rate (SR)</u>	<u>% Difference between AR and SR</u>
1	Diabetes short-term complication	71.29	37.24	91.43%
2	Perforated appendix (Percentage of appendix discharges)	38.90	27.00	44.07%
3	Diabetes long-term complication	193.06	105.85	82.39%
4	Pediatric asthma	84.46	72.59	16.35%
5	Chronic obstructive pulmonary disease	253.80	156.96	61.70%
6	Pediatric gastroenteritis	54.89	31.25	75.65%
7	Hypertension	26.05	40.21	-35.22%
8	Congestive heart failure	441.18	334.36	31.95%
9	Low birth weight (Percentage of Births)	10.46	5.75	81.91%
10	Dehydration	163.80	131.81	24.27%
11	Bacterial pneumonia	415.37	332.18	25.04%
12	Urinary tract infection	169.85	139.25	21.97%
13	Angina without procedure	28.50	49.25	-42.13%
14	Uncontrolled diabetes	42.08	29.95	40.50%
15	Adult asthma	191.05	126.00	51.63%
16	Lower-extremity amputation among patients with diabetes	69.50	30.14	130.59%

Source: NYSDOH Medicaid Data, 2008

**Extension Clinic Site**

The rates for ACSCs are very high for all conditions except for those of Perforated appendix, Pediatric asthma, Dehydration, Bacterial pneumonia, and Urinary tract infection. These data are presented in the table below.

<u>PQI:</u> <u>Extension Clinic Site</u>	<u>PQI Description</u>	<u>Adjusted Rate (AR)</u>	<u>Statewide Rate (SR)</u>	<u>% Difference between AR and SR</u>
1	Diabetes short-term complication	108.21	37.24	190.57%
2	Perforated appendix (Percentage of appendix discharges)	18.35	27.00	-32.04%
3	Diabetes long-term complication	177.88	105.85	68.05%
4	Pediatric asthma	70.37	72.59	-3.06%
5	Chronic obstructive pulmonary disease	192.09	156.96	22.38%
6	Pediatric gastroenteritis	33.52	31.25	7.26%
7	Hypertension	43.24	40.21	7.54%
8	Congestive heart failure	620.75	334.36	85.65%
9	Low birth weight (Percentage of Births)	10.75	5.75	86.96%
10	Dehydration	85.00	131.81	-35.51%
11	Bacterial pneumonia	295.18	332.18	-11.14%
12	Urinary tract infection	132.93	139.25	-4.54%
13	Angina without procedure	49.13	49.25	-0.24%
14	Uncontrolled diabetes	44.27	29.95	47.81%
15	Adult asthma	186.77	126.00	48.23%
16	Lower-extremity amputation among patients with diabetes	50.15	30.14	66.39%

Source: NYSDOH Medicaid Data, 2008

Conclusion

The applicant reports that the vital statistics for Erie County are greatly influenced by the inner city health status within the Buffalo HPSA in which the two sites are located. Based on the NYSDOH Medicaid data, the rates for the PQIs for many conditions for both the sites are poor.

The existing private practice is operating at capacity; the practice currently turns away approximately 100 patients per week due to this lack of capacity. The proposed conversion of the practice to the requested D&TC and associated extension site will expand access to needed care in this underserved area.

Recommendation

**From a need perspective, approval is recommended.**

**Programmatic Analysis**

Background

Both locations currently operate as a the private medical practice of Jericho Road Family Practice, PLLC which treats predominantly poor residents as evidenced by an 80% Medicaid/charity care case load. The applicant believes the conversion to an Article 28 diagnostic and treatment center will allow for the expansion of services and programs. The center will utilize additional space at the main site to accommodate requested services as well as expand hours at both locations. The facility is requesting to provide a numerous services including primary medical care, pediatrics, family planning, health fairs, medical social services, nutritional, prenatal, psychology and well-child. By the third year of operation the Center will be in operation weekdays, weekends and evenings to accommodate patient needs.

Staffing will consist of 45 FTEs including physicians, nurse practitioners, physicians' assistance, registered nurses, social workers and psychologies, and technicians, under the supervision of the Center's medical director, Myron L. Glick. Staffing is expected to increase to 61.63 FTEs by the third year of operation. The staffing numbers include 4.5 and 5.63 interpreters for the first and third year of operation, respectively.

Emergency, in-patient and back-up support services are anticipated to be provided by both Erie County Medical Center which is 5.6 miles and 13 minutes travel time from the Center and Kaleida Health – Millard Fillmore Hospital which is 1.5 miles and six 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.

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 Board of Directors is as follows:

<u>Name</u>	<u>Office Held</u>
John Lee	Chairman
Russel Bell	Vice-Chairman
Mark Herskind	Treasurer
Jill Meyer	Secretary
Lynn Grucza	Member

David Holmes, M.D.	Member
Rev. Geri Lyon	Member
Claity Massey	Member
Han Moe	Member
Mark Roberson	Member
Connie Jozwiak Shields	Member
Richard Vienne, Jr., D.O.	Member
Anita Simons	Member
Gary Violanti	Member
Richard Worling	Member
Wayne MacBeth	Member

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

Upon CON approval, Dr. Glick will become the Medical Director of Jericho Road Community Health Center (JRCHC), where the proposed D&TC will service Buffalo's underserved residents by providing the following services:

Primary Medical Care O/P	Prenatal O/P	Pediatrics O/P
Family Planning O/P	Well-Child Care	Health Fairs O/P
Medical Social Services O/P	Nutritional O/P	Psychology O/P

Upon approval of the proposed D&TC, JRCHC will implement the "Patient-Centered Medical Home model of care for its patients, and apply for Federally Qualified Health Center (FQHC) designation.

#### Asset Transfer Agreement

Jericho Road Ministries, Inc. d/b/a Jericho Road Community Health Center (JRCHC) has entered into a Letter of Intent with Jericho Road Family Practice, P.L.L.C. to acquire their assets and liabilities.

<i>Date:</i>	May 1, 2011
<i>Seller:</i>	Jericho Road Family Practice, P.L.L.C.
<i>Purchaser:</i>	Jericho Road Ministries, Inc., d/b/a Jericho Road Community Health Center

*Purchased Assets:* Medical & Examination equipment, Office equipment, Computers and Peripheral equipment, Phone systems, and Business assets

*Estimated Purchase Price:* \$500,000 (final purchase price will be based upon a full, independent appraisal of the private practice - to be completed in the future)

*Payment Terms:* \$100,000 at closing & (\$50,000 per year for 8-years)

The applicant's acquisition financing plan appears as follows:

*Equity:* \$100,000 – to be provided by Mr. Mark R. Herskind, Board Member

*Equity:* \$50,000 per year for 8-years from the Centers' on going operations

#### Lease Rental Agreement

The applicant has submitted a letter of interest to lease the proposed extension clinic site, the terms are summarized below:

*Premises:* 2012 gross square feet located at 1609 Genesee Street, Buffalo, New York

*Landlord:* Evangelical Lutheran Church of the Resurrection

*Lessee:* Jericho Road Ministries, Inc., d/b/a Jericho Road Community Health Center

*Term:* 10 years at \$7,200 per year (\$3.58 per sq. ft)

*Provisions:* Applicant pays for insurance

The applicant has provided an affidavit stating the lease is an arms-length arrangement. The applicant has also provided realtor letters attesting to the rental rate as being of fair market value.

#### Total Project Cost and Financing

Total project costs for renovation are estimated at \$990,606, broken down as follows:

Renovation & Demolition	\$547,951
Design Contingency	124,795
Construction Contingency	124,795
Architect/Engineering Fees	125,508
Other Fees	40,983
Financing Costs	5,000
Interim Interest Expense	14,166
CON Application Fee	2,000
CON Processing Fee	<u>5,408</u>
Total Project Cost	\$990,606

Project costs are based on a January 1, 2012 start date with a six-month construction period.

The applicant's financing plan appears as follows:

Cash Equity (Foundation grant)	\$95,000
Cash Equity – Mark Herskind (Board Member)	395,606
Bank Loan (5.50%, 5-year term)	<u>500,000</u>
Total	\$990,606

Jericho Road Ministries, Inc. has received a grant award in the amount of \$135,000 from the John R Oishei Foundation, of which \$95,000 is for this project.

Mark Herskind, a Board Member and Treasurer of Jericho Road Ministries, Inc., has provided a letter of interest to gift, as needed, up to \$395,606 for the project's equity. M&T Bank has provided a letter of interest for the capital financing.

#### 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	\$3,486,325	\$4,542,183
Expenses:		
Operating	\$3,271,070	\$4,329,542
Capital	<u>170,353</u>	<u>153,491</u>
Total Expenses	\$3,441,423	\$4,483,033
 Net Income or (Loss)	 \$44,902	 \$59,150
 Utilization: (procedures)	 43,750	 57,000
Cost Per Procedure	\$78.66	\$78.65

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

Medicaid Fee-For-Service	21.0%
Medicaid Managed Care	51.0%
Medicare Fee-For-Service	3.0%
Medicare Manage Care	1.0%
Commercial Fee-For-Service	2.0%
Commercial Manage Care	15.0%
Private Pay	5.0%
All Other	1.0%
Charity	1.0%

The number and mix of staff, as well as projected operating expenses, were determined based on the experience of the existing private practice, adjusted for additional volume.

Utilization assumptions are based on the existing private practice visits, plus being able to service the approximately 100 new patients JRFP currently turns away each week because of the facility's lack of current capacity, plus the expanded proposed programs.

If the facility is approved as a Federally Qualified Health Center (FQHC), it is expected that the enhanced FQHC reimbursement rates will enable the proposed D&TC to be more profitable than the above budgets currently show.

#### Capability and Feasibility

The total project cost of \$990,606 will be satisfied from an equity contribution of \$490,606 and a \$500,000 loan from the M&T bank at the above stated terms. The equity contribution is further broken down as follows: a grant of \$135,000 from the John R. Oishei Foundation, which \$95,000 will be used for this project, and a \$395,606 gift from Mark Herskind, a board member and Treasurer of Jericho Road Ministries, Inc. Presented as BFA Attachment C, is Mr. Mark Herskind's personal net worth statement, which shows sufficient resources to meet the equity contribution.

Working capital requirements are estimated at \$747,172, which appears reasonable based on two months of third year expenses. Mr. Mark Herskind, a Board Member and Treasurer of Jericho Road Ministries, Inc., has provided a letter of interest to gift, as needed, working capital up to \$373,586. The balance of \$373,586 in required working capital will be provided by M&T Bank, the terms include repayment over 5 years with an estimated fixed rate of interest at 5.25%.

Review of BFA Attachment C indicates that Mr. Mark Herskind has adequate liquid resources to provide the gift to be used for working capital. Presented as BFA Attachment D is Jericho Road Community Health Center pro-forma balance sheet which shows operations will start off with \$1,614,331 in positive equity.

Jericho Road Community Health Center projects an operating excess of \$44,902 and \$59,150 in the first and third years, respectively. Operating revenues by payer are based on anticipated utilization and standard reimbursement rates of similar entities, adjusted for the Center's collection rate.

Presented as BFA Attachment A and B is Jericho Road Ministries, Inc., d/b/a Jericho Road Community Health Center (JRCHC) June 30, 2010 and May 18, 2011 financial statements. The applicant noted that the ending date on the internal profit & loss statement is actually May 18, 2011, and not June 2011. Review of Attachment A and B shows JRCHC is a not-for-profit faith based, social services agency that relies heavily on grants and contributions. During the fiscal year ending June 30, 2010, revenues from grants and contributions were approximately 87% and for the ten and a half months ending May 18, 2011, they were about 90% of total revenues, respectively. The applicant states that despite the variation in grant revenues and contributions, they try to continue the faith-based program at a consistent level. For the July 1, 2010 through May 18, 2011, JRCHC initiated improved procedures to control expenses and increase revenues, which resulted in an operating profit of \$117,130 over the ten and half months ending May 18, 2011.

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

This project entails renovations for two facilities at separate sites. One is a 2,012 SF extension clinic for primary care, the second is the sponsoring D&TC site at 12,943 SF.

- Genesee Street Site

The 2,012 SF freestanding extension clinic is located on the above-grade level in a two-story building occupied also by a private practice located on the lower level. Each level is served by an existing short-run elevator with grade level in-between. Modest reconfiguration of the existing space is required, including the addition of a toilet and soiled holding closet. The proposed clinic includes 4 exam rooms, waiting/reception area with an accessible public toilet, separate patient toilet, a single administrative office, and a housekeeping closet. Services are limited to primary medical care and include family planning, health fairs, medical social services, nutrition, pediatrics, prenatal, psychology (assessment, referral, and medication management,) and well child. A partition separating clinical and public areas affords patient privacy.

- Barton Street Site

The 12,943 SF main clinic share will share a 20,493 SF two story building with a separately administered assembly space with required exiting and fire separations. Spaces shared between the two occupancies are limited to an existing egress corridor and public toilets for men and women totaling 1,426 SF. The proposed project entails a total of 6,720 SF of renovated/reconfigured space occurring on the both levels. Reception and waiting are provided on each level. There are 6 nurses stations, each being surrounded by several of the 26 exam rooms to be provided. Also included are two blood processing labs at 112 SF and 203 SF, a 209 SF phone-triage/medical records room, 359 SF break room, 226 SF multipurpose room, and other 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.

Recommendation

**From an architectural perspective, approval is recommended.**

## Attachments

BFA Attachment A	Internal Financial Statement for June 30, 2010, Jericho Road Ministries, Inc., d/b/a Jericho Road Community Health Center
BFA Attachment B	Internal Profit and Loss Statement as of May 18, 2011, Jericho Road Ministries, Inc., d/b/a Jericho Road Community Health Center
BFA Attachment C	Personal Net Worth Statement of Mark Herskind
BFA Attachment D	Pro-forma Balance Sheet of Jericho Road Ministries, Inc., d/b/a Jericho Road Community Health Center
BFA Attachment E	Organization Chart
BFA Attachment F	Establishment Checklist for Diagnostic and Treatment Center
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 6th day of October, 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 at 184 Barton Street, Buffalo and an extension clinic at 1609 Genesee Street, Buffalo, 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:

111218-B

FACILITY/APPLICANT:

Jericho Road Ministries, Inc. d/b/a Jericho  
Road Community Health 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 the marketing and advertising plan to the Department detailing information on the community outreach programs. [RNR]
3. Submission of a plan to significantly increase the level of services to Medicaid and uninsured patients in the two proposed site areas. [RNR]
4. Submission of quarterly and annual reports to the DOH beginning in the second year of operation. The information in these reports must include, but not necessarily be limited to the following:
  - i. The number and type of clinical visits by Zip code of patient residence to assist the Department in determining whether services are being provided predominantly to residents of the service area.
  - ii. The number and type of clinical visits by payor to assist the Department in determining the payor mix of the area. [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 asset transfer agreement acceptable to the Department. [BFA]
9. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]

#### 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). Construction drawings shall indicate all exam rooms to be provided with space clearances and areas equal to or exceeding required minimums. Required paths of egress shall be provided and noted, and required fire separations shall be provided, including occupancy separation. Occupancy boundaries shall be indicated, and spaces to be shared will be limited to common egress corridors and existing men's and women's room. Off-street parking required for the clinic shall be identified and use-restricted as necessary. Elevator access shall be provided with direct access to public waiting areas on each level. A dedicated patient toilet shall be convenient to all exam rooms. [AER]
3. The applicant shall complete construction by August 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 # 111390-B  
**Christian Health Service of Syracuse, Inc.**

**County:** Onondaga (Syracuse)  
**Purpose:** Establishment and Construction

**Program:** Diagnostic and Treatment Center  
**Submitted:** April 28, 2011

## Executive Summary

### Description

Christian Health Service of Syracuse, Inc. (Christian Health), a to-be formed, not-for-profit corporation, requests approval to establish and construct a diagnostic and treatment center (D&TC) to be located in leased space at 3200 Burnet Avenue, Syracuse, to serve the residents of Onondaga County. The Center will provide a broad range of primary medical care in a Christian perspective to a largely underserved population.

Christian Health originated largely with congregants at Living Word Church (LWC) in Syracuse. The Church has a history of significant building projects of over 38 years, which it has completed with all or partially volunteer professionals and tradesman. Christian Health intends to utilize the same vital services of volunteers from LWC, other churches, and the community at large to construct and operate a primary medical care service to a medically underserved population in Onondaga County.

Total project costs are estimated at \$301,170.

DOH Recommendation  
Contingent approval.

### Need Summary

Christian Health will operate a full-time primary care center with evening and Saturday hours, treat any patient regardless of ability to pay or enrollment in public or private insurance, and maintain a state-of-the-art medical records system. Health education and counseling will also be offered.

Projected Visits	
Year 1	13,094
Year 3	21,331

### Program Summary

Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

### Financial Summary

Total project costs will be met from the following: equity of \$56,867 via Church of the Living Word; equity of \$30,012 via Eugene Bailey; a loan of \$34,291 via Eugene Bailey (10 yrs. @ 5.60%); and a loan of \$180,000 via Donald Cullen (10 yrs. @ 5.60%).

Year 3 Budget:	<i>Revenues:</i>	\$ 1,234,222
	<i>Expenses:</i>	<u>1,105,968</u>
	<i>Gain/(Loss):</i>	\$ 128,254

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 includes the construction of a 6,323 SF diagnostic and treatment center. The facility will be constructed in space located on the upper and lower levels of a two-story existing building.

# 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 the marketing and advertising plan to the DOH detailing information on the community outreach programs. [RNR]
3. Submission of a plan to significantly increase the level of service to Medicaid patients in the proposed service area, as well as services to the uninsured. [RNR]
4. Entering into an agreement with an outside independent entity, satisfactory to the Department, to provide annual reports to the Department beginning in the second year of operation. The information included in these reports must include, but not necessarily be limited to the following:
  - The number and type of clinical visits by zip code of patient residence to assist the Department in determining whether services are being provided predominantly to residents of the proposed service area.
  - The number and type of clinical visits by payor, and the number of patients served by payor, to assist the Department in determining whether the mix of payors and access by the community are consistent with those proposed in the approved CON application and show an expansion of service to Medicaid and uninsured patients from the proposed service area.
  - An assessment of the performance of the alternative care delivery model. [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 loan commitment for the loan from Eugene Bailey that is acceptable to the Department. [BFA]
7. Submission of a loan commitment for the loan from Donald Cullen that is acceptable to the Department. [BFA]
8. Submission of a working capital loan commitment that is acceptable to the Department. [BFA]
9. Submission of a photocopy of an executed facility lease agreement, which 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 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]
7. The applicant shall complete construction by February 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]

Council Action Date

**October 6, 2011.**

## Need Analysis

### Background

Christian Health Service of Syracuse, Inc. (Christian Health) requests approval to establish and construct a diagnostic and treatment center (D&TC) to provide primary care at 3200 Burnet Ave, Syracuse, Onondaga County.

### Analysis

Christian Health will serve Onondaga County, including primary care Health Professional Shortage Areas (HPSA) in Syracuse.

The applicant proposes to provide primary care encompassing a range of services: maternity, gynecological, newborn, pediatric, well child, well adult, family care, sports medicine, elderly care, EKGs and pulmonary function testing, nutritional counseling, and parenting classes.

The number of projected visits for proposed services is given below:

<b><u>Projected Visits by Type of Service</u></b>	<b><u>Current Year</u></b>	<b><u>1st Full Year</u></b>	<b><u>3rd Full Year</u></b>
Birthing Service O/P	0	360	480
Family Planning O/P	0	598	980
Nutritional O/P	0	611	1,001
Outpatient Surgery	0	632	1,034
Pediatrics O/P	0	2,795	4,577
Prenatal O/P	0	643	1,053
Primary Care O/P	0	6,212	10,171
Well Child	0	1,243	2,035
<b>Total</b>	<b>0</b>	<b>13,094</b>	<b>21,331</b>

Christian Health Services proposes a payor mix of a minimum of 70% Medicaid, and 12% uninsured patients.

Christian Health Services also proposes to achieve a level 3 designation as a Patient Centered Medical Home according to the standards of NCQA PPC-PCMH.

Emergency department (ED) visits in the Syracuse area in 2008 and 2009 are listed below:

	2008			2009		
	<b><u>Total ED</u></b>	<b><u>ED Admitted</u></b>	<b><u>% ED Admit.</u></b>	<b><u>Total ED</u></b>	<b><u>ED Admitted</u></b>	<b><u>% ED Admit.</u></b>
Community General-Syracuse	24,019	4,632	19.3%	23,884	4,169	17.5%
Crouse Hospital-Syracuse	32,797	8,711	26.6%	34,625	9,307	26.9%
St. Josephs-Syracuse	49,593	9,688	19.5%	52,656	10,335	19.6%
SUNY-Syracuse	46,577	8,604	18.5%	50,277	9,766	19.4%
<b>Total Above</b>	<b>152,986</b>	<b>31,635</b>	<b>20.7%</b>	<b>161,442</b>	<b>33,577</b>	<b>20.8%</b>

Source: SPARCS 2007-09

In addition, the Department's payor information demonstrates that that nearly 46 percent of the ED visits were either Medicaid, Medicare, or Medicaid-Medicare HMOs, 15 percent were self-pay, and the remaining 39 percent included all other payors.

Also, the increase in the number of emergency department visits at Syracuse’s four hospitals combined was nearly six (6) percent from 2008 to 2009.

The 2010-2013 Community Health Assessment-Onondaga County report speculates that emergency department utilization is increasing because 17 percent of the County population does not have a usual source of health care.

	<b>% Change in ED from 2008-09</b>
Community General-Syracuse	-0.6%
Crouse Hospital-Syracuse	5.6%
St. Josephs-Syracuse	6.2%
SUNY-Syracuse	7.9%
<b>Total Above</b>	<b>5.5%</b>

Source: SPARCS 2007-09

ED Primary Payor-Onondaga County:

<b><u>Expected Primary Payer</u></b>	<b><u>2009 Patients</u></b>	<b><u>% Patients 2009</u></b>
Medicaid	10,741	8.3%
Medicaid HMO	28,039	21.8%
Medicare	17,934	13.9%
Medicare HMO	3,117	2.4%
Self-pay	19,404	15.1%
All Other	49,541	38.5%
<b>Total</b>	<b>128,776</b>	<b>100.0%</b>

Source: SPARCS 2007-09

**Conclusion**

Christian Health Service will provide primary care services to patients living in underserved areas. Care will be provided regardless of ability to pay. Christian Health Services will seek a level 3 designation as a Patient Centered Medical Home according to the standards of NCQA PPC-PCMH.

**Recommendation**

**From a need perspective, contingent approval is recommended.**

## Programmatic Analysis

### Background

The D&TC to be established by Christian Health Service of Syracuse, Inc. is anticipated to be a "safety-net" diagnostic and treatment center.

<b>Proposed Operator</b>	<b>Christian Health Service of Syracuse</b>
Operator Type	Not-For-Profit Corporation
Site Address	3200 Burnet Avenue, Syracuse
Services	Primary Medical Care Pediatrics Prenatal Family Planning Nutritional Outpatient Surgery Well Child Care
Hours of Operation	Full time, including evening and weekend hours
Staffing (1 <sup>st</sup> Year / 3 <sup>rd</sup> Year)	10.7 FTEs / 16.9 FTEs These staffing figures include volunteers for many functions such as clerical, office management, and cleaning services, as well as volunteer physicians, physician assistants, and nurses.
Medical Director(s)	R. Eugene Bailey & Daniel B. Rancier
Emergency, In-Patient and Backup Support Services Agreement	Expected to be provided by University Hospital SUNY Health Science Center
Distance	4.5 miles and 15 minutes in travel time

### 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 Board of Directors is as follows:

<b>Name</b>	<b>Office Held</b>
R. Eugene Bailey, MD	President
Donald Cullen	Treasurer
Garry Maderi	Member
Daniel Rancier, MD	Vice President
Bryan Rocine	Secretary

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. Applicants did not disclose any associated facilities.

#### Conclusion

Based on the information reviewed, staff found nothing that 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 a draft lease rental agreement for the site to be occupied, the terms of which are summarized below:

<i>Premises:</i>	6,323 sq. ft. located at 3200 Burnet Ave., Syracuse, New York
<i>Lessor:</i>	CHSOS Properties, LLC
<i>Lessee:</i>	Christian Health Service of Syracuse, Inc.
<i>Term:</i>	15 years
<i>Rental:</i>	Year 1- \$24,120 annually (\$3.81 per sq. ft.) Year 2 through 15- \$30,720 annually (\$4.85 per sq. ft.)
<i>Provisions:</i>	The lessee shall be responsible for maintenance.

The applicant has indicated that the lease arrangement will be a non arms-length lease arrangement.

#### Total Project Cost and Financing

Total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$301,170, itemized as follows:

Renovation and Demolition	\$212,567
Design Contingency	21,257
Construction Contingency	21,257
Architect/Engineering Fees	8,600
Moveable Equipment	33,853
CON Fee	2,000
Additional Processing Fee	1,636
Total Project Cost	\$301,170

Project costs are based on a December 1, 2011 construction start date and a three month construction period.

The applicant's financing plan appears as follows:

Equity via Church of the Living Word	\$56,867
Equity via Eugene Bailey	30,012
Loan via Eugene Bailey (5.60% interest rate for a ten year term)	34,291
Loan via Donald Cullen (5,60% interest rate for a ten year term)	180,000

#### 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	\$906,790	\$1,234,222
Expenses:		
Operating	\$649,746	\$1,064,287
Capital	<u>46,759</u>	<u>41,681</u>
Total Expenses	\$696,505	\$1,105,968
Excess of Revenues over Expenses	\$210,285	\$128,254
Utilization: (Visits)	13,094	21,331
Cost Per Visit	\$53.19	\$51.85

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	48.00%	48.00%
Medicare Fee-For-Service	12.00%	12.00%
Commercial Fee-For-Service	30.00%	30.00%
Private Pay	10.00%	10.00%

Expense and utilization assumptions are based on the historical experience of Doctor Rancier and Doctor Bailey, of which the two doctors will be on the board of Christian Health Service of Syracuse. Presented as BFA Attachment C, is a summary of the detailed budget.

#### Capability and Feasibility

Total project costs of \$301,170 will be met via the following: Equity of \$56,867 via the Church of the Living Word; Equity of \$30,012 via Eugene Bailey; Loan of \$34,291 via Eugene Bailey at an interest rate of 5.60% for a ten year term and a Loan of \$180,000 via Donald Cullen at an interest rate of 5.60% for a ten year term. Appropriate letters of interest have been provided. Presented as BFA Attachment A, is the personal net worth statements of Eugene Bailey and Donald Cullen, which indicates the availability of sufficient funds for the loans and the equity contribution.

Working capital requirements are estimated at \$184,328, which appears reasonable based on two months of third year expenses. The applicant will finance \$92,164 via Eugene Bailey at an interest rate of 5.60% for a ten year term. The remainder, \$92,164, will be provided via the Church of the Living Word.

The Church of the Living Word provided documentation indicating sufficient funds for the equity contribution to meet the total project cost and the working capital requirements.

Presented as BFA Attachment B, is the pro-forma balance sheet of Christian Health Service of Syracuse, which indicates a positive net asset position of \$179,043 as of the first day of operation.

The submitted budget projects an excess of revenues over expenses of \$210,285 and \$128,254 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for diagnostic and treatment centers. The applicant's 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 approval is recommended.

#### Recommendation

**From a financial perspective, contingent approval is recommended.**

## Architectural Analysis

### Background

This proposed project will consist of 6,323 SF of renovations in an existing 2-story building. Both levels have exterior access from grade.

The upper level will consist of 4,032 SF and will include a reception/waiting area, 1 procedure room, 9 exam rooms, 1 lab, 4 prayer/counseling cubicles, offices, staff locker room and 3 toilet rooms.

The lower level will consist of 2,291 SF and will include a lobby, conference room, offices, staff lounge, laundry, 1 toilet and mechanical space. This level will also consist of mechanical/electrical rooms, 1 other tenant and undeveloped space.

### 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 for Eugene Bailey and Donald Cullen
BFA Attachment B	Pro-forma Balance Sheet Of Christian Health Service of Syracuse
BFA Attachment C	Summary of Detailed Budget
BFA Attachment D	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 6th day of October, 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 be located in leased space at 3200 Burnet Avenue, Syracuse, 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:

111390-B

FACILITY/APPLICANT:

Christian Health Service of Syracuse, 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 the marketing and advertising plan to the DOH detailing information on the community outreach programs. [RNR]
3. Submission of a plan to significantly increase the level of service to Medicaid patients in the proposed service area, as well as services to the uninsured. [RNR]
4. Entering into an agreement with an outside independent entity, satisfactory to the Department, to provide annual reports to the Department beginning in the second year of operation. The information included in these reports must include, but not necessarily be limited to the following:
  - The number and type of clinical visits by zip code of patient residence to assist the Department in determining whether services are being provided predominantly to residents of the proposed service area.
  - The number and type of clinical visits by payor, and the number of patients served by payor, to assist the Department in determining whether the mix of payors and access by the community are consistent with those proposed in the approved CON application and show an expansion of service to Medicaid and uninsured patients from the proposed service area.
  - An assessment of the performance of the alternative care delivery model. [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 loan commitment for the loan from Eugene Bailey that is acceptable to the Department. [BFA]
7. Submission of a loan commitment for the loan from Donald Cullen that is acceptable to the Department. [BFA]
8. Submission of a working capital loan commitment that is acceptable to the Department. [BFA]
9. Submission of a photocopy of an executed facility lease agreement, which 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 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]
7. The applicant shall complete construction by February 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]

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 # 111503-B Park Slope Dialysis Management, LLC d/b/a Prospect Park Dialysis Center

**County:** Kings (Brooklyn)                      **Program:** Dialysis Services  
**Purpose:** Establishment and Construction    **Submitted:** June 13, 2011

### Executive Summary

#### Description

Park Slope Dialysis Management, LLC, d/b/a Prospect Park Dialysis Center, requests approval to establish and construct a diagnostic and treatment center to provide a 32-station chronic renal dialysis service for the residents of Kings County. The facility will be located at 672 Parkside Avenue, Brooklyn, New York, and will be open to the general public. The applicant will lease space at the stated location. The applicant has indicated that it will enter into an administrative services agreement.

The ownership of Park Slope Management, LLC is as follows:

Jodumutt Ganesh Bhat M.D.	30%
Nirmal K. Mattoo M.D.	30%
Henry R. Paul M.D.	20%
Eric L. Jerome M.D.	4%
Jubil Malieckal M.D.	4%
Anthony J. Joseph M.D.	4%
Viplov Mehta M.D.	4%
Geoffrey H. Patrice M.D.	4%

The members of Park Slope Management, LLC also have ownership in the following Article 28 dialysis facilities: Ridgewood Dialysis Center, Inc.; West Nassau Dialysis Center, Inc.; New Hyde Park Dialysis Center, Inc.; Central Brooklyn Dialysis Center, Inc.; East End Dialysis Center, Inc.; Ridgewood Dialysis Center, Inc. d/b/a Springfield Gardens Dialysis Center; Newtown Dialysis Center, Inc. d/b/a Astoria Dialysis Center; Newtown Dialysis Center, Inc.; Newtown Dialysis Center, Inc. d/b/a Broadway Dialysis Center; and New York Renal Associates, Inc.

Total project costs are estimated at \$2,208,316.

DOH Recommendation  
Contingent approval

#### Need Summary

There is a significant need in Kings County for additional dialysis stations. Currently there are 602 residents leaving Kings County for dialysis treatment. According to the Department's methodology, the current number of stations in operation is expected to treat 2,966 patients. However, the current complement of dialysis stations are treating 3,625 patients, representing a current lack of capacity for 659 patients. The addition of the proposed stations by Prospect Park will help meet the shortfall in capacity and allow some residents to receive treatment closer to home.

#### Program Summary

Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

#### Financial Summary

Total project costs will be met with \$220,832 cash and a loan of \$1,987,484 (10 yrs. @ 7%).

Year 3 Budget:	<i>Revenues:</i>	\$ 3,826,697
	<i>Expenses:</i>	<u>3,436,506</u>
	<i>Gain/(Loss)</i>	\$ 390,191

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 proposes to fit-out a 10,282 SF, 32-station freestanding dialysis clinic located on the building's top and third floor. The existing building is a 16,695 SF single-story structure, to which the owner will add shell space in newly constructed second and third floors. Both the first and second levels are to be occupied by private 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 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]
3. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
4. Submission of an executed building lease that is acceptable to the Department of Health. [BFA]
5. Submission of a loan commitment that is acceptable to the Department of Health. [BFA]
6. Submission of a working capital loan commitment that is acceptable to the Department of Health. [BFA]
7. Submission of a photocopy of an executed facility lease agreement, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of an executed administrative consulting services agreement, which is acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's executed amended articles of organization, which are acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The submission of State Hospital Code (SHC) Drawings for review, 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 start of construction. [AER]
3. The applicant shall complete construction by November 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]
4. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
5. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
6. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
7. The clinical space must be used exclusively for the approved purpose. [HSP]

Council Action Date

**October 6, 2011.**

# Need Analysis

## Background

The applicant is seeking approval to establish and construct a new 32-station chronic dialysis station facility called Prospect Park Dialysis Center, at 672 Parkside Avenue, Brooklyn. The facility will be operated by Park Slope Dialysis Management, LLC.

## Analysis

Service Area: The service area for this application is Kings County.

### Population:

2009 Estimated. -	2,504,700		
Ages 65 and Over:	11.7%	State Average:	13.4%
Nonwhite:	57.2%	State Average:	34.3%

Minority groups are at a greater risk of developing Type II Diabetes, which is the leading cause of end-stage renal disease (ESRD).

Kings County's average elderly population is slightly lower than the overall state average, but the minority population is much higher than the state average.

### Calculating Capacity:

The Department's estimated capacity for chronic dialysis stations is:

One free standing station calculated at 702 treatments per year (2.5 shifts per day x 6 days per week x 52 weeks x 90% = 702). One free standing station can treat 4.5 patients per year.

One hospital based station calculated at 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.

Per Department policy, hospital-based chronic dialysis stations can treat fewer patients per year. Statewide, the majority of stations are free standing 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 establishing additional free standing stations.

There are currently 659 operating Dialysis Stations in Kings and 33 in the pipeline. This project will add 32 Free Standing Stations to the pipeline status, for a total of 65 total pipeline stations.

Based upon the above methodology, existing stations in Kings have the capacity to treat a total of 2,966 patients annually. Upon project completion 3,110 Kings County residents will be able to receive treatment.

Based upon a conservative estimate of a three percent annual increase in patients treated in Kings County facilities and Kings County residents receiving treatment, the current 659 total stations will not be sufficient to meet the current needs of patients or residents. Considering the current and projected increase in patients, there is a projected need for additional stations even after the completion of this project.

	2009		2015	
	<u>Patients</u>	<u>Residents</u>	<u>Patients</u>	<u>Residents</u>
Treated	3625	4227	4329	5048
Free Standing Stations Needed	806	940	962	1122
Current Total Stations	659	659	659	659
Unmet Need	147	281	303	463



As seen in the table above there will still be significant need in Kings County for additional dialysis stations. A total of 602 residents of Kings County are forced to leave the County to seek of dialysis treatment. This problem will significantly increase by 2015.

**Conclusion**

This proposed center will expand capacity, resulting in fewer Kings County residents having to leave the area to seek dialysis treatment.

**Recommendation**

**From a need perspective, contingent approval is recommended.**

**Programmatic Analysis**

**Background**

Establish a diagnostic and treatment center to provide chronic renal dialysis services.

<b>Proposed Operator</b>	<b>Park Slope Dialysis Management</b>
Operator Type	LLC
Doing Business As	Prospect Park Dialysis
Site Address	672 Parkside Avenue, Brooklyn
Stations	32
Shifts	One shift per day, increasing to three shifts per day by the third year
Staffing (1 <sup>st</sup> Year / 3 <sup>rd</sup> Year)	12.5 FTEs / 23.5 FTEs
Medical Director(s)	Henry Paul
Emergency, In-Patient and Backup Support Services Agreement	University Hospital of Brooklyn
Distance	Less than one-half mile and one minute travel time

**Compliance with Applicable Codes, Rules and Regulations**

The medical staff will ensure that procedures performed at the facility conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and/or expertise. The facility'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 members of LLC, all nephrologists, are:

<b>Name</b>	
Jodumutt Ganesh Bhat, MD (Manager)	30%
Nirmal K. Mattoo, MD (Manager)	30%
Henry R. Paul, MD	20%
Eric L. Jerome, MD	4%
Jubil Malieckal, MD	4%
Anthony J. Joseph, MD	4%
Viplov Mehta, MD	4%
Geoffrey H. Patrice	4%

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.

**Conclusion**

Based on the information reviewed, staff found nothing that 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 a draft lease rental agreement for the site to be occupied, the terms of which are summarized below:

- Premises:* 13,343 Square feet located at 2672 Parkside Avenue, Brooklyn, New York.
- Lessor:* Atlantic Dialysis Management Services, LLC
- Lessee:* Park Slope Dialysis Management, LLC d/b/a Prospect Park Dialysis Center
- Term:* 15 Years
- Rental:*

7/1/2010 - 6/30/2013	\$200,000.00 annually or \$14.99 sq. ft.
7/1/2013 - 6/30/2014	\$203,000.00 annually or \$15.21 sq. ft.
7/1/2014 - 6/30/2015	\$206,045.00 annually or \$15.44 sq. ft.
7/1/2015 - 6/30/2016	\$209,135.68 annually or \$15.67 sq. ft.
7/1/2016 - 6/30/2017	\$212,272.72 annually or \$15.91 sq. ft.
7/1/2017 - 6/30/2018	\$215,456.81 annually or \$16.15 sq. ft.
7/1/2018 - 6/30/2019	\$218,688.66 annually or \$16.39 sq. ft.
7/1/2019 - 6/30/2020	\$221,968.99 annually or \$16.64 sq. ft.
7/1/2020 - 6/30/2021	\$225,298.52 annually or \$16.89 sq. ft.
7/1/2021 - 6/30/2022	\$228,678.00 annually or \$17.02 sq. ft.
7/1/2022 - 6/30/2023	\$232,108.17 annually or \$17.40 sq. ft.
7/1/2023 - 6/30/2024	\$235,589.79 annually or \$17.66 sq. ft.
7/1/2024 - 6/30/2025	\$239,123.64 annually or \$17.92 sq. ft.
- Provisions:* The lessor shall be responsible for real property taxes and utilities. Also the lessee has a built in 5 year renewal provision in the lease agreement.

The applicant has indicated via an affidavit that the lease arrangement will be a non-arms length lease arrangement.

The applicant submitted two letters from licensed real estate brokers, attesting to the reasonableness of the per square foot rental.

Administrative Service Agreement

The applicant has provided an executed administrative service agreement, the terms of which are summarized below.

<i>Provider:</i>	Atlantic Dialysis Management Services, LLC
<i>Facility Operator:</i>	Park Slope Dialysis Management, LLC
<i>Services Provided:</i>	Provide assistance in administrative services, purchasing, accounting and financial services, computer support services, support functions of the office including billing.
<i>Compensation:</i>	\$13,461.54 bi-weekly or (\$350,000 per annual)
<i>Term:</i>	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.

Park Slope Dialysis Management, LLC shall not delegate any responsibilities such as hiring or terminating key employees, control of records or books, disposing of assets, adopting or enforcing policies, approving capital budgets. Park Slope Dialysis Management, LLC will retain all operating power and responsibility associated with the facility.

Total Project Cost and Financing

Total project cost, which includes renovation, demolition, and CON Fees is estimated at \$2,208,316, further broken down as follows:

Renovation & Demolition	\$1,160,681
Design Contingency	102,666
Construction Contingency	51,334
Architect/Engineering Fees	92,855
Other Fees	78,375
Moveable Equipment	604,323
Financing Costs	74,296
Interim Interest	29,718
Application Fee	2,000
Processing Fee	12,068
Total Project Cost	\$2,208,316

The applicant's financing plan appears as follows:

Equity	\$220,832
Bank Loan (7% @ 10 year term)	\$1,987,484

Operating Budget

The applicant has submitted an operating budget for the first and third years of operation. The budget, summarized below, reflects first and third year revenues and first year expenses in 2011 dollars.

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$1,351,921	\$3,904,793
Expenses:		
Operating	\$1,284,097	\$2,729,799
Capital	469,092	440,061
Total Expenses	\$1,753,189	\$3,169,860
Net Income	(\$401,268)	\$734,933
Utilization: (Treatments)	5,184	15,264
Cost Per Treatment	\$338.19	\$207.67

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

Medicaid Fee-for-Service	10%
Medicare Fee-for-Service	80%
Commercial Fee-for Service	10%

Expense and utilization assumptions are based on the historical experience of other dialysis facilities in the geographical area.

#### Capability and Feasibility

The project costs of \$2,208,316 will be met through cash equity contribution of \$220,832 and a bank loan of \$1,987,484 for 10 years at a rate of 7.00%. Presented as BFA Attachment A, is the personal net worth statement for the proposed members, which indicates sufficient resources for equity contribution. Also, the applicant has submitted a Letter of Interest from Capital One Bank at the stated terms.

Working capital requirements are estimated at \$528,831, which appears reasonable based on two months of third year expenses at which \$264,416 will be paid via loan from Capital One Bank for a term of three years at a rate of 8%. A Letter of Interest has been submitted.

The residual of \$246,415 will be paid in via equity from their personal net worth statement as presented in BFA Attachment A, indicating sufficient working capital equity. Presented as BFA Attachment B, is the pro-forma balance sheet of Prospect Park Dialysis Center, LLC as of the first day of operation, which indicates a positive member's equity position of \$246,571.

The submitted budget indicates a net income of (\$401,268) and \$734,933 during the first and third years, respectively. Revenues reflect current reimbursement methodologies for dialysis services. The applicant's budget appears to be reasonable.

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 proposed project provides a 32-station dialysis treatment clinic within newly constructed third-story shell space. The building owner is to add a 13,343 SF second level and an 11,243 SF third level to an existing 16,695 SF single story structure. The proposed 10,282 SF clinic will occupy the entire top and third floor of the fully sprinklered building. The first and second levels are to be occupied by private medical offices. A single open plan dialysis room is provided at 4688 SF including four nurse station nodes providing direct observation of the 32 treatment stations. Patient service rooms and areas also include 405 SF waiting, 126 SF home training, 108 SF exam, 143 SF isolation, and 98 SF patient lockers. Staff areas include a 101 SF medical director's office, 129 SF dietician's office, 123 SF social workers office, 68 SF medical records, 388 SF staff lounge, 65 SF staff lockers, and a 75 SF machine repair room. Also included are a 439 SF water treatment room, an emergency shower, 453 SF of unassigned space, and other utility and 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.

Recommendation

**From an architectural perspective, approval is recommended.**

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## Attachments

BFA Attachment A	Personal Net Worth Statement
BFA Attachment B	Pro-forma Balance Sheet
BFA Attachment C	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 6<sup>th</sup> day of October, 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 32-station chronic renal dialysis diagnostic and treatment center to be located at 672 Parkside Avenue, Brooklyn, 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:

111503-B

FACILITY/APPLICANT:

Park Slope Dialysis Management, LLC d/b/a  
Prospect Park Dialysis 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 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]
3. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
4. Submission of an executed building lease that is acceptable to the Department of Health. [BFA]
5. Submission of a loan commitment that is acceptable to the Department of Health. [BFA]
6. Submission of a working capital loan commitment that is acceptable to the Department of Health. [BFA]
7. Submission of a photocopy of an executed facility lease agreement, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of an executed administrative consulting services agreement, which is acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's executed amended articles of organization, which are acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The submission of State Hospital Code (SHC) Drawings for review, 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 start of construction. [AER]
3. The applicant shall complete construction by November 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]
4. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
5. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
6. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
7. The clinical space must be used exclusively for the approved purpose. [HSP]

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 # 112014-E

## SV Operating Three, LLC d/b/a Verrazano Center for Rehabilitation and Specialty Healthcare

**County:** Richmond (Staten Island)  
**Purpose:** Establishment

**Program:** Residential Health Care Facility  
**Submitted:** July 8, 2011

### Executive Summary

**Description**

SV Operating Three, LLC, d/b/a Verrazano Center for Rehabilitation and Specialty Healthcare requests approval to be established as the operator of St. Elizabeth Ann's Health Care and Rehabilitation Center (St. Elizabeth Ann's), a 300-bed residential health care facility (RHCF) located at 91 Tompkins Avenue, Staten Island. St. Elizabeth Ann's includes 80 AIDS beds, 28 ventilator-dependent beds, 72 behavioral intervention beds, and 30-slot AIDS Adult Day Health Care Program.

The proposed change of ownership will replace the current not-for-profit corporation operator with a for-profit LLC. Ownership of the operation after the requested change is as follows:

<u>Current Operation</u>	<u>Interests</u>
St. Elizabeth Ann's, a component of Saint Vincent's Catholic Medical Centers of New York	100%
<u>Proposed Operation</u>	
SV Operating Three, LLC d/b/a Verrazano Center for Rehabilitation and Specialty Healthcare	100%
MEMBERS:	
Kenneth Rozenberg	(60%)
Leo Lerner	(30%)
Jeremy Strauss	(5%)
Jeffrey Sicklick	(3%)
Amir Abramchik	(2%)

The facility and real estate are being sold in accordance with the bankruptcy proceedings. The current operator is Saint Vincent's Catholic Medical Center's of New York.

**DOH Recommendation**

Contingent approval.

**Need Summary**

The operation of the facility by Verrazano Center will preserve access to St. Elizabeth Ann's beds and services, which would otherwise be faced with possible reduction or closure because of the SVCMC bankruptcy situation.

**Program Summary**

No changes in the program or physical environment are proposed in this application. No administrative services/consulting agreement is proposed in this application.

**Financial Summary**

The purchase price of the operations is \$19,558,000 and \$15,442,000 for the real estate. Satisfaction of the purchase prices will be via bank loan.

<b>Budget:</b>	<b>Revenues:</b>	\$ 49,903,692
	<b>Expenses:</b>	<u>47,892,494</u>
	<b>Gain/(Loss):</b>	\$ 2,011,198

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 review is required.

## Recommendations

Health Systems Agency

There will be no HSA review of this project.

Office of Health Systems Management

**Approval contingent upon:**

1. Submission of an acceptable loan commitment for the operational entity that is acceptable to the Department of Health. [BFA]
2. Submission of an acceptable loan commitment for the real estate portion that is acceptable to the Department. [BFA]
3. Submission of an executed working capital loan that is acceptable to the Department. [BFA]
4. Submission of updated budgets, with all assumptions noted, that include the impact of the State's 2011-2012 Budget and continues to demonstrate financial feasibility, acceptable to the Department. [BFA]
5. Submission of an original affidavit from the applicant, 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. [BFA]
6. Submission of an original affidavit from the applicant members of SV Operating Three, LLC making a commitment to personally fund the balloon payment on the proposed mortgage, should terms acceptable to the Department of Health be unavailable at the time of refinancing. [BFA]
7. Submission of an original affidavit from the applicant member SV Land Three, LLC making a commitment to personally fund the balloon payment on the proposed mortgage, should terms acceptable to the Department of Health be unavailable at the time of refinancing. [BFA]

Council Action Date

**October 6, 2011.**

## Need Analysis

### Background

St. Elizabeth Ann's is a component corporation of Saint Vincent's Catholic Medical Centers of New York (SVCMC), which is in the United States Bankruptcy Court, Southern District of New York. St. Elizabeth Ann's entered into an Asset Purchase Agreement with SV Operating Three, LLC on May 12, 2011. In addition, Verrazano Center will lease space at the former Bayley Seton Hospital campus to house the 72 bed behavioral unit.

There will be no change in the beds or services of the St. Elizabeth Ann's facility as a result of this project.

### Analysis

The New York City Region currently has an RHCf bed need of 6,982 and utilization of 95% as illustrated in the tables below.

<b><i>RHCf Need – NYC Planning Region</i></b>	
2016 Projected Need	51,071
Current Beds	43,454
Beds Under Construction	635
Total Resources	44,089
Unmet Need	6,982

<b><i>RHCf Occupancy – Richmond County</i></b>	<b><i>2007</i></b>	<b><i>2008</i></b>	<b><i>2009</i></b>
St. Elizabeth Ann's	Did Not Report	98.3%	Did Not Report
Verrazano Nursing Home	97.0%	98.4%	95.9%
Staten Island Care Center	94.0%	94.3%	92.1%
Silver Lake Spec. Rehab.	86.7%	49.8%	89.0%
Sea View Hospital, Rehab	101.5%	102.2%	98.0%
New Vanderbilt Rehab	95.6%	93.6%	91.7%
Lily Pond Nursing Home	88.0%	85.7%	Did Not Report
Golden Gate Rehab.	95.2%	94.3%	93.0%
Eger Health Care and Rehab.	99.3%	98.9%	98.5%
Clove Lakes Health Care	96.7%	94.7%	95.1%
Carmel Richmond Healthcare	97.6%	97.5%	97.6%
<i>Richmond County Average</i>	<i>96.2%</i>	<i>92.5%</i>	<i>95.0%</i>
<i>New York City Average</i>	<i>93.6%</i>	<i>94.2%</i>	<i>94.8%</i>

### Recommendation

**From a need perspective, approval is recommended.**

## Programmatic Analysis

### Facility Information

	<i>Existing</i>	<i>Proposed</i>
<i>Facility Name</i>	St. Elizabeth Ann's Health Care and Rehabilitation Center	Verrazano Center for Rehabilitation and Specialty Healthcare

Address	91 Tompkins Avenue Staten Island, NY 10304	Same
RHCF Capacity	300	Same
ADHC Program Capacity	30	Same
Type of Operator	Voluntary	Proprietary
Class Of Operator	Corporation	Limited Liability Company
Operator		SV Operating Three, LLC d/b/a Verrazano Center for Rehabilitation and Specialty Healthcare  <u>Members</u> Kenneth Rozenberg           60% -- managing member Leo Lerner                     30% Jeremy Strauss               5% Jeffrey Sicklick              3% Amir Abramchik              2%

Character and Competence

- FACILITIES REVIEWED:

Residential Health Care Facilities

Williamsbridge Manor Nursing Home	1997 to present
Bronx Center for Rehabilitation & Health	1998 to present
University Nursing Home	2000 to present
Dutchess Center for Rehabilitation	2003 to present
Queens Center for Rehabilitation	2004 to present
Brooklyn Center for Rehabilitation & Residential Health Care	3/2007 to present
Bushwick Center for Rehabilitation and Health Care	5/18/2011 to present
Boro Park Center for Rehabilitation	5/2011 to present
Suffolk Center for Rehabilitation	5/2007 to present
Rome Center for Rehabilitation and Health Care	5/2011 to present
Chittenango Center for Rehabilitation and Health Care	5/2011 to present
Holliswood Care Center, Inc.	11/1/2010 to present

Receiverships

Stonehedge Health & Rehabilitation Center-Rome	7/2008 to 5/2011
Stonehedge Health & Rehabilitation Center-Chittenango	7/2008 to 5/2011
Wartburg Receiver, LLC	6/2008 to 5/18/2011
Waterfront Health Care Center, Inc.	8/1/2011 to present

Certified Home Health Agency

Alpine Home Health Care	7/2008 to present
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Licensed Home Care Services Agency

Amazing Home Care	5/2006 to present
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Ambulance Company

Senior Care Emergency Ambulance Services, Inc.	5/2005 to present
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- INDIVIDUAL BACKGROUND REVIEW:

**Kenneth Rozenberg** is a licensed nursing home administrator in good standing, and also a licensed New York State Paramedic in good standing. Mr. Rozenberg is employed as CEO of Bronx Center for Rehabilitation & Health Care since 1998. Mr. Rozenberg discloses the following health facility interests:

- Williamsbridge Manor Nursing Home 1997 to present
- Bronx Center for Rehabilitation & Health 1998 to present
- University Nursing Home 2000 to present
- Dutchess Center for Rehabilitation 2003 to present
- Queens Center for Rehabilitation 2004 to present
- Brooklyn Center for Rehabilitation & Residential Health Care 3/2007 to present
- Stonehedge Health & Rehabilitation Center-Rome 7/2008 to present
- Stonehedge Health & Rehabilitation Center-Chittenango 7/2008 to present
- Bushwick Center for Rehabilitation and Health Care 5/18/2011 to present
- Wartburg Nursing Home (receivership) 6/2008 to 5/18/2011
- Boro Park Center for Rehabilitation 5/2011 to present
- Suffolk Center for Rehabilitation 5/2007 to present
- Holliswood Care Center, Inc. 11/1/2010 to present
- Alpine Home Health Care 7/2008 to present
- Amazing Home Care 5/2006 to present
- Senior Care Emergency Ambulance Services, Inc. 5/2005 to present
- Waterfront Health Care Center, Inc. 8/1/2011 to present

**Leo Lerner** is a licensed nursing home administrator in good standing currently employed as Controller at Centers for Care, a healthcare company in The Bronx. Mr. Lerner discloses the following health facility interests:

- Queens Center for Rehabilitation 6/4/2011 to present
- Brooklyn Center for Rehabilitation & Residential Health Care 3//1/2007 to present
- Bushwick Center for Rehabilitation and Health Care 5/18/2011 to present
- Wartburg Nursing Home (receivership) 6/2008 to 5/18/2011

**Jeffrey N. Sicklick** is a nursing home administrator in good standing in the states of New York and New Jersey. Mr. Sicklick discloses employment as Administrator of Record at Bronx Center for Rehabilitation & Health since 1997. Mr. Sicklick was previously Administrator of Record at Queens Center for Rehabilitation in 2004 and Dutchess Center for Rehabilitation in 2003. Mr. Sicklick discloses the following health facility interests:

- Dutchess Center for Rehabilitation 2003 to present
- Queens Center for Rehabilitation 2004 to present

**Jeremy B. Strauss** discloses employment as Executive Director of Dutchess Center for Rehabilitation since 2003. Mr. Strauss discloses the following health facility interests:

- Dutchess Center for Rehabilitation 2003 to present
- Queens Center for Rehabilitation 2004 to present
- Brooklyn Center for Rehabilitation & Residential Health Care 3/2007 to present
- Suffolk Center for Rehabilitation 5/2007 to present
- Senior Care Emergency Ambulance Services, Inc. 5/2005 to present

**Amir Abramchik** is a licensed nursing home administrator in good standing, currently employed as Director of Special Projects at Centers for Specialty Care in The Bronx. Mr. Abramchik discloses the following health facility interests:

- Rome Center for Rehabilitation and Health Care 5/2011 to present
- Chittenango Center for Rehabilitation and Health Care 5/2011 to present

**Character and Competence – Analysis:**

The Board of Examiners of Nursing Home Administrators charged Mr. Rozenberg with practicing nursing home administration without a valid license at University Nursing Home, Bronx in violation of Public Health Law Sections 2897(1)(g) and 2896-g(5) and 10 NYCRR 96.4 for the period January 1, 2002 – February 1, 2002. Mr. Rozenberg was assessed a civil penalty of \$350.

No adverse information has been received concerning the character and competency of any of the applicants.

A review of operations of Bronx Center for Rehabilitation & Health Care, LLC for the period reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order issued October 23, 2007 for surveillance findings of April 27, 2007. Deficiencies were found under 10 NYCRR 415.12 Quality of Care and 415.12(i)(1), Quality of Care: Nutrition.
- The facility was fined \$4,000 pursuant to a Stipulation and Order issued August 25, 2011 for surveillance findings of April 16, 2010. Deficiencies were found under 10 NYCRR 415.12 (h)(2) Quality of Care: Accidents and Supervision and 415.26 Administration.

The review of operations for Bronx Center for Rehabilitation & Health Care, LLC results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of operations of Chittenango Center for Rehabilitation and Health Care, formerly Stonehedge Health & Rehabilitation Center-Chittenango, for the period reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order issued November 15, 2010 for surveillance findings on October 22, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1,2) Quality of Care: Accidents and Supervision and 415.26(b)(3)(4) Governing Body.

The review of operations for Chittenango Center for Rehabilitation and Health Care results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of Williamsbridge Manor Nursing Home for the period reveals the following:

- The facility was fined \$6,000 pursuant to a Stipulation and Order issued February 12, 2004 for surveillance findings of July 31, 2002. Deficiencies were found under 10 NYCRR 415.4(b) Staff Treatment of Residents: Free from Mistreatment Neglect and Misappropriation of Property, 415.4(b) Staff Treatment of Residents: Nurse Aide Registry, and 415.12(h) Quality of Care: Adequate Supervision to Prevent Accidents; Administration.
- Williamsbridge Manor Nursing Home was fined \$1,000 pursuant to a Stipulation and Order issued July 8, 2008 for surveillance findings of December 19, 2007. A deficiency was found under 10 NYCRR 415.12 Quality of Care.

The review of operations for Williamsbridge Manor Nursing Home results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

The review of operations of University Nursing Home, Dutchess Center for Rehabilitation, Queens Center for Rehabilitation, Brooklyn Center for Rehabilitation & Residential Health Care, Stonehedge Health & Rehabilitation Center-Rome, Stonehedge Health & Rehabilitation Center-Chittenango, Bushwick Center for Rehabilitation and Health Care, Boro Park Center for Rehabilitation, Suffolk Center for Rehabilitation Holliswood Care Center, Inc. and Waterfront Health Care Center, Inc. for the time periods indicated revealed that a substantially consistent high level of care has been provided since there were no enforcements.

A review of Alpine Home Health Care, LLC and Amazing Home Care found that a substantially consistent high level of care has been provided since there were no enforcements.

The review of Senior Care Emergency Ambulance Services, Inc. found that a substantially consistent high level of care has been provided since there were no enforcements.

Recommendation

**From a programmatic perspective, approval is recommended.**

**Financial Analysis**

Background

St. Elizabeth Ann's is a component corporation of Saint Vincent's Medical Center of New York, which is in United States Bankruptcy Court, Southern District of New York. St. Elizabeth Ann's entered into an Asset Purchase agreement with SV Operating Three, LLC on May 12, 2011, pending consent of the United States Bankruptcy Court approval.

Concurrent with the sale of the operating interest, St. Elizabeth Ann's also entered into a separate agreement with SV Land Three, LLC for the sale and acquisition of the real property interest of the facility. The proposed member of SV Land Three, LLC is Daryl Hagler. SV Land Three, LLC submitted an executed lease agreement granting site control to SV Operating Three, LLC through an arm's length relationship.

Presented in the financial summaries are the ownership percentages for each member. The members are Jeremy Strauss, Kenneth Rozenberg, Jeffery Sicklick, Leo Lerner, Amir Abramchik, who have ownership interests in the following nursing homes: Dutchess Center for Rehabilitation (BFA Attachment F), Queens Center for Rehabilitation (BFA Attachment I), Brooklyn Center for Rehabilitation (BFA Attachment G), Suffolk Center for Rehabilitation (BFA Attachment H), Boro Park Center for Rehabilitation, Williamsbridge Manor Nursing Home (BFA Attachment E), Bronx Center for Rehabilitation & Health (BFA Attachment L), University Nursing Home (BFA Attachment D), Queens Center for Rehabilitation (BFA Attachment I), Brooklyn Center for Rehabilitation (BFA Attachment G), Stonehedge Health & Rehabilitation, Rome, (BFA Attachment J), Bushwick Center for Rehabilitation and Health Care, and Boro Park Center for Rehabilitation.

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>	May 12, 2011
<i>Seller:</i>	Sisters of Charity Health Care System Nursing Home Inc., d/b/a St. Elizabeth Ann's Health Care Rehabilitation Center
<i>Purchaser:</i>	SV Operating Three, LLC
<i>Purchased Assets:</i>	All assets used in operation of the facility, including: all rights, title and interest in; furniture and equipment; permits, documents and records; assignable leases, contracts, licenses and permits; Medicare and Medicaid provider numbers; menus, policy and procedure manuals; telephone numbers, fax numbers; security deposits; accounts and notes receivable, deposits and cash equivalents generated after the closing date.
<i>Excluded Assets:</i>	Any security, vendor, utility or other deposits with any Governmental Entity; any refunds, debtor claims, third-party retroactive adjustments and related documents prior to closing; excluded contracts; excluded personal property leases; any personal files of employees not hired by purchaser.
<i>Liabilities Assumed:</i>	Liabilities arising out of the employment by Seller of any employees on or before the closing; all liabilities arising after the closing with respect to Assigned contracts, licenses and leases; all outstanding New York Health Facility Cash Assessment Program Liabilities of the Seller not to exceed \$69,910; any contingent liabilities as of the closing date relating to the Healthcare Program Liabilities of Seller; any Medicaid retroactive Rate Adjustment Liabilities to January 1, 2009, not to exceed \$2,910,000.
<i>Excluded Liabilities:</i>	Any Liability associated with Excluded Assets and prior to the closing.
<i>Purchase Price:</i>	\$19,558,000
<i>Payment of Purchase Price:</i>	A deposit of \$250,000 to be held in escrow with the remaining \$19,308,000 to

be paid at closing. Any additional purchased assets between the date of this agreement and effective closing date acquired by the Seller will increase the purchase price by 80% of the aggregate present value of such additional purchased assets.

The applicant has provided an original affidavit, 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 as of May 12, 2011, as stated in the Asset Purchase Agreement. The limitation in the submitted affidavit is not acceptable for this project, and a contingency has been applied. Currently, there are no collectible outstanding Medicaid overpayment liabilities.

#### Land Purchase and Sale Agreement

The change in realty ownership will be effectuated in accordance with an executed purchase agreement, the terms of which are summarized below:

<i>Date:</i>	Closing to be determined
<i>Seller:</i>	Sisters of Charity Health Care System Nursing Home, Inc., d/b/a St. Elizabeth Ann's Health Care and Rehabilitation Center
<i>Purchaser:</i>	SV Land Three, LLC
<i>Transaction:</i>	Real Estate located at located at 91 Tompkins Ave., Staten Island, N.Y. The purchase includes furniture, furnishings, fixtures; equipment and other personal property owned by the seller in connection with the real estate are to be conveyed together with all easements; right of way, air or development rights, reservations, privileges, appurtenances pertaining to the interest of the real estate.
<i>Purchase Price:</i>	\$15,442,200
<i>Payment of Purchase Price:</i>	\$750,000 is currently being held in escrow as bid was accepted by the courts. \$14,250,000 to be paid at closing.

SV Land Three, LLC will take over the existing property if selected as the prevailing bidder at the auction. The Purchase and Sale Agreement will be simultaneously executed and delivered with the Asset Purchase Agreement.

#### Lease Agreement

Facility occupancy is subject to an executed lease agreement, the terms of which are summarized as follows:

<i>Date:</i>	July, 2011
<i>Premises:</i>	RHCF located at 91 Tompkins Ave., Staten Island, N.Y.10304
<i>Lessor:</i>	SV Land Three, LLC
<i>Lessee:</i>	SV Operating Three, LLC
<i>Terms:</i>	30 years commencing on the execution of the lease
<i>Rental:</i>	Annual basic rent in the amount of \$1,500,000 paid in 12 equal installments.
<i>Provisions:</i>	Lessee is responsible for taxes, insurance, utilities and maintenance.

The lease arrangement is an arm's length agreement. The useful life for the real estate is six (6) years. The approval of this application will result in a change in reimbursement from the depreciation method to the return-of/return-on equity method.

#### Operating Budget

Following is a summary of the submitted operating budget for the RHCF, presented in 2011 dollars, for the first year subsequent to change in ownership:



Revenues:	
Medicaid	\$40,602,347
Medicare	2,172,911
Private Pay	<u>7,128,434</u>
 Total Revenues	 \$49,903,692
Expenses:	
Operating	\$44,793,531
Interest	367,807
Depreciation and Rent	<u>2,731,156</u>
 Total Expenses	 \$47,892,494
 Net Income	 <u>\$2,011,198</u>
 Utilization: (patient days)	 102,713
Occupancy	93.8%

The following is noted with respect to the submitted RHCF operating budget:

- The capital component of the Medicaid rate is based on historical cost.
- Expenses include lease rental.
- Overall utilization is projected at 93.80%, while utilization by payor source is expected as follows:

Medicaid	86.7%
Medicare	4.6%
Private Pay	8.7%

- Breakeven occupancy is projected at 90.51%.
- The budgeted utilization by payor is based on 2010 historical pay mix.

#### Capability and Feasibility

There are no project costs associated with this application. The purchase price of \$19,558,000 for the operations will be financed by a bank loan for \$19,558,000 at an interest rate of 5.26% for 10 years. The proposed owner's have already paid \$250,000 to be held in escrow from previous equity holdings, resulting in \$19,308,000 to be paid at closing. The purchase price of \$15,442,200 for the real estate will also be financed by a bank loan of \$15,442,200 at an interest rate of 5.26% for 10 years. The proposed owner has put \$750,000 in an escrow account, with \$14,692,200 due at closing. A letter of interest has been provided by TD Bank, indicating interest in lending SV Operating Three, LLC and SV Land Three, LLC the equity required for this transaction. SV Operating Three, LLC and SV Land Three, LLC will both have a balance of \$14,240,691 and \$11,243,869 respectively. Both parties anticipate to refinance the stated amounts at the end of the loan. In the event both parties cannot get financing, both parties will pay cash for the residual amount. BFA Attachment A indicates both parties have enough equity available. Also, contingencies both parties have been added for the balloon payments.

Working capital requirements are estimated at \$7,982,082, based on two months of the first year expenses, of which \$6,482,082 will be satisfied from the proposed member's equity, and the remaining \$1,500,000 will be satisfied through a loan from TD Bank at 4.0% over 3 years. A letter of Interest has been supplied by the Bank. The applicant provided an affidavit from Kenneth Rozenberg, which states that he is willing to contribute resources disproportionate to his ownership percentage. Presented as BFA Attachment A, is the Net Worth of the proposed members. The

submitted budget indicates that a net income of \$2,011,198 would be achieved during the first year following change in ownership.

Presented as BFA Attachment B, is the pro-forma balance sheet of SV Operating Three, LLC d/b/a Verrazano Center for Rehabilitation and Specialty Healthcare, which indicates positive members' equity of \$ 6,482,082 as of the first day of operations.

The submitted budget indicates a net income of \$2,011,198. The following is the comparison of the historical and projected revenues and expenses:

2010 Historical Revenues:	\$48,922,341
2010 Historical Expenses:	44,051,111
2010 Excess Revenue over Expense:	\$4,871,230
Incremental Income:	\$981,351
Incremental Expense:	3,841,383
Incremental Net Income:	(\$2,860,032)
Projected Net Income:	\$2,011,198

The incremental revenue increase for Verrazano Center is based on projections and current utilization. The facility's Medicaid rate will be adjusted to reflect the conversion of the capital component from a not-for-profit capital methodology to a for-profit capital methodology based on a return on and return of equity.

The year one expenses are projected at \$47,892,494, compared to current expenses of \$44,051,111. The increase in expenses is due to direct costs increase and lease rental payments. Also, depreciation costs will increase materially, but overall, the facility will have a projected net income of \$2,011,198.

Review of BFA Attachment C, financial summary for St. Elizabeth Ann's Health Care System Nursing Home, Inc., indicates that the facility has maintained a positive working capital position and positive equity position, and experienced an operating income of \$6,379,430 for the period shown.

Review of BFA Attachment D, financial summary for University Nursing Home, indicates the facility had an average positive working capital position and an average positive equity position. Also, the facility experienced an average net income of \$415,645 for the period shown.

Review of BFA Attachment E, financial summary for Williamsbridge Manor Nursing Home, indicates that the facility has maintained an average positive working capital position and an average positive equity position, and experienced an average net income of \$234,327 for the period shown. The facility was acquired in 2009.

Review of BFA Attachment F, financial summary for Dutchess Center for Rehabilitation, indicates an average negative working capital position and positive equity position, and experienced an average net income of \$440,648 for the period shown.

Review of BFA Attachment G, financial summary for Brooklyn Center for Rehabilitation, indicates that the facility has an average negative working capital position and an average positive equity position. The facility incurred a net loss of \$907,483 for 2008. This facility was acquired in March 2007. The applicant indicates that the facility has a rate appeal with the Department for Medicaid rate rebasing, which would offset the losses. This was not promulgated until 2009, subsequently was approved, creating net income of \$465,887 and \$1,254,006 in 2009 and 2010, respectively.

Review of BFA Attachment H, financial summary for Suffolk Center for Rehabilitation indicates that the facility has an average negative working capital position and an average negative equity position. Also, the facility had an average operating income of \$122,845 for the period shown.

Review of BFA Attachment I, financial summary for Queens Center for Rehabilitation, indicates the facility has maintained an average negative working capital position and an average positive equity position. Also, the facility experienced an average net income of \$566,018 for the period shown.

Review of Attachment J, financial summary for Stonehedge Health and Rehabilitation, Rome, New York indicates the facility has maintained an average negative working capital position and an average positive equity position. Also, the facility experienced an average net income of \$190,649.

Review of Attachment K, financial summary for Stonehedge Health and Rehabilitation, Chittenango, New York indicates the facility has maintained an average negative working capital position and an average positive equity position. Also, the facility experienced an average net income of \$365,468.

Review of BFA Attachment L, financial summary for Bronx Center for Rehabilitation and Health, indicates that the facility has maintained an average positive working capital position and an average positive equity position. Also, the facility experienced an average net income of \$1,061,539 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	Net Worth of Proposed Member
BFA Attachment B	Pro-forma Balance Sheet, SV Operating Three, LLC
BFA Attachment C	Financial Summary, St. Elizabeth Ann's Health Care System Nursing Home Inc.
BFA Attachment D	Financial Summary, University Nursing Home
BFA Attachment E	Financial Summary, Williamsbridge Manor Nursing Home
BFA Attachment F	Financial Summary, Dutchess Center for Rehabilitation
BFA Attachment G	Financial Summary, Brooklyn Center for Rehabilitation
BFA Attachment H	Financial Summary, Suffolk Center for Rehabilitation
BFA Attachment I	Financial Summary, Queens Center for Rehabilitation
BFA Attachment J	Financial Summary, Stonehedge Health and Rehabilitation (Rome, NY)
BFA Attachment K	Financial Summary, Stonehedge Health and Rehabilitation (Chittenango)
BFA Attachment L	Financial Summary, Bronx Center for Rehabilitation and Health.
BFA Attachment M	Organizational Chart
BFA Attachment N	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 6<sup>th</sup> day of October, 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 SV Operating Three, LLC d/b/a Verrazano Center for Rehabilitation and Specialty Healthcare as the new operator of St. Elizabeth Ann's Health Care and Rehabilitation 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:

112014-E

FACILITY/APPLICANT:

SV Operating Three, LLC d/b/a Verrazano  
Center for Rehabilitation and Specialty  
Healthcare

APPROVAL CONTINGENT UPON:

1. Submission of an acceptable loan commitment for the operational entity that is acceptable to the Department of Health. [BFA]
2. Submission of an acceptable loan commitment for the real estate portion that is acceptable to the Department. [BFA]
3. Submission of an executed working capital loan that is acceptable to the Department. [BFA]
4. Submission of updated budgets, with all assumptions noted, that include the impact of the State's 2011-2012 Budget and continues to demonstrate financial feasibility, acceptable to the Department. [BFA]
5. Submission of an original affidavit from the applicant, 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. [BFA]
6. Submission of an original affidavit from the applicant members of SV Operating Three, LLC making a commitment to personally fund the balloon payment on the proposed mortgage, should terms acceptable to the Department of Health be unavailable at the time of refinancing. [BFA]
7. Submission of an original affidavit from the applicant member SV Land Three, LLC making a commitment to personally fund the balloon payment on the proposed mortgage, should terms acceptable to the Department of Health be unavailable at the time of refinancing. [BFA]

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 # 111285-E

## Woodland Pond at New Paltz

**County:** Ulster (New Paltz)  
**Purpose:** Establishment

**Program:** Residential Health Care Facility  
**Submitted:** February 24, 2011

### Executive Summary

#### Description

This application requests permission to replace Kingston Community Services Corp. as the sole corporate member and co-established operator of Kingston Regional Senior Living Corp., d/b/a Woodland Pond at New Paltz, a Continuing Care Retirement Community (CCRC) located in Ulster County, with Health Alliance Planning, Inc., a not-for-profit corporation.

Health Alliance Planning, Inc., and Kingston Regional Senior Living Corp. will remain separate corporations subsequent to approval.

Woodland Pond at New Paltz (Woodland Pond) is comprised of 179 independent living apartments, 60 enriched housing units, and a 40- bed residential health care facility. None of the services now offered at Woodland Pond will be changed, expanded, or reduced. No physical plant construction or renovations are covered by this application. Also, the board members and officers of Woodland Pond will remain unchanged.

**DOH Recommendation**  
Contingent approval.

#### Need Summary

As this project involves only a change in the ownership composition of a CCRC, no Need recommendation is required.

#### Program Summary

Based on the information reviewed, staff found nothing which would reflect adversely upon the applicant's character and competence or standing in the community.

#### Financial Summary

There are no costs associated with the subject application. The Center will remain a separate not-for-profit Article 28 corporation, and maintain a separate operating certificate. There will be no change in authorized services or number or type of beds as a result of the proposed establishment.

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

#### 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. Clarification of applicant name. [CSL]
2. Submission of an amended Certificate of Assumed Name for Kings Regional Senior Living Corp. that is acceptable to the Department. [CSL]
3. Submission of site control that is acceptable to the Department. [CSL]
4. Submission of all amendments for the certificate of incorporation for Kingston Regional Senior Living Corp. that is acceptable to the Department. [CSL]
5. Submission of corporate bylaws for Kingston Regional Senior Living Corp., Inc. that is acceptable to the Department. [CSL]
6. Submission of all amendments for the certificate of incorporation for Health Alliance, Inc. that is acceptable to the Department. [CSL]
7. Submission of corporate bylaws for HealthAlliance, Inc. that is acceptable to the Department. [CSL]
8. Submission of the certificate of dissolution for Kingston Community Services Corp. that is acceptable to the Department. [CSL]
9. Submission of the Assignment of Corporate Services Agreement that is acceptable to the Department. [CSL]
10. Submission of the amended and restated Corporate Services Agreement that is acceptable to the Department. [CSL]

Council Action Date

**October 6, 2011**

## Programmatic Analysis

### Background

Article 46 of the Public Health Law authorizes the establishment of continuing care retirement communities in New York State. The legislation and implementing regulations require continuing care retirement communities to provide:

- An independent living unit. Independent living accommodations range from studio apartments to stand-alone cottages;
- A meal plan;
- A range of health and social services subject to the terms of a residency agreement, which must include at a minimum, sixty (60) days of prepaid services of an on-site or affiliated nursing facility;
- Access to health care services, as defined in the residency agreement, including physician services, rehabilitation services and prescription drugs. The cost of these services is not required to be covered in the residency agreement. Access can be provided through on-site services or through transportation to health care services at another location.

The development of other services within the community is encouraged. Most communities also provide a wide range of additional services and amenities under the terms of the residency agreement.

### Project Review

Establishment application submitted on February 21, 2011 by Woodland Pond at New Paltz.

Kingston Community Services Corporation is the sole member of Kingston Regional Senior Living Corporation d/b/a Woodland Pond at New Paltz.

The Board of Directors of Kingston Regional Senior Living Corp. approved a name change from Kingston Regional Senior Living Corp. to HealthAlliance Senior Living Corporation. Approval of the name change is referenced in the October 13, 2010 meeting of the Board of Directors.

Kingston Regional Senior Living Corp. (HealthAlliance Senior Living Corporation) d/b/a Woodland Pond at New Paltz is requesting approval to establish HealthAlliance, Inc. d/b/a HealthAlliance of the Hudson Valley as an active parent of the Woodland Pond at New Paltz Continuing Care Retirement Community Skilled Nursing Facility.

Kingston Regional Senior Living Corp. (HealthAlliance Senior Living Corporation) d/b/a Woodland Pond at New Paltz is a New York State not-for-profit corporation which operates a continuing care retirement community located in New Paltz, Ulster County. The Woodland Pond community consists of 201 independent living units, 60 enriched housing units, and, a 40 bed skilled nursing facility.

Woodland Pond at New Paltz received a final Certificate of Authority from the New York State Department of Health on October 26, 2007 and opened its doors to residents in October of 2009.

Currently, Kingston Community Services Corp. is the sole corporate member and co-established operator of Kingston Regional Senior Living Corp. (HealthAlliance Senior Living Corporation) d/b/a Woodland Pond at New Paltz. If approved by the Public Health and Health Planning Council, HealthAlliance, Inc. d/b/a HealthAlliance of the Hudson Valley, will replace Kingston Community Services Corp. as sole corporate member of Woodland Pond at New Paltz and as an active parent of the Woodland Pond Skilled Nursing Facility.

HealthAlliance will have extensive powers with regard to Woodland Pond at New Paltz including planning, credentialing and development of capital and operating budgets. In addition, HealthAlliance will provide substantial management services to Woodland Pond pursuant to a Corporate Services Agreement.



If the Public Health and Health Planning Council approves this application to establish HealthAlliance as an active parent of the Woodland Pond Skilled Nursing Facility, HealthAlliance will seek approval from the Continuing Care Retirement Community Council to establish HealthAlliance as cooperator of the Woodland Pond at New Paltz Continuing Care Retirement Community, under Article 46 of the Public Health Law.

None of the services currently offered by Woodland Pond at New Paltz Continuing Care Retirement Community will be changed, expanded or limited by this application.

HealthAlliance is a New York not-for-profit corporation and is the active parent and sole member of Benedictine Hospital, an Article 28 general hospital located in Ulster County; Kingston Hospital, an Article 28 general hospital located in Ulster County; Margaretville Hospital, an Article 28 general hospital located in Delaware County; and, Mountainside Residential Care Center, an Article 28 skilled nursing facility located in Delaware County. In its capacity as active parent, HealthAlliance is responsible for financial and contractual obligations of its cooperation members. HealthAlliance is also the active parent of Kingston Regional Community Services Corporation, the sole member of Kingston Regional Senior Living Corporation (HealthAlliance Senior Living Corporation) d/b/a Woodland Pond at New Paltz.

At the October 29, 2010 meeting of the HealthAlliance, Inc. Board of Directors, the Board approved and authorized the filing of a Certificate of Dissolution and Plan of Dissolution for Kingston Community Service Corp.

Character and Competence

Facilities Reviewed

Margaretville Memorial Hospital	Margaretville, NY
Benedictine Hospital	Kingston, NY
Kingston Hospital	Kingston, NY
Corning Hospital	Corning, NY
Orange Regional Medical Center	Middletown, NY
Foxhall Ambulatory Surgical Center	Kingston, NY
Woodland Pond at New Paltz SNF	New Paltz, NY
Ferncliff Nursing Home SNF	Rhinebeck, NY
Mountainside Residential Care Center SNF	Margaretville, NY
Woodland Pond at New Paltz	
Enriched Housing	New Paltz, NY

Enforcement reviews of the affiliated facilities were conducted by the Department’s Bureau of Hospital and Primary Care Services, Bureau of Quality and Surveillance, and, Division of Assisted Living. There are no outstanding surveillance or enforcement actions for these facilities and, based on the most recent surveillance information, the facilities are deemed to be operating in substantial compliance with all applicable State and Federal codes, rules and regulations. This determination was made based on a review of pertinent records regarding each facility’s enforcement history. There have been no repeat enforcements for any facility listed for the look-back period of ten (10) years. A review of the operations of the above listed facilities for the ten (10) year period (or for the period of the facilities operation, if less than ten (10) years) revealed that a consistently high level of care has been provided.

Mountainside Hospital	Montclair, NJ
St. Clare’s Hospital	Denville, NJ
St. Joseph’s Hospital & Medical Center	Paterson, NJ
St. Michael’s Medical Center	Newark, NJ

A review of operations for the above facilities was conducted by the State of New Jersey Department of Health and Senior Services (DOHSS) – Certificate of Need and Healthcare Facility Licensure Program. No adverse operational findings were found for the reporting period allowed by the DOHSS (the DOHSS examines and evaluates a licensing track record for the period beginning 12 months preceding submission of the review request) and the facilities have provided a substantially consistent high level of care.

**Individual Background Review**

Staff from the Bureau of Continuing Care Initiatives reviewed the disclosure information submitted by the entire Board of Directors of Kingston Regional Senior Living Corp. (HealthAlliance Senior Living Corporation) d/b/a Woodland Pond

at New Paltz and by the Board of Directors of HealthAlliance 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 Professional Medical Conduct and the Education Department databases.

The members of the Board of Directors of Kingston Regional Senior Living Corp. (HealthAlliance Senior Living Corporation) d/b/a Woodland Pond at New Paltz include the following individuals and the offices held. The review revealed the following:

**Thomas W. Jacobi** serves as Chair of the Kingston Regional Senior Living Corp. (HealthAlliance Senior Living Corporation) d/b/a Woodland Pond at New Paltz Board of Directors. He is currently Treasurer of the Kingston Uptown Business Association. Mr. Jacobi is a gemologist and the owner of Schneiders Jewelers, a Kingston business in operation for over 75 years.

**Patricia S. Johnson** serves as Vice Chair of the Kingston Regional Senior Living Corp. (HealthAlliance Senior Living Corporation) d/b/a Woodland Pond at New Paltz Board of Directors. Ms. Johnson has been an active American Cancer Society volunteer for 30 years. She has also served as a member of the American Association of University Women, the Kingston Development Club and the Board of Ethics Committee of the Ulster County Legislature.

**Robert A. Hansut** is a retired Division Manager with Central Hudson Gas and Electric Corporation. He has served as Budget Officer for the Town of Lloyd and as a Town Councilman. Mr. Hansut currently serves as Treasurer of the Kingston Regional Senior Living Corp. (HealthAlliance Senior Living Corporation) d/b/a Woodland Pond at New Paltz Board of Directors.

**Donald C. Katt** has been employed by Ulster County Community College since 1968 and has served as President since 2000. Dr. Katt holds an Ed.D. from the State University of New York at Albany. Dr. Katt serves as Secretary of the Kingston Regional Senior Living Corp. (HealthAlliance Senior Living Corporation) d/b/a Woodland Pond at New Paltz Board of Directors.

**Dr. Laurel M. Garrick Duhaney** has been affiliated with the State University of New York at New Paltz since 1996 and currently serves as Interim Provost and Vice President for Academic Affairs.

**Joseph R. Grieco** retired from the Andes Central School District in 1997 as a teacher and administrator. He holds permanent teaching certificates as a School Administrator - Supervisor and School District Administrator from the New York State Education Department. Mr. Grieco has served as a Town Justice in the Town of Andes since 1972.

**David W. Lundquist, ex-officio member** is currently the President and Chief Executive Officer of HealthAlliance of the Hudson Valley.

**Marc A. Schain** has served as a managing partner of Schain & Co. CPAs since 1974. He holds a valid CPA license from the New York State Education Department and valid Life, Accident and Health Insurance broker licenses from the New York State Insurance Department.

**Daniel Shuster** has owned and operated Shuster Associates, a planning and consulting firm, since 1979.

**Alan Dunefsky** formally retired from the State University of New York at New Paltz in 2005 as Director of Recreational Sports but has continued part-time employment with SUNY at New Paltz as a Special Assistant for Projects.

**Beverly Finnegan** retired in January 2010 as the Regional Vice President for the Kingston-based chapters of the American Cancer Society.

The members of the Board of Directors of HealthAlliance include the following individuals and the offices held. The review revealed the following:

**Eugene P. Heslin, M.D.** is a licensed physician per the New York State Education Department, Office of the Professions. Dr. Heslin has operated a private medical practice in Saugerties, New York since 1992. Dr. Heslin serves as Chair of the HealthAlliance Board of Directors.

**William A. Le Doux** serves as Vice Chair of the HealthAlliance Board of Directors. Mr. Le Doux has owned and operated Le Doux Associates Educational Consultants since August 2000. He holds permanent School District Administrator and School Administrator/Supervisor certifications from the New York State Education Department.

**Cynthia Lowe** serves as Treasurer of the HealthAlliance Board. She is a licensed CPA per the New York State Education Department, Office of the Professions. Ms. Lowe has served as Director of the Area Fund DBA Ulster County Community Foundation since November 2007.

**Marjorie S. Rovereto** currently serves as Secretary of the HealthAlliance Board of Directors. Ms. Rovereto is President/Chief Executive Officer and Trustee of the Ulster Savings Bank in Kingston, New York.

**Pamela Carroad** has served as the Executive Director of United Cerebral Palsy of Ulster County since May 1973.

**Carol Crews** has served as the Executive Director of the Hudson Valley Psychiatric Association in Kingston, New York since June 1997.

**Nancy S. Davenport** is a New York State Licensed Attorney. Ms. Davenport is the Vice President/Manager of State Government Relations for J.P. Morgan Chase in Albany, New York.

**Ali Hammoud, M.D.** is a New York State licensed physician. Dr. Hammoud has been a member of Cardiology Consultants of Westchester since 2001.

**Ellis Lader, M.D.** is a New York State licensed physician. Dr. Lader has been a member of Mid-Valley Cardiology in Kingston, New York since 2001.

**Richard B. Mathews** has served as the County of Ulster Commissioner of Jurors since 1997.

**Kevin Ryan** is a licensed Insurance Broker per the New York State Insurance Department. Mr. Ryan is President and Chief Executive Officer of the Valley Group, Inc. Insurance Brokerage located in Kingston, New York.

**Craig Sickler** is licensed as a CPA and as a Life, Accident and Health Insurance Agent. Mr. Sickler is President of Sickler, Torchia, Allen Public Accountants in Lake Katrine, New York.

**Albert Spada** served as Clerk of Ulster County from 1966 until his retirement in 2006.

**Joyce St. George** is President and Co-Director of PACT Training, Inc. a training and consulting firm in New Kingston, New York.

**Marc A. Tack, D.O.** is a doctor of osteopathic medicine licensed per the New York State Education Department, Office of the Professions. Dr. Tack is an infectious disease specialist with MAHV Medical Group in Kingston, New York.

**Margo McGilvrey, R.N.** is a Registered Professional Nurse currently serving as Chief Nursing Officer and Vice President of Patient Services for HealthAlliance.

**Frank Ehrlich, M.D.** is a licensed New York State physician. Since December 2009, Dr. Ehrlich has served as Chief Medical Officer of HealthAlliance of the Hudson Valley.

**R. Abel Garraghan** has served as President of Heritagenergy, a home heating oil/propane distribution company, since 1974. Mr. Garraghan currently serves on the Boards of the Rhinebeck Savings Bank and the Hudson Valley Economic Development Corporation.

#### Conclusion

None of the Directors or officers of Kingston Regional Senior Living Corp. (HealthAlliance Senior Living Corporation) d/b/a Woodland Pond at New Paltz or HealthAlliance, Inc. have been convicted of a crime or pled nolo contendere to a felony charge; has had a prior discharge in bankruptcy or was found insolvent in any court action; has been subject to a currently effective order or federal or state administrative order relating to business activity or health care as a result of an action by a public agency or department; has any interest in any supplier or potential suppliers of goods or services to the sponsor, or; has supplied materials, goods or services of any kind to the sponsor for a fee.

No Board member has disclosed a record of legal actions, past or pending.

Joseph R. Grieco holds permanent School District Administrator and School District Supervisor certificates from the New York State Education Department.

Marc A. Schain is licensed as a Certified Public Accountant with the New York State Education Department, Office of the Professions and is in good standing. He holds Life, Accident and Health Insurance broker licenses from the New York State Insurance Department, and is in good standing.

Eugene P. Heslin is licensed as a New York State physician by the New York State Education Department, Office of the Professions with no disciplinary actions on file.

William A. Le Doux holds permanent School District Administrator and School District Supervisor certificates from the New York State Education Department.

Cynthia Lowe is licensed as a Certified Public Accountant by the New York State Education Department, Office of the Professions. There are no disciplinary actions listed against Ms. Lowe.

Nancy S. Davenport is an attorney and is duly registered with the Office of Court Administration, per the New York State Unified Court System, Third Appellate Division. Ms. Davenport was admitted to practice as an attorney in New York State courts in 1992.

Ali Hammoud is licensed as a New York State physician by the New York State Education Department, Office of the Professions with no disciplinary actions on file.

Ellis Lader is licensed as a New York State physician by the New York State Education Department, Office of the Professions with no disciplinary actions on file.

Kevin Ryan is licensed as a Property and Casualty Agent by the State of New York Insurance Department with no adverse actions listed against Mr. Ryan.

Craig Sickler is licensed as a Certified Public Accountant by the New York State Education Department, Office of the Professions. There are no disciplinary actions listed against Mr. Sickler. He holds Life, Accident and Health Insurance broker licenses from the New York State Insurance Department, and is in good standing.

Marc A. Tack is licensed as a New York State physician (D.O.) by the New York State Education Department, Office of the Professions with no disciplinary actions on file.

Margo McGilvrey is licensed as a New York State Registered Professional Nurse by the New York State Education Department, Office of the Professions with no disciplinary actions on file.

Frank Ehrlich is licensed as a New York State physician by the New York State Education Department, Office of the Professions with no disciplinary actions on file.

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

With the approval of the subject application, Health Alliance would be jointly licensed so that it could more easily exercise its authority over the entity in areas such as strategic planning, operating and capital budgets, system policies and procedures and financial and debt management. In this manner, Health Alliance will be able to coordinate the activities of the various licensed entities in a more efficient system, but leave the responsibility for the delivery of the clinical activities services to the local organization.

Through this application, Health Alliance will replace Kingston Community Service Corp. (KCSC) as the sole corporate member and become a co-established operator of Kingston Regional Senior Living Corp., d/b/a Woodland Pond at New Paltz (Woodland Pond). Kingston Community Services Corp. will be dissolved. This application will enable Health Alliance the ability to exercise active powers over Woodland Pond and gain broader oversight with respect to the day to day operations including those set forth in the corporate service agreement between the parties. Among these powers and activities are:

- a) Owner shall retain all governing authority for the development and general policies and responsibility for statutory and regulatory compliance;
- b) Owner shall retain sole authority on the disposition of assets, liens or encumbrances;
- c) Owner shall retain sole authority over the incurrence of liabilities not set forth in the approved budget for the day to day operations;
- d) Owner shall maintain independent control over books and records and shall engage independent accountants to examine its financial statements at least annually;
- e) Owner agrees to provide Health Alliance with day-to-day management services;
- f) Owner agrees to allow Health Alliance to assume general responsibility for general directives, guidelines, and policies and standards established by the owner;
- g) Health Alliance shall recruit, hire, fire and supervise all personnel necessary for efficient operation;
- h) Health Alliance shall appoint or terminate key management employees;
- i) Health Alliance shall recommend employee benefits and periodically review personnel policies;
- j) Owner shall reimburse Health Alliance a Management Fee for out of pocket expenses plus the Management Fee which will not exceed \$186,321 per fiscal year quarter.
- k) The agreement is for a stated 5 year term and will be extended unless the owner within 60 days determines not to extend.
- l) The owner is said to default if during the course of business becomes insolvent, is unable to pay its debts or files for bankruptcy. Also, it would default if the owner fails to perform all agreements, or pay Health Alliance for their services performed.

The Corporation shall not have the power to provide any health services and shall not co-mingle Hospital funds or combine Hospital revenue streams, relocate any medical services without the consent of owner, or engage in contract negotiations that would violate the ethical and legal directives.

There are no costs associated with the subject application. The Center will remain a separate not-for-profit Article 28 corporation, and maintain a separate operating certificate. There will be no change in authorized services or number or type of beds as a result of the proposed establishment.

Capability and Feasibility

There are no significant issues of capability or feasibility associated with the subject application.

Presented as BFA Attachment A, is the financial summary for Woodland Pond. As shown on Attachment A, the facility has maintained an average positive working capital position of \$1,241,929 and a negative net asset position of \$13,578,209 for the period shown. The facility incurred an average operational loss of \$7,914,623 during the period shown. The applicant has indicated that the reasons for the losses were due to the following: the facility had been constructed and was delayed in getting the business running by approximately one year, starting operations early 2010. Also, even though the operation had operating revenue, the facility could not recognize revenue due to the revenue recognition rule according to General Accounting Acceptance Principal (Revenue Recognition Topic 600). The facility could not recognize \$6,160,144 in 2009 and \$9,669,103 in 2010. As such, the only revenue recognized in the financial statements is limited to 10% of the income received, which is depreciated using straight line method in terms of the revenue recognition principal.

The other 90% of revenue taken in is refundable under the entrance fee agreement and is not recognized as revenue. The revenue will be recognized when it is earned on an accrual basis. The applicant has indicated that they will implement the following steps to improve operations: Consolidate staffing where needed, improve utilization by marketing the facility, manage revenue and expenses using an electronic financial system that reports efficiencies, set-up budgets with the assistance of Health Alliance, Inc. resources, and meet monthly on current financial status and make changes if needed.

Recommendation

**From a financial perspective, approval is recommended.**

<h2>Attachments</h2>
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- |                  |  |
|------------------|--|
| BFA Attachment A | Financial Summary – Kingston Regional Senior Living Corp. d/b/a Woodland Pond at New Paltz (Woodland Pond) |
| BFA Attachment B | Organizational Chart – Health Alliance, 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 6th day of October, 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 HealthAlliance, Inc. as the active parent of Woodland Pond at New Paltz, 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:

111285-E

FACILITY/APPLICANT:

Woodland Pond at New Paltz

APPROVAL CONTINGENT UPON:

1. Clarification of applicant name. [CSL]
2. Submission of an amended Certificate of Assumed Name for Kings Regional Senior Living Corp. that is acceptable to the Department. [CSL]
3. Submission of site control that is acceptable to the Department. [CSL]
4. Submission of all amendments for the certificate of incorporation for Kingston Regional Senior Living Corp. that is acceptable to the Department. [CSL]
5. Submission of corporate bylaws for Kingston Regional Senior Living Corp., Inc. that is acceptable to the Department. [CSL]
6. Submission of all amendments for the certificate of incorporation for Health Alliance, Inc. that is acceptable to the Department. [CSL]
7. Submission of corporate bylaws for HealthAlliance, Inc. that is acceptable to the Department. [CSL]
8. Submission of the certificate of dissolution for Kingston Community Services Corp. that is acceptable to the Department. [CSL]
9. Submission of the Assignment of Corporate Services Agreement that is acceptable to the Department. [CSL]
10. Submission of the amended and restated Corporate Services Agreement that is 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



Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: Advanced Home Care Services, Inc.  
Address: Brooklyn  
County: Kings  
Structure: For-Profit Corporation  
Application Number: 1717-L

Description of Project:

Advanced 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.

The applicant has authorized 200 shares of stock which are owned solely by Alla Goldin.

The Board of Directors of Advanced Home Care Services, Inc. comprises the following individual:

Alla Goldin, R.N., President, Secretary, Treasurer  
Chief Compliance Officer, Americare Certified Special Services

A search of the individual 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 healthcare professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 1117 Church Avenue, Brooklyn, New York 11218:

New York            Kings                            Queens                            Bronx                            Richmond

The applicant proposes to provide the following health care services:

Nursing    Home Health Aide    Personal Care  
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: September 7, 2011

Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: Angel Care, Inc.  
Address: Brooklyn  
County: Kings  
Structure: For Profit Corporation  
Application Number: 1903-L

Description of Project:

Angel Care, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Angel Care, Inc. has authorized 200 shares of stock which are owned solely by Galina Lenyk-Kolotsi.

The members of the Board of Directors of Angel Care, Inc. comprise the following individual:

Galina Lenyk-Kolotsi, R.N., Chairperson  
Intake Coordinator, Americare Home Care

A search of the individual 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 2170 East 65<sup>th</sup> Street, Brooklyn, New York 11234:

New York	Bronx	Richmond
Kings	Queens	Nassau

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	

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 29, 2011

Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: Bethesda Elite Care, Inc.  
Address: Manorville  
County: Suffolk  
Structure: For-Profit Corporation  
Application Number: 1827-L

Description of Project:

Bethesda Elite 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:

Yvonne Bello, R.N., 51 shares Charge Nurse, Long Island State Veteran's Home	Henry Bello, 10 shares Account Officer, United Nations Children's Emergency Fund
Miriam Bello, 9 shares Sales Lead, Nautica Kids	Victor Bello, P.A., 10 shares Physician Assistant, Peconic Bay Medical Center
Emmanuel Bello, 10 shares Paralegal, Frenkel & Lambert, LLP	Micah Bello, 10 shares Direct Care Counselor, Maryhaven Center of Hope

100 shares of stock remain unissued.

The Board of Directors of Bethesda Elite Care, Inc. comprises the following individuals:

Yvonne Bello, R.N., Chairperson (disclosed above)	Henry Bello, Vice Chairperson (disclosed above)
Miriam Bello, Secretary (disclosed above)	Victor Bello, P.A., Treasurer (disclosed above)
Emmanuel Bello, Director (disclosed above)	Micah Bello, Director (disclosed above)

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 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 3 Surrey Lane, Manorville, New York 11949:

Suffolk	Nassau	Westchester	Queens
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The applicant proposes to serve the residents of the following counties from an office located in Brooklyn:

Kings	New York	Bronx	Richmond
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The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech-Language Pathology
Nutrition	Medical Social Services	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: September 7, 2011

Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: C.P.R. Home Care, Inc. d/b/a City Wide Home Care  
Address: Brooklyn  
County: Kings  
Structure: For-Profit  
Application Number: 1794-L

Description of Project:

C.P.R. Home Care, Inc. d/b/a City Wide Home Care, a for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The proposed Board Members of C.P.R. Home Care, Inc. d/b/a City Wide Home Care, comprises the following individuals:

Alex Gak – Chairperson  
Technical Specialist, Morgan Stanley Smith  
Barney

Alan Vainrib, MD – Director  
Resident, NY Presbyterian Medical Center

Elina Krugolets, RN – Director  
Register Nurse, Hebrew Home at Riverdale

The applicant has authorized 200 shares of stock, which are owned as follows

Alex Gak – 25 Shares  
(Previously Disclosed)

Karina Rozenfeld, RN – 25 Shares  
Director of Patient Services  
Home Care Nurse – Metropolitan Jewish Home  
Care

Elina Krugolets, RN – 25 Shares  
(Previously Disclosed)

Alan Vainrib, MD – 25 Shares  
(Previously Disclosed)

100 shares of stock remain unissued.

The Office of the Professions of the State Education Department and the Office of Professional Medical Conduct, where appropriate, 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 has confirmed that 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.

The applicant proposes to serve the residents of the following counties from an office to be located Kings County:

Bronx

Kings

New York

Queens

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Occupational Therapy
Physical Therapy	Homemaker	Housekeeper	Speech-Language Pathology

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: August 5, 2011

Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: Ideal Home Health, Inc.  
Address: Brooklyn  
County: Kings  
Structure: For-Profit Corporation  
Application Number: 1674-L

Description of Project:

Ideal Home Health, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Ideal Home Health, Inc. has authorized 200 shares of stock, which are owned as follows: Anna Krupovlyanskaya owns 80 shares, Leonid Krupovlyanskiy owns 40 shares, Paul Elberg owns 40 shares and Alex Krupoff owns 40 shares.

The Board of Directors of Ideal Home Health, Inc. comprises the following individuals:

Anna Krupovlyanskaya, R.N., President  
Administrator, Independent Home Care, Inc.  
Columbus, Ohio  
Affiliations: Independent Home Care, Inc.,  
Ideal Medical Supply, Inc. d/b/a Family  
Pharmacy

Paul Elberg, Vice President  
CFO, Independent Home Care, Inc.  
Affiliation: Independent Home Care, Inc.

Leonid Krupovlyanskiy, Second Vice  
President  
Billing, Safety & Compliance Officer,  
Independent Home Care, Inc.  
Affiliation: Ideal Medical Supply, Inc. d/b/a  
Family Pharmacy

Alex Krupoff, Secretary, Treasurer  
Vice President, Cowen and Company

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Board of Nursing of the State of Ohio and the Office of the Professions of the State Education Department (New York) 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 1402 Avenue Y, Brooklyn, New York, 11235:

Bronx                      Kings                      Queens                      New York                      Richmond

The applicant proposes to provide the following health care services:

Nursing                      Home Health Aide                      Personal Care                      Physical Therapy  
Homemaker                      Housekeeper                      Occupational Therapy

A ten year review of the operations of the following agencies was performed as part of this review:

Independent Home Care, Inc.  
Ideal Medical Supply, Inc. d/b/a Family Pharmacy

The information provided by the State of Ohio has indicated that the home care agency has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The State of Ohio has indicated that the pharmacy holds a license in good standing and that the State of Ohio has never taken any disciplinary action against this pharmacy or its license.

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: August 5, 2011



Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: Longevity Health Services, LLC  
Address: Brooklyn  
County: Kings  
Structure: Limited Liability Company  
Application Number: 2018-L

Description of Project:

Longevity Health 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.

The proposed member of Longevity Health Services, LLC comprises the following individual:

Ni Xia Zheng, RN – 100% Membership  
Nurse Case Manager, WellCare of New York

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 235 Bay Street #1, Brooklyn, New York 11214:

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: September 6, 2011

Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: Magic Home Care, LLC  
Address: Brooklyn  
County: Kings  
Structure: Limited Liability Company  
Application Number: 2007-L

Description of Project:

Magic Home 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 members of Magic Home Care, LLC comprise the following individuals:

Tsilistina Ryabicheva, RN, Director of Clinical Services – 50 %      Gennady Shafir, President – 50%  
RN Field Supervisor, ElderServeHealth      Business Administrator, Magic Leasing

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 166 Beaumont Street, 1<sup>st</sup> Floor, Brooklyn, New York 11235:

Kings                      Queens                      Richmond

The applicant proposes to provide the following health care services:

Nursing                      Home Health Aide                      Personal Care                      Medical Social Services  
Physical Therapy                      Occupational Therapy                      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: September 6, 2011

Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: Majestic Touch Home Care Services, Inc.  
Address: Baldwin  
County: Nassau  
Structure: For-Profit Corporation  
Application Number: 1742-L

Description of Project:

Majestic Touch 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.

The applicant has authorized 200 shares of stock which are owned solely by Yves Jean.

The Board of Directors of Majestic Touch Home Care Services, Inc. comprises the following individual:

Yves Jean, MD President, Secretary  
Coordinator, Manager, City of New York – Health & Hospitals Corporation: Jacobi Hospital Center

Yves Jean disclosed that he is a Medical Doctor licensed to practice in the Dominican Republic and Haiti, but he is not licensed to practice medicine in the United States.

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 county from an office located at 2300 Grand Avenue, Suite 205, Baldwin, New York 11510.

Nassau

The applicant proposes to serve the residents of the following counties from an office located in Brooklyn:

Kings                      Queens                      New York                      Bronx                      Richmond

The applicant proposes to provide the following health care services:

Nursing                      Home Health Aide                      Personal Care

Review of the Disclosure Information indicates that the applicant has no affiliations with other health care agencies/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: August 5, 2011

Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: Most Excellent Home Care Agency, Inc.  
Address: Springfield Gardens  
County: Queens  
Structure: For Profit Corporation  
Application Number: 1860-L

Description of Project:

Most Excellent Home Care Agency, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Most Excellent Home Care Agency, Inc. has authorized 200 shares of stock which are owned solely by Mab Ubani.

The Board of Directors of Most Excellent Home Care Agency, Inc. is comprised of the following individual:

Mab Ubani, R.N., President/CEO  
Staff Nurse, Maimonides Medical Center

A search of the individual 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 222-12 146<sup>th</sup> Avenue, Queens, New York 11413:

New York	Bronx	Kings
Nassau	Queens	

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: August 5, 2011

Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: Nannies For Grannies, Inc.  
Address: Patchogue  
County: Suffolk  
Structure: For-Profit Corporation  
Application Number: 1804-L

Description of Project:

Nannies For Grannies, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. Nannies For Grannies, Inc. is an existing non-medical companion care agency.

The applicant has authorized 200 shares of stock which are owned solely by Patricia A. Thelian.

The Board of Directors of Nannies For Grannies, Inc. comprises the following individual:

Patricia A. Thelian, President

Affiliation: There's No Place Like Home Companion Care LTD

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 34 Sunset Lane, Patchogue, New York 11772:

Nassau Suffolk Queens

The applicant proposes to provide the following health care services:

Nursing Home Health Aide Personal Care

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: August 19, 2011

Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: New Universal Home Care, Inc.  
Address: Bronx  
County: Bronx  
Structure: For-Profit Corporation  
Application Number: 1764-L

Description of Project:

New Universal 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 solely by Felix C. Salinas, R.N.

The Board of Directors of New Universal Home Care, Inc. comprises the following individuals:

Felix C. Salinas, R.N., President Staff Nurse, Jacobi Medical Center	Joice I. Salinas, Vice President Community Liaison Worker, Metropolitan Hospital Center (01/07/08 – 10/16/08)
Yvonne M. Mota, Secretary IT Tutor, Monroe College IT Resource Center	Maria E. Fallas, Treasurer Bookkeeper, Heavenly Vision Christian Center

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 2579 Bainbridge Avenue, Bronx, New York 10458:

Bronx	New York	Richmond	Kings	Queens
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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: August 5, 2011

Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: Peconic Landing Home Health Services  
Address: Greenport  
County: Suffolk  
Structure: Not-For-Profit Corporation  
Application Number: 1695-L

Description of Project:

Peconic Landing Home Health Services, a not-for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. The sole member of Peconic Landing Home Health Services is Peconic Landing at Southold, Inc., a continuing care retirement community.

The Board of Directors of Peconic Landing at Southold, Inc. and Peconic Landing Home Health Services comprises the following individuals:

John May, President & Treasurer Self-employed management consultant	Paul Connor, Vice President President & CEO, Eastern Long Island Hospital
Luke Babcock Partner, Saybrook Capital (finance)	Rosamond Baiz Self-employed vineyard manager, The Old Field Vineyards
Gregory Ferraris, CPA Principal, Gregory N. Ferraris CPA, LLC CPA, Banducci, Katz & Ferraris, LLP	Robert Goldman Retired Affiliation: Eastern Long Island Hospital
Alice Hussie Retired	Peter Larsen Rector, St. John's Episcopal Church Affiliation: Southampton Hospital
Thomas McCarthy Self-employed broker, Thomas J. McCarthy Real Estate, Inc.	Sandra Novick Marketing Director, Suffolk County National Bank
Edward W. Webb, II 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 Suffolk County from an office located at 1500 Brecknock Road, Greenport, New York 11944.

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Nutrition	Homemaker
Housekeeper		

A ten year review of the operations of the following facilities was performed as part of this review:

Eastern Long Island Hospital  
Southampton Hospital  
Peconic Landing at Southold, Inc.

A review of the above listed hospitals by the Division of Certification and Surveillance has determined that the hospitals reviewed 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 Bureau of Continuing Care Initiatives has indicated that the continuing care retirement community reviewed 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: September 9, 2011



Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: Sweet Sunshine Home Health Care Agency, Inc  
Address: Brooklyn  
County: Kings  
Structure: For-Profit  
Application Number: 1825-L

Description of Project:

Sweet Sunshine Home Health Care Agency, 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 100 shares of stock, which are owned as follows:

Joyce Bain, RN – 75 Shares

Denise Bain – 25 Shares

The proposed Board Members of Sweet Sunshine Home Health Care Agency, Inc., comprises the following individuals:

Joyce Bain, RN – President  
School Nurse, New York State Department of  
Health Comprehensive Agency

Mildred Johnson-Silvie – Chairwoman  
Director of Business Planning and Development,  
Institute for Family Health

Curtis J. Andrews – First Vice President  
Lab Technologist, Beth Israel Medical Center

Sharon C. Wilson – Recording Secretary and Historian  
Unemployed

Laureen M. Gray – Assistant Secretary  
Nurse Technician, New York Methodist Hospital

Gheneva L. Francis, LPN – Corresponding Secretary  
Unit Secretary, New York Methodist Hospital

Denise Bain – Accountant and Treasurer  
Staff Accountant, Polakoff & Michaelson CPA

Patricia A. Warren – Assistant Treasurer  
Retired

Jacklyn Hazel-Noriega – Business Manager  
Unemployed

Annette J. Carrington – Trustee I  
Retired

Wayne Bain – Trustee II  
Material Examiner and Identifier, DLA Disposition  
Services Richmond

The Office of the Professions of the State Education Department 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 residents of the following counties from an office located at 225 Quincy Street, Brooklyn, New York 11216:

Bronx

Kings

New York

Queens

Richmond

The applicant proposes to provide the following health care services:

Nursing  
Physical Therapy

Home Health Aide  
Homemaker

Personal Care  
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: August 23, 2011

Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: ZLC Senior Care, Inc.  
Address: Merrick  
County: Nassau  
Structure: For-Profit Corporation  
Application Number: 2009-L

Description of Project:

ZLC Senior 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:

Nicole D. Labib, LMSW – President – 100%  
Social Worker, Home Instead Senior Care

The sole board member of ZLC Senior Care, Inc. is Nicole D. Labib.

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 1817 Merrick Avenue, Merrick, New York 11566:

Nassau                      Suffolk                      Queens

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: August 5, 2011

Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: Alternate Staffing, Inc.  
Address: Brooklyn  
County: Kings  
Structure: For-profit  
Application Number: 1896-L

Description of Project:

Alternate Staffing, Inc., a business corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law as described below.

Alternate Staffing, Inc. was previously approved as a home care services agency by the Public Health Council at its July 21, 1995 meeting and subsequently licensed as 9695L001. At that time, the shareholders were: Joel and Sarah Spiegel - 12.50 shares, Jacob "Yanky" Dreyfuss – 12.50 shares, Moishy Dreyfuss – 12.50 shares and Shulamis Dreyfuss – 12.50 shares. The remaining 150 shares were unissued.

On February 16, 1998, shares were redistributed. Joel and Sarah Spiegel transferred 2.5 shares to Moishy Dreyfuss and 10 shares to Norma Dreyfuss; Jacob "Yanky" Dreyfuss transferred 5 shares to Moishy Dreyfuss and 7.5 shares to Shulamis Gelbwachs. As a result, of this redistribution the shareholders of the Alternate Staffing Inc. consisted of the following individuals.

- Moishy Dreyfuss – 20 shares
- Shulamis Gelbwachs – 20 shares
- Norma Dreyfuss – 10 shares

On August 5, 2009, shares were converted. Moishy Dreyfuss' 20 shares were converted to 800 shares of non-voting stock, Shulamis Gelbwachs' 20 shares were converted to 800 shares of non-voting stock, and Norma Dreyfuss' 10 shares were converted to 390 shares of non-voting stock and 10 shares of voting stock.

- Moishy Dreyfuss – 800 shares of non-voting stock
- Shulamis Gelbwachs – 800 shares of non-voting stock
- Norma Dreyfuss – 390 shares of non-voting stock and 10 shares of voting stock

On August 27, 2009, Moishy Dreyfuss' 800 shares of non-voting stock were transferred as follows: 400 shares of non-voting stock to Yanky Dreyfuss 2009 Family Trust and 400 shares of non-voting stock to Shulamis Gelbwachs 2009 Family Trust. Shulamis Gelbwachs transferred 400 shares of non-voting stock to Moishy Dreyfuss 2009 Family Trust and 400 shares of non-voting stock to Joel Spiegel 2009 Family Trust. As a result, of this redistribution the shareholders of the Alternate Staffing Inc. consists of the following individuals.

Yanky Dreyfuss 2009 Family Trust

- 400 shares of non-voting stock

Shulamis Gelbwachs 2009 Family Trust

- 400 shares of non-voting stock

Moishy Dreyfuss 2009 Family Trust

- 400 shares of non-voting stock

Joel Spiegel 2009 Family Trust

- 400 shares of non-voting stock

Norma Dreyfuss

- 390 shares of non-voting stock
- 10 shares of non-voting stock

Shulamis Gelbwachs is the trustee for all four trusts.

The Board of Directors of Alternate Staffing, Inc. comprises the following individuals:

Norma Dreyfuss – President  
CEO, Alternate Staffing, Inc.

Shulamis Gelbwachs – Vice-President/Assistant  
Secretary, Alternate Staffing, Inc.

Malky Friedman – Secretary  
Administrator, Alternate Staffing, Inc.

Shulamis (Dreyfuss) Gelbwachs is exempt from character and competence review due to the fact that she was previously approved by the Public Health Council for this operator.

A search revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant will continue to serve the residents of the following counties from an office located at 4918 Fort Hamilton Parkway, Brooklyn, New York 11219:

Bronx  
Queens

Kings  
Richmond

New York

The applicant will continue to provide the following health care services:

Nursing

Home Health Aide

Personal Care

The information provided by the Bureau of Quality Assurance and Licensure has indicated that the Licensed Home Care Services Agency 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: August 8, 2011

Division of Home & Community Based Care  
Character and Competence Staff Review

Name of Agency: Cudley's Home Care Services, Inc.  
Address: New York  
County: New York  
Structure: For-Profit  
Application Number: 1879-L

Description of Project:

Cudley's Home Care Services, Inc., a business corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Application number 1381L was contingently approved by the Public Health and Health Planning Council at its June 16, 2011 meeting acknowledging the transfer of stock that occurred on July 9, 2003 through an agreement dated March 31, 2001 and August 28, 2001 from Linda Lucious, President, to Jairite Anderson, Vice President.

The current shareholders of Cudley's Home Care Services, Inc. are: Jairite Anderson 182 shares, Chaim Lieberman 10 shares and Chayim Weiss and Chaim Steinmetz each own 4 shares. Mr. Lieberman, Mr. Weiss and Mr. Steinmetz acquired their shares on March 22, 2010 in a stock transaction of less than 10%.

The purpose of this application is to obtain approval to transfer 71% of Ms. Anderson's shares to Mr. Lieberman, Mr. Weiss and Mr. Steinmetz through a stock purchase agreement.

The applicant has authorized 200 shares of stock which are owned as follows:

Chaim Lieberman – 104 shares	Jairite Anderson, LPN, RN – 40 shares
Chayim Weiss – 28 shares	Chaim Steinmetz – 28 shares

The Board of Directors of Cudley's Home Care Services, Inc. is comprised of the following individuals:

Chaim Lieberman – President Administrator, Community Health Care	Jairite Anderson, LPN, RN – Vice President
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Affiliations:  
Priority Home Care Services, Inc. (consumer-  
directed personal care services entity)

Chayim A. Weiss – Treasurer Administrator, Cudley's Home Care Services, Inc.	Chaim Steinmetz – Secretary Manager, NY Developers
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Jairite Anderson is exempt from character and competence review as an individual previously approved by the Public Health and Health Planning Council for this operator.

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant will continue to serve the residents of the following counties from an office located at 391 East 149<sup>th</sup> Street, Suite 521, Bronx, New York 10455:

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 29, 2011

Division of Home & Community Based Care  
Character and Competence Staff Review

Name of Agency: Innovative Services, Inc. d/b/a Upstate Home Care  
Address: Rochester  
County: Monroe  
Structure: For-Profit  
Application Number: 1743-L

Description of Project:

Innovative Services, Inc. d/b/a Upstate Home Care, a business corporation, requests approval for an asset purchase of the assets of a licensed home care services agency under Article 36 of the Public Health Law.

PharmHealth Infusion, Inc. d/b/a PHI was previously approved as a home care services agency by the Public Health Council at its February 26, 1993 meeting and subsequently licensed as 9395L001.

The purpose of this proposal is to acknowledge the transfer of assets that occurred in April 2008 through an Asset Purchase Agreement. Upstate Home Care made effective arrangements to transfer all the patients that were receiving homecare from PHI. Pursuant to Department of Health regulations all homecare patients were notified and were given a list of alternative agencies should they choose to switch homecare providers.

The applicant has authorized 7,000 shares of stock which are owned as follows:

Innovative Services, LTD – 7,000 shares

The Board of Directors of Innovative Services, Inc. d/b/a Upstate Home Care comprises the following individuals:

Anthony A. Artessa – President/CEO

Robert I. Nevil – Chairman

Bernard A. Cesar, Sr. – Member  
Founder/Owner, The Cesar Agency Group, Inc  
(Insurance Agency)

Innovative Homecare Services, LTD has 20,000,000 shares of common stock authorized and just over 4,800,000 issued and outstanding. It also has 5,000,000 shares of preferred stock of which none have been issued.

Anthony Artessa – 1,185,869 shares

Robert I. Nevil – 1,101,071

Bernard A. Cesar, Sr. – 900,269  
(Previously Disclosed)

Phyllis A. Dickey, RN – 575,000  
Operating Room Registered Nurse, St. Elizabeth Hospital

No additional individuals or entities own more than 10% of the issued shares of stock.

The Board of Directors of Innovative Homecare Services, LTD comprises the following individuals:

Anthony A. Artessa – President/CEO  
(Previously Disclosed)

Robert I. Nevil – Chairman  
(Previously Disclosed)

Bernard A. Cesar, Sr. – Member  
(Previously Disclosed)



The Office of the Professions of the State Education Department indicates no issue 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 will continue to serve the residents of the following counties from an office located at 7506 State Route 5, Clinton, New York 13323-3654:

Chenango	Fulton	Hamilton	Herkimer
Lewis	Madison	Montgomery	Oneida
Otesego			

The applicant will continue to serve the residents of the following counties from an office located at 6700 Thompson Road, Syracuse, New York 13211-2141:

Broome	Cayuga	Cortland	Jefferson
Onondaga	Oswego	Schuyler	St. Lawrence
Tioga	Tompkins		

The applicant will continue to serve the residents of the following counties from an office located at 200 Air Park Drive, Suite 100, Rochester, New York 14624-5716:

Genesee	Livingston	Monroe	Ontario
Orleans	Seneca	Steuben	Wayne
Wyoming	Yates		

The applicant will continue to serve the residents of the following counties from an office located at 354 Cayuga Road, Buffalo, New York 14225-1945:

Allegany	Cattaraugus	Chautauqua	Erie
Niagara			

The applicant will continue to provide the following health care services:

Nursing	Respiratory Therapy
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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: August 8, 2011

Division of Home and Community Based Services  
Character and Competence Staff Review

Name of Agency: Utopia Home Care, Inc.  
Address: Kings Park  
County: New York  
Structure: For-Profit Corporation  
Application Number: 1871L

Description of Project:

Utopia Home Care, Inc., a business corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Manuel F. Martinez and Angelina Martinez are the founders of Utopia Home Care, Inc. and have been the sole owners of the Company since its formation. In 2007, in the first stages of their personal estate planning and their succession planning for the company, the Company was recapitalized by creating non-voting shares of common stock in addition to the existing authorized shares of voting stock. In 2008, in connection with their personal estate planning and their succession planning for the Company, Mr. and Mrs. Martinez restructured the ownership of the Company by transferring ownership of (i) a nominal percentage of their voting stock to three of their four adult children, each of which is employed as an Executive Vice President of the Company, and (ii) a majority of their non-voting stock to those three adult children and trusts for the benefit of a fourth adult child, who is also an employee of the Company.

Prior to the 2007 recapitalization, the Company was authorized to issue two hundred (200) shares of voting common stock, of which twenty (20) shares were issued to Manuel F. Martinez and twenty (20) shares were issued to Angelina Martinez. There were no non-voting shares authorized or issued. On December 3, 2007, a Restated Certificate of Incorporation was filed by the Company with the New York Department of State, pursuant to which in addition to the 200 shares of voting common stock, the Company became authorized to issue up to one thousand (1,000) shares of non-voting common stock.

On July 10, 2008, Angelina Martinez and Manuel Martinez each entered into a separate Stock Purchase Agreement with three of their four adult children, David Martinez, Manuel G. Martinez and Diane Martinez. Under each Stock Purchase Agreement, each child purchased from each of Angelina and Manuel F. Martinez, in exchange for a cash payment and delivery of a promissory note, (i) two-thirds of ten percent of one share of voting common stock of the Company and (ii) 50.4 shares of non-voting stock of the Company. In addition, on July 10, 2008, Manuel F. Martinez transferred 27 shares of non-voting common stock to the Paul Martinez Trust, for which Angelina Martinez is the sole trustee and Angelina Martinez transferred 27 shares of non-voting stock to the Paul Martinez Trust No. 2, for which Manuel F. Martinez is the sole trustee.

The applicant has authorized 200 shares of voting stock, which are owned as follows:

Manuel F. Martinez – 19.8002

Angelina Martinez – 19.8002

David Martinez – 0.13332

Diane Martinez – 0.13332

Manuel G. Martinez – 0.13332

160 shares voting stock remain unissued

The applicant has authorized 1000 shares of non-voting stock, which are owned as follows:

Manuel F. Martinez – 1.8

Angelina Martinez – 1.8

David Martinez – 100.8

Diane Martinez – 100.8

Manuel G. Martinez – 100.8

Paul Martinez Trust – 27

Paul Martinez Trust No. 2 - 27

640 shares of non-voting stock remain unissued.

The Board of Directors of Utopia Home Care, Inc. is comprised of the following individuals:

Manuel F. Martinez – Director  
CEO and President, Utopia Home Care, Inc.

Angelina Martinez – Director  
Secretary and Treasurer, Utopia Home Care, Inc.

Manuel G. Martinez – Director  
Executive Vice President, Utopia Home Care, Inc.  
Executive Vice President, Utopia Assisted Living  
Services, Inc. (Connecticut)

Diane M. Martinez - Director  
Executive Vice President, Utopia Home Care, Inc.  
Executive Vice President, Utopia Assisted Living  
Services, Inc. (Connecticut)

David C. Martinez – Director  
Executive Vice President, Utopia Home Care, Inc.  
Executive Vice President, Utopia Assisted Living  
Services, Inc. (Connecticut)

Todd R. Dawid – Director  
Administrator/Vice President, Utopia Home Care, Inc.

Robert C. Fritz – Director  
Vice President – Florida Operations, Utopia Home  
Care, Inc.

André W. Grasso – Director  
Chief Financial Officer, Utopia Home Care, Inc.

Jim F. Kelly – Director  
Retired

Brent L. Piepenbring – Director  
Director of Business Development, Utopia Home Care,  
Inc.

Dolores R. Serri, RN – Director  
Retired

Manuel F. Martinez and Angelina Martinez are exempt from character and competence review due to the fact that they were previously approved by the Public Health Council for this operator.

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 will continue to serve the residents of the following counties from an office located at 60 E. Main Street, Ste. 1, Kings Park, New York 11754:

Nassau

Suffolk

The applicant will continue to serve the residents of the following county from an office located at 180 Old Country Road, Riverhead, New York 11901:

Suffolk

The applicant will continue to serve the residents of the following county from an office located at 116 E. Main Street, Suite 202A, Patchogue, New York 11772:

Suffolk

The applicant will continue to serve the residents of the following counties from an office located at 95 Post Avenue, Westbury, New York 11590:

Nassau                      Queens

The applicant will continue to serve the residents of the following counties from an office located at 73 N. Park Avenue, Rockville Centre, New York 11570:

Nassau                      Queens

The applicant will continue to serve the residents of the following county from an office located at 120 Deer Park Avenue, Babylon, New York 11702:

Suffolk

The applicant will continue to serve the residents of the following counties from an office located at 91-31 Queens Blvd., Elmhurst, New York 11373:

Bronx                      Kings                      New York                      Queens  
Richmond

The applicant will continue to serve the residents of the following counties from an office located at 26 Court Street, Suite 1815, Brooklyn, New York 11242:

Bronx                      Kings                      New York                      Queens  
Richmond                      Westchester

The applicant will continue to serve the residents of the following counties from an office located at 708 Lydig Avenue, Suite 205, Bronx, New York 10462:

Bronx                      Kings                      New York                      Queens  
Richmond                      Westchester

The applicant will continue to provide the following health care services:

Nursing                      Home Health Aide                      Personal Care                      Housekeeper  
Homemaker

A 10 year review of the operations of the following facilities was performed as part of this review (unless otherwise noted):

- Utopia Home Care, Inc. (New York)
- Utopia Home Care, Inc. (Connecticut)
- Utopia Assisted Living Services, Inc. (Connecticut)
- Utopia Home Care, Inc. (Florida)
- Utopia Home Care, Inc. (North Carolina)
- Utopia Home Care, Inc. (Pennsylvania)

Utopia Home Care, Inc. has four licensed locations in Florida. Pursuant to Section 400.474(6)(f) of the Florida Statutes, home health agencies are required to submit quarterly reports within fifteen days after the end of each calendar quarter. Utopia's quarterly report for the quarter ended September 30, 2008 was delivered two days late, on October 17, 2008. As a result, Utopia was fined five thousand dollars for each licensed location for its failure to timely submit its quarterly reports.

In 2004, Utopia Home Care, Inc. (Florida) was fined four hundred dollars (\$400.00) due to its failure to submit its renewal application at least ninety days prior to the expiration of its home health agency license.

The information provided by the out-of-state regulatory agencies in the states of Connecticut, Florida, North Carolina and Pennsylvania have indicated that Utopia Home Care, Inc. 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 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 applicants have 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 29, 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 6<sup>th</sup> day of October, 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.

NUMBER	FACILITY
1717-L	Advanced Home Care Services, Inc. (New York, Kings, Queens, Bronx, and Richmond Counties)
1903-L	Angel Care, Inc. (New York, Bronx, Richmond, Kings, Queens and Nassau Counties)
1827-L	Bethesda Elite Care, Inc. (Suffolk, Nassau, Westchester, Queens, Kings, New York, Bronx, and Richmond Counties)
1794-L	C.P.R. Home Care, Inc. d/b/a City Wide Home Care (Bronx, Kings, New York and Queens Counties)
1674-L	Ideal Home Health, Inc. (Bronx, Kings, Queens, New York and Richmond Counties)

2018-L Longevity Health Services, LLC  
(Bronx, Kings, Nassau, New York, Queens, and  
Richmond Counties)

2007-L Magic Home Care, LLC  
(Kings, Queens and Richmond Counties)

1742-L Majestic Touch Home Care Services, Inc.  
(Kings, Queens, New York, Bronx, and Richmond  
Counties)

1860-L Most Excellent Home Care Agency, Inc.  
(New York, Bronx, Kings, Nassau and Queens  
Counties)

1804-L Nannies for Grannies, Inc.  
(Nassau, Suffolk and Queens Counties)

1764-L New Universal Home Care, Inc.  
(Bronx, New York, Richmond, Kings and Queens  
Counties)

1695-L Peconic Landing Home Health Services  
(Suffolk County)

1825-L Sweet Sunshine Home Health Care Agency, Inc.  
(Bronx, Kings, New York, Queens and Richmond  
Counties)

2009-L ZLC Senior Care, Inc.  
(Nassau, Suffolk and Queens Counties)

1896-L Alternate Staffing, Inc.  
(Bronx, Kings, New York, Queens, and Richmond  
Counties)

1879-L Cudley's Home Care Services, Inc.  
(Bronx, Kings, Nassau, New York, Queens and  
Richmond Counties)

1743-L Innovative Services, Inc., d/b/a Upstate Home  
Care  
(See exhibit for counties served)

1871-L Utopia Home Care, Inc.  
Nassau, Suffolk, Queens, Kings, Bronx, New  
York, Richmond, and Westchester Counties)

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

**October 6, 2011**

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

**CATEGORY 6:** Applications for Individual Consideration/Discussion

**Certified Home Health Agencies – Establish/Construct**

**Exhibit #18**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	111529 E	L. Woerner, Inc. d/b/a HCR (Cortland County) Mr. Booth – Recusal Ms. Hines – Recusal	No Recommendation
2.	112025 E	L. Woerner, Inc. d/b/a HCR (Madison County) Mr. Booth – Recusal Ms. Hines – Recusal	No Recommendation





# Public Health and Health Planning Council

Project # 111529-E

**L. Woerner, Inc.  
d/b/a HCR**

**County: Cortland (Cortland)  
Purpose: Establishment**

**Program: Certified Home Health Agency  
Submitted: June 23, 2011**

## Executive Summary

### Description

L. Woerner, Inc., d/b/a HCR (Home Care of Rochester), an existing Article 36 proprietary corporation, seeks approval to purchase and become the operator of Cortland County Certified Home Health Agency (CHHA), located at 60 Central Ave., Cortland, servicing Cortland County. HCR currently operates an Article 36 CHHA servicing Genesee and Monroe Counties and a long term home health care program (LTHHCP) servicing Genesee County.

HCR will continue serving Genesee, Orleans and Monroe Counties from its office located in Monroe County. HCR plans to open a new separate and distinct agency in Cortland County to serve Cortland County and close the Cortland County Department of Health Home Health Agency. There will be no interruption of patient services.

Concurrently, CON #112025-E to acquire Madison County CHHA and LTHHCP is being reviewed by the Public Health Council (PHHPC), while CON #101156-E to acquire Orleans County CHHA was contingently approved by PHHPC on June 16, 2011.

Ownership of L. Woerner, Inc., d/b/a HCR is made up of an Employee Stock Ownership Plan (90%), member Louise Woerner (7%) and member Mark Maxim (3%).

The Employee Stock Ownership Plan (ESOP) was established as a benefit to L. Woerner, Inc.'s employees. The ESOP established a trust agreement into which L. Woerner, Inc. d/b/a HCR intends to place 90% of its stock. Each participating employee will have a separate account in the trust to hold the employee stock. Participants may not sell, transfer, assign, pledge, or encumber their interest in the Trust. ESOP participants

will be permitted to instruct the voting trustees as to the manner in which the shares of stock allocated to their account will be voted, only in the event of a corporate merger, consolidation, recapitalization, reclassification, liquidation, or dissolution sale of substantially all assets of HCR.

DOH Recommendation  
Contingent approval.

### Need Summary

As this project involves only a change in the ownership of a CHHA, no Need recommendation is required.

### Program Summary

HCR will continue to provide all existing CHHA services. HCR and its principals all possess the appropriate character and competence for approval of this application.

### Financial Summary

The total purchase price of \$1,200,000 will be met with an \$875,000 bank loan and \$325,000 in equity from the applicant.

Budget:	<i>Revenues:</i>	\$ 1,550,441
	<i>Expenses:</i>	<u>1,482,566</u>
	<i>Gain/(Loss):</i>	\$ 67,875

Subject to noted contingency, 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. Approval is contingent on proper documentation of site control, by submission of a proposed lease agreement identifying the full address of the planned practice location in Cortland County from which HCR will serve the residents of Cortland County. [CHA]
2. Submission of an executed building lease with lease payments comparable to budgeted expenses as submitted that is acceptable to the Department of Health. [BFA]

**Approval conditional upon:**

1. Approval conditioned upon proper notice being given to all employees participating in the employee stock ownership plan (ESOP) of the potential for an audit risk due to the lack of a legal separation between the CHHA and the LHCSA as it relates to payment structures. [CHA]
2. Approval conditioned upon no employee, or any other individual, owning/controlling 10% or more of the stock without first obtaining Department of Health and/or Public Health and Health Planning Council approval, as appropriate. [CHA]

Council Action Date

**October 6, 2011.**

## Programmatic Analysis

### Background

L. Woerner, Inc., a business corporation operating under the assumed name of HCR (Home Care of Rochester), was established as the operator of an Article 36 certified home health agency (CHHA) serving Monroe and Genesee Counties, a Long Term Home Health Care Program (LTHHCP) serving Genesee County and an Article 36 licensed home care service agency (LHCSA) under the same assumed name. There are no other parent, subsidiary, or affiliate corporations.

HCR is applying for approval to purchase and become the new owner/operator of Cortland County Department of Health Home Health Agency, serving Cortland County. HCR plans open a new separate and distinct agency in Cortland County, and close Cortland County Department of Health Home Health Agency.

The HCR CHHA, which is approved to serve Monroe, Genesee and Orleans Counties, will continue to provide the services of Home Health Aide, Medical Social Services, Medical Supplies/Equipment/Appliances, Nursing, Nutrition, Personal Care, Occupational Therapy, Physical Therapy, Respiratory Therapy and Speech Language Pathology.

The HCR CHHA, which would now be approved to serve Cortland County, will provide the services of Home Health Aide, Medical Social Services, Medical Supplies/Equipment/Appliances, Nursing, Nutrition, Occupational Therapy, Physical Therapy and Speech Language Pathology.

In 2006, L. Woerner, Inc, d/b/a HCR, CON project 061088, received Public Health Council approval to convert 90% of the shares of corporate stock (which up to that time were owned 90.5% by Louise Woerner and 9.5% by Mark Maxim - both disclosed below), to an Employee Stock Ownership Plan (ESOP), and establish a trust to control and manage the assets, including the stock, held by the ESOP. Ms. Woerner retained 7% of the shares, and Mr. Maxim retained 3% of the shares.

Each employee participating in the ESOP does not actually take ownership of the stock itself, but instead has a separate stock account in the trust to hold his/her allocation of stock. Ms. Woerner and Mr. Maxim are named the sole voting trustees of the ESOP trust, with the power to: manage and control the assets, including the stock, held in the trust; sell, exchange, transfer, or grant options for any property held in the trust; and vote all allocated and unallocated shares of stock. Employees participating in the ESOP instruct the trustees in the manner to vote the shares of stock allocated to their stock account only in the event of corporate merger, consolidation, recapitalization, reclassification, liquidation, dissolution, or sale of substantially all assets of the company or similar transaction. Additional trustees may be designated in the future, but they will not have any voting rights. The Certificate of Amendment to the Certificate of Incorporation stated that the corporation's stock shall be held only by employees of L. Woerner, Inc., d/b/a HCR, or any of its wholly owned subsidiaries, or by the ESOP trust. Employees participating in the ESOP may not sell, transfer, assign, pledge, or encumber the shares of stock allocated to their stock account. Dividends will be allocated among, and credited to, each participant's stock accounts on the basis of the number of shares held by the participant's account. The applicant had confirmed, and has restated such confirmation for this current project proposal, that no employee controls 10% or more of the stock, or will control 10% or more of the stock without first obtaining Department of Health and/or Public Health Council approval, as appropriate.

CON #061088-E also noted that L. Woerner, Inc., d/b/a HCR, operates both a CHHA and LHCSA out of a single corporation. The Department has discouraged this type of arrangement because of the different regulatory requirements and payment structures applicable to CHHAs and LHCSAs. L. Woerner, Inc., d/b/a HCR wished to retain its current corporate arrangement, thus placing the agency at potential risk for future audit liabilities due to there being two different payment structures for the same service within a single corporation. Therefore, the Department required the agency to provide written notification, approved by the Department, to all participants in the ESOP of the possible loss in dividends resulting from the audit risk posed by the corporate structure. The applicant had confirmed, and has restated such confirmation for this current project proposal, that the agency continues to provide such written notification, as previously approved by the Department, to all participants in the ESOP.

The corporation is currently authorized 2,000,000 shares of stock. The stockholders and stock distribution are as follows:

Employee Stock Ownership Plan Trust – 1,800,000 shares (90%)  
Louise Woerner – 140,000 shares (7%)  
Mark Maxim – 60,000 shares (3%)

The Trustees of the Employee Stock Ownership Plan Trust are as follows:

**Louise Woerner**

Chief Executive Officer, L. Woerner, Inc., d/b/a HCR  
(CHHA and LHCSA)

Affiliations:

- HealthNow New York, Inc., Buffalo  
(Managed Care Program) – 4/1/02 to  
4/10/08

**Mark Maxim, CPA**

Chief Operating Officer / Administrator, L. Woerner,  
Inc., d/b/a HCR (CHHA and LHCSA)

Affiliations:

- Lakeside Memorial Hospital, Inc., Brockport  
(Hospital) - 5/3/06 to present

The members of Board of Directors of L. Woerner, Inc., d/b/a HCR, are as follows:

**Louise Woerner**

Previously Disclosed

**Don H. Kollmorgen**

Retired

**Mark Maxim, CPA**

Previously Disclosed

**Carolyn A. Maxim, LMSW**

Owner, Carolyn A. Maxim, LMSW (Counseling  
Services)

The Office of the Professions of the State Education Department indicates no issues with the CPA licensures of Mr. Maxim or with the LMSW license of Ms. Maxim. In addition, a search of all of the above named trustees, board members, officers, employers, and health care 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 both the CHHA and the LHCSA operated by L. Woerner, Inc., d/b/a HCR, for the time period 1999 to present and the LTHHCP from the period of May 2010 to present. It has been determined that the CHHA, LTHHCP and LHCSA have exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent any recurrent code violations. The CHHA, LTHHCP and LHCSA have been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

The Division of Primary and Acute Care Services reviewed the compliance history of Lakeside Memorial Hospital, Inc., for the time period May 3, 2006 to present. It has been determined that the affiliated hospital has been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed, during that time period.

The Office of Managed Care reviewed the compliance history of HealthNow New York, Inc., for the time period April 1, 2002 to April 10, 2008. It has been determined that the affiliated managed care program was in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed, during that time period.

A review of the personal qualifying information indicates there is nothing in the background of the principal stockholders, trustees, board members, and officers to adversely effect their positions with L. Woerner, Inc., d/b/a HCR. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

Recommendation

**From a programmatic perspective, contingent approval is recommended.**

## Financial Analysis

### Asset Purchase Agreement

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

<i>Date:</i>	January 26, 2011
<i>Seller:</i>	County of Cortland
<i>Buyer:</i>	L. Woerner, Inc., d/b/a HCR
<i>Assets Transferred:</i>	Copies of all current patient lists and patient files, with pending orders, treatment plans and clinical records; any and all of Seller's rights under the Assumed Provider Agreement and Assumed Operating Contract.
<i>Assumed liabilities:</i>	None
<i>Purchase Price:</i>	\$1,200,000
<i>Payment:</i>	\$120,000 deposit paid upon execution of this agreement with the balance due at closing.

The applicant has provided an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 36 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.

### Operating Budget

The applicant has submitted an operating budget for the CHHA in 2011 dollars, for the first year subsequent to the change in operator, summarized below:

Revenues:	\$1,550,441
Expenses:	<u>1,482,566</u>
Net Income:	\$67,875

Expenses are further broken down as follows:

	<u>Total Cost</u>	<u>Visits/Hours</u>	<u>Cost per Visit/Hour</u>
Nursing	\$708,249	5,329	\$132.90
Physical Therapy	540,344	4,066	132.89
Speech Therapy	12,503	88	142.08
Occupational Therapy	9,377	66	142.10
Medical Social Services	57,433	216	265.89
Home Health Aides*	<u>154,660</u>	6,235	24.81
Total	<u>\$1,482,566</u>		

*\*Reported in hours*

Utilization by payor source for the first year subsequent to the change in operator is as follows:

Commercial Fee-for-Service	26.12%
Medicare Fee-for-Service	52.01%
Medicaid Fee-for-Service	19.62%
Charity Care	2.25%

Expense and utilization assumptions are based on the historical experience of Cortland County's CHHA and the experience of the applicant in operating a CHHA.

#### Capability and Feasibility

The purchase price of \$1,200,000 will be provided through an \$875,000 bank loan from M&T Bank at an interest rate equal to the one month LIBOR (.22% as of 8/31/11) plus 3% with a floor of 3.75% over 5 years and \$325,000 in equity from the applicant.

Working capital requirements are estimated at \$247,094 based on two months of first year expenses and will be provided by equity from the applicant. Presented as BFA Attachment B, is the financial summary of L. Woerner, Inc., d/b/a HCR, which indicates the availability of sufficient funds to meet the equity contributions for the purchase price and working capital requirements for all four applications. Presented as BFA Attachment D, is the pro-forma balance sheet of L. Woerner, Inc., d/b/a HCR as of the first day of operations, which indicates positive member's equity position of \$3,757,929.

The submitted budget indicates excess revenues of \$67,875 during the first year subsequent to the change in operator. Revenue is based on HCR's experience in the operation of its CHHA and on current reimbursement rates. Monthly expenses per registrant are within the 2011 ceilings. The budget appears reasonable.

As shown on BFA Attachment B, a financial summary of L. Woerner, Inc., d/b/a HCR, indicates that the facility has maintained average positive working capital, an average positive net asset position and generated a net income of \$2,596,693 for 2009, and experienced a net loss of \$2,694,106 in 2010. The applicant has indicated that the reason for the loss was their contribution of \$4,000,000 to the ESOP.

Presented as BFA Attachment C, a financial summary of Cortland County Health Department indicates a net loss of \$479,000 and \$427,000 for 2009 and 2010, respectfully. The applicant has indicated that the loss was attributed to a 45% fringe rate for county employees and the inability to bill for state aid as planned.

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 approval is recommended.

#### Recommendation

**From a financial perspective, contingent approval is recommended.**

## Attachments

BFA Attachment A	Organizational Chart
BFA Attachment B	Financial Summary, L. Woerner, Inc., d/b/a HCR
BFA Attachment C	Financial Summary, Cortland County Health Department
BFA Attachment D	Pro-forma Balance Sheet

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 6th day of October, 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 purchase and become the operator of Cortland County Certified Home Health Agency, 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.

NUMBER

APPLICANT/FACILITY

111529-E

L. Woerner, Inc. d/b/a HCR

APPROVAL CONTINGENT UPON:

1. Approval is contingent on proper documentation of site control, by submission of a proposed lease agreement identifying the full address of the planned practice location in Cortland County from which HCR will serve the residents of Cortland County. [CHA]
2. Submission of an executed building lease with lease payments comparable to budgeted expenses as submitted that is acceptable to the Department of Health. [BFA]

APPROVAL CONDITIONED UPON:

1. Approval conditioned upon proper notice being given to all employees participating in the employee stock ownership plan (ESOP) of the potential for an audit risk due to the lack of a legal separation between the CHHA and the LHCSA as it relates to payment structures. [CHA]
2. Approval conditioned upon no employee, or any other individual, owning/controlling 10% or more of the stock without first obtaining Department of Health and/or Public Health and Health Planning Council approval, as appropriate. [CHA]

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 # 112025-E

**L. Woerner, Inc.  
d/b/a HCR**

**County: Madison (Wampsville)  
Purpose: Establishment**

**Program: Certified Home Health Agency  
Submitted: July 20, 2011**

## Executive Summary

### Description

L. Woerner, Inc., d/b/a HCR (Home Care of Rochester) an existing Article 36 proprietary corporation, seeks approval to purchase and become the operator of Madison County Certified Home Health Agency (CHHA) and Long Term Home Health Care Program (LTHHCP), located on N. Court Street, Wampsville, servicing Madison County. HCR currently operates an Article 36 CHHA servicing Genesee and Monroe Counties, and a LTHHCP servicing Genesee County.

HCR will continue serving Genesee, Orleans and Monroe Counties from its office located in Monroe County. HCR plans to open a new separate and distinct agency in Madison County to serve Madison County and close Madison County Department of Health Home Health Agency. There will be no interruption of patient services.

Concurrently, CON #111529-E to acquire the Cortland County CHHA is being reviewed by the Public Health and Health Planning Council (PHHPC), while CON #101156-E to acquire the Orleans County CHHA was contingently approved by PHHPC on June 16, 2011.

Ownership of L. Woerner, Inc., d/b/a HCR is made up of an Employee Stock Ownership Plan (90%), member Louise Woerner (7%) and member Mark Maxim (3%).

The Employee Stock Ownership Plan (ESOP) was established as a benefit to L. Woerner, Inc.'s employees. The ESOP established a trust agreement into which L. Woerner, Inc. d/b/a HCR intends to place 90% of its stock. Each participating employee will have a separate account in the trust to hold the employee stock. Participants may not sell, transfer, assign, pledge, or encumber their interest in the Trust. ESOP participants will be permitted to instruct the voting trustees as to

the manner in which the shares of stock allocated to their account will be voted, only in the event of a corporate merger, consolidation, recapitalization, reclassification, liquidation, or dissolution sale of substantially all assets of HCR.

DOH Recommendation  
Contingent approval.

### Need Summary

As this project involves only a change in the ownership of a CHHA, no Need recommendation is required.

### Program Summary

HCR will continue to provide all existing CHHA and LTHHCP services. HCR and its principals all possess the appropriate character and competence for approval of this application.

### Financial Summary

The total purchase price of \$900,000 will be met with a \$450,000 bank loan and \$450,000 in equity from the applicant.

Budget:	Revenues:	\$ 3,055,979
	Expenses:	<u>3,010,581</u>
	Gain/(Loss):	\$ 45,398

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. Approval is contingent on proper documentation of site control, by submission of a proposed lease agreement identifying the full address of the planned practice location in Madison County from which HCR will serve the residents of Madison County. [CHA]
2. Submission of an executed building lease, with lease payments comparable to budgeted expenses as submitted that is acceptable to the Department of Health. [BFA]

**Approval conditional upon:**

1. Approval conditioned upon proper notice being given to all employees participating in the employee stock ownership plan (ESOP) of the potential for an audit risk due to the lack of a legal separation between the CHHA and the LHCSA as it relates to payment structures. [CHA]
2. Approval conditioned upon no employee, or any other individual, owning/controlling 10% or more of the stock without first obtaining Department of Health and/or Public Health and Health Planning Council approval, as appropriate. [CHA]

Council Action Date

**October 6, 2011.**

## Programmatic Analysis

### Background

L. Woerner, Inc., a business corporation operating under the assumed name of HCR (Home Care of Rochester), was established as the operator of an Article 36 certified home health agency (CHHA) serving Monroe and Genesee Counties, a Long Term Home Health Care Program (LTHHCP) serving Genesee County and an Article 36 licensed home care service agency (LHCSA) under the same assumed name. There are no other parent, subsidiary, or affiliate corporations.

HCR is applying for approval to purchase and become the new owner/operator of Madison County Department of Health Certified Home Health Agency and Long Term Home Health Care Program, serving Madison County. HCR plans to open a new separate and distinct agency in Madison County, and close Madison County Department of Health Home Health Agency CHHA and LTHHCP.

The HCR CHHA, which is approved to serve Monroe, Genesee and Orleans Counties, will continue to provide the services of Home Health Aide, Medical Social Services, Medical Supplies/Equipment/Appliances, Nursing, Nutrition, Personal Care, Occupational Therapy, Physical Therapy, Respiratory Therapy and Speech Language Pathology.

The HCR CHHA, which would now be approved to serve Madison County, will provide the services of Home Health Aide, Medical Social Services, Medical Supplies/Equipment/Appliances, Nursing, Nutrition, Occupational Therapy, Personal Care, Physical Therapy and Speech Language Pathology.

HCR plans to offer all thirteen of the required LTHHCP services as follows: audiology, home health aide, homemaker, housekeeper, medical social services, medical supply, equipment and appliances, nursing, nutritional, occupational therapy, personal care, physical therapy, respiratory therapy, and speech language pathology.

In 2006, L. Woerner, Inc, d/b/a HCR, CON project 061088, received Public Health Council approval to convert 90% of the shares of corporate stock (which up to that time were owned 90.5% by Louise Woerner and 9.5% by Mark Maxim - both disclosed below), to an Employee Stock Ownership Plan (ESOP), and establish a trust to control and manage the assets, including the stock, held by the ESOP. Ms. Woerner retained 7% of the shares, and Mr. Maxim retained 3% of the shares.

Each employee participating in the ESOP does not actually take ownership of the stock itself, but instead has a separate stock account in the trust to hold his/her allocation of stock. Ms. Woerner and Mr. Maxim are named the sole voting trustees of the ESOP trust, with the power to: manage and control the assets, including the stock, held in the trust; sell, exchange, transfer, or grant options for any property held in the trust; and vote all allocated and unallocated shares of stock. Employees participating in the ESOP instruct the trustees in the manner to vote the shares of stock allocated to their stock account only in the event of corporate merger, consolidation, recapitalization, reclassification, liquidation, dissolution, or sale of substantially all assets of the company or similar transaction. Additional trustees may be designated in the future, but they will not have any voting rights. The Certificate of Amendment to the Certificate of Incorporation stated that the corporation's stock shall be held only by employees of L. Woerner, Inc., d/b/a HCR, or any of its wholly owned subsidiaries, or by the ESOP trust. Employees participating in the ESOP may not sell, transfer, assign, pledge, or encumber the shares of stock allocated to their stock account. Dividends will be allocated among, and credited to, each participant's stock accounts on the basis of the number of shares held by the participant's account. The applicant had confirmed, and has restated such confirmation for this current project proposal, that no employee controls 10% or more of the stock, or will control 10% or more of the stock without first obtaining Department of Health and/or Public Health Council approval, as appropriate.

CON #061088-E also noted that L. Woerner, Inc., d/b/a HCR, operates both a CHHA and LHCSA out of a single corporation. The Department has discouraged this type of arrangement because of the different regulatory requirements and payment structures applicable to CHHAs and LHCSAs. L. Woerner, Inc., d/b/a HCR wished to retain its current corporate arrangement, thus placing the agency at potential risk for future audit liabilities due to there being two different payment structures for the same service within a single corporation. Therefore, the Department required the agency to provide written notification, approved by the Department, to all participants in the ESOP of the possible loss in dividends resulting from the audit risk posed by the corporate structure. The applicant had confirmed,

and has restated such confirmation for this current project proposal, that the agency continues to provide such written notification, as previously approved by the Department, to all participants in the ESOP.

The corporation is currently authorized 2,000,000 shares of stock. The stockholders and stock distribution are as follows:

Employee Stock Ownership Plan Trust – 1,800,000 shares (90%)  
Louise Woerner – 140,000 shares (7%)  
Mark Maxim – 60,000 shares (3%)

The Trustees of the Employee Stock Ownership Plan Trust are as follows:

**Louise Woerner**

Chief Executive Officer, L. Woerner, Inc., d/b/a HCR  
(CHHA and LHCSA)

Affiliations:

- HealthNow New York, Inc., Buffalo  
(Managed Care Program) – 4/1/02 to  
4/10/08

**Mark Maxim, CPA**

Chief Operating Officer / Administrator, L. Woerner,  
Inc., d/b/a HCR (CHHA and LHCSA)

Affiliations:

- Lakeside Memorial Hospital, Inc., Brockport  
(Hospital) - 5/3/06 to present

The members of Board of Directors of L. Woerner, Inc., d/b/a HCR, are as follows:

**Louise Woerner**

Previously Disclosed

**Don H. Kollmorgen**

Retired

**Mark Maxim, CPA**

Previously Disclosed

**Carolyn A. Maxim, LMSW**

Owner, Carolyn A. Maxim, LMSW (Counseling  
Services)

The Office of the Professions of the State Education Department indicates no issues with the CPA licensures of Mr. Maxim or with the LMSW license of Ms. Maxim. In addition, a search of all of the above named trustees, board members, officers, employers, and health care 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 both the CHHA and the LHCSA operated by L. Woerner, Inc., d/b/a HCR, for the time period 1999 to present and the LTHHCP from the period of May 2010 to present. It has been determined that the CHHA, LTHHCP and LHCSA have exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent any recurrent code violations. The CHHA, LTHHCP and LHCSA have been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

The Division of Primary and Acute Care Services reviewed the compliance history of Lakeside Memorial Hospital, Inc., for the time period May 3, 2006 to present. It has been determined that the affiliated hospital has been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed, during that time period.

The Office of Managed Care reviewed the compliance history of HealthNow New York, Inc., for the time period April 1, 2002 to April 10, 2008. It has been determined that the affiliated managed care program was in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed, during that time period.

A review of the personal qualifying information indicates there is nothing in the background of the principal stockholders, trustees, board members, and officers to adversely effect their positions with L. Woerner, Inc., d/b/a HCR. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

Recommendation

**From a programmatic perspective, contingent approval is recommended.**

## Financial Analysis

### Asset Purchase Agreement

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

<i>Date:</i>	February 10, 2011
<i>Seller:</i>	County of Madison
<i>Buyer:</i>	L. Woerner, Inc., d/b/a HCR
<i>Assets Transferred:</i>	Copies of all current patient lists and patient files, with pending orders, treatment plans and clinical records; any and all of Seller's rights under the Assumed Provider Agreement and Assumed Operating Contracts.
<i>Assumed Liabilities:</i>	None
<i>Purchase Price:</i>	\$900,000
<i>Payment:</i>	\$90,000 deposit paid upon execution of this agreement with the balance due at closing.

The applicant has provided an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 36 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.

### Operating Budget

The applicant has submitted an operating budget for the CHHA and the LTHHCP, in 2011 dollars, for the first year subsequent to the change in operator, summarized below:

#### **CHHA**

Revenues	\$2,427,762
Expenses	<u>2,396,705</u>
Net Income	\$31,057

Expenses are further broken down as follows:

	<u>Total Cost</u>	<u>Visit/Hours</u>	<u>Cost per Visit/Hour</u>
Nursing	\$1,698,941	10,597	\$160.32
Physical Therapy	334,617	2922	\$114.52
Speech Therapy	35,668	292	\$122.15
Occupational Therapy	20,399	167	\$122.15
Medical Social Services	4,764	48	\$99.25
Home Health Aides*	302,316	11,314	\$26.72
Total	\$2,396,705		

\* Reported in hours

Utilization by payor source for the CHHA for the first year subsequent to the change in operator is as follows:

Commercial Fee for Service	23.2%
Medicare Fee for Service	53.9%
Medicaid Fee for Service	20.1%
Private Pay	0.4%
Charity Care	2.4%

**LTHHCP**

Revenues	\$628,217
Expenses	<u>613,876</u>
Net Income	14,341

Expenses are further broken down as follows:

	<u>Total Cost</u>	<u>Visits/Hours</u>	<u>Cost per Visit/Hour</u>
Nursing	\$210,008	1,530	\$137.26
Physical Therapy	12,124	113	\$107.29
Speech Pathology	3,159	28	\$112.82
Occupational Therapy	1,154	10	\$115.40
Home Health Aide	385,788	11,151	\$34.60
Personal Care	1,323	28	\$47.25
Medical Social Services	<u>320</u>	3	\$106.67
Total	\$613,876		

Utilization by payor source for the LTHHCP for the first year subsequent to the change in operator is as follows:

Commercial Fee-for-Service	3.8%
Medicare Fee-for-Service	10.0%
Medicaid Fee-for-Service	83.6%
Charity Care	2.4%
Bad Debt	0.2%

Expenses and utilization assumptions are based on the historical experience of Madison County’s CHHA and LTHHCP and the experience of the applicant in operating a CHHA and LTHHCP.

The combined revenues and expenses during the first year subsequent to the change in operator are as follows:

Revenues	\$3,055,979
Expenses	<u>3,010,581</u>
Net Income	\$45,398

**Capability and Feasibility**

The purchase price of \$900,000 will be provided through a \$450,000 bank loan from M&T Bank at an interest rate equal to the one month LIBOR(.22% as of 8/31/11) plus 3% with a floor of 3.75% over 5 years and \$450,000 in equity from the applicant.

Working capital requirements are estimated at \$494,430 based on two months of first years expenses and will be provided by equity from the applicant. Presented as BFA Attachment B, is the financial summary of L. Woerner, Inc., d/b/a HCR, which indicates the availability of sufficient funds to meet the equity contributions for the purchase price and working capital requirements for all four applications. Presented as BFA Attachment D, is the pro-forma balance sheet of L. Woerner, Inc., d/b/a HCR as of the first day of operations, which indicates positive member’s equity position of \$3,757,929.

The submitted budget indicates excess revenues of \$45,398 during the first year subsequent to the change in operator. Revenue is based on HCR’s experience in the operation of its CHHA and LTHHCP and on current reimbursement rates. Monthly expenses per registrant are within the 2011 ceilings. The budget appears reasonable.

As shown on BFA Attachment B, a financial summary of L. Woerner, Inc., d/b/a HCR, indicates that the facility has maintained average positive working capital and average positive net asset position and generated a net income of

\$2,596,693 for 2009 and experienced a net loss of \$2,694,106 in 2010. The applicant has indicated that the reason for the loss was their contribution of \$4,000,000 to the ESOP.

Presented as BFA Attachment C, a financial summary of Madison County Health Department indicates a net loss of \$2,786,209 for 2010. The applicant indicated that the loss was due to increasing operating costs as a result of evolving payment systems, difficulty in recruiting and retaining health care professionals because of fringe benefit costs and work rules associated with union contracts and the development and growth of local private health care systems.

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 approval is recommended.

Recommendation

**From a financial perspective, contingent approval is recommended.**

## Attachments

BFA Attachment A	Organizational Chart
BFA Attachment B	Financial Summary, L. Woerner, Inc., d/b/a HCR
BFA Attachment C	Financial Summary, Madison County Health Department
BFA Attachment D	Pro-forma Balance Sheet

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 6th day of October, 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 establish purchase and become the operator of Madison County Certified Home Health Agency and Long Term Home Health Care 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

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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

APPLICANT/FACILITY

112025-E

L. Woerner, Inc. d/b/a HCR



APPROVAL CONTINGENT UPON:

1. Approval is contingent on proper documentation of site control, by submission of a proposed lease agreement identifying the full address of the planned practice location in Madison County from which HCR will serve the residents of Madison County. [CHA]
2. Submission of an executed building lease, with lease payments comparable to budgeted expenses as submitted that is acceptable to the Department of Health. [BFA]

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Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

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