STATE OF NEW YORK

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

AGENDA

December 8, 2011
10:30 a.m.

Albany Marriott
189 Wolf Road
Albany, New York 12205

I. INTRODUCTION OF OBSERVERS

Dr. William Streck, Chairman

II. APPROVAL OF MINUTES

October 6, 2011 **Exhibit #1**

III. 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

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

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

E. Report of the Office of Health Insurance Programs Activities

John Ulberg, Director, Division of Health Care Financing

IV. HEALTH POLICY

A. Report on the Activities of the Committee on Health Planning

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

B. Request for Stroke Center Designation

Anna Colello, Director, Division of Quality Assurance and Surveillance for Nursing Homes and ICF/M

Applicant **Exhibit #2**

Columbia Memorial Hospital

V. PUBLIC HEALTH SERVICES

Report on the Activities of the Committee on Public Health

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

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

VI. REGULATION

Report of the Committee on Codes, Regulations and Legislation **Exhibit #3**

Angel Gutiérrrez, M.D., Chair

For Emergency Adoption

11-29 Section 760.5 – (CHHA Establishment – Determination of Public Need)

11-27 Amendment of Section 401.2 of Part 401 of Title 10 NYCRR (Amendment to Limitations of Operating Certificates)

For Discussion

11-27 Amendment of Section 401.2 of Part 401 of Title 10 NYCRR (Amendment to Limitations of Operating Certificates)

09-17 Addition of New Part 403 and Amendment of Sections 700.2, 763.13 and 766.11 of Title 10 NYCRR; Amendment of Sections 505.14 and 505.23 of Title 18 NYCRR (Home Care Services Worker Registry)

Amendment of 10 NYCRR Part 710 CON Notice Submissions

For Adoption

11-17 Amendment of Section 405.19 of Part 405 of Title 10 NYCRR
(Observation Unit Operating Standards)

11-03 Amendment of Sections 405.1, 700.2, 720.1, and 755.2 of Title 10 NYCRR
(Accreditation of General Hospitals and Diagnostic and Treatment Centers)

VII. 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 Services – Construction **Exhibit #4**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	111334 C	Lawrence Hospital Center (Westchester County)	Contingent Approval

Hospice – Construction **Exhibit #5**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	111548 C	Hospice of Orange & Sullivan Counties, Inc. (Orange County)	Approval

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

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	111061 C	Shorefront Jewish Geriatric Center (Kings 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

Acute Care Services – Construction **Exhibit #7**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	102167 C	Lincoln Medical and Mental Health Center (Bronx County) Dr. Bhat – Interest Dr. Boufford – Abstaining Dr. Boutin-Foster – Abstaining	Contingent Approval
2.	112030 C	Corning Hospital (Steuben County) Mr. Booth - Interest	Contingent Approval
3.	112120 C	Coler-Goldwater Specialty Hospital and Nursing Facility (New York County) Dr. Bhat – Interest Dr. Boufford – Abstaining	Contingent Approval

Hospice – Construction **Exhibit #8**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	112069 C	Hospice Buffalo, Inc. (Erie County) Mr. Booth - Interest	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 #9**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	072112 C	Oakwood Operating Co., LLC d/b/a Affinity Skilled Living and Rehabilitation Center (Suffolk County)	Deferred
2.	071024 C	Long Beach Memorial Nursing Home, Inc. d/b/a Komanoff Center for Geriatric and Rehabilitation Medicine (Nassau County) Dr. Bhat - Recusal	Deferred
3.	112096 C	Nesconset Acquisition, LLC d/b/a Nesconset Center for Nursing and Rehabilitation (Suffolk County) Mr. Fensterman - Recusal	Deferred
4.	071077 C	North Sea Associates, LLC d/b/a The Hamptons Center for Rehabilitation and Nursing (Suffolk County) Mr. Fensterman- Recusal	Deferred

CATEGORY 6: Applications for Individual Consideration/Discussion

CON Applications

Residential Health Care Facility – Construction **Exhibit #10**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	102376 C	Albany County Nursing Home (Albany County)	Deferred

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Acute Care Services – Establish **Exhibit #11**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	112194 E	Northeast Health, Inc. (Rensselaer County)	Contingent Approval

Ambulatory Surgery Centers – Establish/Construct **Exhibit #12**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	111488 B	Yorkville Endoscopy, LLC d/b/a Yorkville Endoscopy Center (New York County)	Contingent Approval

Residential Health Care Facility – Establish **Exhibit #13**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	112031 E	Alliance Health Associates, Inc. d/b/a Linden Gardens Rehabilitation and Nursing Center (Kings County)	Contingent Approval

Certified Home Health Agencies – Establish **Exhibit #14**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	112023 E	District Nursing Association of Northern Westchester County d/b/a Visiting Nurse Association of Hudson Valley (Westchester County)	Contingent Approval

Certificate of Amendment of the Certificate of Incorporation **Exhibit #15**

	Applicant	E.P.R.C. Recommendation
1.	Samaritan Foundation of Northern New York, Inc.	Approval
2.	Auburn Memorial Hospital	Approval
3.	Auburn Hospital System Foundation, Inc.	Approval
4.	Comprehensive Care Management Diagnostic and Treatment Center, Inc.	Approval

Certificate of Dissolution **Exhibit #16**

	Applicant	E.P.R.C. Recommendation
1.	Hudson Valley Health Specialties, Inc.	Approval
2.	Brooklyn Care, Inc.	Approval
3.	The Albert Lindley Lee Memorial Hospital	Approval

HOME HEALTH AGENCY LICENSURES **Exhibit #17**

	Number	Applicant/Facility	E.P.R.C. Recommendation
	1911	The Gerry Homes (Chautauqua County)	Contingent Approval
	2050	Delaware County Public Health Services (Delaware County)	Contingent Approval

2051	Madison County Department of Health (Madison County)	Contingent Approval
2058	Wayne County Public Health (Wayne County)	Contingent Approval
2067	Herkimer County Public Health Nursing Service (Herkimer County)	Contingent Approval

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Ambulatory Surgery Centers – Establish/Construct **Exhibit #18**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	092069 B	WNY Medical Management, LLC (Erie County) Mr. Booth - Interest	Contingent Approval
2.	111362 B	Upstate Gastroenterology, LLC d/b/a University Gastroenterology at the Philip G. Holtzapple Endoscopy Center (Onondaga County) Mr. Booth - Interest	Contingent Approval

Dialysis Centers – Establish/Construct **Exhibit #19**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	111504 B	Mills Pond Dialysis Center, LLC (Suffolk County) Dr. Bhat – Interest Mr. Fensterman - Recusal	Contingent Approval
	111475 B	USRC Lake Plains, Inc. (Orleans County) Dr. Bhat – Interest Mr. Booth - Interest	Contingent Approval

Residential Health Care Facility – Establish **Exhibit #20**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	111540 E	Fulton Operations Associates, LLC d/b/a Fulton Center for Rehabilitation and Healthcare (Fulton County) Mr. Fensterman - Recusal	Contingent Approval

Certificate of Amendment of the Certificate of Incorporation **Exhibit #21**

	Applicant	E.P.R.C. Recommendation
1.	ODA Primary Health Care Center, Inc. Mr. Fensterman – Recusal	Approval

HOME HEALTH AGENCY LICENSURES **Exhibit #22**

Number	Applicant/Facility	E.P.R.C. Recommendation
1758 L	Comfort Home Care, LLC (Nassau, Suffolk Queens and Westchester Counties) Mr. Regan - Interest	Contingent Approval
1778 L	Restoration Home Care Agency, Inc. (Kings, New York, Queens and Richmond Counties) Mr. Regan - Interest	Contingent Approval
1826 L	Marian E. Howell d/b/a Golden Age Home Care (Bronx, New York, Queens, Kings, Richmond and Westchester Counties) Mr. Regan - Interest	Contingent Approval
1852 L	Five Star Home Health Care Agency, Inc. (Bronx, Kings, New York, Queens, Richmond and Westchester Counties) Mr. Regan - Interest	Contingent Approval

1952 L	Paramount Homecare Agency, Inc. (Bronx, Kings, Nassau, New York, Queens and Richmond Counties) Mr. Regan - Interest	Contingent Approval
1947 L	Surfside Manor Home for Adults, LLC d/b/a Surfside Manor LHCSA (Queens County) Mr. Regan - Interest	Contingent Approval
1705 L	Bestcare, Inc. (Nassau, Suffolk, Kings, Richmond, Queens, New York, Bronx, Dutchess, Rockland, Putnam, and Westchester Counties) Mr. Regan - Interest	Contingent Approval
2073 L	VNA Home Health Services, Inc. (Westchester and Putnam Counties) Mr. Regan - 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

NO APPLICATIONS

C. Proposed Resolution for Adoption **Exhibit #23**

Michael Stone, Assistant Counsel, DLA

X . NEXT MEETING

January 19, 2012 – Committee Day (NYC)
February 2, 2012 – Full Council (NYC)

XI. ADJOURNMENT

State of New York
Public Health and Health Planning Council

Minutes

October 6, 2011

The first meeting of the Public Health and Health Planning Council was held on Thursday, October 6, 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
Mr. Christopher Booth
Dr. Jo Ivey Boufford
Mr. Michael Fassler
Mr. Howard Fensterman
Dr. Carla Boutin-Foster
Dr. Ellen Grant
Dr. Angel Gutierrez
Ms. Victoria Hines
Mr. Robert Hurlbut
Mr. Jeffrey Kraut
Mr. Art Levin
Dr. Glenn Martin
Ms. Ellen Rautenberg
Ms. Susan Regan
Mr. Peter Robinson
Dr. John Rugge
Dr. Theodore Strange
Dr. Ann Marie Theresa Sullivan
Commissioner Shah (ex-officio)

DEPARTMENT OF HEALTH STAFF PRESENT:

Mr. Charles Abel
Dr. Guthrie Birkhead
Anna Colello (Albany via video)
Mr. Richard Cook
Ms. Barbara DelCogliano (Albany via video)
Mr. Christopher Delker
Ms. Ellen Flink (Albany via video)
Ms. Sandy Haff
Ms. Mary Ellen Hennessy (Albany via video)
Ms. Gloria Jimpson (Albany via video)
Ms. Celeste Johnson
Ms. Karen Lipson
Dr. John Miller (Albany via video)
Ms. Karen Madden
Mr. Keith McCarthy (Albany via video)
Ms. Sylvia Pirani (Albany via video)
Mr. Douglas Reilly (Albany via video)
Mr. Jeffrey Rothman
Ms. Linda Rush (Albany via video)
Mr. Robert Schmidt
Ms. Kelly Seebald (Albany via video)
Ms. Suzanne Sullivan (Albany via video)
Ms. Lisa Thomson
Mr. John Valitutto (Albany via video)

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.

MR. HERBERT FRIEDMAN

Dr. Streck advised that Mr. Friedman's term had expired on the Council and acknowledged his many accomplishments from his years of service on the Public Health Council and read a Resolution of Appreciation.

MEETING OVERVIEW:

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

APPROVAL OF THE MINUTES OF JUNE 16, 2011:

Dr. Streck asked for a motion to approve the June 16, 2011 Minutes of the Public Health and Health Planning Council meeting. Dr. Berliner motioned for approval which was seconded by Mr. Fensterman. The minutes were unanimously adopted. Please refer to pages 6 and 7 of the attached transcript.

APPROVAL OF THE MINUTES OF AUGUST 4, 2011:

Dr. Streck asked for a motion to approve the August 4, 2011 Minutes of the Public Health and Health Planning Council meeting. Mr. Robinson motioned for approval which was seconded by Dr. Berliner. The minutes were unanimously adopted. Please refer to page 7 of the attached transcript.

APPROVAL OF THE 2012 MEETING DATES:

Dr. Streck asked for a motion to adopt the 2012 meeting schedule. Dr. Berliner moved the motion which was seconded by Dr. Gutierrez. The 2012 timeline was unanimously adopted. Please refer to page 7 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. Booth.

REPORT OF THE COMMITTEE ON ESTABLISHMENT OF HEALTH CARE FACILITIES

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

Acute Care – Construction **Exhibit #3**

	Number	Applicant/Facility	Council Recommendation
1.	111284 C	Memorial Hospital for Cancer and Allied Diseases (Westchester County) Dr. Boutin-Foster - Recusal	Contingent Approval

Mr. Booth introduced application 111284 and noted for the record that Dr. Boutin-Foster is recusing and exited the meeting room. Mr. Booth motioned for approval which was seconded by Dr. Gutierrez. Mr. Fassler inquired about private accelerators in the area and how it impacts utilization and how are they accounted into this application. Mr. Abel responded that the Department's need methodology of linear accelerators is focused on Article 28, certified linear accelerators, and the proposal for Memorial is within the projected need for those linear accelerators in Westchester County. Members inquired how the State will insure that the applicant take their proper share of Medicaid patients. Mr. Abel noted that during the Department's analysis, it appears to be consistent with Medicaid care provided by other facilities for cancer patients. The motion to approve the application passed. Dr. Boutin-Foster re-entered the meeting room. To review the members discussion, please refer to pages 8 through 20 of the attached transcript.

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

	Number	Applicant/Facility	Council Recommendation
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

Mr. Booth introduced the remaining applications in Category One and motioned for approval which was seconded by Dr. Gutierrez. The motion to approve application 071126, 091039, 092131 and 101087 carried. Please see pages 20 and 21 of the attached transcript.

CON Applications

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

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

	Number	Applicant/Facility	Council Recommendation
1.	111070 C	Isabella Geriatric Center, Inc. (New York County) Dr. Berliner – Recusal Mr. Fassler - Interest	Contingent Approval

Mr. Booth introduced application 111070 and noted for the record that Dr. Berliner is recusing and exited the meeting room and Mr. Fassler is declaring an interest. Mr. Booth motioned to approve and Dr. Gutierrez seconded. The motion to approve passed with Dr. Berliner's recusal. Dr. Berliner re-entered the meeting room. Please see pages 21 and 22 of the transcript.

2.	091021 C	Parkshore Health Care, LLC d/b/a Four Seasons Nursing and Rehabilitation Center (Kings County) Mr. Fensterman – Recusal	Contingent Approval

Mr. Booth noted for the record that Mr. Fensterman is recusing himself from application 091021 and has exited the meeting room. Mr. Booth motioned for approval which was seconded by Dr. Gutierrez. The motion to approve was passed with the Mr. Fensterman's recorded recusal. Please see page 22 of the attached transcript.

3.	092166 C	Eastchester Rehabilitation and Health Care Center, LLC (Bronx County) Mr. Fensterman – Recusal	Contingent Approval

Mr. Fensterman remained outside the meeting room as he declared his recusal on application 092166. Mr. Booth described the application and motioned for approval. Dr. Berliner seconded the motion. The motion carried. Please see page 23 of the 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

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

	Number	Applicant/Facility	Council Recommendation
1.	031039 C	Bronx Center for Rehabilitation & Health Care, LLC (Bronx County) Mr. Fassler - Recusal Mr. Fensterman – Recusal	Disapproved

Mr. Booth noted for the record that Mr. Fassler and Fensterman have declared a conflict on application 031039. Mr. Fensterman remained outside the meeting room and Mr. Fassler exited the meeting room. Mr. Booth introduced the application and motioned for disapproval was seconded by Dr. Gutierrez. The motion to disapprove carried with Mr. Fassler and Mr. Fensterman's recusals. Mr. Fassler returned to the meeting room. Please see pages 23 and 24 of the attached transcript.

2.	071010 C	Long Island Care Center, Inc. (Queens County) Mr. Fensterman- Recusal	Disapproved
3.	092002 C	Promenade Nursing Home, Inc. d/b/a Promenade Rehabilitation and Health Care Center (Queens County) Mr. Fensterman – Recusal	Disapproved
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	Disapproved
5.	111174 C	Sheepshead Nursing & Rehabilitation Center, LLC (Kings County) Mr. Fensterman – Recusal	Disapproved

Mr. Booth introduced application 071010, 092002, 101016, and 111174, advised that Mr. Fensterman has declared a conflict on all 4 applications and remains outside the meeting room. Mr. Booth motioned for approval, Dr. Gutierrez seconded. The motion to disapprove application 071010, 092002, 101016, and 111174 carried with Mr. Fensterman's noted recusals. Please see page 24 and 25 of the attached transcript.

6.	062217 C	Fieldston Operating, LLC d/b/a Fieldston Lodge Care Center (Bronx County)	Disapproved
7.	062380 C	Cliffside Nursing Home, Inc., d/b/a Cliffside Rehabilitation & Residential Health Care Center (Queens County)	Disapproved

Mr. Booth described application 062217 and 062380 and motioned for disapproval which was seconded by Dr. Gutierrez. The motion to disapprove application 062217 and 062380 passed. Please see pages 25 and 26 of the attached transcript.

8.	082176 C	Lutheran Augustana Center for Extended Care and Rehabilitation, Inc. (Kings County) Mr. Fassler - Interest	Disapproved

Mr. Booth noted for the record that Mr. Fassler is declaring an interest on application 082176. Mr. Booth motioned for disapproval which was seconded by Dr. Berliner. The motion to disapprove carried with Mr. Fassler's interest. Please see pages 26 and 27of the attached transcript.

Cardiac Services – Construction **Exhibit #7**

	Number	Applicant/Facility	Council Recommendation
1.	052112 C	Sisters of Charity Hospital (Erie County) Mr. Booth - Interest	Disapproved

Mr. Booth introduced application 052112 and motioned for disapproval which was seconded by Dr. Gutierrez. The motion for disapproval carried. See pages 27 of the attached transcript.

CATEGORY 6: Applications for Individual Consideration/Discussion

CON Applications

Cardiac Services – Construction **Exhibit #8**

	Number	Applicant/Facility	Council Recommendation
1.	102142 C	Mount St. Mary's Hospital and Health Center (Niagara County) Mr. Booth- Interest	Disapproved
2.	102143 C	Mercy Hospital of Buffalo (Niagara County) Mr. Booth- Interest	Disapproved
3.	102151 C	Niagara Falls Memorial Medical Center (Niagara County) Mr. Booth- Interest	Disapproved
4.	102152 C	Buffalo General Hospital (Erie County) Mr. Booth- Interest	Disapproved

Mr. Booth batched application 102142, 102143, 102151 and 102142 and noted for the record that Mr. Booth has an interest on all four applications and Dr. Grant has in interest on application 102151. Mr. Fensterman motioned for disapproval which was seconded by Mr. Booth. After discussion among members, Dr. Streck called the applications to vote individually. Application 102142, 102143, 102151 and 102152 were disapproved with the noted interests. Please see pages 27 through 43 of the attached transcript.

Acute Care Services – Construction **Exhibit #9**

	Number	Applicant/Facility	Council Recommendation
1.	111531 C	Lenox Hill Hospital (New York County) Mr. Fensterman – Recusal Mr. Kraut – Recusal Dr. Strange - Recusal	Contingent Approval

Mr. Booth moved to the next application 111531 and noted for the record that Mr. Fensterman, Mr. Kraut, and Dr. Strange were recusing and exited the meeting room. Mr. Booth briefly described the application and made a motion to approve. Dr. Berliner seconded the motion. The motion to approve carried with Mr. Fensterman, Mr. Kraut and Dr. Strange's recusals and they re-entered the meeting room. Please see pages 44 and 45 of the attached transcript.

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**

	Number	Applicant/Facility	Council Action
1.	102452 B	Fromer LLC Eye Surgery Center of New York (Bronx County)	Contingent Approval

Mr. Booth described application 102452 and motioned for approval, Dr. Gutierrez seconded the motion. The motion carried. See page 45 of the attached transcript.

2.	111277 B	Avicenna ASC, Inc. (Bronx County)	Contingent Approval

Mr. Booth introduced application 111277 and motioned for approval, Dr. Gutierrez seconded the motion to approve. The motion carried. See pages 45 and 46 of the attached transcript.

3.	111421 E	Digestive Diseases Diagnostic and Treatment Center (Kings County)	Contingent Approval
4.	111502 B	Hudson Valley Center, LLC (Westchester County)	Contingent Approval

Mr. Booth described application 111421 and 111502 and motioned for approval. Dr. Gutierrez seconded the motion. Application 111421 and 111502 were approved. See pages 46 and 47 of the attached transcript.

Residential Health Care Facility – Establish/Construct **Exhibit #11**

	Number	**Applicant/Facility**	**Council Action**
1.	111313 B	Samaritan Senior Village (Jefferson County)	Contingent Approval

Mr. Booth motioned for approval of application 111313, Dr. Berliner seconded the motion. The motion carried. Please see pages 47 and 48 of the 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

Ambulatory Surgery Center – Establish/Construct **Exhibit #12**

	Number	**Applicant/Facility**	**Council Action**
1.	111506 E	NYSCQ, LLC d/b/a New York Surgery Center of Queens (Queens County) Dr. Sullivan – Abstaining	Contingent Approval

Mr. Booth described application 111506, Dr. Berliner seconded the motion to approve. The motion carried with Dr. Sullivan's abstention. Please see pages 48 and 49 of the transcript.

2.	101158 B	EMK ASC, LLC d/b/a New York Ambulatory Surgery, LLC (Queens County) Dr. Sullivan – Abstaining	Contingent Approval

Mr. Booth introduced application 101158, and motioned for approval, Dr. Berliner seconded the motion. The motion carried with Dr. Sullivan's noted abstention. See pages 49 and 50 of the attached transcript.

3.	111409 B	Flushing GI, LLC (Queens County) Dr. Sullivan - Abstaining	Contingent Approval

Mr. Booth moved to application 111409, motioned for approval. Dr. Berliner seconded the approval. The motion carried with Dr. Sullivan's abstention. Mr. Levin inquired whether the facilities were accredited See pages 50 through 52 of the transcript.

Diagnostic and Treatment Centers – Establish/Construct **Exhibit #13**

	Number	**Applicant/Facility**	**Council Action**
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

Mr. Booth batched application 111218 and 111390 motioned for approval. Dr. Berliner seconded the motion. Application 111218 and 111390 were approved with Mr. Booth's noted interest. . Please see page 52 of the attached transcript.

Dialysis Center – Establish/Construct **Exhibit #14**

	Number	**Applicant/Facility**	**Council Action**
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

Mr. Booth introduced application 111503 and noted for the record that Mr. Fensterman is recusing and exiting the meeting room. Mr. Bhat was not present, the conflict has been recorded for the record. Mr. Booth motioned for approval which was seconded by Dr. Gutierrez. The motioned carried with Mr. Fensterman's recusal. See pages 52 and 53 of the attached transcript.

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

	Number	Applicant/Facility	Council Action
1.	112014 E	SV Operating Three, LLC d/b/a Verrazano Center for Rehabilitation and Specialty Healthcare (Richmond County) Mr. Fassler - Recusal Mr. Fensterman - Recusal	Contingent Approval

Mr. Fensterman remained outside the meeting room as he declared a conflict on application 112014. Mr. Fassler declared a conflict and exited the meeting room. Mr. Booth described the application and motioned for approval. Dr. Gutierrez seconded the motion. The application was approved with Mr. Fensterman's noted recusal. Mr. Fassler and Mr. Fensterman returned to the meeting room. Please refer to pages and 53 and 54 of the attached transcript.

Continuing Care Retirement Community – Establish **Exhibit #16**

	Number	Applicant/Facility	Council Action
1.	111285 E	Woodland Pond at New Paltz (Ulster County) Dr. Berliner – Recusal	Contingent Approval

Dr. Berliner declared a conflict and exited the meeting room. Mr. Booth described application 111285 and motioned for approval. Dr. Gutierrez seconded the motion to approve. The motion carried with Dr. Berliner's recusal. Please see pages 54 and 55 of the transcript.

HOME HEALTH AGENCY LICENSURES **Exhibit #17**

Number	Applicant/Facility	Council Action
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

Mr. Booth introduced application 1717, 1903, 1827, 1794, 1674, 2018, 2007, 1742, 1860, 1804, 1764, 1695, 1825, 2009,1896, 1879, 1871, and 1743. Noted for the record Ms. Regan declared an interest on licensure applications with the exception of 1743. Mr. Booth and Ms. Hines declared an interest on application 1743. Mr. Booth motioned for approval, Dr. Gutierrez seconded the motion. The motion to approve carried with the noted interests.

Please refer to pages 55 and 56 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

Certified Home Health Agencies – Establish/Construct **Exhibit #18**

	Number	Applicant/Facility	Council Action
1.	111529 E	L. Woerner, Inc. d/b/a HCR (Cortland County) Mr. Booth – Recusal Ms. Hines – Recusal	Contingent Approval
2.	112025 E	L. Woerner, Inc. d/b/a HCR (Madison County) Mr. Booth – Recusal Ms. Hines – Recusal	Contingent Approval

Mr. Booth and Ms. Hines recorded their conflicts on application 111529 and 112025 and exited the meeting room. Mr. Abel described application 111529. Dr. Berliner motioned for approval, Dr. Gutierrez seconded the motion. 111529 was approved with Mr. Booth and Ms. Hines recusals.

Mr. Abel described application 112025, Dr. Berliner motioned for approval. Mr. Hurlbut seconded the motion. The motion to approve carried with Mr. Booth and Ms. Hines noted recusals. Mr. Booth and Ms. Hines returned to the meeting room. Please see pages 56 through 62 of the attached transcript.

Dr. Streck thanked Mr. Booth for his report and moved to the next item on the agenda

Regulation and introduced Dr. Gutierrez to give the Report of the Committee on Codes, Regulations and Legislation.

REGULATION

Report of the Committee on Codes, Regulations and Legislation

Dr. Gutierrez began his report indicating the Committee had met earlier in the day to discuss the emergency change in Section 401.2.

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 Health Law Article 28 to operate at a site not designated on its operating certificate on a temporary basis due to an emergency

He indicated the Committee approved the regulation with an addition to Part B and the following sentence. "An operating certificate shall be used only by the established operator for the designated site of operation." The addition is as follows: "Except that the Commissioner may permit the established operator to operate an alternate or additional site, approved by the Commissioner on a temporary basis, is an emergency."

Dr. Gutierrez motioned for adoption which was seconded by Dr. Berliner. Dr. Streck asked the Council if they had any further comments or questions. Dr. Martin questioned if the terms "temporary" or "emergency" were defined anywhere. Mr. Dering, General Counsel, responded that they were not defined in the regulation; however, the term "emergency" exists elsewhere in the regulation and is consistent. There wasn't a definition added. After some discussion, Dr. Streck asked if members had further questions, hearing none, the motion was approved unanimously. Please refer to pages 63 through 67 of the attached transcript to view Dr. Gutierrez complete report and comments from Council members.

The meeting was briefly adjourned.

REPORT OF THE DEPARTMENT OF HEALTH ACTIVITIES:

Dr. Streck introduced Commissioner Shah to give the Report on the Department of Health Activities.

Commissioner Shah began his report by welcoming the members.

Irene and Flooding

Commissioner Shah advised that the State continues to help families and communities affected by the tropical storm and subsequent flooding. The Governor showed leadership with his Labor for your Neighbor initiative. Many people from across the Department of Health went out and helped their neighbors in the affected upstate communities. The Department was informed about a 10 to 12 foot storm surge approaching, the Department helped evacuate 10,000 people from over 40 institutions, including hospitals and nursing homes and adult day care centers, over the course of about 48 hours and relocated them back to their institutions in about a day and a half afterwards, which was just unprecedented. The Department and all these institutions who stepped up to the plate, including Greater New York Hospital Association, the OEM, and certainly North Shore Long Island Jewish, and other systems who, upon phone calls, sent ambulances to help out and took over evacuation of nursing homes. Dr. Shah noted the hard work and commitment of everyone in the Department and in the greater health care community to make that happen.

MRT- Global Cap

Commissioner Shah explained another major effort was the Medicaid Redesign Team, Global Cap. This is where a decision early on that the last $640 million could not be figured out how to cut, they would figure out amongst themselves. We are living within our means and spending within our means, actually under the cap, cumulatively, for the month of August. This means we are exactly where we need to be. The projections are there for the Medicaid program. The biggest risk to date has actually been enrollment growth, when thousands of more folks that are affected because of the economy are enrolling in the Medicaid program, costs will certainly go up. The reality is, we have been much better at keeping inpatient costs down and really changing the system in ways that positively impact the Medicaid program. The Department has been monitoring this every month.

Hospital Acquired Infection

Dr. Shah advised that the Department recently released a report on the infections through 2010, and showed a marked decline in the rate of central line associated bloodstream infections, or CLABSIs, as well as declines in certain surgical site infections. The rate of CLABSIs in New York hospitals has declined a total of 37 percent since 2007 and surgical site infections have declined 15 percent over that same time frame. This is a reflection of the Department's commitment to work with hospitals to enhance patient safety and adopt those procedures that make big differences in risk of infection. This time, for the first time, the Department included CDIP, a clostridium difficile infection, in this report. It is preventable. In 2010, the State's CDIP hospital onset infection rate was 8.2 infections per 10,000 patient days. The Department became

more aware of where the problems are. The Department is working with hospitals to adopt best practices, ultimately working in extending that beyond clinics and the community.

Public Health (Influenza and WNV)

Commissioner Shah next stated that unfortunately, this year, in terms of other infections, there has been one death from West Nile virus and another from eastern equine encephalitis in New York. This is actually lower than historic rates, and the Department is working actively with local Health Departments to continue surveillance. The temperature is dropping and the fall colors are coming on and the mosquitoes will be dying out, but until the flooding stops, there will be many more mosquitoes than historically.

HIV Mother-to-Child Transmission

Next, Commissioner Shah highlighted prevention of HIV transmission from a mother to her infant. In 2010, New York State reported three infants in the state who were infected through mother to child infection. That is a decrease of 97 percent since testing began in 1997. The CDC actually classifies us as having eliminated it, because it's a 0.7 rate, anything under one percent does not count. About 500 HIV infected moms deliver babies in New York State each year. The Department is promoting aggressive new HIV testing and prevention among these moms, to really get that rate down to zero. We offer antiviral viral drugs to protect the health of both mothers and infants. We know from recent evidence that anyone diagnosed with HIV may benefit from a population health perspective, from getting retroviral drugs. Both the City and the State are thinking about how we can make this happen and really see this epidemic turn into a different type of epidemic, or not become an epidemic. There's a lot of promise from the medical literature on how we can control this.

METRIX

Dr. Shah explained a project that the Department is undertaking. One of the Department's goals is to support evidence-based programs and policies that address the major health priorities across the state, including the prevention and management of chronic diseases like diabetes and asthma. The project is called METRIX, which stands for Maximizing Essential Tools for Research. The Department collects literally hundreds of data sets, looking at all aspects of health care. While some of them are very limited, they often have many potential applications beyond which there were originally collected for. First, the Department did an inventory, and found literally almost 300 different data sets across the Department that we maintain. The Department is trying to create strategic partnerships with anyone and everyone who is interested in the data to advance the goals of public health. The Department has started to publish the data. As of August 15, 2011, the Department published about seven data sets on the Department's website. Dr. Shah concluded his report and inquired if the members had questions.

To review Dr. Shah's full report and questions and comments from Council members, refer to pages 67 through 82 of the attached transcript.

Dr. Streck thanked Dr. Shah for his report and moved to the next item on the agenda and introduced Dr. Birkhead to give the Report on the Activities of the Office of Public Health.

Report of the Office of Public Health Activities

Dr. Birkhead began his report by updating the Council on the emergency response to Hurricane Irene and tropical storm Lee. Dr. Shah discussed earlier the number of unprecedented move to evacuate facilities. The interesting aspect of that is something we had planning for. But, we really had to pull the trigger 48 to 72 hours before the storm is due to hit, and that the tricky part of it. We did carry out the plan, and many of the patients were evacuated while it was still clear skies and the storm had not hit yet. In the end, between both storms, the Department evacuated eight hospitals, thirty-six nursing homes, and twenty adult care facilities statewide. As Dr. Shah indicated, over 10,000 patients were affected. For example, through the federal government we had access to contracts for ambulances, and 186 ambulances actually came to the state from Ohio and Indiana to help with the evacuation.

Dr. Birkhead commented another unprecedented aspect of this is that Dr. Shah went to the City and assisted in the command center and was on-site for many decisions that had to be made. That's one of the aspects, the after action that we're looking at. That seemed to be a very effective means of communication. But how do you decide when action warrants that level of involvement, and how do we make sure that we at the State are able to support the Commissioner off-site in a different location? Those sorts of things we're looking at, in terms of how do to a better job next time, even though things went well.

Dr. Birkhead noted the Department activated the management system on Thursday before the hurricane hit, on Sunday. That means that all parts of the Department, the Office of Public Health, Health Systems, Long Term Care, Legal, Laboratory, and Public Affairs were engaged actively. We had staff at the State emergency bunker 24/7 that deployment actually lasted 28 days, which is one of the longest since 9/11.

Dr. Birkhead commented, we had 168 public water systems that were affected by the two storms, either affected in that they had to shut down for a power shortage or were actually inundated by flooding. There were a total of 125 boil water notices. Our environment health staff are still actually engaged in the process of getting all these water systems back up and operating. Sewage treatment plants were flooded, and there's a whole set that's primarily under the Department of Environmental Conservation, but we were involved in the clearing of routine lab work that goes on in those sewage treatment plants.

Dr. Birkhead expressed the tremendous impact, aside from people being flooded out of their homes and businesses. Some of the routine public health things the Department did during the crisis included deploying tetanus toxoid vaccines to areas where people were potentially injured or going to be doing recovery work. We had a cache of emergency medical equipment and supplies, portable hospital beds to al least one facility where they were moving patients off site, and a host of other medical supplies were also distributed.

He commented Department staff are still engaged in the recovery phase, which we're leaving, perhaps in the South, where they have hurricanes more regulatory, that they realized this is going one. There had been 31 disaster recovery sites set up around the state where people can come and apply for FEMA aid, and the Department staff are at all 31 sites to provide health advice to people. The Department put together a comprehensive list of public health related message that people needed to receive if they're going to move back into a flooded home, or need help.

In closing, Dr. Birkhead commented on this unprecedented experience for the Department. However, he noted we need to learn from these experiences. Dr. Shah indicated the Department will try to write up some of these experiences and how public health fits into emergency response and how we help coordinate and work with all of you who represent the different parts of the health care sector out there to respond when the population us under threat. Please refer to pages 83 through 91 of the attached transcript to view Dr. Birkhead's complete report and comments from Council members.

Dr. Streck thanked Dr. Birkhead for his report and moved to the next item on the agenda and Mr. Cook to give the Report on the Activities of the Office of Health Systems Management .

Report of the Office of Health Systems Management

Mr. Cook began his report by bringing the Council up to date on a few issues. He noted that the Department is looking to reorganize. One of the reorganizations is the Office of Health Systems Management will begin to pick up some of the responsibilities that have been previously been in the Office of Long Term Care. Surveillance for home care, nursing homes and adult homes will now be down by the Office of Health Systems Management, as well as, CON related activities for nursing homes and home care.

He commented these efforts are an attempt in consolidating functions and trying to achieve efficiency. He noted he spend time with Mark Kissinger going through staff issues and splitting up staff needs. This will now bring surveillance and CON under one roof and will allow us to achieve more uniformity, particularly as it regional surveillance issues.

Mr. Cook also informed the Council that Mark has been assigned and directed by the Governor's office, to redesign the long term care system. He commented that this is exactly what needed to occur in the mid 1990s when the system moved to Medicaid Managed Care. We really need to have someone who can cross all agencies and cross all barriers in order to find solutions and Mark obviously is the right person to do that.

Another issue Mr. Cook noted to the Council is the implementation of electronic submission of CONs. It will be a year in December that we've done that. The Department is still getting a number of applications by hand, which require additional staff time to make copies and load it etc. We would like to move forward and would recommend either mid December or January 1 that all applications really should be submitted electronically. Obviously, if there are any issues with people doing so, we will make exceptions and work with them.

The last issue Mr. Cook discussed with the Council is the issue of correspondence and what needs to come to the Council. Over the last couple of meetings what we've seen is an increasing number of requests at the very last minute to being submitting and getting copies of correspondence to member. If that is what the Council wants to do, the Department will abide by that. However, it does complicate the process of us looking at information, putting it together, analyzing it, and trying to make sense of it and send everything to you. It creates an incentive for everyone to wait until the last minute so they can get information to you. The Council will need to make a decision on how it wants correspondence to be forwarded, when it wants to have cutoff date. Because what is occurring now is at the very end prior to a meeting, the Department is getting overwhelmed with requests to get information to you. We do see a redundancy in information, and it really isn't spelling out anything that hasn't' been brought to our attention. Therefore, the Department believes there needs to be a policy on correspondence. Please refer to pages 91 through 103 of the attached transcript to view Mr. Cook's complete report and comments from Council members.

Dr. Streck thanked Mr. Cook for his report and moved to the next item on the agenda Health Policy and introduced

HEALTH POLICY

Report on Activities of the Committee on Health Planning

Dr. Rugge reported to Council members they had scheduled their first ever joint teleconference meeting with the Public Health Committee on November 9th. He explained this meeting was allowable, however, it has to take place at the DOH or the regional offices or other designed locations. They will look at how to understand the specific activities that will fit within a broader range of public health. Also, looking a bit more background in terms of how CON is currently functioning and allow over time in New York compared to the other 49 states with respect to CON.

He indicated a letter went to the stakeholders of the health care system, including payer associations, 19 grantees, regional players in the area of planning, asking for input on what kind of consideration should the Health Planning Committee and PHHPC undertake with regard to changing or revising the CON process. We indicated this is wide open, that we're not simply doing small improvements to make it alittle bit better, or whether we'll have a much broader and wide range of discussions and recommendations.

Dr. Rugge informed members that this Committee is very interested in helping set the context of any consideration, certainly with regard to CONs, in terms of public Health and therefore the Public Health Committee. Please refer to pages 105 through 109 of the attached transcript to view Dr. Rugge's complete report and comments from Council members.

Dr. Streck thanked Dr. Rugge for his report and moved to the next item on the agenda Public Health Services and introduced Dr. Boufford to give the Report on the Activities of the Committee on Public Health.

PUBLIC HEALTH SERVICES

Report on the Activities of the Committee on Public Health

Dr. Boufford reported to Council members, the Committee was given a charge which they refined and then brainstormed some issue areas that they wanted to work on and send a survey to the Committee members.

She indicated the Committee had three priorities over the next year: Number one, to work with the Health Planning Committee and try to see how we can get the most public and health benefit out of the CON revisions, potential revisions, and other levers. Secondly, the core role is supporting the Health Department as it proceeds for public accreditation, to be accredited as a public health agency. Part of that will be developing the State Health Improvement Plan agenda for the next four years. Lastly, the Committee would like to identify one prevention issue that we feel, that by concerted concentration over the next year, we could move the needle on health problems and that we could really make a difference.

Ms. Lipson, from the Department, followed up Dr. Boufford's report with a summary of a presentation that was given to the joint committees of the Public Health Committee and the Health Planning Committee.

"Why should we integrate public planning and CON?" She commented this may be obvious to most, but it's always good to say things out loud and test your assumptions. There may be more, but one reason is to promote the alignment of health care capacity with community needs. Another is to curb health spending, not just by reducing the supply for services, which has been the historic focus on health planning; but also to curb health spending by reducing demand for services. Perhaps by integrating population health into health planning and CON, we can use those tools to keep people healthier and to redistribute realization to the most affected settings/ not necessarily the most intensive settings.

Ms. Lipson indicated another goal for integrating population health into health planning CONs is to reduce health and health care disparities. She commented if we look at the health of communities and the outcomes, we can identify interventions that would reduce health care disparities.

She then referred to existing initiatives within the State DOH and emerging initiatives. The prevention agenda and collaborations that have been required between hospitals and local health department, in community health assessments, in identifying interventions, identifying top priorities and interventions, to address those priorities in communities.

She commented on HEAL 9 and later HEAL 19 local health planning grants that have in many cases created multi-stakeholder collaborative to look at pressing community health needs and develop strategies to address those needs. The community benefits requirements under the Accountable Care Act that require not-for-profit hospitals to participate in community health needs assessment and develop strategies in response to those assessments. There are various ways in which the current certificate of need process uses population criteria; and then the emerging certificate of public advantage initiatives, which comes out of the Medicaid redesign

team and legislation enacted in this year's budget. This is a new regulatory mechanism that promotes collaboration and integration among providers by promoting antitrust immunity and active supervision of those arrangements.

Ms. Lipson indicated there are a number of opportunities emerging to integrate population health with health planning CON. Activities they are seeing through HEAL 9 and HEAL 19 grants, collaborative interdisciplinary activities at the local level, where they are looking at community health needs and identify responses, both in terms of supply and in terms of affecting consumer behavior and affecting the model of care to prevent unnecessary utilization, for example, or to promote better health outcomes. Another opportunity is the payment and health system reforms under the Accountable Care Act. Integration activities like the accountable care organization model, episodic payments and bundles payments reforms; all of those type of system redesign initiatives, incentivized collaboration along with continuum of care, and require attention to population health.

In closing, Ms. Lipson commented the regulatory requirements can be levered to promote population health objectives, as well as leverage to promote quality access and cost containment. However, one challenge is striking the right balance between regulation and market forces. She commented it's tricky to use regulatory levers to affect markets. When you put pressure on one part of the market you often see other parks of the market bubbling out. We have to exercise our authority using those levers cautiously. Other challenges include appropriate mission of local planning in a changing health care environment. What is an appropriate size of a planning area? Should it be at the county level, the neighborhood level, the regional level? We've seen all different models under HEAL 9 and various degrees of success in all different sizes.

Another challenge is resources, both externally and in government. The organizations are strapped for case and that results in difficulty in engaging stakeholders. All organizations and citizen at all levels are under pressure. So it is important to engage stakeholders from all different sectors in order to rationalize delivery systems that impact populations. Please refer to pages 109 through 137 of the attached transcript to view Dr. Boufford and Ms. Lipson's complete report and comments from Council members.

Dr. Streck thanked Dr. Boufford and Ms. Lipson for their reports.

ADJOURNMENT:

Dr. Streck adjourned the public portion have the meeting and moved into executive session.

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8 PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
9 FULL COUNCIL MEETING
10 NEW YORK STATE DEPARTMENT OF HEALTH
11 90 CHURCH STREET
12 THURSDAY, OCTOBER 6, 2011
13 10:53 A.M.
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1 P R E S E N T:
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3 William Streck, M.D., Chair
4 Jo Ivey Boufford, M.D., Vice Chair
5 Charles Abel
6 Dr. Boutin-Foster
7 Guthrie Birkhead, M.D.
8 Richard Cook
9 Christopher Delker
10 Michael Fassler
11 Howard Fensterman
12 Colleen Frost
13 Angel Gutierrez, M.D.
14 Robert Hurlbut
15 Karen Lipson
16 Ellen Rautenberg
17 Susan Regan
18 Peter Robinson
19 Theodore Strange, M.D.
20 Lisa Thompson
21 Present via videoconference in Albany:
22 Sylvia Pirani
23 Also Present:
24 Anita Shemin, CART Provider

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2 P R O C E E D I N G S
3 (Time noted: 10:53 a.m.)
4 CHAIRPERSON STRECK: Good morning, ladies
5 and gentlemen. We're now ready to convene the full
6 meeting of the Public Health and Health Planning
7 Council. I'm Dr. William Streck, chair of the Public
8 Health and Health Planning Council.
9 I have the privilege of chairing the meeting
10 today, and I want to go through a few of the
11 housekeeping rules before we begin the process.
12 I'd like to remind Council members, staff
13 and audience members that the meeting is subject to the
14 open meeting law. The webcasts are available on the
15 Internet at the Department of Health website. And they
16 will be available no later than seven days after the
17 meeting, and for a minimum of 30 days.
18 Because the mikes are open and the ground
19 rules are synchronized captioning, it's important we do
20 not talk over one another. The first time you speak we
21 ask you identify yourself. The mikes are hot, so
22 rustled paper or undesired conversations could be picked
23 up. So just to remind you of that.
24 As a reminder to our audience, there's the
25 form that needs to be filled out before you enter the
4
1 PHHPC - Full Council
2 meeting room. It's required by the New York State
3 Commission on Public Integrity. The form is posted on
4 the Department of Health's website and the forms are
5 available outside the room.
6 I'd like to now move to our accommodations
7 for the work of our colleague, Herbert Friedman, whose
8 term has expired on the Council. Herb was a pleasure to
9 have on the Council and he'll be missed as an active
10 member. It was an honor to serve with him.
11 On behalf of the members of the Council and
12 Vice Chair Boufford and myself, I would read the
13 following resolution of appreciation:
14 "Whereas Herbert H. Friedman served with
15 distinction on the New York State Public Health Council
16 from June 20, 2006 to May 25, 2011; and where during his
17 tenure he served as a member of the Committee on
18 Establishment and Health Care; and in serving in this
19 capacity he has made countless contributions to
20 improving New York State's health care delivery system;
21 and to furthering the improvement of public health for
22 the citizens of New York.
23 "And whereas the members of the Public
24 Health Council of the State of New York do hereby

2 valuable service to the Council for five years.
3 "Now therefore be it resolved that members
4 of the Public Health Council" -- that would actually be
5 the Public Health and Health Planning Council -- "convey
6 to Mr. Friedman our esteemed admiration and appreciation
7 for his instrumental role in enhancing the health and
8 well-being of all who reside in the State of New York.
9 "And be it further resolved that the members
10 of the Public Health and Health Planning Council extend
11 their gratitude to Mr. Friedman for his committed
12 service to the Council, and send him our best wishes for
13 many years of health, happiness and professional
14 achievement."
15 That resolution will be signed by Dr.
16 Boufford and myself, and we do extend our thanks to Mr.
17 Friedman.
18 I next move to today's meeting and begin by
19 pointing out that we are changing the order from the
20 prior meeting as we search for the best way to
21 accommodate the many interests, get our work
22 accomplished and minimize the disruption or delays or
23 inconveniences of applicants and those with other
24 interests.
25 So today we will step immediately into the

2 project review recommendations and establishment
3 actions. And Mr. Booth will chair those activities.
4 After the project review and establishment
5 actions, we will break for lunch. Hopefully there will
6 be a timely coordination of those two events. And then
7 after lunch we return to the format where we are
8 beginning with the Department of Health reports, health
9 policy report, public health services report, the Codes
10 and Regulations Committee and the executive session.
11 So that is the format we'll follow today.
12 I remind members of the Council and most of
13 our guests that we have a format for the Establishment
14 and Project Review in which we do batch applications,
15 but select out those in which there has not been
16 concurrence prior to the meeting. I trust the members
17 have listed whether they have a conflict or an interest
18 in any of these, and would pause to make sure that's the
19 case.
20 So with that, I would ask for a motion for
21 adoption of the minutes of the June 16 Public Health and
22 Health Planning Committee minutes.
23 DR. BERLINER: So moved.
24 MR. FENSTERMAN: Second.

25 CHAIRPERSON STRECK: All in favor say "Aye."

2 (A chorus of "Ayes.")
3 Opposed?
4 Abstentions?
5 And I have a motion for adoption of the
6 August 4, 2011 Public Health and Health Planning meeting
7 minutes.
8 MR. ROBINSON: Moved.
9 DR. BERLINER: Second.
10 CHAIRPERSON STRECK: All in favor say "Aye."
11 (A chorus of "Ayes.")
12 Opposed?
13 Abstentions?
14 Thank you.
15 Next is the adoption of the 2012 schedule.
16 May I have a motion to adopt the 2012
17 schedule?
18 DR. BERLINER: Moved.
19 DR. GUTIERREZ: Second.
20 CHAIRPERSON STRECK: Discussion?
21 All in favor say "Aye."
22 (A chorus of "Ayes.")
23 Opposed?
24 Thank you.
25 We have accomplished these housekeeping and

2 ordering processes. We will now begin the meeting with
3 the project review recommendations and establishment
4 actions. I would turn to Mr. Booth.
5 MR. BOOTH: Thank you very much.
6 The first application is Number 111284C,
7 Memorial Hospital for Cancer and Allied Diseases; to
8 certify and construct an extension clinic to be located
9 at 500 Westchester Avenue, Harrison, and be known as MSK
10 Harrison.
11 Please note that Dr. Boutin-Foster has
12 declared a conflict and has left the room.
13 OHSM recommends approval with conditions and
14 contingencies. And the Committee also approved with
15 conditions and contingencies.
16 There was considerable discussion both from
17 the applicant and from the opposition. And therefore I
18 would move it for approval.
19 Do we have a second?
20 DR. GUTIERRZ: Second.
21 MR. BOOTH: Discussion?
22 MR. FASSLER: I know it's a world renowned
23 facility. But there were questions about private
24 accelerators in the area and how it impacts utilization.

How is it accounted into this? There's a question of

hurting the hospitals, which has already happened with existing providers. That's the first part of the question.
MR. ABEL: We have private linear accelerators throughout the state. And it's true that that resource can increase and decrease as they are non-regulated, as well. But our methodology of linear accelerators, need methodology, is focused on Article 28, certified linear accelerators. And the proposal for Memorial is within the projected need for those linear accelerators in Westchester County.
MR. FASSLER: The second is regarding Medicaid utilization. It was part of the presentation that there was less Medicaid than the others, although most of the patients are Medicare.
How does the state insure that they take their proper share of Medicaid?
MR. ABEL: The evidence that Memorial Sloan-Kettering and Memorial Hospital has provided with respect to their care for the Medicaid population, in our analysis, it appears to be consistent with Medicaid care provided by other facilities for cancer patients. You heard two weeks ago about the average onset of cancer is 66 years old. Most folks have

Medicare by that age. So in terms of primary payer reporting, those fall under Medicaid claims. But where Medicaid is a secondary payer, appropriate billings go under Medicare.
You also heard that the applicant has had difficulty achieving reasonable rates with managed care providers. And that continues to be a challenge that the provider is working with the Department and the Medicaid managed care program to seek resolution.
CHAIRPERSON STRECK: Other questions?
MR. KRAUT: So Charlie, just to follow that up. The majority of patients are Medicare. There is a commitment here to make Medicaid patients, and we are talking about not duly eligible, straight Medicaid under 65.
So with respect to over 65, is this facility and all the doctors that are participating here, are participating in Medicare? So it's not an out of network Medicare, but there's a commitment here for Medicare patients, that they accept Medicare fee for service?
I wasn't at the meeting so I don't know if that was discussed; but that would be a critical access

2 the public.
3 MR. ABEL: I can't comment on how many of
4 the physicians involved accept Medicare fee for service;
5 but the commitment is there on behalf of the applicant
6 to accept Medicare patients and Medicaid patients,
7 regardless of age.
8 MR. KRAUT: There have been issues when
9 we've had a previous -- and I don't know what the
10 experience is in Basking Ridge or in Commack -- but if
11 you recall, last time there was an issue where patients
12 came and said that they did not accept, they were not
13 participating in Medicare. And Medicare you have to go
14 out of pocket. The wouldn't accept Medicare.
15 You are saying the commitment is they are
16 accepting?
17 MR. ABEL: I think you're asking a question
18 that's -- I think you're looking for details beyond my
19 knowledge. I suggest that the applicant is here, the
20 applicant can address your questions.
21 DR. RUGGE: I'd like to comment that clearly
22 Memorial Sloan-Kettering is a national treasure, it
23 generates enormous research, a center of excellence.
24 They also play a prime role as a trainer for
25 colleagues to go in the community. There's at least

2 some basis to believe there's some adequate number of
3 linear accelerators in the territory. And that
4 mobilizing the brand of a national treasure to go into a
5 community may not be the ideal role in terms of public
6 policy.
7 But I think we also heard that, best
8 indicators, there's enormous difficulty, not so much for
9 Medicaid, but with the uninsured and care in Westchester
10 County, of all places. To a significant degree it does
11 not seem the hospitals are directly responsible for
12 this. It's left to the structure of the health care
13 system.
14 But there's also no regional planning, no
15 ability to track and understand what was happening, that
16 some people had the terror of a diagnosis with cancer
17 and having months of delay before obtaining care. To my
18 mind, it absolutely provides an open door to any new
19 provider willing to care for these patients. And so, I
20 give my support of this application.
21 CHAIRPERSON STRECK: Mr. Fensterman.
22 MR. FENSTERMAN: I just want to be clear on
23 the answer to Mr. Kraut's last question. Did you get an
24 answer to the question, or was the answer that the

2 CHAIRPERSON STRECK: I will ask Mr. Kraut if
3 he feels -- my understanding from Charlie was that we
4 don't know the answer to the question. I believe the
5 question Mr. Kraut asked is, Does Sloan-Kettering
6 participate in Medicare? In the sense that
7 participation implies acceptance of Medicare fee
8 schedules for payment in total.
9 Charlie responded that he could not respond
10 for the physicians, and he was unsure for the
11 organization. That's what I heard.
12 Have others heard anything different than
13 that?
14 We'll get to it. I'm collecting questions.
15 MR. FENSTERMAN: How are we going to get the
16 answer to Mr. Kraut's question about the physicians?
17 CHAIRPERSON STRECK: They are here. I'm not
18 sure that's our usual protocol. But if there's an
19 opportunity to clarify a question, I think -- I'm
20 hesitant to create a precedent in terms of public
21 comment at this meeting, however.
22 MR. FENSTERMAN: As I'm able to interpret
23 his concern, his concern would be that, as a Council we
24 don't want to see those patients then going to the other
25 hospitals in the area. There are hospitals in the area,

2 those hospitals having to absorb the patients. But that
3 wold not necessarily be fair to them, to even the
4 playing field.
5 Is that a correct assumption on my part, Mr.
6 Kraut?
7 MR. KRAUT: That was the basis for the
8 question.
9 MR. FENSTERMAN: So I need to know that
10 answer, Mr. Chairman, and I'm also concerned about the
11 precedent.
12 CHAIRPERSON STRECK: Are there other
13 comments?
14 DR. SULLIVAN: I'm still concerned about the
15 Medicaid issue. I think that (unclear) levels felt
16 comfortable with. In fact many of the other providers
17 have accepted those rates, and we've seen those
18 patients.
19 I think the question here is to be very
20 careful that we're not setting up a system where -- most
21 Medicaid is not fee for service (unclear) longer used
22 managed Medicaid. So I think that the question here is
23 whether doing same thing as Medicaid as you were
24 suggesting with Medicare, to be careful we're not

2 hospitals, where Sloan says they take Medicaid, but they
3 had trouble with the rates managed care companies are
4 not accepting.
5 I just think that's a very important issue
6 to keep an eye on.
7 CHAIRPERSON STRECK: Are there other
8 comments or questions in regard to this application?
9 MR. ROBINSON: Two observations. One is
10 that we continue to struggle with the whole issue of
11 linear accelerators in the world of private practice.
12 And it seems to me that in some fashion or other we need
13 to find a way to integrate the review process so we're
14 looking at capacity broadly.
15 We've managed to do that in the Finger Lakes
16 Region by having the commercial payers actually play a
17 proactive role in reviewing and approving those
18 applications from the private practice community, and
19 therefore were able to have a community wide
20 methodology. And obviously that's a voluntary kind of
21 effort.
22 It does seem to me that the Department does
23 need to look at a way to level the playing field;
24 whether that means proposing legislation that gives the
25 Department that authority or some or mechanism that

2 would be appropriate. Because that to me is an issue of
3 building much more than the need, and therefore
4 increasing the cost.
5 That's not to say this isn't an appropriate
6 application, but it does really raise for us a
7 significant question about where we are investing our
8 health care dollars.
9 CHAIRPERSON STRECK: Mr. Cook?
10 MR. COOK: I think in a perfect world that's
11 exactly what we'd like to do here. We can certainly go
12 back and look at whether we can put a proposal together.
13 The problem with doing it right now is a
14 challenge that, you've got independent private physician
15 groups that are not under control of the state. And
16 were we to begin counting their linear accelerators,
17 community hospitals would then probably be disadvantaged
18 because we wouldn't be able to approve theirs.
19 So we're kind of in this conundrum right now
20 of how we can sort this out. We agree there's a dilemma
21 and we're challenged by it.
22 MR. ROBINSON: I'm not suggesting that we do
23 it for this application, but I think it is an issue that
24 does require maybe the Health Planning Committee to look

25 at.

2 CHAIRPERSON STRECK: Other comments?
3 MS. HINES: I'm also focused on the need
4 question. And I appreciate the conundrum, but we do
5 know that we have more linear accelerator capacity than
6 is represented in the needs analysis. So I worry about
7 creating excess capacity.
8 And then I also have a question about need.
9 I'm unclear as to whether or not we have existing access
10 to capacity and the other Westchester providers that
11 could accommodate not just today's volume, but future
12 growth.
13 CHAIRPERSON STRECK: Comments or questions?
14 What I have heard is a recognition of the
15 excellence of Sloan-Kettering, questions about the total
16 number of units and the capacity of existing units,
17 questions about Medicare participation on the part of
18 the institution and the physicians, questions about
19 Medicaid, and acknowledgments of the conundrum of the
20 policy whereby we have sort of shadow counting, as it
21 were, by our own constraints.
22 Is that a summary of the discussion?
23 Is there anyone who wishes to add to that
24 discussion?
25 MR. COOK: If I can, I also think it's

2 important to put something in context. The Department
3 has been working with Sloan in order to, quite frankly,
4 push the best we can to get Medicare in a managed care
5 contract.
6 But having said that, one of the unique
7 things that we have found at Sloan, and I think you
8 heard at the hearing, was that individual Medicaid
9 patients have gotten access to Sloan where they did not
10 get access to other community hospitals.
11 Their charity care policy is the highest in
12 the state, 500 percent of the poverty. So we have
13 generally found in working with Sloan that, as it
14 relates to Medicaid and the uninsured, they have a very
15 good record and as good a record as any major cancer
16 center within the state.
17 In the context of need and whether or not
18 they impact on community hospitals, I do think it's
19 important to understand they already are located in this
20 area. And it's noted in the report, if all the
21 individuals who currently come from that area and
22 farther north use that facility, that facility would be
23 at capacity.
24 So I don't make those points in order to

2 important to the context of this, a recognition that
3 they are in the market, that they already draw from that
4 market.
5 And quite frankly, one of the things that
6 was compelling to the Department was their demographic
7 study of the number of cases that are likely to grow in
8 the future. And how are they going to be able to meet
9 that capacity, given the fact that it's very difficult
10 within Manhattan to find added space to build.
11 CHAIRPERSON STRECK: With those remarks and
12 with the summary of remarks I provided in terms of the
13 comments of members of the Council through this
14 discussion, is there more anyone wishes to add before
15 proceeding to vote on this issue?
16 If not, then I would ask for a vote. And we
17 will do this two ways. First, I will ask for a hand
18 vote for those in favor of the recommendation of the
19 Project Review Committee.
20 Those in favor, raise your hand.
21 (A show of hands.)
22 Sixteen. That is a positive vote of sixteen
23 by a hand vote. I will not ask for a roll call vote. I
24 will ask for those opposed to the application as
25 presented.

2 (Show of hands.)
3 And those abstaining.
4 None.
5 Is everyone comfortable that that vote was
6 clear and decisive without proceeding to a roll call
7 vote?
8 Then that motion passes, and we will move to
9 the next project.
10 MR. BOOTH: We are going to batch the next
11 four projects:
12 071126, Wayne Center for Nursing and
13 Rehabilitation; convert 22 RHCF beds, for a total of 40.
14 091039C, Palm Gardens Care Center LLC, d/b/a
15 Palm Gardens Center for Nursing and Rehabilitation;
16 convert 15 RHCF beds to vent beds, for a total of 53.
17 092131C, Silvercrest Center for Nursing and
18 Rehabilitation. Interest declared by Mr. Fassler.
19 Convert 30 RHCF beds to vent beds, for a total of 80.
20 And 101087C, Flushing Manor Geriatric
21 Center, d/b/a Dr. William O. Benenson Rehab Pavilion,
22 convert 10 RHCF beds to vent beds, for a total of 20.
23 In each of these cases OHSM recommended
24 approval with contingencies, and the committee also

25 approved each of these with contingencies. There was no
21
1 PHHPC - Full Council
2 discussion.
3 I move them as a unit for approval.
4 DR. GUTIERREZ: Second.
5 CHAIRPERSON STRECK: It's been moved and
6 seconded as a batch.
7 Are there comments about the individual
8 applications within the batch or any other issues
9 attendant to the motion?
10 Hearing none, I would ask for those in favor
11 of the motion as presented to raise your hands.
12 (A show of hands.)
13 Those would be in favor, I will tell you
14 now.
15 Those opposed?
16 Thank you. That passes.
17 Mr. Booth.
18 MR. BOOTH: The next application is 111070C,
19 Isabella Geriatric Center. Dr. Berliner declared a
20 conflict and is leaving the room. Mr. Fassler has
21 declared an interest. Convert 16 RHCF beds to vent
22 beds, for a total of 36. There will be no change in
23 overall bed capacity. OHSM recommended approval with
24 conditions and contingencies. The committee approved
25 with conditions and contingencies.
22
1 PHHPC - Full Council
2 I so move. There was no discussion.
3 DR. GUTIERREZ: Second.
4 CHAIRPERSON STRECK: Moved and seconded.
5 Is there further discussion?
6 Hearing none, all in favor raise your hand.
7 (Show of hands.)
8 Those opposed?
9 Motion passes. Thank you.
10 MR. BOOTH: 091021C, Parkshore Health Care
11 LLC, d/b/a Four Seasons Nursing and Rehabilitation
12 Center. Mr. Fensterman declared a conflict and has left
13 the room. Convert 10 RHCF beds to vent beds, for a
14 total of 20. OHSM recommended approval with conditions
15 and contingencies. The committee recommends approval
16 with conditions and contingencies.
17 There was no discussion, and I so move.
18 DR. BERLINER: Second.
19 CHAIRPERSON STRECK: It's been moved and
20 seconded.
21 Discussion?
22 Hearing none, all in favor of the motion as
23 presented raise your hands.
24 (Show of hands.)

2 Opposed?
3 Thank you.
4 MR. BOOTH: 092166C, Eastchester
5 Rehabilitation and Health Care Center. Mr. Fensterman
6 has declared a conflict and is not in the room. Convert
7 4 RHCF beds to vent beds, for a total of 20. OHSM
8 recommended approval with conditions and contingencies.
9 The Committee also recommended approval with conditions
10 and contingencies. There was no discussion.
11 I so move.
12 DR. GUTIERREZ: Second.
13 CHAIRPERSON STRECK: It's been moved and
14 seconded.
15 Discussion?
16 Hearing none, all in favor raise your hand?
17 (A show of hands.)
18 Thank you.
19 Opposed?
20 Thank you. Motion carries.
21 MR. BOOTH: 031039C, Bronx Center for
22 Rehabilitation and Health Care Mr. Fassler and Mr.
23 Fensterman have declared conflicts and have left the
24 room. Certify 16 bed ventilator dependent service.
25 OHSM recommended disapproval, the committee recommended

2 disapproval. There was no discussion.
3 I move for disapproval.
4 DR. GUTIERREZ: Second.
5 CHAIRPERSON STRECK: It's been moved and
6 seconded.
7 Is there further discussion?
8 Hearing none, those in favor of the
9 recommendation please raise your hand.
10 (Show of hands.)
11 Those opposed?
12 Thank you. The motion carries.
13 MR. BOOTH: I'm going to batch the next four
14 applications: 071010C, Long Island Care Center.
15 Convert 30 RHCF beds to vent beds, for a total of 40.
16 092002C, Promenade Nursing Home, d/b/a
17 Promenade Rehabilitation and Health Care Center.
18 Convert 20 beds to vent beds, for a total of 40.
19 10106C, Fort Tryon Rehabilitation and Health
20 Care Facility, d/b/a Fort Tryon Center for
21 Rehabilitation and Nursing. Certify a 15 bed ventilator
22 dependent service.
23 111174C, Sheepshead Nursing and
24 Rehabilitation Center LLC. Convert 20 beds to vent

25 beds.
25
1 PHHPC - Full Council
2 In each of these four cases, Mr. Fensterman
3 has declared a conflict and has not been in the room and
4 is not in the room.
5 In each of the cases OHSF recommended
6 disapproval and the committee recommended disapproval
7 without discussion.
8 So I move to disapprove.
9 DR. GUTIERREZ: Second.
10 CHAIRPERSON STRECK: The motion for
11 disapproval has been moved and seconded for these
12 applications.
13 Discussion?
14 Those who favor the motion as presented
15 please raise your hand.
16 (Show of hands.)
17 Those opposed?
18 Thank you. The motion carries.
19 MR. BOOTH: I'll batch the next two.
20 062217C, Fieldston Operating LLC, d/b/a
21 Fieldston Lodge Care Center. Convert 6 RHCF beds to
22 vent beds, for a total of 16.
23 And 062380C, Cliffside Nursing Home, d/b/a
24 Cliffside Rehabilitation and Residential Health Care
25 Center. Convert 20 beds to ventilator beds for a total
26
1 PHHPC - Full Council
2 of 58.
3 In each case, OHSM recommended disapproval.
4 In each case, the committee recommended disapproval
5 without discussion.
6 I so move for disapproval.
7 DR. GUTIERREZ: Second.
8 CHAIRPERSON STRECK: Moved and seconded for
9 disapproval.
10 Further discussion?
11 Hearing none, those in favor of the motion
12 raise your hand.
13 (Show of hands.)
14 Those opposed?
15 Thank you. Motion carries.
16 MR. BOOTH: 082176C, Lutheran Augustana
17 Center for Extended Care and Rehabilitation. Interest
18 declared by Mr. Fassler. Convert 12 RHCF beds to vent
19 bed service. OHSM recommends disapproval. The
20 Committee recommends disapproval with no discussion.
21 I so move.
22 CHAIRPERSON STRECK: Mr. Fensterman, Mr.
23 Fassler, that's an error? I'm checking.
24 Motion made and seconded.

Further discussion?

Hearing none, those in favor of the motion as presented raise your hand.
(Show of hands.)
Opposed?
Thank you. Motion carries.
MR. BOOTH: 052112C, Sisters of Charity Hospital. Interest declared by Mr. Booth. Certify an adult PCI-capable cardiac catheterization laboratory to serve the communities of Buffalo and northern Erie County residents, to utilize Catholic Health System services.
OHSM recommends its approval. The Committee recommends its approval without discussion. I move it for disapproval.
DR. GUTIERREZ: Second.
CHAIRPERSON STRECK: The a motion for disapproval has been made. Is there further discussion?
Hearing none, those in favor of the motion raise your hand.
(Show of hands.)
Those opposed?
The motion is approved.
MR. BOOTH: I'll batch the next two applications. 10214C, Mount St. Mary's Hospital and

Health Center. Interest declared by Mr. Booth. Certify acute PCA capable catheterization laboratory, to be jointly certified with Mercy Hospital of Buffalo, to be located at Military Road in Niagara Falls.
102143C, Mercy Hospital of Buffalo, a connected application for the same facility.
In each case OHSM recommended disapproval and asked the Committee. There was no recommendation.
CHAIRPERSON STRECK: Just for clarification. As a category 6, each of these warrants individual consideration. And you are batching them technically because of their relationship?
MR. BOOTH: Correct.
CHAIRPERSON STRECK: Do we need to put the whole group in play or just those two, in your opinion?
MR. BOOTH: I think the conversation at the committee meeting was about them as a group. So it may make sense to put them all in.
CHAIRPERSON STRECK: Do you want to proceed and get them all out there and we can start discussing?
MR. BOOTH: 102151C, Niagara Falls Memorial Medical Center; and 102152C, Buffalo General Hospital. Interest declared by Mr. Booth and Dr. Grant on both of

25 these.
29
1 PHHPC - Full Council
2 Certify a cardiac catheterization at Niagara
3 Falls Medical Center; and perform renovations to
4 accommodate relocation of Cayuga, Buffalo General
5 Hospital cardiac cath lab to Niagara Falls Memorial
6 Medical Center.
7 In each case OHSM recommended disapproval.
8 Again, the Committee did not have a recommendation.
9 CHAIRPERSON STRECK: We have no
10 recommendation from the Establishment and Project Review
11 Committee. Just to review our own rules of engagement
12 here, as category 6, they cannot be batched. They each
13 have to be voted on independently. So the geographic
14 proximity allows the discussion to cover all of them as
15 they may or may not be related.
16 With that, with no recommendation, I open
17 the floor to members of the Council for comments on
18 these applications.
19 Mr. Abel?
20 MR. ABEL: To help in your deliberations
21 here. One of the prime recommendations that the
22 Department heard from discussions two weeks ago was
23 that, couldn't the two systems, the Catholic Health
24 System of Western New York, with which Mercy Hospital
25 and Mount St. Mary's are affiliated, and the Cayuga
30
1 PHHPC - Full Council
2 Health System, represented by Buffalo General and their
3 joint application with Niagara Falls Memorial Medical
4 Center; couldn't they come together with the Department
5 to work on a strategy for increasing the cardiac care
6 services for the residents of Niagara County, which I
7 believe we all agree are the underlying reasons for
8 these four applications, to joint cath labs before you?
9 The Department did make the effort in the
10 interim period to conduct a conference call with senior
11 staff from all of the hospitals involved in the Western
12 and own Department of Health Western regional office and
13 DOH central office.
14 Among the items we discussed were ambulance
15 transport times and protocols, including transports of
16 MI individuals diagnosed with MI to Buffalo. That
17 strategy, the ambulance protocol for the ambulances in
18 the area is generally to transport those individuals
19 directly to the hospitals with cardiac cath labs in
20 Buffalo, unless they are directed to go elsewhere by the
21 patient or patient's physician.
22 Discussed also were the hospital practices
23 with respect to cath lab prep for the hospitals in
24 Buffalo, and the ED handling procedures for cardiac

2 labs in Buffalo, and also the community hospitals in
3 Niagara County.
4 From that discussion, there seemed to be
5 some fertile ground for discussing best practices with
6 respect to ED and cath lab prep for these type of
7 individuals. The Department noticed distinct
8 differences between the two systems and their protocols.
9 One element of note I will bring out is,
10 both hospital systems in Buffalo said that it takes
11 approximately 30 minutes to prep a cath lab with
12 gathering the necessary instruments, gathering necessary
13 staff, in order to do a PCI procedure; which correlates
14 actually -- for those folks who were here two weeks
15 ago -- with the approximate 30 minute transport time
16 that was reported by customary routes in reasonable
17 weather for the ambulance transports from the Niagara
18 County hospitals to the Buffalo hospitals with the cath
19 labs.
20 Clearly, if those times are concurrent, one
21 would believe that an efficient transport of PCI
22 patients to a cath lab in Buffalo would be as time
23 efficient as staffing up a cath lab in Niagara
24 hospitals, should they have a cath lab.
25 I think that works in very well with the

2 Department's approach with respect to economies of scale
3 based in the Buffalo hospitals, and volumes driving
4 enhanced quality of care for PCI and cardiac patients.
5 I may suggest as meet the Department's recommendation
6 for disapproval.
7 Beyond that, we discussed the role of the
8 Global Vascular Institute in Buffalo, that is being
9 constructed, approved by the Department a few years ago;
10 and the discussion of participation of the Catholic
11 Health System west in that facility; a discussion of
12 public outreach and preventative care initiatives for
13 Niagara County residents.
14 Granted, we had a significant amount of
15 discussion on this conference call. But we all
16 recognized that it was just the first step in a process
17 that all parties agree is worthwhile in proceeding with.
18 And the Department has taken it upon itself to continue
19 this discussion on these principles in a future meeting.
20 Our Western Regional Office will coordinate
21 this, and our focus will be on local solutions and
22 implementation strategies, for enhancing care to Niagara
23 County residents, specific PCI patient transport times
24 and protocols, and with a Niagara County focus; and best

2 patients.
3 So I wanted to fill you in on what's been
4 happening in the interim, and the direction at which we
5 would propose to continue this discussion.
6 Clearly, any future proposal that may
7 present itself with a joint venture would need to come
8 through. For instance, if it dealt with a PCI lab
9 request, it would have to come through as a certificate
10 of need application.
11 And I would argue that the four applications
12 before you are different enough from whatever proposal
13 may come forward, that not only would it -- without a
14 disapproval of these four applications, not only would
15 it provide a hindrance for another applicant coming
16 forward, they would have to be dealt with in form or
17 fashion in future applications.
18 So the Department continues to recommend
19 disapproval of these four applications.
20 Thank you.
21 DR. GUTIERREZ: Being from Buffalo, I feel
22 encouraged by hearing Mr. Abel say that there appears to
23 be a good climate for conversation between the two
24 systems. Accepting that, I feel comfortable moving that
25 this application at this point be disapproved, with the

2 idea that it would provide time for the two
3 organizations to come together and put together a
4 proposal jointly.
5 DR. GRANT: The idea was a strategic
6 collaboration of the hospital facilities, and that has
7 not been addressed. (Unclear.)
8 MR. FENSTERMAN: I want the record to
9 reflect that we encourage the Establishment Committee's
10 collaboration, and am now advised they are
11 collaborating; consistent with what Mr. Abel just
12 stated, that he was of the view that a proper procedure
13 would be an entirely new CON application, should the two
14 parties successfully collaborate.
15 I think the record should be clear that that
16 is one of the predicates upon which we are proceeding,
17 and with that understanding that there may very well in
18 the future be a new CON application. I'm stating that
19 for the record, because we did encourage that at the
20 establishment, that they collaborate together to find a
21 solution.
22 MR. BOOTH: I agree with Mr. Fensterman's
23 comments, and I second the motion on the table.
24 CHAIRPERSON STRECK: Mr. Levin.

MR. LEVIN: It would be helpful I think, Charlie, in the future, to know -- I don't know if the state is tracking the procedure time within the institutions, to know, for example, how Buffalo General is doing in getting its own patients from the door to the procedure room.
They're saying 30 minutes prep, but we know that's a big problem in hospitals. People will often say, "I can get people to another facility faster than I can get them up to a procedure room in my own hospital." So not everybody is at 100 percent of the standard of care. And if we have that information, what's being reported to Medicare, that would be helpful in the future to know that.
MR. KRAUT: I think that's great if you can encourage collaboration. I was affected by some of the letters we got and the data about the door to balloon time, and that was helpful with the data.
Putting it away from this hospital, but echoing what Dr. Rugge said, the policy implications; we deny this application because they're not collaborating or, because, if you can get to the lab -- what is the policy implication of the denial?
If you can get to a cath lab within 30 minutes in your region, there's not a need for it? I'm

trying to understand. What's the policy learning from this discussion, from the State's perspective?
CHAIRPERSON STRECK: Before you answer that, Charlie, I want to add question I was going to ask that relates. A denial is a denial and, essentially, as Jeff points out, restarts an entire process.
Would a deferral be more consistent with our behaviors in the past, where we have deferred items that have groups collaborate? The very point Jeff made, if we're denying because people aren't collaborating, that is a different issue, I think. I don't think we are making up an issue.
That's why I'm curious about the technical way we both encourage what you want but not set a precedent in terms of criteria for which we are making decisions.
MR. ABEL: The four disapprovals that we have before us are disapprovals based on our need analysis. So they're actually need only disapprovals. In our analysis, we did not find a need for an additional cath lab in the region. In fact, in the Buffalo General-Niagara Falls application, that application was not even an additional cath lab; it was

25 a relocation of an existing cath lab.
37
1 PHHPC - Full Council
2 And the problem we had with that is we felt
3 that the volume that could be achieved at Niagara Falls
4 could be problematic and actually disruptive to the
5 overall care resource in the region by creating a
6 problem with respect to the existing economies of scale
7 we have seen in Buffalo; and concerns, frankly, about
8 quality of care and quality outcomes in that Niagara
9 facility that may not be able to achieve satisfactory
10 volume.
11 So I want to be clear that the disapprovals
12 are based on the Department's analysis that there is no
13 need for these projects as proposed. That doesn't mean
14 that we will stop working to try to find a collaborative
15 solution, which may or may not result in a proposal for
16 an additional cath lab.
17 It may be, and the Department strongly
18 believes, that by enhancing the transportation system
19 for Niagara County residents, and by improving hospital
20 intake protocols for cardiac patients, both at the
21 Niagara facilities and at the Buffalo facilities, we may
22 demonstrate significant improvement. And the need for
23 additional cath lab for Niagara, it will be determined
24 that certainly is not any need by all the parties
25 involved.
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1 PHHPC - Full Council
2 That being said, the Department is open, to
3 the extent an applicant can demonstrate to us that a
4 cath lab in Niagara County would work, is needed because
5 of local factors. We are open to exploring that avenue
6 as well. Thank you.
7 MR. HURLBUT: Just remember in my previous
8 life on the other council, that what we used to do is,
9 we used to defer them. And we deferred them for one
10 cycle; especially if they were speaking to one another.
11 I don't know if it has changed, but if we
12 recommend disapproval, they have to start all over
13 again, for the whole process. And that can take a lot
14 of time and energy that's already been done.
15 So that's why we used to defer them,
16 Charlie, for one cycle, to see where they were if, after
17 that one particular cycle, they were still speaking to
18 one another, and they were still working it. Then we
19 would continue it. We would not disapprove it.
20 If it came to the point where they weren't
21 talking to each other any more, and there wasn't going
22 to be a resolution between the two parties, then we
23 would go back and look at each one and comment on them.
24 And you would tell us what was going on with those

25 particular conversations, and we would go back and look
1 at each one in its own right.
2 MR. LEVIN: I'm a little confused, because
3 what I'm hearing from Charlie is, based on needs
4 assessment, we don't need any more cath labs in that
5 area. So I'm not sure what the end game is with
6 collaboration. Are we saying that if they collaborate
7 we approve another cath lab, when the needs assessment
8 says we have enough?
9 I don't get it. I don't get why this would
10 be contingent on collaboration. I understand working
11 out transport issues et cetera, et cetera. But let's
12 assume they went and did what we are suggesting they do
13 and came back and said, "We'd like to open another cath
14 lab, but we're collaboratively opening." It hasn't
15 changed the needs assessment.
16 MR. FENSTERMAN: I think that that was part
17 of the problem. For example, the transportation issue,
18 the issue that Charlie was addressing, that they don't
19 seek to improve upon. It was those very issues that
20 gave rise to concern on the part of the Committee as to
21 the issue of need.
22 And because the Committee had substantial
23 concerns about those issues, balancing the Department's
24 analysis, I think most of the members of the Committee
25 were prepared to adopt; versus the issues -- to use as

1 an example, transport -- that are obviously a problem
2 because the Department is trying to address them with
3 its local office and the principals. It was giving rise
4 to a potential need.
5 So I agree in that respect with Mr. Abel
6 that if issues are resolved, that it may very well not
7 be necessary for another application. But at this
8 juncture, with the problems existing as they do, we did
9 encourage a collaboration, because we felt a potential
10 collaboration would satisfy the need in face of the
11 problems. That was the reason we were going in that
12 direction.
13 CHAIRPERSON STRECK: If I may venture your
14 response to Mr. Levin. I'm understanding you to say
15 that the Department's recommendation on need was brought
16 into question in the eyes of some members of the Project
17 Review Committee. So the need remains in question in
18 the eyes of some members of the Committee, and that's
19 why we're going this way.
20 Does that partially answer your question?
21 MR. LEVIN: It does, but I'd like to remind
22 everybody that there is a general consensus the PCIs are

overdone. And there are sequelae at the expense of others.

So we're dealing with an issue in we have a lot of data. And if we believe in... build it and they will come. That expanded labs will expand procedures, and that's not necessarily the right direction to go.

CHAIRPERSON STRECK: Agreed. General consensus is not quite data driven in a meeting like this.

MR. COOK: I think, to answer the point; the Department feels very strongly that there is not a need for additional cath services in Niagara. I think the value of what the Council discussion was, was not just in the context of cath labs, but in the context of how do you improve overall heart care within Niagara? Having said that, the important element that came out of that discussion was, for the first time we were able get two parties to sit down and begin moving away from a commitment to having cath labs competing with each other, but looking broadly at the issues.

I also think that, as you look at this issue, remember that the collaboration could be that they come together and jointly put cath labs in Niagara that meet the needs of Niagara County residents that travel to Buffalo.

But you would do that in the context of, I think, a plan that has the two systems working together to figure out the best way to deliver that service. And our recommendation would be to file the disapproval. And I think that creates an incentive, quite frankly, to broaden this discussion away from this catheterization lab and into how to get systems to collaborate and look at community needs, not individual province.

CHAIRPERSON STRECK: I have clarified with Mr. Abel that the staff report does recommend disapproval based on the need. That is the motion on the floor, that the disapprove is based on need.

I do want to particularly answer Mr. Kraut's question, that the disapproval is not based upon lack of cooperation. That would open a Pandora's box that we would never recover from, if it's based on need.

(Laughter.)

Is further discussion?

Hearing none, I ask for a vote in favor of the motion; and the motion is to disapprove each one individually. I would begin with 102142C, Mount St. Mary's, that application. The motion is for disapproval.

Those in favor raise your hand.
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PHHPC - Full Council
(Show of hands.)
Thank you.
Opposed?
102143C, Mercy Hospital of Buffalo.
Those in favor of the motion for
disapproval, raise your hand.
(Show of hands.)
Opposed?
Thank you.
102151C, Niagara Falls Memorial Medical
Center.
Those in favor of the motion for disapproval
raise your hand.
(Show of hands.)
Opposed?
Thank you.
102152C, Buffalo General Hospital.
Those in favor of the motion for disapproval
raise your hand.
(Show of hands.)
Opposed?
Thank you.
That will conclude the consideration of
those applications.
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PHHPC - Full Council
Mr. Booth?
MR. BOOTH: Application 111531C, Lenox Hill
Hospital. Mr. Fensterman, Mr. Kraut and Dr. Strange
have all declared conflicts and are leaving the room.
Interest has been declared by Dr. Martin and Mr. Levin.
Certify a new two bed hospital division of
Lenox Hill Hospital, to be called the Center for
Comprehensive Care Hospital Division, at 30 Seventh
Avenue, New York.
OHSM recommended approval with conditions
and contingencies. The Committee recommends approval
with an added condition that the applicant will agree to
provide data as specified by the Department in response
to the request of the Committee.
With that, I would move its approval.
DR. BERLINER: Second.
CHAIRPERSON STRECK: The application has
been moved for approval and seconded.
Discussion?
Hearing none, we'll proceed to a vote.
Those in favor of the application as
presented raise your hand.
(Show of hands.)

Those opposed?
(Show of hands.)
Thank you.
MR. BOOTH: Application 102452B, Fromer LLC Eye Surgery Center of New York. Establish and construct a freestanding ambulatory surgery center 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.
OHSM recommended approval with five year limited life with conditions and contingencies. The Committee also recommended approval for a five year limited life with conditions and contingencies.
There was no discussion, and I so move.
DR. GUTIERREZ: Second.
CHAIRPERSON STRECK: Moved and seconded.
Any further discussion?
Those in favor, then, please raise your hand.
(Show of hands.)
Those opposed?
That motion carries. Thank you.
MR. BOOTH: 111277B, Avicenna ASC, establish

and construct a free standing multi-specialty ambulatory surgery center at 2522 Hughes Avenue in the Bronx, to provide surgery specialties in orthopedics, ophthalmology, podiatry, dermatology, urology, neurology, gynecology, gastroenterology, vascular and pain management.
OHSM recommended approval for five year limited life, with conditions and contingencies. The Committee also recommended approval for five year limited life with conditions and contingencies.
There was no discussion, and I so move.
CHAIRPERSON STRECK: Why don't you go on through, since we now move for establishment and construction. These are category 1 items. They can be batched, so if you take this first group.
MR. BOOTH: 11421E, Digestive Diseases Diagnostic and Treatment Center, transfer 23 percent of ownership interest from two new members and (unclear) ambulatory care services.
OHSM recommended approval with contingencies. The Committee also recommended approval with contingencies. No discussion.
111502B, Hudson Valley Center, establish and

25 construct a specialty freestanding ambulatory service
47
1 PHHPC - Full Council
2 center to perform gastroenterological services relating
3 to endoscopy and colonoscopy services. The center will
4 be located at Crumpound Road, Portland Manor, on the
5 campus of Hudson Hospital Center, which will serve as a
6 backup hospital.
7 OHSM recommended approval for limited life
8 with conditions and contingencies. The Committee also
9 recommended approval for five year limited life with
10 conditions and contingencies.
11 There was no discussion and I move as a
12 group.
13 DR. GUTIERREZ: Second.
14 CHAIRPERSON STRECK: It's been move and
15 seconded.
16 Discussion?
17 If not, all those in favor of the
18 application as proposed raise your hand.
19 (Show of hands.)
20 Opposed?
21 (Show of hands.)
22 Approved.
23 MR. BOOTH: 111313B, Samaritan Senior
24 Village; establish and construct a 168 bed residential
25 health care facility to be located at 19322 U.S. Route
48
1 PHHPC - Full Council
2 11 on Summit Drive, Watertown. The sole member of
3 Samaritan Senior Village will be Samaritan Medical
4 Center. OHSM recommended approval with conditions and
5 contingencies, and the Committee recommends approval
6 with conditions and contingencies.
7 There was no discussion, and I so move.
8 DR. BERLINER: Second.
9 CHAIRPERSON STRECK: All in favor raise your
10 hands.
11 (Show of hands.)
12 Opposed?
13 The motion carries. Thank you.
14 Moving to category 2 applications
15 recommended for approval with recusals.
16 MR. BOOTH: 111506E, NYSCQ LLC, d/b/a New
17 York Surgery Center of Queens. Establish NYSCQ LLC as
18 the new operator of Boulevard Surgical Center, an
19 existing multi-specialty freestanding ambulatory surgery
20 center. OHSM recommended approval with conditions and
21 contingencies. The Committee recommended approval with
22 conditions and contingencies. There was no discussion.
23 I so move.
24 DR. BERLINER: Second.

25 CHAIRPERSON STRECK: We note that Dr.
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1 PHHPC - Full Council
2 Sullivan is abstaining on this by her own choice.
3 Are there comments or questions?
4 Hearing none, all in favor of the
5 application as recommended?
6 (Show of hands.)
7 Those opposed?
8 Thank you. Approved.
9 MR. BOOTH: 101158B, EMK ASC, LLC, d/b/a New
10 York Ambulatory Surgery. Establish and construct an
11 ambulatory surgery center at 9002 Queens Boulevard,
12 Elmhurst, the site of the former home of St. John's
13 Queens Hospital. EMK ASC, LLC will change its name to
14 New York Ambulatory Surgery, LLC, and be certified as a
15 multi-specialty freestanding ambulatory surgery center
16 to provide the following services:
17 (Unclear), orthopedic surgery, ophthalmology
18 ENT, podiatrist surgery, plastic surgery, pain
19 management, general surgery and gastroenterology.
20 OHSM recommended approval for a five year
21 limited life with conditions and contingencies, and the
22 Committee recommends approval for a five year life with
23 conditions and contingencies.
24 There was no discussion, and I so move.
25 DR. BERLINER: Second.
50
1 PHHPC - Full Council
2 CHAIRPERSON STRECK: Further discussion?
3 All in favor, a show of hands.
4 (Show of hands.)
5 Opposed?
6 Thank you. It is approved.
7 MR. BOOTH: 111409B, Flushing GI, LLC.
8 Establish and construct a single specialty freestanding
9 ambulatory surgery center providing gastroenterological
10 procedures. Upon approval and amendment of the articles
11 of incorporation being filed for Flushing GI to change
12 its name and operate as Flushing Endoscopy Center LLC,
13 and will be a consolidation of the ambulatory surgery
14 (unclear) private practices that are now being performed
15 in an office space that is both (unclear).
16 OHSM and the Committee recommend approval
17 with a five year limited life with conditions and
18 contingencies. There was no discussion, and I so move.
19 DR. BERLINER: Second.
20 CHAIRPERSON STRECK: Further discussion?
21 Hearing none, those in favor please raise
22 your hand.
23 (Show of hands.)
24 Those opposed?

25 Thank you.
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1 PHHPC - Full Council
2 I think you can batch the next two.
3 MR. LEVIN: It will be helpful to know for
4 these conversions whether they are related or not to
5 what we've done with requiring that office space
6 surgeries have more than minimal sedation, the
7 accredited facility, et cetera. It would be helpful to
8 know if the facilities are accredited or not, so we can
9 understand a little more about the intended or
10 unintended consequences of the office space regulations.
11 CHAIRPERSON STRECK: Okay.
12 MR. ABEL: I can speak generally to that
13 real quick. What we found are that most of the projects
14 that have asserted that the rationale for coming to
15 Article 28 is due to office space surgery guidelines.
16 Those, for the most part, have been handled already by
17 this Council.
18 So these new facilities are finding a need
19 for increased space or for equipment or protocols to
20 treat a surgical need that can only be done in an
21 Article 28 setting.
22 So it is a little variation on that theme,
23 but clearly the bulk of the applications that were
24 inspired by the office space surgery already have been
25 processed.
52
1 PHHPC - Full Council
2 MR. LEVIN: Thank you.
3 MR. BOOTH: Application 111218B, Jericho
4 Road Ministries, d/b/a Jericho Road Community Health
5 Center. Establish and construct a diagnostic and
6 treatment center at 184 Barton Street in Buffalo, and an
7 extension clinic at 1609... Street, Buffalo.
8 111390B, Christian Health Service of
9 Syracuse, establish and construct a diagnostic treatment
10 center to be located in leased space at 3200 Burnett
11 Avenue, Syracuse, to serve the residents of Onandaga
12 County. In both cases, Mr. Booth has declared an
13 interest. In both cases, OHSM and the Committee
14 recommend approval with conditions and contingencies.
15 There was no discussion, and I so move.
16 DR. BERLINER: Second.
17 CHAIRPERSON STRECK: It's been moved and
18 second.
19 Discussion?
20 All in favor raise your hand.
21 (Show of hands.)
22 Opposed?
23 Thank you.
24 MR. BOOTH: 111503B, Park Slope Dialysis

Management, LLC, d/b/a Prospect Park Dialysis Center. A
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PHHPC - Full Council
recusal by Dr. Bhat [sic] and Mr. Fensterman, both of whom are not in the room. Establish and construct a 32 station renal dialysis treatment center, to be located at 672 Parkside Avenue in Brooklyn.
In both cases OHSM and the Committee have recommended approval with conditions and contingencies. There was no discussion and I move these two.
DR. GUTIERREZ: Second.
CHAIRPERSON STRECK: Moved and seconded.
Further discussion?
Those in favor raise your hand.
(Show of hands.)
Opposed?
Thank you.
MR. BOOTH: 112014E, SV Operating Three, LLC, d/b/a Verrazano Center for Rehabilitation and Specialty Healthcare. Recusals by Mr. Fassler and Mr. Fensterman, both of whom left the room. Establish SV Operating Three LLC d/b/a Verrazano Center for Rehabilitation and Specialty Healthcare as a new operator, St. Elizabeth and Health Care Rehabilitation Center.
St. Elizabeth includes 88 beds, 28 ventilator beds, 72 behavioral intervention beds, 30
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PHHPC - Full Council
slot AIDS beds, a health care program.
Note for the record the following contingencies into the record: Submission of a photocopy of an executed certificate of assumed name, acceptable to the Department.
OHSM and the Committee recommend approval with contingencies. There was no discussion.
I so move.
DR. GUTIERREZ: Second.
CHAIRPERSON STRECK: Further discussion?
All in favor raise your hand.
(Show of hands.)
Opposed?
Thank you. The motion passes.
MR. BOOTH: 111285E, Woodland Pond at New Paltz. Conflict declared by Dr. Berliner, who's leaving the room. Establish Health Alliance, Inc., as the active partner of Woodland Pond at New Paltz.
Both OHSM and the Committee recommend approval with contingencies. There was no discussion at the committee meeting, and I move the approval.
MR. ROBINSON: Second.
CHAIRPERSON STRECK: Discussion?

2 board member, has nonetheless advised the chair that
3 this is the first application that was totally
4 electronic accomplished in New York State. And though
5 he is not here to vote, would like that point noted for
6 the record.
7 It was filed last night.
8 (Laughter.)
9 Discussion?
10 Hearing none, those in favor raise your
11 hand, please?
12 (Show of hands.)
13 Opposed?
14 Thank you.
15 MR. BOOTH: I will batch all the home care
16 health agency applications: 1717L, 1903L, 1827L, 1794L,
17 1674L, and 2018L and 2007L, 1742L, 1860L, 1804L, 1764L,
18 1695L, 1825L, 2009L, 1896L, 1879L, 1871L, and 1743L.
19 Ms. Regan has declared an interest on all of
20 these, with the exception of 1743L, in which Mr. Booth
21 and Ms. Hines have declared interest.
22 I move them all.
23 DR. GUTIERREZ: Second.
24 CHAIRPERSON STRECK: This batch has been
25 moved and seconded.

2 Is there further discussion?
3 Hearing none, those in favor say "Aye."
4 (A chorus of "Ayes.")
5 Those opposed?
6 Thank you.
7 Category 6.
8 MR. ABEL: Mr. Booth has a conflict on these
9 two. If the Council permits --
10 CHAIRPERSON STRECK: Fine.
11 MR. ABEL: Ms. Hines has a conflict, as
12 well.
13 This is Project 111529, L. Woerner doing
14 business as HCR. This is to acquire the Cortland County
15 Department of Health certified home health agency and
16 add Cortland County to its existing CHHA operating
17 certificate. OHSM recommends approval with conditions
18 and contingencies. There was no recommendation at the
19 Establishment and Project Review Committee, due to a
20 lack of quorum.
21 CHAIRPERSON STRECK: So we have no
22 recommendation for the group.
23 Is there a comment on this application?
24 For purposes of discussion, may we have a

25 motion?
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1 PHHPC - Full Council
2 DR. BERLINER: So moved.
3 DR. GUTIERREZ: Second.
4 CHAIRPERSON STRECK: The motion is to
5 approve. And we have a second for a motion to approve.
6 This is just for purposes of discussion.
7 Are there comments?
8 DR. RUGGE: Why is there no recommendation?
9 MR. ABEL: There was a lack of quorum at the
10 Establishment and Project Review Committee.
11 MS. REGAN: Were there any concerns
12 expressed or any issues?
13 MR. ABEL: There was no concern expressed.
14 We asked if there was anyone opposed. I believe we had
15 six members, and we did not have any concerns expressed.
16 CHAIRPERSON STRECK: You had two
17 competitors. They had to leave the room? There has to
18 be some concern, if you have two competitors in the
19 room. Were they not in the room?
20 MR. ABEL: We did not have any opposition
21 expressed.
22 MS. REGAN: I think that's why they left and
23 broke the quorum, because they couldn't vote. They're
24 operating in the same region.
25 CHAIRPERSON STRECK: Charlie, are there
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1 PHHPC - Full Council
2 issues about this? Behind the scenes, are there issues
3 about this application that this Council should be aware
4 of before they vote upon?
5 MR. ABEL: From the Department's
6 perspective, there are no issues. We would have
7 indicated any concerns in the exhibit. The applicant
8 has demonstrated financial feasibility and good
9 character and competence. And obviously, there is a
10 need for this facility. It is a continuing operation.
11 CHAIRPERSON STRECK: This is a for-profit
12 purchase of a county public health operation; which is,
13 I'd say, not pandemic in upstate, but has become quite
14 an issue in the region. I would say within that region
15 this is a concern in terms of the way things are
16 shifting.
17 I'm not judging this, I'm just saying that's
18 a real concern, perhaps because of competition.
19 MS. REGAN: Now that you've put it in those
20 terms, let me ask the Department. Are there any
21 not-for-profit CHHAs operating? There must be. Are
22 there any that you are aware could absorb patients who
23 might be turned away from a for-profit?
24 MR. ABEL: I don't have the specific data.

2 from her. I should mention that in many of the rural
3 counties such as Cortland County, frankly, we're lucky
4 if we have more than one CHHA serving that community.
5 MR. KRAUT: When we look back at the SHRPC,
6 when these type of applications came forward, there were
7 a couple of things that bear mentioning.
8 One is counties, because of the economics of
9 providing services. They're making choices and many of
10 them had decided to divest themselves of their home care
11 mission, if you will; and making sure it was secured by
12 a for-profit or not-for-profit provider, and in turn
13 receive some compensation for conveying that license
14 over.
15 And that was seen as a positive thing,
16 because the issues that we had, is it going to at least
17 maintain services? I think the question you raise, I
18 think there is -- I'll speak personally. There's
19 certainly a preference that, if given two choice, I
20 prefer not-for-profit. But given a choice of for-profit
21 and no home care provider, we tend to err historically
22 on the side of preserving the services.
23 MS. REGAN: I would feel better about that
24 if I were assured by the Department that you're
25 enforcing a free care rule and the non-discrimination.

2 I know those are law. I don't know how strictly they
3 are enforced.
4 MR. ABEL: In fact, we enforcing those.
5 We're taking a whole fresh look at CHHAs in general, to
6 make sure that we are enforcing in a fair and universal
7 manner. In fact, CHHAs have become something of a topic
8 of interest these days.
9 DR. BERLINER: Charlie, I don't know if you
10 remember this. It seems to me that several years ago we
11 actually did do a review of Cortland County, movement of
12 home care services out of the Department of Health. I
13 remember there was a big discussion about it, although I
14 don't remember what it was.
15 Is this a continuation of that? Is this
16 something new or different, if you know at all?
17 MR. ABEL: I don't know if it is a
18 continuation. I'm sorry.
19 CHAIRPERSON STRECK: Thank you for
20 introducing that partial information.
21 (Laughter.)
22 Other comments on this application?
23 Hearing none, the motion is for approval
24 based on the recommendation of the Department of Health,

25 and that followed the lack of recommendation from the
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1 PHHPC - Full Council
2 Establishment and Project Review Committee.
3 There is a motion for approval on the table.
4 Any further discussion?
5 All those favor raise your hand.
6 (Show of hands.)
7 Opposed?
8 Thank you. Motion carries.
9 Charlie, will you handle the next one?
10 MR. ABEL: Project 1112025, L Woerner Inc.,
11 doing business as HCR. This is to acquire the Madison
12 County Certified Home Health Agency, a long term health
13 care program in Madison County, an existing operation.
14 The Department OHSM recommends approval with conditions
15 and contingencies.
16 Like the previous application, there was no
17 recommendation at the Establishment and Project Review
18 Committee because of lack of a quorum. The Department
19 recommends approval.
20 DR. BERLINER: Moved.
21 MR. HURLBUT: Second.
22 CHAIRPERSON STRECK: Given the similarity of
23 these applications, do we wish to relive the discussion,
24 or are there other points to be made?
25 (Laughter.)
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1 PHHPC - Full Council
2 DR. BOUTIN-FOSTER: Why weren't these
3 applications batched? Previously, I think similar
4 applications were.
5 MR. ABEL: Because of the certified home
6 health agency methodology, they are region-specific in
7 upstate New York. It's by county.
8 CHAIRPERSON STRECK: With that information
9 and an motion for approval on the floor, I'll ask for
10 the members in favor of the recommendation to raise your
11 hand, please?
12 (Show of hands.)
13 Opposed?
14 The motion carries.
15 Thank you, Charlie. Thank you members of
16 the Establishment and Project Review Committee.
17 MR. BOOTH: That concludes our report.
18 (Laughter.)
19 CHAIRPERSON STRECK: With that, we'll move
20 to the Codes Committee. We're a bit ahead of the
21 anticipated schedule here. Because there are emergency
22 code recommendations and to insure a quorum for that,
23 Dr. Gutierrez has alerted me that this might be an
24 opportune moment.

25 Go ahead, Dr. Gutierrez.

2 DR. GUTIERREZ: We had a very early meeting
3 this morning to discuss this emergency change in Section
4 401.2, specifically Item B. That's the limitations of
5 operating certificates. Added to Part B and approved by
6 the Committee is the following sentence. I will read
7 the whole section.
8 "An operating certificate shall be used only
9 by the established operator for the designated site of
10 operation."
11 And here is the addition: "Except that the
12 commissioner may permit the established operator to
13 operate an alternate or additional site, approved by the
14 commissioner on a temporary basis, in an emergency."
15 That is the end of the addition. There was
16 a realization that there was no option to overrule the
17 existing recommendation. The Committee listened to it
18 and voted in approval. And I move it be approved.
19 DR. BERLINER: Second.
20 CHAIRPERSON STRECK: It has been moved and
21 seconded, that Dr. Shah's extensive powers be extended.
22 Is there further discussion on this motion
23 as presented by the Codes Committee? Comments or
24 questions?
25 DR. MARTIN: Are those terms defined

2 anywhere, what "temporary" or "emergency" means?
3 DR. GUTIERREZ: No; it was not discussed.
4 CHAIRPERSON STRECK: Mr. Dering?
5 MR. DERING: They're not defined in the
6 regulation. The term "emergency," for example, exists
7 elsewhere in the regulation. It's consistent. There
8 wasn't a definition added. The term's in the regulation
9 already in another spot.
10 DR. MARTIN: Okay.
11 MR. COOK: I think the easiest way to
12 understand this is to have an example.
13 One of the issues that we have and face in
14 New York is when two nursing homes were flooded. And
15 there were four clinics that also were flooded. And
16 what we did have the authority to do without a full CON
17 is, basically, relocate those services or those beds at
18 another site.
19 And given that these nursing homes are not
20 up anytime soon, we're looking at issues where the beds
21 are going to be a separate unit for another nursing
22 home. There might be a development to take them to a
23 psychiatric center, a 30 bed unit.
24 That's the type of authority we're dealing

25 with, to preserve access for nursing homes and clinics.
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1 PHHPC - Full Council
2 CHAIRPERSON STRECK: I presume the access
3 would also insure that reimbursement for such services
4 would follow within the construct of the approved
5 reimbursement policies?
6 MR. COOK: Yes. We're working with Medicaid
7 for specific changes to deal with Hurricane Lee and
8 Irene, and we're working with CMS to follow suit.
9 CHAIRPERSON STRECK: Dr. Martin?
10 DR. MARTIN: I raise this because that's an
11 obvious situation where the regulation makes perfect
12 sense. I'm concerned about mischief in terms of the
13 temporary aspect of this dragging on for years before
14 somebody goes back; or an emergency being there's a
15 major leak in the roof because they didn't keep it up
16 properly in the first place, and now you use this
17 ability to get rid of an old place, you get rid of it
18 and end up somewhere new; besides the regular process.
19 So if "emergency" is defined clearly and
20 "temporary," the commissioner I assume will keep an eye
21 on this. I'm little concerned.
22 CHAIRPERSON STRECK: I think these
23 Machiavellian considerations have a place in our
24 deliberations.
25 (Laughter.)
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2 MR. DERING: When you look at the regulation
3 as it exists now, 401.2A, that has both a temporary and
4 an emergency. What that allows is, in the event of an
5 emergency, there's existing authority for facilities to
6 raise or exceed their capacity.
7 And so, what's interesting about the
8 proposed addition is that, in this circumstance, it
9 would also have to be pursuant to the approval of the
10 commissioner. So there is a safeguard in place.
11 CHAIRPERSON STRECK: Are there further
12 comments or questions on the proposed emergency
13 regulations?
14 You made the motion and we have a second.
15 With that in play, is there more discussion
16 on the topic?
17 Hearing none, those in favor of the motion
18 as presented, please raise your hand.
19 (Show of hands.)
20 Opposed?
21 It is unanimously approved. Thank you.
22 That is the extent of the Code Committee
23 work today. Well done.
24 We will now break for lunch and resume at

25 12:45 with Department of Health reports and the

2 remainder of our agenda. Thank you for your attention
3 and contributions thus far.
4 (Time noted: 12:16 p.m.)
5 (Recess taken.)
6 (Time noted: 12:52 p.m.)
7 CHAIRPERSON STRECK: I call the meeting back
8 to order. I apologize for starting late after saying we
9 would start at 12:45. We have, however, successfully
10 gone through the Establishment and Project Review
11 Committee. We are now ready to move on to the rest of
12 our agenda. And that begins with the Department of
13 Health reports, and I first of all would be privileged
14 to have the report from Dr. Shah.
15 COMMISSIONER SHAH: Thank you.
16 Without further ado, I understand you guys
17 had a very busy morning and I'm sorry to miss it, but
18 thank you for your efforts.
19 The State, after Irene, the State continued
20 to help families and communities affected both by the
21 tropical storm and subsequent funding. And Governor
22 Cuomo showed leadership with his Labor for your Neighbor
23 initiative. Many folks from across the Department of
24 Health went out and helped their neighbors in the
25 affected upstate communities. It was truly an historic

2 storm on many levels.
3 Certainly, when we were told about a 10 to
4 12 foot storm surge approaching, we evacuated, we helped
5 evacuate 10,000 people from over 40 institutions,
6 including 7 hospitals and nursing homes and adult day
7 care centers, over the course of about 48 hours; and got
8 them back to their institutions in about a day and a
9 half afterwards, which was just unprecedented.
10 I don't know of any other instance where so
11 many people being evacuated with really nothing going
12 wrong. We were out of diapers at one point at one
13 institution, but we were able to get them the diapers
14 they needed, and it was really impressive.
15 The Department and all these institutions
16 who stepped up to the plate, including Greater New York,
17 Hospital Association, the OEM, and certainly North Shore
18 Long Island Jewish, and other systems who, upon phone
19 calls, sent ambulances to help out and took over
20 evacuation of nursing homes.
21 Really an incredible effort, and over the
22 coming weeks I think you'll hear more about them as some
23 of these stories get published; because a lot was done.
24 I'll let Dr. Birkhead discuss some of those

25 details, but I just wanted to note the hard work and
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2 commitment of everyone in the Department and in the
3 greater health care community to make that happen.
4 Another major effort was the Medicaid
5 redesign team, Global Cap. This is where we made a
6 decision early on that the last $640 million that we
7 couldn't figure out how to cut, they would figure out
8 amongst themselves.
9 And it has been amazing. We are living
10 within our means and spending within our means, actually
11 under the cap, cumulatively, for the month of August.
12 Which means we are exactly where we need to be. Our
13 projections are there for the Medicaid program.
14 And our biggest risk to date has actually
15 been enrollment growth. When thousands of more folks
16 that are affected because of the economy are enrolling
17 in the Medicaid program, costs will certainly go up.
18 But the reality is, we've been much better at keeping
19 inpatient costs down and really changing the system in
20 ways that positively impact the Medicaid program.
21 We're monitoring this every month. If you
22 haven't had a chance to, go on to the MRT website and
23 take a look at these monthly reports. They're a good
24 read, and they answer a lot more questions in much more
25 detail.
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2 Hospital acquired infections. We've
3 recently released a report on the infections through
4 2010, and showed a marked decline in the rate of central
5 line associated bloodstream infections, or CLABSIs, as
6 we call them; as well as declines in certain surgical
7 site infections.
8 The rate of CLABSIs in New York hospitals
9 has declined a total of 37 percent since 2007; and
10 surgical site infections have declined 15 percent over
11 that same time frame.
12 This is really a reflection of the
13 Department's commitment to work with hospitals to
14 enhance patient safety and adopt those procedures that
15 make big differences in risk of infection. This time,
16 for the first time, we've actually included CDIP, a
17 clostridium difficile infection, in this report. And
18 we're the first state to do so. It is preventable. We
19 are going to make a big difference just by following
20 these numbers over time.
21 In 2010, the State's CDIP hospital onset
22 infection rate was 8.2 infections per 10,000 patient
23 days. And as we become more aware of where the problems
24 are, I'm sure that number will go down. As you know,

25 I'm a strong believer in data driven outcomes. And we
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2 are working with hospitals to adopt best practices,
3 ultimately working in extending that beyond clinics and
4 the community.
5 As we gear up for flu season, I'd like to
6 start by taking a quick poll.
7 How many of you have had your flu shots?
8 (A show of hands.)
9 I haven't, my hand is down.
10 (Laughter.)
11 I hope all of you do get your flu shots
12 right away. The pharmacies can help you in the
13 neighborhood. Unfortunately, this year, in terms of
14 other infections, we have had one death from West Nile
15 virus and another from eastern equine encephalitis in
16 New York. This is actually lower than historic rates,
17 and we're working actively with local Health Departments
18 to continue surveillance.
19 Luckily, the temperature is dropping and the
20 fall colors are coming on. The mosquitoes will be dying
21 out, but until the flooding stops, there will be many
22 more mosquitoes than historically. I'll let Dr.
23 Birkhead talk about some other collaborative efforts in
24 terms of diseases.
25 HIV mother to child transmission. Another
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2 area that I want to highlight is the prevention of HIV
3 transmission from a mother to her infant.
4 In 2010, New York State reported three
5 infants in the state who were infected through mother to
6 child infection. That's a decrease of 97 percent since
7 testing began in 1997. The CDC actually classifies us
8 as having eliminated it, because it's a 0.7 rate;
9 anything under 1 percent doesn't count.
10 But we still have three more cases we don't
11 want to see happen next year. And about 500 HIV
12 infected moms deliver babies in New York State each
13 year. And we are promoting aggressive new HIV testing
14 and prevention among these moms, to really get that rate
15 down to zero.
16 We offer antiviral viral drugs to protect
17 the health of both mothers and infants. We know from
18 recent evidence that anyone diagnosed with HIV may
19 benefit from a population health perspective, from
20 getting retroviral drugs.
21 So both the City and the State are thinking
22 about how we can make this happen and really see this
23 epidemic turn into a different type of epidemic, or not
24 become an epidemic. There's a lot of promise from the

25 medical literature on how we can control this. This is
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2 very exciting in public health.
3 I want to go beyond our normal update to
4 talk about a project that we're also doing in the
5 Department of Health. As you know, one of our goals is
6 to support evidence-based programs and policies that
7 address the major health priorities across the state,
8 including the prevention and management of chronic
9 diseases like diabetes and asthma.
10 We're calling this project METRIX, which
11 stands for Maximizing Essential Tools for Research
12 Innovation and Excellence, M-E-T-R-I-X. You know, we
13 collect literally hundreds of data sets at the
14 Department of Health, looking at all aspects of health
15 care; from the WICK program to the Medicaid database to
16 BRFSS, smoking cessation related surveys and data sets.
17 While some of them are very limited, they
18 often have many potential applications beyond which
19 there were originally collected for. And that's why we
20 launched this project.
21 First, we did an inventory, and we found
22 literally almost 300 different data sets across the
23 Department that we maintain. And what we're trying to
24 do is, create strategic partnerships with anyone and
25 everyone who's interested in the data to advance the
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2 goals of public health.
3 To that end, we started publishing the data.
4 As of August 15, we published about seven data sets on
5 our website. If you go to the New York State Department
6 of Health and then Metrix, M-E-T-R-I-X. You will get to
7 it if you Google it.
8 This seems like the nursing home survey.
9 The weekly bed counts. Not only has this reduced work
10 for the Department in terms of FOIL requests, people are
11 actually interested. I wouldn't be surprised if shortly
12 you'll find an i-Phone app that has nursing home bed
13 counts in it.
14 And our goal is to create RFAs around
15 specific data sets to help extend what we can do with
16 it, and to really drive policy making with this rich
17 data. Certainly linking the data to the Medicaid data
18 set, to the all payer claims data set. All of those are
19 things we can ultimately do down the road.
20 But in the short term, we already have seven
21 data sets fully documented and the entire data set up
22 there. I encourage you to go to the website and check
23 it out. If you're interested in it, shoot us an e-mail.
24 We'd love to work with you on that.

That concludes my report.
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Do you have any questions?
CHAIRPERSON STRECK: Questions or comments?
MS. RAUTENBERG: What characterizes the three maternal transmission cases? There was no neonatal care, they were born outside the hospital? Do they have a common thread to them?
COMMISSIONER SHAH: I can't speak specifically to these three cases, but we have analyzed in past years the reasons, and it's indicated it's multi-factorial. In some cases there's lack of prenatal care, in other cases there may be adherence issues with moms in prenatal care.
One phenomenon that we've uncovered is actually transmission to the mother acquiring infection herself, while she had her initial test. So we routinely recommend, particular in high risk communities, a second test for prenatal care.
But this phenomenon of a mom becoming infected during a pregnancy is one that we try to highlight. So it's multi-factorial.
Three is a pretty low number, and it is, I think, liable to bounce up because we are in very low rates now. We have seen a pattern. It's a great success in the past decade or two.
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In the late 80s we probably had as many as 2500 moms, infected moms delivering about 500 babies a year. So we've come a long way.
MS. RAUTENBERG: Thanks. I agree with you, it's a great success.
CHAIRPERSON STRECK: Other comments or questions?
DR. GRANT: Are there any updates on accountable care?
COMMISSIONER SHAH: The question was about any updates on the accountable care organization through the State. My understanding is there have been three applications for the pioneer status, including the Catholic Health System of Buffalo, Montefiore Hospital system, and I believe Crystal Run is the third system that actually applied for the pioneer status.
That's all that I heard up to date. I believe that many other groups are sitting on the sidelines to wait and see. But nevertheless, doing the actions that are necessary to become clinically integrated across multiple areas of health care.
So whether they're calling themselves accountable care organizations or not, the reality is

25 that is happening in many other areas of the state.
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2 CHAIRPERSON STRECK: Other questions?
3 DR. BOUTIN-FOSTER: This is really helpful.
4 I'm really interested in the METRIX project. I'd like
5 to know whether this can be accessed by community
6 groups, so that they will know what are some of the
7 county and zip code level data for the communities that
8 they serve and then develop programs and things like
9 that.
10 COMMISSIONER SHAH: This is going to be the
11 full data set published on our website with an
12 understanding of how to use it. Ultimately, for
13 example, with the BRFSS data, the entire data set is up
14 there. You can download it. You can get it and work
15 with it, and we'd love to work with you on that.
16 DR. BOUTIN-FOSTER: Not for people who are
17 already doing health policy, but for grass roots
18 organizations who may need this type of data for
19 lobbying or for some of the other things we don't
20 necessarily do.
21 COMMISSIONER SHAH: The goal is to
22 ultimately empower everyone to use this data. We've
23 gone down different paths in terms of trying to build
24 tools to access the data from our perspective for
25 various data sets over time. And the understanding from
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2 the federal level is that the more you just give out the
3 full data in as accessible a format as possible, you
4 keep it updated, refreshed at regular intervals, you
5 create API, which are those hooks into it.
6 More amazing things can come out of it. For
7 example, if you think of what Google is doing with their
8 maps, and all these different applications. Or you
9 could think about what the Feds are doing with weather
10 data. There are probably about 200 profit making
11 weather applications and websites that take that data in
12 real time and repurpose it for who knows what.
13 That's ultimately our goal. So
14 incrementally we've released seven data sets and we're
15 going to release three and more and more and more over
16 time. But then we want to build up that community of
17 users, so they can help support themselves with that
18 data and come up with who knows what in potential
19 applications.
20 MR. ROBINSON: Can you provide us an update
21 on the health exchange legislation, where you think that
22 is headed and how it may play out over time?
23 COMMISSIONER SHAH: The question related to
24 the health exchange legislation and where it will play

25 out.
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2 As you know, there was some progress made,
3 it was two steps forward, one step back in terms of
4 where we were with that legislation. I believe that if
5 we were to get something in place by next year's budget
6 at the latest, we would still be just fine in terms of
7 where we need to be as a state. And I'm not saying we
8 wait until to get it done, but the reality is we still
9 have time to get the legislation we need for a New York
10 State solution, as opposed to a federally controlled
11 system.
12 There is movement, it is on the governor's
13 agenda, it is a high priority. We are still exploring.
14 It hasn't been finalized.
15 MR. ROBINSON: Thank you.
16 DR. MARTIN: I want to go back to one of the
17 things you started off about evacuations from the
18 hurricanes. And I agree with you, A) we were very
19 lucky, and B) good job.
20 I know that certainly, in some of the
21 medical evacuation shelters, that there was a certain
22 degree in the variability and quality of the information
23 that came with the patient and the staff that came with
24 the patients, and their ability to help support care in
25 some of those sites.
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2 I assume that on actions and analyses going
3 forward, I think we were lucky and there were probably
4 some good lessons learned and need to be learned from
5 that, that's ongoing.
6 COMMISSIONER SHAH: Absolutely. We were
7 lucky that we had a coastal zone evacuation plan. We
8 understood what Zone A, Zone B were, because of an
9 exercise we did last year. What this highlights to me
10 is the importance of planning and preparation.
11 Even as Homeland Security dollars go away
12 and all preparedness dollars disappear, that kind of
13 infrastructure and planning allowed us to get away with
14 what we did, which was an amazing feat, where I heard
15 maybe a few records at all, out of 10,000, that didn't
16 initially get there with the patient. Literally a
17 handful, which ultimately were resolved by patient
18 reports to the clinic transfers.
19 Ultimately, what we are doing is, greater
20 New York has already had their hot wash or after-action
21 summary. The City had theirs and we are having our own,
22 a combined discussion across all of the different
23 groups, that will culminate in findings.
24 We discussed ideas, everything from studies

25 that we would like to do of the data. But the reality
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2 is our best opportunity in terms of looking at the data
3 in depth would be from the finance, in terms of
4 transferring patients from institution A to B and back
5 again; we're paying for all of that ultimately. So that
6 is yet another opportunity to figure out what happened,
7 how it happened, and it's an ongoing effort.
8 CHAIRPERSON STRECK: Hot wash?
9 (Laughter.)
10 MR. KRAUT: It's a term of art in the
11 emergency field.
12 CHAIRPERSON STRECK: I had a question about
13 staffing of the Department of Health, given some of the
14 concerns that have emerged. Could you comment on the
15 potential effects of some of the activities that are
16 going on in Albany, in terms of staffing the Department?
17 COMMISSIONER SHAH: As you know, with the
18 current round of discussions, the Department of Health
19 will again lose a substantial number of employees that
20 are vital to our function. The reality is, we are going
21 to have to make it work, and I believe we can.
22 We are really taking everything we do
23 through the lens of how critical and important it is,
24 how can we leverage our partners and others to help in
25 actions. And to date, we've been right on track.
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2 If you look at, for example MRT, 73
3 proposals, working groups across multiple departments,
4 and it is happening, it's working.
5 So while I would love to see the staffing
6 not be cut, I'd love to find a way to backfill key
7 positions. I believe the administration understands the
8 critical role of some positions, and is making those
9 allowances to make sure that our functions are
10 happening.
11 We're thinking what we should be doing as a
12 Department. As entire units are decimated, we decide,
13 does this make sense? Is this a roll that we need to
14 do, or is it more someone else's show? And to the
15 extent that conversation has been happening across
16 departments in an integrated way, we've been able to do
17 just fine.
18 CHAIRPERSON STRECK: That's good news.
19 We'll trust as members of the Council that scrutiny will
20 be late coming to us, lest our efficiency be brought
21 into question here.
22 Are there other comments or questions for
23 the Commissioner?
24 Thank you very much.

25 COMMISSIONER SHAH: Thank you.

2 CHAIRPERSON STRECK: Dr. Birkhead, under the
3 Office of Public Health, has a public health report.
4 DR. BIRKHEAD: Thanks very much. I was
5 going to amplify on the emergency response to the
6 hurricane and tropical storm that followed. There was
7 some discussion, so I'll try to keep my remarks brief.
8 There were a number of unprecedented aspects
9 of the storm response, and there were actually two
10 storms, Hurricane Irene and then a week or so later,
11 tropical storm Lee, which hit upstate New York more.
12 We already talked about the unprecedented
13 move to evacuate facilities. And the interesting aspect
14 of that, as Dr. Shah indicated, is something we had
15 planned for. But you have to really pull the trigger 48
16 to 72 hours before the storm is due to hit, and that's
17 the tricky part of that.
18 The mayor did decide to do that, and we did
19 carry out the plan, and many of the patients were
20 evacuated while it was still clear skies and the storm
21 had not hit yet. But that's really the way you have to
22 do it, looking at how long it takes to actually carry
23 this out.
24 In the end, between both storms, we
25 evacuated 8 hospitals, 36 nursing homes, 20 adult care

2 facilities statewide. As the commissioner indicated,
3 over 10,000 patients were affected.
4 We did actually implement a number of
5 aspects of the plan. For example, through the federal
6 government we had access to contracts for ambulances,
7 and 186 ambulances actually came to the state from Ohio
8 and Indiana to help with evacuation activities.
9 And another unprecedented aspect of this is
10 that Dr. Shah himself went to the City and sat in the
11 command center and was on-site there for many decisions
12 that had to be made. I think that's one of the aspects,
13 the after action that we're looking at. That seemed to
14 be a very effective means of communication.
15 But how do you decide when action warrants
16 that level of involvement, and how do we make sure that
17 we at the State are able to support the commissioner
18 off-site in a different location?
19 So all those sorts of things we're looking
20 at, in terms of how to do a better job next time; even
21 though I think we agreed things went well.
22 We activated a management system on Thursday
23 before the hurricane hit, on Sunday. And that means
24 that we all, all parts of the Department, the Office of

2 Laboratory, Public Affairs, were engaged actively. We
3 had staff at the State emergency bunker 24/7. And that
4 deployment actually lasted 28 days, which is one of the
5 longest since 9/11 that we had staff actually on 24/7 at
6 the State emergency command center.
7 I think people are aware the hurricane
8 impact in New York City was less than anticipated, but
9 the hurricane actually had quite an impact up the Hudson
10 Valley, and tropical storm Lee that followed up the
11 Susquehanna Valley.
12 And in fact, for example, we had 168 public
13 water systems that were affected by the two storms;
14 either affected in that they had to shut down for a
15 power shortage, or were actually inundated by flooding.
16 There were a total of 125 boil water notices.
17 So our environmental health staff are still
18 actually engaged in the process of getting all these
19 water systems back up and operating.
20 We had sewage treatment plants that were
21 flooded, and there's a whole set that's primarily under
22 the Department of Environmental Conservation, but we
23 were involved in the clearing of routine lab work that
24 goes on in those sewage treatment plats.
25 There was a tremendous impact, aside from

2 people being flooded out of their homes and businesses.
3 And we had no sooner begun to recover from Irene than
4 tropical storm Lee hit, as I mentioned, in the
5 Binghampton area and up through central New York. And
6 there were additional evacuations and water supply
7 issues that arose there.
8 Some of the routine public health things we
9 did during the crisis included deploying tetanus toxoid
10 vaccines to areas where people were potentially injured
11 or going to be doing recovery work. We have a cache of
12 emergency medical equipment and supplies, portable
13 hospital beds to at least one facility where they were
14 moving patients off site, and a host of other medical
15 supplies were also distributed.
16 Believe it or not, we are still involved
17 with this. So our staff are still engaged in the
18 recovery phase, which we're learning, perhaps in the
19 South, where they have hurricanes more regularly, that
20 they realized this is going on.
21 I think with the new experience, there had
22 been 31 disaster recovery sites set up around the state
23 where people can come and apply for FEMA aid, and we've
24 had Health Department staff at all of those 31 sites to

provide health advice to people. Things you might not think about if your home was flooded -- or you might think about it -- for example, food storage, food spoilage, private water supplies, private wells that become flooded, people with vegetable gardens, what do you do?
Mold, and how do you remediate mold? What happens if your basement is flooded and the oil in your tank spills, the heating oil spills in the basement, what do you need to do?
So we put together a comprehensive list of public health of health related messages that people needed to receive if they're going to move back into a flooded home, or are needing help.
And so our staff are actually still engaged with this, and we have pulled staff from all over the state, from western New York unaffected areas, to help medical people in working seven days a week. The recovery sites were originally seven days a week. They scaled back to six days a week, but still going on.
So this has been an unprecedented experience for us. I hope we don't have any more storms like this, but the potential is that we will. And so we need to learn from these experiences. I think it is a great example, and the Commissioner indicated we'll try to

write up some of these, how public health fits into emergency response and how we help coordinate and work with all of you who represent the different parts of the health care sector out there to respond when the population is under threat.
So I'd be happy to answer any specific questions.
COMMISSIONER SHAH: I hope a lesson learned is not that you send the Commissioner into the eye of the storm every time.
(Laughter.)
DR. BIRKHEAD: We had a good time.
MR. KRAUT: Dr. Birkhead, this morning we had a codes committee in which we voted to authorize the Commissioner some emergency powers. Because of the hurricane, there was a recognition that the code was either vague or limiting in dealing with certain situations.
It may be too soon to know, but the lessons to learn as far as adapting the code, did you run up against a roadblock or a limitation that the code needs to be revised as a consequence of the experience?
COMMISSIONER SHAH: I think I might ask Rick

to help answer the question. But we did have questions about the capacity of the facilities and whether they could exceed their capacity. And I think we determined that there were existing regulations that allowed facilities to exceed their capacity under some circumstances, we did get a message out.
MR. KRAUT: From a public health, the sanitary code; is there sufficient emergency powers that dealt with all the issues that you had to confront? I understand the regulatory stuff of health care providers.
DR. BIRKHEAD: I'd have to think about that to give you a full answer. But I don't think we were constrained in our response. When public water systems went down, I think we had the ability to communicate with the population. We were able to bring in water in some instances, big tank trucks to help out. I don't think we were constrained specifically by sanitary code provisions, but that's part of what we will look at as we complete this. I can't come up with a specific example of a needed change right at the moment.
CHAIRPERSON STRECK: Other comments or questions for Dr. Birkhead?
DR. STRANGE: As somebody who was intimately involved, we were part of one of the hospitals that were

fully evacuated. We want to say thank you. Thank you to the State, thank you to the City, thank you to the North Shore System as part of Staten Island University Hospital.
We started evacuating on Thursday; pulling neonates first, burn unit patients second, discharging patients to nursing homes when we could; and moving patients back out to Long Island, which is a great distance, having to cover at least one bridge. And then they had their own constraints out on Long Island, because the storm surge was potentially occurring there. I think as Dr. Shah said, within 48 hours we repatriated every one of those patients back who could be repatriated. And we moved some very sick critical care patients in this process also; on ventilators, major surgical cases and so on. To date, we don't know of one patient who was adversely affected by this.
And interestingly, we have not seen the readmission rate dramatically rise of any patient who was discharged prior to this whole thing also, which tells you something to learn by also.
So again, just to say thank you from

somebody who was in the trenches that day, and that
weekend as we slept. Because it really did work and it
worked very well.
As you said, Dr. Birkhead, this has to start
on a beautiful sunny day, and not on the day the storm
is here.
CHAIRPERSON STRECK: Thank you.
For the record, I want to note that Mr.
Kraut recused himself from the compliment.
(Laughter.)
Are there any other comments?
If not, I'll move on to Mr. Cook, Office of
Health Systems Management report.
MR. COOK: Just a couple of issues. Some of
you may already know, but the Department, as you are
well aware, is looking at reorganizing. And one of the
reorganizations that's occurred is, the Office of Health
Systems Management will begin to pick up some of the
responsibilities that have previously been in the Office
of Long Term Care.
So surveillance for home care, for nursing
homes and for adult homes will be done by the Office of
Health Systems Management.
And a CON related activity, for nursing
homes and for home care, will also be done by the Office

of Health Systems.
Bill, you spoke about the impact of staffing
reductions. Clearly these efforts are an attempt, and I
think will be successful in consolidating functions and
trying to achieve some efficiency.
Mark and I spent a lot of time going through
staff and splitting up staff needs. And I think at the
end of the day this will end up showing efficiencies
both for the Department; by frankly bringing
surveillance and CON under one roof, to allow us to
achieve more uniformity, particularly as it relates to
regional surveillance issues.
Mark, as you may or may not know, has been
assigned and directed by the governor's office, to,
quite frankly, become the champion and redesign the long
term care system.
So the opportunity here is to free Mark up
from some of the responsibilities, and allow him to
champion that cause.
As some of you who've been around for a
while know, that's almost exactly what needed to occur
in the mid 1990s when the system moved to Medicaid
managed care. You really need to have someone who can

2 find solutions. And Mark obviously is the right person
3 to do that.
4 There are a couple of other issues that,
5 quite frankly, could help us with staffing related
6 responsibilities. One of the things that we would like
7 to recommend to the Council is that, as you well know,
8 we implemented an electronic submission of all CONs. It
9 will be a year in December. We've done that.
10 We are still getting a number of
11 applications in by hand. Quite frankly, that does
12 require additional staff time, to make copies, to load
13 it, et cetera.
14 So we would like to move forward, and we
15 would recommend either mid December or January 1, that
16 all applications really should be submitted
17 electronically. And obviously if there are any issues
18 with people having a hard time doing that, we will make
19 exceptions and work with them. But I think it's time,
20 since we have not had any issues at this point with the
21 submissions. We really worked through them, and I think
22 it is time to move to that issue.
23 The other thing that we've been working on
24 and could use your help on is the whole issue of
25 correspondence and what needs to come to the Council.

2 Quite frankly, over the last couple of meetings what
3 we've seen is an increasing number of requests at the
4 very last minute to begin submitting and getting copies
5 of correspondence to you.
6 If that's what the Council wants to do,
7 we're obviously going to abide by that. But it does
8 complicate the process of us looking at information,
9 putting it together, analyzing it, and trying to make
10 sense of it and send everything to you. Quite frankly,
11 it creates an incentive for everyone to wait until the
12 last minute so they can get information to you.
13 I really do think the Council needs to make
14 a decision on how it wants correspondence to be
15 forwarded, when it wants to have a cutoff date. Because
16 what's really occurring now is that at the very end
17 prior to a meeting, we're getting overwhelmed with
18 requests to get information to you.
19 And I think, quite frankly, in most
20 instances that information is redundant. And it really
21 isn't spelling out anything that hasn't been brought to
22 the fore before.
23 So however the Council would like to address
24 that, we really do believe there needs to be a policy on

2 Any questions?
3 MR. HURLBUT: What I've noticed lately is,
4 we're getting a lot of letters from the actual
5 applicants themselves; especially after they've had the
6 Establishment Committee meeting, and then they want to
7 have another one, pseudo, pending letters.
8 And I've been getting phone calls, which I
9 have not returned, and actually forwarded any e-mails
10 that I've gotten. I've gotten a ton of those, too. I
11 forwarded them to Colleen.
12 Is there a way that we can sort of
13 universally deal with this? The letters we sort of
14 opened in the past, but they seem to want to have
15 another Committee meeting than the one they had; and
16 that's something I think needs to be addressed.
17 CHAIRPERSON STRECK: Other comments?
18 You want a policy; we're getting letters.
19 DR. BERLINER: How do you want to deal with
20 this?
21 CHAIRPERSON STRECK: You moved me along.
22 How will we do this?
23 MR. DERING: I wonder if one practical
24 approach is to have some communication with the
25 applicants beforehand, before the Committee meeting;

2 saying, "To the extent you want to communicate, this is
3 your chance, do it now. Please don't follow-up
4 afterwards."
5 Will something like that work?
6 MR. KRAUT: The problem -- it could work in
7 limited, but I think you need to have a consistent rule.
8 The problem is we have the Project Review Committee.
9 Questions are raised and somebody says, "We need an
10 answer before the next meeting."
11 So the issue is not the answer coming the
12 day before the next meeting, but to give the Department
13 ample time. If you recall, there were a host of other
14 issues that we had discussed when we had one of our
15 first meetings about -- even the format of the reports,
16 the type of information we get, what's important to us?
17 We don't have to spend so much time on the
18 architectural.
19 So there are collateral issues as well that
20 are related to this. And the key thing is establishing,
21 I think, a deadline that gives the public and the
22 applicant a fair opportunity to respond to any issue
23 that's come up.
24 But to Rick's point, it could be six days or

five days before the full Council meeting, no additional correspondence will be considered or reviewed and will be turned back to the applicant with a letter. And as long as the deadlines are real and known, and you have to deal with it. Maybe what we could do is, if the chair would like, have -- I know ad hoc committees don't work in this place -- but maybe somebody -- I would volunteer to talk to people and draft a letter that we could all look at and see if we could develop some policy.
I'd be happy to do that, being guided by one of the state's rules regarding meetings and correspondence.
DR. BERLINER: I think the problem is less on the side of the applicants and more on the side of the public, who get very limited notice about when things are going to happen, and therefore find out the day before and then start to write letters and really don't really understand the process to begin with.
I think, as Jeff was saying, the problem isn't people writing letters so much as having the Department tell us if what people are saying in the letters is accurate or inaccurate. Otherwise they're just letters and we don't give them all that much credibility, because they haven't been --

So the idea of some kind of cutoff date gives the Department time to review stuff that comes in and be able to tell us, "This is right, this is wrong, we don't know about this" -- would be helpful. But can't be too soon after the first meeting, because it's only two weeks and it's too soon, and people aren't going to be able to write those letters.
CHAIRPERSON STRECK: Following up on your point, this is a messy process and it's inconvenient right now. But it is about as open as we can make it, to your point. People, the public in particular it seems to me, will be frustrated by any temporary deadlines we set.
And there will be an event where some pertinent information comes in after the deadline. And then we will have eliminated it by our deadline.
So I'm not speaking totally against some schedule; but perhaps I'm suggesting that, as messy as it is now, phone calls, letters, it got us through today, which was a pretty complex process.
DR. GRANT: If we go in the direction of drafting -- and I don't know if we made a full decision yet -- I would welcome something to the public about

kind of, basically what we would like to see at these meetings. We're volunteers here, and there should be a decorum of respect.
I understand passion, but when it gets to the point of this crowd's rowdiness, I don't know if we need a sergeant-at-arms, but something needs to be said to the public that we will not tolerate outbursts and the craziness that we saw today.
I thought it was inappropriate and disrespectful. If it means having to have a guard from downstairs at our meeting during that time, to escort people who become disrespectful and discourteous, I think that's what we need to do.
MR. FENSTERMAN: I think, getting back to the letter issue, we should have a definitive policy that if we receive a letter that is anonymous, it should be immediately disregarded and not forwarded to us. It should be disregarded. And moreover, if we receive a letter that's not signed, identify somebody that has not affixed a signature attesting to the fact that they submitted that, we should ipso facto ignore it.
I think that should be an easy policy determination. I agree with Jeff as far as the deadline, the practicality of establishing it, is that frequently questions are asked and folks don't know the

answers extemporaneously. So they come with these applications that are very, very important to the people appearing before us, and they may not be able to extemporaneously have the answer; or they may not have the answer at hand and have to research it.
So I think if we get those communications, and sometimes we ask questions when no one knows the answer. So I think if we get the letters a sufficient amount of time in advance of the full Council meeting, which I think was Jeff's point, it would be helpful to us.
This deluge that we get a day or so before the meeting I think creates a burden on us all. And if we were to have questions of the Department, it creates a burden on the Department. If all of us want to ask questions of the Department a day or two before the meeting, the Department doesn't have the opportunity to consider it.
So that's two suggestions.
CHAIRPERSON STRECK: Other comments?
What I hear is Mr. Dering should take the first two comments from Mr. Fensterman, which are sort of slam dunks; we don't have to deal with anonymous

25 letters, and begin building a policy for the
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2 consideration of the group.
3 MR. DERING: Okay.
4 CHAIRPERSON STRECK: And then you can bring
5 that back for our consideration.
6 Is that acceptable to the Council as a
7 whole? You want a clause there about security, as well,
8 Dr. Grant?
9 MR. LEVIN: Some narrative that describes
10 what's expected and what is not tolerated. What is
11 expected and what will be acceptable. I will tell you
12 that at FDA meetings, there is also a public comment
13 period. There is a time limit imposed. The clock is
14 cut off. There's no exceptions to that. I don't think
15 it was appropriate this time around, but there are
16 lessons learned. That's done at the federal level. I
17 think it would be perfectly appropriate to say, "Five
18 minutes and you're cut off, and that's it."
19 I think Howard's point is well taken; how
20 the public learns about this meeting is far different
21 from how people in the industry learn about it. We need
22 to think about that. How do we create lines of
23 communication, so people are aware, if something is
24 going on in their community is a matter under
25 consideration? So we might give thought to that.
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2 CHAIRPERSON STRECK: Just a topic of
3 courtesy. I think I would like to mention the fact that
4 Mr. Cicero's letter in defense of Dr. Daines was
5 appreciated by many who read it. I was not at the
6 meeting. I was not fully aware of the nature of the
7 comments. Mr. Cicero's letter was obviously heartfelt
8 on his part, and I think appreciated.
9 (Applause.)
10 Are we past this topic?
11 MR. COOK: I just want to add, again, the
12 Department is not looking to curtail communications. I
13 think to have a clear communication policy that we know
14 what is to guide us, how we circulate it, and whatever
15 that policy the council would like to adopt would be
16 okay.
17 I think that, given the merger of the
18 Council, the path policies we had in the past, we just
19 need clarification of how folks want to carry out that
20 duty.
21 CHAIRPERSON STRECK: I think that's fine.
22 MS. HINES: Different topic.
23 Rick, let me say I completely appreciate
24 this stress that you all are under, in terms of

25 consistent downsizing and moving. I think you've done a
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2 remarkable job given that.
3 It strikes me that, over the last four
4 months, I haven't done a count, but we've approved
5 probably 35 or 40 applications; which I know there's not
6 a need methodology.
7 I'm not sure that I would suggest that there
8 should be, but it does create additional work for the
9 Department from a surveillance perspective; particularly
10 given it's in an industry where we clearly have a big
11 light shining on it right now, and wage and hour laws
12 even more so.
13 So I wonder if we need to think about, not
14 necessarily a need methodology, but some other review
15 mechanism, a review mechanism, a different way of
16 conducting surveillance that accomplishes what we need
17 to conduct, but in a less time intensive way.
18 I don't know the answer. I just think it's
19 something we should think about.
20 CHAIRPERSON STRECK: Thank you.
21 We will now move to our health policy
22 discussion, Dr. Rugge.
23 DR. RUGGE: Thank you.
24 As we discussed last time in the Health
25 Planning Committee, about taking on CON reform, both two
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2 weeks ago and this morning we've been living out the CON
3 process. I think a few observations are clear.
4 From the MSK discussions this morning, we've
5 seen there is unfortunate limits on the levels of need
6 assessment and the planning going on the regional level,
7 Mr. Robinson observed. In addition, there are real
8 limits in terms of staff analysis with respect to the
9 non-Article 28, non-regulated parts of the system, only
10 some of them are regulated.
11 It was suggested at the very least that
12 there may be a need for an improved process for data
13 collection; and perhaps at least a fresh look at new
14 levels of regulation, in terms of what services do come
15 under the purview of this Council and under the purview
16 of the Department.
17 With regard to the Niagara discussion, and
18 again, I think there are three series of outcomes that
19 we've hit upon today. One is that we eventually come to
20 a decision, either by FPIC or by the commissioner;
21 coming in three different colors, black for rejection,
22 white for approval and gray; whether through deferral or
23 through approval with contingencies, some of which are
24 added at the last minute in meetings like this morning.

25 And second, outcomes, even more important is
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2 one that's semi-visible. And it is the very process of
3 applying and the process of decision making, which
4 again, is going in a circular direction. One for
5 withdrawal. There's strong evidence that many, many
6 applications are withdrawn even before they come to us
7 for any kind of consideration.
8 Certainly we've seen evidence of
9 recalibration by the applicants; and also unexpected
10 levels of collaboration among nearby... and even by
11 competitors.
12 The third yield for the CON process, there
13 is inevitably delay. Whether that delay is reasonable
14 or only to be expected in a time of unprecedented
15 changes of the system, I think is another item for
16 consideration by this committee and by the Council; and
17 what it implies of our ability to respond to a changing
18 environment, both fiscal and environmental.
19 Along these lines, the committee to date has
20 undertaken three activities. One is, thanks to Mr.
21 Dering, we have received clarification about how the
22 process of meetings can take place. And you will hear
23 shortly, to schedule our first ever teleconference
24 meeting of this committee jointly with the Public Health
25 Committee.
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2 This turns out to be allowable if we have
3 these meetings take place at the Department of Health or
4 the regional offices or other designated locations.
5 In terms of telephone meetings, our homes or
6 offices are not allowed due to the meeting laws. This
7 is less than ideal, in part because the meetings are not
8 in person and there's not the same vibrancy of
9 communication; and I'm a bit concerned about attendance
10 when traveling across town and traveling 40 miles down
11 the road. I suppose that would depend upon how
12 important our activities seem to be on the Council, and
13 how robust our discussions need to be.
14 It does seem clear that meeting for eight
15 hours a year will not yield much by way of deliberations
16 or real change in the system.
17 Secondly, a letter last Thursday went to the
18 stakeholders of the health care system, including payer
19 associations, 19 grantees, regional players in the area
20 of planning, asking for input on what kind of
21 consideration should the Health Planning Committee and
22 the FPIC undertake with regard to changing or revising
23 the CON process.
24 Indicating this is very much wide open, that

25 we are not sure we're simply doing small improvements to
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2 make it a little bit better, or whether we'll have a
3 much broader and more wide range of discussions and
4 recommendations.
5 And thirdly, this Committee is very
6 interested in helping set the context of any
7 consideration, certainly with regard to CONs, in terms
8 of public health and therefore the Public Health
9 Committee.
10 We had a joint meeting two weeks ago that
11 was truncated, because it had to be held simultaneously
12 with a very long public discussion going on by the
13 Establishment Committee. And so we will be once again
14 meeting with Dr. Boufford and her committee jointly by
15 teleconference, first ever, on November 9; established
16 once again, looking at how to understand the specific
17 activities that will fit within a broader range of
18 public health.
19 As part of that upcoming discussion on
20 November 9, looking for a bit more background in terms
21 of how CON is currently functioning and allowed over
22 time in New York. That will be happening in the other
23 49 states with respect to CON. I've asked Karen Madden
24 to have a limit of no more than 20 pages per state. She
25 promises to make the executive summary available for
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2 those who are slow readers.
3 (Laughter.)
4 And perhaps, most importantly at that
5 meeting, we should have the preliminary responses back
6 from the stakeholders. So we will make some effort to
7 collate those responses and use that input to begin to
8 shape the agenda as we see it going forward with this.
9 And with that, I would be happy to turn it
10 back to Dr. Streck and Dr. Boufford for discussion.
11 CHAIRPERSON STRECK: Comments?
12 CON is indeed a very large topic. I guess
13 I'm still not clear, John. Since we're prohibited from
14 phone calls, you don't think we can do it in eight
15 hours. We're getting all these reports. I guess the
16 part I missed was the how.
17 DR. RUGGE: In addition to the
18 teleconference meeting, there has been made room in the
19 budget and in the time scheduled for meetings of the
20 Health Planning Committee on the day prior to the FPIC
21 meeting or any committee meetings.
22 CHAIRPERSON STRECK: Favoritism.
23 (Laughter.)
24 DR. RUGGE: I didn't want to gloat.

25 CHAIRPERSON STRECK: That explains a lot.
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2 DR. RUGGE: We may be taxing the computers
3 in their capacity to understand by reading and by
4 communicating in other ways, to serve as a helpful
5 background to all those discussions.
6 CHAIRPERSON STRECK: I find that encouraging
7 that we have been able to carve out time within the
8 rigorous rules of engagement, as it were.
9 Other comments or questions for John?
10 Thank you.
11 I now move to Dr. Boufford under Public
12 Health Services.
13 DR. BOUFFORD: Thank you.
14 As John said, we do want things to be
15 seamless. At the first meeting of the Public Health
16 Committee, we did brainstorm. We were given as a charge
17 to the Committee, which we refined and then we
18 brainstormed, some issue areas that we wanted to work on
19 and send a survey to the Committee members.
20 And the top priorities, three priorities,
21 for the Committee over the next year were: Number 1,
22 clearly to work with John to try to see how we can get
23 the most public and health benefit out of the CON
24 revisions, potential revisions, and the other levers
25 Karen will talk about that are in the context of New
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2 York State health policy decisions coming up.
3 Secondly, that we will of course, our core
4 role is supporting the Health Department as it proceeds
5 for public accreditation, to be accredited as a public
6 health agency. And part of that will be developing the
7 State Health Improvement Plan agenda for the next four
8 years.
9 And finally, we as a Committee want to
10 identify one prevention issue that we feel that by
11 concerted concentration over the next year we could move
12 the needle on a health problem that we could really make
13 a difference. So we will get to these other issues now,
14 but we could see our work with the CON Committee as kind
15 of the overlapping areas of the VEN diagram, and each of
16 us having a set of things we'll do as an independent
17 committee, and the core things to do together.
18 And the other point I would make about the
19 joint committee, I think is that -- and Karen will talk
20 about this -- we did talk about potential opportunities
21 for maximizing the public health and population health
22 benefit of the changes in the personal health care
23 delivery system.
24 And one of the goals is to, I think,

25 familiarize people with the vocabulary and concepts that
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2 may not be as familiar to them, as we all know around
3 the personal health care system.
4 So part of, the other focus I wanted to talk
5 about today, the shorter version of the presentation I
6 did give at the committee; just to share it with
7 everyone.
8 (Screen projection presentation begins.)
9 Let me start by saying that we wanted to
10 start with a set of definitions. And everybody sort of
11 knows that the health care delivery system, and the use
12 of words is important to health care. We usually talk
13 about the personal health care system, which we spend
14 most of our time on.
15 There's two other terms that get thrown
16 around which are important for our consideration. We'll
17 start from the bottom. The second one is "public
18 health." And the Institute of Medicine has defined this
19 term to mean the collective actions of society to assure
20 conditions where people can be as healthy as they
21 possibly be; and ultimately government does have that
22 responsibility in reality to assure conditions, not by
23 guaranteeing everybody has the same level of health, for
24 lots of reasons.
25 The other term that has gotten to be more
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2 used is the term "population health." And to
3 distinguish it from "public health," in talking about
4 population health, we are really talking about the
5 health outcomes of a group of people, a population and
6 community, and especially the distribution of those
7 outcomes; the health status of a community and the
8 disparities within that community.
9 So you can see that population health is in
10 a sense a goal, a sort of concerted action health care
11 system and the public health system that we'll talk
12 about later.
13 So, the U.S. system, we have over $2
14 trillion a year invested. It is very heavily invested
15 in the personal health care system and in the biomedical
16 research model, and we probably have one of the most
17 sophisticated and effective systems in the world because
18 of that investment.
19 But when we look at the ranking of the
20 United States globally, in terms of performance of our
21 health system and the health outcomes that we get out of
22 it, they're not very impressive. And so in World Health
23 Organization rankings, we ranked 37 among developed
24 countries in overall performance, mainly because we are

25 relatively low access, high cost and poor health
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2 outcomes, status results.
3 And in the rankings of the OACD
4 industrialized countries, we show up 23rd life
5 expectancy, and 21st in infant mortality. So those are
6 not great results for the $2 trillion investment.
7 So then the question becomes, Why haven't we
8 gotten more out of that investment?
9 And this is pie chart that comes from
10 Michael McGiness and Bill... from the CDC, that shows
11 that only about 10 percent of what we call avoidable
12 mortality in the United States, the dark blue part of
13 the pie, is directly related to inadequate access to
14 medical care, personal medical care. And that the other
15 factors, half of the problem is behavior factors, which
16 obviously are like smoking, alcohol, tobacco use, diet.
17 But they're also affected by the socio-economic
18 conditions in particular communities.
19 Do individuals have access to healthy food,
20 and can they exercise, and other kinds of issues
21 associated with poverty and education.
22 Environmental factors, increasing data about
23 the importance of the built-in natural environment, and
24 health factors and genetic issues we're learning slowly.
25 And hopefully they will have clinical use soon.
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2 But if you look at this pie chart, and some
3 people would say 10 percent, maybe as high as 20
4 percent, if you assume that every prevention activity in
5 a doctor's office or a provider's office. But very few
6 go above that. And the reason we don't get a result is
7 the money, is all in the 10 percent. Just to remind
8 you, that's the dark blue and the money is all, maybe a
9 little less than 2 percent now. This has been
10 replicated in the last year, is actually what we might
11 call public health and community based prevention,
12 broader prevention areas.
13 So, in a very real sense, we get what we pay
14 for. And we are very good at things we have invested
15 in.
16 Now, another way to look at the broader
17 determinants of health which we need to think about in
18 the context of population health, is the work by Dave
19 Kendick from the University of Wisconsin.
20 This is a map of the U.S.
21 (Indicating screen projection.)
22 This something showing mortality rates,
23 which are basically controlled by age and sex. So the
24 factor of older people in a part of the country, or more

25 men or more women, that is eliminated as a factor here.
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2 And what you see is mortality rates
3 relatively high, dark red, not a good thing. Dark blue
4 is a much better thing. In terms of places to live,
5 because the mortality rates are much lower.
6 Then, if we add to next map, to the age and
7 sex controlling force, race and ethnicity, you begin to
8 see the disappearance of a number of the very dark red
9 areas in the southern part of the United States and the
10 Southwest, because we're basically taking out,
11 especially the African-American disparities in health
12 status.
13 If we take and add to this control factor
14 the issue of socio-economic composition, we begin to see
15 how important the issue of poverty is when added to
16 these other determinants of health.
17 And finally adding the availability of
18 health care, we really see not too much difference
19 between the control of poverty and the health care
20 access.
21 Nevada is the big red person out there, the
22 state out there. And I actually presented this
23 information in front of the health commissioner from
24 Nevada, who said, "We don't like government in our
25 business, and we like our gambling and smoking and
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2 alcohol and other things."
3 So this work is really based on something
4 called the Match Program, which is the first time ever
5 in the United States, funded by the Robert Wood Johnson
6 Foundation. There's been a county by county ranking; a
7 set of traditional medical indicators like infant
8 mortality, along with what you might call socio-economic
9 indicators, like literacy, rape, socio-economic status
10 and other activities.
11 And New York State counties have all been
12 rated on this index. Quite interesting, actually, and
13 shared with the local health directors. And we
14 certainly have explored it in our Public Health
15 Committee. And I think it's instructive in terms of the
16 disparities within the state. The two lowest rankings,
17 one is, I believe Green County in upstate New York, and
18 the other is the Bronx. So you can really get a sense
19 of what is going on.
20 So one of the big interfaces between these
21 concerns in the community and population health is
22 primary care. I just want to share this with you,
23 because we spend a good bit of time on hospitals. This
24 is a recently replicated study by CDC of some work that

25 was actually done in the 50s.
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2 You take a thousand adults over 18 for a
3 month, using the ambulatory medical survey, which is the
4 national survey in the U.S., similar to an analogous
5 survey in England. Eight hundred of those people will
6 have an illness episode. Three hundred or so will
7 actually enter the formal health care system.
8 So a lot of self-care, a lot of using other
9 providers or people in the community is still very
10 strong. And then, of the 300, you can see that it's
11 really quite a bit less, 2 or 3 percent end up in a
12 hospital. And that's where most of our money is and
13 it's where most of our energy goes and it's where a lot
14 of the political focus is.
15 So it's important to remember where care is.
16 And we talked about some of these areas of community
17 based care, where there may or may not be either the
18 investment or the infrastructure. It is a very
19 significant factor in terms of getting broader
20 population health results.
21 So there has been a lot of work to move the
22 needle in this broader area. And the Institute of
23 Medicine has several reports since the late 80s on
24 so-called essential public health functions; what has to
25 happen in a community to get better health results.
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2 This is a list of consensus functions
3 developed by a whole array of national public health
4 agencies. If you look at number 7, one of it relates to
5 access to health care, that the role of public health is
6 to assure that there are adequate health services; but a
7 variety of other areas, including things like emergency
8 response, surveillance, and other areas we talked about
9 here.
10 And the goal, really, is to strengthen the
11 governmental public health system, the agency, the
12 accreditation effort is one of those things; to allow
13 them to play an important role with other stakeholders
14 in the community. This is, again, from the Institute of
15 Medicine study on Who will keep the public healthy? The
16 notion being that the government can't do it alone, it
17 really needs to work in conjunction with the personal
18 health care delivery system, which in the U.S. is
19 largely private sector; with employers, business, the
20 media, academia, obviously community organizations
21 themselves.
22 Part of the challenge of getting this health
23 result is aligning all of these interests. Some of
24 these we try to do in these conversations and other

25 things that are part of a broader conversation.
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2 And getting these things aligned, a good
3 example, there is health at all policy. We want our
4 health policies to take into consideration the health
5 impact of behaviors of various agencies. So, how do
6 decisions being made in the transportation sector affect
7 health, human health? How are decisions being made in
8 the agriculture sector affecting human health?
9 We know much more about that, and those of
10 you are more aware of some of the things that have gone
11 on in New York City with the leadership of Mayor
12 Bloomberg, and Rochester, sometimes led more by the
13 business community, have been attention to bringing
14 these various stakeholders together so all of them can
15 act in a better way for health.
16 The last notion is sort of a conceptual
17 framework. If you think about the kinds of
18 interventions that are needed to move from the lower
19 left hand corner, which is personal medical care, up to
20 population health results; along the horizontal axis you
21 can see that with each step out along the horizontal
22 axis, whether it's a community based primary care
23 system, we begin to have a bigger impact on the
24 community, the kind of health promotion prevention
25 activities that go on in state health departments in
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1 PHHPC - Full Council
2 advising people to use helmets, wear seatbelts.
3 You get into the community, edging on to the
4 broader society, public advocacy regulation in smoking,
5 calorie postings, zoning for complete street side
6 recycling, parks availability, moves us out into having
7 institutional impact. School meals is another one.
8 And then at the far right are the
9 socio-economic factors that I talked about earlier, that
10 we begin to understand affecting human health;
11 dramatically, the importance of place, of communities,
12 in terms of the kind of housing people live in, the jobs
13 that they have, the educational levels they attain, all
14 affect their health status.
15 So I think the lesson and the excitement for
16 us about really working on the CON process and on some
17 of the processes that Carol will talk about, to try to
18 get as much traction across this continuum, means that
19 we don't stay in that lower left hand box to only focus
20 on the personal health care system, and to really move
21 the impact out.
22 I will stop there. That's the end of my
23 report.
24 DR. LIPSON: I'm Karen Lipson. I wanted to

25 give a high level summary of the second presentation
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2 that we delivered at the joint meeting of the Public
3 Health Committee and Planning Committee.
4 This is a presentation that Sylvia Pirani
5 and I put together to provide a context for the
6 activities that the committees are discussing. And
7 Sylvia is with us in Albany. And since I'm on-site, she
8 asked me to do this presentation, but I'm going to allow
9 her to field any hard questions that you might have.
10 I'm not going to deliver the whole
11 presentation. I'm just going to focus on four slides,
12 two at the beginning and two at the end.
13 So this first one is, Why should we
14 integrate public planning and CON?
15 This may be obvious to most of you, but I
16 think it's always good to say things out loud and test
17 your assumptions. So the reasons here, and there may be
18 more, but one reason is to promote the alignment of
19 health care capacity with community needs.
20 Another is to curb health spending, not just
21 by reducing the supply for services, which has been the
22 historic focus of health planning; but also to curb
23 health spending by reducing demand for services.
24 And maybe by integrating population health
25 into health planning and CON, we can use those tools to
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2 keep people healthier and to redistribute realization to
3 the most affected settings; not necessarily the most
4 intensive settings. And we can focus on prevention.
5 Another goal for integrating population
6 health into health planning CONs is to reduce health and
7 health care disparities. If we look at the health of
8 communities and the outcomes that Joe suggested, we can
9 identify interventions that would reduce health care
10 disparities.
11 So we covered the topics on this slide.
12 (Indicating.)
13 These are basically existing initiatives
14 within the State DOH and emerging initiatives, the
15 prevention agenda and the collaborations that have been
16 required between hospitals and local health departments,
17 in community health assessments, in identifying
18 interventions, identifying top priorities and
19 interventions, to address those priorities in
20 communities.
21 The HEAL 9 and later HEAL 19 local health
22 planning grants that have in many cases created
23 multi-stakeholder collaboratives to look at pressing
24 community health needs and develop strategies to address

those needs; the community benefit requirements under
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the Accountable Care Act that require not-for-profit hospitals to participate in community health needs assessment and develop strategies in response to those assessments, and various ways in which the current certificate of need process uses population health criteria; and then the emerging certificate of public advantage initiatives, which comes out of the Medicaid redesign team and legislation enacted in this year's budget.
And that is a new regulatory mechanism that promotes collaboration and integration among providers by promoting antitrust immunity and active supervision of those arrangements.
That was the introduction to the presentation, and now I'm going to give you the give takeaway. Everybody received a copy of this presentation, or a link to the presentation earlier in the week; so you could read the middle of the presentation on your own. I will take you to the end.
We think there are a number of opportunities emerging to integrate population health with health planning CON. One are the type of activities that we are seeing through our HEAL 9 and HEAL 19 grants, collaborative interdisciplinary activities at the local
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level, where they are looking at community health needs and identifying responses, both in terms of supply and in terms of affecting consumer behavior and affecting the model of care to prevent unnecessary utilization, for example, or to promote better health outcomes.
Another opportunity is the payment and health system reforms under the Accountable Care Act. Integration activities like the accountable care organization model, episodic payments and bundled payments reforms; all of those type of system redesign initiatives, incentivized collaboration along with continuum of care, and require attention to population health.
Finally, the regulatory requirements that we spoke of can be levered to promote population health objectives, as well as leverage to promote quality access and cost containment.
We talked a little about challenges associated with using those levers to affect population health. And one of those challenges is striking the right balance between regulation and market forces. It's tricky to use regulatory levers to affect markets, as everybody knows. When you put pressure on one part

of the market you often see other parts of the market bubbling out. And we have to exercise our authority using those levers cautiously.
We also don't want to impose such burdens of regulatory requirements that end up weakening delivery systems that we're trying to strengthen.
Other challenges I think are obvious. What is the appropriate mission of local planning in a changing health care environment? What is an appropriate size of a planning area? Should it be at the county level, the neighborhood level, the regional level? And we've seen all different models under HEAL 9 and various degrees of success in all different sizes.
And last but not least is resources, both externally and in government. The organizations are strapped for cash, and that results in difficulty in engaging stakeholders. All organizations and citizens at all levels are under a lot of pressure, and HEAL 19 grantees have said and other organizations have said, "We can't get people to come..."
So it is important to engage stakeholders from all different sectors in order to rationalize delivery systems that impact populations.
That's it.
CHAIRPERSON STRECK: Questions or comments

Joe or Karen?
MR. BOOTH: Could we get copies of the slides e-mailed to us?
CHAIRPERSON STRECK: I have a question. I think the principles are clear. But it was the latter part of Karen's comments. It isn't on the slides. Who is going to do it?
MS. LIPSON: As far as aligning the stakeholders?
CHAIRPERSON STRECK: Who's going to make this move, the Department? I don't see that part of it.
MS. LIPSON: I think ideally it would be a collaboration among those folks in the bubble diagram. Ultimately the government holds the ring. I think even most of the analyses, the question of government pulling people together usually means you've got to get the government plus the other stakeholders.
I think you see examples. I don't want to keep bringing up Mayor Bloomberg and New York City, but he is kind of the gold standard internationally for a leader, a political leader, a chief executive. And cities have to take action on this, pulling together across governments and bringing together the Department

25 of Transportation, EPA, education and others.
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2 CHAIRPERSON STRECK: He's been empowered by
3 government.
4 MS. LIPSON: He's been a strong executive
5 branch in New York City; but I think the governor of the
6 state can do it. And there are county executives, and
7 country leaders that are doing it, too. The
8 Netherlands, Finland, and smaller countries.
9 But I think the interesting question, Bill,
10 in talking especially about health care deliver systems,
11 and that's what I think we're trying to get at. Where
12 do you put, how do you create incentives so it's in
13 their interest to try to have a bigger health impact?
14 George Isham, who is medical director of
15 Health One in Minnesota, has done a lot of work on this,
16 has really talked about it. And Kaiser is very involved
17 in this issue of community benefit and trying to figure
18 out how much is it fair to ask the health care delivery
19 system to do in the context of having an impact on the
20 geographic community?
21 An obviously if you're in Colorado or
22 Minnesota or some other places, it's very fair to ask;
23 because basically most of the patients that you're
24 taking care of are from certain geographical
25 communities. And you're probably the biggest employer,
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2 you could contract locally, you have impact on the
3 environment, et cetera.
4 If you're in a city it's a little harder to
5 do. So what he tried to do is identify these
6 categories, which is there are certain things that are
7 mission specify and we can do them; be sure we have high
8 quality care for our patients. They are mission
9 specific, and we should be doing them as well, which is
10 intervention work, individual services that will be
11 required under accountable care.
12 The third area of things that are mission
13 specific, and we ought to be doing them with partners,
14 which is where the partnership between the delivery
15 system and the public health agency comes in. We have
16 to try to do local health planning in New York State,
17 and the results were mixed, I think it's fair to say, to
18 the extent to which the big health care delivery system
19 and the local health directors have been working
20 together with other non-profits in the communities. It
21 varies by community. And that's a set of partnerships
22 you want to promote.
23 And the final thing for delivery systems, we
24 don't have any control over these things, like housing,

like transportation and other things. But you could make the case, and I think there are examples of hospitals like Lutheran or Montefiore, where the community was falling down around their ears. And had they not introduced themselves into the issue of supporting local businesses with contracting, helping to underwrite mortgages to get housing improved in their community, they wouldn't have had a community to take care of twenty years ago.

So these are win-win things for these organizations; and the employees, the biggest number of employees in big systems are entry level people who are the lowest salaried and generally live locally and have the highest indices of bad health.

So there are a number of activities, and part of it is consciousness raising and leadership to get people to do this. You've got it among CEO execs. I think Kaiser probably has taken it further than most systems and made big investments in that area.

MR. KRAUT: It's the perennial issue, to the point, some of the comments particularly about Lutheran, Kaiser and Montefiore because -- I'll focus, stay away from government's responsibility and leadership and talk about the provider community maybe, and then try to bring it back to the role of the Council, without

regulation, without prescribing what kind of questions we ask and other things we're interested in.

You look at Lutheran, Montefiore, Kaiser, it's in their economic self-interest, and there is a business case for it. Kaiser also being an insurer and a provider, and Lutheran running a large Medicaid managed care program, and being enormously proficient in its QHC network.

So there is the hope and the expectation that as we assume more risk, it is going to be in the economic interest of all the providers to pay more attention. And there's a real business case for investing in population health. Because a lot of the change can't occur if it's not at that community provider level.

The countervailing force -- not countervailing -- but looking also at the issue, we could show you statistics about population health, show you statistics, as you said, about poverty, about educational attainment and unemployment; it's all the same communities.

So the health care aspect is one aspect, but it's a larger societal thing. Even if we see economic

2 state, it's very hard to get the business community to
3 understand the business case or the economic importance
4 of lifting up those communities that are at the lowest
5 end.
6 The New York State averages, Nassau County
7 is pretty high. But the distance between the highs and
8 lows in individual communities is significant. I do
9 think -- just bringing it back to the Council, this is
10 not as well linearly connected as I would have liked,
11 now that I'm hearing you say it -- the issue is, what's
12 the kind of conversation you have here?
13 John, you'll remember last year when we had
14 conversations about emergency rooms and the investments
15 in emergency rooms; and you appropriately wanted to say,
16 "Tell me what you're doing in primary care. What are
17 you doing for population health?" And trying to say,
18 well -- we had a difference of opinion, frankly --
19 about, if we're going to approve this major capital
20 investment you're making, I want to see what you're
21 doing over all, and I'd like to see similar investments
22 made elsewhere. And I had a different opinion on that.
23 But the fact of the matter is, so what's the
24 role for us? And just by merely asking questions as
25 applicants come through -- this is where the community

2 service regs -- maybe it didn't start this way, but
3 you're certainly trying to evolve it this way, to have
4 some degree of accountability in how people are thinking
5 about that.
6 There may be a lot of instances -- but I'm
7 just warning everybody -- not at the point of mandating
8 or burdening or legislating -- because I do think it's
9 organizations that are really focused on taking care of
10 people. It's in our business interest to really pay
11 attention to this.
12 MS. LIPSON: You want the incentives.
13 DR. RUGGE: Along these lines, Karen
14 mentioned in her discussion the balance between
15 regulation and market forces. The government has an
16 opportunity to play a catalytic role, a leadership role.
17 I think what we're facing is the overwhelming market
18 tsunami, and the fact, maxed out managed health care.
19 We can't spend more than we're already spending, not
20 very much more.
21 I think that's going to force a lot of
22 discussions. We may even be getting to see, this
23 morning, talking about FDNY in front of the Lenox Hill
24 solution, and reaching out to a community provider,

25 quite different than a city provider, quite different
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2 than our discussion.
3 And going again to Niagara, talking about
4 (unclear) cath labs, needing even better mobile
5 emergency systems. And I think more and more we're
6 going to be needing to look holistically and globally at
7 the system, and consideration for any single application
8 for any single new service.
9 That's, to my mind, what the CON discussion
10 is all about, in terms of how do we formulate that, how
11 do we make that process more clear and more compelling?
12 CHAIRPERSON STRECK: You might consider a
13 holistic system that we're trying to reduce the cost,
14 that we approved a $140 million project this morning in
15 that holistic system that is not going to reduce the
16 cost. And you might use that as an example. It's by
17 our own rules, but we did it.
18 COMMISSIONER SHAH: I would add to this
19 great discussion, think of what happened with green
20 technology. Companies wanted to do the right thing once
21 incentives were lined up; and everyone knew they had to
22 play at a certain level. It made it easier to know that
23 they were going to do the right thing, but the
24 competitors would also have to do the right thing.
25 So I think, if you think of it from that
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2 perspective, in health care there are a lot of
3 thoughtful folks out there who want to do the right
4 thing from that global perspective.
5 What is that minimum set of green
6 technology, or from a health care perspective, system
7 level thinking that we can encourage and set that bar
8 together, that everyone agrees is the right thing to do?
9 So everyone can do it and not get penalized for being an
10 early adopter, while somebody else opens up a profit
11 making center.
12 DR. RUGGE: This is very important and will
13 help change the system; but it's not what is most
14 important. What is most important that we get the
15 system we pay for. And the reimbursement system is so
16 distorted in terms of what the priorities should be.
17 We're spending 1 percent on population health, public
18 health; and 99 percent where 2 percent of the action is.
19 That's understandable. People need care and
20 we always have to provide that in the most sophisticated
21 possible way. We also have to understand the limits of
22 what we can do and make sure we're being effective in
23 every way.
24 CHAIRPERSON STRECK: I think Dr. Shah is

2 this; the green technology analogy.
3 Are there other comments or questions?
4 MR. ROBINSON: Just two. One is, I think
5 your points, Dr. Shah and yours, John, also, point to
6 the importance of having the insurers at the table. I
7 think that obviously there are a lot of different
8 insurers, there are for-profit and not-for-profit, in
9 terms of how accountable they are to the communities, to
10 regions or to the state. I think that's important.
11 The other issue is that we're experiencing
12 this push and pull in community planning. You heard
13 wonderful presentations from the Health Systems Agency,
14 which I think is the only very active one in the State,
15 in that region. And that has pluses and minuses, too.
16 There is a real advantage to itt as a
17 convener and a facilitator, and it certainly gets to the
18 point where if it starts to assume the role of being a
19 quasi-regulator, then it then adds layers and complexity
20 costs and dysfunctionality to planning.
21 So I think as we think about how we want to
22 move this structure forward, we ought to be very careful
23 about how we introduce local health planning.
24 CHAIRPERSON STRECK: Other comments?
25 MS. LIPSON: I didn't talk about one of the

2 big dilemmas in health care. I think it's good that the
3 health care reform actually included what they funded
4 for community based prevention, which means preventive
5 interventions on tobacco, exercise and diet, which have
6 been shown to be effective but don't involve the
7 personal care system.
8 And previously we said prevention, 20 years
9 down the pike, there's no point, waste of time.
10 Obviously, in some states with a more closed managed
11 care system, it is not a waste of time; because if you
12 have three plans and two provider systems or whatever
13 (unclear), we have a different issue here.
14 The fact is the return on investment is
15 showing up in two to five years; and that's a term of
16 office for elected officials, which begins to get
17 people's attention.
18 And it led to putting the reimbursement
19 community, the information graph that just came out -- a
20 direct result of that are ROI type of analysis.
21 Similar things are happening with CEOs of
22 companies. They're realizing now that it's in their
23 interest, as was said earlier, to make that investment.
24 But I think there are opportunities like

25 that, and one of the dilemmas of health care is, when
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2 you're scoring things to include in the reimbursement
3 system. And that's the trick on this Medicaid redesign.
4 You don't get credit for savings in the employment
5 sector, like productivity or absenteeism. You don't get
6 credit for it unless it saves health care costs.
7 We have been involved in conversations with
8 CBO and OMB, and they decided to go ahead with community
9 based prevention, even though they couldn't score the
10 savings in the health care system, because the data is
11 there.
12 So we really do have a lot of changes and
13 shifts to think about in terms of creating incentives
14 that really can help people do what they really do want
15 to do.
16 CHAIRPERSON STRECK: Thank you for that
17 discussion. I would say we all share the view that we
18 don't get credit for what we do well in the health care
19 system. That seems to be part of it. We look forward
20 to a return to these discussions.
21 That concludes the formal agenda of the
22 meeting. There is an executive session to follow.
23 Are there comments from any of the members
24 of the Council before we move to executive session?
25 I'd like to thank all of you who served on
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2 these committees. We perceived today to have been more
3 efficient than we expected. But that's only because of
4 the really diligent work that went on in the committee
5 structures, both the regularly scheduled ones and the
6 ones added today. Since I participated in none of
7 those, I extend my thanks for your good work.
8 (Laughter.)
9 We're adjourned now, and we'll move to
10 executive session.
11 DR. GUTIERREZ: Mr. Chairman, I want to
12 record I'm moving away.
13 (Time noted: 2:30 p.m.)
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C E R T I F I C A T I O N

I, Jeffrey Shapiro, a Shorthand Reporter and Notary Public, within and for the State of New York, do hereby certify that I reported the proceedings in the within-entitled matter, on Friday, October 6, 2011, at the offices of the NYS DEPARTMENT OF HEALTH, New York, and that this is an accurate transcription of these proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 2011.

_____

JEFFREY SHAPIRO

M E M O R A N D U M

TO: Members of the Public Health and Healthcare Planning Council

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

DATE: November 2, 2011

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

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

1. Columbia Memorial Hospital

APPLICATION FOR DESIGNATED STROKE CENTER

Staff Report

Hospital: Jane Ehrlich
Chief Executive Officer
Columbia Memorial Hospital
71 Prospect Avenue
Hudson, NY 12534

Findings:

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

Approval Conditional Upon:

- Site Visit

Recommendations:

- Approval

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

December 8, 2011

I. REGULATION

Report of the Committee on Codes, Regulations and Legislation **Exhibit #3**

Angel Gutiérrrez, M.D., Chair

For Emergency Adoption

11-29 Section 760.5 – (CHHA Establishment – Determination of Public Need)

11-27 Amendment of Section 401.2 of Part 401 of Title 10 NYCRR
(Amendment to Limitations of Operating Certificates)

For Discussion

11-27 Amendment of Section 401.2 of Part 401 of Title 10 NYCRR
(Amendment to Limitations of Operating Certificates)

09-17 Addition of New Part 403 and Amendment of Sections 700.2, 763.13 and 766.11 of Title 10 NYCRR; Amendment of Sections 505.14 and 505.23 of Title 18 NYCRR (Home Care Services Worker Registry)

Amendment of 10 NYCRR Part 710 CON Notice Submissions

For Adoption

11-17 Amendment of Section 405.19 of Part 405 of Title 10 NYCRR
(Observation Unit Operating Standards)

11-03 Amendment of Sections 405.1, 700.2, 720.1, and 755.2 of Title 10 NYCRR
(Accreditation of General Hospitals and Diagnostic and Treatment Centers)

Pursuant to the authority vested in the Public Health and Health Planning Council by Section 3612(5) of the Public Health Law, Section 760.5 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) is amended by adding new subdivision (l), to be effective upon filing with the Secretary of State.

Section 760.5 is amended by adding new subdivision (l) to read as follows:

Section 760.5 – Determinations of public need.

(l) Notwithstanding the provisions of this section, the Commissioner is authorized to issue a request for applications to establish new certified home health agencies, or expand the approved geographic service area and/or approved population of existing certified home health agencies. Public need, in connection with any such request for applications, shall be found to exist only if the applicant demonstrates, in accordance with the criteria set forth in subdivision (a) of section 709.1 of this title, that approval of the application will:

(i) facilitate the implementation of Medicaid Redesign initiatives designed to shift Medicaid beneficiaries from traditional fee-for- service programs to managed long term care systems, integrated health systems, or similar care coordination models; or

(ii) ensure access to certified home health agency services in counties with less than 2 existing certified home health agencies not including those operated by the county.

Regulatory Impact Statement

Statutory Authority:

Section 3612 of the Public Health Law authorizes the Public Health and Health Planning Council to develop implementing regulations for certified home health providers.

Legislative Objectives:

There are two objectives of this proposed rule: (1) further the Medicaid Redesign initiatives, and (2) increase the number of CHHAs in those areas where patient choice is limited.

The first objective, to further the Medicaid Redesign Team (MRT) initiatives that will facilitate the transition of Medicaid beneficiaries from traditional fee-for-service programs to managed care and managed long term care plans (MLTCPs), integrated health care systems and other types of care coordination models, is primary. MLTCPs are facing an immediate influx of members who require services that may more easily be provided by allowing the MLTCPs to establish a certified home health agency. It is anticipated that many MLTCPs will avail themselves of this opportunity, which will improve their ability to provide care coordination to their members, ultimately resulting in cost savings to the Medicaid program, enhance care coordination, and increase quality and efficiency of providing home health services to Medicaid beneficiaries.

Other MRT initiatives involve a shift to integrated health care systems that rely heavily on care coordination. It is anticipated that CHHAs will play a central role in

connection with these models, and that there is a need to allow these systems an opportunity to better provide care coordination within the comprehensive array of services they provide and more fully meet the needs of their patients. This will also result in cost savings to the Medicaid program and increase quality and efficiency of providing home health services to Medicaid beneficiaries

The second objective of the regulatory change is to increase the number of certified home health agencies in New York State in those areas where patient choice of home health services is limited. A number of upstate counties have closed, are in the process of closing, or have indicated a desire to close, their CHHAs. In many cases, closure of the county operated agencies will leave only one existing CHHA in the county. The expansion of need in these counties will improve patient choice and access as well as quality outcomes. Additionally, increased competition in these areas may result in cost savings to the Medicaid program.

While all potential applicants will have the opportunity to demonstrate need as defined in the rule, it is anticipated that immediate need is primarily focused in those areas referenced above given the current service delivery landscape.

Needs and Benefits:

In conjunction with the MRT initiatives this rule will facilitate the transition of Medicaid cases to care coordination models by allowing MLTCPs the opportunity to provide home health services directly. The rule will also decrease Medicaid costs for patients who are chronically ill by allowing patients to remain in their home and receive home health services through a coordinated approach to care delivery. In addition, the

rule will allow existing health systems to establish new CHHAs or to expand the geographic service area of existing CHHAs to enable the health care system the ability to provide a full array of services including home health care more efficiently.

As more county-based CHHAs are closing, the establishment of new CHHAs, and/or the expansion of the geographic service area, and/or the expansion of the population served by existing certified home health agencies, will ensure improved patient choice and access of home health services in these communities. The increased competition of certified home health agencies may lower the costs of home health care services.

Costs:

Costs to Regulated Parties:

The rule does not impose any new compliance costs on regulated parties.

Costs to the Agency and to the State and Local Governments Including this Agency:

This rule should not impose any costs upon this agency, New York State, or its local governments, except for incidental costs that may be associated with the issuance of a request for applications and evaluation of applications received. As discussed above, the rule may result in decreased costs associated with Medicaid expenditures for the State as a result of decreasing institutional health care costs and increasing community based services.

Local Government Mandates:

This rule imposes no mandates upon any county, city, town, village, school district, fire district, or other special district.

Paperwork:

The rule imposes no new reporting requirements, forms, or other paperwork upon regulated parties.

Duplication:

There are no relevant rules or other legal requirements of the Federal or State governments that duplicate, overlap, or conflict with this rule.

Alternatives:

The Department examined several alternatives including approval of new CHHAs using the current need methodology outlined in 10NYCRR section 760.5, or revision of the current need methodology. These options were rejected for multiple reasons, but primarily because of the limited time table for implementation of MRT initiatives and a lack of evidence suggesting widespread need for additional CHHAs in New York State.

The MRT has suggested, as a primary method of reducing costs and increasing quality and efficiency in the Medicaid program, a rapid shift from the traditional fee-for-service model to care coordination models that will better ensure that Medicaid recipients receive quality care in an efficient manner. MLTCPs and other integrated health systems must be ready to accept a significant number of patients in the near future, and will be

better able to provide a comprehensive array of services to meet the needs of individuals receiving care through their systems if they had the ability to establish or expand CHHAs to accommodate these patients. Allowing these provider types to establish a new CHHA or expand an existing CHHA to meet the needs of patients provides a means for a more integrated, cost effective, quality outcome based approach.

In addition to the needs that have arisen in connection with implementation of the MRT initiatives, the availability of upstate home health agency providers has decreased in recent years as more county-based CHHAs have closed in response to fiscal pressures. There are currently 130 CHHA providers in New York State. Of these, 32 are county operated agencies and 16 are sole providers within their county. In recent years, 17 county operated CHHAs have closed, and an additional 18 counties have indicated to the department that they intend to close or have a closure plan in place to occur over the next year. These closures have decreased patient access and choice to home health services, and have made county residents dependent, in many cases, on a single source for their home care needs. Given the potential risks of these limits, there is a need for additional providers in areas that have diminished sources of care. Although the department made efforts to review the number of existing CHHAs against the current need methodology, existing data is insufficient to determine whether the existing methodology accurately reflects need. Addition of existing agencies using the current or a revised methodology would thus require a significant amount of time to collect and analyze data, and make needed revisions.

Other than these two specific areas of need, the Department has no evidence of unmet need in New York State in accordance with the existing need methodology, nor

the data that would be necessary to evaluate the efficacy of that methodology and undertake substantial revisions that may be necessary. As such, and because MRT implementation is extremely time sensitive, the options of lifting the moratorium using the current need methodology or revising the need methodology were rejected due to time constraints and lack of sufficient data. The Department will, however, continue to examine the need methodology for a possible future revision to the regulations.

Federal Standards:

The rule does not conflict with nor exceed any minimum standards of the Federal government for the same or similar subject area.

Compliance Schedule:

None.

Contact Person: Katherine Ceroalo
New York State Department of Health
Bureau of House Counsel, Regulatory Affairs Unit
Corning Tower Building, Rm. 2438
Empire State Plaza
Albany, New York 12237
(518) 473-7488
(518) 473-2019 (FAX)
REGSQNA@health.state.ny.us

Regulatory Flexibility Analysis for Small Businesses and Local Governments

Effect of Rule:

Local governments will not be affected by this rule except to the extent that they are providers of certified home health agency (CHHA) services and wish to file an application to expand their services, or do not provide CHHA services but wish to apply. Currently there are 32 county-based CHHAs in New York State. The small businesses that will be affected are CHHA providers which employ fewer than 100 persons, and who wish to file an application to expand their services. Based on the most recent data, there are approximately 21 CHHAs that are considered small businesses in NYS.

Compliance Requirements:

None.

Professional Services:

New agencies would be required to hire the appropriate staff and existing agencies may need to hire additional staff if they were to expand their services, but any staffing required would only arise if agencies choose to submit an application for establishment or expansion pursuant to a request for applications issued in accordance with this rule.

Compliance Costs:

All successful candidates will be required to pay the $2,000 application fee. The application fees are statutorily mandated, in Public Health Law §3605(13).

Some newly certified home health agencies may choose to pay accreditation fees, which are estimated at $3,000 - $7,000 every 3 years depending on the organization, size of the agency, and number of sites surveyed to become certified to participate in the Medicare and Medicaid system if state surveyors are unable to perform initial and pre-opening surveys due to resource constraints. These survey types are considered the lowest priority for federal surveillance purposes under the Centers for Medicare and Medicaid Services (CMS) 1864 contract that CMS has with the state. State obligations under this contract with CMS require that all required surveillance activities for existing program are completed prior to conducting pre-opening and initial surveys activities that are required for new providers to begin operations. Newly approved providers may choose to become accredited in order to begin operations in a more expedited time frame.

Economic and Technological Feasibility:

The Department has considered feasibility and believes the rules can be met with minimal economic and technological impact. Processes for facilitating fingerprinting and CHRC are already in place for home care providers in NYS.

Minimizing Adverse Impact:

The Department has considered State Administrative Procedure Act (SAPA) Section 202-b(1) in developing this rule, but has determined that because the rule simply

provides for a limited expansion of public need to address implementation of Medicaid Redesign Team (MRT) initiatives and access to CHHA services in underserved counties, there is no adverse impact on local governments or small businesses.

Small Business and Local Government Participations:

This rule is proposed as an emergency action because of the need to ensure the existence of adequate, qualified caregivers and the limited timetable for implementation of MRT initiatives.

For Rules that Either Establish or Modify a Violation or Penalties Associated with a Violation:

This regulation does not create or modify any penalty. Consequently, no cure period has been considered.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

All counties in NYS have rural areas with the exception of 7 downstate counties. Counties with rural areas are served by 92 of the existing 130 certified home health agencies in NYS.

Reporting, Record Keeping and Other Compliance Requirements and Professional Services:

Providers will continue to have personnel and clinical record requirements and are expected to maintain a Health Commerce System account to communicate with the Department.

Professional personnel required of the certified home health agencies is unchanged from existing requirements.

Costs:

All successful candidates will be required to pay the $2,000 application fee. The application fees are statutorily mandated, in Public Health Law §3605(13).

Some newly certified home health agencies may choose to pay accreditation fees, which are estimated at $3,000 - $7,000 every 3 years depending on the organization, size of the agency, and number of sites surveyed to become certified to participate in the Medicare and Medicaid system if state surveyors are unable to perform initial and pre-opening surveys due to resource constraints. These survey types are considered the

lowest priority for federal surveillance purposes under the Centers for Medicare and Medicaid Services (CMS) 1864 contract that CMS has with the state. State obligations under this contract with CMS require that all required surveillance activities for existing program are completed prior to conducting pre-opening and initial surveys activities that are required for new providers to begin operations. Newly approved providers may choose to become accredited in order to begin operations in a more expedited time frame.

Minimizing Adverse Impact:

The Department considered State Administrative Procedure Act (SAPA) Section 202-bb(2), in developing this rule, but has determined that because the rule simply provides for a limited expansion of public need to address implementation of Medicaid Redesign Team (MRT) initiatives and access to CHHA services in underserved counties, there is no adverse impact on rural areas.

Rural Area Participation:

This rule is proposed as an emergency action because of the limited timetable for implementation of MRT initiatives.

Job Impact Statement

Nature of Impact:

The Department has determined that the proposed rules will not have an adverse impact on jobs and employment opportunities. The 130 certified home health agencies (CHHA) statewide directly employ approximately 54,290 full time equivalents (FTEs), most of whom are professionally licensed by the State Education Department and subject to the credentialing rules of that Department. A minimal number of persons with criminal histories may be denied employment, which is a similar restriction in other health care provider types.

Categories and Numbers Affected:

The establishment of new certified home health agencies will be required to hire professional as well as support staff. A major reason for this rule is increased access in smaller rural counties and should have the effect of creating additional employment opportunities in these areas.

Regions of Adverse Impact:

None

Minimizing Adverse Impact:

Not applicable.

Self-Employment Opportunities:

Not applicable.

Emergency Justification

This amendment to Title 10 NYCRR section 760.5 is being filed as an emergency action to further the Medicaid Redesign Team (MRT) initiatives that are intended to facilitate the transition of Medicaid cases from traditional fee-for-service programs to managed care, managed long term care plans, integrated health systems, and other types of care coordination models. The timetable for this shift is relatively short, and a limited expansion of public need will ensure a sufficient number of certified home health agencies (CHHAs) are available to provide services in connection with this shift. This will result in cost savings for the Medicaid program, enhance care coordination, and increase quality and efficiency of providing home health services to Medicaid beneficiaries. This emergency action will also ensure adequate care is available for patients in need and improve management of high cost and complex cases, and improve care coordination and the provision of home health services within integrated health care systems. Finally, establishment or expansion of CHHAs in counties with limited access will ensure adequate care is available to persons in need, will ensure continuity of care and will provide expanded patient choice to home health services in those areas where choice has recently become limited.

Pursuant to the authority vested in the Public Health and Health Planning Council, and subject to the approval of the Commissioner of Health by Section 2803(2)(a) of the Public Health Law, section 401.2 of Part 401 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York, is amended to be effective upon filing with the Secretary of State, to read as follows:

Section 401.2 is amended to read as follows:

401.2 Limitations of operating certificates. Operating certificates are issued to established operators subject to the following limitations and conditions:

(a) The medical facility shall control admission and discharge of patients or residents to assure that occupancy shall not exceed the bed capacity specified in the operating certificate, except that a hospital may temporarily exceed such capacity in an emergency.

(b) An operating certificate shall be used only by the established operator for the designated site of operation, except that the commissioner may permit the established operator to operate at an alternate or additional site approved by the commissioner on a temporary basis in an emergency. **[**provided that an] An operating certificate issued for a facility approved to provide:

(1) chronic renal dialysis services shall also encompass the provision of such services to patients at home;

(2) comprehensive outpatient rehabilitation facility (CORF) services shall also encompass the provision of the following services offsite: physical therapy, occupational

therapy, speech pathology and in addition, home visits to evaluate the home environment in relation to the patient's established treatment goals; and

(3) outpatient physical therapy, occupational therapy and/or speech-language pathology services shall also encompass the provision of home visits to evaluate the home environment in relation to the patient's established treatment goals.

(c) An operating certificate shall be posted conspicuously at the designated site of operation.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The authority for the promulgation of these regulations is contained in section 2803(2)(a)(v) of the Public Health Law, which authorizes the Public Health and Health Planning Council to adopt and amend rules and regulations, subject to the approval of the Commissioner, that define standards and procedures relating to hospital operating certificates.

Legislative Objective:

The regulatory objective of this authority is to permit the Commissioner of the Department of Health to ensure access to health care in communities where a crisis has prevented or limited an existing local health care facility operator from operating at the site designated on its operating certificate.

Needs and Benefits:

This amendment would give the Commissioner the ability to safeguard the health and welfare of residents of areas affected by emergency situations by permitting operators of health care facilities to resume operations at temporary sites. Under the existing regulation, the Commissioner has no authority to permit an operator to operate its health care facility at any site other than that designated on the operating certificate. In the event all or part of a facility cannot be used due to circumstances related to an emergency such as a natural disaster or a fire, this amendment would permit the

Commissioner to act quickly to ensure that the patients or residents of the operator are temporarily served at an alternate or additional site appropriate under the circumstances. The operator of the affected facility would be able to continue to meet the needs of its patients or residents at a safe and appropriate alternate or additional site pending the repair, replacement or relocation of the designated site of operation.

COSTS:

Costs for the Implementation of, and Continuing Compliance with this Regulation to Regulated Entity:

None. The ability to receive revenue through continued operations during the temporary relocation would be a benefit to the regulated entity.

Cost to the Department of Health:

There will be no costs to the Department.

Local Government Mandates:

This amendment will not impose any program service, duty or responsibility upon any county, city, town, village school district, fire district or other special district.

Paperwork:

This amendment will increase the paperwork for providers only to the extent required by the temporary relocation of their operations.

Duplication:

This regulation does not duplicate, overlap or conflict with any other state or federal law or regulations.

Alternatives:

No alternatives were considered, as § 401.2 (b) presents the only barrier to allowing a health care facility operator to operate at a site not designated on its operating certificate.

Federal Standards:

This amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

The proposed amendment will become effective upon filing with the Secretary of State.

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Bureau of House Counsel, Regulatory Affairs Unit
Corning Tower Building, Rm. 2438
Empire State Plaza
Albany, New York 12237
(518) 473-7488
(518) 473-2019 (FAX)
REGSQNA@health.state.ny.us

REGULATORY FLEXIBILITY ANALYSIS

Effect on Small Businesses and Local Governments:

No impact on small businesses or local governments is expected.

Compliance Requirements:

This amendment does not impose new reporting, record keeping or other compliance requirements on small businesses or local governments.

Professional Services:

No new professional services are required as a result of this proposed action.

Compliance Costs:

This amendment does not impose new reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Economic & Technology Feasibility:

This amendment does not impose any new financial or technical burdens upon regulated entities.

Minimizing Adverse Impact:

There is no adverse impact.

Opportunity for Small Business Participation:

Any operator of a hospital as defined under Article 28 of the Public Health Law, regardless of size, may need to operate its facility at another or additional location in an emergency. This amendment would allow it to do so.

No Amelioration or Cure Period Necessary:

This amendment does not involve the establishment or modification of a violation or of penalties associated with a violation. It merely gives operators of hospitals as defined under Article 28 of the Public Health Law the ability to temporarily operate at sites not designated on their operating certificates in times of emergency. Therefore, as no new penalty could be imposed as a result of this amendment, no cure period was included.

RURAL AREA FLEXIBILITY ANALYSIS

Types and Estimated Number of Rural Areas:

This rule will apply to all operators of hospitals as defined under Article 28 of the Public Health Law. These businesses are located in rural, as well as suburban and metropolitan areas of the State.

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

No new reporting, recordkeeping or other compliance requirements and professional services are needed in a rural area to comply with the proposed rule.

Compliance Costs:

There are no direct costs associated with compliance.

Minimizing Adverse Impact:

There is no adverse impact.

Opportunity for Rural Area Participation:

Any operator of a hospital as defined under Article 28 of the Public Health Law, including those in rural areas, may need to operate its facility at another location in an emergency. This amendment would allow it to do so.

JOB IMPACT STATEMENT

Nature of Impact:

It is not anticipated that there will be any impact of this rule on jobs or employment opportunities.

Categories and Numbers Affected:

This rule will apply to all operators of hospitals as defined under Article 28 of the Public Health Law.

Regions of Adverse Impact:

This rule will apply to operators of hospitals as defined under Article 28 of the Public Health Law in all regions within the State, but it will have no adverse impact on those operators or their employees.

Minimizing Adverse Impact:

The rule would not impose any additional requirements upon regulated entities, and therefore there would be no adverse impact on jobs or employment opportunities.

Self-Employment Opportunities:

The rule is expected to have no impact on self-employment opportunities.

EMERGENCY JUSTIFICATION

The amendment to 10 NYCRR 401.2 (b) will give the Commissioner the ability to safeguard the health and welfare of residents of areas affected by emergency situations by permitting operators of health care facilities licensed pursuant to Public Health Law Article 28 ("facilities") to resume or continue operations at temporary sites.

Recent weather events have required the temporary evacuation of facilities in the New York metropolitan area and relocation of facilities in Broome and Tioga Counties due to flooding. Section 401.2 (a) of Title 10 allows operators to temporarily exceed the bed capacities stated on their facilities' operating certificates, which, during the recent emergencies, has allowed operators of facilities impacted by those weather events to transfer their patients or residents to other facilities temporarily. This was effective in the New York metropolitan area due to the availability of adequate space in surrounding facilities and due to the lack of any significant damage to the evacuated facilities. In Broome and Tioga Counties, however, the heavy flooding caused lasting damage to facilities, thereby threatening patients' access to health care in clinic space and requiring residents of nursing homes to be moved to space in other nursing homes in the area.

Because section 401.2 (b) of Title 10 currently limits an operator's operating certificate to the site of operation set forth in the operating certificate, an operator of an impacted facility is not able to care for its patients or residents at any other site until the Commissioner has approved a certificate of need application for the relocation of the facility. In Broome County, a hospital filed applications to relocate some of its extension clinics, but a more expedient process could have better mitigated issues of access to

health care. Residents of flooded nursing homes have been cared for in other local nursing homes that had adequate space due to the recent decertification of beds in that area. Although an application to relocate one of the flooded nursing home is expected, currently, nursing homes in Broome County are now at capacity and are unable to accept hospital patients who need to be discharged to nursing home level of care. The number of such patients has been steadily increasing.

This amendment to 10 NYCRR 401.2 (b) is necessary now to allow appropriate arrangements by operators of affected facilities in a manner that will not adversely impact the ability of hospitals in Broome County to properly discharge patients to area nursing homes. The amendment is also necessary to ensure access to appropriate health care for patients or residents during the next time of emergency.

Pursuant to the authority vested in the Public Health and Health Planning Council, and subject to the approval of the Commissioner of Health by Section 2803(2)(a) of the Public Health Law, section 401.2 of Part 401 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York, is amended to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Section 401.2 is amended to read as follows:

401.2 Limitations of operating certificates. Operating certificates are issued to established operators subject to the following limitations and conditions:

(a) The medical facility shall control admission and discharge of patients or residents to assure that occupancy shall not exceed the bed capacity specified in the operating certificate, except that a hospital may temporarily exceed such capacity in an emergency.

(b) An operating certificate shall be used only by the established operator for the designated site of operation, except that the commissioner may permit the established operator to operate at an alternate or additional site approved by the commissioner on a temporary basis in an emergency. **[**provided that an] An operating certificate issued for a facility approved to provide:

(1) chronic renal dialysis services shall also encompass the provision of such services to patients at home;

(2) comprehensive outpatient rehabilitation facility (CORF) services shall also encompass the provision of the following services offsite: physical therapy, occupational

therapy, speech pathology and in addition, home visits to evaluate the home environment in relation to the patient's established treatment goals; and

(3) outpatient physical therapy, occupational therapy and/or speech-language pathology services shall also encompass the provision of home visits to evaluate the home environment in relation to the patient's established treatment goals.

(c) An operating certificate shall be posted conspicuously at the designated site of operation.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The authority for the promulgation of these regulations is contained in section 2803(2)(a)(v) of the Public Health Law, which authorizes the Public Health and Health Planning Council to adopt and amend rules and regulations, subject to the approval of the Commissioner, that define standards and procedures relating to hospital operating certificates.

Legislative Objective:

The regulatory objective of this authority is to permit the Commissioner of the Department of Health to ensure access to health care in communities where a crisis has prevented or limited an existing local health care facility operator from operating at the site designated on its operating certificate.

Needs and Benefits:

This amendment would give the Commissioner the ability to safeguard the health and welfare of residents of areas affected by emergency situations by permitting operators of health care facilities to resume operations at temporary sites. Under the existing regulation, the Commissioner has no authority to permit an operator to operate its health care facility at any site other than that designated on the operating certificate. In the event all or part of a facility cannot be used due to circumstances related to an emergency such as a natural disaster or a fire, this amendment would permit the

Commissioner to act quickly to ensure that the patients or residents of the operator are temporarily served at an alternate or additional site appropriate under the circumstances. The operator of the affected facility would be able to continue to meet the needs of its patients or residents at a safe and appropriate alternate or additional site pending the repair, replacement or relocation of the designated site of operation.

COSTS:

Costs for the Implementation of, and Continuing Compliance with this Regulation to Regulated Entity:

None. The ability to receive revenue through continued operations during the temporary relocation would be a benefit to the regulated entity.

Cost to the Department of Health:

There will be no costs to the Department.

Local Government Mandates:

This amendment will not impose any program service, duty or responsibility upon any county, city, town, village school district, fire district or other special district.

Paperwork:

This amendment will increase the paperwork for providers only to the extent required by the temporary relocation of their operations.

Duplication:

This regulation does not duplicate, overlap or conflict with any other state or federal law or regulations.

Alternatives:

No alternatives were considered, as § 401.2 (b) presents the only barrier to allowing a health care facility operator to operate at a site not designated on its operating certificate.

Federal Standards:

This amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

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

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New York State Department of Health
Bureau of House Counsel, Regulatory Affairs Unit
Corning Tower Building, Rm. 2438
Empire State Plaza
Albany, New York 12237
(518) 473-7488
(518) 473-2019 (FAX)
REGSQNA@health.state.ny.us

REGULATORY FLEXIBILITY ANALYSIS

Effect on Small Businesses and Local Governments:

No impact on small businesses or local governments is expected.

Compliance Requirements:

This amendment does not impose new reporting, record keeping or other compliance requirements on small businesses or local governments.

Professional Services:

No new professional services are required as a result of this proposed action.

Compliance Costs:

This amendment does not impose new reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Economic & Technology Feasibility:

This amendment does not impose any new financial or technical burdens upon regulated entities.

Minimizing Adverse Impact:

There is no adverse impact.

Opportunity for Small Business Participation:

Any operator of a hospital as defined under Article 28 of the Public Health Law, regardless of size, may need to operate its facility at another or additional location in an emergency. This amendment would allow it to do so.

No Amelioration or Cure Period Necessary:

This amendment does not involve the establishment or modification of a violation or of penalties associated with a violation. It merely gives operators of hospitals as defined under Article 28 of the Public Health Law the ability to temporarily operate at sites not designated on their operating certificates in times of emergency. Therefore, as no new penalty could be imposed as a result of this amendment, no cure period was included.

RURAL AREA FLEXIBILITY ANALYSIS

Types and Estimated Number of Rural Areas:

This rule will apply to all operators of hospitals as defined under Article 28 of the Public Health Law. These businesses are located in rural, as well as suburban and metropolitan areas of the State.

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

No new reporting, recordkeeping or other compliance requirements and professional services are needed in a rural area to comply with the proposed rule.

Compliance Costs:

There are no direct costs associated with compliance.

Minimizing Adverse Impact:

There is no adverse impact.

Opportunity for Rural Area Participation:

Any operator of a hospital as defined under Article 28 of the Public Health Law, including those in rural areas, may need to operate its facility at another location in an emergency. This amendment would allow it to do so.

JOB IMPACT STATEMENT

Nature of Impact:

It is not anticipated that there will be any impact of this rule on jobs or employment opportunities.

Categories and Numbers Affected:

This rule will apply to all operators of hospitals as defined under Article 28 of the Public Health Law.

Regions of Adverse Impact:

This rule will apply to operators of hospitals as defined under Article 28 of the Public Health Law in all regions within the State, but it will have no adverse impact on those operators or their employees.

Minimizing Adverse Impact:

The rule would not impose any additional requirements upon regulated entities, and therefore there would be no adverse impact on jobs or employment opportunities.

Self-Employment Opportunities:

The rule is expected to have no impact on self-employment opportunities.

Summary of Express Terms

This rule creates a new Part 403 in Title 10 (Health) of the NYCRR. This part defines the rules for implementing Chapter 594 of the Laws of 2008 (Public Health Law § 3613) which requires the Department of Health (DOH) to establish a Home Care Worker Registry and the rights, duties and obligations of home care services workers, home care services agencies, and home care training and education programs.

Workers providing home health aide services and personal care aide services are covered by the rule. All agencies providing either home health aide or personal care aide services, including those operated by municipalities, are covered. All education and training programs for home health or personal care aides approved by either DOH or the State Education Department are covered.

The statute requires that, starting September 25, 2009, information about each and every home care services worker and every training program must be entered into a registry that is accessible to the public and to employers and prospective employers of such workers. The registry must be available through the DOH website and by a toll-free number.

Section 403.1 defines the groups and classes of persons and entities to whom the regulation applies.

Section 403.2 includes all of the definitions applicable to the rule. These include Commissioner, Department, home care services entity (entity), home care services worker (worker), home care services worker registry (registry), home care services

worker trainee (trainee), state-approved education or training program (program), successfully completed or successful completion, and senior official.

Section 403.3 includes general requirements applicable to education and training programs.

Section 403.4 includes the responsibilities of state-approved education and training programs. Among those responsibilities are the entry of data about each and every training program that begins on or after September 25, 2009, into the registry within 10 business days after the beginning of the program, and entering required information from PHL § 3613(3)(a)-(e) about each trainee who completes the program into the registry within 10 days after completion of the program. Programs must also certify that they have verified the identity of each trainee within 10 days after the aide has successfully completed a training program, and must issue a certificate of completion to the trainee within 10 business days after execution of the certification of identity. Programs are also responsible for correcting incorrectly entered information that they entered.

Section 403.5 includes the responsibilities of home care services entities. Among these is the entry of required information into the registry about all employees prior to their performing home care services. Entities are required to check that the employee's training information is in the registry before they are allowed to provide home care services. Entities must update the registry to include additional information provided by the employee. Entities are also responsible for correcting incorrectly entered information that they entered. Required information must be entered into the registry within 10 business days after a triggering event. Entities must also create original entries into the

registry about persons who completed their home care services worker training before September 25, 2009, and who were employed on that date. This information must have been entered before September 25, 2010.

Section 403.6 includes the responsibilities of home care services workers and trainees. They are required to provide training programs and home care services entities with all information required for the registry and all identity information.

Section 403.7 describes other responsibilities including record keeping requirements.

Conforming amendments to existing regulations are included in Title 10, sections 763.13 and 766.11 and Title 18, sections 505.14 and 505.23.

Pursuant to the authority vested in the Commissioner of Health by section 3613(9) of the Public Health Law, a new Part 403 is added and sections 763.13 and 766.11 of Title 10 (Health), and sections 505.14 and 505.23 of Title 18 (Social Services) of the Official Compilation of Codes, Rules and Regulations of the State of New York, are amended, to be effective on publication of a Notice of Adoption in the New York State Register, to read as follows:

A new Part 403 is added to Title 10 NYCRR to read as follows:

CHAPTER V, SUBCHAPTER A

MEDICAL FACILITIES – MINIMUM STANDARDS

PART 403

HOME CARE WORKER REGISTRY

(Statutory Authority: Public Health Law section 3613(9))

Sec.

Section 403.1 Applicability.

(a) This Part shall apply to every home care services agency certified, licensed or authorized under Article 36 of the Public Health Law, including agencies exempt under Public Health Law Section 3619; any education or training program for home health aides or personal care aides that is authorized, licensed or approved by either the Department or the New York State Education Department; and any person who has successfully completed a state approved education or training program.

(b) Nothing in this Part shall be construed to amend, supersede or otherwise modify any requirements of the regulations of the Department of Health relating to the education or training of home health aides or personal care aides by New York State authorized education or training programs.

Section 403.2 Definitions.

For purposes of this Part, the following terms shall have the following meanings:

(a) "Commissioner" means the Commissioner of Health of the State of New York.

(b) "Department" means the New York State Department of Health.

(c) "Home care services entity" or "entity" means a home care services agency or other entity providing home care services subject to Article 36 of the Public Health Law or exempt under section 3619 of such law.

(d) "Home care services worker" or "worker" means any person engaged in or applying to become engaged in providing home health aide services, as defined in Public

Health Law section 3602(4) or personal care aide services, as defined in Public Health Law section 3602(5).

(e) "Home care services worker registry" or "registry" means the home care services worker registry established by Public Health Law section 3613.

(f) "Home care services worker trainee" or "trainee" means an individual who has applied for and been accepted into a state approved education or training program.

(g) "State approved education or training program" or "program" means a program that provides education or training for persons to meet any requirement established by the Department for providing home health aide services or personal care services, which program is approved by the Department or the New York State Education Department.

(h) "Successfully completed" or "successful completion" means, in connection with home health aide training, compliance with 10 NYCRR 700.2(b)(9); in connection with personal care aide training, it means compliance with 18 NYCRR 505.14(e).

(i) "Senior official" means an individual with responsibility for oversight of a training program and who is authorized to execute a legally binding instrument on behalf of the operator of the program. The senior official may be the operator if the operator is a natural person.

Section 403.3 General requirements.

(a) Each state approved education or training program and home care services entity must request and submit information required for the registry as specified in this Part. Each program and entity shall designate at least two individuals to access and enter

data in the registry and shall submit the names, positions and contact information for each such individual to the Department in the form and manner required by the Department.

(b) Each program or entity subject to the provisions of this Part shall have policies and procedures designed to implement the provisions of this Part.

(c) Only an individual designated in accordance with subsection (a) of this section shall submit the information to the registry. Home care services workers or trainees may submit information to any such individual for inclusion in the registry as specified in this Part.

Section 403.4 Responsibilities of State Approved Education or Training Programs.

(a) Any entity that offers or provides a state approved education or training program shall, for each trainee who begins a training program:

(1) (i) verify the identity of the trainee by examining at least one of the following unexpired documents:

(a) Driver's license or identification card issued by a State or outlying possession of the United States, provided it contains a photograph or information such as name, date of birth, gender, height, eye color and address;

(b) Identification card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address;

(c) School identification card with a photograph;

(d) Voter's registration card;

(e) United States Military card or draft record;

(f) Military dependent's identification card;

(g) United States Coast Guard Merchant Mariner Card;

(h) Native American tribal document;

(i) Driver's license issued by a Canadian government authority;

(j) United States Passport or United States Passport Card;

(k) Permanent Resident Card or Alien Registration Receipt Card; or

(l) Employment Authorization Document that contains a photograph.

(ii) For any such document examined, information regarding the document title, issuing authority, document number and expiration date, if any, must be recorded and maintained in the permanent records of the program.

(iii) If the trainee fails to provide any of the documents specified in subsection (a), the training program must deny participation in the program.

(2) Obtain all of the information required by section 3613(3)(a)-(e) of the Public Health Law and maintain such information in the permanent records of the program;

(3) Within 10 business days of successful completion of the program, enter the information required by section 3613(3)(a)-(e) of the Public Health Law into the registry in the form and manner required by the Department;

(4) Upon request of a trainee or a person who has successfully completed an approved education or training offered by the program, and upon proof of identity, provide access to complete registry information relating to such person, including a printed report if requested.

(5) Within 10 business days after a request by a trainee or a person who has successfully completed an approved education or training offered by the program, correct information entered incorrectly into the registry by the program. A program must request verification from the worker supporting the correction.

(6) Within 10 business days after a trainee has successfully completed an approved education or training offered by the program, ensure that a written sworn statement by the senior official of the entity, made under penalty of perjury, has been fully executed and included in the permanent records of the program. The written sworn statement must:

(a) identify each trainee who has successfully completed the program by name, address, date of birth and date of completion of the program;

(b) describe the nature of the education or training covered in the program;

(c) certify that the trainee has in fact successfully completed the identified program; and

(c) certify that the entity has verified the true identity of each trainee who has successfully completed the identified program as required in subsection (a)(1) of this section.

(7) Within 10 business days after the written sworn statement described in subsection (a)(6) of this section has been executed by the senior official of the entity, print and sign the certificate of successful completion generated by the Department and provide a copy of the signed certificate to the trainee. The original certificate must be maintained in the permanent records of the program.

(b) Any entity that offers or provides a state approved education or training program shall submit information to the registry about each class offered to train or educate home care services workers, before or within 10 business days after the commencement of the class, regarding the following:

(1) Name and date of birth of each person attending the program;

(2) The location, dates and times where the classroom portion of the program will be held;

(3) The name, title and qualifications of the person(s) who will be delivering the classroom instruction; and

(4) The anticipated date of graduation.

Section 403.5 Responsibilities of Home Care Services Entities.

(a) A home care services entity will have the following responsibilities with respect to home care services workers employed on or after September 25, 2009:

(1) For any home care services worker who began their training on or after September 25, 2009, a home care services entity shall access the worker's registry information prior to the worker beginning to provide home care services for that entity.

(2) A person who successfully completed a state approved education or training program for home health aides or personal care aides that began on or after September 25, 2009, may not provide home care services unless the person's information has been posted to the registry by the education or training program.

(3) within 10 business days after the worker has been employed by the home care services entity, enter the information required by section 3613(3)(f) of the Public Health Law into the registry in the form and manner required by the Department;

(4) For all home care services workers who successfully completed training before September 25, 2009, prior to the worker beginning to provide home care services, a home care services entity must access the worker's registry information. If the worker is not yet listed in the registry, the entity shall, prior to the individual beginning to provide home care services:

(i) Obtain the information required by section 3613(3)(a)-(f) of the Public Health Law from the home care services worker;

(ii) Obtain a copy of the certificate issued to the prospective employee by the state-approved training program; and

(iii) Enter the information required by Public Health Law section 3613(3)(a)-(f) into the registry.

(5) Within 10 business days after the home care services worker begins to provide home care services, update the registry information to show the worker's employment with the entity, including the start date;

(6) Within 10 business days after receiving information from a home care services worker that is not in the registry, update the registry to include the new or updated information. If the updated information is a change of name, obtain and retain documentation of the change as provided in section 403.6(a)(4) of this Part;

(7) Within 10 business days after a home care services worker's employment with the entity is terminated, update the registry with the date on which the worker's employment with the entity was terminated;

(8) Upon request of any home care services worker currently employed by the entity, provide access to complete registry information relating to the employee, including a printed report if requested.

(9) Within 10 business days after a request by a home care services worker, correct information in the registry that was entered incorrectly by the entity. An entity must request verification from the worker supporting the correction. If the correction involves a change of name, obtain and retain documentation of the change as provided in section 403.6(a)(4) of this Part.

(b) For every home care services worker who was employed by a home care services entity as of September 25, 2009, the home care services entity shall, on a schedule provided by the Department, enter all of the information required by section 3613(3)(a)-(f) of the Public Health Law on the registry with respect to such workers.

Section 403.6 Responsibilities of Home Care Services Workers.

(a) Home care services workers have the following responsibilities:

(1) Workers must retain in good order their certificate of successful completion of training and display it to a prospective employer when requested;

(2) If a worker discovers that a training program or entity incorrectly entered information regarding the worker in the registry, the worker must provide corrected

information, including any verification of the change that may be requested, to the training program or entity;

(3) If any information required for the registry changes, the worker must inform the program or entity of the changes and provide verification of the change as requested by the program or entity;

(4) If a worker changes his or her name, the worker must provide proof of the name change to the program or entity. The program or entity will change the worker's name in the registry and must retain a copy of the proof submitted in the entity's permanent records. Appropriate proof of change of name includes copy of a certificate of marriage, decree of divorce, or other court order authorizing a person to change his or her name.

Section 403.7 Other responsibilities.

(a) Each program shall establish, maintain, and keep such records as are required to show compliance with this Part for a period of 6 years after the successful completion of training, unless otherwise directed by the Department or the New York State Education Department.

(b) Each entity shall establish, maintain, and keep such records as are required to show compliance with this Part for a period of 6 years after the termination of a worker's employment, unless otherwise directed by the Department.

Subdivision (b) of section 763.13 of Title 10 NYCRR is amended to read as follows:

(b) (1) that qualifications as specified in section 700.2 of this Title are met; [and]

(i) that the information required by Public Health Law section 3613(3)(a)-(f) has been entered into the home care services worker registry in accordance with Part 403 of this Title; and

(ii) a criminal history record check to the extent required by section 400.23 and Part 402 of this Title.

Subdivision (b) of section 766.11 of Title 10 NYCRR is amended to read as follows:

(b) (1) that qualifications for home health aide and personal care aide as specified in section 700.2 of this Title are met; and

(2) that the information required by Public Health Law section 3613(3)(a)-(f) has been entered into the home care services worker registry in accordance with Part 403 of this Title.

Paragraph (4) of subdivision (d), of section 505.14 of Title 18 NYCRR is amended to read as follows:

(4) The minimum criteria for the selection of all persons providing personal care services shall include, but are not limited to, the following:

(i) maturity, emotional and mental stability, and experience in personal care or homemaking;

(ii) ability to read and write, understand and carry out directions and instructions, record messages, and keep simple records;

(iii) sympathetic attitude toward providing services for patients at home who have medical problems; [and]

(iv) good physical health, as indicated by the documentation in the personnel file of all persons providing personal care services. This documentation must include the same assurances and proof of good physical health that the Department of Health requires for employees of certified home health agencies pursuant to 10 NYCRR 763.4[.];

(v) a criminal history record check to the extent required by 10 NYCRR 400.23[.]; and

(vi) compliance with Part 403 of Title 10 NYCRR, as required in that Part.

Paragraphs (7), (8) and (9) of subdivision (e) of section 505.14 of Title 18 NYCRR are amended to read as follows:

(7) The successful participation of each person providing personal care services in approved basic training, competency testing and continuing in-service training programs shall be documented in that person's personnel records. Documentation shall include the following items:

(i) a completed employment application or other satisfactory proof of the date on which the person was hired; and

(ii) (*a)* for persons who completed a training program before September 25, 2009, a dated certificate, letter or other satisfactory proof of the person's successful completion of a basic training program approved by the department; or

(*b)*for persons who completed a training program on or after September 25, 2009, that information required by Part 403 of Title 10 NYCRR.

(iii) dated certificates, written references, letters or other satisfactory proof that the person:

(a) meets the qualifications specified in clause (4)(i)(a) or (b) of this subdivision; and

(b) has successfully completed competency testing and any remedial basic training necessary as a result of such testing. The dated and scored competency testing instruments and record of any remedial training provided shall be maintained;

(iv) an in-service card, log or other satisfactory proof of the employee's participation in three hours of in-service training semiannually.

(8) The local social services district shall develop a plan for monitoring the assignments of individuals providing personal care services to assure that individuals are in compliance with the training requirements. This plan shall be submitted by the local social services district to the Department for approval and shall include, as a minimum, specific methods for monitoring each individual's competency testing, and in-service requirements specified in this subdivision. Methods of compliance with the basic training, monitoring may include: onsite reviews of employee personnel records; establishment of a formal reporting system on training activities; establishment of requirements for submittal of certificates or other documentation prior to each individual's assignment to a personal care service case; or any combination of these or other methods. The monitoring plan must include provision for assuring that training programs have complied with the requirement Part 403 of Title 10 NYCRR related to the home care services worker registry.

(9) When a provider agency is not in compliance with department requirements for training, or when the agency's training efforts do not comply with the approved plan for that agency, or the agency has failed to comply with the requirements of Part 403 of Title 10 NYCRR, the Department shall withdraw the approval of that agency's training plan.

No reimbursement shall be available to local social services districts, and no payments shall be made to provider agencies for services provided by individuals who are not trained in accordance with department requirements and the agency's approved training plan.

Subparagraph (iii) of paragraph (3) of subdivision (a) of section 505.23 of Title 18 NYCRR is amended to read as follows:

(iii) home health aide services, as defined in the regulations of the Department of Health, provided by a person who meets the training requirements of the Department of Health, whose information as required by Part 403 of Title 10 NYCRR has been entered into the home care services worker registry, is assigned by a registered professional nurse to provide home health aide services in accordance with a recipient's plan of care, and is supervised by a registered professional nurse from a certified home health agency or a therapist, in accordance with the regulations of the Department of Health.

Regulatory Impact Statement

Statutory Authority:

The statutory authority for this rule is Chapter 594 of the Laws of 2008, which requires the Department of Health to create and populate a health care services worker registry. The Chapter has been codified as Section 3613 of the Public Health Law.

Legislative Objectives:

To protect homebound, care-dependent New Yorkers by establishing a central registry of persons who have successfully completed state approved education or training programs for home health aides and personal care aides.

Needs and Benefits:

According to the sponsor's memorandum for the legislation, the Office of the Attorney General (OAG) investigations uncovered "fraud and abuse in the home health care industry, . . . as it relates to the education and training . . . [of] home health aides or personal care aides . . ." These investigations uncovered instances of training programs issuing fraudulent certificates to persons who either had not been trained or had not demonstrated competence to perform necessary tasks. The memo proposed that the existing methods for verification of education and training were "insufficient to prevent and deter fraud. In some cases, the training programs issuing fraudulent certificates, when contacted by home care services entities, represented that the fraudulent certificates were valid, when, in truth and fact, they were not. Frauds relating to fraudulent

certificates…[were]… occurring throughout the State, endangering New York's most vulnerable population and costing taxpayers tens of millions of dollars."

Again, citing the sponsor's memo, the statute being implemented by this regulation is the legislature's "crucial first step" in reducing or eliminating fraudulent training. Using the nurse aide registry established by Public Health Law section 2803-j as a model, the legislation proposes to extend protections that exist in the nursing home context to homebound, care-dependent persons. The public nature of the registry will allow not only contractors and employers of home care services workers access to education and training information, but also will make this information available to members of the public.

Certified aides will not be able to gain employment until their training and employment information is posted on the Registry. For this reason, the Department decided on timeframes that were reasonable, but would not prevent an aide from being employed.

A central registry will help facilitate the Department's ability to track home care services workers, and will thus provide greater transparency and accountability, which, in turn, will enhance the quality of care delivered to the vulnerable population served by the home health care industry.

Costs:

Costs to Regulated Parties for the Implementation of and Continuing Compliance with the Rule:

Those agencies that hire additional staff solely for the purpose of collecting, entering and maintaining data related to the requirements of the registry will incur a continuing cost for such staff. The extent of the cost will be tied to the rate of pay for such employee(s) and will likely vary depending on skill level. It is estimated that it will take approximately a third of an hour (20 minutes) for an administrative staff person, with an average hourly wage of fifteen dollars, to enter the required data into and maintain it on the registry. This cost would apply to information that must be entered by the training program and also by the employer. In 2008, there were approximately 50,000 new home care and personal care aides. Based on this information, the overall administrative cost for entering information pertaining to new aides would be $500,000 spread across the state. There will be an additional cost during the first year to input aides currently employed into the Home Care Registry. These costs will be incurred by the employers only.

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

Two million dollars was appropriated for implementation of the registry at the State level in the 2009-10 State Budget. These funds have been used in part to develop the software and hardware linkages needed to house the registry, and in part to fund state staff to maintain the registry once it is operational. Approximately $1 million will be needed annually to maintain the state staff and the registry functionality.

The information, including the source(s) of such information and the methodology upon which the cost analysis is based:

Information about appropriation levels was included in the 2009-10 State Budget. Information about staffing and worker training and retention was received from the home care provider associations and SEIU Local 1199.

Local Government Mandates:

Local governments that operate home care services agencies are exempt from many of the requirements of Article 36 of the Public Health Law. However, the enabling legislation for this regulation expressly includes exempted entities under its mandate. Thus, those local governments that operate home care services agencies must comply with the requirements for obtaining, reviewing, maintaining and updating registry information for home care services workers employed by such local governments.

In accordance with Executive Order 17, the following fiscal impact relates to the costs associated with the implementation of this regulation on local governments. Local governments will incur the same administrative costs as any other employment related entity. No additional funds are provided for local government to implement this new mandate. Of the 1, 200 licensed and certified home care services agencies, approximately 5% are operated by counties. Most Certified Home Health Agencies (CHHAs) do not hire aides directly, but subcontract with a Licensed Home Care Services Agency (LHCSA). Therefore much of the local administrative costs associated with this regulation will be borne by the county operated LHCSAs.

In order to determine the true impact this regulation will have on local governments, the Department limited the scope of agencies with employment responsibilities to the approximately 900 LHCSA sites operating in the state. Of this amount, only 11 LHCSAs (1% of the total) are operated by counties. Each year, approximately 500 new aides are employed through county operated LHCSAs. It should be noted that local governments do not operate training programs, and therefore will only incur the administrative costs associated with home care employers. Assuming all administrative costs are equal, it is estimated that the overall cost to implement this new requirement will be approximately $2,500 in total for all local governments operating LHCSAs. As with the general administrative costs associated with the Home Care Registry, costs will be higher in the first year to accommodate the necessary data entry required to enter all currently employed aides into the system.

Paperwork:

This rule requires significant "paperwork", although most of it may be addressed with electronic rather than actual paper documentation.

State approved training and education programs must:

Collect and maintain identity information from all trainees;

Maintain information about all training programs;

Post information about all training programs to the registry;

Post names of trainees to the registry;

Collect, maintain and post to the registry statutorily required information about trainees who have completed the training program;

Maintain a written certificate of completion and issue a copy to trainees who complete the training program; and

Complete, retain and provide a copy of a signed certificate for the required training for each trainee.

Home care services agencies must:

Collect and maintain identity information from employees providing home care services;

Maintain information about duration of employment for employees providing home care services; and

Collect, maintain and post statutorily required information to the registry about employees who provide home care services.

Duplication:

Some of the information required to be collected and entered into the registry by employers may be the same information employers are required to provide to the Department for mandatory criminal history record check. At the present time, these systems have different forms and do not communicate, thus requiring the employer to submit some information more than once. Given the limited time frame, the Department is not able to link these systems at this time, but there may be opportunities in the future to limit some of the duplicative information.

Alternatives:

Because the enabling legislation is very prescriptive, other alternatives, such as waiting until other DOH systems were linked to the Registry to avoid initial duplication of information, were not considered. This regulation is the minimum implementation required to give full effect to the statute by the required implementation date.

Federal Standards:

Not applicable.

Compliance Schedule:

Full compliance will be achieved immediately, as most aspects of these regulations have been implemented.

Contact Person: Katherine Ceroalo
New York State Department of Health
Bureau of House Counsel, Regulatory Affairs Unit
Corning Tower Building, Rm. 2438
Empire State Plaza
Albany, New York 12237
(518) 473-7488
(518) 473-2019 (FAX)
REGSQNA@health.state.ny.us

Consolidated Regulatory Flexibility Analysis
for Small Businesses and Local Governments

Effect of Rule:

Small businesses that will be affected by this rule include home care services agencies in the state that employ 100 or fewer persons and most state approved education and training programs for home health and personal care aides. There are approximately 500 training and education programs operating from approximately 700 sites statewide and approximately 1300 home care services agencies, many of which qualify as small businesses, and some of which are County operated. All of these will feel some impact from this rule, as all are affected by its requirements.

Compliance Requirements:

This rule establishes reporting and record keeping requirements for all impacted entities. Workers providing home health aide services and personal care aide services are required to report information to state approved education and training programs and employers. All education and training programs for home health or personal care aides approved by either DOH or the State Education Department are required to enter specific information about training programs, trainers and trainees into the registry, to maintain specific training records for six years after training is complete, and to issue a standardized certificate developed by the Department. All agencies providing either home health aide or personal care aide services, including those operated by municipalities, are required to collect and maintain identity and training information about covered home care services workers and must check the home care services worker registry before

assigning a worker to provide services, and update or enter required information into the registry if such information is not present.

The Department does not intend to publish a small business regulation guide in connection with this regulation. While this regulation will impact a substantial number of small business and local governments, the Department has determined that the impact itself is not "substantial." The Department does plan to issue additional guidance once the regulation has been published.

Professional Services:

No special professional services should be required to maintain the records or complete the data entry required by this rule, although covered educational programs and home care services agencies may need additional employees to perform these activities.

Compliance Costs:

Nominal capital and annual cost is anticipated for most impacted entities, including county governments that operate home care services agencies. All home care services agencies are already required to maintain a computer connection to the Health Provider Network (HPN) to receive and transmit information from and to the Department. No additional computer connections should be required. Those education and training programs that are not associated with a home care services agency will need to obtain an HPN account and maintain a computer connection to the internet. There is no charge for an HPN account; most organizations already maintain internet access of

some sort. The costs for small business and local governments should not be significantly different from the costs of other affected providers. The only significant continuing cost would be additional staff to perform the functions required by the regulation which would accrue to entities that do not presently have sufficient staff to perform these additional functions.

Economic and Technological Feasibility:

The Department has considered the economic and technical feasibility impact associated with this rule on small business and local government. While there may be economic issues associated with this rule, such as the need to hire additional staff, the legislation that this rule implements would require the same investment in staff and technology as the rule requires.

Minimizing Adverse Impact:

While the Department has considered the options of State Administrative Procedure Act (SAPA) Section 202-b.1 in developing this rule, the statutory mandate for the creation of the registry does not allow significant discretion in implementation. The Department has chosen generally to include only reporting and record keeping required by the legislation for home care services agencies. Most training programs are not in rural areas. The statute does not allow exemption from reporting to any particular entity type.

Small Business and Local Government Participation:

The Department will meet the requirements of SAPA Section 202-b(6) in part by publishing a notice of proposed rulemaking in the State Register with a comment period. The Department has already conducted meetings with representatives of statewide provider organizations representing home care services agencies and training programs including the Empire State Association of Assisted Living, NYS Association of Home Care Providers, Home Care Association of NYS, NY Association of Homes and Services for the Aging, as well as representatives of SEIU Local 1199, which represents significant numbers of home care services workers downstate. When the legislation was first introduced, most of the provider associations supported the bill.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

All rural areas of the State in which home care services agencies are located are equally affected. The impact on rural areas should be no greater and present no unique issues that differ from the impact on other areas of the State where these agencies are located.

Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services:

This rule establishes reporting and record keeping requirements for all covered entities. Workers providing home health aide services and personal care aide services are required to report information to state approved education and training programs and employers. All such programs for home health or personal care aides approved by either DOH or the State Education Department are required to enter specified information about training programs, trainers and trainees into the registry, must maintain specific training records for six years after training is complete, and must issue a standardized certificate developed by the Department. All agencies providing either home health aide or personal care aide services, including those operated by municipalities, are required to collect and maintain identity and training information about home care services workers and must both check the home care services worker registry before assigning a worker to provide services, and update or enter required information into the registry if such information is not present.

No special professional services should be required to maintain the records or complete the data entry, although covered educational programs and home care services agencies may need additional employees to perform these activities.

Costs:

Nominal capital and annual cost is anticipated for most impacted entities. All home care services agencies are already required to maintain a computer connection to the Health Provider Network (HPN) to receive and transmit information from and to the Department. No additional computer connections should be required. Those education and training programs that are not associated with a home care services agency will need to obtain an HPN account and maintain a computer connection to the internet. There is no charge for an HPN account; most organizations already maintain internet access of some sort. The cost in rural areas should not be significantly more than the cost in other areas of the state. The only significant continuing cost would be the possible need for additional staff to perform the functions required by the regulation.

Minimizing Adverse Impact:

The statutory mandate authorizing the creation of the registry does not allow the Department of Health significant discretion in implementation. The Department generally requires only such reporting and record keeping as provided for in the legislation for home care services agencies. Most training programs are not in rural areas. The statute does not allow exemption from reporting to any particular entity type.

Rural Area Participation:

The Department participated in an April 28, 2009 meeting on the implementation of the registry with representatives of statewide provider organizations representing home care services agencies and training programs, including the Empire State Association of Assisted Living, NYS Association of Home Care Providers, Home Care Association of NYS, NY Association of Homes and Services for the Aging, as well as representatives of SEIU Local 1199, which represents significant numbers of home care services workers downstate.

Job Impact Statement

Nature of Impact:

The Department has determined that the proposed rule will not have a substantial adverse impact on jobs and employment opportunities.

Categories and Numbers Affected:

There may be a minor increase in the number of jobs in office and administrative support occupations statewide, depending upon how many affected entities choose to hire additional staff to meet the record keeping requirements of the rule.

Regions of Adverse Impact:

None.

Minimizing Adverse Impact:

None.

Self-employment Opportunities:

Not applicable.

Amendment of 10 NYCRR Part 710
CON Notice Submissions

Brief Description

Chapter 174 of the Laws of 2011 amends Article 28 of the Public Health Law to eliminate requirements for limited review and CON review for projects confined to non-clinical infrastructure, repair and maintenance, and one-for-one equipment replacement, all regardless of cost. In place of the former limited review and CON requirements for these categories of projects, the amended Section 2802 requires the submission of only a written notice, applicable architect/engineer certification that the proposed project meets applicable statutes, codes and regulations, and a plan for patient safety during construction. These changes take effect on January 20, 2012.

Factual Tabulation and Analysis

Section 2802 of the Public Health Law seeks to ensure that the CON application process furnishes the Department with sufficient information to determine whether construction projects proposed by facilities subject to Article 28 are consistent with this standard. Section 2802 and Part 710 set forth three levels of review:

- Limited Review: This level of review requires only the submission of a narrative describing the construction activity to be undertaken, and where applicable, architecture/engineering drawings or certification. Limited review construction projects are generally not subject to review for financial feasibility or public need.

- Administrative CON review – This process requires submission of a CON application, which has considerably more detailed forms and schedules than the documents required for limited review. The process also involves review for financial feasibility and public need.

- Full CON review – Full review construction projects generally require the submission of the same forms and schedules as administrative review applications but, because of their generally greater complexity and higher costs, usually involve a more detailed review for financial feasibility and public need. They also require review by the Public Health and Health Planning Council for submission of a recommendation by the PHHPC to the Commissioner.

Under paragraph (4) of subdivision (c) of section 710.1, projects for facility repair and maintenance, and one-for-one replacement of non-medical and most medical equipment for which the total project costs are under $6 million are subject to limited review. Those between $6 million and $15 million require administrative CON review. Projects for one-for-one equipment replacement of certain types of major medical equipment –MRI's, therapeutic radiology devices, CT scanners and cardiac

catheterization equipment—regardless of cost, do not require an application, but only notification to the Department, and documentation that the equipment to be replaced is depreciated or no longer operational. Under section 710.1(c)(5), projects involving non-clinical infrastructure, including but not limited to windows, roof and wall repairs, parking garages, dietary, and solid waste and/or sewage disposal, whose costs are under $15 million are subject only to limited review. Non-clinical infrastructure projects that exceed $15 million are subject to administrative CON review. Non-clinical infrastructure projects that exceed this amount are not subject to full review, regardless of cost.

The amended section 2802 provides for a lower level of review for construction projects, regardless of cost, that involve only non-clinical infrastructure, facility repair and maintenance, or the one-for-one replacement of equipment. To reflect this change, there is a need to amend paragraphs (4) and (5) of subdivision (c) of section 710.1 to remove requirements that subject certain of such projects costing more than $6 million to administrative CON review and others exceeding $15 million to administrative or full review. In lieu of the submission of administrative or full review CON applications, the amended rules will require the submission of only a written notice and, where applicable, architect/engineer certification and a plan for patient safety during project construction.

For those repair/maintenance, equipment replacement and non-clinical infrastructure projects currently subject to administrative CON review and the relatively few such projects requiring full CON review, the amended section 2802 and accompanying changes in Part 710 will remove the need for applicants to submit the more elaborate and detailed CON application forms and schedules in favor of a simpler process requiring only a written notice and applicable architect/engineer certifications and patient safety plans. This will save providers considerable time in submitting construction projects to the Department.

The amended section 2802 also does not require that the Department furnish the applicant with a formal approval of the submitted project; nor would it allow the Department to require that the applicant await such approval. The amended statute also does not permit the Department to prescribe how far in advance of the project's intended implementation the required written notice must be submitted. Applicants may therefore proceed with their projects as soon as their written notices are submitted and receipt of the notice acknowledged by NYSE-CON, the electronic CON application processing mechanism. However, it will remain the responsibility of the applicant to construct and operate the project in full compliance with the medical facilities construction code (Parts 711 through 715), the hospital code (Part 405) and any other applicable regulations. Any violations thereof will be fully cited in the course of routine surveys, complaint investigations or other surveillance and enforcement activities.

The submission of written notices rather than CON applications, together with the absence of a need to await formal Department approval of proposed projects, will enable hospitals, nursing homes and diagnostic and treatment centers to undertake affected construction projects more quickly in response to changing market conditions. These changes will also enable providers to take more prompt advantage of changes in

equipment and technology and allow them to more readily update their facility equipment and infrastructure. These changes will also help health facility operators avoid increases in construction costs that can occur while projects are pending Department approval, as well as prevent delays in the attainment of savings and new revenues associated with proposed improvements to their facilities and services. For the Department, the simpler processing of written notices will enable staff to focus more fully on larger-scale CON projects that warrant in-depth review and analysis.

Stakeholder Response

Because the amended Section 2802 simplifies the CON process for non-clinical infrastructure projects, repair and maintenance, and replacement of equipment, the Department anticipates that hospitals, nursing homes and D & T centers will be supportive of the proposed changes in Part 710 needed for the amended statute's implementation.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by section 2803 of the Public Health Law, Part 405 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

405.19 Emergency services

* * *

(e) Patient care. (1) The hospital shall assure that all persons arriving at the emergency service for treatment receive emergency health care that meets generally accepted standards of medical care.

(2) Every person arriving at the emergency service for care shall be promptly examined, diagnosed and appropriately treated in accordance with triage and transfer policies and protocols adopted by the emergency service and approved by the hospital. Such protocols must include written agreements with local emergency medical services (EMS) in accordance with subparagraph (b)(1)(i) of this section. All patient care services shall be provided under the direction and control of the emergency services director or attending physician. In no event shall a patient be discharged or transferred to another facility, unless evaluated, initially managed, and treated as necessary by an appropriately privileged physician, physician assistant, or nurse practitioner. No later than eight hours after presenting in the emergency service, every person shall be admitted to the hospital, or assigned to an observation unit in accordance with subdivision (g) of this section, or

transferred to another hospital in accordance with paragraph (6) of this subdivision, or discharged to self-care or the care of a physician or other appropriate follow-up service. Hospitals which elect to use physician assistants or nurse practitioners shall develop and implement written policies and treatment protocols subject to approval by the governing body that specify patient conditions that may be treated by a registered physician assistant or nurse practitioner without direct visual supervision of the emergency services attending physician.

* * *

(5) [Where observation beds are used, they shall be for observation and stabilization and they shall not be used for longer than eight hours duration. Patients in these beds shall be cared for by sufficient staff assigned to meet the patients' needs. At the end of eight hours observation or treatment the patient must be admitted to the inpatient service, be transferred in accordance with paragraph (6) of this subdivision, or be discharged to self-care or the care of a physician or other appropriate follow-up service.] Reserved.

* * *

(g) *Observation units.* Observation units shall be a under the direction and control of the emergency service and, unless a contrary requirement is specified in this subdivision, observation units shall be subject to all requirements of this section applicable to emergency services.

(1) Patient Care: An observation unit shall be used only for observation, diagnosis and stabilization of those patients for whom diagnosis and a determination concerning admission, discharge, or transfer cannot be accomplished within eight hours, but can reasonably be expected within twenty-four hours.

Patients shall be assigned to the observation unit by physician order and within twenty-four hours of the issuance of an order assigning the patient to an observation unit, the patient must be admitted to the inpatient service, be transferred in accordance with paragraph (6) of subdivision (e) of this section, or be discharged to self-care or the care of a physician or other appropriate follow-up service.

(2) Physical Space:

(i) The total number of dedicated observation unit beds in a hospital shall be limited to five percent of the hospital's certified bed capacity, and shall not exceed forty, provided that in a hospital with less than 100 certified beds, an observation unit may have up to five beds.

(ii) The observation unit shall be located within a distinct physical space, except in a hospital designated as a critical access hospital pursuant to subpart F of part 485 of Title 42 of the Code of Federal Regulations or a sole community hospital pursuant to section 412.92 of Title 42 of the Code of Federal Regulations or any successor provisions.

(iii) The observation unit shall comply with the applicable provisions of Parts 711 and 712-2 and section 712-2.4 of this Title for construction projects approved or completed after January 1, 2011.

(iv) Observation unit beds shall not be counted within the state certified bed capacity of the hospital and shall be exempt from the public need provisions of Part 709.

(v) The observation unit shall be marked with a clear and conspicuous sign that states: “This is an observation unit for visits of up to 24 hours. Patients in this unit are not admitted for inpatient services.”

(3) Staffing.

(i) Patients in an observation unit shall be cared for, pursuant to a defined staffing plan, by staff, appropriately trained and in sufficient numbers to meet the needs of patients in the observation unit.

(ii) At a minimum, a physician, nurse practitioner, or physician assistant shall be responsible for oversight of the medical care of the patients assigned to the observation unit. Such physician, nurse practitioner, or physician assistant assigned to oversee the observation unit shall be immediately available to meet the needs of patients in the observation unit and shall not be assigned concurrent duties that will interfere with such availability.

(4) Organization. The medical staff shall develop and implement written policies and procedures approved by the governing body for the observation unit that shall include, but not be limited to:

(i) the integration of the observation unit and its services with the emergency service and other related services of the hospital; and

(ii) appropriate use of the observation unit, including documentation of the clinical reasons and indications that warrant the period of observation, rather than admission or discharge, consistent with section 405.10 of this Part.

(5) Opening and Closure.

(i) Any hospital seeking to establish an observation unit shall:

(A) if no construction, as defined in subdivision 5 of section 2801 of the Public Health Law, will be needed, and no service will be eliminated:

(I) submit a written notice to the Department on a form developed by the Department, not less than 90 days prior to opening the unit, indicating the hospital's intent to establish such a unit; the number of beds to be located in the unit; the location of the unit within the facility, and such other information as the Department may require; and

(II) submit a certification from a licensed architect or engineer, in the form specified by the Department, that the space complies with the applicable provisions of Parts 711 and 712-2 and section 712-2.4 of this Title for construction projects approved or completed after January 1, 2011; or

(B), if construction, as defined in subdivision 5 of section 2801 of the Public Health Law, will be needed or a service will be eliminated:

(I) comply with Part 710 of this Title, provided that for purposes of Part 710, a construction project involving only the creation of an observation unit and the addition of observation unit beds shall not be subject to review under paragraph (2) or (3) of subdivision (c) of section 710.1 of this title, unless the total project cost exceeds $15 million or $6 million respectively; and

(II) comply with the applicable provisions of Parts 711 and 712-2 and section 712-2.4 of this Title for construction projects approved or completed after January 1, 2011.

(ii) No hospital may discontinue operation of an observation unit without providing written notification to the Department of the impending closure not less than 90 days prior to the closure.

(6) Transition. A hospital operating an observation unit pursuant to a waiver granted by the Department shall be required to comply with the provisions of this subdivision within 24 months of its effective date.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The authority for the proposed revision to Title 10 NYCRR Part 405 is section 2803 of the Public Health Law (PHL), which authorizes the Public Health and Health Planning Council (PHHPC) to adopt and amend rules and regulations, subject to the approval of the Commissioner of Health, to effectuate the provisions and purposes of Article 28 of the PHL with respect to minimum standards for hospitals.

Legislative Objectives:

In March 2011, Governor Cuomo's Medicaid Re-Design Team (MRT) voted to approve certain regulatory reforms to support improvements in the quality of care and assist health care facilities to operate more efficiently. The creation of a regulatory framework for observation units and a Medicaid rate for observation services was one of several reforms adopted by the MRT.

The Department proposes to allow hospitals to create observation units to be used for patient assessment, including diagnostic testing, and stabilization for a period of up to twenty-four hours from the time the patient is assigned to the observation unit, after which time, the patient will either be admitted, transferred, or discharged. Observation unit beds in a facility will be limited to a total of five percent of the hospital's certified bed capacity, and up to a maximum of forty beds, provided that in a hospital with less than 100 certified beds, an observation unit may have up to five beds.

It is important for state regulations governing hospitals to safeguard and promote patient safety, while also allowing hospitals to operate efficiently. The Department's goal is to keep pace with the health care environment, while assuring patient safety and quality of care. The intent of this regulation is to avoid unnecessary inpatient admissions, premature discharges from the emergency department, and repeated emergency department visits, and to improve the quality and experience of care received by patients seeking emergency services. Observation units can also help to improve the efficiency of emergency services and relieve emergency service overcrowding.

Current Requirements:

Current regulations require that after eight hours in the emergency department, hospitals must either discharge or admit the patient. In some circumstances, eight hours may not be enough time to stabilize a patient and complete the diagnostic tests required to assess the patient properly. Even patients who have been stabilized may remain in the emergency department while they await test results, occupying emergency service space that could be used by other patients who may require more immediate services. Hospitals have identified observation services as a means of improving patient care and relieving overcrowding in emergency departments by increasing efficiency and patient through-put.

The Department has granted waivers for the use of observation services to approximately 22 hospitals. Observations services in a unit under the auspices of the emergency service, allow hospitals to provide focused assessment and treatment as

needed, beyond the 8 hours permitted for emergency services. When properly utilized, observation services can prevent inappropriate admissions and premature discharges from the emergency service.

Needs and Benefits:

State regulations governing hospitals should safeguard and promote high-quality care and patient safety, while also allowing hospitals to operate efficiently and maintain access to services. Regulations should also keep pace with the advances in health care technology, best practices, and models of care.

This proposed regulation creates operating standards for observation units under the auspices of the emergency service. Patients will be permitted to stay in observation units for up to twenty-four hours from assignment to the observation unit from the emergency service. After this time patients must be discharged, admitted as an inpatient or transferred to another hospital. Observation services provided in these units will be eligible for Medicaid reimbursement, provided that payment requirements are met. This regulatory change will support improvements in emergency service efficiency and reductions in unnecessary inpatient admissions and in premature discharges from the emergency service that can lead to poor outcomes. These provisions will also improve the patient's experience of care by preventing prolonged stays in crowded emergency departments and relieve emergency department overcrowding.

COSTS

Costs to Private Regulated Parties:

As the creation of an observation unit is optional, this regulation creates no additional burdens or costs to regulated parties. It will eliminate the need for the cumbersome waiver process that is currently used to authorize the operation of observation units. A few providers that are currently operating observation units pursuant to waivers approved by the Department may have to make modifications to the observation unit space. Costs associated with these modifications should be minimal, and those providers will, for the first time, be able to bill Medicaid for services provided in the unit.

Costs to Local Government:

There are no costs to local government.

Costs to the Department of Health:

The proposed amendment would impose no new costs on the Department.

Costs to Other State Agencies:

There are no costs to other State agencies or offices of State government.

Local Government Mandates:

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

Paperwork:

This regulation will eliminate the paperwork associated with a cumbersome waiver application process. The regulation does not require a certificate of need or other application in order to establish an observation unit unless construction is necessary or a service is to be eliminated. Instead, it imposes a notice requirement.

Duplication:

There are no relevant State regulations which duplicate, overlap or conflict with the proposed amendment. Federal Medicare payment rules set forth standards for reimbursement of observation services. These proposed regulations provide a clear and consistent process for creating observation units and operating standards for such units. The regulations do not conflict with Medicare payment rules.

Alternatives:

The Department considered allowing providers to use undesignated emergency service beds as observation beds, instead of creating a distinct unit. Based on the literature, the Department determined that this arrangement would not achieve the goals of the regulation. It would merely prolong emergency service visits without altering the

model of care, relieving overcrowding, or improving quality and the patient experience of care.

Federal Standards:

The proposed amendment does not exceed any minimum operating standards for health care facilities imposed by the Federal government.

Compliance Schedule:

The proposed amendment will be effective upon publication of a Notice of Adoption in the New York State Register. Facilities operating observation units pursuant to a waiver approved by the Department will have 24 months to comply with these regulations.

Contact Person: Katherine Ceroalo
New York State Department of Health
Bureau of House Counsel, Regulatory Affairs Unit
Corning Tower Building, Room 2438
Empire State Plaza
Albany, New York 12237
(518) 473-7488
(518) 473-2019 (FAX)
REGSQNA@health.state.ny.us

REGULATORY FLEXIBILITY ANALYSIS

No regulatory flexibility analysis is required pursuant to section 202-(b)(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping or other compliance requirements on small businesses or local governments.

STATEMENT IN LIEU OF

RURAL AREA FLEXIBILITY ANALYSIS

No rural area flexibility analysis is required pursuant to section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse impact on facilities in rural areas, and it does not impose reporting, record keeping or other compliance requirements on facilities in rural areas. The regulation includes an exemption from the requirement of a discrete physical space for critical access hospitals and sole community hospitals.

STATEMENT IN LIEU OF

JOB IMPACT STATEMENT

No Job Impact Statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment, that it will not have an adverse impact on jobs and employment opportunities.

Pursuant to the authority vested in the Public Health and Health Planning Council and subject to the approval of the Commissioner of Health by paragraph (2) of section 2803 of the Public Health Law, Sections 405.1, 700.2, 720.1 and 755.2 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York are hereby amended, Section 751.11 of Title 10 (Health) is renumbered 751.12 and a new Section 751.11 (Health) of Title 10 is added to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Paragraph (2) of Subdivision (a) of Section 405.1 of Part 405 is amended to read as follows:

(2) the commissioner may accept as evidence of compliance with the minimum operational standards of this Part, accreditation by an accreditation agency to which the Centers for Medicare and Medicaid Services has granted deeming status and which the Commissioner has determined has accrediting standards sufficient to assure the Commissioner that hospitals so accredited are in compliance with such operational standards. The Commissioner can choose to enter into collaborative agreements with such accreditation agencies so that the accreditation agency's accreditation survey can be used in lieu of a Departmental survey. A list of accreditation agencies with which the Department has a collaborative agreement will be posted on the department's website. [h]Hospitals shall notify the commissioner in writing within seven days after receipt of notice of [the accreditation decision or notification of a tentative nonaccreditation by the

Joint Commission on Accreditation of Healthcare Organizations or the American Osteopathic Association.] failure to be accredited, re-accredited or the loss of accreditation by the accreditation agency.

Subdivision (b) of Section 405.1 of Part 405.1 is amended to read as follows:

(b) The provisions of Parts 700, except for paragraphs (a) (1), (a)(21-22), (b)(25) and (c)(7), (35)-(41) of section 700.2; 702; 703, except for section 703.6; 706; and 707 of Article 1 of this Chapter shall not apply to general hospitals.

Paragraph (1) of Subdivision (a) of Section 700.2 is amended to read as follows:

(1) *Accredited hospital or other accredited medical facility*, as defined in article 28 of the Public Health Law, shall mean a hospital or facility which has been accredited by [the Joint Commission on Accreditation of Hospitals, or an osteopathic hospital which has been accredited by the Committee of Hospitals of the American Osteopathic Association.] an accreditation agency to which the Centers for Medicare and Medicaid Services has granted deeming status and which the Commissioner has determined has accrediting standards sufficient to assure the Commissioner that hospitals or facilities so accredited are in compliance with operational standards under this Chapter.

Section 720.1 is amended to read as follows:

Section 720.1 [Standards of Joint Commission on] General Hospital Accreditation [of Hospitals or American Osteopathic Association].

(a) General [H] hospitals must comply with the operational standards set forth in Part 405 of this Title. The commissioner may[,if he so desires,] accept as evidence of compliance with the minimum operational standards of Part 405 of this Title accreditation by [of the Joint Commission on Accreditation of Hospitals or American Osteopathic Association] an accreditation agency to which the Centers for Medicare and Medicaid Services has granted deeming status and which the Commissioner has determined has accrediting standards sufficient to assure the Commissioner that hospitals so accredited are in compliance with such operational standards. The Commissioner can choose to enter into collaborative agreements with such accreditation agencies so that the accreditation agency's accreditation survey can be used in lieu of a Departmental survey. A list of accreditation agencies with which the Department has a collaborative agreement will be posted on the Department's website. [. that such hospitals meet the standards of such organization as set forth in the Accreditation Manual of Hospitals of the Joint Commission on Accreditation of Hospitals, 1976 Edition, as amended or the Accreditation Requirements of the American Osteopathic Association, 11th edition, February 1976, as amended, provided that, in addition to complying with Part 405 of this Title] These provisions shall apply provided that:

[(1) a copy of the survey report and the certificate of accreditation of the Joint Commission on Accreditation of Hospitals or the certificate of accreditation of the

American Osteopathic Association is submitted to the commissioner within seven days of receipt from the hospital;

(2) the Joint commission on Accreditation of Hospitals' plan of correction and interim self-evaluation or the American Osteopathic Association notice of noncompliances and progress report on correction of noncompliances are submitted to the commissioner simultaneous with the mailing or the receipt as the case may be;]

(1) [(3)] there are no constraints placed upon release of the [Joint Commission on Accreditation of Hospitals] accreditation agency survey report, plan of correction, interim self-evaluation report, [or the American Osteopathic Association] certificate of accreditation, notice on noncompliances, [progress report on correction of noncompliances] or such other material which the commissioner has accepted under this section; [or] and

(2) [(4)] the hospital is at all times subject to a survey for compliance with Part 405 of this Title as deemed necessary by the commissioner.

(b) The hospital shall notify the commissioner [immediately upon receipt of notice] in writing within seven days of failure to be accredited, re-accredited or the loss of accreditation by the [Joint Commission on Accreditation of Hospitals or the American Osteopathic Association] accreditation agency with Centers for Medicare and Medicaid Services deeming status.

[(c) The standards of the Joint Commission on Accreditation of Hospitals as set forth in the Accreditation Manual of Hospitals, 1976 Edition, as amended, or the Accreditation Requirements of the American Osteopathic Association, 11th Edition, February 1976, as amended, shall constitute the maximum standards and procedures for purposes of limiting medical assistance reimbursement.]

Section 751.11 is renumbered Section 751.12 to read as follows:

751.12 [751.11] Validity

If any clause, sentence, paragraph or section of this Part shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph or section thereof directly involved in the controversy in which such judgment shall have been rendered.

A new Section 751.11 is added to read as follows:

751.11 Center Accreditation.

(a) Centers must comply with the operational standards set forth in this Article 6 of Subchapter C of Chapter V of this Title. The commissioner may accept as evidence of compliance with the minimum operational standards of this Article 6 of Subchapter C of Chapter V of this Title, accreditation by an accreditation agency to which the Centers for

Medicare and Medicaid Services has granted deeming status and which the Commissioner has determined has accrediting standards sufficient to assure the Commissioner that centers so accredited are in compliance with such operational standards. The Commissioner can choose to enter into collaborative agreements with such accreditation agencies so that the accreditation agency's accreditation survey can be used in lieu of a Departmental survey. A list of accreditation agencies with which the Department has a collaborative agreement will be posted on the Department's website. These provisions shall apply provided that:

(1) there are no constraints placed upon release of the accreditation agency survey report, plan of correction, interim self-evaluation report, certificate of accreditation, notice on noncompliances, or such other material which the commissioner has accepted under this section; and

(2) the center is at all times subject to a survey for compliance with Article 6 of Subchapter C of Chapter V of this Title as deemed necessary by the commissioner.

(b) The center shall notify the commissioner in writing within seven days of failure to be accredited, re-accredited or the loss of accreditation by the accreditation agency.

Subdivision (f) of Section 755.2 is amended to read as follows:

When ambulatory surgery services are provided, the operator shall ensure that:

* * *

(f) evidence of compliance with operational standards, as set forth in Section 751.11 of this Title, shall apply. [accreditation is obtained from either the Accreditation Association for Ambulatory Health Care (AAAHC) or the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).] New facilities shall obtain accreditation from an accreditation agency to which the Centers for Medicare and Medicaid Services has granted deeming status and which the Commissioner has determined has accrediting standards sufficient to assure the Commissioner that ambulatory surgery services so accredited are in compliance with ambulatory surgery services operational standards under this Chapter within two full years of operation. [Facilities operational upon the effective date hereof shall obtain accreditation within one full year of such effective date.]

REGULATORY IMPACT STATEMENT

Statutory Authority:

The authority for the promulgation of these regulations is contained in Sections 2800 and 2803(2) of the Public Health Law (PHL). Section 2800 of PHL Article 28 (Hospitals) specifies that "Hospital and related services including health-related service of the highest quality, efficiently provided and properly utilized at a reasonable cost, are of vital concern to the public health. In order to provide for the protection and promotion of the health of the inhabitants of the state, pursuant to section three of article seventeen of the constitution, the department of health shall have the central, comprehensive responsibility for the development and administration of the state's policy with respect to hospital and related services, and all public and private institutions, whether state, county, municipal, incorporated or not incorporated, serving principally as facilities for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition or for the rendering of health-related service shall be subject to the provisions of this article."

PHL Section 2803(2) authorizes the Public Health and Health Planning Council (PHHPC) to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities.

Legislative Objectives:

The legislative objective of PHL Article 28 includes the protection of the health of the residents of the State by assuring the efficient provision and proper utilization of health services, of the highest quality at a reasonable cost.

Needs and Benefits:

Section 720.1 of 10 NYCRR specifically requires hospitals to comply with operational standards set forth in Part 405 of 10 NYCRR and specifies that such hospitals are at all times subject to a survey for compliance with Part 405. Section 720.1 currently authorizes the Commissioner to accept as evidence of compliance with the minimum operational standards of Part 405, accreditation of The Joint Commission (TJC) or the American Osteopathic Association (AOA). Sections 405.1 and 700.2 of 10 NYCRR also refer to The Joint Commission and to the American Osteopathic Association as the national accreditation organizations that are authorized to issue certificates of accreditation to facilities certifying compliance with operational standards. Diagnostic and Treatment Centers (DT&Cs), whose provisions are set forth in 10 NYCRR Subchapter C, Article 6, are, like general hospitals, also Public Health Law Article 28 facilities that are surveyed for compliance with their operational standards. In addition to the TJC, Section 755.2 specifies that accreditation can be obtained for Free-Standing and Off-Site Hospital Based Ambulatory Surgery Centers from the Accreditation Association for Ambulatory Health Care (AAAHC).

Although the TJC and the AOA have been the 2 accrediting organizations predominantly used over the years, and in the case of Free-Standing and Off-Site Hospital Based Ambulatory Surgery Centers, also the AAAHC, additional accrediting organizations have come into existence and have been granted deeming status by the federal Centers for Medicare and Medicaid Services (CMS). Newer accrediting agencies are being utilized by hospitals and other facilities more and more, and recognized by CMS for federal surveillance purposes. At the same time more facilities are dropping their affiliation with the TJC, and various sections of Title 10 NYCRR limit the accreditation agencies for purposes of compliance with Department regulations to just the TJC, AOA, or the AAAHC. The Department of Health enters into collaborative agreements with approved accrediting agencies with the intent to reduce duplication of surveys.

Costs for the Implementation of and Continuing Compliance with these Regulations to the Regulated Entity

This proposal is intended to reduce duplicative surveys, resulting in costs savings to the regulated parties. The regulated parties will also need to devote less staff time to the survey process.

Cost to State and Local Government:

The regulatory changes being sought could actually produce a cost savings for state and local governments. Any state or local government Article 28 general hospital or diagnostic and treatment center that chooses to be accredited by an accreditation agency with CMS deeming status for Medicare compliance would have the ability to select a more cost efficient option for accreditation with the expansion of approved agencies. Currently, when a facility drops its accreditation to TJC or AOA the state must perform routine surveys for that facility. This regulation may reduce the need for such surveys by the State because it broadens the number of accredited agencies for which the Department may accept accreditation as compliance with Department regulations.

Cost to the Department of Health:

These regulatory changes will be a cost savings as they will allow the Department to reduce duplicative surveys which require additional staff and resources.

Local Government Mandates:

None. The provisions do not add any additional mandates to local governments.

Paperwork:

No additional new paperwork will be required.

Duplication:

This proposal is intended to reduce duplicative surveys, saving costs and staff time for the Department and the regulated parties. These sought after regulatory changes for hospitals would eliminate the need for hospitals to notify the Department when successfully obtaining accreditation or re-accreditation from a CMS approved agency. The revised regulations will require diagnostic and treatment centers to notify the Department of any adverse accreditation decisions in order to bring consistency to the accreditation notification process for both hospitals and centers.

Alternative Approaches:

There are no other viable alternative approaches. Current provisions limit the accreditation agencies with which the State can enter into collaborative agreements. This proposal would allow for additional accreditation agencies whose accreditation would be acceptable evidence of compliance with Department standards. The proposed regulation would require such agencies to have CMS deeming status for Medicare compliance and be acceptable to the Commissioner. Agencies that meet those requirements will no longer be prohibited from being utilized by hospitals and diagnostic

and treatment centers in lieu of State routine surveys and the Commissioner can choose to enter into additional collaborative agreements which will reduce duplicative surveys. A list of accreditation agencies with which the Department has a collaborative agreement will be posted on the Department's website.

Federal Requirements:

This regulatory amendment does not exceed any minimum standards of the federal government for the same or similar subject areas. This proposal is intended to reduce duplicative surveys, saving costs and staff time for the Department and the regulated parties.

Compliance Schedule:

This proposal will go into effect upon publication of a Notice of Adoption in the New York *State Register*.

Contact Person: Katherine Ceroalo
New York State Department of Health
Bureau of House Counsel, Regulatory Affairs Unit
Corning Tower Building, Rm. 2438
Empire State Plaza
Albany, New York 12237
(518) 473-7488
(518) 473-2019 (FAX)
REGSQNA@health.state.ny.us

REGULATORY FLEXIBILITY ANALYSIS
FOR SMALL BUSINESS AND LOCAL GOVERNMENTS

Effect of Rule:

General hospitals and diagnostic and treatment centers (DT&Cs) would be affected by this rule. Small businesses (defined as 100 employees or less), independently owned and operated, affected by this rule would include: 3 hospitals and 234 diagnostic and treatment centers.

Compliance Requirements:

There will be no additional requirements for general hospitals. Centers must now notify the Department of accreditation decisions consistent with requirements for hospitals.

Professional Services:

This proposal does not require any additional professional services.

Compliance Costs:

There are no additional costs required to comply with this measure. It would reduce the cost of duplicative routine surveys for both the Department and the regulated parties. Staff time would also be saved.

Economic and Technological Feasibility:

This proposal is economically and technically feasible. As said above, it will eliminate the cost of duplicate surveys to determine compliance with operational standards. Facility and Department staff time will also be saved.

Minimizing Adverse Impact:

There will be no adverse impact to small businesses or local governments from this regulation. The revisions merely allow the Commissioner to accept as evidence of compliance with minimum operational standards, a facility's accreditation from a Centers for Medicare and Medicaid Services (CMS) approved accreditation agency. Current regulations specify that such accreditation must be from TJC, AOA or the AAAHC in order to show evidence of compliance. This rule will allow other accreditation agencies to be utilized as long as they are CMS approved. Many facilities choose such other agencies for their accreditation and these regulatory changes recognize CMS expansion of approved agencies.

Small Business and Local Government Participation:

Outreach to the affected parties is being conducted. They include general hospitals, diagnostic and treatment centers and accreditation agencies. Organizations representing the affected parties can access notice of this proposal on the Department's

website by its inclusion on the agenda of the Codes and Regulations Committee of the Public Health and Health Planning Council (PHHPC). The public, including any affected party, is invited to comment during the PHHPC Codes and Regulations Committee meeting.

RURAL AREA FLEXIBILITY ANALYSIS

Pursuant to section 202-bb of the State Administrative Procedure Act (SAPA), a rural area flexibility analysis is not required. These provisions apply uniformly throughout New York State, including all rural areas.

The proposed rule will not impose an adverse economic impact on rural facilities defined within PHL Articles 28, nor will it impose any additional reporting, record keeping or other compliance requirements on public or private entities in rural areas.

JOB IMPACT STATEMENT

A Job Impact Statement is not included in accordance with Section 201-a (2) of the State Administrative Procedure Act (SAPA), because it will not have a substantial adverse effect on jobs and employment opportunities.

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

December 8, 2011

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Acute Care Services – Construction **Exhibit #4**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	111334 C	Lawrence Hospital Center (Westchester County)	Contingent Approval

Hospice – Construction **Exhibit #5**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	111548 C	Hospice of Orange & Sullivan Counties, Inc. (Orange County)	Approval

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

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	111061 C	Shorefront Jewish Geriatric Center (Kings County)	Contingent Approval

Public Health and Health Planning Council

Project # 111334-C

Lawrence Hospital Center

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

Program: **Acute Care Services**
Submitted: **April 4, 2011**

Executive Summary

Description

Lawrence Hospital Center (Lawrence), a 291-bed not-for-profit hospital located at 55 Palmer Avenue, Bronxville, seeks approval to construct a three-story building to house a therapeutic radiology center. The center will include a new CT simulator and linear accelerator, which will improve and expand cancer treatment services to the residents in its area. The proposed new building will include a bank of 2 elevators, a 6 operating room surgical suite, and 4 exam rooms for infusion therapy.

The submission of this application will impact three prior CON applications submitted for review as follows:

- It amends and supersedes CON #081134-C, which received contingent approval by State Hospital Review and Planning Council on October 2, 2008.
- CON #052191-C, an approval for elevators in the new building, will be withdrawn and is now included in this application.
- CON #061100-C will be modified to withdraw the following: a new and expanded post-surgery recovery unit; the obstetrics service and 16 full-term bassinettes and 10 level II nursery bassinettes that were to be relocated from the 4th floor to the 6th floor; the renovation of vacated space to create a pediatrics inpatient area of 12 beds and general medical surgical unit of 8 beds; relocating administrative offices; the new pediatrics wing will no longer be created. LHC received early start approval to complete elements of CON #061100-C, which was already accomplished.

The reason for the amended application is due to a substantive change in scope and direction after an extensive review of its development plans.

Total project costs are estimated at $39,259,077

DOH Recommendation

Contingent approval.

Need Summary

Based on the 709.16 need methodology, there is currently a need for 2 linear accelerators in Westchester County.

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 via cash from Lawrence Hospital in the amount of $13,544,327, and a bank loan of $25,714,750 (20 yrs. @ approximately 6%).

Budget:	*Revenues:*	*$ 22,980,162*
	Expenses:	*21,722,332*
	Gain/(Loss):	*$ 1,257,830*

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

Architectural Summary

Radiation oncology services will be located on the basement level, with the medical oncology services located on the 1st floor. The relocated operating rooms will be included on the 2nd floor, which will be adjacent to the existing surgery department. Upon completion of the new building, a break-through to the existing building will be made, creating a contiguous surgery department. Upon securing necessary capital, the hospital plans to conduct a future project to improve its surgical department support spaces, which are not a part of this project, using the vacated current operating room space after this project is complete.

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 a modification of project 061100-C that is acceptable to the Department of Health. [BFA]
4. Submission of withdrawal of project 052191-C that is acceptable to the Department of Health. [BFA]
5. Submission of a CON application resolving the issues noted in the architectural review with regard to the size of the PACU and the location of the Phase II Recovery Unit. [AER]
6. 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 by 7/2/2014. 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

December 8, 2011.

Need Analysis

Background

Lawrence Hospital Center (LHC) requests approval to construct a new therapeutic radiology oncology center, including a new computer tomography simulator, a new linear accelerator, a 4-room infusion therapy program and a 6-bed operating room surgical suite, within a new three-story structure to be built on the northeast corner of the hospital's campus. This project amends and supercedes CON #081134-C.

Lawrence Hospital Center is certified for the following beds and services:

Certified Beds	
Coronary Care	8
Intensive Care	6
Maternity	20
Medical/Surgical	235
Neonatal Continuing Care	3
Neonatal Intermediate Care	7
Pediatric	12
Total	*291*

Licensed Services	
Ambulatory Surgery-Multi Specialty	Medical Social Services
Dental O/P	Nuclear Medicine-Therapeutic
Magnetic Resonance Imaging	Radiology-Diagnostic
Neonatal Intermediate Care	Clinical Laboratory Service
Physical Medicine and Rehabilitation O/P	Intensive Care
Therapy-Speech Language Pathology O/P	Medical/Surgical
Audiology O/P	Pediatric
Emergency Department	Renal Dialysis-Acute
Maternity	Coronary Care
Nuclear Medicine-Diagnostic	Lithotripsy
Primary Medical Care O/P	Neonatal Continuing Care
CT Scanner	Pharmaceutical Service
Family Planning O/P	Therapy-Speech Language Pathology
Other Authorized Locations: 2	

Lawrence Hospital Center received contingent approval for CON #0811340-C on October 24, 2008 to construct a therapeutic radiology center with a new computed tomography simulator and a new linear accelerator within a new three story building. Through CON #111334-C, the hospital now requests approval to add an infusion therapy program to the original project, as well as four exam rooms and a surgical suite with six operating rooms.

The hospital projects the following volume of patients and services at the proposed oncology center:

Service	Year 1 Patients	Year 1 Visits	Year 3 Patients	Year 3 Visits
Radiation Therapy	267	6806	297	7571
Infusion/Chemotherapy	1400	2576	1450	2840
Ambulatory Surgery	N/A	3389	N/A	3594
Inpatient Surgery	2336	2336	2476	2476

Public Need

10 NYCRR Section 709.16 - Radiation Oncology Need Methodology

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

Need for Linacs in Westchester County	=12
Existing & Approved Resource	=11
Remaining Need	=1

Existing and Approved Resources: Westchester County

Facility	*Equipment*	*2008 Utilization*
Northern Westchester Hospital	1 linac	8,235
St. John's Riverside Hospital	1 cobalt unit	-
White Plains Hospital	2 linacs	12,123
Westchester Medical Center	2 linacs	18,353
Sloan-Kettering at Phelps Memorial	2 linacs	-
Sloan-Kettering at Harrison	2 linacs	-
Hudson Valley Hospital Center	1 linac	(approved 6/07)
Total	11	38,711

Conclusion
Based on the 709.16 need methodology for linear accelerators, there is a remaining need for 1 linear accelerator in Westchester County.

Recommendation
From a need perspective, approval is recommended.

Programmatic Analysis

Background
The project seeks to construct a new building on the hospital campus to house a therapeutic radiology oncology center. The building will have:

- 4 exam rooms
- 6 operating rooms
- Therapeutic Radiology Services
- CT scanner
- Linear accelerator

Compliance with Applicable Codes, Rules and Regulations
The medical staff will continue to 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 includes 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

Total Project Cost and Financing
Total project cost for construction and the acquisition of moveable equipment is estimated at $39,259,077, broken down as follows:

New Construction	$25,031,044
Design Contingency	428,750
Construction Contingency	428,750
Architectural/Engineering Fees	1,336,400
Construction Manager Fees	668,800

Other Fees	1,033,600
Moveable Equipment	9,125,000
Financing Costs	501,000
Interim Interest	489,000
Application Fee	2,000
Processing Fee	214,733
Total Project Costs	$39,259,077

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

The applicant's financing plan appears as follows:

Equity	$13,544,327
*Bank Loan	$25,714,750

**Approximately 6% for a term of 20 years. The bank may increase the rate after 10 years to a maximum of ½% dependent on market condition and the BBB+ rating from S&P of the hospital.*

Operating Budget

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

	Year One	Year Three
*Revenues	$17,845,529	$22,980,162
Expenses:		
Operating	$13,275,293	$18,235,235
Capital	3,574,401	3,487,097
Total Expenses	$16,849,694	$21,722,332
Excess Revenues over Expenses	$995,835	$1,257,830
Number of Visits	2,108	2,607
Number of Discharge's	350	490

**Incremental revenue is made up of outpatient and inpatient revenues. Presented as BFA Attachment B, is a detailed analysis of inpatient and outpatient expenses.*

Payor Source

Lawrence Hospital Center – Inpatient

	Year One	Year Three
Medicaid Fee-for-Service	2%	2%
Medicaid Managed Care	7%	7%
Medicare Fee-for-Service	33%	33%
Medicare Managed Care	10%	10%
Commercial Fee-for-Service	2%	2%
Commercial Managed Care	44%	44%
All Other	2%	2%

Incremental utilization, broken down by payor source, for the first and third year for Lawrence Hospital Center outpatient services is as follows:

Lawrence Hospital Center – Outpatient

	Year One	Year Three
Medicaid Fee-for-Service	1%	2%
Medicaid Managed Care	1%	1%
Medicare Fee-for-Service	49%	48%

Medicare Managed Care	7%	7%
Commercial Fee-for-Service	2%	2%
Commercial Managed Care	39%	39%
All Other	1%	1%

Expenses and utilization are based on the hospitals historical experience.

Capability and Feasibility

The total project cost is $39,259,077, at which the applicant will pay cash equity of $13,544,327 and a bank loan of $25,714,750 at a rate of approximately 6% for a term of 20 years, at which a Letter of Interest has been presented. Also, the financial institution will determine after (10) years if the rate may increase another ½% depending on market conditions and rating of the hospital.

Presented as BFA Attachment A is the 2009 and 2010 certified financial statements of Lawrence Hospital Center, which indicates an average positive working capital position of $13,744,767 and an average positive net asset position of $74,605,164 for the period shown. Also, Lawrence Hospital Center has achieved an excess of revenue over expenses of $4,953,112 and $2,423,496 in 2009 and 2010, respectively.

The submitted budget for Lawrence Hospital Center projects an excess of revenues over expenses of $995,835 and $1,257,830 for the first and third year of operation, respectively. Revenues are based on the hospitals' current reimbursement methodologies for inpatient surgical services and outpatient radiation/infusion therapy services.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Architectural Analysis

Background

The new addition to the northeast corner of the Hospital will add 41,923 gross square feet to the campus complex, as follows:

- Radiation Oncology – Basement Level (10,596 Square Feet)

The Radiation Oncology program will be located on the Basement Level and will consist of a new linear accelerator, a CT simulator, four (4) examination rooms, reception/waiting areas and ancillary support spaces for Radiation Therapy. The Basement Level will house the main clinical activities for the proposed Cancer Center's radiation therapy functions. The linear accelerator will be located in the northeast corner. There will be minor renovations to connect the new space to the Basement Level of the Hospital.

- Medical Oncology – First Floor (12,165 Square Feet)

The Medical Oncology program will be located on the First Floor (the main entrance level) and will house four (4) exam rooms, 14 infusion stations, medical prep areas and support services. By extending an all-weather-conditioned connector to the existing hospital vehicular drop-off area, which is west of the proposed site for the Project, the new Cancer Center will provide valet parking for cancer patients. This connector will allow for direct access to a new dedicated elevator providing service to outpatients and visitors to the Cancer Center. Inpatient access to the new addition will be achieved via the existing adjacent elevators within the Hospital. Surgery outpatients and visitors will continue to utilize the hospital's main entrance to access the Surgery Department and other services. There will be minor renovations to connect the new space to the First Floor of the Hospital.

- OR Relocation – Second Floor (10,862 Square Feet)

Six (6) existing operating rooms will be relocated to the Second Floor Surgery Department component of the new building. In addition to the relocated ORs, the Second Floor of the addition will house the surgery personnel locker and lounge areas, storage and support services. Other existing support services (i.e., PACU, prep areas) will remain in place. Minor renovations will be required to connect the new space to the Second Floor of the hospital.

- Mechanical Penthouse & Roof Garden – Third Floor to Roof Garden (4,538 Square Feet)

To house the required air handlers, chillers and pumps for the new Cancer Center, a separate mechanical penthouse will be constructed. A roof garden is proposed for patient and visitor access.

- Elevators and Lobbies – Basement Level to Sixth Floor (3,762 Square Feet)

Two (2) new elevators and their associated lobbies will also be added adjacent to the existing visitor elevators to improve the vertical circulation of guests, patients and staff through the hospital. The elevators will extend from the Basement Level to the Sixth Floor, with stops on each floor in between.

Outstanding Issues

The current PACU is undersized and does not meet the requirements of a modern operating suite serving six Operating Rooms. It provides only 7 undersized recovery stations of 45 sf. Current standards require 80 sf per station and 2 recovery stations per Operating Room served. The current operating rooms being replaced consist of 5 built in the 1950's that meet the requirements of a Type A operating room, not requiring PACU. The sixth Operating Room presently in use meets the current standards for a Type B operating room.

The Phase II Recovery unit is located two floors above the PACU and adjacent to operating rooms in the Ambulatory Surgery processing unit. It consists of 12 semi-private rooms converted from med/surg bedrooms. The beds are non compliant in that they share a single oxygen and suction station between them on the head wall, and do not have direct supervision from the Recovery Staff. Circulation in the Ambulatory Surgery preparation unit requires that individuals being brought from the PACU to Phase II recovery comingle with patients coming in for Ambulatory Surgery Registration and patients and family visiting the Labor and Delivery unit of the hospital.

Lawrence Hospital Center states that issues relative to pre-op and post op recovery, cubicle size and patient circulation will be addressed in future CON applications.

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, contingent approval is recommended.

Attachments

BFA Attachment A	Financial Summary-Lawrence Hospital Center
BFA Attachment B	Detailed Budget Lawrence Hospital Center
BHFP Attachment	Map

Public Health and Health Planning Council

Project # 111548-C
Hospice of Orange and Sullivan Counties, Inc.

County: **Orange (Newburgh)**
Purpose: **Construction**

Program: **Hospice Services**
Submitted: **June 28, 2011**

Executive Summary

Description
Hospice of Orange and Sullivan Counties, Inc., an existing not-for-profit corporation which operates an Article 40 hospice program serving the residents of Orange, Sullivan and Ulster Counties, requests approval to convert 2 hospice residence beds to be dually-certified as inpatient and residence beds at its hospice facility. The hospice facility, The Kaplan Family Hospice Residence, is located at 1 Sunrise Lane, Newburgh.

Upon approval, Hospice of Orange and Sullivan Counties, Inc. will add 2 dually-certified beds. The existing hospice is currently certified for 8 Article 40 hospice residence beds and 3 inpatient beds.

DOH Recommendation
Approval.

Need Summary
The Hospice Bed Need Methodology using 2013 projections shows a need for 6, 4 and 7 inpatient hospice beds in Orange, Sullivan and Ulster Counties, respectively. As of September 2011, there are 3 operational inpatient hospice beds in Orange County and none in Sullivan and Ulster Counties.

The inpatient hospice need in the tri-county region is 17. Approval of the CON will reduce the remaining need in the area to 15.

Program Summary
Hospice of Orange and Sullivan Counties, Inc. is currently in compliance with all applicable codes, rules, and regulations.

Financial Summary
There are no project costs associated with this application.

Incremental Budget:	*Revenues:*	*$ 2,107,895*
	Expenses:	*2,107,895*
	Gain/(Loss):	*$ 0*

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

Architectural Summary
The purpose of this application is to add the ability to use two of the eight residential beds as inpatient beds when needed ("swing beds"), and to have them revert back to residential beds when not needed.

The existing space has been certified as NYCRR Title 10 Part 717 code compliant by a NYS licensed architect for use as dually certified beds meeting the requirement for institutional occupancies per the NFPA. There is no renovation work associated with this CON project.

Recommendations

Health Systems Agency
There will be no HSA recommendation for this application.

Office of Health Systems Management
Approval.

Council Action Date
December 8, 2011.

Need Analysis

Background

Hospice Orange and Sullivan Counties, Inc. currently operates the Kaplan Family Hospice Residence, which is located at 1 Sunrise Lane, Newburgh New York – Orange County. The applicant seeks approval to certify two (2) existing resident beds as inpatient beds when needed (swing) and have them revert to residential beds when not needed.

The hospice residence serves the needs of patients who do not have family members or a suitable home setting for end-of-life care. The service area for Hospice Orange and Sullivan Counties are Orange, Sullivan and Ulster Counties. Based on 2013 projections, there is a need for 17 inpatient hospice beds in the tri-county area. Hospice Orange and Sullivan Counties currently consists of three (3) inpatient hospice beds and eight (8) hospice residence beds.

A dually certified bed in a hospice residence can be used for inpatient care if the patient's condition worsens and or warrants an inpatient level of care. A dually certified bed will allow the hospice to retain the patient in the residence rather than transferring them to another inpatient facility.

The beds at the facility will be arrayed as follows:

- Inpatient Certified 3 beds
- Residence Beds 8 beds (including 2 dually certified beds)

The realignment of beds will enhance Hospice Orange and Sullivan Counties abilities to provide the hospice needs of the communities it serve.

Conclusion

Using 2013 projections, the Hospice Bed Need Methodology shows a need for 6, 4 and 7 inpatient hospice beds in Orange, Sullivan and Ulster Counties, respectively. As of September 2011, there are three (3) operational inpatient hospice beds in Orange County and none in Sullivan and Ulster Counties.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

Hospice of Orange and Sullivan Counties, Inc., a voluntary corporation, currently operates an Article 40 hospice which serves the residents of Orange, Sullivan, and Ulster Counties. It is also currently certified to operate a 3-bed hospice inpatient unit and an 8-bed hospice residence unit in a freestanding facility located in Newburgh.

The current proposal seeks approval to convert 2 of the 8 hospice residence beds into dually certified beds for both inpatient level of care and residence level of care. Chapter 154 of the Laws of 2004 was enacted to permit the dual certification of hospice residence beds for inpatient care, and regulations were subsequently developed and incorporated into 10 NYCRR. The hospice agency reports that, since this hospice facility housing both a hospice inpatient unit and a hospice residence unit had already met hospice inpatient level construction standards when initially approved, the proposed conversion of 2 of the 8 hospice residence beds to dually certified beds for both inpatient level of care and residence level of care requires no construction reconfigurations.

The one-story hospice inpatient and hospice residence facility will continue to consist of the same 3 bed hospice inpatient unit and 8 bed hospice residence unit. Two of the 8 residence beds will merely be designated as dually certified beds for both hospice residence level of care and hospice inpatient level of care. Each patient room continues to be of sufficient size to accommodate a fold-out bed to allow family members to remain overnight in the

patient's room. There will continue to be a common patient / family great room area, meditation room, kitchen and dining facilities, library, laundry, reception area, administrative offices, etc. The kitchen and dining area continue to be available to families for individual food storage and meal preparation, and the multi-purpose great room area, meditation room, library, and reception area continue to be available for family activities and gatherings. The facility will continue to prepare and serve the required three meals per day.

Staffing for the facility will continue to utilize 24-hour RN coverage. The direct care staffing schedule will include, at a minimum, 1 RN, 1 LPN, and 2 Home Health Aides on the day and evening shifts, seven days per week, and 1 RN, 1 LPN, and 1 Home Health Aide on the night shift, seven days per week. The same complete interdisciplinary care team will continue to be assigned specifically to the hospice inpatient / residence facility. Administrative oversight for the 3-bed hospice inpatient unit and 8-bed hospice residence unit (with 2 of the 8 hospice residence beds dually certified for both inpatient level of care and residence level of care) will continue to be conducted by the existing full time RN Hospice Residence Manager, and the onsite clinical management and oversight will continue to be conducted by the existing full time RN Clinical Nursing Coordinator.

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 of operation, summarized below:

	Year One	Year Three
Revenues	$2,047,596	$2,107,895
Expenses:		
Operating	$1,688,900	$1,739,567
Capital	357,600	$368,328
Total Expenses	$2,046,500	$2,107,895
Net Income	$1,096	$0
Utilization: (patient days)	3,197	3,242
Cost per day	$640.13	$650.18

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

	Years One and Three
Medicare	52%
Medicaid	18%
Private	15%
Other	15%

Expense and utilization assumptions are based on the applicant's current and historical expense and utilization trends.

Capability and Feasibility

There are no project costs associated with this application.

The submitted budget indicates a net income of $1,096 and $0 during the first and third years of operation, respectively. Revenues are based on prevailing reimbursement methodologies for hospice services.

Presented as BFA Attachment A is the financial summary of Hospice of Orange and Sullivan Counties, which indicates that the program has experienced average positive working capital and net asset position, and generated a net income of $1,114,716 and $528,273 for 2009 and 2010, respectively.

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.

Architectural Analysis

Background

The existing space has been certified as NYCRR Title 10 Part 717 code compliant by a NYS licensed architect for use as dually certified beds meeting the requirement for institutional occupancies per the NFPA. There is no renovation work associated with this CON project.

Recommendation

From an architectural perspective, approval is recommended.

Attachments

BFA Attachment A	Financial Summary, Hospice of Orange & Sullivan Counties

Public Health and Health Planning Council

Project # 111061-C
Shorefront Jewish Geriatric Center

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

Program: **Residential Health Care Facility**
Submitted: **January 5, 2011**

Executive Summary

Description
Shorefront Jewish Geriatric Center (Shorefront), a 360-bed voluntary residential healthcare facility (RHCF) located at 3015 West 29th Street, Brooklyn, requests approval to address the new sprinkler regulations and simultaneously to renovate patient rooms, dining rooms, staff work areas, shower and tub rooms and the recreation area.

On August 13, 2008, the Centers for Medicare and Medicaid Services (CMS) published the final regulation mandating that all nursing homes integrate compliant sprinkler systems by August 13, 2013. The regulation will not allow any exceptions. The applicant is also proposing a renovation of patient rooms and common spaces that will be affected by this mandated expansion of existing sprinkler systems.

Total project costs are estimated at $17,883,448.

DOH Recommendation
Contingent approval.

Need Summary
Shorefront had occupancies of 98.6% and 97.9% in 2008 and 2009, respectively. At the end of 2010, the facility's Case Mix Index (CMI) was 1.22. There was 1 Physical A and 1 Physical B.

Program Summary
Shorefront is undertaking code-related maintenance and upgrades related to the normal aging of the building. The completion of construction will result in a more pleasant resident environment coupled with additional operational efficiencies. Several planning issues should be addressed prior to the commencement of construction:

1. Documentation that sufficient lounge and activity space will be available to residents upon project completion;
2. Access to a tub should be available within each nursing unit;
3. A phasing/resident safety plan should be submitted detailing the access issues for each floor during the construction of new lounge spaces and conversion of existing lounges to temporary resident rooms; and
4. Alternatives should be presented for those residents whose medical status will preclude their relocation to the temporary lounge rooms.

Financial Summary
Project costs will be met via equity from restricted assets.

Incremental Budget:	*Revenues:*	*$ 7,447,059*
	Expenses:	*6,068,847*
	Gain/(Loss):	*$ 1,378,212*

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

Architectural Summary
The applicant is requesting approval for the renovation of its 7-story RHCF, which was originally built in 1990. The facility is proposing this project in order to address the new sprinkler regulations, as well as to significantly renovate its five nursing floors (3rd -7th floors) along with minor renovation to one of its non-nursing floors (2nd floor). Upon completion of this project, the total bed capacity will remain the same, and the facility will be in compliance with the new sprinkler regulations.

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 updated budgets, with all assumptions noted, that include the impact of the State's 2011-12 Budget and continues to demonstrate financial feasibility, acceptable to the Department of Health. [BFA]
3. Submission of a detailed decanting plan by sub-unit for the entire construction period that reduces the total number of available lounges by no more than 10. [LTC]
4. Submission and programmatic approval of final floor plans which demonstrate resolution of the planning issues addressed in contingency no. 3. [LTC]
5. Submission of final plans showing the temporary resident rooms which include placement of furniture, furnishings, egress and access to the toilet room.[LTC]

Approval conditional upon:

1. Applicant will convert no more than one lounge per 36 bed nursing unit, or two lounges per floor, during the entire construction period. [LTC]
2. The submission of State Hospital Code (SHC) Drawings for review, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
3. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the start of construction. [AER]
4. The applicant shall complete construction by August 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

December 8, 2011.

Need Analysis

Background

Shorefront Jewish Geriatric Center, a current 360 bed Residential Health Care Facility (RHCF) located at 3015 West 29 Street, Brooklyn, 11224 seeks approval to comply with the new Federal regulations requiring sprinklers in nursing homes and to renovate the facility and patient rooms, dining rooms, staff work areas, shower and tub rooms, and the recreation area.

RHCF Occupancy	*2007*	*2008*	*2009*
Shorefront Jewish Geriatric Center	New Facility	98.6%	97.9%
Kings County	91.8%	92.2%	92.3%
New York City	93.6%	94.2%	94.8%

Shorefront Jewish Geriatric Center had occupancies of 98.6% and 97.9% in 2008 and 2009, respectively. At the end of 2010, the facility's Case Mix Index (CMI) was 1.22. There was 1 Physical A and 1 Physical B.

Conclusion

The proposed reservations and sprinkler installation would improve the quality of residential life and enhance resident safety in this high-occupancy facility.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Facility Information

	Existing	*Proposed*
Facility Name	Shorefront Jewish Geriatric Center	Same
Address	3015 West 29th Street Brooklyn, NY 11224	Same
RHCF Capacity	360	360
ADHC Program Capacity	0	0
Type of Operator	Voluntary	Same
Class of Operator	Corporation	Same
Operator	Shorefront Jewish Geriatric Center	Same

Shorefront Jewish Geriatric Center (Shorefront) is a 360 bed nursing facility located in the Coney Island section of Brooklyn. In order to comply with CMS regulations, Shorefront will upgrade its existing sprinkler system to cover all areas of the existing building. Concurrent with the sprinkler upgrade, Shorefront will undertake renovation and refurbishment of its nursing units. The renovation project will not affect the total bed complement nor add to or modify existing programs.

Shorefront is a circa 1990 building consisting of five nursing floors with each floor containing two L-shaped 36 bed nursing units, grouped into four 18 bed wings surrounding a central core. As originally constructed the building included a sprinkler system. However, the 2008 CMS regulation requires all nursing homes to be fully sprinklered by August, 2013, without exception. Shorefront is obligated to undertake a project to extend the system by installing additional sprinkler heads in those discrete areas which do not have them currently.

Since the work will extend to virtually the entire facility, Shorefront has elected to proceed with renovations in those areas affected by the sprinkler installation. Work to be undertaken will include the purchase of new furniture and curtains in the resident rooms, and the replacement of carpeting in all areas with sheet vinyl; shower and tub rooms will be re-designed to provide training toilets and the shower areas enlarged. The current working drawings do not clearly depict a tub room in each nursing unit; final drawings should show a minimum of one tub room per nursing unit.

In addition the nursing facility has identified the lounge space and nursing stations as areas in need of improvement, with the nursing stations to be transformed into work stations and some office space relocated into lounge space at the ends of the wings. New lounge space will be created in the core area adjacent to the dining room in the existing nursing station area. Shorefront indicates that the lounges at the ends of the sub-units have been poorly utilized at present, with residents opting to congregate near the dining area. DOH is supportive of the changes to meet resident demand, but requires evidence that the new lounges will be adequately sized.

In order to maintain the resident census at full capacity, the applicant has included a plan to utilize nearly all the existing lounges as temporary bedrooms for residents uprooted by the sprinkler project. Shorefront proposes to empty each 18 bed wing and relocate those residents into 18 lounges on the third through seventh floors for a period of approximately three weeks. Upon completion of the renovations the residents will return to their rooms. Under this plan, these nursing floors would have access to little or no lounge and activity space for a period of at least sixty weeks. In addition, the relocation of lounge space to the central core could produce a further diminution to the quality of residential life. Therefore, in order to ensure an acceptable residential environment, the maintenance of a minimum of two lounges at any one time on all the nursing floors will be required.

Compliance

Shorefront Jewish Geriatric Center is in current compliance with all codes, rules and regulations.

Conclusion

Shorefront is undertaking code related maintenance and upgrades related to the normal aging of the building. The completion of construction will result in a more pleasant resident environment, coupled with additional operational efficiencies. Several planning issues should be addressed prior to the commencement of construction:

1. Documentation that sufficient lounge and activity space will be available to residents upon project completion;
2. Access to a tub should be available within each nursing unit;
3. A phasing/resident safety plan should be submitted detailing the access issues for each floor during the construction of new lounge spaces and conversion of existing lounges to temporary resident rooms; and
4. Alternatives should be presented for those residents whose medical status will preclude their relocation to the temporary lounge rooms.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Total Project Cost and Financing

The total project cost for renovation and moveable equipment of $17,883,466 will be funded via equity from restricted assets.

Renovation & Demolition	$10,547,488
Design Contingency	1,054,749
Construction Contingency	1,054,749
Architect/Engineering Fees	928,179
Construction Manager Fees	316,425
Other Fees	210,950
Moveable Equipment	3,566,103
Telecommunications	104,000

Application Fee	3,000
Processing Fee	97,805
Total Project Cost	$17,883,448

This project is for renovation of common space and the integration of a new sprinkler system. This project will have no impact on the current utilization or bed count. Project costs of $17,883,448 will be funded via equity from restricted assets.

Operating Budget

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

	Years One and Three
Revenues	$7,447,059
Expenses:	
Operating	$5,430,153
Capital	638,694
Total Expenses	$6,068,847
Excess of Revenues over Expenses	$1,378,212

There is no incremental utilization with this project. However, it should be noted that revenue is itemized as follows: adult day health care program started January 1, 2011 of $6,981,576 and Medicaid reimbursement for this application of $465,483. Operating expenses is related to the adult day health care component and capital is for minor renovation and sprinkler system.

Capability and Feasibility

Project costs of $17,883,448 will be paid out of restricted assets, which are $18,808,902 according to BFA Attachment C Financial Summary. Presented as BFA Attachment A, is the 2008 through 2010 financial summary of Shorefront Jewish Geriatric Center, Inc., which indicates the availability of sufficient funds to meet the total project costs.

The incremental budget projects an excess of revenues over expenses of $1,378,212 during the first and third years after the project completion, respectively. Revenues are based on capital reimbursement for Medicaid of $638,694. Also, Shorefront Jewish Geriatric Center purchased an adult day care operation from M.J.G. Nursing Home, Co., Inc., which started operations January 1, 2011. As shown on BFA Attachment B is the 2010 unaudited financial statement of operations indicating an excess of revenues over expenses of $1,551,423.

The additional income from the purchased adult day care facility will positively impact Shorefront Jewish Geriatric Center, indicating an excess of revenue over expenses of $1,378,212 for year one and three. The budget appears reasonable.

As shown on Attachment A, Shorefront Jewish Geriatric Center, Inc. had an average positive working capital position of $10,751,076 and an average positive net asset position of $24,038,741 during the period 2008 through 2010. Also, the facility incurred an average operating loss of $3,079,352 during the period 2008 through 2010. The applicant has indicated that the reason for the losses was the following: The nursing home had no trend factor since 2007 and operating expenses were continuing to increase. (It should be noted that the applicant made improvements in operations as suggested on the BFA Attachment A financial summary). The summary indicates that in 2008, Shorefront Jewish Geriatric Center had a Net loss of $7,441,093; the 2010 Net Loss is $75,980. The savings was due to ceasing the operation of a CHHA that significantly cut expenses. Also, since Shorefront Jewish Geriatric Center purchased and started operations of M.J.G. Adult Day Care on January 1, 2011, the excess of revenues over expenses of $1,551,423 will offset future loses of Shorefront Jewish Geriatric Center.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Architectural Analysis

Background

The project will consist of approximately 130,485 square feet of renovation to the existing 2nd through 7th floors of the seven-story nursing home. Overall square footage will not change following the renovations.

- Second floor (5,835 sf renovation)

The renovation on the second floor (non-nursing) will consist of approximately 5,835 sf of work within the physical and occupational therapy area. This work includes casework replacement along with some lighting upgrades to the corridor adjacent to the therapy area.

- Third-seventh floors (24,930 sf renovation per floor = 124,650 sf renovation)

In addition to the required sprinkler work, the renovation on the third through seventh floors (nursing floors) will include 10 nurse stations, 10 staff work areas, 10 lounge spaces, 20 shower and bathing rooms, as well as the 360 resident rooms.

Renovations related to the nurse stations and staff work areas per floor:
The new staff work areas located at the entrance to each of the two nursing units gives the staff more private work space while maintaining visual interaction. Also, two existing end of corridor resident lounges will be exchanged for staff support spaces. The existing nurse station will become a staff office and work area with four work stations. There will also be a clinical office nearby.

Renovations related to resident lounge spaces per floor:
There will be two new lounge spaces up front near the entrance to each nursing unit as well as space outside the dining room doors. In turn, two of the four resident lounges at the ends of the corridor are exchanged for staff work spaces. Two with the best views for the residents are maintained so that there are varieties of views.

Renovations related to the shower and bathing rooms per floor:
All showers and bathing rooms will be redesigned to provide training toilets, shower facilities that are larger and access to tubs.

Renovations related to the resident rooms per floor:
This work includes the replacement of the beds and headboards, resident chairs, night tables, televisions, window treatments, and cubicle curtains. The existing built-in casework will be replaced with new furniture. The resident room flooring (carpeting) will be replaced in all areas by resilient flooring (sheet vinyl). The patient toilet rooms will have cosmetic upgrades. The main corridors outside of the resident rooms will have handrail upgrades and floor replacement as well as lighting upgrades. Hall flooring (carpeting) will be replaced in all areas by solid vinyl floor tiles.

Environmental Review

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

Recommendation

From an architectural perspective, approval is recommended.

Attachments

BFA Attachment A	Financial Summary for Shorefront Jewish Geriatric Center, Inc.
BFA Attachment B	Financial Summary for M.J.G. Co., Inc. – 2010 unaudited
BFA Attachment C	Financial Summary for Shorefront Jewish Geriatric Center, Inc. – (Assets limited as to use)

SHOREFRONT JEWISH GERIATRIC CENTER, INC.
d/b/a SHOREFRONT CENTER FOR REHABILITATION
AND NURSING CARE

BALANCE SHEET

DECEMBER 31, 2010 AND 2009

	2010	2009
ASSETS		
Current assets		
Cash	$ 21,656,201	$ 17,548,693
Cash - patient trust funds	479,540	369,987
Accounts receivable (net of allowance for uncollectible accounts of $3,054,811 in 2010 and $3,164,997 in 2009)	5,010,245	4,220,089
Estimated due from third parties		
Prepaid expenses and other assets	15,022	23,407
Due from Metropolitan Jewish Health System Foundation	7,132	4,813
Due from participating agencies of the Metropolitan Jewish Health System (net of allowance of $1,000,000 in 2010 and $1,000,000 in 2009)	2,245,433	8,258,044
Total current assets	29,413,573	30,425,033
Assets limited as to use	18,808,902	15,983,378
Fixed assets - net	19,107,315	20,687,279
Deferred financing costs - net	1,189,563	1,279,909
Total assets	$ 68,519,353	$ 68,375,599

SHOREFRONT JEWISH GERIATRIC CENTER, INC.
d/b/a SHOREFRONT CENTER FOR REHABILITATION AND NURSING CARE

BALANCE SHEET

DECEMBER 31, 2010 AND 2009

	2010	2009
LIABILITIES AND NET ASSETS		
Current liabilities		
Accounts payable and accrued expenses	$ 1,496,036	$ 1,802,052
Payroll and related expenses payable	1,926,179	1,788,474
Patient trust funds	479,540	369,987
Estimated due to third parties	14,765,484	13,704,286
Mortgage payable	1,206,000	1,142,000
Total current liabilities	19,873,239	18,806,799
Long-term liabilities		
Swap liability	3,059,860	2,523,402
Mortgage payable	21,204,000	22,410,000
Total liabilities	44,137,099	43,740,201
Net assets :		
Unrestricted	24,382,254	24,635,398
Total liabilities and net assets	$ 68,519,353	$ 68,375,599

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

December 8, 2011

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Acute Care Services – Construction **Exhibit #7**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	102167 C	Lincoln Medical and Mental Health Center (Bronx County) Dr. Bhat – Interest Dr. Boufford – Abstaining Dr. Boutin-Foster – Abstaining	Contingent Approval
2.	112030 C	Corning Hospital (Steuben County) Mr. Booth - Interest	Contingent Approval
3.	112120 C	Coler-Goldwater Specialty Hospital and Nursing Facility (New York County) Dr. Bhat – Interest Dr. Boufford – Abstaining	Contingent Approval

Hospice – Construction **Exhibit #8**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	112069 C	Hospice Buffalo, Inc. (Erie County) Mr. Booth - Interest	Approval

Public Health and Health Planning Council

Project # 102167-C
Lincoln Medical and Mental Health Center

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

Program: **Acute Care Services**
Submitted: **April 7, 2010**

Executive Summary

Description
Lincoln Medical and Mental Health Center (LMMHC), a 347-bed public hospital located at 234 East 149th Street, Bronx, is seeking approval to perform renovations to its emergency department (ED). LMMHC is operated by the New York City Health and Hospitals Corporation (NYCHHC), a public-benefit corporation, which operates numerous health care facilities in New York City.

The renovation project is designed to modernize the ED and introduce new technology and equipment, resulting in enhanced trauma capacity, improved patient flow, increased patient safety and improved staff efficiency.

Total project costs are estimated at $16,249,629.

DOH Recommendation
Contingent approval.

Need Summary
LMMHC had 152,432 ED visits in 2009. Data from 2010 is incomplete; however, to date, 151,084 visits have been reported. Using 2009 data and the average planning standard of 1,500 ED visits per station, LMMHC will need 102 ED stations. This project proposes 106 ED stations, which will allow a margin for future growth.

Program Summary
Based on the information reviewed, a favorable recommendation can be made regarding the facility's current compliance pursuant to NYS Public Health Law Section 2802-(3)(e).

Financial Summary
Project costs will be met with $366,434 in accumulated funds, and NYC General Obligation Bonds of $16,063,195 (30 yrs. @ 5.50%). The bonds have 18 year payout remaining.

Incremental Budget:	Revenues:	$ 2,084,865
	Expenses:	9,138,090
	Gain/(Loss):	($ 7,053,225)

It appears that the applicant has demonstrated the capability to proceed in a financially feasible manner. The facility's incremental losses will be covered by NYCHHC.

Architectural Summary
This project entails the proposed expansion and renovation of the hospital's existing ED, including the renovation of 37,200 SF of space currently occupied by the ED and adjacent ambulatory care facilities, plus an additional 2,220 SF to be constructed adjacent to the existing ER. The completed project will include a total 106 patient care stations, which is an increase of 31 over the existing 75 stations. There are 45 private treatment rooms included in the new total number of stations.

The proposed ED is comprised of four treatment areas: Adult Acute Care, Pediatric Care, Critical Care/Trauma, and Behavioral Health Care. The proposed project is also intended to enhance trauma capability, improve patient flow, and increase patient safety and staff efficiency. The project is proposed to address a steadily increasing volume of service. The new addition with entrance canopy and related site work is also expected to enhance visibility of the ED and improve access at the ambulance and walk-in entrances, and the private vehicle drop-off.

Recommendations

Health Systems Agency
There will be no HSA recommendation for this application.

Office of Health Systems Management
Approval contingent upon:

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

Approval conditional upon:

1. The submission of State Hospital Code (SHC) Drawings for review, 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 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. [AER]

Council Action Date
December 8, 2011.

Need Analysis

Background

Lincoln Medical and Mental Health Center (LMMHC) proposes to renovate its Emergency Department resulting in 106 treatment stations, 45 of which will be private rooms. There will be 8 stations for intake and triage, 53 stations for adults, 27 stations for pediatrics, 8 critical care and trauma stations, and 10 behavioral health stations.

The proposed addition and renovation is designed to modernize the ED space and introduce new technology and equipment.

LMMHC is certified for the following beds and services:

Certified Beds	
Coronary Care	7
Intensive Care	23
Maternity	35
Medical / Surgical	177
Neonatal Continuing Care	10
Neonatal Intensive Care	5
Neonatal Intermediate Care	5
Pediatric	32
Pediatric ICU	8
Psychiatric	45
Total Beds	*347*

Certified Services	
AIDS Center	Neonatal Continuing Care
Ambulance	Neonatal Intensive Care
Ambulatory Surgery - Multi Speciality	Neonatal Intermediate Care
Audiology O/P	Nuclear Medicine - Diagnostic
Certified Mental Health Services O/P	Nuclear Medicine - Therapeutic
Chemical Dependence - Rehabilitation O/P	Pediatric
Chemical Dependence - Withdrawal O/P	Pediatric Intensive Care
Clinical Laboratory Service	Pharmaceutical Service
Coronary Care	Physical Medicine and Rehabilitation O/P
CT Scanner	Primary Medical Care O/P
Dental O/P	Psychiatric
Emergency Department	Radiology - Diagnostic
Family Planning O/P	Radiology-Therapeutic
Intensive Care	Renal Dialysis - Acute
Linear Accelerator	Renal Dialysis - Chronic
Lithotripsy	Respiratory Care
Maternity	Therapy - Occupational O/P
Medical Social Services	Therapy - Physical O/P
Medical/Surgical	Therapy - Speech Language Pathology
Methadone Maintenance O/P	Therapy - Vocational Rehabilitation O/P

LMMHC has one extension clinic and the following state designations:

- AIDS Center
- Level 3 Perinatal Center
- Regional Trauma Center
- SAFE Center
- Stroke Center

Analysis

The hospital provides services to the communities of Mott Haven, Hunts Point, Highbridge, and Morrisania. The primary service area includes zip codes 10451, 104452, 10454, and 10456.

The number of projected visits per CON is as follows:

Current:	162,757
1st Year Increment:	179,033
3rd Year Increment:	183,916

In 2008, 2009, and 2010, approximately 92 percent of the ED visits at LMMHC were made by Bronx County residents. *(Source: SPARCS 2008-10)*

Overall Emergency Department and Outpatient Utilization

The table below provides detailed information on the number of ED visits at LMMHC from 2008-2010. The number of ED visits increased by 5.7 percent from 2008 to 2010. The percent of ED visits admitted was 13 to 14 during these years.

ED Utilization 2008-2010

YEAR	*Total ED Visits*	*ED Visits T/R*	*ED Visits Inpatient Admission*	*% ED Visits Inpatient Admission*
2008	142,896	124,254	18,642	13.00%
2009	152,432	132,509	19,923	13.10%
2010*	151,084	130,094	20,990	13.90%

(SOURCE: SPARCS 2008-10)
**Data is not complete*

Conclusion

The proposed project is designed to modernize the ED space that will improve patient flow and increase patient safety.

LMMHC had 152,432 ED visits in 2009. Data from 2010 is incomplete. However, to date, 151,084 visits have been reported. Using the average planning standard of 1,500 ED visits per station, LMMHC will need 100 ED stations. This project proposed 106 ED stations, which will allow for future growth.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

Lincoln Medical and Mental Health Center, a governmental facility, requests approval to renovate the emergency department. There will be no changes to services concurrent with the approval.

Compliance with Applicable Codes, Rules and Regulations

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

Character and Competence

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

Conclusion

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Total Project Cost and Financing

Total project cost for New Construction and renovations is estimated at $16,429,629, broken down as follows:

New Construction	$ 1,611,792
Renovation and Demolition	9,230,570
Design Contingency	1,087,976
Construction Contingency	626,447
Architect/Engineering Fees	2,154,062
Construction Manager Fees	949,500
Financing Fees	313,000
Interim Interest Expense	364,434
CON Application Fee	2,000
CON Processing Fee	89,848
Total Project Cost	$16,429,629

Project cost is based on a January, 15, 2012 construction start date and an 18 month construction period. The applicant's financing plan is as follow:

Equity:	$ 366,434
City of New York General Obligation Bonds, 5.50%, 30 years (18 year payout remaining)	16,063,195

The bonds are part of the City's tax-exempt general obligation bonds, issued to fund multiple capital projects for HHC facilities. The bonds are available for disbursement upon CON approval.

Operating Budget

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

	Year One	Year Three
Revenues:	$1,603,742	$2,084,865
Expenses:		
Operating	4,745,816	$8,011,590
Depreciation and Rent	272,500	272,500
Interest	879,000	854,000
Total Expenses	5,897,316	9,138,090
Net Revenue:	($4,293,574)	($7,053,225)
Utilization: Visits	16,276	21,159

Incremental utilization by payor source, based on historical experience, is anticipated as follows for years one and three:

	Outpatient
Medicaid Fee-for-Service	11.24%
Medicaid Managed Care	40.22%
Medicare Fee-for-Service	4.15%
Medicare Managed Care	3.58%
Commercial Fee-for-Service	3.24%
Commercial Managed Care	2.07%
Private Pay/Other*	35.50%

** Private pay/other is comprised of 24.20% visits classified as bad debt 9.46% classified as private pay and 1.84% classified as charity care.*

The applicant indicates that expenses will be recovered through increased revenues generated by additional inpatient and outpatient utilization.

Capability and Feasibility

The issue of capability centers on the applicant's ability to satisfy project cost. Review of BFA Attachment A, financial summary of HHC, indicates sufficient resources for the equity contribution of $366,434. The remaining $16,063,195 will be satisfied from City of New York bonds, which have already been issued at the above stated terms.

The issue of feasibility centers on the applicant's ability to meet expenses with revenues and maintain a viable ongoing entity. The submitted incremental budget indicates that Lincoln Medical & Mental Health Center will generate a net loss of approximately $4,293,574 in year 1 and $7,053,225 by the third year of operation. The loss is caused due to the fact that a significant number of the patients that are seen in the ED unit are admitted to the hospital and the revenues that are generated during their ED visit being incorporated into their overall hospital stay as an inpatient. As this facility is part of NYCHHC, NYCHHC will cover any losses.

As shown on BFA Attachment A, HHC maintained positive working capital position and a negative net asset position, and had an average operating loss of $587,866,500 during 2008-2010. The reasons for the losses are due to the retirement benefit expenses increasing by $518,100,000 more than budgeted, after the New York City Actuary recognized costs not previously recognized. HHC has recognized the costs and is now paying the current amount owed yearly to the pension benefit plan, and has changed the pension plan to a cost sharing plan. Also, as a part of a cost reduction initiative, HHC has instituted the following initiatives to improve their profitability: Reducing medical supply costs through renegotiations with vendors; improving billing and coding procedures, and instituting a corporate-wide hiring freeze and right sizing all the related hospitals.

Based on the preceding, it appears the applicant has demonstrated the capability to proceed in a financially feasible manner, and approval is recommended.

Recommendation
From a financial perspective, approval is recommended.

Architectural Analysis

Review Summary:
The proposed project includes a 2,220 SF of new construction plus 32,000 SF of renovation within and adjacent to the facilities existing Emergency Department, on the 1st floor. The completed ER will include 106 exam stations including 46 private treatment rooms. The exam/treatment stations will be divided between four clinical units, each with its own caretaker station. These include 53 Adult Acute Care at 4787 SF, 27 Pediatric Care at 4550 SF, 8 Critical Care/Trauma, and 10 Behavioral Health Care at 4426 SF. There will also be 4 pediatric and 4 adult triage stations adjacent to the respective waiting areas. A newly constructed walk-in entrance and security desk is intended to eliminate current congestion created from those activities occurring at the existing ambulance entrance. The addition will also provide space for a new lobby and adult waiting area with 73 seats, 5 nearby registrar stations and adjacent triage rooms. A separate 42 seat pediatric waiting area includes 5 registrar stations and 4 triage rooms.

The Adult Acute Care unit provides 53 stations with an area totaling 10,552 SF. This includes a 2,873 SF area for Adult/Women's treatment including 1 SART room with toilet and shower, 4 GYN rooms with toilets and 6 curtained stations surrounding a dedicated nurses station. Also included is a 12 station asthma care room, 3 isolation rooms, 1 ENT room, 2 GYN and 16 fast track stations.

Critical Care/Trauma includes a 265 sf nurses station and a 180 SF usable open area. The 8 stations include 4 adult, 3 holding and 1 cast room. This area totals 2078 sf.

The Pediatric Care unit includes a asthma care room with 12 sitting and 1 stretcher stations, plus 1 GYN/SART room, 2 triage stations, 2 trauma stations, and 6 exam rooms. This area totals 4550 sf with adjacent support spaces.

Behavioral Health includes a nurses station and day room core surrounded by 10 individual patient rooms, and support spaces that include 3 separate toilet rooms each with a shower. Staff locker/conference room and visitor waiting are provided. Sally ports are provided at the two entrances, one of which leads to Adult ED, the other to a corridor of the main lobby.

The entrance drop-off areas will be resurfaced and a new canopy will provide protection at the entrances.

Environmental Review:
The Department has deemed this project to be a TYPE I Action and the lead agency shall be Bronx County.

Recommendation
From an architectural perspective, approval is recommended.

Attachments

BFA-Attachment A	Financial Summary, New York City Health and Hospitals Corporation
BHFP Attachment	Map

Public Health and Health Planning Council

Project # 112030-C

Corning Hospital

County: **Steuben (Corning)**
Purpose: **Construction**

Program: **Acute Care Services**
Submitted: **July 15, 2011**

Executive Summary

Description

Corning Hospital, an existing 99-bed not-for-profit hospital located in Steuben County, requests approval to undertake a physical plant replacement project that will provide significant and necessary improvements to address aged and obsolete facilities in all program areas. The hospital will be "rightsized" to a certified capacity of 65 beds, representing a 34% reduction from the current certified capacity of 99 beds. The new hospital will be located on approximately 68 acres of vacant land located on the north side of State Route 17 at Exit 48 of I-86 in the Town of Corning. The proposed site is approximately 4.1 miles east of the current site.

Corning Hospital's sole corporate member and active parent is Guthrie Healthcare System (GHS). Together with the Guthrie Clinic, GHS formed Guthrie Health ("Guthrie"), a not-for-profit Pennsylvania health care organization that acts as the overall parent of a geographically distributed integrated delivery system that services 11 counties along the twin tiers of New York and Pennsylvania.

Total project costs are estimated at $149,995,908.

DOH Recommendation

Contingent approval.

Need Summary

Corning Hospital will decertify 28 medical/surgical beds, 1 obstetric bed and all 5 of its pediatric beds. In addition, the applicant will close two of its hospital extension clinics and relocate those programs and services to the new hospital building. The new hospital will have 100% single beds and will be able to accommodate all patients regardless of age in a more efficient manner.

Program Summary

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.

Financial Summary

Project costs will be met with equity of $89,995,908 and a loan from Guthrie Health of $60,000,000 (30 yrs. @ 5.5%).

Budget:	*Revenues:*	*$106,317,000*
	Expenses:	*103,941,000*
	Gain/(Loss):	*$ 2,376,000*

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

Architectural Summary

This project involves the construction of a 65-bed, two-story, 270,908 SF, relocated, replacement hospital. Included in the project square footage are 4,100 SF of canopies, a separate one-story, 21,035 SF cancer center and a distinct 3,500 SF grounds building.

Recommendations

Health Systems Agency

The Finger Lakes Health Systems Agency recommends approval of this project.

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 at a comparable market rate that is acceptable to the Department of Health. [BFA]
3. 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. This approval is conditional upon relocation of the Intensive Care Unit to offer convenient access from the emergency, respiratory therapy, laboratory, radiology, surgery, and other essential departments and services as defined by the functional program, and so that medical emergency resuscitation teams can respond promptly to emergency calls with minimum travel time OR upon written confirmation from an FGI Guidelines Committee representative that the Intensive Care Unit location approximately 300 feet and 1 floor away from the Emergency Department as proposed is compliant with 2010 FGI Guidelines 2.2-2.6.1.2(1) and 2.2-2.6.1.2(2). [AER]
2. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's request for, and Department's granting approval for the start of construction. [AER]
3. The applicant shall start construction on or before July 1, 2012 and complete construction by July 1, 2014 upon the filing of Final Construction Documents in accordance with 10 NYCRR section 710.7. 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

December 8, 2011.

Need Analysis

Background

Coming Hospital is a 99-bed acute care hospital located at 176 Denison Parkway East, Coming, New York (Steuben County). The facility seeks CON approval to undertake a physical plant replacement project that will provide significant and necessary improvements to address aged and obsolete facilities in all program areas. The Hospital will also reduce it total inpatient capacity by 34 beds to 65 beds.

Corning Hospital has the following certified beds and services:

Table 1:
Corning Hospital Certified Beds

Bed Category	*Current Beds*	*Requested Action*	*Capacity Upon Completion*
Medical / Surgical	78	-28	50
Intensive Care	8		8
Maternity	8	-1	7
Pediatric	5	-5	0
Total Beds	99	-34	65

Table 2:
Corning Hospital Certified Services

Service	*Current Services*	*Services Upon Completion*
Ambulatory Surgery - Multi Specialty	✓	✓
Clinical Laboratory Service	✓	✓
Coronary Care	✓	✓
CT Scanner	✓	✓
Emergency Department	✓	✓
Intensive Care	✓	✓
Linear Accelerator	✓(off site)	✓(On site)
Lithotripsy	✓	✓
Magnetic Resonance Imaging	✓	✓
Maternity	✓	✓
Medical Social Services	✓	✓
Medical/Surgical	✓	✓
Nuclear Medicine - Diagnostic	✓	✓
Outpatient Surgery	✓	✓
Pediatric	✓	Remove
Pediatric O/P	✓	✓
Pharmaceutical Service	✓	✓
Primary Medical Care O/P	✓	✓
Radiology – Diagnostic	✓	✓
Radiology – Therapeutic	✓(off site)	✓(On site)
Respiratory Care		✓(correction)
Therapy - Occupational	✓(off site)	✓(On site)
Therapy - Physical	✓(off site)	✓(On site)
Therapy - Respiratory		✓(correction)
Therapy – Speech Language Pathology	✓(off site)	✓(On site)

Corning Hospital is authorized to operate 3 other hospital extension clinics providing care such as Primary Medical Care, Therapeutic Radiology, Occupational Therapy, Physical Therapy, Speech Language Pathology, and Physical Medicine and Rehabilitation.

However, upon completion of this CON two of these hospital extension clinics will close (Corning Hospital Cancer Treatment Services located at 114 Columbia Street, Corning New York and Corning Hospital O/P Rehabilitation Facility located at 8 Denison Parkway Corning, New York). The programs and services of the aforementioned clinics will be physically attached to the new building and become an integral part of the Hospital.

State Designation:

-- Level 1 Perinatal Center; and
-- Stroke Center.

The following are the key elements of the proposal:

- Construct a new two-(2)-story hospital to replace the existing urban hospital, which is antiquated, landlocked and inefficient;
- Develop significantly fewer inpatient beds than currently certified to respond to healthcare reform efforts, while enhancing the Guthrie/CH focus on primary and ambulatory care;
- Reduce inpatient certified capacity from 99 beds to 65 beds, which will all be located in private rooms;
- Replace the fully depreciated Linear Accelerator with a state-of-the-art machine;
- Create space for a state-of-the-art Emergency Department (ED) with 18 treatment areas/bays, an increase of three (3) treatment areas over the existing outdated and undersized ED;
- Create space for a redesigned Obstetrics Unit consisting of five (5) Labor, Delivery, Recovery and Postpartum (LDRP) beds and two (2) postpartum beds to be used mainly for C-section births. The total capacity of the unit will be seven (7) beds as compared with the existing certified capacity of eight (8) beds;
- Create space for a state-of-the-art operating room (OR) suite consisting of five (5) ORs and two (2) procedure rooms for a total of seven (7) rooms that will be designed to treat both inpatients and more complex outpatients. The new capacity represents a reduction of one (1) procedure room from the current capacity;
- Create the space required to replace the Guthrie Cancer Center at Corning Hospital, an existing off-site extension clinic and the site of the Hospital's existing Linear Accelerator, which will be replaced as part of the Project; and
- Create space to replace the Corning Hospital Outpatient Rehabilitation Facility, another off-site extension clinic.

Analysis

Patient Origin and Population

In 2008 to 2010, an average of 82.5 percent, 5.9 percent and 3.4 percent of Corning Hospital's total inpatient discharges were residents of Steuben, Chemung and Schuyler Counties, respectively. In 2000, the census population for the aforementioned counties stood at 209,022; census counts for 2010 show a slight decline of 1.4 percent to 206,163 residents. Between the two census periods, the total population increased slightly by 0.3 percent from 98,728 in 2000 to 98,990 in 2010.

Displayed in Table 3 below is Corning Hospital's inpatient utilization by major service category. As shown below, total inpatient discharges at CH increased by 13.2 percent from 4,135 in 2006 to 4,679 in 2010. These patients generated a total average daily census that ranged from 36 to 40 patients on any given day. The associated total occupancy rates ranged from 34.2 percent to 38.6 percent.

During the period under review, 74.0 percent to 78.0 percent of the Hospital's discharges were allocated to the major service category of medical/surgical. Occupancy rates for these patients ranged from 35.0 percent to 40.0 percent. The facility's obstetrics occupancy rates ranged in the low to mid 30's while pediatrics occupancy rates were under 15.0 percent (Table 3). All of the occupancy rates in the aforementioned service categories were well below the established NYSDOH standards for rural counties (medical/surgical 80.0%; obstetric 70.0% and pediatric 65.0%).

Table 3: Corning Hospital: Inpatient Utilization by Major Service Category						
Major Service Category	*2006*	*2007*	*2008*	*2009*	*2010*	Beds
	Discharges					
Medical/Surgical	3,066	3,251	3,409	3,568	3,597	
Pediatric	131	130	132	150	122	
Obstetric	427	453	406	406	438	
General Psychiatric	73	75	34	40	50	
Chemical Dependency	29	28	29	41	44	
High Risk Neonates	25	14	11	19	22	
Subtotal	3,751	3,951	4,021	4,224	4,273	
Healthy Newborns	384	432	374	391	406	
Grand Total	4,135	4,383	4,395	4,615	4,679	
	Average Daily Census					
Medical/Surgical	30	32	35	32	33	
Pediatric	1	1	1	1	1	
Obstetric	3	3	3	3	3	
General Psychiatric	1	0	0	0	0	
Chemical Dependency	0	0	0	0	0	
High Risk Neonates	0	0	0	0	0	
Subtotal	34	36	38	36	37	
Healthy Newborns	2	3	2	2	2	
Grand Total	36	39	40	38	39	
	Occupancy Based on Current Beds (%)					
Medical/Surgical	34.8	37.2	40.2	37.1	38.4	86
Pediatric	14.0	12.0	14.0	16.0	12.0	5
Obstetric	32.5	35.0	32.5	31.3	32.5	8
General Psychiatric	0.0	0.0	0.0	0.0	0.0	0
Chemical Dependency	0.0	0.0	0.0	0.0	0.0	0
High Risk Neonates	0.0	0.0	0.0	0.0	0.0	0
Total	34.2	36.4	38.6	36.2	37.3	99

Source: SPARCS 2006-2010

Corning Hospital also provides care for patients seeking Emergency Department (ED) services. During the period, the hospital generated an average of 22,324 total ED visits year. On average, about of 15.0 percent of these visits resulted in an inpatient admission. Corning Hospital also performed a sizable number of Ambulatory Surgery procedures. During the years under consideration, these procedures increased by 13.0 percent from 8,470 in 2005 to 9,529 in 2009 (Table 4).

Table 4: Corning Hospital: Emergency Department and Ambulatory Surgery Statistics			
Year	*Total Emergency Department. Visits*	*% of Emergency Department Visits Resulting in Inpatient Admission*	*Amb/Surg Procedures*
2005	22,459	14.6	8,470
2006	22,455	14.1	8,746
2007	21,712	15.4	8,497
2008	22,834	16.4	8,432
2009	22,162	16.9	9,529

Source: Institutional Cost Reports, 2005-2009

Discussion
In this CON, the facility seeks approval to right size its inpatient beds and build Emergency Department and surgical capacity to meet current as well as future demand. Based on the facility's proposed bed capacity, derivation of occupancy rates for current utilization as well as projected utilization yields sufficient capacity to meet demand in all service areas.

Conclusion
Corning Hospital seeks CON approval to replace its existing facility as well as to right size its inpatient beds in order to respond to the changes in the healthcare delivery system. This replacement project will provide significant and necessary improvements to address aged and obsolete facilities in all program areas. The Hospital will also reduce its total inpatient capacity by 34 beds and relocate two of its three hospital extension clinics to the hospital's main campus. The new hospital will have 100 percent single beds and will be able to accommodate all patients, regardless of age, in a more efficient manner.

Recommendation
From a need perspective, approval is recommended.

Programmatic Analysis

Program Proposal
Construct a replacement facility.

Corning Hospital will:

- Reduce bed capacity from 99 to 65 beds,
- Add three emergency department treatment areas,
- Decrease operating rooms by one, and
- Consolidate services from two extension clinics into the new facility

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.

Recommendation
From a programmatic perspective, approval is recommended.

Financial Analysis

Background

This project is for the construction of a new, approximately 270,000 square foot, two story hospital to replace the existing urban hospital, which is antiquated, landlocked and inefficient. The current site has inadequate parking, the facilities were not designed for current medical care technologies, especially with respect to space requirements, and there are very few private rooms. Inpatient certified capacity will be reduced from 99 beds to 65 beds, which will all be located in private rooms. The Emergency Department will be expanded to 18 treatment bays, an increase of three treatment bays over the existing outdated and undersized ED.

Land Acquisition Agreement

The applicant submitted an executed land acquisition agreement for the site that the replacement hospital will be located, summarized below:

Premises:	68 acres of land located on the north side of State Route 17 at Exit 48 of I-86 in the town of Corning.
Seller:	Roger F. Steele and Roger F. Steele Trust
Purchaser:	CONOR, LLC
Purchase Price:	$3,397,450
Payment of Purchase Price:	Cash at Closing

The applicant has indicated that CONOR is a party related to Guthrie Health/Corning Hospital to enter into the agreement to acquire the land. The applicant has indicated that the land will be transferred to Corning Hospital at a later date. As a contingency of approval, the applicant must submit an executed land transfer agreement conveying the land to the hospital.

Total Project Cost and Financing

Total project cost, which is for new construction and the acquisition of moveable equipment, is estimated at $149,995,908, itemized as follows:

Land Acquisition	$3,397,450
New Construction	95,275,950
Site Development	15,000
Design Contingency	9,214,407
Construction Contingency	4,186,950
Architect/Engineering Fees	5,834,227
Temporary Utilities	505,000
Construction Manager Fees	756,650
Other Fees (Consultant)	5,525,420
Moveable Equipment	16,020,000
Telecommunications	1,952,400
Interim Interest Expense	6,490,000
CON Fee	2,000
Additional Processing Fee	820,454
Total Project Cost	$149,995,908

Project costs are based on a July 1, 2012 construction start date and a 24 month construction period. Land acquisition costs are based on the lower of cost or market. The applicant provided an executed purchase agreement and an MAI appraisal in support of land acquisition costs. The applicant's financing plan appears as follows:

Equity	$89,995,908
Loan from Guthrie Health (5.5% interest rate for a thirty year term)	$60,000,000

Operating Budget

The applicant has submitted an operating budget that is relative to the whole facility, in 2011 dollars, for the first and third years, summarized below:

	Year One	Year Three
Revenues:		
Inpatient	$29,442,679	$29,943,438
Outpatient	66,805,321	73,905,562
Other	808,000	939,000
Non-Operating Revenue	894,000	1,529,000
Total Revenues	$97,950,000	$106,317,000
Expenses:		
Operating	$80,770,000	$88,508,000
Capital	15,173,000	15,433,000
Total Expenses	$95,943,000	$103,941,000
Excess of Revenues over Expenses	$2,007,000	$2,376,000
Utilization:		
Discharges	5,353	5,243
Visits	164,795	170,523

The applicant has indicated that the 2011-2012 State Budget will have a negative impact of $285,000 on the facility. The applicant has indicated that this will be absorbed by hospital operations.

The incremental excess of revenues over expenses for this project during the first and third years are ($6,250,788) and ($6,769,587), respectively. The losses will be offset from current operations.

Total utilization by payor source for inpatient services is broken down as follows, during the first and third years after project completion:

	Year One	Year Three
Medicaid Fee-For-Service	10.77%	10.77%
Medicare Fee-For-Service	44.38%	44.36%
Commercial Fee-For-Service	41.90%	41.90%
Private Pay	2.95%	2.97%

Total utilization by payor source for outpatient services is broken down as follows, during the first and third years after project completion:

	Year One	Year Three
Medicaid Fee-For-Service	10.77%	10.76%
Medicare Fee-For-Service	44.38%	44.38%
Commercial Fee-For-Service	41.90%	41.90%
Private Pay	2.95%	2.96%

Feasibility Assumptions

The applicant has provided its internal feasibility assumptions relative to this project. BFA Attachment E through I presents historical and forecasted results pertaining to the facility utilization and financial performance.

The applicant has indicated that Corning Hospital operates on a July 1st to June 30th fiscal year, due in part to its membership in Guthrie Healthcare System, a Pennsylvania not-for-profit System.

The applicant has indicated that the only reason Corning Hospital's certified financial statements are prepared on a December 31st basis is for New York State reporting purposes.

Following are significant assumptions:

Inpatient Utilization

BFA Attachment H presents historical and forecasted demand for inpatient services, based on the following assumptions:

- Increase in discharges for intensive care and med/surg is the result of Corning Hospital's recent growth (increase of 4.13% from July 1, 2009 through June 30, 2011). The intensive care discharges will increase 15.80% from 2009 through 2017 (2.25% annually). The reason for the increase is historical experience and the replacement hospital having more private rooms to attract patients.

Historical (7/1/2009 - 6/30/2010) and projected (7/1/2016 - 6/30/2017) inpatient discharges by payor source are broken down as follows:

	2010	2017
Medicaid Fee-For-Service	10.77%	10.77%
Medicare Fee-For-Service	44.38%	44.38%
Commercial Fee-For-Service	41.89%	41.91%
Private Pay	2.96%	2.94%

Outpatient Utilization

BFA Attachment I presents historical and forecasted demand for outpatient services based on the following assumptions:

- Increase in visits for ER is the result of Corning Hospital's estimates of the likely growth in outpatient user rates, and an increase in visits due to the new ER having more space than the existing ER, and being more modern. The ER visits will increase 32.70% from July 1, 2011 through June 30, 2017 (5.45% annually).

- Increase in visits for linear accelerator services is the result of replacing the outdated linear accelerator, and relocating the Cancer Center from off-site to the hospital campus. The linear accelerator visits will increase 52.69% from July 1, 2011 through June 30, 2017 (8.78% annually).

Historical (July 1, 2010) and projected (June 30, 2017) outpatient visits by payor source are broken down as follows:

	2010	2017
Medicaid Fee-For-Service	10.77%	10.77%
Medicare Fee-For-Service	44.38%	44.38%
Commercial Fee-For-Service	41.90%	41.90%
Private Pay	2.95%	2.95%

Forecasted Financial Statements

Presented as BFA Attachment E, F and G are the forecasted balance sheet, statement of forecasted revenues and expenses and forecasted cash flow, respectively, for Corning Hospital. Each statement's underlying results and assumptions are summarized below:

Balance Sheet

As shown on Attachment E, Corning Hospital has a positive working capital position and a positive net asset position during the period shown.

Debt service coverage ratios on outstanding debt during the last two years of the projection period:

2016	2017
4.19	4.30

Forecasted Statement of Revenues and Expenses

Revenues:

Inpatient Medicare reimbursement is calculated under the Prospective Payment System. Inpatient rates for Medicare has been projected based on existing methodologies with revenues trended at an average 2%. Medicare outpatient reimbursement has been projected based on existing methodologies with revenues trended at an average of 2.00% annually. Medicare revenues reflect historical experience adjusted for increased utilization on historical experience.

Inpatient Medicaid revenues assume a continuation of HCRA throughout the projection period trended at 0%. Case mix index is consistent with historical experience. Outpatient rates for Medicaid have been projected based on existing methodologies with revenues trended at 0%, consistent with historical experience.

Expenses:

Salaries and Wages - Existing staffing levels will continue throughout the forecast period, adjusted for changes in inpatient volume. The forecasted expenses per salaries and wages are predicated upon the current average salary per FTE, increased by 3% base increase with an additional 1.5% for step increases for Union employees, and 3.5% and 2.5% for Non-union nursing/clinical and administrative/service.

Fringe Benefits -The employee benefit expenses are predicated as a percentage of salaries and wages and are expected to be 40% in 2017, which is consistent with historical experience.

Non-salary expenses, including supplies, utilities, purchased services and insurance, are projected to have savings via efficiencies. The hospital projected efficiency savings of 20% for utilities and savings of 2% via efficiencies through supply cost.

Mortgage Interest - The projected interest rate for the projected financing is 5.5% for a 30 year term.

Depreciation and Amortization - Calculated over the respective useful life of the assets acquired. As a result, of the proposed CON, capital costs will be 14.85% of total operating expenses in 2017. Capital costs are presently 4.98% of total operating expenses.

Capability and Feasibility

The hospital will finance $60,000,000 via Guthrie Health at an interest rate of 5.5% for a 30 year term. Presented as BFA Attachment B are the June 30, 2009 and June 30, 2010 certified financial statements of Guthrie Health, which indicates the availability of sufficient funds to provide the loan to Corning Hospital. The remainder, $89,995,908, will be provided by Corning Hospital and Guthrie Health. The applicant has indicated that the plan is for Corning Hospital to provide all the equity, but the applicant is aware of the Department of Health's policy requiring the documentation of current balances in the amount to satisfy equity contributions as of the date of CON review. As a result, to meet this policy's requirements, Corning Hospital and its parent and co-operator, Guthrie Healthcare System, commit to the Department to make available sufficient funds from the resources of Guthrie Health to supplement the hospital's equity. Presented as BFA Attachment A is the 2009 and 2010 certified financial statements of Corning Hospital, and also with the assistance of Guthrie Health (Attachment B), indicates the availability of sufficient funds for the equity contribution.

The submitted budget projects a total excess of revenues over expenses of $2,007,000 and $2,376,000 for this project during the first and third years, respectively. The applicant's financial projections (BFA Attachment F) indicate that the hospital will achieve an excess of revenues over expenses during the period after project completion, consistent with historical experience.

As shown on BFA Attachment A, the hospital had an average positive working capital position and an average positive net asset position during 2009 and 2010. The hospital achieved an excess of revenues over expenses of $17,505,751 and $14,418,543 during 2009 and 2010, respectively.

Presented as BFA Attachment C, is the June 30, 2011 internal financial statements of Corning Hospital. As shown on Attachment C, the hospital had a positive working capital position and a positive net asset position through June 30, 2011. Also, the hospital has achieved an operating excess of revenues over expenses of $9,216,000 through June 30, 2011.

Presented as BFA Attachment D, is the June 30, 2011 internal financial statements of Guthrie Health. As shown on Attachment D, the entity had a positive working capital position and a positive net asset position through June 30, 2011. As shown on Attachment D, the entity had an excess of revenues over expenses of $30,561,000 through June 30, 2011.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Architectural Analysis

Background

This project involves the construction of a 65 bed, two-story, 270,908 SF, relocated, replacement hospital of type II (222) construction. Included in the project square footage are 4,100 SF of canopies, a separate one-story, 21,035 SF cancer center of type II (000) construction and a distinct 3,500 SF grounds building. The hospital and cancer center will be fully sprinklered buildings.

Corning Hospital currently is licensed for 99 inpatient beds. Upon completion of this project, the total bed capacity will be 65 licensed all-private beds and the hospital will house 18 emergency room positions, 5 operating rooms, 1 C-section room, 2 procedure rooms, 1 CT, 1 MRI, 2 radiographic rooms, 1 R/F rooms, 2 mammography rooms, 3 ultrasound rooms, 1 stereotactic room, and 1 nuclear medicine room. Also included in the hospital will be outpatient rehabilitation, cardio-pulmonary rehabilitation, and a sleep lab suite.

- First Floor (161,773 SF new construction)

The first floor will consist of 161,773 SF and will include a main entrance with a central mall which will serve as the primary access and waiting areas for: registration, pre-admission testing, diagnostic imaging, cardiac diagnostics, outpatient surgery, dining, education, business office, gift shop and chapel. There will also be an emergency department with 18 emergency room positions, a surgical suite with 5 operating rooms and 2 procedure rooms, and an imaging department with 1 CT, 1 MRI, 2 radiographic rooms, 1 R/F rooms, 2 mammography rooms, 3 ultrasound rooms, 1 stereotactic room, and 1 nuclear medicine room. Also included on the first floor will be outpatient rehabilitation, cardio-pulmonary rehabilitation, the sleep lab suite and administrative offices. Support services on this floor include central sterile, pharmacy, laboratory, dietary, information technology, housekeeping, material management with a loading dock, and plant operations as well as mechanical and electrical spaces.

- Second Floor (80,500 SF new construction)

The second floor will consist of 80,500 SF and will include 2 medical/surgical patient units with 25 private patient rooms each, 1 maternity unit with 1 C-section suite and 7 private patient rooms and an intensive care unit with 8 private ICU rooms. The respiratory therapy unit will also be located on this floor.

- Cancer Center (21,035 SF new construction)

Also, there is a one-story cancer center of 21,035 SF which has corridor connecting it to the hospital. The cancer center will house: 1 linear accelerator, 1 CT simulator room, 8 exam rooms, 1 exam/procedure room, and 18 infusion stations.

- Grounds Building

There will also be a free-standing 3,500 SF grounds building located on the site.

Environmental Review

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

Recommendation

From an architectural perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Financial Summary- 2009 and 2010 certified financial statements of Corning Hospital
BFA Attachment B	Financial Summary- June 30, 2009 and June 30, 2010 certified financial statements of Guthrie Health
BFA Attachment C	Financial Summary- June 30, 2011 internal financial statements of Corning Hospital
BFA Attachment D	Financial Summary- June 30, 2011 internal financial statements of Guthrie Health
BFA Attachment E	Historical and Forecasted Balance Sheet
BFA Attachment F	Historical and Forecasted Income Statement
BFA Attachment G	Historical and Forecasted Cash Flow Statement
BFA Attachment H	Historical and Forecasted Demand for Inpatient Services
BFA Attachment I	Historical and Forecasted Demand for Outpatient Services
BHFP Attachment	Map

Public Health and Health Planning Council

Project # 112120-C
Coler-Goldwater Specialty Hospital and Nursing Facility

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

Program: **Acute Care Services**
Submitted: **August 25, 2011**

Executive Summary

Description
Coler-Goldwater Specialty Hospital and Nursing Facility (Coler-Goldwater), a 417-bed public hospital located at 1 Main Street, Roosevelt Island, requests approval to renovate the former North General Hospital building to accommodate 201 Long-Term Acute Care Hospital (LTACH) beds and decertify 120 physical medicine and rehabilitation (PM&R) beds and 96 AIDS beds. This application amends and supersedes CON #102252-C, which was contingently approved on November 19, 2010, by the Public Health Council.

The New York City Health and Hospitals Corporation (NYCHHC), operator of Coler-Goldwater, states that a post-acquisition assessment of the existing infrastructure revealed that more preventive renovation than originally anticipated is required, including stabilization of the building envelope, demolition of the ceiling, relocation of the oxygen tank and replacement of elevators and roof. In addition, due to the delay in acquiring the building, NYCHHC states that the original project schedule could not be met. Therefore, the facility developed an aggressive accelerated scheduled, which adds cost to the project.

Since the submission and approval of the original CON, Coler-Goldwater indicates that it hired new architects who have developed design improvements for the LTACH program, which include more private rooms and new and larger weaning rooms. This project also includes the purchase of the lot adjacent to the facility which will be utilized to house the oxygen tanks, other support functions and parking. The amended scope and improved design will allow the facility to provide a much improved setting for its patients.

Total project costs are estimated at $148,197,343.

DOH Recommendation
Contingent approval.

Need Summary
Coler-Goldwater will downsize from 417 total inpatient beds to 201 total beds. The hospital recognizes that the new facility will be fully-occupied due to the transfer of patients from the former site. However, the applicant states that they have identified several strategies which will enable them to manage with the reduced beds.

Program Summary
Based on the information reviewed, a favorable recommendation can be made regarding the facility's current compliance pursuant to NYS Public Health Law Section 2802-(3)(e).

Financial Summary
Project costs will be met with $6,899,501 in accumulated funds, $2,510,453 in land value, an $8,530,000 HEAL 7 Grant award, and NYC bond financing of $130,257,389 (30 yrs. @ 5.50%).

Budget:	Revenues:	$ 56,651,645
	Expenses:	77,168,392
	Gain/(Loss):	$ (20,516,747)

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

Architectural Summary
The applicant proposes to renovate a former 9-story inpatient acute care hospital building, located at 1879 Madison Avenue, New York, to accommodate 201 LTACH beds which will be relocated from Coler-Goldwater on Roosevelt Island. This building will house 111 ventilator dependant beds and 90 other LTACH beds. A related CON #102253 has also been submitted to construct a 276-bed residential health care facility (RHCF) adjacent to this structure, to house RHCF beds that are also proposed for relocation from Coler-Goldwater.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval contingent upon:

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

Approval conditional upon:

1. The applicant shall complete construction by October 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]
2. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
3. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to start of construction. [AER]

Council Action Date

December 8, 2011.

Need Analysis

Background

Coler-Goldwater Specialty Hospital and Nursing Facility - Goldwater Hospital Site is a Long Term Acute Care Hospital (LTACH) located at 1 Main Street Roosevelt Island, New York – New York County. The applicant seeks CON approval to renovate the former North General Hospital building, located at 1879 Madison Avenue, New York, to accommodate 201 LTACH beds. This project amends and supercedes CON #102252-C.

Coler-Goldwater Specialty Hospital and Nursing Facility has the following certified beds and services:

Certified Beds

Bed Category	*Certified*	*Requested*	*Upon Completion*
Medical / Surgical	201		201
AIDS	96	-96	0
Physical Medicine and Rehabilitation	120	-120	0
Total	417	-216	201

Certified Services

AIDS	Coronary Care
Clinical Laboratory Service	Intensive Care
CT Scanner	Medical/Surgical
Medical Social Services	Physical Medical Rehabilitation
Pharmaceutical Service	Respiratory Care
Radiology – Diagnostic	Therapy - Vocational Rehabilitation O/P
Therapy - Speech Language Pathology	

Coler-Goldwater Hospital is a member of New York City Health and Hospitals Corporation (HHC).

CGH program will include the following:

-- 201 medical/surgical beds with an emphasis on ventilator dependent patients;

- o 111 of the medical/surgical beds are proposed to be ventilator compatible
- o 16 of the 111 ventilator compatible beds will be designed to accommodate patients being weaned

-- Patients will have a full range of rehabilitation modalities including:

- o exercise physiology;
- o physical therapy;
- o occupational therapy;
- o vocational rehabilitation counseling;
- o audiology; and
- o psychology/psychiatry and speech therapy.

Care will be provided under the leadership of experienced medical staff assisted by several on-site support and diagnostic services. The program will also include full-service on-site dental clinics, offering general dentistry services augmented by the specialties of periodontics, endodontics and a wide range of surgeries including implantation. A 24-hour on-site stat lab will be maintained for urgent diagnostic purposes.

Inpatient Utilization

CGH has 417 total inpatient beds that fall under major service category medical/surgical. The majority of Coler-Goldwater Hospital's patients are residents of the 5 boroughs of New York City. In 2006, the hospital discharged 773

total patients; by 2007, the number of discharges increased to 888 then declined in 2008 and 2009 to 823 and 709, respectively. Total inpatient discharges for 2010 stood at 635 patients.

The average daily census of these patients fluctuated between 272 and 362 patients on any given day. The average length of stay (ALOS) for these patients also varied during the period under review. Patients discharged in 2010 recorded the longest ALOS of 194.2 days, while those discharged in 2009 experienced the shortest ALOS of 140.0 days. The facility recorded its highest occupancy rates of 82.4 percent and 86.8 percent in 2006 and 2008, respectively and its lowest occupancy rate of 65.2 percent in 2009 (Table 1).

Table 1:
Inpatient Utilization

Utilization Category	*2006*	*2007*	*2008*	*2009*	*2010*	*Current Beds*
Discharges	773	888	823	709	635	
Average Daily Census	344	341	362	272	338	
Average Length of Stay	162.2	140.2	160.5	140.0	194.2	
Occupancy Based on Current Beds	82.4	81.8	86.8	65.2	81.0	417

Source: SPARCS 2006 – 2010

Between 2008 and 2010, CGH discharged an average of 722 total inpatients; of these, almost 80.0 percent were allocated to 5 Major Diagnostic Categories (MDC):

- 37.6 percent to Diseases & Disorders of the Respiratory System;
- 16.2 percent to HIV Infections;
- 9.2 percent to Diseases & Disorders of the Musculoskeletal System & Conn Tissue;
- 8.6 percent to Infectious & Parasitic Diseases, Systemic or Unspecified Sites; and
- 7.9 percent to Diseases & Disorders of the Skin, Subcutaneous Tissue & Breast (Table 2).

Table 2:
Average Discharges by Major Diagnostic Category

Major Diagnostic Category (MDC)	*Average '08 - '10*	*Percent Average '08 - '10*	*Average Cumulative Percent '08 - '10*
Diseases & Disorders of the Respiratory System	272	37.6	37.6
Hiv Infections	117	16.2	53.8
Diseases & Disorders of the Musculoskeletal System & Conn Tissue	67	9.2	63.0
Infectious & Parasitic Diseases, Systemic or Unspecified Sites	62	8.6	71.6
Diseases & Disorders of the Skin, Subcutaneous Tissue & Breast	57	7.9	79.5
Factors Influencing Hlth Stat & Othr Contacts with Hlth Servcs	49	6.8	86.3
Diseases & Disorders of the Kidney & Urinary Tract	31	4.3	90.6
Diseases & Disorders of the Circulatory System	23	3.1	93.7
Diseases & Disorders of the Digestive System	16	2.2	95.9
Diseases & Disorders of the Hepatobiliary System & Pancreas	9	1.2	97.2
Diseases & Disorders of the Nervous System	6	0.9	98.1
Diseases & Disorders of the Ear, Nose, Mouth & Throat	3	0.4	98.4
Endocrine, Nutritional & Metabolic Diseases & Disorders	3	0.4	98.8
Myeloproliferative Diseases & Disorders,Poorly Differentiated Ne	2	0.3	99.1
Injuries, Poisonings & Toxic Effects of Drugs	2	0.3	99.4
Diseases & Disorders of the Male Reproductive System	2	0.2	99.6
Diseases & Disorders of Blood, Blood Forming Organs, Immunolog D	1	0.2	99.8
Diseases & Disorders of the Eye	1	0.1	99.9

Table 2: Average Discharges by Major Diagnostic Category			
Major Diagnostic Category (MDC)	*Average '08 - '10*	*Percent Average '08 - '10*	*Average Cumulative Percent '08 - '10*
Mental Diseases & Disorders	1	0.1	100.0
Total	722	100	

Source: SPARCS 2008 - 2009

Goldwater North - LTACH

Referrals for admission to Goldwater North – LTACH will continue to come from all levels of healthcare facilities in the New York City area. According to CGH, patients being admitted to this specialty hospital as opposed to a nursing facility will be based upon a comprehensive assessment of the treatment needs of each referral. These assessments, will take into account the patient's severity of illness, functional status and other key medical and psychosocial complicating factors.

The hospital will provide a full range of rehabilitation modalities. These services will be available to patients utilizing CGHN as needed. The care will be provided under the leadership of experienced medical and support staff. Medical subspecialties to be provided include dermatology, endocrinology, ENT, gastroenterology, gynecology, hematology/oncology, infectious disease, nephrology, neurology, ophthalmology, orthopedics, podiatry, pulmonary medicine, rheumatology, urology and surgical sub-specialties. Onsite radiology services will be available and most test including CT-Scans, ultra sound and routine x-rays will be conducted onsite, thus reducing the need to transport patients off-site.

This proposal to downsize its beds and relocate to the former North General Hospital site is consistent with both Coler-Goldwater Hospital and Health and Hospitals Corporation's goals.

Patients to be served at Goldwater North will initially be drawn from the patient population in residence at the former CGH site. The applicant expects that CGHN to be fully occupied at the time of relocation, since the total number of beds will be reduced from a complement of 417 to 201.

The new facility is designed and planned to meet the needs of patients requiring LTACH services. In addition, the new location at Goldwater North is more easily accessible to public transportation; therefore, contact between patients, families and friends should be easier to achieve. The neighborhood will also offer the opportunity for easier community connectedness to patients as they transition to living outside the hospital.

The following are the key objectives of this project:

- increase healthcare access while reducing healthcare disparities;
- enhance and leverage advance information technology systems to improve the safety and effectiveness of patient care;
- reinvest in the infrastructure to increase efficiency, ensure safety, improve care and satisfaction of its patients;
- maintain financial health and achieve greater operational efficiency;
- advance residents' quality of care through culture change;
- address physical plant and infrastructure needs; and
- work with community based-organizations to identify housing for those patients able to live in the community with the appropriate support.

Conclusion

Coler-Goldwater Specialty Hospital and Nursing Facility - Goldwater Hospital Site seeks CON approval to renovate the former North General Hospital building and relocate Coler-Goldwater Specialty Hospital and Nursing Facility – Goldwater to the newly renovated space and change its name to Goldwater North – LTACH. Additionally, the facility will downsize from 417 total inpatient beds to 201 total beds. The facility states that this project will significantly

improve the care environment of its patients/residents, address programmatic regulatory code deficiencies in the existing building design, achieve greater operating efficiencies and support the rightsizing policy of the New York State Department of Health. Additionally, the hospital recognizes that the new facility will be fully occupied due to the transfer of patients from the former site. However, the applicant states that they have identified several strategies which will enable them to manage with the reduced beds.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

Coler-Goldwater Specialty Hospital & Nursing Facility, a federally designated long-term care hospital operated by the New York City Health and Hospital Corporation requests approval to relocate hospital services from the current Goldwater division to the former North General Hospital main building and undertake requisite renovations. The new location is being referred to as Goldwater North.

The renovation and relocation will result in the reduction of the total number of beds in the Coler-Goldwater system. The Goldwater division, upon relocation to the Goldwater North location will decrease from 417 beds to 201 beds by decertifying 96 AIDS beds and 120 Physical Medicine and Rehabilitation (PMR) beds. No changes will occur at the Coler Division, which is currently licensed for 210 beds, as a result of this application. Upon completion of this project no hospital services will remain at the current Goldwater division, and the site will no longer function as a hospital division of Coler-Goldwater. Other than the decertification of beds mentioned, the services currently provided at the Goldwater division will continue upon relocation to the Goldwater North site.

Concomitant with the reduction of beds, staffing at the relocated Goldwater North division will decrease from the current staffing level of 840.6 medically related FTEs to 586 medically related FTEs.

Compliance with Applicable Codes, Rules and Regulations

The medical staff will continue to 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.

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

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Lease Agreement

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

Date:	June 30, 2011
Premises:	1879 Madison Avenue, New York, New York
Landlord:	North General Hospital Holding Corporation
Tenant:	New York City Health and Hospital Corporation
Rental:	Fixed rent in the amount equal to all fee-for-service Medicaid capital cost reimbursement based on lease.
Term:	Shall be the period during which DASNY bonds are outstanding or the period during which tenant receives fee-for-service Medicaid capital cost reimbursement from NYS DOH for the non-depreciated value of the portion of the building utilized by tenant.
Provisions:	The tenant shall be responsible for insurance, utilities and maintenance.

HHC will never be obligated to pay additional rent due to the DASNY obligations and NGH will utilize the tenant's payments of rent to be applied to the satisfaction of such DASNY obligations.

Total Project Cost and Financing

Total project costs for new construction is estimated at $148,197,343, detailed as follows:

Land Acquisition	$2,510,000
Renovation & Demolition	85,202,600
Design Contingency	8,502,060
Construction Contingency	8,502,060
Fixed Equipment	2,316,890
Planning Consultant Fees	1,017,800
Architect/Engineering Fees	6,439,233
Construction Manager Fees	1,688,400
Other Fees (EDC fees)	3,060,000
Moveable Equipment	12,500,000
Telecommunications	6,210,191
Financing Costs	2,538,000
Interim Interest Expense	6,895,501
CON Application Fee	4,000
CON Additional Processing Fees	810,608
Total Project Cost	$ 148,197,343

The original project cost was for $64,883,477 and contingently approved by PHC on November 19, 2010. This is an increase of 128%.

Total project costs are based on a construction start date of January 23, 2012, and an October 1, 2013 completion date. The ap financing plan appears as follows:

Land Value	$2,510,453
Accumulated Funds	$6,899,501
HEAL Phase 7 Grant	$8,530,000
New York City Bonds @ 5.5% over 30 years	$130,257,389

Coler-Goldwater has requested and been granted an extension of the HEAL 7 Grant award from the Department until September 30, 2012.

Operating Budget

The applicant has provided a first and third year budget for the renovations and addition of the 201 beds, in 2012 dollars, summarized below:

	Year One	Year Three
Total Inpatient Revenues	$57,807,800	$56,651,645
Expenses:		
Operating	$63,570,000	$61,487,812
Interest	7,685,793	7,482,793
Depreciation and Rent	8,197,787	8,197,787
Total Expenses	$79,453,580	$77,168,392
Excess Revenue over Expenses	$(21,645,780)	$(20,516,747)
Total Inpatient days	73,365	71,898

**Note: HHC will offset losses from operations.*

Inpatient utilization by payor source for years one and three is anticipated as follows:

	Years One and Three
Medicaid Fee-for-Service	83.1%
Medicaid Managed Care	0.6%
Medicare Fee-for-Service	5.1%
Medicare Managed Care	1.3%
Commercial Fee-For-Service	0.3%
Charity Care	8.2%
Private Pay/Other	1.4%

Capability and Feasibility

Total project cost of $148,197,343 will be funded through $2,510,453 land value, $130,257,389 New York City tax exempt bonds at stated terms, $8,530,000 HEAL Phase 7 Grant, and the remaining $6,899,501 in accumulated funds. Presented as BFA Attachment A, is the financial summary of HHC, which indicates the availability of sufficient resources for this project.

The Hospital's financial projections indicate negative income will be achieved during the period. HHC will offset these losses from operations. HHC relies on supplemental Medicaid Disproportionate Share Hospital and Upper Payment Limit funds to support its operations, which are estimated at $1,544,750,374 for fiscal year 2012. As shown on BFA Attachment A, HHC has experienced net deficit positions and maintained positive working capital during the period shown. HHC has also experienced negative income from operations and has implemented the following management initiatives as of May 2010, to increase income from operations:

- Phase I - $300 million in benefits resulting in a hiring freeze, a reduction in supply costs, improved utilization management, and enhanced collection through improved documentation and coding.

- Phase II - $300 million in savings through a restructuring program and the implementation of future initiatives to be in place by 2014. These initiatives include this application.

Subject to noted contingency, 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 is a part of the overall Coler-Goldwater master plan to close the existing 70+ year old Goldwater facility located on Roosevelt Island, which is non-sprinklered and beyond its useful life. Consolidation of all of the hospital's ventilator patients onto three floors in this newer facility will better support the clinical treatment and care for this patient population. The opportunity to renovate existing beds, as compared to constructing a new replacement facility has significant costs savings.

The current master plan calls for the location of specific services from the Coler-Goldwater facility to available space at the former North General Hospital. North General Hospital was built in the early 1990's, and closed June 30th, 2010. The building is 276,398 SF. For the next 18 months to a maximum of 4 years, The Institute for Family Health, a not-for-profit clinic will be utilizing approximately 20,000 SF on the 1st floor.

North General hospital was designed with single and double M/S rooms, which is what is required for the LTACH. Utilizing an existing building has been determined to be more cost effective than building a new structure or renovations at the Coler-Goldwater site.

The project will be comprised of the following renovations:

- Basement (38,082 SF)

Renovations will occur to the existing kitchen (cook chill thermal cart parking and electrical connections, cold tray line and dishwashing), communications room (new switch), and morgue (new refrigeration). A new wheelchair shop and repair service will be established. The remainder of the floor including corridors will receive cosmetic upgrades including painting, ceilings, lighting, and minor repairs. This floor currently includes spaces for staff dining, medical records, environmental services, linen distribution services, facilities management and shops and central stores. The existing cart lift will be removed as it requires major upgrade for continued use.

- First Floor (39,977 SF)

Major renovations will occur to establish a new “avenue-to-avenue” connection between the LTACH and SNF with activity and spiritual care functions. Renovations are also proposed to convert the Emergency Department (no longer open) to physical and occupational therapy. Minor renovations are proposed for nursing administration, patient admitting and a community meeting center. Additional minor renovations will establish a new grade level security department with a holding room. The existing outpatient clinic space will receive targeted renovation in support of speech, audiology and clinic exam for medical, specialty (ophthalmology and gyn) and dental clinic activities for LTACH and SNF residents. A distinct zone of existing exam rooms will be used for employee health. At a minimum, all areas including corridors will receive work associated with necessary infrastructure upgrades and cosmetic improvements including painting, ceilings, lighting, and minor repairs.

- Second Floor (38,626 SF)

Minor renovations to the existing Radiology Department are proposed in order to replace equipment in existing radiology rooms including CT, R/F and Ultrasound. Existing rooms will also be repurposed for procedure functions including a minor procedure room and endoscopy. The existing decontamination room will be utilized for scope cleaning functions. The existing patient holding/recovery space will be utilized for radiology and procedural patient needs. Other spaces on the floor which will receive minor renovations include conversion of existing rehabilitation to administrative and departmental offices and establishment of bio-medical engineering and storage. Minor renovations are proposed for clinical support services currently located on this floor including pharmacy, laboratory and central sterile storage. The remainder of the second floor as well as the corridors will receive work associated with necessary infrastructure upgrades and cosmetic improvements including painting, ceilings, lighting, and minor repairs.

- Third Floor (32,697 SF)

Major renovations will occur on the east side to create a 14 bed ventilator unit and respiratory therapy/pulmonary function department. Minor renovations will occur at the existing west bed unit to convert the existing semi-private patient rooms to 21 beds with required clearances for ventilator patients. Major renovations will occur at the core area in order to create handicapped accessible bathing facilities. The remainder of the rooms on the floor, as well as the corridors will receive work associated with necessary infrastructure upgrades and cosmetic improvements including painting, ceilings, lighting, and minor repairs.

- Fourth Floor (31,084 SF)

Major renovations will occur on the east side (former behavioral health unit) to create a 20 bed ventilator unit with 14 oversized, universal private patient rooms for ventilator patients and 6 beds configured as semi-private patient suites. Minor renovations will occur at the existing west bed unit to convert the existing semi-private patient rooms to 20 beds with required clearances for ventilator patients. Major renovations will occur at the core area in order to create handicapped accessible bathing facilities. The remainder of the rooms on the floor, as well as the corridors will receive work associated with necessary infrastructure upgrades and cosmetic improvements including painting, ceilings, lighting, and minor repairs.

- Fifth Floor (25,088 SF)

Major renovations will occur on the east side to establish a 14 bed ventilator unit. Minor renovations will occur at the existing west bed unit to convert the existing semi-private patient rooms to 22 beds with required clearances for ventilator patients. Major renovations will occur at the core area to create handicapped accessible bathing facilities. The remainder of the rooms on the floor, as well as the corridors will receive work associated with necessary infrastructure upgrades and cosmetic improvements including painting, ceilings, lighting, and minor repairs.

- Sixth Floor (25,088 SF)

Cosmetic renovations will occur at the west patient bed unit to convert them for use as 40 general medical LTACH beds. Major renovations will occur at the core to create handicapped accessible bathing facilities. The east wing (8,280 SF) will receive work associated with necessary infrastructure upgrades. The remainder of the rooms on the floor, as well as the corridors will receive work associated with necessary infrastructure upgrades and cosmetic improvements including painting, ceilings, lighting, and minor repairs.

- Seventh Floor (23,148 SF)

Cosmetic renovations will occur at the east and west patient bed units to convert them for use as 50 general medical LTACH beds. Major renovations will occur at the core area to create handicapped accessible bathing facilities. The remainder of the rooms on the floor, as well as the corridors will receive work associated with necessary infrastructure upgrades and cosmetic improvements including painting, ceilings, lighting, and minor repairs.

- Eighth Floor (17,208 SF)

This level will house the boiler plant and the HVAC equipment including air handlers and exhaust fans. Penthouse infrastructure upgrade work shall include replacement of 6 existing AHU, replacement of all pumps, replacement of chiller # 3, modifying steam generator piping to provide hot water boiler stand by capacity and replacement of domestic hot water heating boilers.

- Ninth Floor (5,400 SF)

The elevator controls will be replaced and housed in this penthouse.

Environmental Review

The Department has deemed this project to be a TYPE II Action and will not have a significant effect on the environment. An Environmental Impact Statement is not required. However, any agency that has an interest in this

project may make their own independent determination of significance and necessity for an EIS in accordance with the procedures specified within Part 97.8 of Title 10: Rules and Regulations.

Recommendation

From an architectural perspective, approval is recommended.

Attachments

BFA Attachment A	Financial Summary, New York City Health and Hospitals Corporation- 2010-2008
BFA Attachment B	Cost Analysis
BHFP Attachment	Map

Public Health and Health Planning Council

Project # 112069-C

Hospice Buffalo, Inc.

County: **Erie (Buffalo)** ***Program:*** **Hospice Services**
Purpose: **Establishment and Construction** ***Submitted:*** **August 5, 2011**

Executive Summary

Description

Hospice Buffalo, Inc., an existing not-for-profit corporation which operates an Article 40 hospice program serving the residents of Erie County, requests approval to convert 8 residence beds to inpatient beds with minor upgrades. Hospice Buffalo, Inc. is located at the St. John Baptist Hospice Buffalo House, 111 Maple St., Buffalo.

Hospice Buffalo, Inc. is currently certified for 22 inpatient beds at the Center for Hospice and Palliative Care – Mitchell Campus, 225 Como Park Blvd., Cheektowaga. Hospice Buffalo, Inc. is also certified for 18 residence beds, of which 10 are located at Mitchell Campus and 8 at St. John Baptist Hospice Buffalo House. They are also operate 4 dually-certified beds, of which 2 are located at Mitchell Campus Hospice House and 2 at the St. John Baptist Hospice Buffalo House.

Upon approval, Hospice Buffalo, Inc. will have a capacity of 32 inpatient beds and 10 residence beds, with only 2 dually-certified beds at the Hospice House on the Mitchell Campus.

The Center for Hospice & Palliative Care, Inc., a not-for-profit organization, is the sole corporate member of Hospice Buffalo, Inc. It was formed to deliver a comprehensive program of care to individuals and their families.

Total project costs are estimated at $454,077.

DOH Recommendation

Approval.

Need Summary

The Hospice Bed Need Methodology, using 2013 projections, shows a need for 38 inpatient hospice beds in Erie County. As of September 2011, there are 26 operational inpatient hospice beds in the county. This illustrates a shortage of 10 beds in the planning area. The proposed project is designed to almost completely alleviate the shortage of beds in the county.

Program Summary

Hospice Buffalo, Inc. is currently in compliance with all applicable codes, rules, and regulations.

Financial Summary

Project costs will be met with equity from the facility.

Incremental Budget:	*Revenues:*	*$ 1,849,443*
	Expenses:	*2,929,221*
	Gain/(Loss):	*$(1,079,778)*

Hospice of Buffalo, Inc. will fund the incremental losses in years one and three from operations.

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

Architectural Summary

The St. John Baptist Hospice Buffalo House is a 9,241 SF one-story residence, with eight residential rooms which includes two dually certified beds. The facility includes areas for clinical, administrative, facility operations and family use. The project will include a new commercial kitchen, modifications to the family lounge and provisions for additional storage space.

Recommendations

Health Systems Agency
There will be no HSA review of this project.

Office of Health Systems Management
Approval conditional upon:

1. The applicant shall complete construction by October 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]
2. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
3. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to start of construction. [AER]

Council Action Date
December 8, 2011.

Need Analysis

Background

Hospice Buffalo Inc., located at 225 Como Park Boulevard Cheektowaga, New York in Erie County seeks CON approval to convert eight (8) residence hospice beds into eight (8) inpatient hospice beds resulting in a total of 32 certified inpatient hospice beds.

The hospice residence serves the needs of patients who do not have family members or a suitable home setting for end-of-life care. The service area for Hospice Buffalo is Erie County. As stated in the summary, based on 2013 projections, there is a need for 38 inpatient hospice beds in the county. Hospice Buffalo currently consists of twenty-six (26) inpatient hospice beds and eighteen (18) hospice residence beds. This leaves a shortage of 10 hospice inpatient beds in the planning area.

The facility seeks CON approval to convert 8 hospice residence beds to 8 hospice inpatient beds. The hospice residence beds that are being converted are at the St. John Baptist Hospice Buffalo House and include 2 dually certified beds.

After the conversion, the distribution of beds by location will be as follows:

- Mitchell Campus:
    - 22 hospice inpatient beds; and
    - 10 resident beds (including 2 dually certified beds);
- St John Baptist Hospice Buffalo House:
    - 8 hospice inpatient beds

St. John Baptist House is a relatively new facility; therefore, the conversion of hospice residence beds to hospice inpatient beds will require minor upgrades. These upgrades include the following:

- install a commercial grade kitchen;
- renovate and enlarge the nurses station;
- renovate the patient entrance and install a canopy; and
- move the tub room in order to accommodate the new nurses station.

Conclusion

The Hospice Bed Need Methodology, using 2013 projections, shows a need for 38 inpatient hospice beds in Erie County. As of September 2011, there are 26 operational inpatient hospice beds in the county. This illustrates a shortage of 12 beds in the planning area. The proposed project is designed to almost completely alleviate the shortage of beds in the county

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

Hospice Buffalo, Inc., a voluntary corporation, currently operates an Article 40 hospice which serves the residents of Erie County. It is also currently certified to operate a 22-bed hospice inpatient unit and a 10-bed hospice residence unit (with 2 of these 10 residence beds dually certified for both inpatient care and residence care) in a freestanding

facility located in Cheektowaga, and another 8-bed hospice residence unit (with 2 of these 8 residence beds dually certified for both inpatient care and residence care) in a freestanding facility located in Buffalo.

The current proposal seeks approval to convert the 8-bed hospice residence unit (with 2 of these 8 residence beds dually certified for both inpatient care and residence care) located in Buffalo, into an 8-bed hospice inpatient unit instead. Since this hospice residence already required hospice inpatient level construction standards when initially approved due to its 2 dually certified beds, the proposed conversion to all hospice inpatient level beds requires minimal construction reconfigurations.

The one-story hospice inpatient facility will continue to consist of the same 8 private patient rooms, 4 located on either side of the centralized nurses' station. Each room continues to contain a private bath with toilet, sink and shower, and each room has individual access to an exterior private screened-in porch. Each room is of sufficient size to accommodate a fold-out bed to allow family members to remain overnight in the patient's room. There continues to be a separate tub room for patient use, and there will also be a separate guest room with full private bath available in the facility for family overnight stays, if desired. There will continue to be a common patient / family lounge area, chapel / meditation room, kitchen and dining facilities, laundry, reception area, administrative offices, etc. The kitchen and dining area are available to families for individual food storage and meal preparation, and the multi-purpose lounge area, chapel / meditation room, porch and courtyard are all available for family activities and gatherings. In addition, a new commercial kitchen is being installed to prepare and serve the required three meals per day.

Staffing for the inpatient unit will continue to utilize 24-hour RN coverage. The direct care staffing schedule will include, at a minimum, 1 Charge RN, 1 RN, 1 LPN, and 1 Home Health Aide on each of the three shifts, seven days per week, to meet the needs of the inpatient level of care. A Social Worker and volunteers will be onsite daily, and physicians will make daily rounds. The same complete interdisciplinary care team will continue to be available and assigned to both the Cheektowaga and Buffalo facilities. Administrative oversight for the new 8-bed hospice inpatient unit will continue to be conducted by the existing Director of Inpatient and Resident Services, who has been, and will continue to be, responsible for overall management of both the Cheektowaga and Buffalo facilities.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Total Project Costs and Financing

Total project costs are estimated at $454,077, broken down as follows:

New Construction	$56,068
Renovation & Demolition	215,072
Site Development	8,748
Construction Contingency	37,721
Fixed Equipment	75,816
Architect/Engineering Fees	35,800
Movable Equipment	21,500
Application Fee	2,000
Additional Processing Fee	1,352
Total Project Cost	$454,077

Project costs are based on a May 1, 2012 construction state date and nine month construction period, which will be equity-funded by the facility.

Operating Budget

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

	Year One	Year Three
Revenues	$1,777,627	$1,849,440
Expenses:		
Operating	2,624,953	2,784,813
Capital	144,408	144,408
Total Expenses	$2,769,361	$2,929,221
Net Loss	($991,734)	($1,079,781)
Utilization: (patient days)	2738	2738
Cost per day	$1,011.45	$1,069,84

Hospice Buffalo, Inc. will fund the losses in years one and three from operations.

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

	Years One and Three
Medicare	79%
Medicaid	5%
Private Pay	2%
Other	14%

Expense and utilization assumptions are based on the applicant's current and historical expense and utilization trends.

Capability and Feasibility

Project cost of $454,077 will be provided as equity from the facility. Presented as BFA Attachment A, is the financial summary of Hospice Buffalo, Inc., which indicates the availability of sufficient resources.

The submitted budget indicates a net loss of $991,734 and $1,079,781 during the first and third year of operation, respectively. Hospice Buffalo, Inc. has stated that while the eight-bed residence has incurred operational losses since it opened in 2008, by converting the residence beds to inpatient beds, the facility will not only decrease the operational losses by approximately $200,000 per year, but alleviate the shortage of inpatient beds. Hospice of Buffalo, Inc. will fund the losses in years one and three from operations. Revenues are based on prevailing reimbursement methodologies for hospice services. The budget appears reasonable.

As shown on BFA Attachment A, financial summary of Hospice Buffalo, Inc. indicates the facility has experienced positive working capital and net asset position and generated a net income of $4,375,811 and $3,524,753 for 2009 and 2010, respectively.

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.

Architectural Analysis

Background

The St. John Baptist Hospice Buffalo House is a 9,241 SF one-story residence with eight residential rooms, which includes two dually certified beds. The facility includes areas for clinical, administrative, facility operations and family use.

The project will include a new commercial kitchen, modifications to the family lounge and provisions for additional storage space. Since inpatient meals will be prepared in the new commercial kitchen, the size of the family kitchen will be reduced, allowing for the relocation of vending from the lounge. This change will improve circulation, eliminate clutter and improve the visual quality of the family lounge. The commercial kitchen will be equipped to handle service for eight inpatients for three meals daily.

The rear patient entrance will be modified with a new covered drop off area and entrance way which will allow drivers and paramedics to pull under the portico and transport the new inpatients from vehicles into the building under more protected conditions. The existing garage will be converted for use as storage and office space.

The mechanical system will be modified to accommodate the addition and relocation of supply and return air devices. The new kitchen will require removal of a unit heater and associated flues, piping and wiring. New lighting will be provided for all areas undergoing changes. The existing sprinkler system will be modified for relocation of sprinkler heads in the nurses' station, tub room and kitchen. The existing fire alarm system will be retained and expanded to meet the requirements for the buildings future program.

Environmental Review

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

Recommendation

From an architectural perspective, approval is recommended.

Attachments

BFA Attachment A Financial Summary, Hospice Buffalo, Inc.

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

December 8, 2011

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 #9**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	072112 C	Oakwood Operating Co., LLC d/b/a Affinity Skilled Living and Rehabilitation Center (Suffolk County)	Deferred
2.	071024 C	Long Beach Memorial Nursing Home, Inc. d/b/a Komanoff Center for Geriatric and Rehabilitation Medicine (Nassau County) Dr. Bhat - Recusal	Deferred
3.	112096 C	Nesconset Acquisition, LLC d/b/a Nesconset Center for Nursing and Rehabilitation (Suffolk County) Mr. Fensterman - Recusal	Deferred
4.	071077 C	North Sea Associates, LLC d/b/a The Hamptons Center for Rehabilitation and Nursing (Suffolk County) Mr. Fensterman- Recusal	Deferred

Deferred

072112 C

Oakwood Operating Co., LLC d/b/a Affinity Skilled Living and Rehabilitation Center

Suffolk County

Deferred

071024 C

Long Beach Memorial Nursing Home, Inc. d/b/a Komanoff Center for Geriatric and Rehabilitation Medicine

Nassau County

Deferred

112096 C

Nesconset Acquisition, LLC d/b/a The Nesconset Center for Rehabilitation and Nursing

Suffolk County

071077 C

North Sea Associates, LLC d/b/a The Hamptons Center for Rehabilitation and Nursing

(Suffolk County)

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

December 8, 2011

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 6: Applications for Individual Consideration/Discussion

CON Applications

Residential Health Care Facility – Construction **Exhibit #10**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	102376 C	Albany County Nursing Home (Albany County)	Deferred

Deferred

102376 C

Albany County Nursing Home

Albany County

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

December 8, 2011

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Acute Care Services – Establish **Exhibit #11**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	112194 E	Northeast Health, Inc. (Rensselaer County)	Contingent Approval

Ambulatory Surgery Centers – Establish/Construct **Exhibit #12**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	111488 B	Yorkville Endoscopy, LLC d/b/a Yorkville Endoscopy Center (New York County)	Contingent Approval

Residential Health Care Facility – Establish **Exhibit #13**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	112031 E	Alliance Health Associates, Inc. d/b/a Linden Gardens Rehabilitation and Nursing Center (Kings County)	Contingent Approval

Certified Home Health Agencies – Establish **Exhibit #14**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	112023 E	District Nursing Association of Northern Westchester County d/b/a Visiting Nurse Association of Hudson Valley (Westchester County)	Contingent Approval

Certificate of Amendment of the Certificate of Incorporation **Exhibit #15**

	Applicant	E.P.R.C. Recommendation
1.	Samaritan Foundation of Northern New York, Inc.	Approval
2.	Auburn Memorial Hospital	Approval
3.	Auburn Hospital System Foundation, Inc.	Approval
4.	Comprehensive Care Management Diagnostic and Treatment Center, Inc.	Approval

Certificate of Dissolution **Exhibit #16**

	Applicant	E.P.R.C. Recommendation
1.	Hudson Valley Health Specialties, Inc.	Approval
2.	Brooklyn Care, Inc.	Approval
3.	The Albert Lindley Lee Memorial Hospital	Approval

HOME HEALTH AGENCY LICENSURES **Exhibit #17**

	Number	Applicant/Facility	E.P.R.C. Recommendation
	1911	The Gerry Homes (Chautauqua County)	Contingent Approval
	2050	Delaware County Public Health Services (Delaware County)	Contingent Approval

2051	Madison County Department of Health (Madison County)	Contingent Approval
2058	Wayne County Public Health (Wayne County)	Contingent Approval
2067	Herkimer County Public Health Nursing Service (Herkimer County)	Contingent Approval

Public Health and Health Planning Council

Project # 112194-E

Northeast Health, Inc.

County: **Rensselaer (Troy)**
Purpose: **Establishment**

Program: **Acute Care Services**
Submitted: **September 28, 2011**

Executive Summary

Description

This application proposes to de-establish Northeast Health, Inc. as the active parent and co-operator of the following not-for-profit facilities:

- *Albany Memorial Hospital*, a 165-bed hospital located in Albany with three extension clinics;
- *Sunnyview Hospital and Rehabilitation Center*, a 115-bed hospital located in Schenectady with two extension clinics;
- *Samaritan Hospital*, a 238-bed hospital located in Troy with six extension clinics;
- *Eddy Heritage House Nursing and Rehabilitation Center*, a 120-bed residential health care facility (RHCF) with two respite beds; and
- *James A. Eddy Memorial Geriatric Center*, an 80-bed RHCF both located in Troy.

This application also proposes to de-establish Northeast Health, Inc. as the active parent of *Capital Region Geriatric Center Inc. d/b/a Eddy Village Green*, a 192-bed not-for-profit RHCF with 60 adult day health care (ADHC) slots located in Cohoes and *Beverwyck, Inc. d/b/a Eddy Village Green at Beverwyck*, a 24-bed not-for-profit RHCF located in Slingerlands.

St. Peter's Health Partners (SPHP), a not-for-profit Corporation, has become the sole member and passive parent of Northeast Health, Inc., Seton Health System, Inc. and St. Peter's Health Care Services through affiliation.

DOH Recommendation

Contingent approval.

Need Summary

There are no service or bed changes requested in this CON application. The communities to be served currently receive services from the applicant and will continue to receive services from the new entity.

Program Summary

There are neither programmatic nor character and competence aspects subject to review in this proposal.

Financial Summary

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 recommendation for this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of a photocopy each of the fully executed (signed and dated) Certificates of Amendment of the Certificates of Incorporation of Northeast Health, Inc.; the Capital Region Geriatric Center, Inc.; Heritage House Nursing Center, Inc.; James A. Eddy Memorial Geriatric Center, Inc.; Memorial Hospital, Albany, N.Y.; Samaritan Hospital of Troy, New York; and Beverwyck, Inc.; acceptable to the Department of Health. [CSL]
2. Submission of a photocopy of the bylaws of Sunnyview Hospital and Rehabilitation Center, acceptable to the Department. [CSL]

State Council Recommendation

December 8, 2011.

Need Analysis

Background

Northeast Health Inc., seek CON approval to be de-established as the active parent of several Article 28 entities.

Northeast Health Inc., Seton Health System and St. Peter's Health Services recently became affilatied by each naming St. Peter's Health Partners (SPHP), a new not-for-profit corporation, as its sole member. Under this affiliation, Northeast Health plans to relinquish its reserved powers over the following entities:

- Capital Region Geriatric Center d/b/a Eddy Village Green - RHCF Facility ID - 4000;
- Heritage House Nursing and Rehabilitation Center d/b/a Eddy Heritage House - RHCF Facility ID - 4549;
- James A. Eddy Memorial Geriatric Center - RHCF Facility ID - 3293;
- Memorial Hospital, Albany N.Y. d/b/a Memorial Hospital - Hospital Facility ID - 0004;
- Samaritan Hospital of Troy New York - Hospital Facility ID - 0756;
- Beverwyck, Inc. - RHCF Facility ID – 9198; and
- Sunnyview Hospital and Rehabilitation Center- Hospital Facility ID - 0831;

SPHP will assume reserved powers over the aforementioned entities.

There are no service or bed changes requested in this CON application. The communities to be served currently receive services from the applicant and will continue to receive services from the new entity.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Conclusion

This Certificate of Need application is to remove the active parent powers of Northeast Health, Inc over several Article 28 facilities. There are neither programmatic nor character and competence aspects subject to review in this proposal.

Recommendation

From a program perspective, approval is recommended.

Financial Analysis

Affiliation Agreement

The June 16, 2010 executed affiliation agreement among St. Peter's Health Care Services (SPHCS), Northeast Health, Inc. (NEH), Seton Health (Seton), Catholic Health East and Ascension Health results in all three systems coming under the SPHP umbrella as follows:

- St. Peter's Health Partners (SPHP), a not-for-profit corporation, is the sole corporate member of all three systems.
- The current organizational relationships within the SPHCS, NEH and Seton systems will remain the same.
- There will be no merging or consolidation of separately incorporated entities at this time.

- SPHP and its subsidiary corporations will have mirror boards of directors which will be the same as the board of directors for each of the Article 28 Entities, as well as any of the Article 28 Entities' parent organizations.

Capability and Feasibility

There are no project costs associated with this application.

There is no budget associated with this application.

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A Organizational Chart of St. Peter's Health Partners

BFA Attachment B 2010-2009 Financial Statements for Northeast Health Inc., and Affiliates

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 8th day of December, 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 de-establish Northeast Health, Inc as the active parent and co-operator of the following not-for-profit facilities: Albany Memorial Hospital, Sunnyview Hospital and Rehabilitation Center, Samaritan Hospital, Eddy Heritage House Nursing and Rehabilitation Center and James A. Eddy Memorial Geriatric Center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:	FACILITY/APPLICANT:
112194 E	Northeast Health, Inc.

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy each of the fully executed (signed and dated) Certificates of Amendment of the Certificates of Incorporation of Northeast Health, Inc.; the Capital Region Geriatric Center, Inc.; Heritage House Nursing Center, Inc.; James A. Eddy Memorial Geriatric Center, Inc.; Memorial Hospital, Albany, N.Y.; Samaritan Hospital of Troy, New York; and Beverwyck, Inc.; acceptable to the Department of Health. [CSL]

2. Submission of a photocopy of the bylaws of Sunnyview Hospital and Rehabilitation Center, 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 # 111488-B

Yorkville Endoscopy, LLC
d/b/a Yorkville Endoscopy Center

County: **New York (New York)** ***Program:*** **Ambulatory Surgery Center**
Purpose: **Establishment and Construction** ***Submitted:*** **June 6, 2011**

Executive Summary

Description

Yorkville Endoscopy, LLC d/b/a Yorkville Endoscopy Center, a to-be-formed limited liability company, requests approval to establish and construct an Article 28 D&TC to be certified as a single-specialty freestanding ambulatory surgery center (FASC) in the discipline of gastroenterology, to be located at 425 East 61st Street, New York. The proposed members of Yorkville Endoscopy, LLC consists of four Board-Certified Gastroenterologists and a limited liability company, which is equally owned by two investing members, Oleg Gutnik, M.D. and Jordan Fowler.

Mr. Fowler and Dr. Gutnik each will own 4% of Yorkville Endoscopy, LLC through their equal ownership in Frontier Healthcare Associates, LLC. Additionally, Mr. Fowler and Dr. Gutnik, as investors or through an equal ownership in Frontier Healthcare Associates, LLC, have an ownership interest or an indirect ownership interest in the following:

- *Digestive Diseases and Diagnostic & Treatment Center, LLC* (Kings County)
- *QEASC, LLC* (Queens County)
- *Queens Boulevard GI, LLC* (Queens County)
- *Putnam GI, LLC* (Putnam County)
- *PBGS, LLC d/b/a Downtown Brooklyn Gynecology Center* (Kings County)

Mr. Fowler also has a 0.72% ownership interest as an investor in *West Side GI, LLC* (New York County).

Mr. Fowler and Dr. Gutnik also have an ownership interest in the administrative service provider, Frontier Healthcare Management Services, LLC.

No responses were received to the Department's inquiry to local hospitals regarding the impact of the proposed ASC in the service area.

Total project costs are estimated at $1,163,770.

DOH Recommendation

Contingent approval for a 5-year limited life.

Need Summary

The 4 physician members have committed to utilize the Center to perform approximately 5,500 projected first-year procedures that they are currently performing in their private, office-based practice in New York County. None of the projected cases will migrate to the Center from any hospital.

The number of projected visits is as follows:

First Year:	5,500
Third Year:	6,064

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 through member's personal investment of $293,770 and a loan of $870,000 5 yrs. @ 4.95%).

Budget:	*Revenues:*	*$ 3,868,132*
	Expenses:	*2,866,216*
	Gain/(Loss):	*$ 1,001,916*

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

Architectural Summary

The FASC will lease 4,500 SF on the 4th floor of an existing medical services building, to provide endoscopy and gastroenterology related services to the local community. The site will include two procedure rooms, pre-operating area and four recovery rooms, along with the requisite support areas.

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 a written statement that the proposed extension clinic will serve all persons in need of the care without regard to their ability to pay or the source of payment. [RNR]
6. Submission of a written statement that the proposed extension clinic will enter into a transfer and affiliation agreement to provide backup and emergency services to the Center. [RNR]
7. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
8. Submission of a loan commitment that is acceptable to the Department. [BFA]
9. Submission of a working capital loan commitment that is acceptable to the Department. [BFA]
10. Submission of an executed lease agreement that is acceptable to the Department. [BFA]
11. Submission of an executed administrative services agreement that is acceptable to the Department. [BFA]
12. Submission of an Article of Organization for the applicant, which is acceptable to the Department. [CSL]
13. Submission of the Operating Agreement for the applicant, which is acceptable to the Department. [CSL]
14. Submission of a Joinder to the Operating Agreement for the applicant, which is acceptable to the Department. [CSL]
15. Submission of an Amended and Restated Articles of Organization of Frontier Healthcare Associates, LLC. which is acceptable to the Department. [CSL]
16. Submission of the Operating Agreement of the Frontier Healthcare Associates, LLC, 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 request for, and Department's granting approval for the start of construction AER). [AER]
7. The applicant shall complete construction by June 1, 2014 upon the filing of Final Construction Documents in accordance with 10 NYCRR section 710.7. In accordance with 10 NYCRR Part 710.2(b)(5), if construction is not completed by this 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
December 8, 2011.

Need Analysis

Background

Yorkville Endoscopy, LLC, a to-be-formed company, is seeking approval for the establishment and construction of an Article 28 diagnostic and treatment center that will be certified as a single-specialty freestanding ambulatory surgical center (FASC) specializing in gastroenterology procedures. The FASC will be named the Yorkville Endoscopy Center and will be located at 425 East 61st Street, New York, New York County.

Analysis

The service area for this project is New York County. Yorkville Endoscopy is not in a HPSA area for primary care, mental health, or dental health services (HRSA).

New York County has a total of 30 facilities providing ambulatory surgery services as follows:

Type of Facility:	***Single Specialty***	***Multi Specialty***
D&TC	1-Gastroenterology	
D&TC	1-Endoscopy	
D&TC		6
Hospital Extension Clinic		4
Hospital		18
Total	*2*	*28*

Source: HFIS

An overview of some of the gastroenterology ambulatory procedures in New York County for 2008 and 2009 is given below. It shows an increase of 13.6 percent between 2008 and 2009.

Clinical Classification (CCS) Diagnosis Category	***2008***	***2009***
Cancer of colon	1,169	782
Cancer of esophagus	363	354
Cancer of other GI organs; peritoneum	146	151
Cancer of rectum and anus	664	503
Cancer of stomach	497	526
Gastritis and duodenitis	7,891	9,420
Gastroduodenal ulcer (except hemorrhage)	491	668
Gastrointestinal hemorrhage	2,451	3,179
Total	*376,532*	*427,854*
% Change 2008-09		*13.6%*

Yorkville Endoscopy will bring existing private practices into the regulatory environment of an Article 28 Center. Yorkville's physicians will perform at the ambulatory surgery center procedures that are currently being done in their private practices. Patients will not migrate from hospitals.

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Background

Establish a diagnostic and treatment center that will also be federally certified as an ambulatory surgery center.

Proposed Operator	**Yorkville Endoscopy**
Operator Type	LLC
Doing Business As	
Site Address	425 East 61st Street, New York
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 (1st Year / 3rd Year)	19.3 FTEs / 21.0 FTEs
Medical Director(s)	Lawrence Cohen
Emergency, In-Patient and Backup Support Services Agreement	Expected to be provided by Mount Sinai Hospital
Distance	2.8 miles and 8 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 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 and membership interests of the LLC are as follows:

Lawrence B. Cohen, M.D.	27.333%
James Aisenberg, M.D.	27.333%
Kenneth M. Miller, M.D.	27.334%
Neville Bamji, M.D.	10.000%
Frontier Healthcare Associates, LLC	8.000%
-- Jordan C Fowler (50%)	
-- Oleg Gutnik, M.D. (50%)	
Total	100.000%

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.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Background

The applicant has submitted a draft administrative services agreement: the terms are summarized below:

Facility:	Yorkville Endoscopy, LLC d/b/a Yorkville Endoscopy Center
Contractor:	Frontier Healthcare Management Services, LLC
Services Provided:	Provide oversight to the following functions: staffing & scheduling; accounting; compliance with medical staff by-laws/rules; accreditation; nursing; and administration. As directed by the company: develop payor contracting strategy, payors' credentialing, negotiate third party contracts and their renewals. Provide summary statistics of all signed contracts. Assist in the preparation of the annual business plan & budget. Monitor and report: clinical benchmarks; in coordination with the administrator & director of nursing monitor quality of care indicators, clinical staffing patterns and risk management program. Educate staff on regulatory and accreditation requirements. Assist the administrator in monitoring the completeness of physician credentialing.
Term:	1 year – renewable for three additional one (1) year term
Fee:	Annual Fee $150,000 (1/12 to be paid monthly = $12,500) Fee will increase 2% per year after the first year

The three members of Frontier Healthcare Management Services, LLC are Jordan Fowler (47.5% membership interest), Oleg Gutnik, M.D. (47.5% membership interest), and Roy Bejarano (5.0% membership interest). Frontier Healthcare Management Services, LLC is also the proposed administrative services provider for projects nos. 101167-B (West Side GI, LLC), 111076-B (QEASC, LLC) and 111138-B (Putnam GI, LLC).

Lease Rental Agreement

The applicant has submitted a Letter of Interest to lease the proposed site; the terms are summarized below:

Premises:	4,500 gross square feet located at 425 East 61st Street, 4th Floor, New York, New York
Landlord:	ABS Partners Real Estate, LLC
Lessee:	Yorkville Endoscopy LLC d/b/a Yorkville Endoscopy Center
Term:	15 years and 8 months (1st 8 months are free)
Rental	After the 1st 8 months the next 12 months will at $225,000 per year ($50.00 per sq. ft) Yearly rate will increase by the Consumer Price Index
Provisions:	Utilities, Taxes, and Maintenance

Two letters from licensed real estate agents have been submitted, which attest to the rent's reasonableness.

Total Project Cost and Financing

Total project costs for renovation and acquisition of moveable equipment is estimated at $1,163,770, broken down as follows:

Renovation & Demolition	$795,467
Design Contingency	79,547
Construction Contingency	79,547
Architect/Engineering Fees	63,637
Other Fees	50,000
Movable Equipment	67,751
Financing Costs	8,700
Interim Interest Expense	10,766
CON Application Fee	2,000
CON Processing Fee	6,355
Total Project Cost	$1,163,770

Project costs are based on a February 1, 2012 start date with a four month construction period.

The applicant's financing plan appears as follows:

Cash Equity (Applicant)	$293,770
Bank Loan (4.95%, 5-year term)	870,000
Total	$1,163,770

A Letter of Interest has been provided from TD Bank.

Operating Budget

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

	Year One	Year Three
Revenues	$3,512,999	$3,868,132
Expenses:		
Operating	$2,276,564	$2,425,447
Capital	266,872	440,769
Total Expenses	$2,543,436	$2,866,216
Net Income or (Loss)	$969,563	$1,001,916
Utilization: (procedures)	5,500	6,064
Cost Per Procedure	$462.44	$472.66

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

Medicaid Fee-For-Service	1.0%
Medicaid Managed Care	1.6%
Medicare Fee-For-Service	20.6%
Medicare Manage Care	3.4%
Commercial Fee-For-Service	21.2%
Commercial Manage Care	50.2%
Charity	2.0%

Utilization projections are based upon members' current office-based practices being relocated to the more appropriate FASC setting. Each practicing physician has submitted letters in support of their projections. Expense assumptions are based upon staffing patterns appropriate for the projected volume and members experience in working with similar facilities. It appears all costs will be cover at approximately 74% of projected volume or 4,070 procedures in the first year and 4,490 procedures in the third year.

Capability and Feasibility

The total project cost of $1,163,770 will be satisfied by the proposed members contributing $293,770, and the balance of $870,000 being finance by TD Bank at the above-stated terms.

Working capital requirements are estimated at $477,702, which appears reasonable based on two months of third year expenses. The applicant has submitted a letter of interest from TD Bank to finance half of the working capital or $238,851, with a one year pay back period carrying a 3.25% estimated interest rate. The remaining $238,851 in working capital will be provided from the members' own financial resources. Presented as BFA Attachment A are the applicant's personal net worth statements, which indicates there are sufficient liquid resources to meet the equity and working capital requirements for the project.

Presented as BFA Attachment B is Yorkville Endoscopy, LLC pro-forma balance sheet that shows operations will start off with $776,885 in equity, approximately $244,264 higher then the estimated minimum, which accounts for the physicians' contribution of medical equipment not included in project costs.

Yorkville Endoscopy, LLC projects an operating excess of $969,563 and $1,001,916 in the first and third years, respectively. Revenues for Medicare and Medicaid are based on current and projected rates and other payors reflecting adjustments based on experience in the region. 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 proposed ambulatory surgery center will be located on the fourth floor of an existing medical services building. The project will consist of renovation to approximately 3,200 SF of the existing 8,200 SF space and will include a waiting area, reception with office, admitting station, patient and staff toilets, 2 pre-op bays, 4 recovery areas, nurse station, exam room, patient changing area, 2 procedure rooms, decontamination room, scope processing room, anesthesia station and scope storage area. The facility will also include a staff lounge with lockers, soiled workroom, clean workroom, medical gas storage and janitor closet.

The building will be protected with a 24hr central station fire alarm and a full sprinkler system. The project will respond to the increasing need for outpatient Endoscopic procedures in the area.

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 Yorkville Endoscopy, LLC
BFA Attachment B	Pro-forma Balance Sheet of Yorkville Endoscopy, LLC
BFA Attachment C	Establishment Checklist for Ambulatory Care Sites
BHFP Attachment	Map

Supplemental Information

Outreach

Below are presented summaries of responses by hospitals to letters from the Department asking for information on the impact of the proposed ambulatory surgery center (ASC) in their service areas. There follows a summary of the applicant's response to DOH's request for information on the proposed facility's volume of surgical cases, the sources of those cases, and on how staff will be recruited and retained by the ASC.

Facility: New York Presbyterian Hospital
New York Weill Cornell Center
525 East 68th Street
New York, New York 10021

No response.

Facility: The Hospital for Special Surgery
535 East 70th Street
New York, New York 10021

No response.

Facility: Memorial Hospital for Cancer and Allied Diseases
1275 York Avenue
New York, New York 10065

No response.

Facility: Lenox Hill Hospital
100 East 77th Street
New York, New York 10021

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 currently performed in the participating physicians' private practice. The applicant also cites growing local demand for ambulatory surgical procedures, as evinced by SPARCS data showing an increase of 527% in ambulatory surgery cases for freestanding facilities in New York County between 2000 and 2010. The applicant physicians also state that performing cases in a facility that is under the control of the member physicians, who are converting their practice to the proposed ASC, will result in greater convenience and efficiency for patients and physicians, which will encourage utilization of the proposed facility.

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 Retnetion

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.

- Office-Based Cases

All cases for the proposed ASC are based on the current volume of cases being performed by the applicant physicians in their office-based practice, and from a projected modest growth in that office-based volume.

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 8th day of December, 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 service center specializing in gastroenterology, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:	FACILITY/APPLICANT:
111488-B	Yorkville Endoscopy, LLC d/b/a Yorkville Endoscopy Center

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 a written statement that the proposed extension clinic will serve all persons in need of the care without regard to their ability to pay or the source of payment. [RNR]
6. Submission of a written statement that the proposed extension clinic will enter into a transfer and affiliation agreement to provide backup and emergency services to the Center. [RNR]
7. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
8. Submission of a loan commitment that is acceptable to the Department. [BFA]
9. Submission of a working capital loan commitment that is acceptable to the Department. [BFA]
10. Submission of an executed lease agreement that is acceptable to the Department. [BFA]
11. Submission of an executed administrative services agreement that is acceptable to the Department. [BFA]
12. Submission of an Article of Organization for the applicant, which is acceptable to the Department. [CSL]
13. Submission of the Operating Agreement for the applicant, which is acceptable to the Department. [CSL]

14. Submission of a Joinder to the Operating Agreement for the applicant, which is acceptable to the Department. [CSL]
15. Submission of an Amended and Restated Articles of Organization of Frontier Healthcare Associates, LLC. which is acceptable to the Department. [CSL]
16. Submission of the Operating Agreement of the Frontier Healthcare Associates, LLC, 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 request for, and Department's granting approval for the start of construction AER). [AER]
7. The applicant shall complete construction by June 1, 2014 upon the filing of Final Construction Documents in accordance with 10 NYCRR section 710.7. In accordance with 10 NYCRR Part 710.2(b)(5), if construction is not completed by this 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

Public Health and Health Planning Council

Project # 112031-E

Alliance Health Associates, Inc.
d/b/a Linden Gardens Rehabilitation and Nursing Center

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

Program: **Residential Health Care Facility**
Submitted: **July 18, 2011**

Executive Summary

Description

Alliance Health Associates, Inc., d/b/a Linden Gardens Rehabilitation and Nursing Center, an existing proprietary corporation, requests approval to be established as the operator of Ruby Weston Manor, a 240-bed not-for-profit residential health care facility (RHCF) located at 2237 Linden Boulevard, Brooklyn. Ownership of the operation before and after the requested change is as follows:

Current	
Ruby Weston Manor	100%
Proposed Owner	
Alliance Health Associates, Inc. d/b/a Linden Gardens Rehabilitation and Nursing Center	
MEMBERS:	
-- Joel Landau	40%
-- Jack Basch	30%
-- Marvin Rubin	15%
-- Soloman Rubin	15%

The operator of Ruby Weston Manor received final CON approval in 1995 to construct a 280-bed RHCF. The facility opened in 1998, but was never constructed to the full 280-bed authorization and the applicant never modified its CON approval. With this current CON proposal, the Department finalizes its certification for this RHCF at the current 240-bed capacity.

Alliance Health Associates, Inc. will enter into a lease agreement with Alliance Health Property, LLC for the property. The applicant has submitted an executed real property purchase agreement between Alliance Health Property, LLC and Ruby Weston Manor dated June 2, 2011.

Jack Basch has ownership interests in Elmhurst Care Center, Inc, a 240-bed RHCF in East Elmhurst, and Bezalel Rehabilitation and Nursing Center, a 120-bed RHCF in Far Rockaway, while Soloman Rubin has ownership interests in Hamilton Park Nursing and Rehabilitation Center, a 150-bed RHCF in Brooklyn.

DOH Recommendation

Contingent approval.

Need Summary

Occupancy rates for the facility showed an increase from 74.3% in 2007 to 87.8%% in 2010. The applicant has submitted documentation that occupancy as of September 30, 2011 is 93.7%

Program Summary

The review of operations of Elmhurst Care Center, Inc., Bezalel Rehabilitation and Nursing Center and Hamilton Park Nursing and Rehabilitation Center results in a conclusion of substantially consistent high level of care since there were no enforcements for the time periods indicated.

Financial Summary

Total purchase price of $9,500,000 will be met with a bank loan of $7,125,000, with the remaining $2,375,000 coming from members' equity.

Budget:	*Revenues:*	*$ 18,216,413*
	Expenses:	*18,045,787*
	Gain/(Loss):	*$ 170,626*

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

Architectural Summary

This project is for Establishment action only; therefore, no Architectural review 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 loan commitment for the purchase price acceptable to the Department of Health. [BFA]
2. Submission of a working capital loan commitment acceptable to the Department. [BFA]
3. Submission of an executed lease agreement acceptable to the Department. [BFA. CSL]
4. Submission of a photocopy of the applicant's executed Certificate of Amendment of its Certificate of Incorporation, acceptable to the Department. [CSL]
5. Submission of a photocopy of the applicant's adopted Amended and Restated Bylaws, acceptable to the Department. [CSL]

Council Action Date

December 8, 2011.

Need Analysis

Background

Alliance Health Associates, Inc., d/b/a Linden Gardens Rehabilitation and Nursing Center, proposes to be established as the operator of Ruby Weston Manor, a 240-bed residential health care facility (RHCF) located at 2237 Linden Boulevard, Brooklyn, Kings County. The sole shareholder of Alliance Health Associates, Inc. is Jack Basch. Mr. Basch will be transfer a total of 70% of interest to Marvin Rubin who will have 15%, Solomon Rubin who will have 15%, and Joel Landau who will have 40%.

RHCF Bed Need	*New York City*
2016 Projected Need	51,071
Current Beds	43,454
Beds Under Construction	635
Total Resources	44,089
2016 Projected Unmet Need	6,982

RHCF Occupancy	*2007*	*2008*	*2009*	*2010*
Ruby Weston Manor	74.3%	64.8%	78.5%	87.8%*
Kings County	91.8%	92.2%	92.3%	92.8%

** 2010 occupancy is unaudited.*

The Ruby Weston reported occupancy rates were 74.3%, 64.8%, 78.5%, and 87.8% in 2007, 2008, 2009, and 2010 respectively. Additionally, the applicant has submitted documentation that occupancy as of September 30, 2011 is 93.7%. Those rates are well below the planning optimum of 97% and the occupancy percentage in Kings County.

In 2010 Ruby Weston had 20 physical A's and 7 physical B's with a CMI of .905.

Conclusion

Since this is a request for a change in ownership and occupancy has increased to acceptable levels, there will be no changes in beds or services following the completion of this project.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Facility Information

	Existing	*Proposed*
Facility Name	Ruby Weston Manor	Linden Gardens Rehabilitation and Nursing Center
Address	2237 Linden Boulevard Brooklyn, NY 11207	Same
RHCF Capacity	240	Same
ADHC Program Capacity	NA	Same
Type OF Operator	Not-for-Profit	Proprietary
Class of Operator	Business Corporation	Same

Operator	Ruby Weston Manor	Alliance Health Associates, Inc. d/b/a Linden Gardens Rehabilitation and Nursing Center Shareholders Jack Basch 30% Marvin Rubin 15% Joel Landau 40% Solomon Rubin 15%

Character and Competence

- FACILITIES REVIEWED

Residential Health Care Facilities

Elmhurst Care Center, Inc.	11/01 to present (10 years)
Bezalel Rehabilitation and Nursing Center	11/01 to present (10 years)
Hamilton Park Nursing and Rehabilitation Center	11/01 to present (10 years)

Other Health Related Facilities

Shiel Medical Laboratory, Inc.	11/01 to present (10 years)

- INDIVIDUAL BACKGROUND REVIEW

Jack Basch is employed as the Director of Alliance Health Associates. Mr. Basch discloses the following ownership interests.

Shiel Medical Laboratory, Inc.	1994 to present
Elmhurst Care Center, Inc.	1/1999 to present
Bezalel Rehabilitation and Nursing Center	1989 to present

Mr. Basch has disclosed an indirect ownership interest in Genesis Healthcare, Inc. Genesis HealthCare, Inc. is headquartered in Kennett Square, Pennsylvania and operates over 200 nursing homes and long term care facilities in 13 Eastern states. Jack and Miriam Basch hold a 4.3478% membership interest in MCP Genesis, LLC, which is a 9.2% member of FC Investors XI. FC Investors XI is an entity formed by Formation Capital, which, along with JER Partners, is a co-owner of Genesis HealthCare, Inc. Mr. Basch has indicated his ownership interest is made solely for investment purposes, and he does not possess any controlling powers over the company or any of its health care operations. In recognition of DOH concern regarding the nature of his ownership interest, Mr. Basch has submitted an affidavit whereby he attests that he has no director, officer, or operating role or interest in Genesis HealthCare.

Marvin Rubin is employed in management at Hamilton Park Nursing and Rehabilitation Center in Brooklyn, NY. Mr. Rubin indicates he holds no ownership interests in health care facilities.

Joel Landau is the Director of Care to Care IPA, LLC, a radiology benefit management company. In addition Mr. Landau is also the owner of The Intelimed Group, a medical contracting and credentialing group and EZ-Bill, a medical billing company. Mr. Landau indicates he holds no ownership interests in health facilities.

Solomon Rubin is employed by Grandell Rehabilitation and Nursing Center as controller, since November, 1997. Mr. Rubin also is employed by Beach Terrace Care Center as controller, since February, 1998.

Mr. Rubin discloses the following ownership interests:

Hamilton Park Nursing and Rehabilitation Center	August 2009 to present

Character and Competence – Analysis:
Joel Landau was named as a defendant on February 8, 2011 in a civil action in New York County Civil Supreme Court. On June 21, 2011, the action was dismissed.

No adverse information regarding the other three proposed members has been received.

The review of operations of Elmhurst Care Center, Inc., Bezalel Rehabilitation and Nursing Center and Hamilton Park Nursing and Rehabilitation Center results in a conclusion of substantially consistent high level of care since there were no enforcements for the time periods indicated.

The review of Shiel Medical Laboratory, Inc. indicates there are no issues with its license.

There are no proposed changes in either the program or physical environment of the facility.

Recommendation
From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement
The applicant has submitted an executed asset purchase agreement, the terms of which are summarized below:

Date:	June 2, 2011
Seller:	Ruby Weston Manor
Buyer:	Alliance Health Associates, Inc d/b/a Linden Gardens Rehabilitation and Nursing Center
Assets Transferred:	All of Seller's right and title to and interest in all of the assets of every kind, nature and description owned or leased by the Seller and used by, for and in connection with the business.
Excluded Assets:	Any collective bargaining agreement between the Seller and any labor organization which represents the Seller's employees, claims against third parties, Seller's non-transferable licenses, organizational documents, corporate seal, tax returns, and other tax records of Seller, all equity interests in Seller and the real property.
Assumed Liabilities:	None
Purchase Price:	$9,500,000
Payment:	$475,000 down payment 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 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. Currently, there are no outstanding Medicaid audit liabilities and approximately $1,231,195 in Health Facility Cash Assessment Program liabilities and $2,074,584 in retro Medicaid rate liabilities.

Lease Rental Agreement
The applicant has submitted a draft lease agreement, the terms of which are summarized below:

Landlord:	Alliance Health Property, LLC
Leesee:	Alliance Health Associates, Inc.
Premises:	All buildings, structures, fixtures and equipment located at 2237 Linden Boulevard, Brooklyn

Rental:	2,500,000 per year, increasing 5% every three years.
Term:	25 years with the option to renew for an additional ten years.
Provisions:	The lessee shall be responsible for taxes, utilities, insurance and maintenance.

The lease agreement is between related entities with common ownership and is, therefore, a non-arm's length agreement. The applicant has submitted an executed real property purchase agreement between Alliance Health Property, LLC and Ruby Weston Manor.

Operating Budget

The applicant has submitted an operating budget, in 2011 dollars, for the first year subsequent to change in ownership:

Revenues:	$18,216,413
Expenses:	
Operating	$14,830,607
Capital	3,215,180
Total Expenses:	$18,045,787
Net Income:	$170,626
Utilization: (patient days)	78,942
Occupancy:	90.1%

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

- Expenses include lease rental.
- Medicare and private pay assume current rates of payment.
- Medicaid rate is based on the facility's 2011 Medicaid rate published by DOH, adjusted to reflect change in capital reimbursement due to conversion from not-for-profit to proprietary.
- Utilization by payor source for year one is expected as follows:

Medicare Fee for Service	5.6%
Medicaid Fee for Service	75.9%
Private Pay	18.5%

- Breakeven occupancy is projected at 89.3%.

Capability and Feasibility

The purchase price of $9,500,000 will be provided through a $7,125,000 bank loan from First Meridian at a 6% interest rate for 20 years and $2,375,000 in equity from the proposed members. Presented as BFA Attachment A is the net worth statements of the proposed members showing sufficient funds. The applicant has submitted an affidavit from each member which states that he is willing to contribute resources disproportionate to ownership percentages.

Working capital contributions are estimated at $3,007,631, based on two months of first year expenses, and will be satisfied by a working capital loan in the amount of $1,503,815 at an interest rate of 6.25% for a 5 year term, for which a letter of interest has been provided by First Meridian. The remainder, $1,503,816, will be provided as equity from the proposed members. Presented as BFA Attachment B, is the pro-forma balance sheet of Alliance Health Associates, Inc. as of the first day of operation, which indicates positive member's equity position of $3,878,816.

Review of Attachment C, financial summary of Ruby Weston Manor, indicates that the facility has maintained average positive working capital and positive equity and experienced an average net loss of $1,346,491 for the period shown. The applicant has indicated the reasons for the losses were low occupancy levels in 2008 and 2009, inadequate controls on operating expenses and a retroactive Medicaid rate adjustment which resulted in a reduction in revenue of $1,456,183 for 2009. In 2010, the facility developed and implemented a plan for increasing occupancy and a change in management led to tighter fiscal controls. Occupancy increased from 78.5% in 2009, to 87.8% in 2010, and expenses have decreased by $325,696 from 2009. As of September 30, 2011, occupancy has increased to 93.7%.

The submitted budget indicates a net income of $170,626 for the first year subsequent to change in ownership. The budget appears reasonable.

Review of BFA Attachments D and E, financial summaries for Elmhurst Care Center and Bezalel Rehabilitation and Nursing Center, indicates that the facilities have maintained positive working capital and positive equity, and experienced an average net income of $431,275 and $115,381, respectively, for the period shown.

Review of BFA Attachment F, financial summary for Hamilton Park Nursing and Rehabilitation Center, indicates that the facility has experienced average negative working capital, average negative equity, and experienced an average net loss of $458,281 for the period shown. The applicant has stated the reason for the losses was a result of two and a half years of retroactive rate adjustments due to the reduction and elimination of the facility's trend factors, and other State Budget reductions that the new operator could not have anticipated during 2010. The facility has since adjusted its operating expenses for 2011, and has generated a net income of $1,009,757 as of July 31.

Based on the preceding, and subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Personal Net Worth Statement
BFA Attachment B	Pro-forma Balance Sheet
BFA Attachment C	Financial Summary, Ruby Weston Manor
BFA Attachment D	Financial Summary, Elmhurst Care Center
BFA Attachment E	Financial Summary, Bezalel Rehabilitation and Nursing Center
BFA Attachment F	Financial Summary, Hamilton Park Nursing and Rehabilitation Center
BFA Attachment G	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 8th day of December, 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 Alliance Health Associates, Inc. d/b/a Linden Gardens Rehabilitation and Nursing Center as the new operator of Ruby Weston Manor Residential Health Care Facility, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:	FACILITY/APPLICANT:
112031 E	Alliance Health Associates, Inc. d/b/a Linden Gardens Rehabilitation and Nursing Center

APPROVAL CONTINGENT UPON:

1. Submission of an executed loan commitment for the purchase price acceptable to the Department of Health. [BFA]
2. Submission of a working capital loan commitment acceptable to the Department. [BFA]
3. Submission of an executed lease agreement acceptable to the Department. [BFA. CSL]
4. Submission of a photocopy of the applicant's executed Certificate of Amendment of its Certificate of Incorporation, acceptable to the Department. [CSL]
5. Submission of a photocopy of the applicant's adopted Amended and Restated Bylaws, 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 # 112023-E

District Nursing Association of Northern Westchester County d/b/a Visiting Nurse Association of Hudson Valley

County: **Westchester (Tarrytown)**
Purpose: **Establishment**

Program: **Certified Home Health Agency**
Submitted: **July 13, 2011**

Executive Summary

Description

District Nursing Association of Northern Westchester County d/b/a Visiting Nurse Association of Hudson Valley (VNAHV), an existing Article 36 not-for-profit corporation, is requesting approval to acquire Putnam Hospital Center's Certified Home Health Agency (CHHA) operating certificate and extend CHHA services into Putnam County.

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

A review of the hospitals and diagnostic and treatment centers by the Division of Certification and Surveillance determined that the facilities have exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations.

A review of the certified home health agency by the Bureau of Quality Assurance and Licensure determined that the agency has exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations.

Financial Summary

There is no purchase price for Putnam Hospital's Center CHHA. There is currently a Memorandum of Understanding (MOU) in place, whereby Putnam Hospital Center has agreed with VNAHV to hold two board seats for VNAHV:

Budget:	*Revenues:*	*$ 14,603,029*
	Expenses:	*14,602,071*
	Gain/(Loss):	*$ 958*

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. Copies of all existing and proposed amendments to the Articles of Incorporation of the operator, District Nursing Association of Northern Westchester County, acceptable to the Department. [CSL]

Council Action Date
December 8, 2011.

Programmatic Analysis

Background

District Nursing Association of Northern Westchester County, Inc. d/b/a Visiting Nurse Association of Hudson Valley, a not-for-profit Article 36 certified home health agency (CHHA) proposes to purchase the assets of the Putnam Hospital Center's certified home health agency. Visiting Nurse Association of Hudson Valley is currently approved to serve patients in Westchester County. As a result of this Asset Purchase Agreement, Visiting Nurse Association of Hudson Valley will also be able to serve patients in Putnam County. Visiting Nurse Association of Hudson Valley plans to open a branch office in Putnam County at 20 Milltown Road, Brewster, New York.

Visiting Nurse Association of Hudson Valley plans to provide the following services: home health aide, medical social services, medical supply, equipment and appliances, nursing, occupational therapy, physical therapy, and speech-language pathology.

District Nursing Association of Northern Westchester County, Inc. d/b/a Visiting Nurse Association of Hudson Valley is a not-for-profit corporation with parent corporations, Sound Shore Health System, Inc. and Pinnacle Healthcare, Inc. as well as VNA and Hospice Care Foundation of Hudson Valley, all not-for-profit corporations.

The members of the Board of Directors of District Nursing Association of Northern Westchester County, Inc. d/b/a Visiting Nurse Association of Hudson Valley are as follows:

George Erbe, Chairperson
Retired
Affiliations: Sound Shore Medical Center of Westchester, Pinnacle Healthcare, Inc.

Janet Ready, R.N., Vice Chairperson, Secretary
COO, Vassar Brothers Medical Center

John Heimerdinger, Treasurer
Retired
Affiliation: Westchester Medical Center

Charles Barton
Retired

Peter Burchell
Financial Advisor, UBS Financial Service, Inc.

Albert Farina
CFO, Sound Shore Medical Center of Westchester

Richard Halevy
Self-employed consultant in PR

Carla Herman, R.N.
Director of Planning, Westchester Medical Center
Affiliations: Childrens Rehabilitation Center

John Spicer
President/CEO
Mount Vernon Hospital and Sound Shore Medical Center of Westchester

Clark Walter, Esq.
SVP/General Counsel,
Sound Shore Medical Center of Westchester

The members of the Board of Trustees of Sound Shore Health System, Inc. are as follows:

Mauro Romita, Esq., Chairperson
President/COO, Castle Oil Corp.
Affiliations: Sound Shore Medical Center of Westchester, Pinnacle Healthcare, Inc.

Darren DeVerna, Vice Chairperson
President, Production Resource Group (entertainment technology)
Affiliations: Mount Vernon Hospital, Pinnacle Healthcare, Inc.

Richard Naclerio, Secretary
Retired
Affiliation: Mount Vernon Hospital

Lawrence Ruisi, Treasurer
Retired
Affiliations: Sound Shore Medical Center of Westchester, Pinnacle Healthcare, Inc.

Robert Balachandran, Esq.
President/CEO, BellRow Enterprises (consulting)
Affiliation: Sound Shore Medical Center of Westchester

Vincent Bufano
Retired
Affiliations: Mount Vernon Hospital, Pinnacle Healthcare, Inc.

Pat Capasso
Manager/Sales, Pascap Co., Inc. (scrap metal processing)
Affiliation: Mount Vernon Hospital

Daniel Cremins
Executive VP, H.J. Kalikow & Co. (real estate)
Affiliation: Sound Shore Medical Center of Westchester

George Erbe
(disclosed above)

Louis Frost, Esq.
Partner, Davidson, Dawson & Clark, LLP
Affiliation: Sound Shore Medical Center of Westchester

Lorri Gorman, CPA
Unemployed
Affiliation: Sound Shore Medical Center of Westchester

Maryellen Johnston
Sales, Write On Larchmont (stationery sales)
Affiliation: Sound Shore Medical Center of Westchester

Charles McCabe
Retired
Affiliation: Sound Shore Medical Center of Westchester

Thomas McEvoy
Retired
Affiliation: Sound Shore Medical Center of Westchester

Carol Petrillo
Unemployed
Affiliation: Sound Shore Medical Center of Westchester

Richard Petrillo, M.D.
Chairman, Department of Medicine, Mount Vernon Hospital

Jeffrey Powers
CEO, Powers Fasteners, Inc. (tool and fastener manufacturing)
Affiliation: Sound Shore Medical Center of Westchester

John Spicer
(disclosed above)

Stephen Tenore
Funeral Director, Lloyd Maxey & Sons Beauchamp Chapel, Inc.
Funeral Director, Sisto & Paino, Inc.
Affiliation: Sound Shore Medical Center of Westchester

Danna Wood Webb, Esq.
self-employed attorney
Affiliation: Mount Vernon Hospital

The members of the Board of Directors of VNA and Hospice Care Foundation are as follows:

Peter Burchell, Chairperson
(disclosed above)

Hope Levene, First Vice Chairperson and Secretary
Retired

John Heimerdinger, Treasurer
(disclosed above)

Charles Barton
(disclosed above)

George Erbe
(disclosed above)

Adela Elow
Retired

Virginia Flood
Retired

Richard Halevy
(disclosed above)

Sue Kelly
Retired

The members of the Board of Directors of Putnam Hospital Center are as follows:

Keiren Farquhar, Chairperson
Medical Rescue Coordinator,
Putnam County Department of Health

Jeffrey Redfield, First Vice Chairperson
VP Organization Strategy, Victorinox
(manufacturing)

Robert Morini, Second Vice Chairperson
Regional VP, Houlehan Lawrence, Inc.
(real estate)

Paul Camarda, Secretary
Self-employed, Camarda Realty
Investments, LLC

Raymond Durkin
Partner, Durkin Brothers
(fuel oil supplier)

James Dusenbury
Retired

Kevin Dwyer
Owner, Dwyer Agency
(real estate/insurance)

Karen Fleming
Director of Human Resources,
Powers Fasteners, Inc.
(construction fasteners)

William Gerstner
Partner, Saw Mill CapitaL, LLC

Donna McGregor, CPA
President/CEO, Putnam Hospital Center
Affiliation: The Ambulatory Surgery
Center of Westchester

Loretta Molinari, R.N.
Branch Manager, Visiting Nurse Services
in Putnam

John Neubauer
President, John W. Neubauer Audio
Visual Products, Inc.
Affiliations: HANYS, Health Quest
Systems, Inc.

Janusz Rudnicki, M.D.
OB/Gyn, Mount Kisco Medical Group

Wayne Ryder
CEO, Putnam National Bank

The members of the Board of Directors of Health Quest Systems, Inc. are as follows:

Steven Lant, Chairperson
President/CEO, C.H. Energy Group, Inc.

Robert Dyson, First Vice Chairperson
Investment Services, Patterson Planning &
Services, Inc.

James Brudvig
VP for Administration, Bard College

Joseph DiVestea
Financial Advisor, Merrill Lynch

Thomas Eastwood
Retired

Keiren Farquhar
(disclosed above)

Affiliation: Putnam Hospital Center

Sunil Khurana, M.D.
CEO, Premier Medical Group
Affiliation: Vassar Brothers Medical Center

Mary Madden
President/CEO, Hudson Valley Federal Credit Union

Michael Moses, M.D.
President, Cross River Anesthesiologist Services

Michael Nesheiwat, M.D.
Physician, Putnam Family Medicine, PC

Wayne Nussbickel
President/CEO, N & S Supply (wholesale plumbing & heating)

Gregory Rakow
President, Fraleigh & Rakow, Inc. (insurance)

Michael Weber
President/CEO, Health Quest Systems, Inc.

Lillian Weigert, Esq.
Attorney, Gellert & Klein, PC

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department, the New York Physician Profile and the Office of Professional Medical Conduct, where appropriate, indicate no issues with the licenses of the health care professionals associated with this application.

Certificates of Good Standing have been received for all attorneys.

A ten year review of the following facilities was performed as part of this review:

Children's Rehabilitation Center
Mount Vernon Hospital
Putnam Hospital Center
Sound Shore Medical Center of Westchester
The Ambulatory Surgery Center of Westchester
Vassar Brothers Medical Center
VNA of Hudson Valley

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Background

The services to be provided by the applicant include nursing, physical therapy, speech therapy, occupational therapy, home health aid, and medical social services.

Memorandum of Understanding

The applicant has submitted a Memorandum of Understanding for the transfer of 100% of the operational ownership of Putnam Hospital Center in Putnam County. The County will transfer its CHHA services to Visiting Nurse Association Hudson Valley. The terms of the agreement summarized below:

Purpose:	The transfer of Putnam Hospital Center, Certified Home Health Agency to VNAHV.
Seller:	Putnam Hospital Center
Purchaser:	Visiting Nurse Association of Hudson Valley
Purchase Price:	(Goodwill) – The MOU states that Putnam Hospital Center will exchange (2) govern ring board seats collectively with the VNA in exchange for the CHHA.

The MOU states PHC will acquire (2) seats on the executive committee, finance committee, audit committee, professional advisory committee or the QA committee. This agreement is valid for five years.

The applicant has provided as 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 36 of the Public Health Law, with respect to the period of the time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility.

Lease Rental Agreement

The applicant has submitted an executed lease agreement for the space that they occupy, which is summarized below.

Dated:	July 15, 2011
Premises:	4,725 square feet located at 20 Milltown Road, Brewster, Suite 101, Putnam County
Lessor:	Cojax Construction, LLC
Lessee:	VNA Hudson Valley
Term:	10 year term
Rental:	$89,775.00 annually or $7,481.25 per month Year 1
Provisions:	Lessee has to purchase its proportionate share of operating expenses starting October 1, 2012 to include real estate taxes, insurance, utilities and repairs and maintenance expenses. Rent expense will increase by 3% per year for 10 years.

The applicant indicates that the lease is an arm's-length agreement. Also, the applicant has provided two letters from licensed Real Estate agents indicating the rent reasonableness.

Operating Budget

The applicant has provided an incremental operating budget in 2011 dollars for the first year of operation. The budget is summarized below:

	Year One
Revenues:	$14,603,029
Expenses:	
Operating:	$14,513,254
Capital:	
	$89,775
Total Expenses:	$14,602,071
Excess Revenues over Expenses:	$958

Year One expenses are broken down as follows:

	Total Costs	Visits/Hours	Cost per Visit
Nursing	$7,233,074	36,002	$200.91
Physical Therapy	3,504,184	26,850	130.51
Speech Pathology	81,128	668	117.92
Occupation Therapy	385,981	3,120	115.06
*Home Health Aide	2,972,009	27,964	106.28

Medical Social Services	452,695	1,638	276.37
Total	$14,602,071		

**Reflects hourly data*

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

Medicaid	4%
Medicare	74%
Commercial	19%
Charity Care	2%
Private Pay	1%

Expense and utilization assumptions are based on the current reimbursement methodologies, and the applicant's professional experience in operating a New York State Licensed Home Care Service Agency.

Capability and Feaasibility

There is no operational purchase price associated with this application.

Working capital requirements, based on two months of first year expenses are $2,433,679, and will be furnished through ongoing operations.

The submitted budget projects an excess of revenues over expenses of $958 during the first year of operation. Revenues are based on current reimbursement rates for Visiting Nurse Association for Hudson Valley historical experience in operating an existing certified home health agency. The budget appears reasonable.

Presented as BFA Attachment B is the 2009-2010 financial summary of Visiting Nurse Association of Hudson Valley, which shows a positive working capital and net assets for the period shown. Visiting Nurse Association of Hudson Valley had an operating loss of $25,351 and $149,608 during 2009 and 2010, respectively.

The 2009 loss from operations was due to professional fees and contract services costing more than expected. During 2010, VNA lowered this expense by $670,903 to offset the loss.

The 2010 loss from operations was due to a one time charge initiated by the NYS Workers Compensation Board in the amount of $274,133, due to a shortage in the trust fund requirement. This amount was charged to operations as a one time charge and has been paid.

It appears 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	Organizational Chart – Visiting Nurse Association of Hudson Valley
BFA Attachment B	Financial Summary – Visiting Nurse Association of Hudson Valley

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 8th day of December, 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 acquire Putnam Hospital Center's certified home health agency and add Putnam County to its existing operating certificate, 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
112023 E	District Nursing Association of Northern Westchester County d/b/a Visiting Nurse Association of Hudson Valley

APPROVAL CONTINGENT UPON:

1. Copies of all existing and proposed amendments to the Articles of Incorporation of the operator, District Nursing Association of Northern Westchester County, acceptable to the Department. [CSL]

APPROVAL CONDITIONED UPON:

N/A

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York 12180-2299

New York State Department of Health

Memorandum

TO: Public Health and Health Planning Council (Council)

FROM: James E. Dering, General Counsel

DATE: November 7, 2011

SUBJECT: Proposed Certificate of Amendment of the Certificate of Incorporation of Samaritan Foundation of Northern New York, Inc.

Attached for the Council's review and approval is a photocopy of a Certificate of Amendment of the Certificate of Incorporation of Samaritan Foundation of Northern New York, Inc. (Foundation). The Foundation seeks approval from the Council to change its corporate name to "The Samaritan Medical Center Foundation of Northern New York", which it believes would make the Foundation more easily identifiable to the public. The Council's approval for this name change is required pursuant to section 804(a)(ii) of the Not-for-Profit Corporation Law and Title 10 (Health) of the Official Compilation of the Codes, Rules and Regulations of the State of New York §§ 401.3(b)(2) and 600.11(a)(2).

The Foundation was originally incorporated on May 26, 1995, after receiving approval from the Council, to raise funds for Samaritan Medical Center. A restated Certificate of Incorporation was filed on September 7, 1996, after the Foundation received approval from the Council, to empower the Foundation to raise funds for Samaritan Medical Center, as well as its affiliates.

In addition to the proposed Certificate of Amendment, also attached is a letter from the Foundation's attorney explaining in more detail the reason for the requested corporate name change.

The proposed Certificate of Amendment is legally acceptable in form and the Department has no objection to its filing.

Attachments

SCHWERZMANN & WISE, P.C.
ATTORNEYS AT LAW
351 WASHINGTON STREET, SUITE 213
P. O. BOX 704
WATERTOWN, NEW YORK 13601-3418
315 788-6700
FAX 315 788-2813

ANDERSON WISE
DENNIS G. WHEELPLEY
STEVEN C. HAAS
CATHERINE BURNS QUENCER
KEITH B. CAUGHLIN
ANN E. PHILLIPS
GEORGE E. MEAD III
EMILY M. GERVISS*

* ALSO ADMITTED IN FLORIDA

RICHARD F. SCHWERZMANN
1918-2000)

LESLIE H. DEMING
OF COUNSEL

July 28, 2011

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
DIVISION OF HEALTH FACILITY PLANNING
AUG 05 2011
RECEIVED

Via Overnight UPS to:
NYS Department of Health
ATTN: Colleen M. Frost, Executive Secretary, Public Health and Health Planning Council
Health Planning Facility
433 River St., 6th Floor
Troy, NY 12180

Re: Corporate Name Change - Samaritan Foundation of Northern New York, Inc.

Dear Ms. Frost,

Our office represents the Samaritan Foundation of Northern New York, Inc. located in Watertown, New York (hereinafter the "Foundation"). The Foundation desires to change its corporate name to "The Samaritan Medical Center Foundation of Northern New York." The reason for the name change is simply to make the Foundation more easily identifiable to the public at large. In accordance with NY Not-For-Profit Law ("NPL") Section 804(a)(ii) we believe that the consent of the Public Health and Health Planning Council (hereinafter the "PHHPC") is a necessary prerequisite to filing the Certificate of Amendment with the Department of State.

To obtain the PHHPC's consent, enclosed herein for consideration are the following:

1) Proposed "Certificate of Amendment" (copy);
2) Resolution approving the name change (copy); and
3) Copies of the original Certificate of Incorporation filed May 26, 1995 and Restated Certificate of Incorporation filed January 31, 1997 with approvals.

Regarding the proposed new corporate name, we do not believe the terms "incorporated," "limited," or "corporation" (or an abbreviation thereof) need be added as the Foundation is exempt from doing so pursuant to NPL Section 301(a).

Please forward these documents to the necessary departments for review. **We are requesting to be placed on the PHHPC's agenda for its upcoming meeting on September 22, 2011 or sooner if possible.**

If you or a reviewing department has any questions or concerns, please do not hesitate to contact the undersigned. Your anticipated prompt attention to this matter is appreciated.

Very Truly Yours,

SCHWERZMANN & WISE, P.C.

Lucy M. Gerviss

Encs.

cc: Lisa Weber, Chair - Samaritan Foundation of Northern New York, Inc.

New York State
Department of State
Division of Corporations, State Records and Uniform Commercial Code
One Commerce Plaza, 99 Washington Avenue
Albany, NY 12231
www.dos.state.ny.us

CERTIFICATE OF AMENDMENT OF THE CERTIFICATE OF INCORPORATION OF

SAMARITAN FOUNDATION OF NORTHERN NEW YORK, INC.

(Insert Name of Domestic Corporation)

Under Section 803 of the Not-for-Profit Corporation Law

FIRST: The name of the corporation is:

SAMARITAN FOUNDATION OF NORTHERN NEW YORK, INC.

If the name of the corporation has been changed, the name under which it was formed is:

N/A

SECOND: The certificate of incorporation was filed by the Department of State on:

Ma6 26, 1995; restated certificate of Incorporation filed by the Department of State on January 31, 1997.

THIRD: The law the corporation was formed under is: Section 402 NY Not-for-Profit Corporation Law.

FOURTH: The corporation is a corporation as defined in Section 102(a)(5) of the Not-for-Profit Corporation Law.

FIFTH: The corporation is a Type B corporation. If the corporate purposes are being enlarged, limited or otherwise changed, ~~the~~ corporation shall be a Type B corporation.

SIXTH: The amendment effected by this certificate of amendment is as follows:

(Set forth each amendment in a separate paragraph providing the subject matter and full text of each amended paragraph. For example, an amendment changing the name of the corporation would read as follows: "Paragraph *First* of the Certificate of Incorporation relating to *the corporate name* is hereby *amended* to read in its entirety as follows: *First: The name of the corporation is (new name)*.")

Paragraph "1" of the Certificate of Incorporation relating to the corporate name.

is hereby [*check the appropriate box*] ☐ added to read in its entirety as follows or ☒ amended to read in its entirety as follows:

1. The name of the corporation is THE SAMARITAN MEDICAL CENTER FOUNDATION OF NORTHERN NEW YORK.

SEVENTH: The Secretary of State is designated as agent of the corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the corporation is:

THE SAMARITAN MEDICAL CENTER FOUNDATION OF NORTHERN NEW YORK
803 Washington St.
Watertown, NY 13601

EIGHTH: The certificate of amendment was authorized by: (*Check the appropriate box*)

☒ The amendment was authorized by a vote of a majority of the members at a meeting.

☐ The amendment was authorized by the unanimous written consent of the members entitled to vote thereon.

☐ The amendment was authorized by a vote of a majority of the entire board of directors. The corporation has no members.

Lisa Weber
(*Signature*)

Chair
(*Signer's Title*)

Lisa Weber
(*Print or Type Signer's Name*)

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF

SAMARITAN FOUNDATION OF NORTHERN NEW YORK

(Insert Name of Domestic Corporation)

Under Section 803 of the Not-for-Profit Corporation Law

Filer's Name Schwerzmann & Wise, P.C., Catherine Burns Quencer, of counsel

Address 215 Washington St., PO Box 704

City, State and Zip Code Watertown, NY 13601

NOTE: **The certificate must be submitted with a $30 filing fee.** This form was prepared by the New York State Department of State. It does not contain all optional provisions under the law. You are not required to use this form. You may draft your own form or use forms available at legal stationery stores. The Department of State recommends that all documents be prepared under the guidance of an attorney. **Please be sure to review Section 804 and Section 404 of the Not-for-Profit Corporation Law to determine if any consents or approvals are required to be attached to this certificate of amendment.**

For Office Use Only

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 8th day of December, 2011, approves the filing of the Certificate of Amendment of Certificate of Incorporation of Samaritan Foundation of Northern New York, Inc., dated July 25, 2011.

New York State Department of Health

Memorandum

TO: Public Health and Health Planning Council (Council)

FROM: James E. Dering, General Counsel

DATE: November 9, 2011

SUBJECT: Proposed Certificate of Amendment of the Certificate of Incorporation of Auburn Memorial Hospital

Attached for the Council's review and approval is a photocopy of the proposed Certificate of Amendment of the Certificate of Incorporation of Auburn Memorial Hospital (AMH). AMH seeks approval from the Council to change its corporate name to "Auburn Community Hospital," which it believes would further connect AMH to the community which it serves. The Council's approval for this name change is required pursuant to section 804(a)(ii) of the Not-for-Profit Corporation Law and Title 10 (Health) of the Official Compilation of the Codes, Rules and Regulations of the State of New York §§ 401.3(b)(2) and 600.11(a)(2).

AMH was originally formed by a special act of the New York State Legislature – Chapter 641 of the Laws of 1872, passed on May 11, 1872. The original name of AMH was "Auburn City Hospital." The name was changed to the current one by a Certificate of Amendment, dated May 6, 1994, and approved by the Council on June 13, 1994.

In addition to the proposed Certificate of Amendment, also attached is a letter from AMH's attorney explaining in more detail the reason for the requested corporate name change.

The proposed Certificate of Amendment is legally acceptable in form and the Department has no objection to its filing.

Attachments

HANCOCK
ESTABROOK, LLP
COUNSELORS AT LAW

JENNIFER R. BOLSTER
315-565-4506
jbolster@hancocklaw.com

February 25, 2011

New York State Department of Health
Division of Legal Affairs
Bureau of House Counsel
2438 Corning Tower
Empire State Plaza
Albany, NY 12237

Re: Auburn Memorial Hospital and affiliated entities

Dear Sir/Madam:

Enclosed please find a copy of the executed proposed Certificate of Amendment of the Certificate of Incorporation of Auburn Memorial Hospital and Auburn Hospital System Foundation, Inc., as well as the corporate documents currently filed with State of New York Department of State for each entity.

The Certificates of Amendment change the names of the entities to Auburn Community Hospital and Auburn Community Hospital Foundation, Inc, respectively. The Boards of Trustees for each of the entities has proposed the name change as part of its desire to portray the Hospital as a health care entity which provides services to the greater Auburn, New York community. The Hospital is the only general hospital in Cayuga County and it regularly serves residents of the City of Auburn and the surrounding communities. As attorneys for the Hospital we request the proposed name changes be submitted to the Public Health Council for approval in accordance with Article 28 of the Public Health Law and 10 NYCRR 600.11.

Enclosed please also find a copy of the executed proposed Certificate of Amendment of the Certificate of Incorporation of Auburn Memorial Companies, Inc. and the corporate documents currently filed with NYS Department of State. Please confirm as indicated in the previous correspondence from the Public Health Council that the proposed Certificate of Amendment does not require Public Health Council approval.

If any further information or documents are required at this time, or if you have any questions, please do not hesitate to contact me.

Very truly yours,

HANCOCK ESTABROOK, LLP

Jennifer R. Bolster

JRB/kag
Enclosures

CERTIFICATE OF AMENDMENT

OF

CERTIFICATE OF INCORPORATION

OF

AUBURN MEMORIAL HOSPITAL

Under Section 803 of the Not-For-Profit Corporation Law.

The undersigned, being the President and Secretary of Auburn Memorial Hospital (the "Corporation") for the purpose of amending the Certificate of Incorporation of the Corporation under Section 803 of the Not-For-Profit Corporation Law, hereby certify that:

1. The name of the Corporation is:

AUBURN MEMORIAL HOSPITAL

2. The Corporation was formed by a special act of the New York State Legislature, namely Chapter 641 of the Laws of 1872, passed on May 11, 1872. The original name under which it was formed was "Auburn City Hospital." The name of the Corporation was changed from Auburn City Hospital to Auburn Memorial Hospital by a Certificate of Amendment of the Certificate of Incorporation filed with the New York State Secretary of State on February 27, 1953.

3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law. The Corporation is a Type "B" corporation under Section 201 of the Not-For-Profit Corporation Law, and shall remain a Type "B" corporation following the effective date of the amendment herein.

4. The Corporation's Certificate of Incorporation is hereby amended to change the Corporation's name to:

AUBURN COMMUNITY HOSPITAL

5. The within amendment to the Corporation's Certificate of Incorporation was authorized by a majority vote of members entitled to vote thereon at a duly called meeting of such members.

6. The Corporation hereby designates the New York Secretary of State as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is:

17 Lansing Street
Auburn, NY 13021

IN WITNESS WHEREOF, the undersigned have executed this Certificate of Amendment of the Corporation's Certificate of Incorporation and hereby affirm the truth of the statements made herein under the penalties of perjury this 12 day of February, 2011.

Scott A. Berlucchi, President

William Dorr, Secretary

CERTIFICATE OF AMENDMENT

OF

CERTIFICATE OF INCORPORATION

OF

AUBURN MEMORIAL HOSPITAL

Under Section 803 of the Not-For-Profit Corporation Law

Raymond R. D'Agostino, Esq.
Hancock & Estabrook, LLP
1500 AXA Tower I
100 Madison Street
Syracuse, New York 13202
Cust. Ref. No.: 109173-01

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 8th day of December, 2011, approves the filing of the Certificate of Amendment of Certificate of Incorporation of Auburn Memorial Hospital, dated February 12, 2011.

New York State Department of Health

Memorandum

TO: Public Health and Health Planning Council (Council)

FROM: James E. Dering, General Counsel

DATE: November 9, 2011

SUBJECT: Proposed Certificate of Amendment of the Certificate of Incorporation of Auburn Hospital System Foundation, Inc.

Attached for the Council's review and approval is a photocopy of the proposed Certificate of Amendment of the Certificate of Incorporation of Auburn Hospital System Foundation, Inc. (Foundation). The Foundation raises funds on behalf of Auburn Memorial Hospital (AMH), which is seeking Council approval to change its name to "Auburn Community Hospital." In order to maintain the connection, the Foundation seeks approval from the Council to change its corporate name to "Auburn Community Hospital Foundation, Inc." The Council's approval for this name change is required pursuant to section 804(a)(ii) of the Not-for-Profit Corporation Law and Title 10 (Health) of the Official Compilation of the Codes, Rules and Regulations of the State of New York §§ 401.3(b)(2) and 600.11(a)(2).

The Foundation's Certificate of Incorporation was originally filed on December 12, 2000, after receiving Council approval, as a fundraiser for AMH, on November 17, 2000.

In addition to the proposed Certificate of Amendment, also attached is a letter from the Foundation's attorney explaining in more detail the reason for the requested corporate name change.

The proposed Certificate of Amendment is legally acceptable in form and the Department has no objection to its filing.

Attachments

CERTIFICATE OF AMENDMENT

OF

CERTIFICATE OF INCORPORATION

OF

AUBURN HOSPITAL SYSTEM FOUNDATION, INC.

Under Section 803 of the Not-For-Profit Corporation Law.

The undersigned, being the President and Secretary of Auburn Hospital System Foundation, Inc. (the "Corporation"), for the purpose of amending the Certificate of Incorporation of the Corporation under Section 803 of the Not-For-Profit Corporation Law, hereby certify that:

1. The name of the Corporation is:

AUBURN HOSPITAL SYSTEM FOUNDATION, INC.

2. The Corporation's Certificate of Incorporation was filed with the New York State Secretary of State on December 12, 2000 under Section 402 of the New York Not-for-Profit Corporation Law.

3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law. The Corporation is a Type "B" corporation under Section 201 of the Not-For-Profit Corporation Law, and shall remain a Type "B" corporation following the effective date of the amendment herein.

4. The Corporation's Certificate of Incorporation is hereby amended to change the Corporation's name to:

AUBURN COMMUNITY HOSPITAL FOUNDATION, INC.

5. The within amendment to the Corporation's Certificate of Incorporation was authorized by the affirmative vote of the Corporation's sole corporate member at a duly called meeting of such member.

6. Pursuant to paragraph 14 of the Corporation's Certificate of Incorporation, the administrator of Auburn Memorial Hospital has consented, in writing, to the within amendment.

7. The Corporation hereby designates the New York Secretary of State as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is:

17 Lansing Street
Auburn, NY 13021

IN WITNESS WHEREOF, the undersigned have executed this Certificate of Amendment of the Corporation's Certificate of Incorporation and hereby affirm the truth of the statements made herein under the penalties of perjury this 19 day of February, 2011.

Stephen M. Zabriskie, **President**
(print name)

Scott A. Berlucchi, **Secretary**
(print name)

CERTIFICATE OF AMENDMENT

OF

CERTIFICATE OF INCORPORATION

OF

AUBURN HOSPITAL SYSTEM FOUNDATION, INC.

Under Section 803 of the Not-For-Profit Corporation Law

Raymond R. D'Agostino, Esq.
Hancock & Estabrook, LLP
1500 AXA Tower I
100 Madison Street
Syracuse, New York 13202
Cust. Ref. No.: 109173-01

HANCOCK
ESTABROOK, LLP
COUNSELORS AT LAW

JENNIFER R. BOLSTER
315-565-4506
jbolster@hancocklaw.com

February 25, 2011

New York State Department of Health
Division of Legal Affairs
Bureau of House Counsel
2438 Corning Tower
Empire State Plaza
Albany, NY 12237

Re: Auburn Memorial Hospital and affiliated entities

Dear Sir/Madam:

Enclosed please find a copy of the executed proposed Certificate of Amendment of the Certificate of Incorporation of Auburn Memorial Hospital and Auburn Hospital System Foundation, Inc., as well as the corporate documents currently filed with State of New York Department of State for each entity.

The Certificates of Amendment change the names of the entities to Auburn Community Hospital and Auburn Community Hospital Foundation, Inc, respectively. The Boards of Trustees for each of the entities has proposed the name change as part of its desire to portray the Hospital as a health care entity which provides services to the greater Auburn, New York community. The Hospital is the only general hospital in Cayuga County and it regularly serves residents of the City of Auburn and the surrounding communities. As attorneys for the Hospital we request the proposed name changes be submitted to the Public Health Council for approval in accordance with Article 28 of the Public Health Law and 10 NYCRR 600.11.

Enclosed please also find a copy of the executed proposed Certificate of Amendment of the Certificate of Incorporation of Auburn Memorial Companies, Inc. and the corporate documents currently filed with NYS Department of State. Please confirm as indicated in the previous correspondence from the Public Health Council that the proposed Certificate of Amendment does not require Public Health Council approval.

If any further information or documents are required at this time, or if you have any questions, please do not hesitate to contact me.

Very truly yours,

HANCOCK ESTABROOK, LLP

Jennifer R. Bolster

JRB/kag
Enclosures

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 8th day of December, 2011, approves the filing of the Certificate of Amendment of Certificate of Incorporation of Auburn Hospital System Foundation, Inc., dated February 18, 2011.

New York State Department Of Health
Division of Legal Affairs
Memorandum

TO: Public Health Council

FROM: James E. Dering, General Counsel JED

DATE: November 15, 2011

SUBJECT: Proposed Certificate of Amendment of the Certificate of Incorporation of Comprehensive Care Management Diagnostic and Treatment Center, Inc.

Attached is the proposed Certificate of Amendment of the Certificate of Incorporation of Comprehensive Care Management Diagnostic and Treatment Center, Inc. This not-for-profit corporation seeks approval to change its name to "CenterLight Healthcare Diagnostic and Treatment Center." The corporation is currently licensed to operate several Article 28 diagnostic and treatment centers located in Queens, Kings, Bronx and Suffolk Counties. Public Health Council approval for a change of corporate name is required by Not-for-Profit Corporation Law § 804 (a) and 10 NYCRR § 600.11 (a) (1).

Also attached is a letter, dated September 29, 2011, from Stephanie Marcantonio, an attorney representing Comprehensive Care Management Diagnostic and Treatment Center, Inc. As explained in that letter, the name change is in connection with a rebranding within the corporate membership structure.

The proposed Certificate of Amendment is in legally acceptable form.

Attachments

CERTIFICATE OF AMENDMENT

TO THE

CERTIFICATE OF INCORPORATION

OF

COMPREHENSIVE CARE MANAGEMENT

DIAGNOSTIC AND TREATMENT CENTER, INC.

UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW

The undersigned, being the President and Chief Executive Officer of Comprehensive Care Management Diagnostic and Treatment Center, Inc., does hereby certify that:

1. The name of the corporation is Comprehensive Care Management Diagnostic and Treatment Center, Inc. (the "Corporation"). The name under which it was formed was Beth Abraham Diagnostic and Treatment Center, Inc.

2. The Certificate of Incorporation of the Corporation was filed by the Department of State on May 7, 1990. The law under which the Corporation was formed was the New York Not-for-Profit Corporation Law.

3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law and is a Type B corporation as defined in Section 201 of that law.

4. The Certificate of Incorporation is amended to change the corporate name. Article I of the Certificate of Incorporation is amended to read:

"The name of the Corporation is CenterLight Healthcare Diagnostic and Treatment Center (hereinafter called the "Corporation")."

5. The above amendment to the Certificate of Incorporation was authorized by a vote of the sole member of the Corporation at a duly convened and held meeting in accordance with Section 802 of the Not-for-Profit Corporation Law.

6. The Corporation designates the Secretary of State of the State of New York as its agent upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process served upon him or her as follows:

612 Allerton Avenue
Bronx, New York 10467

IN WITNESS WHEREOF, I have signed this Certificate of Amendment to the Certificate of Incorporation this 28th day of September, 2011, and I affirm that the statements contained herein are true under penalties of perjury.

Michael Fassler
President and Chief Executive Officer

STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the Department of State, at the City of Albany, on July 12, 2011.

Daniel E. Shapiro
First Deputy Secretary of State

Rev. 06/07

CERTIFICATE OF INCORPORATION

OF

BETH ABRAHAM DIAGNOSTIC AND TREATMENT CENTER, INC.

13372

Under Section 402 of the
Not-For-Profit Corporation Law
of the State of New York

The undersigned, being a natural person of at least eighteen years of age, for the purpose of forming a corporation pursuant to the Not-For-Profit Corporation Law of the State of New York, hereby certifies as follows:

ARTICLE I

The name of the Corporation is Beth Abraham Diagnostic and Treatment Center, Inc. (hereinafter called the "Corporation").

ARTICLE II

The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102, and is a Type B corporation as defined in Section 201, of the Not-For-Profit Corporation Law of the State of New York.

ARTICLE III

The purposes for which the Corporation is organized are to operate exclusively for charitable, educational, and scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, and within such limits:

(a) To organize, establish, maintain, and operate a diagnostic and treatment center in accordance with applicable law, such purposes to include, but not be limited to, (i) providing services for the diagnosis, treatment, and preventive care of individuals enrolled in the Beth Abraham chronic care management, home health care, or adult day care programs; and (ii) providing physician services to the general community.

(b) To do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof and not prohibited by law or inconsistent with the other provisions of this Certificate of Incorporation.

(c) In accordance with the above, to have and exercise all powers available to corporations organized pursuant to the Not-For-Profit Corporation Law of the State of New York.

Nothing herein contained shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes any of the activities set forth in subsections (b) through (n), subsections (p) through (s), or subsection (u) of Section 404 of the Not-For-Profit Corporation Law of the State of New York.

ARTICLE IV

In all events and under all circumstances, and notwithstanding merger, consolidation, reorganization,

termination, dissolution or winding up of this Corporation, voluntary or involuntary or by operation of law:

(a) The Corporation shall neither have nor exercise any power or authority, either expressly, by interpretation or by operation of law, nor directly nor indirectly engage in any activity, that would prevent it from qualifying (and continuing to qualify) as an organization described in Section 501(c)(3) of the Internal Revenue Code.

(b) No part of the assets or net earnings of the Corporation shall inure to the benefit of or be distributable, as compensation or otherwise, to its incorporators, directors, officers or other private persons having a personal or private interest in the Corporation, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services actually rendered, to make reimbursement in reasonable amounts for expenses actually incurred, and to make payments or distributions in reasonable amounts, whether pursuant to contractual arrangements or otherwise, in furtherance of the purposes set forth in ARTICLE III hereof. The foregoing provision shall not be construed to require the Corporation to pay compensation to or to reimburse incorporators, directors, officers or other private persons having an interest in the Corporation.

(c) No substantial part of the activities of the Corporation shall consist of the carrying on of propaganda, or of otherwise attempting, to influence legislation, unless

Section 501(h) of the Internal Revenue Code shall apply to the Corporation, in which case the Corporation shall not normally make lobbying or grass roots expenditures in excess of the amounts therein specified. The Corporation shall not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office; nor shall it engage in any "prohibited transaction" as defined in Section 503(b) of the Internal Revenue Code.

(d) Neither the whole, nor any part or portion, of the assets or net earnings of the Corporation shall be used, nor shall the Corporation ever be operated, for objects or purposes other than those set forth in ARTICLE III hereof.

(e) (1) The Corporation shall distribute such amounts for each taxable year at such time and in such manner as not to subject it to tax on undistributed income under Section 4942 of the Internal Revenue Code.

(2) The Corporation shall not engage in any act of self-dealing which is subject to tax under Section 4941 of the Internal Revenue Code.

(3) The Corporation shall not retain any excess business holdings which are subject to tax under Section 4943 of the Internal Revenue Code.

(4) The Corporation shall not make any investments in such manner as to subject it to tax under Section 4944 of the Internal Revenue Code.

(5) The Corporation shall not make any taxable expenditures which are subject to tax under Section 4945 of the Internal Revenue Code.

ARTICLE V

Upon any dissolution of the Corporation, all of its assets and property of every nature and description remaining after the payment of all liabilities and obligations of the Corporation (but not including assets held by the Corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution) shall be paid over and transferred, subject to an order of a Justice of the Supreme Court of the State of New York, to one or more organizations which engage in activities substantially similar to those of the Corporation, and which are then qualified for exemption from federal income taxes as organizations described in Section 501(c)(3) of the Internal Revenue Code.

ARTICLE VI

All references contained in this Certificate of Incorporation to the Internal Revenue Code shall be deemed to refer to the Internal Revenue Code of 1986, as amended, and to any corresponding provisions of any subsequent federal tax laws.

ARTICLE VII

The Corporation is hereby authorized by resolution of the Board of Directors of the Corporation to accept subventions

from members or non-members on terms and conditions not inconsistent with the Not-For-Profit Corporation Law of the State of New York and to issue certificates therefor. Such subventions shall consist of money or other property, tangible or intangible, actually received by the Corporation or expended for its benefit or for its formation or reorganization, or a combination thereof, and shall be evidenced by the issuance of subvention certificates in accordance with the provisions of Section 505 of the Not-For-Profit Corporation Law.

ARTICLE VIII

The office of the Corporation is to be located in the ~~City of New York~~, County of Bronx, State of New York.

ARTICLE IX

The names and addresses of the persons constituting the initial Board of Directors of the Corporation until the first annual meeting or until their successors are elected and qualified are:

NAME	ADDRESS
Edwin H. Stern, III	20 Broad Street New York, New York 10005
William A. Riesenfeld	136 East 56th Street New York, New York 10022
John A. Wiener	745 Fifth Avenue New York, New York 10151

~~ARTICLE V~~ JAW

~~The period of duration of the Corporation is perpetual.~~ JAW

ARTICLE X JAW

The Secretary of State is hereby designated the agent of the Corporation upon whom process against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation ~~served upon him as agent of the Corporation~~ is:

612 Allerton Avenue
Bronx, New York 10467

IN WITNESS WHEREOF, the ~~undersigned incorporator has~~ made, subscribed and acknowledged this Certificate this 4th day of August, 1987.

Incorporator

John A. Wiener
(Signature)

John A. Wiener
745 Fifth Avenue
New York, New York 10151

IN WITNESS WHEREOF, this Certificate has been subscribed this 24th day of April, 1990, by the undersigned who affirms that the ~~statements made herein~~ are true under the penalties of perjury.

John A. Wiener
(signature)

John A. Wiener
745 Fifth Avenue
New York, New York 10151

CERTIFICATE OF APPROVAL

I, HERBERT SHAPIRO, the undersigned, a Justice of the Supreme Court of the State of New York in the Twelfth Judicial District, in which the office of Beth Abraham Diagnostic and Treatment Center, Inc. is to be located, do hereby approve the foregoing Certificate of Incorporation of Beth Abraham Diagnostic and Treatment Center, Inc. and consent that the same be filed.

DATED: APR 3 1990

Supreme Court, Bronx County
~~Special Term~~, Part 8
New York, New York

Justice, Supreme Court
Twelfth Judicial District
HERBERT SHAPIRO

The undersigned has no objection to the granting of judicial approval hereon and waives statutory notice.

Attorney General
State of New York

By: Assistant Attorney General

DATED: , 19

March 12, 1990

ATTORNEY GENERAL HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON AND WAIVES STATUTORY NOTICE.

ROBERT ABRAMS, ATTORNEY GEN.
STATE OF NEW YORK

by Howard Holt
HOWARD HOLT
Associate Attorney

VERIFICATION

STATE OF New York)
COUNTY OF New York) ss.:

I, John A. Wiener, being duly sworn, depose and state that I am the Incorporator of Beth Abraham Diagnostic and Treatment Centers, Inc., the corporation named in and described in the foregoing certificate and that I have read the foregoing certificate and know the contents thereof to be true, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

X John A. Wiener

Sworn to before me this 13th
day of February 1990.

[redacted]
Notary Public

(If executed outside one of the states of the United States or District of Columbia, the signature and authority of the foreign notary should be duly authenticated.)

380206-018 (9/88)

STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

November 2, 1989

Mr. Len McNally
Associate Director of Planning
Beth Abraham Diagnostic and
Treatment Center
612 Allerton Avenue
Bronx, NY 10467

Re: Certificate of Incorporation of Beth Abraham Diagnostic and Treatment Center, Inc.

Dear Mr. McNally:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 27th day of June, 1986, I hereby certify that the Public Health Council consents to the filing of the Certificate of Incorporation of Beth Abraham Diagnostic and Treatment Center, Inc., dated August 4, 1987.

Sincerely,

Karen S. Westervelt

Karen S. Westervelt
Executive Secretary

RECEIVED
NOV 9 1989
ADMINISTRATION

10

STATE OF NEW ...
DEPARTMENT OF ...
FILED MAY 07 1980
AMT. OF CHECK $ 60
FILING FEE $ 30
TAX $
COUNTY FEE $ 10
COPY $
CERT $
RETURN $
SPEC. HANDLE $ none
BY P Brady Typed

-11

(3) 113972

CERTIFICATE OF INCORPORATION

OF

BETH ABRAHAM DIAGNOSTIC AND TREATMENT CENTER, INC.

61134

A4-R

CPP Type B

RECEIVED
MAY 3 4 PM '80

Filed by:

Mark A. Sterling
Hogan & Hartson
Columbia Square
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109

A3 w/l

MAY 7 2 33 PM '80

STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the Department of State, at the City of Albany, on July 12, 2011.

Daniel E. Shapiro
First Deputy Secretary of State

Rev. 06/07

Article - 75

CERTIFICATE OF AMENDMENT OF CERTIFICATE OF INCORPORATION OF BETH ABRAHAM DIAGNOSTIC AND TREATMENT CENTER, INC.

T970501000360

Under Section 803 of the Not-For-Profit Corporation Law

Pursuant to the provisions of Section 803 of the Not-For-Profit Corporation Law, the undersigned, the Chairperson of the Board and Secretary of BETH ABRAHAM DIAGNOSTIC AND TREATMENT CENTER, INC., a corporation organized under the New York Not-For-Profit Corporation (the "Corporation"), do hereby certify:

FIRST: That the name of the Corporation is BETH ABRAHAM DIAGNOSTIC AND TREATMENT CENTER, INC.

SECOND: That the Certificate of Incorporation of the Corporation was filed by the Department of State, Albany, New York on the 7th day of May, 1990. The Corporation was formed under the Membership Corporations Law of the State of New York. The name under which the Corporation was formed is "Beth Abraham Diagnostic and Treatment Center, Inc."

THIRD: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law. It is a Type B corporation, as defined in Section 201 of the Not-For-Profit Corporation Law and shall hereafter continue to be a Type B corporation under the Not-For-Profit Corporation Law.

FOURTH: Article (1) of the Certificate of Incorporation which sets forth the name of the Corporation, is hereby amended to read:

ARTICLE I

The name of the Corporation is Comprehensive Care Management Diagnostic and Treatment Center, Inc.

FIFTH: This amendment to the Certificate of Incorporation was authorized by resolution adopted by Unanimous Written Consent of the Board of Directors of the Corporation in Lieu of Meeting dated 12/11, 1996.

SIXTH: The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is c/o 612 Allerton Avenue, Bronx, New York 10467.

IN WITNESS WHEREOF, this Certificate of Amendment has been subscribed by the undersigned this 11th day of March, 1996, and the statements contained herein are affirmed as true under penalties of perjury.

By: _____
Geraldine Taylor, Chairperson

By: _____
Celia Zuckerman, Secretary

1

RESOLUTION OF THE BOARD OF DIRECTORS OF
BETH ABRAHAM DIAGNOSTIC AND TREATMENT CENTER, INC.

Action By Unanimous Written Consent of
the Board of Directors

The undersigned, being all of the members of the Board of Directors of Beth Abraham Diagnostic and Treatment Center, Inc., a New York not-for-profit corporation, do hereby adopt, by unanimous consent in writing, the following resolution effective as of the date hereof with the same force and effect as if such resolution had been unanimously adopted at a duly convened meeting of the Board of Directors of Beth Abraham Diagnostic and Treatment Center, Inc.:

WHEREAS, the Board of Directors of Beth Abraham Diagnostic and Treatment Center, Inc. has determined that it is in the best interests of Beth Abraham Diagnostic and Treatment Center, Inc. to change its name to "Comprehensive Care Management Diagnostic and Treatment Center, Inc."

THEREFORE, BE IT RESOLVED, that the Board of Directors hereby ratifies, approves and authorizes Beth Abraham Diagnostic and Treatment Center, Inc. to change its name to "Comprehensive Care Management Diagnostic and Treatment Center, Inc."; and

RESOLVED FURTHER, that the appropriate officers and staff of Beth Abraham Diagnostic and Treatment Center, Inc., or any one or more of them, hereby are authorized and directed to do all things, to take all actions and to execute, deliver, and file all documents, approvals and instruments in the name and on behalf of Beth Abraham Diagnostic and Treatment Center, Inc. as may be necessary or convenient in effecting the foregoing resolution.

IN WITNESS WHEREOF, this Action by Unanimous Written Consent of the Board of Directors in Lieu of Meeting has been duly executed as of the 11 day of December, 1996.

Geraldine Taylor

Celia Zuckerman

Susan Aldrich

STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

DUPLICATE - ORIGINAL LOST

March 24, 1997

Ms. Lori H. Lahn
Beth Abraham Health Services
612 Allerton Avenue
Bronx, New York 10467

Re: Certificate of Amendment of Certificate of Incorporation of Beth Abraham Diagnostic and Treatment Center, Inc.

Dear Ms. Lahn:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 21st day of March, 1997, I hereby certify that the Certificate of Amendment to the Certificate of Incorporation of Beth Abraham Diagnostic and Treatment Center, Inc. hereafter to be known as Comprehensive Care Management Diagnostic and Treatment Center, Inc. dated December 11, 1996 is approved.

Sincerely,

Karen S. Westervelt
Executive Secretary

3

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RELYEA-75

CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION

OF

BETH ABRAHAM DIAGNOSTIC AND TREATMENT CENTER, INC.

Under Section 803 of the Not-for-Profit Corporation Law

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED MAY 01 1997
TAX $
BY:

Bronx

Filed By:
Relyea Services, Inc.
P.O. Box 5167
Albany, New York
12205-0167

RELYEA-75

4 970501000368

CADWALADER

Cadwalader, Wickersham & Taft LLP
New York London Charlotte Washington Beijing

One World Financial Center, New York, NY 10281
Tel 212 504 6000 Fax 212 504 6666
www.cadwalader.com

September 29, 2011

VIA FEDERAL EXPRESS

Susan A. Sullivan, Esq.
Bureau of House Counsel
New York State Department of Health
Empire State Plaza
Corning Tower, 24th Floor
Albany, New York 12237-0031

Re: Comprehensive Care Management Diagnostic and Treatment Center, Inc. (Proposed Name Change)

Dear Ms. Sullivan:

As discussed by telephone, Comprehensive Care Management Diagnostic and Treatment Center, Inc. ("CCM DTC") previously provided to you a proposed form of its Certificate of Amendment to the Certificate of Incorporation that would change its corporate name to CenterLight Healthcare Diagnostic and Treatment Center. The proposed name change is in connection with a rebranding being undertaken by Bethco Corporation, which will be renamed CenterLight Health System. Bethco Corporation is the sole corporate member of Comprehensive Care Management Corporation, which is in turn the sole corporate member of CCM DTC. Comprehensive Care Management Corporation will be renamed CenterLight Healthcare. The proposed name change to CenterLight Healthcare Diagnostic and Treatment Center will reflect the relationship of the diagnostic and treatment center to CenterLight Health System and CenterLight Healthcare.

Enclosed is a copy of the executed Certificate of Amendment of the Certificate of Incorporation of CCM DTC for submission to the Public Health and Health Planning Council.

Stephanie Marcantonio Tel 212 504 6749 Fax 212 504 6666 stephanie.marcantonio@cwt.com

Susan A. Sullivan, Esq
September 29, 2011

Please call me at (212) 504-6749 if you have any questions or comments. Thank you for your assistance.

Sincerely yours,

Stephanie Marcantonio

SM/mls

Enclosures

cc: Christie O'Toole
Paul W. Mourning, Esq.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 8th day of December, 2011, approves the filing of the Certificate of Amendment of Certificate of Incorporation of Comprehensive Care Management Diagnostic and Treatment Center, Inc., dated September 28, 2011.

New York State Department Of Health

Memorandum

TO: Public Health and Health Planning Council

FROM: James E. Dering, General Counsel

DATE: October 24, 2011

SUBJECT: Proposed Dissolution of Hudson Valley Health Specialties, Inc.

Hudson Valley Health Specialties, Inc. ("Hudson Valley") requests Public Health and Health Planning Council approval of its proposed Dissolution in accordance with the requirements of Not-For-Profit Corporation Law §1002(e) and §1003, as well as 10 NYCRR Part 650.

Hudson Valley was established under Article 28 of the Public Health Law in 1999 to operate a diagnostic and treatment center with two extension sites in Orange County. On December 31, 2009, Hudson Valley ceased operations and surrendered its operating certificate to the Department. Therefore, there is no longer a reason for Hudson Valley to exist. Hudson Valley's assets and liabilities will be assumed by Ulster Greene ARC pursuant to an agreement referenced in Hudson Valley's proposed Plan of Dissolution.

Attached are a copy of the duly executed proposed Certificate of Dissolution, a letter from Hudson Valley's attorney explaining the need for the proposed Dissolution, a proposed Plan of Dissolution, and a proposed Verified Petition seeking the Supreme Court's approval of Hudson Valley's Certificate of Dissolution.

The Certificate of Dissolution is in legally acceptable form.

Attachments

DANIELS AND PORCO, LLP
ATTORNEYS AT LAW

317 ROUTE 22, P.O. BOX 668
PAWLING, NEW YORK 12564
TEL: (845) 855-5900
FAX: (845) 855-5945
www.danielsporco.com

November 12, 2010

Ms. Jean Quarrier
Director of the Bureau of House Counsel
Corning Tower
Room 2438
Albany, NY 12237

Re: Dissolution of Hudson Valley Health Specialties, Inc.

Dear Ms. Quarrier:

This firm represents Hudson Valley Health Specialties, Inc., in it proposed dissolution. Hudson Valley Health Specialties, Inc., ("Hudson Valley") is a New York Not for Profit Corporation which up until December 31, 2009, operated an Article 28 Diagnostic and Treatment Center in Kingston, New York, pursuant to an operating certificate issued by the New York State Department of Health. Effective December 31, 2009, Hudson Valley ceased operating its Article 28 facility and surrendered its operating certificate to the New York State Department of Health. Please find enclosed a copy of the letter from Salvatore Garozzo, Associate Executive Director of Hudson Valley, to Susan Berry at the New York State Department of Health, dated September 28, 2009, expressing Hudson Valley's intent to close its Article 28 facility along with a copy of the closure plan.

Pursuant to section 1002 (c) of the New York Not for Profit Corporation Law, Hudson Valley's Plan of Dissolution must be approved by the New York State Public Health Council. Hudson Valley now seeks such approval and submits the following documents as part of its application.

1. A copy of the Plan of Dissolution which was approved by the Board of Directors of Hudson Valley on November 8, 2010;
2. A copy of the resolution of the Hudson Valley Board of Directors adopting the Plan of Dissolution;
3. A copy of the proposed Certificate of Dissolution; and
4. A copy of the Certificate of Incorporation of Hudson Valley.

These documents are being submitted as part of Hudson Valley's application for approval of the Plan of Dissolution by the Public Health Council. Once the Plan of Dissolution is approved by the Public Health Council, Hudson Valley will seek the approval of the New York State Supreme Court, Ulster County of the dissolution with the consent and approval of the New York State Attorney General's Office.

Thank you for your attention to this matter. If you have any questions, or require additional information, please feel free to call me.

Sincerely,

Ian S. MacDonald

/ISM

Cc: Salvatore Garozzo

CERTIFICATE OF DISSOLUTION
OF THE
HUDSON VALLEY HEALTH SPECIALTIES, INC.

Pursuant to Section 1003 of the Not-for-Profit Corporation Law

I, Laurie A. Kelley, the Executive Director of The HUDSON VALLEY HEALTH SPECIALTIES, INC. hereby certify:

1. The name of this corporation is The HUDSON VALLEY HEALTH SPECIALTIES, INC., ("the Corporation").

2. The Certificate of Incorporation of HUDSON VALLEY HEALTH SPECIALTIES, INC. was filed with the New York State Department of State on the 5th day of November, 1999.

3. The names and addresses of each of the officers of the Corporation and the title of each are as follows:

Todd McNutt, President	50 Sharon Lane, Kingston, NY
Thomas Hitchcock, First Vice President	2331 Route 23C, East Jewett, NY
Sheree Cross, Second Vice President	28 Dog Wood Knoll, Highland, NY
Valerie Dwyer, Treasurer	326 Loughran Court, Kingston, NY
Kathleen Farrell, Secretary	P.O. Box 861 Stone Ridge, NY

4. The names and addresses of each member of the Board of Directors of the Corporation are as follows:

Todd McNutt	50 Sharon Lane, Kingston, NY
Thomas Hitchcock	2331 Route 23C, East Jewett, NY
Sheree Cross	28 Dog Wood Knoll, Highland, NY
Valerie Dwyer	326 Loughran Court, Kingston, NY
Kathleen Farrell	P.O. Box 861 Stone Ridge, NY
Ryan Arold	1096 Ulster Landing Road, Saugerties, NY
Robert Boening	117 Terrace Lane, Hurley, NY
Craig Crump	442 Pearl Street, Kingston, NY
Jack Deyo	314 Price Lane, Kingston, NY

filing of this Certificate of Dissolution with the New York State Department of State. A copy of the approval letter is annexed hereto as Exhibit "B."

11. The corporation is in the process of carrying out the Dissolution and Distribution of Assets.

12. Prior to the filing of this Certificate of Dissolution with the Department of State, the endorsement of the Attorney General will be attached.

IN WITNESS WHEREOF, the undersigned has signed the Certificate of Dissolution of The HUDSON VALLEY HEALTH SPECIALTIES, INC., this 7th day of October, 2011.

Laurie A. Kelley
Executive Director
HUDSON VALLEY HEALTH SPECIALTIES, INC.

PLAN OF DISSOLUTION AND DISTRIBUTION
OF
ASSETS OF HUDSON VALLEY HEALTH SPECIALTIES, INC

The Board of Directors ("the Board") of HUDSON VALLEY HEALTH SPECIALTIES, INC., ("the Corporation") at a regular meeting duly convened on the 8th Day of November, 2010, a quorum being present at all times, having considered the advisability of voluntarily dissolving the corporation , and it being the opinion of the Board that dissolution is advisable and in the best interests of the corporation, and the Board having adopted, by a vote, a plan for a voluntary dissolution of the corporation, does hereby resolve that the Corporation be dissolved in accordance with the following plan:

1. There being no members of the Corporation, no vote of membership is required to approve this dissolution, and action of the Board of Directors is sufficient.

2. Approval of the dissolution of the corporation is required to be obtained from the New York State Public Health Council. This Plan of Dissolution is contingent upon such approval.

3. The Corporation has assets. Such assets are not legally required to be used for any particular purpose. A list of the assets of the Corporation is contained in the financial statement for year-end 2009 of the Corporation attached hereto as Exhibit "A."

4. All of the assets owned by the Corporation subject to any unpaid liabilities of the Corporation and all liabilities of the Corporation shall be distributed to and assumed by ULSTER GREENE ARC, which is an entity which shares an identical Board of Directors to that of HUDSON VALLEY HEALTH SPECIALTIES, INC., and has a substantially similar purpose as that of HUDSON VALLEY HEALTH SPECIALTIES, INC., and which qualifies as an exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954, as amended. The terms of the distribution of assets and assumption of liabilities by ULSTER GREENE ARC are memorialized in a written agreement attached hereto.

5. The Corporation has total current liabilities of $2,167,810.00, a description of those liabilities is contained in the year-end 2009 financial statement attached hereto. These liabilities will be assumed by ULSTER GREENE ARC, pursuant to the written agreement attached hereto.

6. Any patients of the Corporation have been, and will continue to be, referred to The Institute For Family Health, which is a New York Not for Profit Corporation with a facility in Kingston, New York, with the capacity to serve all of the Corporation's patients.

7. Within two hundred seventy days after the date that an Order Approving the Plan of Dissolution and Distribution of Assets is signed by the Court, the Corporation shall carry out this Plan.

CERTIFICATION

I, Laurie A. Kelley, Executive Director of HUDSON VALLEY HEALTH SPECIALTIES, INC., hereby certifies under penalty of perjury that a regular meeting of the Board of Directors of the Corporation was duly held on November 8, 2010 at 471 Albany Avenue, Kingston, New York and the within Plan of Dissolution was duly submitted and passed by vote of the Directors.

Laurie A. Kelley, Executive Director
Dated the 8th day of November, 2010

Notary Public, State of New York
Qualified in Ulster County
Commission Expires 4-30-2011

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

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HUDSON VALLEY HEALTH SPECIALTIES, INC.,

Index No.:

Petitioner

Disposition of Assets of a Not-for-Profit Corporation Pursuant to NPCL § 511

PETITION

----------X

To the Supreme Court of the State of New York:

Petitioner, by its attorney, Ian S. MacDonald, Esq., respectfully alleges:

1. The petitioner, HUDSON VALLEY HEALTH SPECIALTIES, INC., is a not-for-profit corporation duly organized and existing under the Not for Profit Corporation Law of the State of New York. A copy of its Certificate of Incorporation is attached hereto as Exhibit "A."

2. The names of the members of the Board of Directors of the petitioner corporation and their places of residence are:

Todd McNutt	50 Sharon Lane, Kingston, NY
Thomas Hitchcock	2331 Route 23C, East Jewett, NY
Sheree Cross	28 Dog Wood Knoll, Highland, NY
Valerie Dwyer	326 Loughran Court, Kingston, NY
Kathleen Farrell	P.O. Box 861 Stone Ridge, NY
Ryan Arold	1096 Ulster Landing Road, Saugerties, NY
Robert Boening	117 Terrace Lane, Hurley, NY
Craig Crump	442 Pearl Street, Kingston, NY
Jack Deyo	314 Price Lane, Kingston, NY

podiatry, neurology, primary care, psychiatric, psychological, speech language, pathology and any other medically related services, for the prevention, diagnosis or treatment of disease, pain, injury, deformity or physical condition.

5. The Petitioner corporation proposes to transfer all of its remaining assets subject to any unpaid liabilities and all the liabilities to ULSTER GREENE ARC, which is an entity which shares an identical Board of Directors to that of the Petitioner, and has a substantially similar purpose as that of Petitioner, and which qualifies as an exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. The terms of the distribution of assets and assumption of liabilities by ULSTER GREEN ARC, are memorialized in a written agreement attached hereto as Exhibit "B." These assets constitute all of the assets of the petitioner corporation. The Plan of Dissolution is attached hereto as Exhibit "C." A copy of the Certificate of Incorporation of ULSTER GREEN ARC is attached hereto as Exhibit "D."

6. The assets, debts and liabilities of the petitioner corporation and the manner in which they are secured are as follows: The assets of the Petitioner consist of equipment valued at less than $10,000.00. The Petitioner has liabilities in the amount of $2,167,810.00 which are set forth in the December 31, 2009 financial statement attached hereto as Exhibit "E."

7. The Petitioner will not receive, or be required to pay, any consideration for the transfer of the aforesaid assets and liabilities to ULSTER GREENE ARC.

8. The dissolution of the Petitioner is contemplated after the transfer of the assets and liabilities as aforesaid.

IAN S. MacDONALD, Esq.
DANIELS & PORCO, LLP
Attorneys for the Petitioner
517 Route 22
P.O. Box 668
Pawling, NY 12564
(845) 855-5900

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 8th day of December, 2011, approves the filing of the Certificate of Dissolution of Hudson Valley Health Specialties, Inc., dated October 7, 2011.

New York State Department Of Health

Memorandum

TO: Public Health and Health Planning Council (Council)

FROM: James E. Dering, General Counsel

DATE: November 7, 2011

SUBJECT: Proposed Certificate of Dissolution for Brooklyn Cares, Inc. (Brooklyn Cares)

Attached for the Council's review and approval is a photocopy of a Certificate of Dissolution for Brooklyn Cares, Inc. The Council's approval to file this Certificate of Dissolution is required pursuant to Not-for-Profit Corporation Law §§ 1002(c) and 1003; and Title 10 (Health) of the Official Compilation of the Codes, Rules and Regulations of the State of New York § 650.1.

The Certificate of Incorporation of Brooklyn Cares was filed on March 30, 1995 and it was approved to establish and operate a diagnostic and treatment center at two different sites: "Boro Primary Care Center" (Boro PCC) and "Sheepshead Bay Primary Care Center" (Sheepshead Bay PCC). Both sites ceased operations in 2001 because of financial difficulties. As explained more fully in the photocopy of the attached letter from Marsena M. Farris, attorney for Brooklyn Cares, all necessary actions were undertaken to properly close each of the two sites and to surrender the resepective operating certificates. Also attached is a photocopy of the proposed Verified Petition pursuant to which Brooklyn Cares will seek the necessary approval from the Attorney General of the State of New York for the dissolution.

The Certificate of Dissolution is in legally acceptable form and the Department has no objection to its filing.

Attachments

CERTIFICATE OF DISSOLUTION

OF

BROOKLYN CARES, INC.

UNDER SECTION 1003

OF THE NOT-FOR-PROFIT CORPORATION LAW

I, the undersigned, the Chairman of Brooklyn Cares, Inc., hereby certify:

1. The name of the corporation is Brooklyn Cares, Inc. (the "Corporation").

2. The Certificate of Incorporation of the Corporation was filed by the Department of State of the State of New York on the 30th day of March, 1995.

3. The names and addresses of each of the officers and directors of the Corporation and the title of each are as follows:

NAME	TITLE	ADDRESS
Eli Feldman	Chairman	5 Old Scots Road Marlboro, New Jersey 07746
Isaac Assael	Treasurer	91 Central Park West New York, New York 10023
Robert Leamer	Secretary	207 Noe Avenue Chatham, New Jersey 07928

4. The dissolution of the Corporation was authorized by a unanimous written consent of the Board of Directors dated as of September 23, 2008 and approved by a written consent of the sole corporate member dated as of December 16, 2008.

5. The Corporation elects to dissolve.

6. At the time of authorization of its Plan of Dissolution, the Corporation holds no assets for distribution that are legally required to be used for a particular purpose pursuant to the Not-for-Profit Corporation Law.

7. At the time of the dissolution, the Corporation is a Type B corporation as defined under the Not-for-Profit Corporation Law.

8. The Plan of Dissolution has been duly filed with the Attorney General of the State of New York pursuant to Not-for-Profit Corporation Law § 1001(b).

9. The Plan of Dissolution contains the statement that the Corporation had no assets and no liabilities.

10. Prior to the filing of this Certificate with the Department of State, the endorsement of the Attorney General and the approval of the New York State Public Health Council will be attached.

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Dissolution this 22 day of July, 2010 under the penalties of perjury.

Eli Feldman
Chairman

CADWALADER

Cadwalader, Wickersham & Taft LLP
One World Financial Center, New York, NY 10281
Tel +1 212 504 6000 Fax +1 212 504 6666
www.cadwalader.com

New York London Charlotte Washington
Houston Beijing Hong Kong

March 11, 2011

Ms. Colleen Frost
Executive Secretary
New York State Public Health and Health
Planning Council
Hedley Building
433 River Street – 6th Floor
Troy, New York 12180

Re: Brooklyn Cares, Inc.

Dear Ms. Frost:

Brooklyn Cares, Inc. (the "Corporation") has elected to voluntarily dissolve. It was founded in 1995 to operate a not-for-profit diagnostic and treatment center in the Boro Park section of Brooklyn. Brooklyn Cares, Inc. provided primary medical services, including services to "walk-in" patients with illnesses that were immediate or urgent, at two separate sites known as "Boro Park Primary Care Center" and "Sheepshead Bay Primary Care Center". The Corporation ceased operations in 2001 because it was no longer financially viable. The Corporation took all appropriate action pursuant to Department of Health regulations -- plans of closure were reviewed and approved by DOH and the operating certificates were surrendered for both sites. The Corporation has no assets or liabilities. Brooklyn Cares, Inc. seeks Commissioner of Health consent to its dissolution. Thank you for your assistance.

Please call me at (212) 504-6095 if you have any questions or comments.

Sincerely,

Marsena M. Farris

MMF/re
Enclosures

Marsena M. Farris Tel 212 504 6095 Fax 212 504 6666 marsena.farris@cwt.com

PLAN OF DISSOLUTION
OF
BROOKLYN CARES, INC.
A NEW YORK NOT-FOR-PROFIT CORPORATION

The Board of Directors of Brooklyn Cares, Inc., (the "Corporation") by unanimous written consent dated as of September 23, 2008, having considered the advisability of voluntarily dissolving the Corporation, and it being the unanimous opinion of the Board that dissolution is advisable and it is in the best interests of the Corporation to effect such a dissolution, and the Board of Directors, having adopted by unanimous written consent, a Plan for a voluntary dissolution of the Corporation, does hereby recommend to the sole corporate member for approval that the Corporation be dissolved in accordance with the following Plan:

(1) Upon resolution of the Board of Directors adopting a Plan of Dissolution, the Board shall submit the plan to a vote of the sole corporate member to approve the Plan.

(2) Approval of the dissolution of the Corporation is required by the Public Health Council of the State of New York, which approval is attached.

(3) The Corporation has no assets or liabilities.

(4) Within ten (10) days after the authorization of the Plan of Dissolution by the Board of Directors and approval of the Plan by the sole corporate member, a certified copy of the Plan shall be filed with the Attorney General of the State of New York pursuant to New York State Not-for-Profit Corporation Law Section 1002(d).

(5) A Certificate of Dissolution shall be executed and all approvals required under Section 1003 of the Not-for-Profit Corporation Law shall be attached thereto.

CERTIFICATION

I, Robert E. Leamer, Secretary of Brooklyn Cares, Inc., hereby certify under penalties of perjury that (i) this Plan of Dissolution was duly authorized by the unanimous written consent of the Board of Directors dated as of September 23, 2008 and that (ii) this Plan of Dissolution was duly approved by the written consent of the sole corporate member dated as of December 16, 2008.

Dated: January 12, 2009

Robert E. Leamer
Secretary
Brooklyn Cares, Inc.

In the Matter of the Application of Brooklyn Cares, Inc. For Approval of a Certificate of Dissolution pursuant to Section 1002 of the Not-for-Profit Corporation Law.	**VERIFIED PETITION**

TO:
THE ATTORNEY GENERAL OF THE STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
CHARITIES BUREAU
120 BROADWAY, 3RD FLOOR
NEW YORK, NEW YORK 10271-0332

Petitioner, Brooklyn Cares, Inc. (the "Corporation"), by Eli Feldman, the Chairman of the Corporation, for its Verified Petition, respectfully alleges:

1. Petitioner, Brooklyn Cares, Inc., is a corporation incorporated under the New York Not-for-Profit Corporation Law on March 30, 1995, with its principal office at 6323 Seventh Avenue, Brooklyn, New York 11220. A copy of the Certificate of Incorporation is attached as Exhibit A.

2. The name, addresses and titles of the Corporation's officers and directors are as follows:

Name	Title	Address
Eli Feldman Director and Officer	Chairman	5 Old Scots Road Marlboro, New Jersey 07746
Isaac Assael Director and Officer	Treasurer	91 Central Park West New York, New York 10023
Robert Leamer Director and Officer	Secretary	207 Noe Avenue Chatham, New Jersey 07928

3. The purposes for which the Corporation was organized are as follows:

(a) To construct and operate a diagnostic and treatment center, which shall be a medical facility with one or more organized health services, and is not part of an inpatient hospital facility or vocational rehabilitation center, to be primarily engaged in providing services and facilities to out-of-hospital or ambulatory patients by or under the

supervision of a physician, for the prevention, diagnosis, and treatment of human disease, pain, injury, deformity, or physical condition, not including the individual or group private practice of medicine; and

(b) To engage in any other activity that is incidental to, connected with, or in advancement of, the foregoing purposes and that is within the definition of charitable, educational and scientific for purposes of Section 501(c)(3) of the Code.

4. The Corporation is a Type B corporation.

5. The Board of Directors of the Corporation adopted the Plan of Dissolution of Brooklyn Cares, Inc. and authorized the filing of a Certificate of Dissolution in accordance with Section 1003 of the Not-for-Profit Corporation Law, by a Unanimous Written Consent of Directors dated as of September 23, 2008, a copy of which is attached hereto as Exhibit B. A copy of the Plan of Dissolution, certified by the Secretary of the Corporation, is attached hereto as part of Exhibit B.

6. Dissolution of the Corporation was approved by the sole corporate member of the Corporation by Written Consent of the Member dated as of December 16, 2008, a copy of which is attached hereto as Exhibit C.

7. A certified copy of the Corporation's Plan of Dissolution was filed with the Office of the Attorney General and is attached hereto as Exhibit D.

8. Brooklyn Cares, Inc. has no assets or liabilities and its final report showing zero assets has been filed with the Attorney General.

9. Approval of the Public Health and Health Planning Council of the State of New York is necessary, and a copy of such approval is attached hereto as Exhibit E.

10. With this Petition, the original Certificate of Dissolution is being submitted to the Attorney General for approval pursuant to Not-for-Profit Corporation Law Section 1003.

WHEREFORE, petitioner requests that the Attorney General approve the Certificate of Dissolution of Brooklyn Cares, Inc., a not-for-profit corporation, pursuant to Not-for-Profit Corporation Law Section 1003.

IN WITNESS WHEREOF, the Corporation has caused this Petition to be executed this ____ day of _____, 2011 by Eli Feldman, its Chairman.

_____
Eli Feldman
Chairman
Brooklyn Cares, Inc.

Verification

STATE OF NEW YORK)
: ss.:
COUNTY OF KINGS)

I, the undersigned, Eli Feldman, being duly sworn, depose and say:

I am the Chairman of Brooklyn Cares, Inc., the corporation named in the above Petition. I make this verification at the direction of its Board of Directors. I have read the foregoing Petition and know the contents thereof to be true of my own knowledge.

_____
Eli Feldman

Sworn to before me this
____ day of _____, 2011

_____
Notary Public

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 8th day of December, 2011, approves the filing of the Certificate of Dissolution of Brooklyn Cares, Inc., dated July 22, 2010.

New York State Department Of Health
Division of Legal Affairs
Memorandum

TO: Public Health and Health Planning Council

FROM: James E. Dering, General Counsel

DATE: November 9, 2011

SUBJECT: Proposed Dissolution of The Albert Lee Memorial Hospital a/k/a A.L. Lee Memorial Hospital

The Albert Lee Memorial Hospital a/k/a A.L. Lee Memorial Hospital ("the Hospital") request Public Health and Health Planning Council approval of their proposed dissolutions in accordance with the requirements of Not-For-Profit Corporation Law §1002(c) and §1003, as well as 10 NYCRR Part 650.

The Hospital was originally incorporated on February 1, 1974 for the purpose of assuming and succeeding all assets, liabilities, rights, powers, duties and obligations of the City of Fulton, New York, in its Albert Lindley Lee Memorial Hospital and to operate and maintain an acute care general hospital for the examination, diagnosis, care or treatment of the sick, infirm and disabled. On November 28, 2006, the Berger Commission Report was released and recommended that the Hospital be closed by June 30, 2008. In April 2009 the Hospital and Oswego Hospital entered into an Asset Purchase Agreement whereby Oswego Hospital proposed to purchase the facility and certain identified equipment. The Hospital filed for Chapter 11 Bankruptcy to implement the closure recommendations of the Berger Commission and to orderly wind-down and liquidate the Hospital's assets and liabilities as well as seek approval of the agreement to transition services to Oswego Hospital. On March 12, 2010, the Bankruptcy Court entered an Order confirming the Amended Chapter 11 Plan of Liquidation whereby the Hospital will have until November 22, 2011 to use all assets and funds to pay off all liabilities of the Hospital in accordance with the terms of the Amended Chapter 11 Plan and Plan of Dissolution. The Hospital now seeks to dissolve.

Attached are copies of:

(1) The proposed certificates of dissolution of the Hospital;

(2) A letter, dated November 3, 2011, from the applicant's attorney seeking

Public Health and Health Planning Council approval of the proposed dissolution and stating the reasons therefor;

(3) Proposed verified petition seeking court approval of the applicant's certificate of dissolution, containing, among other things, the Hospital's:

a. Certificate of Incorporation;

b. Plan of Dissolution and Distribution of Assets; and

c. Board of Director's resolution adopting the Plan of Dissolution and Distribution of Assets.

(4) The Hospital's Amended Chapter 11 Plan of Liquidation; and

(5) The Order Confirming the Hospital's Amended Chapter 11 Plan of Liquidation.

The Certificates of Dissolution are in legally acceptable form.

JD/DY

Attachments

Certificate of Dissolution

of

The Albert Lindley Lee Memorial Hospital

Pursuant to § 1003 of the Not-for-Profit Corporation Law

I, Dennis A. Casey, the Executive Director of The Albert Lindley Lee Memorial Hospital, hereby certify:

1. The name of this corporation is The Albert Lindley Lee Memorial Hospital.

2. The Certificate of Incorporation of The Albert Lindley Lee Memorial Hospital was filed with the Department of State of the State of New York on the 1st day of February, 1974.

3. The names and addresses of each of the directors and officers of the corporation and the title of each are as follows:

Name	Director/Title	Address
Richard B. Abbott	Chairman, Board of Directors	34 South Pollard Drive Fulton, New York 13069
Donald L. Kesterke	Vice-Chairman, Board of Directors	557 West First Street Fulton, New York 13069
Michael K. Stafford	Treasurer, Board of Directors	730 Maple Avenue Fulton, New York 13069
Judy Young	Secretary, Board of Directors	1622 County Route 57 Fulton, New York 13069
Dennis A. Casey	Executive Director	37 Patrick Circle Fulton, New York 13069

4. Dissolution of the corporation was authorized by a unanimous vote of the Board of Directors.

5. The corporation elects to dissolve.

6. At the time of dissolution, the corporation is a Type B corporation.

7. The corporation filed with the Attorney General a certified copy of its Plan of Dissolution.

8. The Plan of Dissolution filed with the Attorney General included a statement that at the time of dissolution the corporation had no assets or liabilities.

9. The corporation has carried out its Plan of Dissolution, paid all of its liabilities and submitted a final report to the Attorney General.

10. At the time of the authorization of its Plan of Dissolution, the corporation did not hold any assets that are legally required to be used for a particular purpose pursuant to the Not-for-Profit Corporation Law.

11. Prior to the filing of this Certificate with the Department of State, the endorsement of the Attorney General will be attached.

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Dissolution of The Albert Lindley Lee Memorial Hospital this 2nd day of November, 2011.

Dennis A. Casey
Executive Director

PLAN OF DISSOLUTION
AND DISTRIBUTION OF ASSETS OF
THE ALBERT LINDLEY LEE MEMORIAL HOSPITAL
a/k/a A.L. LEE MEMORIAL HOSPITAL

The Board of Directors of The Albert Lindley Lee Memorial Hospital a/k/a A.L. Lee Memorial Hospital (the "Corporation") having considered the advisability of voluntarily dissolving the Corporation, and it being the unanimous opinion of the Board that dissolution is advisable and in the best interests of the Corporation, and the Board having adopted, by unanimous vote, a plan for a voluntary dissolution of the Corporation, does hereby resolve that the Corporation be dissolved pursuant to Article 10 of the New York Not-For-Profit Corporation Law, and that the Corporation's assets be distributed, in accordance with the following plan (the "Plan"):

ARTICLE I
Background

1. The Corporation is a type-B New York not-for-profit corporation which, until April 26, 2009, was licensed as an Article 28 acute care facility by the New York State Department of Health and operated a 67-bed facility in Fulton, Oswego County, New York.

2. On November 28, 2006, the Commission on Health Care Facilities in the 21st Century (commonly known as the "Berger Commission") released a report and recommendations regarding the status of hospitals and other health care providers in New York State (the "Berger Commission Report"). The Berger Commission Report recommended that the Corporation close all of its 67 beds by June 30, 2008. The closure recommendation was later extended to June 30, 2009.

3. On April 3, 2009 (the "Petition Date"), the Corporation filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Northern District of New York (the "Bankruptcy Court"). The chapter 11 case was filed in order to wind-down the Corporation's operations in a controlled and orderly fashion, to implement the closure recommendation of the Berger Commission and to effectuate the orderly liquidation of its assets to address its creditors' claims.

4. The Corporation ceased all acute care hospital services and closed its facility on April 26, 2009.

5. The Board of Directors of the Corporation has determined that it would be in the best interest of the Corporation's creditors to pursue sales of substantially all of the Corporation's assets in the context of the chapter 11 bankruptcy proceeding. The Board of Directors determined that any delay would be detrimental to the Corporation's residents and to its bankruptcy estate.

6. Except as discussed below, the Corporation does not have any endowment or use restricted funds.

ARTICLE II
Sale of Corporation's Assets

1. The first step in the process of the dissolution of the Corporation will be the sale of substantially all of the assets of the Corporation.

2. Since April, 2009, the Corporation engaged in significant efforts to market substantially all of its assets for sale. The Corporation and Oswego Hospital entered into an Asset Purchase Agreement on April 1, 2009, pursuant to which Oswego Hospital proposes to purchase the real property in Fulton, New York upon which the hospital facility is located, certain real property improved by a medical office building located in Phoenix, New York and certain identified equipment and furniture. The consideration to be paid by Oswego Hospital under the Asset Purchase Agreement is $1,500,000.00 (the "Hospital Purchase Price"). The Hospital Purchase Price is allocated among the subject assets as follows: $850,000 for the Hospital Facility; $350,000 for the Phoenix Property; and $300,000 for the equipment and furniture. The Hospital Purchase Price shall be paid in cash at the closing of the sale.

3. Oswego Hospital acted as a "stalking horse", or designated bidder, at a public auction of the assets described above pursuant to section 363 of the Bankruptcy Code which was subject to higher and better offers (hereinafter, the "Oswego Hospital Sale"). The Oswego Hospital Sale was approved by the Bankruptcy Court on July 6, 2009. The Corporation anticipates that this sale will close during October 2010.

4. On July 8, 2009, the Corporation and Great American Group, LLC ("Great American") entered into the Equipment Purchase Agreement pursuant to which Great American proposed to purchase from the Corporation certain assets consisting of excess medical equipment, furniture, fixtures and related items located at the hospital facility (the "Equipment Assets"). The consideration to be paid by Great American for the Equipment Assets under the Equipment Purchase Agreement was $115,000.00 payable in cash at closing (the "Equipment Purchase Price"), which was subject to higher and/or better offers under the Bankruptcy Code. The sale of the Equipment Assets was approved by the Bankruptcy Court pursuant to an order dated July 30, 2009. The sale closed during August 2009, and after certain adjustments at closing, the final sale price paid by Great American was $95,000.00.

5. On June 5, 2009, the Corporation received a written purchase offer from Centurion Service Group, LLC ("Centurion") pursuant to which Centurion proposed to purchase from the Corporation fifty-three (53) 20-inch flat screen televisions (the "Televisions") purchased by Corporation in 2005 and located at the hospital facility. On August 10, 2009, the Bankruptcy Court entered an order approving the sale of the Televisions to Centurion and the closing occurred shortly thereafter. The aggregate consideration paid by Centurion for the Televisions was $3,975.00 cash.

6. The Corporation's auxiliary organization, which supported the Corporation and its mission, maintained an operating account at HSBC Bank, a portion of which, in the approximate amount of $27,953.05, was reserved for four scholarships awards (the "Scholarship Funds"). The Scholarship Funds were donated to the auxiliary over many years in memory of various deceased individuals. Similarly, the Corporation maintains a Certificate of Deposit Account with KeyBank National Association with a current balance of approximately $8,202.62 which contains funds in support of the Adolph Kalafarski Memorial Scholarship (the "Kalafarski Scholarship"). The Corporation and its auxiliary desired to preserve the intent of the Auxiliary Scholarships and Kalafarski Scholarship for the benefit of the community on a continuing basis. On December 30, 2009, the Corporation transferred the Scholarship Funds to the Community Foundation of Central New York, Inc. (the "Community Foundation"), which has agreed to maintain and administer the Scholarship Funds, and disburse annual awards to scholarship recipients, on a continuing basis.

7. The Corporation also owned various items of personal property of historical value that have accumulated since the Corporation opened in 1910 which relate to the operation of the Corporation. Most of the historical assets were bequeathed or donated to the Corporation over the years. Included among the historical assets are twenty-two (22) watercolor paintings of Fulton area buildings and landscapes by local artist Eugenijis Kaskin and one (1) painting by local artist Ruth Pierce. On August 10, 2009, the Bankruptcy Court issued an order authorizing the Corporation to donate the historical assets and paintings to the Friends of History in Fulton New York, Inc. so that an accurate assessment of their historical value may be made, and so that the items may be preserved for the good of the community. In addition, the Court authorized the sale of one (1) Kaskin painting to Fulton resident Teresa L. Czirr for the sum of $100.00.

8. The Corporation also owns certain restricted use funds which are comprised of three (3) bequests or donations received over the years known as the Fulton War Chest fund, the Lovejoy fund and the Osborne fund (collectively, the "Legacy Funds"). The principal amounts of the funds total $20,322.00. The Corporation desires to preserve the funds for the community on a continuing basis and has elected to transfer the funds to the Community Foundation, which has agreed to maintain and administer the funds in accordance with the Funds' donative intent. The Legacy Funds will be transferred to the Community Foundation during September or October 2010.

9. In addition to the real property encompassing the Hospital Facility and a medical office building in Phoenix, New York, as of the April 3, 2009 bankruptcy filing date, the Corporation also owned the following eighteen (18) parcels of commercial and residential real property located in the City of Fulton or Village of Phoenix, New York (collectively, the "Real Properties"):

a. 406 Lyon Street, Fulton, New York
b. 502 South Fifth Street, Fulton, New York
c. 504 South Fifth Street, Fulton, New York
d. 506/508 South Fifth Street, Fulton, New York
e. 510 South Fifth Street, Fulton, New York
f. 370 South Fourth Street, Fulton, New York

g. 451 South Fourth Street, Fulton, New York
h. 455 South Fourth Street, Fulton, New York
i. 457 South Fourth Street, Fulton, New York
j. 459 South Fourth Street, Fulton, New York
k. 509 South Fourth Street/402 Lyon Street, Fulton, New York
l. 513 South Fourth Street, Fulton, New York
m. 515-517 South Fourth Street, Fulton, New York
n. 460 Park Street, Fulton, New York
o. 156 Chestnut Street, Phoenix, New York

9. The Corporation also owned real property improved by a medical office building located at 450 Fulton Street, Hannibal, New York. The Corporation estimates that the Hannibal property is valued at approximately $400,000, however, it is encumbered by a mortgage lien in favor of Fulton Savings Bank in the approximate amount of $423,000. This medical office building was the subject of a foreclosure sale conducted by Fulton Savings Bank on December 4, 2009. No proceeds from the foreclosure of the medical office building were paid to the Corporation.

10. Most of the Real Properties were listed for sale with real estate broker Century 21 Leah's Signature ("Century 21") of Fulton, New York pursuant to an Exclusive Right to Sell Contract dated May 4, 2009. To date, the Corporation has closed sales with respect to fourteen (14) of the Real Properties. Four properties (one residence and three parking lot parcels) remain unsold at this time and may be the subject of auction sales if the Corporation does not receive purchase offers for them by October 31, 2010.

11. The Corporation owned accounts receivable which were valued at approximately $2,250,000 as of the Petition Date. The receivables were owed by third-party payers such as insurance companies, Medicare, Medicaid, workers compensation and individual patients arising from medical care provided by the Corporation in the ordinary course of its business (the "Accounts Receivable"). On June 29, 2009, the Corporation retained a medical billing and collection consultant to assist with the collection of the Accounts Receivable owed by governmental or corporate payers. Those collection efforts concluded during December 2009. On March 16, 2010, the Corporation retained ACL Adjustment Associates, Inc. to collect the remaining Accounts Receivable owed from private individuals and supervise the collection of other private-pay Accounts Receivable by three collection agencies. On September 16, 2010, the Bankruptcy Court approved the sale of most of the Accounts Receivable being collected by collection agencies to Horizon Resources, LLC for $100,000.00.

12. On July 15, 2010, the Bankruptcy Court entered an order confirming the Corporation's Amended Chapter 11 Plan of Liquidation (the "Plan"). The Plan provides for the liquidation of the Corporation's assets as described above and the payment of the asset sale proceeds to creditors in accordance with the priorities set forth in the Bankruptcy Code.

13. Any remaining assets will have *de minimus* value and will be liquidated by the Corporation in the ordinary course of its wind-down.

ARTICLE III
Procedure for Dissolution

1. This Plan has been approved by the Corporation's Board of Directors.

2. The action of the Board of Directors shall suffice, and a Certificate of Dissolution shall be executed and verified.

3. The Bankruptcy Court has approve the various asset sales described above following the filing and hearing of motions on notice to the Office of the New York State Attorney General (the "AG"), the New York State Department of Health ("DOH"), the Corporation's creditors and other parties in interest.

4. After the approval of a Justice of the Supreme Court is obtained and annexed thereto, and all assets have been transferred by the Corporation in accordance with this Plan, the Certificate of Dissolution shall be filed in accordance with requirements of law.

5. The Corporation's Plan has been confirmed by the Bankruptcy Court and dissolution of the Corporation may take place at the appropriate time thereafter.

6. No approval of the dissolution of the Corporation is required by any governmental agency or officer, except the AG and the DOH.

7. To the extent that there are any assets in excess of the Corporation's liabilities, they will be distributed to the Community Foundation (the "Residual Distributee"), which qualifies as an exempt organization pursuant to § 501(c)(3) of the Internal Revenue Code of 1986, as amended, having purposes substantially similar to those of the Corporation. Proof of such exemption is attached, as well as (a) certified copies of the Residual Distributee's organizational documents and any amendments thereto, (b) the Residual Distributee's financial report for the last three years (or such lesser number of years that the Residual Distributee has been in existence), and (c) a sworn affidavit from a Trustee or officer of the Residual Distributee stating its purposes and that it is currently exempt from federal income taxation.

8. Within two hundred seventy (270) days after the date on which the Order Approving Plan of Dissolution and Distribution of Assets is signed by the Supreme Court, the Corporation will carry out this Plan, pay its liabilities, distribute its assets and wind up its business in accordance with this Plan.

ARTICLE IV
Procedure After Dissolution

1. All pending contracts (to the extent any remain following the Bankruptcy Sales) shall be rejected and terminated in accordance with section 365 of the Bankruptcy Code.

2. All outstanding debts owing to the Corporation (to the extent any remain following the Bankruptcy Sale) shall be collected as expeditiously as possible.

ARTICLE V
Distribution of Assets

1. Liabilities of the Corporation shall be paid under the supervision and direction of the Bankruptcy Court from the proceeds of the asset sales in accordance with the priorities set forth in the Bankruptcy Code.

2. Any excess monies shall be distributed to that organization set forth in the provision contained in section seven (7) of Article III, above.

CERTIFICATION

State of New York)
County of Oswego) ss.:

I, Judy Young, Secretary of The Albert Lindley Lee Memorial Hospital a/k/a A.L. Lee Memorial Hospital, hereby certify that a special meeting of the Board of Directors of the Corporation was held at 7:30 a.m. on September 15, 2010 at 510 South Fourth Street, Fulton, New York and the within resolution was duly submitted and passed by a unanimous vote of the Directors.

Date: September 15, 2010

Judy Young
Judy Young, Secretary

THE ALBERT LINDLEY LEE MEMORIAL HOSPITAL
a/k/a A.L. LEE MEMORIAL HOSPITAL

LIST OF EXHIBITS TO PLAN OF DISSOLUTION AND DISTRIBUTION OF ASSETS

Exhibit A – Resolution of Board of Directors Adopting Plan of Dissolution and Distribution of Assets of The Albert Lindley Lee Memorial Hospital a/k/a A.L. Lee Memorial Hospital

Exhibit B – Order Pursuant to Sections 363 and 105 of The Bankruptcy Code and Federal Rule of Bankruptcy Procedure 6004 Approving Sale of Assets to Oswego Hospital Free and Clear of All Liens, Claims, Encumbrances and Other Interests

Exhibit C - Affidavit of Officer of recipient Corporation Regarding its Corporate Purposes, Tax Exempt Status and Related Matters:

1. Distributee's Certificate of Incorporation and all Amendments.

2. Distributee's audited financial statements and Form 990 for its fiscal years ended December 31, 2005, December 31, 2006 and December 31, 2007.

3. Distributee's Internal Revenue Service determination letter.

Exhibit A

Resolution of Board of Directors Adopting Plan of Dissolution and Distribution of Assets of The Albert Lindley Lee Memorial Hospital a/k/a A.L. Lee Memorial Hospital

BOARD OF DIRECTORS
OF THE ALBERT LINDLEY LEE MEMORIAL HOSPITAL

Resolution Adopting Plan of Dissolution and Distribution of Assets
of The Albert Lindley Lee Memorial Hospital

WHEREAS, The Albert Lindley Lee Memorial Hospital a/k/a A.L. Lee Memorial Hospital (the "Corporation") is a Not-For-Profit Corporation organized under the laws of the State of New York; and

WHEREAS, during November 2006, the Corporation was directed to cease operations and close its facility in accordance with the recommendations of the Commission on Health Care Facilities in the 21st Century (the "Berger Commission"); and

WHEREAS, on April 3, 2009, the Corporation filed a voluntary petition for relief under chapter 11 of the United States Bankruptcy Code with the United States Bankruptcy Court for the Northern District of New York and began the process of liquidating its assets for the benefit of its creditors; and

WHEREAS, on April 26, 2009, the Corporation ceased providing all acute care hospital services and closed its hospital facility; and

WHEREAS, as a result of the closure of the hospital facility and the liquidation of the Corporation's assets, it will be necessary for the Corporation to distribute the asset sale proceeds to creditors and to dissolve in accordance with Article 10 of the New York Not-For-Profit Corporation Law; and

WHEREAS, on July 17, 2009, the Corporation's Board of Directors adopted a Plan of Dissolution and Distribution of Assets in accordance with Article 10 of the New York Not-For-Profit Corporation Law; and

WHEREAS, certain intervening events have required that the Plan of Dissolution and Distribution be revised; and

WHEREAS, a revised Plan of Dissolution and Distribution of Assets of The Albert Lindley Lee Memorial Hospital a/k/a A.L. Lee Memorial Hospital dated as of September 15, 2010 (the "Plan") has been prepared in accordance with Article 10 of the New York Not-For-Profit Corporation Law and reviewed by the Board of Directors.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE ALBERT LINDLEY LEE MEMORIAL HOSPITAL a/k/a A.L. LEE MEMORIAL HOSPITAL as follows:

Section 1. The Board of Directors hereby finds and determines that it is in the Corporation's best interest to adopt the Plan and the Plan is hereby adopted in its entirety.

Section 2. In order to accomplish the dissolution of the Corporation and the distribution of assets as set forth in the Plan, the Corporation is hereby authorized to execute and deliver to the United States Bankruptcy Court, the Office of the New York State Attorney General, the New York State Supreme Court, and all other appropriate parties, all documents and agreements, and perform all conditions that may be requested or required in connection therewith.

Section 3. Dennis Casey, who holds the title of Executive Director of the Corporation, be and hereby is authorized to execute and deliver on behalf of the Corporation all documents to be signed by the Corporation. Notwithstanding any other provision of these resolutions, Mr. Casey is authorized to assent to changes, insertions, omissions and modifications of the same. The execution of said documents by Mr. Casey shall be deemed to be complete with full approval of any such changes, insertions, omissions and modifications.

Section 4. The agents of the Corporation do and hereby are authorized and directed to do or cause to be done all such other acts and things and to execute all such other documents, certificates and instruments as in their judgment may be necessary or advisable in carrying out the intents and purposes of all the resolutions adopted at this meeting, and all actions heretofore taken by the agents of the Corporation in connection with the subject matter of the resolutions adopted at this meeting are hereby approved, ratified and confirmed in all respects.

Section 5. All of the foregoing resolutions are in furtherance of the lawful purposes of the Corporation.

Section 6. The resolutions adopted herein shall take effect immediately and third parties are authorized to rely upon such resolutions until written notice of any change in said resolutions, which shall not affect any actions taken prior to the receipt of such notice.

SECRETARY'S CERTIFICATION

I, the undersigned, Secretary of the Board of Directors of The Albert Lindley Lee Memorial Hospital a/k/a A.L. Lee Memorial Hospital (the "Corporation"), do hereby certify:

1. That I have compared the annexed resolution of the Board of Directors of the Corporation dated September 15, 2010 with the original thereof on file in my office and the same is a true an complete copy of the proceedings of the Board of Directors of the Corporation and of such resolutions set forth therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

2. I further certify that the attached resolutions enacted by the Board of Directors of the Corporation have not been amended or repealed and are in full force and effect on and as of the date of this Certification.

IN WITNESS WHEREOF, I have hereunder set my hand on September 15, 2010.

Judy Young

Judy Young, Secretary

BOND SCHOENECK & KING

One Lincoln Center | Syracuse, NY 13202-1355 | bsk.com

CAMILLE W. HILL, ESQ.
chill@bsk.com
P: 315.218.8627
F: 315.218.8927

November 3, 2011

VIA ELECTRONIC MAIL

Colleen Frost
Executive Secretary
Public Health and Health Planning Council
NYS Department of Health
Health Facility Planning
Hedley Building, 6th Floor
433 River Street
Troy, New York 12180

Re: *The Albert Lindley Lee Memorial Hospital*

Dear Ms. Frost:

Our firm represents The Albert Lindley Lee Memorial Hospital a/k/a A.L. Lee Memorial Hospital (the "Hospital") which operated a general hospital at 510 South Fourth Street, Fulton, New York from 1910 until April 26, 2009, when it closed in accordance with the Berger Commission recommendations. I write to request that the Public Health and Health Planning Council ("PHHPC") approve the voluntary dissolution of the Hospital in accordance with 10 NYCRR § 650.1. The public need for the dissolution is discussed more fully below.

The Hospital was incorporated as a Type B not-for-profit corporation under the New York Not-for-Profit Corporation Law on February 1, 1974 and surrendered its Certificate of Need on April 27, 2009. In order to facilitate the closure of the Hospital facility and liquidate its assets, the Hospital filed a chapter 11 petition for relief with the United States Bankruptcy Court for the Northern District of New York on April 3, 2009 (the "Bankruptcy Case"). All of the Hospital's assets have since been liquidated and all proceeds will be distributed to creditors by November 22, 2011. The Bankruptcy Case has been fully administered and will be closed on or around December 15, 2011.

At set forth above, the Hospital is no longer operating and its assets and liabilities have been fully administered. In order to properly wind-up the Hospital's financial affairs, and because it is a not-for-profit corporation, the Hospital is required to petition the Office of the NYS Attorney General for permission to dissolve in accordance with Article 10 of the Not-for-Profit Corporation Law. We are in the process of preparing the Verified Petition for Dissolution which will be submitted to the Attorney General. We understand that,

prior to the submission of the Petition to the Attorney General, the Hospital must obtain approval for the proposed dissolution from the PHHPC pursuant to 10 NYCRR § 650.1.

In accordance with this request, enclosed for the PHHPC's consideration are the follow documents:

1. the proposed Certificate of Dissolution;

2. the assets have been liquidated in accordance with the Amended Chapter 11 Plan of Liquidation confirmed by Bankruptcy Court Order dated July 15, 2010. Copies of the Chapter 11 Plan and July 15, 2010 Order are enclosed herewith. A complete description of the disposition of assets is also contained in the Hospital's Plan of Dissolution and Distribution of Assets (see paragraph 3 below);

3. the Plan of Dissolution and Distribution approved by the Hospital's Board of Directors on September 15, 2010;

4. the proposed Verified Petition to be submitted to the Office of the Attorney General under Article 10 of the New York Not-for-Profit Corporation Law

The Hospital respectfully requests that its request for approval of the voluntary dissolution be considered at the PHHPC's December 8, 2011 Board Meeting.

Thank you for your consideration in this matter. Please do not hesitate to contact me at (315) 218-8627 or chill@bsk.com if you have any questions or need additional information.

Very truly yours,

BOND, SCHOENECK & KING, PLLC

Camille W. Hill

Camille W. Hill

Enclosures

cc: Diana Yang, Esq. (w/ enclosures)
Dennis A. Casey (w/out enclosures)

In the Matter of the Application of

THE ALBERT LINDLEY LEE MEMORIAL HOSPITAL,

Petitioner,

VERIFIED PETITION

For approval of Plan of Dissolution and Certificate of Dissolution pursuant to Sections 1002 and 1003 of the Not-for-Profit Corporation Law.

TO: THE ATTORNEY GENERAL OF THE STATE OF NEW YORK:
OFFICE OF THE ATTORNEY GENERAL
Syracuse Regional Office
615 Erie Boulevard, West, Suite 102
Syracuse, New York 13204

Petitioner, The Albert Lindley Lee Memorial Hospital, by and through its counsel, Bond, Schoeneck & King, PLLC, for its Verified Petition seeking approval of its Plan of Dissolution and Certificate of Dissolution pursuant to Sections 1002 and 1003 of the Not-for-Profit Corporation Law, hereby alleges as follows:

1. The Albert Lindley Lee Memorial Hospital (the "Corporation"), whose principal address was 510 South Fourth Street, City of Fulton, County of Oswego, New York 13069, was incorporated pursuant to New York's Not-for-Profit Corporation Law on February 1, 1974. A copy of the Corporation's Certificate of Incorporation is attached hereto as **Exhibit "A"**.

2. The names, addresses and titles of the Corporation's directors and officers are as follows:

Name	Director/Title	Address
Richard B. Abbott	Chairman, Board of Directors	34 South Pollard Drive Fulton, New York 13069

Donald L. Kesterke	Vice-Chairman, Board of Directors	557 West First Street Fulton, New York 13069
Michael K. Stafford	Treasurer, Board of Directors	730 Maple Avenue Fulton, New York 13069
Judy Young	Secretary, Board of Directors	1622 County Route 57 Fulton, New York 13069
Dennis A. Casey	Executive Director	37 Patrick Circle Fulton, New York 13069

3. The purposes for which the Corporation was organized were to assume and succeed to all existing assets, liabilities, rights, powers, duties and obligations of the City of Fulton, New York, in its Albert Lindley Lee Memorial Hospital and to operate and maintain an acute care general hospital for the examination, diagnosis, care or treatment of the sick, infirm and disabled.

4. The Corporation is a Type B not-for-profit corporation.

A. Chapter 11 Case

5. On November 28, 2006, the Commission on Health Care Facilities in the 21st Century (commonly known as the "Berger Commission") released a report and recommendations regarding the status of hospitals and other health care providers in New York State (the "Berger Commission Report"). The Berger Commission Report recommended that the Corporation close all of its 67 beds by June 30, 2008. The Corporation's closure date was thereafter extended to June 30, 2009.

6. On April 1, 2009, the Corporation and Oswego Hospital entered into an Asset Purchase Agreement pursuant to which Oswego Hospital proposed to purchase from the Corporation its hospital facility and certain identified equipment, among other assets.

7. On April 3, 2009 (the "Petition Date"), the Corporation filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, §§ 101, *et seq.*, as amended (the "Bankruptcy Code") with the United States Bankruptcy Court for the Northern District of New York (the "Bankruptcy Court"). The purposes of the Corporation's chapter 11 filing were to implement the closure recommendation of the Berger Commission, wind-down the Corporation's operations in a controlled and orderly fashion, to effectuate the orderly liquidation of the Corporation's assets and to address its creditors' claims, and to seek approval of the Asset Purchase Agreement in order to transition healthcare services in Southern Oswego County.

8. On March 12, 2010, the Corporation filed its Amended Chapter 11 Plan of Liquidation (the "Chapter 11 Plan") with the Bankruptcy Court. The Chapter 11 Plan provided for the liquidation to cash of all the Corporation's assets and the payment of those proceeds to the Corporation's creditors. On July 15, 2010, the Bankruptcy Court entered an Order confirming the Corporation's Amended Chapter 11 Plan of Liquidation.

9. The Corporation concluded sales of its various assets throughout the pendency of its chapter 11 case. The sale of the hospital facility and equipment to Oswego Hospital closed on December 15, 2010. The recovery of certain avoidable transfers and accounts receivable concluded on October 31, 2011. As of November 1, 2011, all of the Corporation's assets have been liquidated and turned into cash.

10. The Corporation issued checks in payment of allowed administrative claims and allowed priority claims on or around September 6, 2011. The funds remaining in the Corporation's bankruptcy estate will be disbursed, *pro rata*, to general unsecured creditors by November 22, 2011. Following the disbursement of those funds, no funds or other assets will

remain in the Corporation's bankruptcy estate and all liabilities of the Corporation will have been paid in accordance with the terms of the Amended Chapter 11 Plan and Plan of Dissolution.

B. Plan of Dissolution

11. A meeting of the Board of Directors of the Corporation was held pursuant to duly given notice on September 15, 2010 at which a Resolution was duly passed by a unanimous vote by the directors of the Corporation present adopting a Plan of Dissolution and authorizing the filing of a Certificate of Dissolution in accordance with Section 1003 of the Not-for-Profit Corporation Law. Copies of the Plan of Dissolution and accompanying Resolution, executed by the Secretary of the Board of Directors, are attached hereto as **Exhibit "B"**.

12. The corporation has no members.

13. A certified copy of the Corporation's Plan of Dissolution was filed with the Office of the Attorney General.

14. The Corporation has carried out its Plan of Dissolution, and a copy of its final report showing zero assets has been filed with the Attorney General.

15. Approval of the dissolution of the Corporation is required to be obtained from the New York State Department of Health, and a copy of such approval is attached hereto as **Exhibit "C"**:

16. With this Petition, the original Certificate of Dissolution is being submitted to the Attorney General for approval pursuant to Not-for-Profit Corporation Law Section 1003.

WHEREFORE, the Corporation respectfully requests that the Attorney General approve the Plan of Dissolution and the Certificate of Dissolution of The Albert Lindley Lee Memorial Hospital, a not-for-profit corporation, pursuant to Not-for-Profit Corporation Law Sections 1002 and 1003.

IN WITNESS WHEREFORE, the Corporation has caused this Petition to be executed this 3rd day of November, 2011 by:

Dennis A. Casey
Executive Director

VERIFICATION

STATE OF NEW YORK)
COUNTY OF Jefferson) SS.:

Dennis A. Casey, being duly sworn, deposes and says:

I am the Executive Director of The Albert Lindley Lee Memorial Hospital, the corporation named in the above Petition, and make this Verification at the direction of its Board of Directors. I have read the foregoing Petition and know the contents thereof to be true of my own knowledge, except those matters that are stated on information and belief and as to those matters I believe them to be true.

Dennis A. Casey

Sworn to before me this
3rd day of November, 2011.

Frances Ann Pietroski
Notary Public

FRANCES ANN PIETROSKI
Notary Public, State of New York
No. 01PI6166174
Qualified In Jefferson County
Commission Expires Jun. 11, 2015

Exhibit "A"

Certificate of Incorporation

CERTIFICATE OF INCORPORATION

of

THE ALBERT LINDLEY LEE MEMORIAL HOSPITAL

Under Section 402 of the Not-for-Profit Corporation Law

We, the undersigned, being natural persons over twenty-one years of age, for the purpose of forming a corporation under Section 402 of the Not-for-Profit Corporation Law, hereby certify:

FIRST: The name of the corporation is:

THE ALBERT LINDLEY LEE MEMORIAL HOSPITAL

SECOND: The corporation is a corporation as defined in sub-paragraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law; the purposes for which it is formed are:

a) To assume and succeed to all existing assets, liabilities, rights, powers, duties and obligations of the City of Fulton, New York, in its Albert Lindley Lee Memorial Hospital and to operate and maintain an acute care general hospital for the examination, diagnosis, care or treatment of the sick, infirm and disabled.

b) To treat all persons requesting health care, regardless of race, color or religion, or financial ability to pay for such service;

c) To participate in activities designed to promote the general health of the community;

d) To conduct its activities so that no part of the property of the corporation shall inure to the benefit of any individual member, director or officer of the corporation, or any other private individual (except that reasonable compensation may be offered for services rendered to or for the corporation), and no member, director or officer of the corporation, or any private individual shall be entitled to

share in the distribution of any of the corporate assets on dissolution of the corporation. Upon dissolution the assets of the corporation will be distributed solely to organizations enumerated and described in sub-paragraph 3 of paragraph (c) of Section 501 of the Internal Revenue Code. No activity shall be conducted for profit to the corporation; no funds shall be used or expended for the purposes of influencing, promoting, or opposing legislation by propaganda or otherwise; and no funds shall be used, nor shall any activity be conducted to influence, promote, or oppose the campaign of any person for public office;

e) To exercise the general and special powers enumerated under Section 202(a) of the Not-for-Profit Corporation Law, except as limited herein or by statute of the State of New York;

the corporation is a "Type B" corporation under Section 201 of the Not-for-Profit Corporation Law.

THIRD: The office of the corporation is to be located in the City of Fulton, Oswego County, New York.

FOURTH: The territory in which its activities are principally to be conducted is in the County of Oswego, New York area.

FIFTH: The names and addresses of the incorporators are:

Name	Address
Mr. Curtis A. Gibbs	13 Nestle Avenue, Fulton, New York
Mr. Mahlon Freeman	723 Ontario Street, Fulton, New York
Mr. Ronald Blanding	323 Rochester Street, Fulton, New York
Mrs. Eileen Carroll	Wilobob Terrace, Fulton, New York

SIXTH: The names and addresses of the initial directors are:

Name	Address
Mr. Curtis A. Gibbs	13 Nestle Avenue, Fulton, New York
Mr. Mahlon Freeman	723 Ontario Street, Fulton, New York
Mr. Ronald Blanding	323 Rochester Street, Fulton, New York
Mrs. Eileen Carroll	Wilobob Terrace, Fulton, New York
Mr. Adolph E. Kalafarski	698 Forest Avenue, Fulton, New York
Dr. Harold McGovern	402 West Broadway, Fulton, New York
Mrs. Anna Buell	702 Highland Street, Fulton, New York
Mrs. Vita Chalone	215 Rochester Street, Fulton, New York
Mr. Bruner Fox	191 West 1st Street,N., Fulton, New York
Raymond S. Shaver, D.C.	172 South Third Street, Fulton, New York
Mrs. Martha Broadbent	Bakeman & Dewey Dr., Fulton, New York
Mr. Earl Osborne	406 Lyons Street, Fulton, New York
Mr. Theo. Lebro	West River Road,S., Fulton, New York
Mr. John Francesconi	822 West Third Street, Fulton, New York

SEVENTH: The post office address to which the Secretary of State shall mail a copy of any notice required by law shall be: The Albert Lindley Lee Memorial Hospital, Fulton, New York 13069.

EIGHTH: By-laws of the corporation may be adopted by the directors at any regular meeting or at any special meeting called for that purpose, so long as they are not inconsistent with the provisions of these Articles, or other requirement of law.

NINTH: The number of directors shall be not less than six.

TENTH: All approvals and consents required by the Not-for-Profit Corporation Law or any other statute of this state are endorsed upon or annexed to the certificate. The approval of the Public Health Council of the State Department of Health and of a Justice of the Supreme Court of the Fifth Judicial District, the district in which the office of the corporation is located, are annexed to this certificate.

IN WITNESS WHEREOF, we have made, subscribed and acknowledged this Certificate this 22 day of August, 1972.

Curtis A. Gibbs

Curtis A. Gibbs

Mahlon Freeman

Mahlon Freeman

Ronald Blanding

Ronald Blanding

Eileen Carroll

Eileen Carroll

STATE OF NEW YORK)
COUNTY OF OSWEGO) SS.:

On this 22 day of August, 1972, before me personally came CURTIS A. GIBBS, MAHLON FREEMAN, RONALD BLANDING and EILEEN CARROLL, to me known and known to me to be the same persons described in and who executed the foregoing Certificate of Incorporation and they thereupon acknowledged to me that they executed the same.

David R. Dale

Notary Public - DAVID R. DALE

The undersigned, a Justice of the Supreme Court of the State of New York of the Fifth Judicial District, wherein is located the office of The Albert Lindley Lee Memorial Hospital, hereby approved the within Certificate of Incorporation of The Albert Lindley Lee Memorial Hospital and the filing thereof.

Dated: May 21st, 1973 ~~1972~~

Ronald A. Mikel

Justice of the Supreme Court

STATE OF NEW YORK)
COUNTY OF OSWEGO) ss.:

EILEEN CARROLL, being duly sworn, deposes and says that:

1. I am one of the incorporators and initial directors named in the annexed Certificate of Incorporation of the Albert Lindley Lee Memorial Hospital who subscribed and acknowledged said certificate on August 22, 1972.

2. The Certificate of Incorporation was not filed with the Secretary of State at that time pending Supreme Court approval of the form of the certificate, and pending Supreme Court approval to transfer hospital assets and liabilities of the City of Fulton to the new proposed not-for-profit corporation to be formed. Said approvals were obtained respectively, on May 21, 1973 and January 3, 1974.

3. The action taken by the incorporators on August 22, 1972 has not been amended or revoked and is in full force and effect.

4. Except for Mr. Mahlon Freeman, all of the incorporators named in the annexed certificate of incorporation are alive and well. Mr. Mahlon Freeman is deceased.

5. The reason for the delay since August 22, 1972 in submitting the annexed certificate to the Secretary of State for filing was the need to secure the approvals and consents of the Public Health Council of the State Department of Health and of a Justice of the Supreme Court of the Fifth Judicial District, both of which are annexed.

/s/ Eileen Carroll
Eileen Carroll, Incorporator

Sworn to before me this
15th day of January, 1974.

/s/ John S. Ferguson
Notary Public

Comm. expires 3/30/74

Exhibit "B"

Plan of Dissolution and Distribution of Assets dated September 15, 2010
and Authorizing Resolution

PLAN OF DISSOLUTION
AND DISTRIBUTION OF ASSETS OF
THE ALBERT LINDLEY LEE MEMORIAL HOSPITAL
a/k/a A.L. LEE MEMORIAL HOSPITAL

The Board of Directors of The Albert Lindley Lee Memorial Hospital a/k/a A.L. Lee Memorial Hospital (the "Corporation") having considered the advisability of voluntarily dissolving the Corporation, and it being the unanimous opinion of the Board that dissolution is advisable and in the best interests of the Corporation, and the Board having adopted, by unanimous vote, a plan for a voluntary dissolution of the Corporation, does hereby resolve that the Corporation be dissolved pursuant to Article 10 of the New York Not-For-Profit Corporation Law, and that the Corporation's assets be distributed, in accordance with the following plan (the "Plan"):

ARTICLE I
Background

1. The Corporation is a type-B New York not-for-profit corporation which, until April 26, 2009, was licensed as an Article 28 acute care facility by the New York State Department of Health and operated a 67-bed facility in Fulton, Oswego County, New York.

2. On November 28, 2006, the Commission on Health Care Facilities in the 21st Century (commonly known as the "Berger Commission") released a report and recommendations regarding the status of hospitals and other health care providers in New York State (the "Berger Commission Report"). The Berger Commission Report recommended that the Corporation close all of its 67 beds by June 30, 2008. The closure recommendation was later extended to June 30, 2009.

3. On April 3, 2009 (the "Petition Date"), the Corporation filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Northern District of New York (the "Bankruptcy Court"). The chapter 11 case was filed in order to wind-down the Corporation's operations in a controlled and orderly fashion, to implement the closure recommendation of the Berger Commission and to effectuate the orderly liquidation of its assets to address its creditors' claims.

4. The Corporation ceased all acute care hospital services and closed its facility on April 26, 2009.

5. The Board of Directors of the Corporation has determined that it would be in the best interest of the Corporation's creditors to pursue sales of substantially all of the Corporation's assets in the context of the chapter 11 bankruptcy proceeding. The Board of Directors determined that any delay would be detrimental to the Corporation's residents and to its bankruptcy estate.

6. Except as discussed below, the Corporation does not have any endowment or use restricted funds.

ARTICLE II
Sale of Corporation's Assets

1. The first step in the process of the dissolution of the Corporation will be the sale of substantially all of the assets of the Corporation.

2. Since April, 2009, the Corporation engaged in significant efforts to market substantially all of its assets for sale. The Corporation and Oswego Hospital entered into an Asset Purchase Agreement on April 1, 2009, pursuant to which Oswego Hospital proposes to purchase the real property in Fulton, New York upon which the hospital facility is located, certain real property improved by a medical office building located in Phoenix, New York and certain identified equipment and furniture. The consideration to be paid by Oswego Hospital under the Asset Purchase Agreement is $1,500,000.00 (the "Hospital Purchase Price"). The Hospital Purchase Price is allocated among the subject assets as follows: $850,000 for the Hospital Facility; $350,000 for the Phoenix Property; and $300,000 for the equipment and furniture. The Hospital Purchase Price shall be paid in cash at the closing of the sale.

3. Oswego Hospital acted as a "stalking horse", or designated bidder, at a public auction of the assets described above pursuant to section 363 of the Bankruptcy Code which was subject to higher and better offers (hereinafter, the "Oswego Hospital Sale"). The Oswego Hospital Sale was approved by the Bankruptcy Court on July 6, 2009. The Corporation anticipates that this sale will close during October 2010.

4. On July 8, 2009, the Corporation and Great American Group, LLC ("Great American") entered into the Equipment Purchase Agreement pursuant to which Great American proposed to purchase from the Corporation certain assets consisting of excess medical equipment, furniture, fixtures and related items located at the hospital facility (the "Equipment Assets"). The consideration to be paid by Great American for the Equipment Assets under the Equipment Purchase Agreement was $115,000.00 payable in cash at closing (the "Equipment Purchase Price"), which was subject to higher and/or better offers under the Bankruptcy Code. The sale of the Equipment Assets was approved by the Bankruptcy Court pursuant to an order dated July 30, 2009. The sale closed during August 2009, and after certain adjustments at closing, the final sale price paid by Great American was $95,000.00.

5. On June 5, 2009, the Corporation received a written purchase offer from Centurion Service Group, LLC ("Centurion") pursuant to which Centurion proposed to purchase from the Corporation fifty-three (53) 20-inch flat screen televisions (the "Televisions") purchased by Corporation in 2005 and located at the hospital facility. On August 10, 2009, the Bankruptcy Court entered an order approving the sale of the Televisions to Centurion and the closing occurred shortly thereafter. The aggregate consideration paid by Centurion for the Televisions was $3,975.00 cash.

6. The Corporation's auxiliary organization, which supported the Corporation and its mission, maintained an operating account at HSBC Bank, a portion of which, in the approximate amount of $27,953.05, was reserved for four scholarships awards (the "Scholarship Funds"). The Scholarship Funds were donated to the auxiliary over many years in memory of various deceased individuals. Similarly, the Corporation maintains a Certificate of Deposit Account with KeyBank National Association with a current balance of approximately $8,202.62 which contains funds in support of the Adolph Kalafarski Memorial Scholarship (the "Kalafarski Scholarship"). The Corporation and its auxiliary desired to preserve the intent of the Auxiliary Scholarships and Kalafarski Scholarship for the benefit of the community on a continuing basis. On December 30, 2009, the Corporation transferred the Scholarship Funds to the Community Foundation of Central New York, Inc. (the "Community Foundation"), which has agreed to maintain and administer the Scholarship Funds, and disburse annual awards to scholarship recipients, on a continuing basis.

7. The Corporation also owned various items of personal property of historical value that have accumulated since the Corporation opened in 1910 which relate to the operation of the Corporation. Most of the historical assets were bequeathed or donated to the Corporation over the years. Included among the historical assets are twenty-two (22) watercolor paintings of Fulton area buildings and landscapes by local artist Eugenijis Kaskin and one (1) painting by local artist Ruth Pierce. On August 10, 2009, the Bankruptcy Court issued an order authorizing the Corporation to donate the historical assets and paintings to the Friends of History in Fulton New York, Inc. so that an accurate assessment of their historical value may be made, and so that the items may be preserved for the good of the community. In addition, the Court authorized the sale of one (1) Kaskin painting to Fulton resident Teresa L. Czirr for the sum of $100.00.

8. The Corporation also owns certain restricted use funds which are comprised of three (3) bequests or donations received over the years known as the Fulton War Chest fund, the Lovejoy fund and the Osborne fund (collectively, the "Legacy Funds"). The principal amounts of the funds total $20,322.00. The Corporation desires to preserve the funds for the community on a continuing basis and has elected to transfer the funds to the Community Foundation, which has agreed to maintain and administer the funds in accordance with the Funds' donative intent. The Legacy Funds will be transferred to the Community Foundation during September or October 2010.

9. In addition to the real property encompassing the Hospital Facility and a medical office building in Phoenix, New York, as of the April 3, 2009 bankruptcy filing date, the Corporation also owned the following eighteen (18) parcels of commercial and residential real property located in the City of Fulton or Village of Phoenix, New York (collectively, the "Real Properties"):

a. 406 Lyon Street, Fulton, New York
b. 502 South Fifth Street, Fulton, New York
c. 504 South Fifth Street, Fulton, New York
d. 506/508 South Fifth Street, Fulton, New York
e. 510 South Fifth Street, Fulton, New York
f. 370 South Fourth Street, Fulton, New York

g. 451 South Fourth Street, Fulton, New York
h. 455 South Fourth Street, Fulton, New York
i. 457 South Fourth Street, Fulton, New York
j. 459 South Fourth Street, Fulton, New York
k. 509 South Fourth Street/402 Lyon Street, Fulton, New York
l. 513 South Fourth Street, Fulton, New York
m. 515-517 South Fourth Street, Fulton, New York
n. 460 Park Street, Fulton, New York
o. 156 Chestnut Street, Phoenix, New York

9. The Corporation also owned real property improved by a medical office building located at 450 Fulton Street, Hannibal, New York. The Corporation estimates that the Hannibal property is valued at approximately $400,000, however, it is encumbered by a mortgage lien in favor of Fulton Savings Bank in the approximate amount of $423,000. This medical office building was the subject of a foreclosure sale conducted by Fulton Savings Bank on December 4, 2009. No proceeds from the foreclosure of the medical office building were paid to the Corporation.

10. Most of the Real Properties were listed for sale with real estate broker Century 21 Leah's Signature ("Century 21") of Fulton, New York pursuant to an Exclusive Right to Sell Contract dated May 4, 2009. To date, the Corporation has closed sales with respect to fourteen (14) of the Real Properties. Four properties (one residence and three parking lot parcels) remain unsold at this time and may be the subject of auction sales if the Corporation does not receive purchase offers for them by October 31, 2010.

11. The Corporation owned accounts receivable which were valued at approximately $2,250,000 as of the Petition Date. The receivables were owed by third-party payers such as insurance companies, Medicare, Medicaid, workers compensation and individual patients arising from medical care provided by the Corporation in the ordinary course of its business (the "Accounts Receivable"). On June 29, 2009, the Corporation retained a medical billing and collection consultant to assist with the collection of the Accounts Receivable owed by governmental or corporate payers. Those collection efforts concluded during December 2009. On March 16, 2010, the Corporation retained ACL Adjustment Associates, Inc. to collect the remaining Accounts Receivable owed from private individuals and supervise the collection of other private-pay Accounts Receivable by three collection agencies. On September 16, 2010, the Bankruptcy Court approved the sale of most of the Accounts Receivable being collected by collection agencies to Horizon Resources, LLC for $100,000.00.

12. On July 15, 2010, the Bankruptcy Court entered an order confirming the Corporation's Amended Chapter 11 Plan of Liquidation (the "Plan"). The Plan provides for the liquidation of the Corporation's assets as described above and the payment of the asset sale proceeds to creditors in accordance with the priorities set forth in the Bankruptcy Code.

13. Any remaining assets will have *de minimus* value and will be liquidated by the Corporation in the ordinary course of its wind-down.

ARTICLE III
Procedure for Dissolution

1. This Plan has been approved by the Corporation's Board of Directors.

2. The action of the Board of Directors shall suffice, and a Certificate of Dissolution shall be executed and verified.

3. The Bankruptcy Court has approve the various asset sales described above following the filing and hearing of motions on notice to the Office of the New York State Attorney General (the "AG"), the New York State Department of Health ("DOH"), the Corporation's creditors and other parties in interest.

4. After the approval of a Justice of the Supreme Court is obtained and annexed thereto, and all assets have been transferred by the Corporation in accordance with this Plan, the Certificate of Dissolution shall be filed in accordance with requirements of law.

5. The Corporation's Plan has been confirmed by the Bankruptcy Court and dissolution of the Corporation may take place at the appropriate time thereafter.

6. No approval of the dissolution of the Corporation is required by any governmental agency or officer, except the AG and the DOH.

7. To the extent that there are any assets in excess of the Corporation's liabilities, they will be distributed to the Community Foundation (the "Residual Distributee"), which qualifies as an exempt organization pursuant to § 501(c)(3) of the Internal Revenue Code of 1986, as amended, having purposes substantially similar to those of the Corporation. Proof of such exemption is attached, as well as (a) certified copies of the Residual Distributee's organizational documents and any amendments thereto, (b) the Residual Distributee's financial report for the last three years (or such lesser number of years that the Residual Distributee has been in existence), and (c) a sworn affidavit from a Trustee or officer of the Residual Distributee stating its purposes and that it is currently exempt from federal income taxation.

8. Within two hundred seventy (270) days after the date on which the Order Approving Plan of Dissolution and Distribution of Assets is signed by the Supreme Court, the Corporation will carry out this Plan, pay its liabilities, distribute its assets and wind up its business in accordance with this Plan.

ARTICLE IV
Procedure After Dissolution

1. All pending contracts (to the extent any remain following the Bankruptcy Sales) shall be rejected and terminated in accordance with section 365 of the Bankruptcy Code.

2. All outstanding debts owing to the Corporation (to the extent any remain following the Bankruptcy Sale) shall be collected as expeditiously as possible.

ARTICLE V
Distribution of Assets

1. Liabilities of the Corporation shall be paid under the supervision and direction of the Bankruptcy Court from the proceeds of the asset sales in accordance with the priorities set forth in the Bankruptcy Code.

2. Any excess monies shall be distributed to that organization set forth in the provision contained in section seven (7) of Article III, above.

CERTIFICATION

State of New York)
County of Oswego) ss.:

I, Judy Young, Secretary of The Albert Lindley Lee Memorial Hospital a/k/a A.L. Lee Memorial Hospital, hereby certify that a special meeting of the Board of Directors of the Corporation was held at 7:30 a.m. on September 15, 2010 at 510 South Fourth Street, Fulton, New York and the within resolution was duly submitted and passed by a unanimous vote of the Directors.

Date: September 15, 2010

Judy Young

Judy Young, Secretary

THE ALBERT LINDLEY LEE MEMORIAL HOSPITAL
a/k/a A.L. LEE MEMORIAL HOSPITAL

LIST OF EXHIBITS TO PLAN OF DISSOLUTION AND DISTRIBUTION OF ASSETS

Exhibit A – Resolution of Board of Directors Adopting Plan of Dissolution and Distribution of Assets of The Albert Lindley Lee Memorial Hospital a/k/a A.L. Lee Memorial Hospital

Exhibit B – Order Pursuant to Sections 363 and 105 of The Bankruptcy Code and Federal Rule of Bankruptcy Procedure 6004 Approving Sale of Assets to Oswego Hospital Free and Clear of All Liens, Claims, Encumbrances and Other Interests

Exhibit C - Affidavit of Officer of recipient Corporation Regarding its Corporate Purposes, Tax Exempt Status and Related Matters:

1. Distributee's Certificate of Incorporation and all Amendments.

2. Distributee's audited financial statements and Form 990 for its fiscal years ended December 31, 2005, December 31, 2006 and December 31, 2007.

3. Distributee's Internal Revenue Service determination letter.

BOARD OF DIRECTORS
OF THE ALBERT LINDLEY LEE MEMORIAL HOSPITAL

Resolution Adopting Plan of Dissolution and Distribution of Assets
of The Albert Lindley Lee Memorial Hospital

WHEREAS, The Albert Lindley Lee Memorial Hospital a/k/a A.L. Lee Memorial Hospital (the "Corporation") is a Not-For-Profit Corporation organized under the laws of the State of New York; and

WHEREAS, during November 2006, the Corporation was directed to cease operations and close its facility in accordance with the recommendations of the Commission on Health Care Facilities in the 21st Century (the "Berger Commission"); and

WHEREAS, on April 3, 2009, the Corporation filed a voluntary petition for relief under chapter 11 of the United States Bankruptcy Code with the United States Bankruptcy Court for the Northern District of New York and began the process of liquidating its assets for the benefit of its creditors; and

WHEREAS, on April 26, 2009, the Corporation ceased providing all acute care hospital services and closed its hospital facility; and

WHEREAS, as a result of the closure of the hospital facility and the liquidation of the Corporation's assets, it will be necessary for the Corporation to distribute the asset sale proceeds to creditors and to dissolve in accordance with Article 10 of the New York Not-For-Profit Corporation Law; and

WHEREAS, on July 17, 2009, the Corporation's Board of Directors adopted a Plan of Dissolution and Distribution of Assets in accordance with Article 10 of the New York Not-For-Profit Corporation Law; and

WHEREAS, certain intervening events have required that the Plan of Dissolution and Distribution be revised; and

WHEREAS, a revised Plan of Dissolution and Distribution of Assets of The Albert Lindley Lee Memorial Hospital a/k/a A.L. Lee Memorial Hospital dated as of September 15, 2010 (the "Plan") has been prepared in accordance with Article 10 of the New York Not-For-Profit Corporation Law and reviewed by the Board of Directors.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE ALBERT LINDLEY LEE MEMORIAL HOSPITAL a/k/a A.L. LEE MEMORIAL HOSPITAL as follows:

Section 1. The Board of Directors hereby finds and determines that it is in the Corporation's best interest to adopt the Plan and the Plan is hereby adopted in its entirety.

Exhibit A

Resolution of Board of Directors Adopting Plan of Dissolution and Distribution of Assets of The Albert Lindley Lee Memorial Hospital a/k/a A.L. Lee Memorial Hospital

Section 2. In order to accomplish the dissolution of the Corporation and the distribution of assets as set forth in the Plan, the Corporation is hereby authorized to execute and deliver to the United States Bankruptcy Court, the Office of the New York State Attorney General, the New York State Supreme Court, and all other appropriate parties, all documents and agreements, and perform all conditions that may be requested or required in connection therewith.

Section 3. Dennis Casey, who holds the title of Executive Director of the Corporation, be and hereby is authorized to execute and deliver on behalf of the Corporation all documents to be signed by the Corporation. Notwithstanding any other provision of these resolutions, Mr. Casey is authorized to assent to changes, insertions, omissions and modifications of the same. The execution of said documents by Mr. Casey shall be deemed to be complete with full approval of any such changes, insertions, omissions and modifications.

Section 4. The agents of the Corporation do and hereby are authorized and directed to do or cause to be done all such other acts and things and to execute all such other documents, certificates and instruments as in their judgment may be necessary or advisable in carrying out the intents and purposes of all the resolutions adopted at this meeting, and all actions heretofore taken by the agents of the Corporation in connection with the subject matter of the resolutions adopted at this meeting are hereby approved, ratified and confirmed in all respects.

Section 5. All of the foregoing resolutions are in furtherance of the lawful purposes of the Corporation.

Section 6. The resolutions adopted herein shall take effect immediately and third parties are authorized to rely upon such resolutions until written notice of any change in said resolutions, which shall not affect any actions taken prior to the receipt of such notice.

SECRETARY'S CERTIFICATION

I, the undersigned, Secretary of the Board of Directors of The Albert Lindley Lee Memorial Hospital a/k/a A.L. Lee Memorial Hospital (the "Corporation"), do hereby certify:

1. That I have compared the annexed resolution of the Board of Directors of the Corporation dated September 15, 2010 with the original thereof on file in my office and the same is a true an complete copy of the proceedings of the Board of Directors of the Corporation and of such resolutions set forth therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

2. I further certify that the attached resolutions enacted by the Board of Directors of the Corporation have not been amended or repealed and are in full force and effect on and as of the date of this Certification.

IN WITNESS WHEREOF, I have hereunder set my hand on September 15, 2010.

Judy Young

Judy Young, Secretary

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:

THE ALBERT LINDLEY LEE MEMORIAL HOSPITAL,
a/k/a A.L. LEE MEMORIAL HOSPITAL,

Debtor.

Case No. 09-30845
Chapter 11 Case

DEBTOR'S AMENDED CHAPTER 11 PLAN OF LIQUIDATION

BOND, SCHOENECK & KING, PLLC
Attorneys for Debtor
The Albert Lindley Lee Memorial Hospital
a/k/a A.L. Lee Memorial Hospital
Office and Post Office Address:
One Lincoln Center
Syracuse, New York 13202
Tel: (315) 218-8000
Fax: (315) 218-8100

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The Albert Lindley Lee Memorial Hospital a/k/a Lee Memorial Hospital (the "Debtor"), proposes the following plan of liquidation (the "Plan") pursuant to § 1121(a) of title 11 of the United States Code.

ARTICLE I

DEFINITIONS

For purposes of this Plan, the following terms shall have the respective meanings as hereinafter set forth. The capitalized terms used in this Plan shall at all times refer to terms defined in this Article I.

1.1 "Accounts" means all rights of the Debtor for payments for goods sold or leased or for services rendered.

1.2 "Administrative Expense Claim" means any cost or expense of administration of the Proceedings allowed under § 503(b) of the Bankruptcy Code including, without limitation, any actual and necessary expenses of operating the Debtor's business together with all allowances of compensation or reimbursement of expenses to the extent allowed under § 330 of the Bankruptcy Code.

1.3 "Administrative Expense Claimant" means a holder of an Allowed Administrative Expense Claim.

1.4 "Allowed" means, with respect to Claims, (a) any Claim against any Debtor, proof of which is timely filed or by order of the Bankruptcy Court is not or will not be required to be filed, (b) any Claim that has been or is hereafter listed in the Schedules of liabilities filed by the Debtor, as liquidated in amount and not disputed or contingent or (c) any Claim allowed pursuant to this Plan and, in each such case in (a) and (b) above, to which either (i) no objection to allowance has been interposed within the applicable period fixed by this Plan, the Bankruptcy Code, the Bankruptcy Rules or the Bankruptcy Court or (ii) such objection is so interposed and the Claim will have been allowed by a Final Order (but only to the extent so allowed).

1.5 "Assets" means the assets of the Debtor, including all cash, real property, accounts, general intangibles and chattel paper.

1.6 "Bankruptcy Code" means that version of title 11 of the United States Code, §§ 101, *et seq.*, as amended, that was in effect on the Petition Date.

1.7 "Bankruptcy Court" means the United States Bankruptcy Court for the Northern District of New York (Syracuse Division) in which the Chapter 11 Case is pending.

1.8 "Bankruptcy Rules" means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under § 2075 of title 28 of the United States Code, as amended from time to time, applicable to the Chapter 11 Case under § 151 of title 28 of the United States Code.

1.9 "Cash" means cash, cash equivalents and readily marketable securities or instruments, including, but not limited to, bank deposits, certified or cashiers checks, timed certificates of deposit issued by any bank, commercial paper and readily marketable direct obligations of the United States of America or agencies or instrumentalities thereof.

1.10 "Chapter 11" means the provisions of chapter 11 of the Bankruptcy Code.

1.11 "Chapter 11 Case" means the voluntary petition pursuant to chapter 11 of the Bankruptcy Code filed by the Debtor in the Bankruptcy Court and assigned case number 09-30845.

1.12 "Claim" means a claim against the Debtor as defined in § 101 of the Bankruptcy Code, *to wit*, (a) the right to payment whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; and (b) the right to an equitable remedy for breach of performance if such breach gives rise to a payment whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

1.13 "Class" means any group of Claims classified by the Plan pursuant to § 1121(a)(1) of the Bankruptcy Code.

1.14 "Committee" means the Official Committee of Unsecured Creditors appointed by the Office of the United States Trustee in the Chapter 11 Case.

1.15 "Confirmation Date" means the date of the entry by the Court of an Order confirming this Plan.

1.16 "Confirmation Order" means the Order entered by the Bankruptcy Court confirming the Plan in accordance with Chapter 11.

1.17 "Creditor" means any Entity that holds a Claim against the Debtor.

1.18 "Debtor" means The Albert Lindley Lee Memorial Hospital a/k/a A.L. Lee Memorial Hospital, the debtor in possession with regard to the Chapter 11 Case.

1.19 "Disclosure Statement" means the disclosure statement relating to the Plan, including, without limitation, all exhibits thereto, as approved by the Bankruptcy Court pursuant to § 1125 of the Bankruptcy Code.

1.20 "Disputed Claim" means (a) any claim (other than any Allowed Claim) which is scheduled as disputed, contingent or unliquidated or (b) any claim which has been filed pursuant to § 501(a) of the Bankruptcy Code and as to which an objection to the allowance thereof has been interposed within the time limitation fixed by the Bankruptcy Code or by the Order of the Bankruptcy Court, which objection has not been determined in whole or in part by a final Order.

1.21 "Disputed Claim Reserve" means the reserve established for Disputed Claims according to this Plan.

1.22 "Distributions" means the payments to the various classes of Claims as provided in this Plan.

1.23 "Distribution Dates" means such date(s) as the Debtor shall establish, in its discretion, for making Distributions.

1.24 "Debtor Account" means the Debtor in Possession account maintained at HSBC Bank, in which the Debtor has deposited, or shall deposit, all of its Cash and the Proceeds.

1.25 "Effective Date" means a Business Day selected by the Debtor on or after the Confirmation Date on which the conditions to the effectiveness of this Plan have been satisfied or waived.

1.26 "Entity" means an individual, corporation, partnership, limited liability company, association, joint stock company, joint venture, estate, trust, unincorporated organization, or government or any political subdivision thereof, or other person or entity, regardless of the form of the business organization.

1.27 "Final Order" means an order or judgment of the Bankruptcy Court entered by the Clerk of the Bankruptcy Court on the docket in the Chapter 11 Case which has not been reversed, vacated or stayed and as to which (i) the time to appeal, petition for *certiorari*, or move for a new trial, reargument, or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceeding for a new trial, reargument or rehearing shall then be pending, or (ii) if an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order or judgment of the Bankruptcy Court shall have been affirmed by the highest court to which such order was appealed, or *certiorari* shall have been denied, or a new trial, reargument, or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument, or rehearing shall have expired.

1.28 "FSB" means Fulton Savings Bank.

1.29 "FSB Mortgages" means the various notes and mortgage liens recorded in the Oswego County Clerk's Office in favor of FSB covering certain parcels of real property owned by the Debtor and located within Oswego County.

1.30 "FSB Mortgage Claims" means all Claims of FSB, as evidenced and secured by, granted and set forth in the FSB Mortgages and other FSB Mortgage Documents.

1.31 "FSB Mortgage Documents" means all of those documents, agreements and instruments evidencing and securing the FSB Mortgage Claims, including, without limitation, the FSB Mortgages.

1.32 "General Unsecured Claim" means any Claim arising prior to the Petition Date as against the Debtor, other than an Administrative Claim, Priority Claim or Secured Claim.

1.33 "Hospital Facility" means the real property owned by the Debtor located at 510 South Fourth Street, Fulton, New York 13069 and improved by a two-story hospital building.

1.34 "Liquidation" means the determination by the Debtor of the extent and nature of the Debtor's Assets and its liabilities and the orderly liquidation of the Assets and distribution of the Proceeds.

1.35 "Liquidation Expenses" means the expenses incurred by the Debtor with regard to the Liquidation including, without limitation, Administrative Expense Claims and Priority Claims.

1.36 "Objection Deadline" has the meaning ascribed thereto in Section 6.1 of this Plan.

1.37 "Oswego Hospital" means the not-for-profit entity located at 110 West Sixth Street, Oswego, New York 13126.

1.38 "Pension Plan" means The Albert Lindley Lee Memorial Hospital Retirement Plan and Trust.

1.39 "Petition Date" means April 3, 2009, the date on which the Chapter 11 Case was commenced.

1.40 "Phoenix Property" means the real property owned by the Debtor located at 7 Bridge Street, Phoenix, New York 13135 and improved by a medical office building.

1.41 "Plan" means this Chapter 11 Plan and any amendments hereto or modification hereof made in accordance with chapter 11 of the Bankruptcy Code.

1.42 "Priority Claim" means the portion of an Allowed Claim entitled to priority under § 507(a)(3) through § 507(a)(8) of the Bankruptcy Code.

1.43 "Proceeds" means net cash received from the sale, disposition or liquidation of any Asset and any interest thereon.

1.44 "Professional Claim" means a claim for compensation and/or reimbursement of expenses pursuant to sections 327, 328, 330, 331 or 503(b) of the Bankruptcy Code relating to services, provided by a professional appointed in the Chapter 11 Case, incurred on and after the Petition Date and prior to and including the Effective Date.

1.45 "Pro Rata Share" means, with respect to a claimant of a particular Class, the proportion that the Allowed Claim or the then unpaid portion thereof of such claimant in such Class bears to the aggregate Allowed Claims (or the aggregate then-unpaid portion thereof) of all claimants in such Class. Included in such calculations shall be the full amount of Disputed

Claims in the particular Class which have been asserted and which are otherwise pending and which have not yet been allowed or otherwise disposed of.

1.46 "Schedules" means the schedules of assets and liabilities and the statement of financial affairs filed by the Debtor under § 521 of the Bankruptcy Code, Bankruptcy Rule 1007 and the Official Bankruptcy Forms of the Bankruptcy Rules, as such schedules and statement have been or may be supplemented or amended through the Confirmation Date.

1.47 "Section 503(b)(9) Claim" means any Administrative Expense Claim arising under § 503(b)(9) of the Bankruptcy Code.

1.48 "Secured Claim" means a Claim (i) secured by collateral, to the extent of the value of such collateral (a) as set forth in the Plan, (b) as agreed by the holder of such Claim and the Debtor, or (c) as determined by a Final Order in accordance with § 506(a) of the Bankruptcy Code, or (ii) secured by the amount of any rights of setoff of the holder thereof under § 553 of the Bankruptcy Code.

1.49 "Tangible Assets" means those items of furniture, equipment and other personal property designated to be sold to Oswego Hospital pursuant to an Asset Purchase Agreement dated April 1, 2009 and approved by the Bankruptcy Court.

1.50 "U.S. Trustee" means the Office of the United States Trustee for the Northern District of New York.

1.51 The words "herein," "hereof," "hereto," "hereunder" and other words of similar import refer to the Plan as a whole and not to any particular section, subsection, or clause contained therein. Wherever from the context it appears appropriate, each term stated in either the singular or the plural shall include the singular and the plural and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, the feminine and the neuter. A term used herein that is not defined herein shall have the meaning assigned to that term in the Bankruptcy Code. The rules of construction contained in § 102 of the Bankruptcy Code shall apply to the Plan. The headings in the Plan are for convenience of reference only and shall not limit or otherwise affect the provisions hereof.

ARTICLE II

CLASSIFICATION OF CLAIMS

Claims are classified for all purposes, including voting (unless otherwise specified), confirmation and distribution pursuant to the Plan, as follows:

2.1 Class 1: FSB Mortgage Claims. Class 1 consists of the FSB Mortgage Claims. For purposes of this Class, the FSB Mortgage Claims outstanding as of the date of this Plan, and the locations of the real properties securing such Claims, are separately classified in sub-classes, as follows:

Class 1(a) – 7 Bridge Street, Phoenix, New York
Class 1(b) – 510 South Fifth Street, Fulton, New York

Class 1(c) – Consolidated Mortgage on the following:

370 South Fourth Street, Fulton, New York
451 South Fourth Street, Fulton, New York
455 South Fourth Street, Fulton, New York
515 South Fourth Street, Fulton, New York
517 South Fourth Street, Fulton, New York
510 South Fifth Street, Fulton, New York

2.2 Class 2: Administrative Expense Claims. Class 2 consists of holders of Allowed Administrative Expense Claims. All of the Class 2 Claims remaining to be paid in the Chapter 11 Case consist of (i) Professional Claims, (ii) quarterly fees due the Office of the United States Trustee pursuant to 28 U.S.C. § 1930(a), (iii) all Allowed Section 503(b)(9) Claims, (iv) all post-Petition Date tax claims of governmental units, and (v) all credit, advances and/or loans provided to, and/or debts incurred by, the Debtor after the Petition Date in the ordinary course of the Debtor's business. Class 2 shall also include any Allowed Administrative Expense Claim on behalf of the PBGC.

2.3 Class 3: Priority Claims. Class 3 consists of Allowed Priority Claims.

2.4 Class 4: General Unsecured Claims. Class 4 consists of all holders of General Unsecured Claims, including General Unsecured Claims filed by the PBGC and all deficiency claims asserted by FSB.

ARTICLE III

IMPAIRMENT

Classes 1, 2 and 3 are not Impaired under the Plan and therefore are deemed to accept the Plan. Class 4 is impaired under the Plan, and may vote to accept or reject the Plan.

ARTICLE IV

TREATMENT OF CLASSES

4.1 **Class 1 – FSB Mortgage Claims.**

(a) **Treatment**. The Allowed Class 1 FSB Mortgage Claims shall be paid upon the sales of the respective real properties securing the mortgage Liens on those properties. FSB's mortgage Liens on the Debtor's real properties shall not be impaired. The Liens securing and collateralizing the FSB Mortgage Claims, and evidenced by the FSB Mortgage Documents, shall be retained and confirmed hereby as first or second priority mortgage Liens, as the case may be, on, against and in respect of the Debtor's real properties. Neither such Liens, nor the FSB Mortgage Documents, are modified in any way by the confirmation of this Plan. The FSB Mortgage Documents are and remain fully enforceable against the Debtor by their terms. In the event that a particular parcel of real property remains unsold on the Effective Date, the Debtor will either, at the election of FSB, execute a deed in lieu of foreclosure with respect to that property or consent to the modification of the automatic stay so as to permit FSB to commence a

foreclosure action with respect to that property. If the indebtedness owed under the FSB Mortgage Documents has been satisfied in full, the Debtor may seek to sell any remaining real property by auction sale. Finally, to the extent that FSB shall assert any deficiency claims under the FSB Mortgage Documents against the Debtor, such deficiency claims shall be treated as Class 4 General Unsecured Claims.

(b) Impairment and Voting. The Class 1 FSB Mortgage Claim is not Impaired and shall not be entitled to vote to accept or reject the Plan. Accordingly, the Class 1 Claim holder is deemed to have accepted the Plan.

4.2 **Class 2 – Administrative Expense Claims.**

(a) Distribution. Allowed Class 2 Administrative Expense Claims will be paid in full, in cash, on the Effective Date. Each holder of an Administrative Expense Claim in this Class shall be paid with priority as set forth in § 507(a)(1) of the Bankruptcy Code an amount not to exceed the full amount of its Claim prior to any Distribution to any holder of a Claim in Classes 3 or 4. No payment shall be made to any claimant in this Class until the Claim has been fixed and allowed by final and non-appealable order of the Court.

(b) Impairment and Voting. Class 2 Claims are not Impaired and shall not be entitled to vote to accept or reject the Plan. Accordingly, the Class 2 Claim holders are deemed to have accepted the Plan.

4.3 **Class 3 – Priority Claims.**

(a) Distribution. The holders of Allowed Class 3 Priority Claims shall be paid in full, in the priority as set forth in § 507(a) of the Bankruptcy Code, on the Effective Date, prior to any distribution to any holder of a Claim in Class 4. No payment shall be made to the claimants in this Class unless, however, and until (i) all Class 1 and Class 2 Claims have been paid in full, and (ii) the Priority Claims have been fixed and allowed by a Final Order of the Bankruptcy Court or determined to be undisputed, liquidated and not contingent. The Class 3 Priority Claims shall be paid without interest.

(b) Impairment and Voting. The Class 3 Priority Claims are not Impaired and shall not be entitled to vote to accept or reject the Plan. Accordingly, the Class 3 Priority Claim holders are deemed to have accepted the Plan.

4.4 **Class 4 – General Unsecured Claims.**

(a) Distributions. On or before the date that is 30 days following the date upon which all the Class 4 Claims are finally determined, or the Effective Date, whichever is later, each holder of an Allowed Class 4 General Unsecured Claim shall be paid a Distribution in an amount equal to the Pro Rata Share of its Allowed Claim. At this time, the Debtor estimates that the holders of Allowed Class 4 Claims will receive a distribution equal to approximately 25% of their Allowed Claims. It is possible, however, that additional funds may be distributed to the Class 4 creditors if additional accounts receivable funds and avoidable transfers are recovered by the Committee. The Class 4 General Unsecured Claims shall be paid without interest. No payment shall be made to any claimant in this Class unless and until (i) all Class 1,

2 and 3 Claims have been paid in full; and (ii) such General Unsecured Claim has been fixed and allowed by a Final Order of the Bankruptcy Court or determined to be undisputed, liquidated and not contingent.

(b) Impairment and Voting. Class 4 is Impaired and therefore holders of Class 4 General Unsecured Claims are entitled to vote to accept or reject the Plan.

The issuance of a Confirmation Order by this Court shall discharge the Debtor from all obligations not explicitly treated under the Plan.

ARTICLE V

MEANS FOR EXECUTION OF THE PLAN

5.1 Distribution Sources and Methods. The Cash required to fund Distributions to be made to claimants under this Plan will be funded from the liquidation of all Assets of the Debtor and the recovery of funds to be reimbursed to the Debtor under the HEAL Grant. Following the closing of the sale of the Hospital Facility, the Phoenix Property and the Tangible Assets to Oswego Hospital, the closings of the sales of miscellaneous equipment, personal property and real property, the collection of the Debtor's accounts receivable and the recovery of the HEAL Grant funds, all Assets owned by the Debtor will have been liquidated and the Proceeds totaling between $3,750,000 and $4,300,000 will be deposited into the Debtor Account. To the extent that additional assets of the Debtor are thereafter recovered and/or liquidated, the proceeds will be placed in the Debtor Account.

5.2 Persons Authorized to Implement Plan. Upon confirmation, the Debtor and Bond, Schoeneck & King, PLLC, as counsel to the Debtor, shall be empowered and authorized to (i) act as disbursing agents in connection with all Distributions to be made under the Plan and (ii) perform all acts and to execute all documents and instruments necessary to implement and fully consummate this Plan. Any members of the Debtor, its Board of Directors or officers who act under this section shall not be paid for their services but will be allowed an administrative expense claim for reasonable out-of-pocket expenses. Bond, Schoeneck & King, PLLC shall be paid in accordance with the Court's orders relating to its appointment and payment.

5.3 Cancellation of Equity Interests. Because the Debtor is a not-for-profit corporation, there are no holders of equity interests. However, to the extent that assets remain after payment in full of Creditor claims ("Excess Proceeds"), such Excess Proceeds shall be held by the Debtor and paid in accordance with such order as may be entered by New York State Supreme Court, Oswego County, pursuant to Sections 510 and 511 of the New York Not-For-Profit Corporation Law.

5.4 Dissolution of Corporate Entity. Following the entry of an Order closing the Chapter 11 Case, the Debtor's representatives shall, in their discretion, take any and all steps deemed necessary to properly dissolve the Debtor's corporate entity, subject to the jurisdiction and approval of New York State Supreme Court, Oswego County.

ARTICLE VI

PROCEDURE FOR RESOLVING DISPUTED CLAIMS AND IN RESPECT OF DISTRIBUTIONS

6.1 Objection Deadline. As soon as practicable, but in no event beyond sixty (60) days after the Effective Date, unless otherwise authorized by the Bankruptcy Court upon *ex parte* motion by the Debtor (the "Objection Deadline"), the Debtor shall file objections to Claims with the Bankruptcy Court and serve such objections upon the holders of each of the Claims to which objections are made, upon consultation with the Creditors' Committee.

6.2 Authority to Oppose Claims and Prosecute Estate Causes of Action. Subject to (a) consultation with the Committee and (b) all necessary approvals from the Bankruptcy Court, the Debtor shall have the exclusive privilege of objecting to, disputing, defending against, and otherwise opposing, and the making, asserting, filing, litigation, settlement or withdrawal of all objections to, Claims. The Debtor shall have the power to preserve, fail to preserve, settle, compromise or litigate any claim or cause of action (except for any claims or causes of action released or to be released pursuant to or in connection with this Plan) before any applicable or appropriate court, panel, agency or tribunal (including, where appropriate, the Bankruptcy Court) that the Debtor may have against any Entity based on acts, omissions or events prior to the Effective Date. The Debtor shall continue to retain the services of Bond, Schoeneck & King, PLLC, which shall be paid for services rendered during the post-Confirmation period by the Debtor's estate.

6.3 No Distributions on Disputed Claims Pending Allowance. Notwithstanding any other provision in this Plan, no payment or Distribution shall be made with respect to any Claim to the extent it is a Disputed Claim unless and until such Claim becomes an Allowed Claim consistent with this Plan.

6.4 No Distribution in Excess of Amount of Allowed Claim. Notwithstanding anything to the contrary herein, no holder of an Allowed Claim or Allowed Administrative Expense Claim shall receive in respect of such Claim any Distribution in excess of the Allowed amount of such Claim. Except as otherwise expressly provided herein, no Claim or Administrative Expense Claim shall be Allowed to the extent it is for post-petition interest.

6.5 Determination by Bankruptcy Court. The amount of any Disputed Claim, and the rights of the holder of such Claim, if any, to payment in respect thereof shall be determined by the Bankruptcy Court, unless it shall have sooner become an Allowed Claim.

6.6 Unclaimed Property/Unclaimed Personal Property. If any Distribution remains unclaimed for a period of sixty (60) days after it has been delivered (or attempted to be delivered) in accordance with this Plan to the holder entitled thereto, such unclaimed property shall be forfeited by such holder. The holder of the Allowed Claim previously entitled to such unclaimed property shall cease to be entitled thereto, and such property shall, to the extent practicable in the Debtor's sole discretion, be redistributed to the holders of Allowed Claims pursuant to this Plan.

6.7 Third Party Agreements; Subordination. Except as set forth herein, Distributions to the various Classes of Claims hereunder shall not affect the right of any Entity to levy, garnish, attach or employ any other legal process with respect to such Distributions by reason of any claimed contractual subordination rights, or otherwise. Distributions made by the Debtor shall not be inconsistent with such contractual subordination provisions and may be modified only by a Final Order directing that Distributions be made other than as provided in the Plan and Confirmation Order; provided, however, that the Debtor (or any of its agents, members, representatives, professionals or employees) shall not be liable to any Entity on account of distributions which are ultimately determined to be inconsistent with inter-creditor contractual subordination agreements or rights unless such Distributions were made in bad faith or with malicious intent.

6.8 Transmittal of Distributions and Notices

(a) Any property or notice which an Entity is or becomes entitled to receive pursuant to this Plan may be delivered by regular mail, postage prepaid, in an envelope addressed to that Entity at the address indicated on any notice of appearance filed in this Chapter 11 Case by that Entity or its authorized agent prior to the Effective Date. If no notice of appearance has been filed, notice shall be sent to the address indicated on a properly filed proof of claim or, absent such a proof of claim, the address set forth in the relevant Schedule of assets and liabilities for that Entity. Property distributed in accordance with this section shall be deemed delivered to such Entity regardless of whether such property is actually received by that Entity.

(b) A holder of an Administrative Expense Claim or Claim may designate a different address for notices and/or Distributions by notifying the Debtor in writing of that address. Any change of address of a party entitled to receive Distributions hereunder must be provided to the Debtor by registered mail in order to be effective. Such notification shall be effective upon receipt by the Debtor.

6.9 Disputed Payment. If any dispute arises as to the identity of a holder of an Allowed Claim who is to receive any Distribution, the Debtor may, in lieu of making a Distribution to such Entity, make such Distribution into a Disputed Claims Reserve until the disposition thereof shall be determined by Bankruptcy Court order or by written agreement among the interested parties to such dispute. The Debtor shall not have any liability if it acts in accordance with this section.

6.10 Withholding Taxes and Expenses of Distribution. No federal, state or local withholding taxes or other amounts required to be withheld under applicable law will be deducted from Distributions made pursuant to this Plan. All Entities holding Claims and receiving Distributions under the Plan are responsible for paying to the appropriate taxing authorities the required amounts as defined in the applicable tax codes.

6.11 Method of Cash Distributions. Any Cash payment to be made by the Debtor pursuant to this Plan will be in U.S. dollars and will be made by check.

6.12 Fractional Cents/De Minimis Payment. When any payment of a fraction of a cent would otherwise be called for, the actual payment shall reflect a rounding of such fraction to the nearest whole cent (rounding down in the case of less than $0.50 and rounding up in the case of $0.50 or more); provided, however, that in no event will an amount less than $1.00 be distributed. Any remaining unpaid amount in the Debtor's estate at the conclusion of the Chapter 11 Case will be disbursed in accordance with a further order of New York State Supreme Court, Oswego County.

6.13 Distributions on Non-Business Days. Any payment or Distribution due on a day other than a Business Day shall be made, without interest, on the next Business Day.

ARTICLE VII

EXECUTORY CONTRACTS

7.1 Rejection of Executory Contracts. To the extent that any executory contract or unexpired lease remains which has not been expressly assumed and assigned to a third party, it shall be deemed rejected.

7.2 Bar Date for Filing Proofs of Claim Relating to Executory Contracts and Unexpired Leases Rejected Pursuant to the Plan. Any creditor whose Claim arises from the rejection of an executory contract or unexpired lease shall have thirty (30) days from the service upon them of a copy of the Confirmation Order to file a Proof of Claim with the Bankruptcy Court regarding such rejection. To the extent such Claim becomes an Allowed Claim, any such person shall have the rights of a Class 4 Claimant with respect thereto. If such Proof of Claim is not filed within the time specified herein, it shall be forever barred from assertion against the Debtor or its property.

ARTICLE VIII

DISCHARGE AND RELEASE

8.1 Discharge and Release. On the Effective Date, the Debtor, the Committee, the Committee's members and their respective Assets and properties will be discharged and released from any debt, charge, liability, encumbrance, security interest, lien, assignment, Claim or other Cause of Action of any kind, nature or description (including, but not limited to, any claim of successor liability) that arose before the Effective Date, and any debt of the kind specified in §§ 502(g), 502(h) or 502(i) of the Bankruptcy Code, whether or not a Proof of Claim is filed or is deemed filed, whether or not such Claim is Allowed, and whether or not the holder of such Claim has voted on this Plan including, without limitation, liabilities arising under environmental laws in respect of the Debtor, or any of the Debtor's successors or assigns or their respective Assets or properties, which result, in whole or in part, from any condition, event, occurrence or happening prior to the Effective Date, whether known or unknown, discovered or undiscovered, asserted or unasserted, latent or patent, and regardless of whether any Claim was, is, or could have been asserted for such liability, and upon such discharge and release, no such liabilities shall be obligations, liabilities, claims, liens or encumbrances against the Debtor, and the Assets, whether under the doctrine of successor liability or otherwise.

Nothing in the Debtor's bankruptcy proceedings, Confirmation Order, Plan, the Bankruptcy Code (and section 1141 thereof), or any other document filed in the Chapter 11 Case shall in any way be construed to discharge, release, limit, or relieve the Debtor or any other party, in any capacity, from any liability or responsibility with respect to the Pension Plan or any other defined benefit pension plan under any law, governmental policy or regulatory provision. The PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility by any of the provisions of the Plan, Confirmation Order, Bankruptcy Code or any other document filed in the Chapter 11 Case.

In addition, nothing in the Debtor's bankruptcy proceedings, Confirmation Order or the Plan shall effect a release of any claim by the United States Government or any of its agencies or any state and local authority whatsoever, including, without limitation, any Claim arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against the Released Parties, nor shall anything in the Confirmation Order or the Plan enjoin the United States or any state or local authority from bringing any claim, suit, action or other proceedings against the Released Parties for any liability whatsoever, including, without limitation, any claim, suit or action arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state or local authority, nor shall anything in the Confirmation Order or the Plan exculpate any party from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including any liabilities arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against the Released Parties.

8.2 Full Satisfaction. Furthermore, but in no way limiting the generality of the foregoing, except as otherwise specifically provided by this Plan, the distributions and rights that are provided in this Plan will be in complete satisfaction, discharge and release, effective as of the Effective Date, of (i) all Claims and Causes of Action against, liabilities of, liens on, charges, encumbrances, security interests, obligations of and interests in the Debtor, the Assets, or the direct or indirect Assets and properties of the Debtor, whether known or unknown, and (ii) all Causes of Action, whether known or unknown, either directly or derivatively through the Debtors, or the successors and assigns of the Debtor based on the same subject matter as any Claim or any other interests, in each case, regardless of whether a Proof of Claim was filed, whether or not Allowed, and whether or not the holder of the Claim has voted on this Plan, or based on any act or omission, transaction or other activity or security, instrument or other agreement of any kind or nature occurring, arising or existing prior to the Effective Date that was or could have been the subject of any Claim, in each case regardless of whether a proof of Claim was filed, whether or not Allowed and whether or not the holder of the Claim has voted on this Plan.

8.3 Injunction Through Effective Date. Except as expressly provided for in the Plan, all injunctions, liens or stays entered in the Chapter 11 Case and existing immediately before the Effective Date will remain in full force and effect until the Effective Date.

8.4 Exculpation. The Debtor, the Committee and their respective present and former officers, directors, members, representatives, board members, employees, advisors, attorneys and agents acting in such capacity shall have no liability whatsoever to any holder or

purported holder of an Administrative Expense Claim or Claim for any act or omission, specifically in connection with, or arising out of, this Plan, the Disclosure Statement, the negotiation of the Plan, the pursuit of approval of this Disclosure Statement or the solicitation of votes for confirmation of the Plan, the consummation of the Plan, the administration of the Plan or the property to be distributed under the Plan, or any transaction contemplated by the Plan or this Disclosure Statement or in furtherance thereof, except for willful misconduct or gross negligence as determined by a Final Order, and, in all respects, shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan. This Exculpation clause shall not be effective concerning the conduct of the Chapter 11 Case generally.

Nothing in this section shall (i) be construed to exculpate any entity from fraud, gross negligence, willful misconduct, malpractice, criminal conduct, misuse of confidential information that causes damages, or ultra vires acts or (ii) limit the liability of the professionals of the Debtors and the Committee to their respective clients pursuant to N.Y. Comp. Codes R. & Regs. tit. 22 § 1200.8, Rule 1.8(h)(1) (2009).

8.5 Permanent Injunction.

(a) Except as expressly provided for in the Plan, all Entities are precluded and permanently enjoined from asserting against: (i) the Debtor and/or (ii) the officers and directors thereof, and/or (iii) the respective Assets and property of any of the foregoing, any Claim, which is discharged pursuant to § 8.1 or § 8.6, or satisfied pursuant to § 8.2, of the Plan.

(b) Scope of Release and Injunction Hereunder. The injunction provisions set forth in § 8.5 of the Plan and the release provisions set forth in §§ 8.1 of the Plan, only release and enjoin prosecution of (a) any Claims discharged under § 8.1 of the Plan, (b) Claims satisfied under § 8.2 of the Plan and (c) Claims and causes of action which are released, cancelled or compromised by the Debtor pursuant to § 6.2 of the Plan, as set forth therein.

8.6 Binding Effect. On the Effective Date, according to § 1141 of the Bankruptcy Code, the provisions of this Plan will bind the Debtor, the Committee, any Entity acquiring Assets under this Plan, and any holder of a Claim, whether or not the Claim is Impaired under this Plan and whether or not the holder of the Claim has accepted this Plan.

ARTICLE IX

CAUSES OF ACTION

9.1 The Debtor will retain and have the right to enforce any and all present and future rights, claims, avoidance actions, or any other causes of action against any Entity, including rights that arise before, on or after the Petition Date. Except as provided for in the Plan, all present or further rights, claims avoidance actions, or other causes of action against any Entity that existed prior to the Effective Date are preserved without limitation. The Debtor may settle any such action as it deems appropriate without further Bankruptcy Court approval or any additional notice that Rule 9019 of the Federal Rules of Bankruptcy Procedure would otherwise require.

As of the date of the Plan, the Debtor and the Committee continue to analyze potential causes of action under §§ 544, 545, 546, 547, 548, 549, 550, 551, 553 and 554 of the Bankruptcy Code. Subject to (a) consultation with the Debtor, and (b) all necessary approvals from the Bankruptcy Court, in the event, and to the extent, that (a) the Committee makes a determination that there are valid causes of action to be prosecuted, and (b) Claims are not paid in full, the Committee will either prosecute, or direct the Debtor to prosecute, such causes of action, and the Proceeds thereof will be distributed to the holders of Allowed Claims in accordance with Section 5.1 of the Plan.

ARTICLE X

MODIFICATION OF THIS PLAN

10.1 Modification. The Debtor reserves its right, according to the Bankruptcy Code, to amend or modify the Plan before its substantial consummation. After the Confirmation Date, the Debtor may, upon order of the Bankruptcy Court, and according to § 1127(b) of the Bankruptcy Code, remedy any defect or omission, or reconcile any inconsistencies in the Plan in such manner as may be necessary to carry out the purposes and intentions of the Plan. A Claimant that has accepted or rejected the Plan will be deemed to have either accepted or rejected, as the case may be, the Plan as modified or amended, even if the modifications or amendments are made after the solicitation of votes of acceptance or rejection of the Plan, unless the Bankruptcy Court orders that such Claimant may change its previous vote within a time established by the Bankruptcy Court for such change to be made.

10.2 Prior Votes on Modification. A Claimant that has accepted or rejected this Plan will be deemed to have either accepted or rejected, as the case may be, this Plan as modified or amended, even if the modifications or amendments are made after the solicitation of votes of acceptance or rejection of this Plan, unless the Bankruptcy Court orders that such Claimant may change its previous vote within a time established by the Bankruptcy Court for such change to be made.

ARTICLE XI

GENERAL PROVISIONS

11.1 Notices. Except as otherwise specified, all notices and requests will be given by any written means, including but not limited to, telex, telecopy, telegram, facsimile, first class mail, express mail or similar overnight delivery service and hand delivered letters, and any such notice or request will be deemed to have been given when received. Notices will be delivered as follows:

To the Debtor:

Stephen A. Donato, Esq.
Camille W. Hill, Esq.
Bond, Schoeneck & King, PLLC
One Lincoln Center
Syracuse, New York 13202
Phone:(315) 218-8000
Fax: (315) 218-8100

To the Committee:

Robert M. Hirsh, Esq.
Arent Fox LLP
1675 Broadway
New York, New York 10019
Phone: (212) 484-3900
Fax: (212) 484-3990

To the Office of the U.S. Trustee:

Office of the United States Trustee
Attn: Guy A. Van Baalen, Esq.
105 U.S. Courthouse, 10 Broad Street
Utica, New York 13501
Phone: (315) 793-8191
Fax: (315) 793-8133

11.2 Confirmation by Non-Acceptance Method. The Debtor hereby requests confirmation of this Plan pursuant to Bankruptcy Code § 1129(b) with respect to any Impaired Class that does not vote to accept this Plan.

11.3 Payment of Statutory Fees. All fees payable pursuant to 28 U.S.C. § 1930 of the United States Code will be paid until the Court enters a Final Decree closing the Chapter 11 Case.

11.4 Headings. The headings used in this Plan are inserted for convenience only and constitute neither part of this Plan nor in any manner affect the provisions or interpretations of this Plan.

11.5 Enforceability. Should any provision of this Plan be determined to be unenforceable for any reason, such determination will in no way limit or affect the enforceability or operative effect of any other provision of this Plan.

11.6 Exemption from Transfer Taxes. Pursuant to § 1146(a) of the Bankruptcy Code, the issuance, transfer or exchange of notes, documents, agreements, or instruments under

this Plan, in furtherance of, or in connection with this Plan, shall not be subject to any stamp, real estate transfer, mortgage recording or other similar tax.

11.7 Closing of Chapter 11 Case. The Chapter 11 Case shall be closed on the earliest date possible after all cash distributions required to be made under this Plan have been made, after all property in the possession of the Debtor under this Plan has been fully administered or abandoned, after all actions relating to Claims by or against the estate of the Debtor have been concluded, after any other matter which may have theretofore have arisen under the article "Retention of Jurisdiction" shall have been concluded, and upon the Court's approval of the final report filed by the Debtor.

ARTICLE XII

RETENTION OF JURISDICTION

12.1 The Bankruptcy Court will retain jurisdiction of all matters arising out of or related to the Chapter 11 Case and this Plan as long as necessary for the purposes of §§ 105(a), 1127, 1142(a) and 1144 of the Bankruptcy Code and for, *inter alia*, the following non-inclusive purposes:

(a) to decide any objections to the allowance, disallowance or subordination of Claims or a controversy as to the classification of Claims;

(b) to decide and fix (i) all Administrative Expense Claims, (ii) Secured Claims, (iii) Priority Claims, (iv) General Unsecured Claims, (v) Claims arising from the rejection of any executory contracts or unexpired leases, and (vi) any other fee and expense authorized to be paid or reimbursed under the Bankruptcy Code;

(c) to liquidate or estimate damages or determine the manner and time for such liquidation or estimation in connection with any Disputed, contingent or unliquidated Claims;

(d) to adjudicate any matters as may be provided for in the Confirmation Order;

(e) to effectuate Distributions under and enforce the provisions of this Plan;

(f) to hear and determine any pending applications, adversary proceedings or contested matter including all controversies, suits and disputes that may arise in connection with the interpretation or enforcement of this Plan, and matters concerning state, local and federal taxes according to §§ 346, 505 and 1146 of the Bankruptcy Code;

(g) to amend or to correct any defect, cure any omission or reconcile any inconsistency in this Plan or the Confirmation Order as may be necessary to carry out the purposes and intent of this Plan;

(h) to enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, reversed, revoked or vacated;

(i) to consider any modification of this Plan pursuant to § 1127 of the Bankruptcy Code or modification of the Plan after substantial consummation, as such term is defined in § 1101(2) of the Bankruptcy Code;

(j) to determine such other matters as may be provided for in the Confirmation Order or as may be authorized under the provisions of the Bankruptcy Code to the maximum extent of its jurisdiction; and

(k) to enter a final decree closing the Chapter 11 Case.

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Dated: March 5, 2010
Syracuse, New York

BOND, SCHOENECK & KING, PLLC
Attorneys for the Debtor

By: Camille W. Hill

Stephen A. Donato, Esq., of counsel
Camille W. Hill, Esq., of counsel
Office and Post Office Address:
One Lincoln Center
Syracuse, New York 13202
Telephone: (315) 218-8000

Dated: March 5, 2010
Fulton, New York

THE ALBERT LINDLEY LEE
MEMORIAL HOSPITAL a/k/a A.L. LEE
MEMORIAL HOSPITAL

By: Dennis A Casey

Dennis A. Casey, Executive Director

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:

THE ALBERT LINDLEY LEE MEMORIAL HOSPITAL
a/k/a A.L. LEE MEMORIAL HOSPITAL,

Case No. 09-30845
Chapter 11 Case

Debtor.

ORDER CONFIRMING DEBTOR'S AMENDED CHAPTER 11 PLAN OF LIQUIDATION

Debtor The Albert Lindley Lee Memorial Hospital, a/k/a A.L. Lee Memorial Hospital (the "Debtor") having filed a voluntary petition for relief pursuant to chapter 11 of title 11 of the United States Code, §§ 101 *et seq.* (the "Bankruptcy Code") on April 3, 2009 (the "Petition Date"); and the Debtor having filed its Amended Chapter 11 Plan of Liquidation dated March 5, 2010 with this Court on March 12, 2010 (the "Plan"); and the Debtor having filed its Amended Disclosure Statement to Accompany Debtor's Amended Chapter 11 Plan of Liquidation dated March 5, 2010 with this Court on March 12, 2010 (the "Disclosure Statement"); and the Court having approved the Disclosure Statement by Order Approving Amended Disclosure Statement and Fixing Time for Hearing on Confirmation, Filing Acceptances or Rejections of Plan, Combined with Notice Thereof on March 16, 2010 (the "Disclosure Statement Approval Order"); and the Court having approved certain Solicitation and Voting Procedures for the Plan as set forth in the Disclosure Statement Approval Order; and the Court having fixed May 28, 2010 as the last date for voting on the Plan (the "Voting Deadline") and June 3, 2010 as the last date for filing objections to the Plan (the "Objection Deadline"); and the Court having scheduled

a hearing to consider confirmation of the Plan pursuant to section 1129 of the Bankruptcy Code (the "Confirmation Hearing") for June 10, 2010 in Syracuse, New York; and due notice of the Voting Deadline, the Objection Deadline and the Confirmation Hearing having been given to the Debtor's creditors, and other parties in interest in accordance with the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"); and the Court having found that the Disclosure Statement and the Plan were transmitted to all of the Debtor's impaired creditors entitled to vote on the Plan; and upon the Certificate of Service of Kristin Doner of Bond, Schoeneck & King, PLLC filed on April 15, 2010 (the "Mailing Certificate"); and upon the Ballot Certification Pursuant to Local Rule 3018-1(b) by Camille W. Hill, Esq. dated June 2, 2010 (the "Ballot Certification"); and upon reading and filing the Statement in Response to Confirmation of the Debtor's Amended Plan Filed on March 12, 2010 by Oswego Hospital dated May 11, 2010, the United States Trustee's Limited Objection to Debtor's Amended Plan of Liquidation dated May 26, 2010 and the Objection of the Pension Benefit Guaranty Corporation to the Debtor's Amended Chapter 11 Plan of Liquidation dated June 1, 2010 in opposition to Confirmation of the Plan; and the Confirmation Hearing having been held on June 10, 2010 in Syracuse, New York; and the Debtor having appeared by Bond, Schoeneck & King, PLLC (Stephen A. Donato, Esq. and Camille W. Hill, Esq., of counsel) in support of Confirmation of the Plan; and appearances having been entered on behalf of the Official Committee of Unsecured Creditors by Arent Fox LLP (David Kozlowski, Esq., of counsel), Oswego Hospital by Harris Beach, PLLC (Lee E. Woodard, Esq., of counsel), the Pension Benefit Guaranty Corporation by Vicente M. Murrell, Esq., and the Office of the United States Trustee by Guy A. Van Baalen, Esq.; and all objections to Confirmation of the Plan having been withdrawn or otherwise

resolved; and upon the record of the proceedings throughout the Chapter 11 Case[1] and at the Confirmation Hearing; and upon due deliberation and sufficient cause appearing therefor,

The Court hereby FINDS AND DETERMINES that:

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any finding of fact shall later be determined to be a conclusion of law it shall be so deemed and vice versa. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan or the Disclosure Statement, as applicable.

B. This Court has jurisdiction over the Plan and Confirmation of the Plan pursuant to 28 U.S.C. §§ 157 and 1334. Confirmation of the Plan is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(L). Venue of the Debtor's chapter 11 case is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. This Court takes judicial notice of the docket of this Chapter 11 Case maintained by the Clerk of the Court, including, without limitation, all pleadings and other documents filed, all orders entered, and all evidence and arguments made, proffered or adduced at the hearings held before the Court during the pendency of the Chapter 11 Case, including, without limitation, the hearing to consider the adequacy of the Disclosure Statement.

D. The Plan is modified as more fully set forth herein and as appearing on the record of the Confirmation Hearing, and such modifications are made for cause, consistent with section 1127 of the Bankruptcy Code.

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[1] All capitalized terms not defined herein shall have the meanings ascribed to them in the Debtor's Plan and Disclosure Statement.

E. In accordance with the Disclosure Statement Approval Order, the applicable sections of the Bankruptcy Code and the Bankruptcy Rules, including, but not limited to, Bankruptcy Rules 2002, 3017 and 3020, due notice of the Confirmation Hearing and the opportunity to object to confirmation of the Plan was given to the Debtor's creditors and all other parties in interest. Such notice of the Confirmation Hearing and the opportunity to object to Confirmation of the Plan was timely, sufficient and adequate, and no other or further notice is required.

F. In accordance with Bankruptcy Rule 3017(d) and the Disclosure Statement Approval Order, copies of the (I) Plan and Disclosure Statement, (II) the Disclosure Statement Approval Order, (III) a Ballot for voting on the Plan, (IV) the Disclosure Statement Approval Order, (V) a Letter from Counsel for the Official Committee of Unsecured Creditors dated April 6, 2010 in support of the Plan, and (VI) Notice of Bar Date and Procedures for Filing Requests for Payment of Administrative Expense Claims and Claims Under Section 503(b)(9) of the Bankruptcy Code dated April 1, 2010 (collectively, the "Solicitation Package") were transmitted to holders of Claims in Class 4 under the Plan (collectively, the "Voting Class"). Such transmittal and the Solicitation Package, and the time periods and dates provided therein and employed in connection therewith, were timely, sufficient and adequate and no other or further notice or action is required.

G. In accordance with Bankruptcy Rule 3017(d) and the Disclosure Statement Approval Order, and as set forth in the Mailing Certification, notice of the Confirmation Hearing was transmitted to holders of Claims in Classes 1, 2, 3 and 4 under the Plan and to all other parties in interest.

H. Votes for acceptance or rejection of the Plan were solicited in good faith and in compliance with sections 1125 and 1126 of the Bankruptcy Code, Bankruptcy Rules 3017 and 3018, the applicable provisions of the Disclosure Statement, the Disclosure Statement Approval Order, all other applicable provisions of the Bankruptcy Code and all other applicable rules, laws and regulations.

I. All procedures used to distribute to the applicable holders of Claims and to tabulate the Ballots as set forth in the Ballot Certification, were fair and appropriate and conducted in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules of this Court, the Disclosure Statement Approval Order and all other applicable rules, laws and regulations.

J. The Debtor, as the proponent of the Plan, has met its burden of proving the elements of sections 1129(a) of the Bankruptcy Code as more fully set forth below, by a preponderance of the evidence, which is the applicable evidentiary standard in this Court for Confirmation of the Plan.

K. Pursuant to sections 1122(a) and 1123(a)(1) of the Bankruptcy Code, Article II of the Plan designates separate classes of Claims, each of which contains only Claims that are substantially similar to the other Claims within that Class. Valid business, factual and legal reasons exist for separately classifying the various classes of Claims contained in the Plan, and such Classes do not unfairly discriminate among holders of Claims. Pursuant to section 1123(a)(2) and 1123(a)(3) of the Bankruptcy Code, Article III of the Plan identifies each Class that is impaired and each Class that is unimpaired under the Plan, and specifies the treatment provided to each Class. Pursuant to section 1123(a)(4) of the Bankruptcy Code, Article IV of the Plan provides for the same treatment of each Claim in a particular Class.

L. Pursuant to section 1123(a)(5) of the Bankruptcy Code, Article V and other provisions of the Plan and the Confirmation Order provide adequate means for the Plan's implementation.

M. Pursuant to section 1123(a)(7) of the Bankruptcy Code, the Plan contains only provisions that are consistent with the interests of the holders of Claims and with public policy with respect to the manner of selection of any member, officer, director, or trustee under the Plan and any successor to such of member, officer, director or trustee, and therefore section 1123(a)(7) of the Bankruptcy Code is satisfied.

N. The Plan is dated and identifies the entity submitting it, thereby satisfying Bankruptcy Rule 3016(a).

O. In accordance with section 1123(b)(6) of the Bankruptcy Code, the provisions of the Plan are appropriate and consistent with the applicable provisions of the Bankruptcy Code including, without limitation, provisions for (a) distributions to Creditors, (b) the rejection or assumption of certain executory contracts and unexpired leases, including, without limitation, those identified and listed below in this Order, (c) the retention of and right to enforce, sue on, settle or compromise (or to refuse to do any of the foregoing with respect to) certain claims or causes of action against third parties, to the extent not waived or released under the Plan and (d) the transactions contemplated pursuant to Section 5.1 of the Plan.

P. Claims in Classes 1, 2 and 3 are unimpaired under the Plan and, pursuant to section 1126(f) of the Bankruptcy Code, the votes of such holders have not been solicited as such Classes are conclusively presumed to have accepted the Plan.

Q. Claims in Class 4 are impaired under, and are entitled to vote on, the Plan.

R. In accordance with section 1126(c) of the Bankruptcy Code and as set forth in the Ballot Certification, Class 4 has voted to accept the Plan, in that 95.48% in amount and 95.24% in number of the Claims in such Class that actually voted on the Plan have voted to accept the Plan.

S. Based upon the record before this Court in this Chapter 11 Case, the Debtor and its current officers, directors, employees, agents, advisors, attorneys and other representatives have acted in good faith within the meaning of section 1125(e) of the Bankruptcy Code in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all their respective activities relating to the solicitation of acceptances to the Plan and their participation in the activities described in section 1125 of the Bankruptcy Code, and are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code and the exculpation provisions set forth in the Plan.

T. The Plan complies with the applicable provisions of the Bankruptcy Code, as required by section 1129(a)(1) of the Bankruptcy Code.

U. The Debtor, as the proponent of the Plan, has complied with the applicable provisions of the Bankruptcy Code, as required by section 1129(a)(2) of the Bankruptcy Code. Specifically, the Debtor is a proper debtor under section 109(d) of the Bankruptcy Code and is a proper proponent of the Plan under section 1121(a) of the Bankruptcy Code. Throughout the Chapter 11 Case and, specifically, in transmitting the Solicitation Packages and notice of the Confirmation Hearing, and in soliciting and tabulating votes on the Plan, the Debtor has complied with the applicable provisions of the Bankruptcy Code and the Bankruptcy Rules, including as provided or permitted by Orders of this Court.

V. The Plan has been proposed in good faith and not by any means forbidden by law, in compliance with section 1129(a)(3) of the Bankruptcy Code. In determining that the Plan has been proposed in good faith, this Court has examined the totality of the circumstances surrounding the filing of the Chapter 11 Case. The Chapter 11 Case was filed, and the Plan was proposed, with the legitimate and honest purposes of liquidating the Debtor's assets and maximizing the value of the Debtor's estate to provide the maximum recovery to Claim holders under the circumstances.

W. The Debtor, and its present or former officers, directors, employees, affiliates and attorneys, have acted in good faith, and have satisfied their duties to all third persons, as applicable, in connection with the management and operation of the Debtor, the formulation, negotiation, proposal and implementation of the Plan and every contract, instrument, document or other agreement related thereto, and all actions related to the Chapter 11 Case.

X. Any payment made or to be made by the Debtor for services or for costs and expenses in or in connection with the Chapter 11 Case, or in connection with the Plan and incident to the Chapter 11 Case incurred through the Effective Date, has been approved by, or is subject to the approval of, the Bankruptcy Court as reasonable, thereby satisfying section 1129(a)(4) of the Bankruptcy Code.

Y. The Debtor has complied with section 1129(a)(5) of the Bankruptcy Code by disclosing the identity of the officers, directors and insiders continuing to serve in such roles, as set forth on the record at the Confirmation Hearing.

Z. The Plan does not provide for any change in rates over which a governmental regulatory commission has jurisdiction. Accordingly, section 1129(a)(6) of the Bankruptcy Code is inapplicable to the Plan.

AA. The Plan satisfies section 1129(a)(7) of the Bankruptcy Code. The Disclosure Statement and Plan establish that each holder of an impaired Claim either has accepted the Plan or will receive or retain under the Plan, on account of such Claim, property of a value, as of the Effective Date, that is not less than the amount that such holder would receive or retain if the Debtor was liquidated under Chapter 7 of the Bankruptcy Code on such date.

BB. The treatment of Administrative Expense Claims and Section 503(b)(9) Claims pursuant to Section 4.2 of the Plan satisfies the requirements of section 1129(a)(9)(A) of the Bankruptcy Code.

CC. In compliance with sections 1129(a)(9)(B), (C) and (D) of the Bankruptcy Code, Section 4.3 of the Plan provides that holders of priority claims of the kind specified in said sections, if any, will receive cash on the Effective Date of the Plan equal to the allowed amount of such claim.

DD. The Debtor has either assumed or rejected all pre-petition executory contracts and unexpired leases pursuant to section 365(a) of the Bankruptcy Code, and procedures exist for the filing of cure claims due under those executory contracts and unexpired leases in accordance with section 365(b)(1) of the Bankruptcy Code.

EE. The Plan has been accepted by impaired Class 4, and therefore, the Plan has been accepted by at least one class of Impaired Claims entitled to vote on the Plan, determined without including any acceptances of the Plan by any insider, in compliance with section 1129(a)(10) of the Bankruptcy Code.

FF. The evidence proffered or adduced at the Confirmation Hearing (a) is persuasive and credible, (b) has not been controverted by other evidence, and (c) established that the Plan is feasible, is a liquidating plan and has a reasonable likelihood of success, in that, after the

Effective Date, the Debtor should have adequate capital to effect the payments required under the Plan, thus satisfying the requirements of section 1129(a)(11) of the Bankruptcy Code. The reservation of rights taken by the PBGC at the Confirmation Hearing regarding its claims, and recognized by the Court on the record, are preserved.

GG. The Plan, as amended by this Confirmation Order, provides for the payment of all fees payable pursuant to section 1930 of Title 28 of the United States Code on or before the Effective Date, in compliance with section 1129(a)(12) of the Bankruptcy Code. The Plan further provides that all such fees payable after the Effective Date will be assumed and paid by the Debtor.

HH. Section 1129(a)(13) of the Bankruptcy Code requires a plan to provide for retiree benefits at levels established pursuant to section 1114 of the Bankruptcy Code. As demonstrated by evidence proffered or adduced during the Confirmation Hearing and as set forth on the record thereof, the Debtor complies with this obligation. Thus section 1129(a)(13) of the Bankruptcy Code is met in this Chapter 11 Case.

II. Sections 1129(a)(14) and (a)(15) of the Bankruptcy Code concern domestic support obligations and debtors who are individuals, and are not applicable in this Chapter 11 Case.

JJ. Section 1129(a)(16), added to the Bankruptcy Code in 2005 by the Bankruptcy Abuse Prevention and Consumer Protection Act, requires that any transfers of property by a not-for-profit corporation shall be made in accordance with any applicable provisions of nonbankruptcy law. The Debtor shall comply with the provisions of Section 509 or Section 510 of the New York Not-for-Profit Corporation Law, which govern such transfers by a not-for-profit

corporation such as the Debtor. *See* N.Y. N-PCL §§ 509, 510 (McKinney's 2007). As a result, the Plan is in compliance with section 1129(a)(16) of the Bankruptcy Code.

KK. The principal purpose of the Plan, as evidenced by its terms, is not the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933 (15 U.S.C. § 77e).

LL. Article VII of the Plan governing assumption and rejection of executory contracts and unexpired leases satisfies the requirements of section 365(b) of the Bankruptcy Code.

MM. All releases, exculpations, injunctions and limitations of liability as to claims and causes of action that are embodied in Article VIII of the Plan are approved in all respects and are fair, equitable and reasonable in the context of the circumstances presented in this Chapter 11 Case. These provisions are in the best interests of the Debtor, its Estate, creditors and other parties in interest.

NN. Based upon the foregoing, the Plan satisfies the requirements for Confirmation set forth in section 1129 of the Bankruptcy Code.

OO. This Court may properly retain jurisdiction over all matters set forth in the Plan and section 1142 of the Bankruptcy Code.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Plan complies with all applicable provisions of the Bankruptcy Code and applicable Bankruptcy Rules relating to Confirmation. The Plan, all provisions thereof, and the exhibits and schedules thereto, hereby are confirmed under section 1129 of the Bankruptcy Code. All objections to the Plan not heretofore withdrawn are overruled in their entirety.

2. Section 2.3 of the Plan is hereby modified to provide as follows:

2.3 **Class 3: Priority Claims.** Class 3 consists of Allowed Priority Claims, including the Priority Claim filed by the PBGC.

3. Section 6.9 of the Plan is hereby modified to provide as follows:

6.9 **Disputed Payment.** If any dispute arises as to **the amount or validity of a Claim, or** the identity of a holder of an Allowed Claim who is to receive any Distribution, the Debtor may, in Lieu of making a Distribution to such Entity, make such Distribution into a Disputed Claims Reserve until the disposition thereof shall be determined by Bankruptcy Court order or by written agreement among the interested parties to such dispute. The Debtor shall not have any liability if it acts in accordance with this section.

4. The foregoing modifications to the Plan are hereby approved in their entirety pursuant to section 1127 of the Bankruptcy Code.

5. Notwithstanding anything contained in the (i) Debtor's Amended Disclosure Statement to accompany Debtor's Amended Chapter 11 Plan of Liquidation dated March 5, 2010; (ii) Debtor's Amended Chapter 11 Plan of Liquidation dated March 5, 2010; and (iii) any Confirmation Order that may be entered in this case, all of the terms, conditions and obligations of the Debtor outlined in the Asset Purchase Agreement with Oswego Hospital dated as of April 1, 2009 and Order Approving the Asset Purchase Agreement dated July 6, 2009 shall remain in full force and effect and shall not be altered, released or otherwise affected by the confirmation of the Plan or the Confirmation Order entered herein.

6. Pursuant to section 1141 of the Bankruptcy Code, effective upon entry of this Order, but subject to the occurrence of the Effective Date, the Plan (including the exhibits and schedules to, and all documents and agreements created pursuant to, the Plan) and its provisions shall be binding upon the Debtor, any entity acquiring or receiving property or a distribution under the Plan, any lessor or lessee of property to or from the Debtor, any party to a contract with the Debtor, any person who granted or is a beneficiary of the exculpations and releases contained in or provided for under the Plan, any holder of a Claim against the Debtor, including

all governmental entities, whether or not the Claim of such holder is impaired under the Plan and whether or not such holder or entity has accepted the Plan, any and all nondebtor parties to executory contracts and unexpired leases with the Debtor, any and all entities that are parties to or are subject to the settlements, compromises, releases, discharges and injunctions described herein or in the Plan, any other party in interest, and the respective heirs, executors, administrators, successors or assigns, if any, of all of the foregoing.

7. Pursuant to sections 1141(b) and (c) of the Bankruptcy Code, except as otherwise provided in the Plan, all property of the Debtor's estate, to the full extent of section 541 of the Bankruptcy Code, and any and all other rights and assets of the Debtor of every kind and nature, shall on the Effective Date of the Plan, revest in the Debtor free and clear of all Liens, Claims and other encumbrances other than those Liens, Claims and encumbrances retained, preserved or created pursuant to the Plan or any document entered into in connection with the transactions described in the Plan and this Order, including, without limitation, the Class 1 FSB Mortgage Claims. The Debtor will distribute all property in accordance with the terms of the Plan. To the extent that the revesting of the assets by the Debtor pursuant to the Plan is deemed to constitute a "transfer" of property, such transfer of property, (a) shall be a legal, valid and effective transfer of property, (b) vest or shall vest the Debtor with good title to such property, free and clear of all Liens, Claims and encumbrances except as set forth in the Plan and herein, and (c) does not and shall not subject the Debtor to any liability by reason of such transfer under the Bankruptcy Code or applicable nonbankruptcy law including, but not limited to, any laws affecting successor or transferee liability, other than the Liens, Claims and encumbrances retained, preserved or created pursuant hereto, or in the Plan.

8. The Debtor and its members, directors, officers, agents and attorneys are hereby authorized, empowered and directed to grant, issue, execute, deliver, file or record any agreement, document or security, and to take all other actions necessary or appropriate, in its sole discretion, to implement, effectuate and consummate the Plan in accordance with its terms, or take any or all corporate actions authorized to be taken pursuant to the Plan, and any release, amendment, or restatement of any certificates of incorporation, operating agreement or other organization documents of the Debtor, whether or not specifically referred to in the Plan, all without further Order of this Court. Any or all such documents shall be accepted by each of the respective state filing offices and recorded, if required, in accordance with applicable state law and shall become effective in accordance with their terms and the provisions of state law, and on and after the Effective Date, any such document will be legal, valid and binding in accordance with its terms.

9. All injunctions or stays, whether imposed by operation of law or by Order of this Court, provided for in the Chapter 11 Case pursuant to sections 105 or 362 of the Bankruptcy Code or otherwise, that are in effect on the Confirmation Date shall remain in full force and effect until the Effective Date. As of the Effective Date, the stay imposed pursuant to section 362(a) of the Bankruptcy Code shall be dissolved and of no further force and effect, subject to the injunction set forth in paragraph 12 below and/or sections 524 and 1141 of the Bankruptcy Code, and the Debtor may take such other actions as are necessary to effectuate the transactions specifically contemplated by the Plan and this Order.

10. Except as provided for in this Order or in the Plan, the rights afforded under the Plan and the treatment of Claims under the Plan will be in exchange for, and in complete satisfaction, discharge and release of, all Claims, including any interest accrued on Claims from

the Petition Date. Except as provided for in the Plan or this Order, as of the Effective Date, the Debtor will be discharged from all Claims or other debts that arose before the Effective Date and all debts of the kind specified in sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, whether or not (i) a proof of claim based on such debt is filed or deemed filed pursuant to section 501 of the Bankruptcy Code, (ii) a Claim based on such debt is allowed pursuant to section 502 of the Bankruptcy Code, or (iii) the holder of a Claim based on such debt has accepted the Plan.

11. As of the Effective Date, except as provided in the Plan or this Order, all persons will be precluded from asserting against the Debtor or its affiliates, successors, assigns or property, any other or further Claims, demands, debts, rights, causes of action, liabilities or interests against the Debtor based upon any act, omission, transaction or other activity of any kind or nature that occurred prior to the Effective Date. In accordance with the foregoing, except as provided in the Plan or this Order, as of the Effective Date, all such Claims and other debts and liabilities against the Debtor shall be discharged pursuant to sections 524 and 1141 of the Bankruptcy Code, provided, however, that nothing in the Plan or this Confirmation Order shall discharge, release, or enjoin an action, if any, by a governmental entity against any party for any claims under 29 U.S.C. §§ 1104-1109 and 1342(d). Such discharge will void any judgment obtained against the Debtor to the extent that such judgment relates to a discharged Claim.

12. However, nothing in the Debtor's bankruptcy proceedings, Confirmation Order, the Plan, the Bankruptcy Code (and section 1141 thereof), or any other document filed in the Debtor's bankruptcy case shall in any way be construed to discharge, release, limit or relieve the Debtor or any other party, in any capacity, from any liability or responsibility with respect to the Pension Plan or any other defined benefit pension plan under any law, governmental policy, or regulatory provision. The PBGC and the Pension Plan shall not be enjoined or precluded from

enforcing such liability or responsibility by any of the provisions of the Plan, Confirmation Order, Bankruptcy Code or any other document filed in any debtor's bankruptcy case.

13. Except as provided in the Plan or this Order, as of the Effective Date, all entities that have held, currently hold or may hold a Claim or other demand, debt, right, cause of action or liability that is discharged pursuant to the terms of the Plan are permanently enjoined from taking any of the following actions on account of any such discharged Claims, debts or liabilities: (i) commencing or continuing in any manner any action or other proceeding against the Debtor or its property; (ii) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against the Debtor or its property; (iii) creating, perfecting or enforcing any lien or encumbrance against the Debtor or its property or any released entity; (iv) asserting a setoff, right of subrogation or recoupment of any kind against any debt, liability or obligation due to the Debtor or its property; and (v) commencing or continuing any action, in any manner, in any place that does not comply with or is inconsistent with the provisions of the Plan.

14. This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any state or any other governmental authority with respect to the implementation or consummation of the Plan and any documents, instruments, or agreements, and any amendments or modifications thereto, and any other acts referred to in or contemplated by the Plan, the Disclosure Statement, and any documents, instruments, or agreements, and any amendments or modifications thereto.

15. Pursuant to section 1146(a) of the Bankruptcy Code, the making or delivery of any deed or other instrument of transfer by the Debtor under, in furtherance of, or in connection with, the Plan, including, without limitation, any disposition, liquidation, or dissolution, deeds, bills of sale, transfers of tangible property, will not be subject to any stamp tax, recording tax,

personal property tax, real estate transfer tax, sales or use tax or other similar tax, and the County Clerk or other recording officer of any office in which such document or instrument of transfer is to be recorded be and hereby is directed to record such instrument without collecting any such tax.

16. Pursuant to Article V of the Plan, unless otherwise provided in the Plan, on the Effective Date, or as soon thereafter as is reasonably practicable, the Debtor shall remit distributions to be made under the Plan to holders of Allowed Claims, and with respect to Disputed Claims, no payment shall be made unless such Disputed Claim becomes an Allowed Claim consistent with the Plan.

17. All final applications for payment of Professional Claims must be filed with the Bankruptcy Court and served by a date no later than thirty (30) days after the Effective Date. Copies of applications for payment of Professional Claims shall be served upon (i) the Office of the United States Trustee, 105 U.S. Courthouse, 10 Broad Street, Utica, New York 13501, Attn: Guy A. Van Baalen, Esq.; (ii) Bond, Schoeneck & King, PLLC, One Lincoln Center, Syracuse, New York 13202, Attn: Stephen A. Donato, Esq., counsel to the Debtor; and (iii) Arent Fox LLP, 1675 Broadway, New York, New York 10019-5820, Attn: Robert M. Hirsh, Esq., counsel to the Creditors' Committee.

18. The Debtor shall continue to make timely payments to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6) for all periods up to the date the Chapter 11 Case is converted, dismissed or closed by Court Order, and simultaneously provide to the United States Trustee post-confirmation operating reports indicating the cash disbursements for the relevant subsequent calendar quarters until the Chapter 11 Case is converted, dismissed or closed by Court Order.

19. The appointment of Thelma H. Snyder, as Patient Care Ombudsman under section 333 of the Bankruptcy Code, shall terminate upon the entry of the Confirmation Order in this Chapter 11 Case. Ms. Snyder shall be permitted to file a final application for compensation in connection with the services provided in connection with her appointment, to the extent she may not have previously done so.

20. Within ten (10) days after the Effective Date, or as soon as practicable thereafter, the Debtor shall mail a notice (the "Effective Date Notice"), in substantially the form annexed hereto as Exhibit "A", by first class mail, postage prepaid, to (i) the Office of the United States Trustee for the Northern District of New York, (ii) all known holders of Claims against the Debtor and (iii) all parties that have requested notice in this Chapter 11 Case. The form of Effective Date Notice is hereby approved. Service of the Effective Date Notice as provided herein shall constitute good and sufficient notice pursuant to Bankruptcy Rules 2002(f)(7), 2002(k) and 3020(c) of entry of this Order and of the relief granted herein and, except as otherwise set forth in this Order, no other or further notice need be given.

21. Unless otherwise agreed to in writing, no distribution on account of any Claim, whether allowed on or after the Effective Date, shall be deemed to waive the rights of the Debtor's estate in connection with any causes of action against the holder of any claim receiving such distribution, including, without limitation, any causes of action under chapter 5 of the Bankruptcy Code.

22. The Debtor shall have the right, in accordance with section 1127 of the Bankruptcy Code, to modify or amend the Plan after the Confirmation Date to the fullest extent permitted by law, provided that any such modification is consented to in writing, prior to the

effectiveness of any such modification or amendment, by the Creditors' Committee, or by Order of this Court.

23. The failure to specifically include or reference any particular provision of the Plan in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Plan be confirmed in its entirety.

24. Pursuant to sections 1123(a) and 1142(a) of the Bankruptcy Code, the provisions of this Confirmation Order and the Plan shall apply and be enforceable notwithstanding any otherwise applicable nonbankruptcy law.

25. Each term and provision of the Plan, as it may have been altered or interpreted by this Court, is valid and enforceable pursuant to its terms.

26. If any or all of the provisions of this Order are hereafter reversed, modified or vacated by subsequent Order of this Court or any other court, such reversal, modification or vacatur shall not affect the validity of the acts or obligations incurred or undertaken under or in connection with the Plan prior to the Debtor's receipt of written notice of any such order. Notwithstanding any such reversal, modification or vacatur of this Order, any such act or obligation incurred or undertaken pursuant to, and in reliance on, this Order prior to the effective date of such reversal, modification or vacatur shall be governed in all respects by the provisions of this Order and the Plan and all documents executed pursuant thereto or any amendments or modifications thereto.

27. To the extent of any inconsistency between the provisions of the Plan and this Confirmation Order, the terms and conditions contained in this Confirmation Order shall govern. The provisions of this Confirmation Order are integrated with each other and are nonseverable and mutually dependent unless expressly stated by further Order of this Court.

28. This Court shall retain jurisdiction of all matters arising out of or related to the Chapter 11 Case and this Plan as long as necessary for the purposes of §§ 105(a), 1127, 1142(a) and 1144 of the Bankruptcy Code and for, among other things, the following non-inclusive purposes:

a) to decide any objections to the allowance, disallowance or subordination of Claims or a controversy as to the classification of Claims;

b) to decide and fix (i) all Administrative Claims, (ii) Claims arising from the rejection of any executory contracts or unexpired leases, (iii) Liens on any Assets or any proceeds thereof, and (iv) any other fee and expense authorized to be paid or reimbursed under the Bankruptcy Code;

c) to liquidate or estimate damages or determine the manner and time for such liquidation or estimation in connection with any Disputed, contingent or unliquidated Claims;

d) to adjudicate any matters as may be provided for in the Confirmation Order;

e) to adjudicate all matters arising out of or related to Section 8.4 (Exculpation) of the Plan;

f) to effectuate Distributions under and enforce the provisions of the Plan;

g) to hear and determine any pending applications, adversary proceedings or contested matters including all controversies, suits and disputes that may arise in connection with the interpretation or enforcement of the Plan, and matters concerning state, local and federal taxes according to §§ 346, 505 and 1146 of the Bankruptcy Code;

h) to amend or to correct any defect, cure any omission or reconcile any inconsistency in this Plan or the Confirmation Order as may be necessary to carry out the purposes and intent of the Plan;

i) to enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, reversed, revoked or vacated;

j) to consider any modification of the Plan pursuant to § 1127 of the Bankruptcy Code or modification of the Plan after substantial consummation, as such term is defined in § 1101(2) of the Bankruptcy Code;

k) to determine such other matters as may be provided for in the Confirmation Order or as may be authorized under the provisions of the Bankruptcy Code to the maximum extent of its jurisdiction; and

l) to enter a final decree closing the Chapter 11 Case.

Dated: July 15, 2010
Syracuse, New York

Margaret Cangilos-Ruiz
United States Bankruptcy Judge

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 8th day of December, 2011, approves the filing of the Certificate of Dissolution of The Albert Lindley Lee Memorial Hospital, dated November 2, 2011.

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	The Gerry Homes
Address:	Jamestown
County:	Chautauqua
Structure:	Not-For-Profit
Application Number:	1911-L

Description of Project:

The Gerry Homes, a not-for-profit corporation, requests approval to obtain licensure as a home care agency under Article 36 of the Public Health Law.

This application is requesting approval to establish a licensed home care services agency (LHCSA) associated with a new Assisted Living Program (ALP). This LHCSA will be associated with the new Assisted Living Program (ALP) The Gerry Homes be known as the Orchard Grove Residence. This project is part of an approved HEAL-NY Phase 12 Grant.

The Board of Directors of The Gerry Homes comprises the following individuals:

Rev. William Rushik – Chair
Pastor, Free Methodist Church
Affiliations:

- Bergquist Adult Home (5/1992-present)
- Gerry Nursing Home Company, Inc. (8/1992-2008)
- Heritage Park Health Care Center (5/1992-present)
- Heritage Green Nursing Home (5/1992-present)
- Heritage Ministries Management Company, Inc. (5/2011-present)

Danny R. Johnson – Vice-Chair
Owner, Dan Johnson Construction Company
Affiliations:

- Bergquist Adult Home (5/1993-present)
- Gerry Nursing Home Company, Inc. (8/1992-2008)
- Heritage Park Health Care Center (5/1993-present)
- Heritage Green Nursing Home (5/1993-present)

Marian I. Barker – Secretary
Treasurer/Bookkeeper, Pittsburgh Conference Free Methodist Church
Affiliations:

- Bergquist Adult Home (5/1994-present)
- Gerry Nursing Home Company, Inc. (5/1994-2008)
- Heritage Park Health Care Center (5/1994-present)
- Heritage Green Nursing Home (5/1994-present)

Michael R. Vannest – Treasurer
Sr. Director, Global Development – Global Software Development, Global Crossing LTD
Affiliations:

- Bergquist Adult Home (5/2004-present)
- Gerry Nursing Home Company, Inc. (5/2006-2008)
- Heritage Park Health Care Center (5/2004-present)
- Heritage Green Nursing Home (5/2004-present)

Burton R. Jones
Retired

John A. Kelley
Retired
Affiliations:

- Bergquist Adult Home (8/2009-present)
- Heritage Park Health Care Center (8/2009-present)
- Heritage Green Nursing Home (8/2009-present)

Ruth Alexander Logan
VP for Administration, Roberts Wesleyan College
Affiliations:

- Bergquist Adult Home (2/2008-present)
- Heritage Village Rehab. & Skilled Nursing, Inc. (11/2007-present)
- Heritage Park Health Care Center (2/2008-present)
- Heritage Green Nursing Home (2/2008-present)
- Heritage Ministries Management Company, Inc. (12/2007-present)

Mark P. Robbins, RN
Director of Nursing, Chautauqua County Home
Affiliations:

- Bergquist Adult Home (5/2008-present)
- Heritage Village Rehab. & Skilled Nursing, Inc. (11/2007-present)
- Heritage Park Health Care Center (2/2008-present)
- Heritage Green Nursing Home (2/2008-present)
- Heritage Ministries Management Company, Inc. (12/2007-present)

Edwin G. Roorda
Cost Analyst/Business Process Analyst, ITT Corp
Affiliations:

- Bergquist Adult Home (2/2008-present)
- Heritage Village Rehab. & Skilled Nursing, Inc. (11/2007-present)
- Heritage Park Health Care Center (2/2008-present)
- Heritage Green Nursing Home (2/2008-present)
- Heritage Ministries Management Company, Inc. (12/2007-present)

Bertha A. Saho
Seaonsal Bookstore Clerk/Groundskeeper, Camp of the Woods/Gospel Volunteers
Affiliations:

- Bergquist Adult Home (5/1996-present)
- Gerry Nursing Home Company, Inc. (5/1996-2008)

The Office of the Professions of the State Education Department, the New York State Physician Profile and Office of Professional Medical Conduct, where appropriate, indicates no issues with the licensure of the health professionals associated with this application.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve Chautauqua County from an office located at 3017 North Main Street, Jamestown, NY 14701.

The applicant proposes to provide the following health care services:

Nursing Home Health Aide

A 10 year review of the operations of the following facilities was performed as part of this review (unless otherwise noted):

- Heritage Park Health Care Center - RHCF
- Heritage Green Nursing Home - RHCF
- Heritage House Child Care Center
- Bergquist Adult Home - ACF

The information provided by the Bureau of Quality and Surveillance indicated that the Residential Health Care Facilities, reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Office and Children Family Services Division of Child Care Services reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent code violations.

The information provided by the Bureau of Adult Care Facility Quality and Surveillance has indicated that the Adult Home, 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 16, 2011

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Delaware County Public Health Services
Address:	Delhi
County:	Delaware
Structure:	Public
Application Number:	2050L

Description of Project:

Delaware County Public Health Services, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The county currently operates a certified home health agency and long term home health care program which they are planning on selling. Delaware County is requesting approval to become licensed as a licensed home care services agency to enable the county to continue to provide essential public health nursing services in the event the CHHA and LTHHCP are sold.

The applicant proposes to serve the residents of Delaware County from an office located at 99 Main Street, Delhi, New York 13753.

The applicant proposes to provide nursing services

The Delaware County Public Health Services currently operates a Diagnostic and Treatment Center, Certified Home Health Agency and Long Term Home Health Care Program.

The information provided by the Division of Certification and Surveillance has indicated that the Diagnostic and Treatment Center has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Bureau of Quality Assurance and Licensure has indicated that the Certified Home Health Agency and Long Term Home Health Care Program have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation:	Contingent Approval
Date:	September 22, 2011

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Madison County Department of Health
Address:	Wampsville
County:	Madison
Structure:	Public
Application Number:	2051-L

Description of Project:

Madison County Department of Health, a government subdivision, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant currently operates a certified home health agency, a long term home health care program and a diagnostic and treatment Center. The Public Health and Health Planning Council contingently approved L. Worner, Inc.'s acquisition of the certified home health agency and long term home health care program at the October 6, 2011 meeting. Madison County Department of Health is requesting approval to become licensed as a licensed home care services agency to enable the county to continue to provide essential public health nursing services.

The applicant proposes to serve the residents of Madison County from an office located at:
138 North Court Street, Wampsville, New York 13163.

The applicant proposes to provide the following health care services:

Nursing Medical Social Services Nutrition

The information provided by the Bureau of Quality Assurance and Licensure has indicated that the certified home health care agency (CHHA) and long term home health care program (LTHHCP) reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the Division of Certification and Surveillance has determined that the Article 28 diagnostic and treatment center reviewed has exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation:	Contingent Approval
Date:	September 22, 2011

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Wayne County Public Health
Address:	Lyons
County:	Wayne
Structure:	Public
Application Number:	2058L

Description of Project:

Wayne County Public Health, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The county currently operates a certified home health agency which they are planning on selling. Wayne County is requesting approval to become licensed as a licensed home care services agency to enable the county to continue to provide essential public health nursing services in the event the CHHA is sold.

The applicant proposes to serve the residents of Wayne County from an office located at 1519 Nye Road, Suite 200, Lyons, New York 14489.

The applicant proposes to provide nursing services

The Wayne County Public Health Services currently operates a Diagnostic and Treatment Center and Certified Home Health Agency.

The information provided by the Division of Certification and Surveillance has indicated that the Diagnostic and Treatment Center has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The County of Wayne as operator of Wayne Community Nursing Care was fined eight thousand five hundred dollars ($8,500.00) pursuant to a stipulation and order dated July 11, 2011 for inspection findings of June 4, 2010 for violations 10 NYCRR Sections 763.11(a) Governing Authority; 763.11(b) Governing Authority; 763.4(h) Policy and Procedure of Service Delivery; 763.6(b) Patient Assessment and Plan of Care; 763.6(c) Patient Assessment and Plan of Care; 763.6(e) Patient Assessment and Plan of Care; and 763.2 Patients' Rights.

The information provided by the Bureau of Quality Assurance and Licensure has indicated that the certified home health agency has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation:	Contingent Approval
Date:	October 4, 2011

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Herkimer County Public Health Nursing Service
Address:	Herkimer
County:	Herkimer
Structure:	Public
Application Number:	2067L

Description of Project:

Herkimer County Public Health Nursing Service, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The county currently operates a certified home health agency and long term home health care program which they are planning on selling. Herkimer County is requesting approval to open a licensed home care services agency to enable the county to continue to provide essential public health nursing services in the event the CHHA and LTHHCP is sold.

The applicant proposes to serve the residents of Herkimer County from an office located at 301 N. Washington Street, Herkimer, New York 13350.

The applicant proposes to provide nursing services

Herkimer County currently operates an Adult Home, Diagnostic and Treatment Center, Certified Home Health Agency and Long Term Home Health Care Program.

The information provided by the Division of Certification and Surveillance indicated that the Diagnostic and Treatment Center has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Herkimer County Public Health Nursing Service was fined nine thousand dollars ($9,000.00) pursuant to a stipulation and order dated July 6, 2007 for inspection findings of November 5, 2003, December 7, 2005 and January 20, 2006 for violations 10 NYCRR Sections 763.4(a) & (h): Policies and procedures of service delivery; 763.6(a), (b) & (e): Patient assessment and plan of care; and 763.11(a) & (b): Governing authority.

The information provided by the Bureau of Quality Assurance and Licensure indicated that the Certified Home Health Agency and Long Term Home Health Care Program have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Bureau of Adult Care Facility Quality and Surveillance indicated that the Adult Home has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation:	Contingent Approval
Date:	October 19, 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 8th day of December, 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:
1758 L	Comfort Home Care, LLC (Nassau, Suffolk, Queens and Westchester Counties)
1778 L	Restoration Home Care Agency, Inc. (Kings, New York, Queens and Richmond Counties)
1826 L	Marian E. Howell d/b/a Golden Age Home Care (Bronx, New York, Queens, Kings, Richmond and Westchester Counties)
1852 L	Five Star Home Health Care Agency, Inc. (Bronx, Kings, New York, Queens, Richmond and Westchester Counties)
1952 L	Paramount Homecare Agency, Inc. (Bronx, Kings, Nassau, New York, Queens and Richmond Counties)

1911 L	The Gerry Homes (Chautauqua County)
1947 L	Surfside Manor Home for Adults, LLC d/b/a Surfside Manor LHCSA (Queens County)
2050 L	Delaware County Public Health Services (Delaware County)
2051 L	Madison County Department of Health (Madison County)
2058 L	Wayne County Public Health (Wayne County)
2067 L	Herkimer County Public Health Nursing Service (Herkimer County)
1705 L	Bestcare, Inc. (Nassau, Suffolk, Kings, Richmond, Queens, New York, Bronx, Dutchess, Rockland, Putnam, and Westchester Counties)
2073 L	VNA Home Health Services, Inc. (Westchester and Putnam Counties)

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

December 8, 2011

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Ambulatory Surgery Centers – Establish/Construct **Exhibit #18**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	092069 B	WNY Medical Management, LLC (Erie County) Mr. Booth - Interest	Contingent Approval
2.	111362 B	Upstate Gastroenterology, LLC d/b/a University Gastroenterology at the Philip G. Holtzapple Endoscopy Center (Onondaga County) Mr. Booth - Interest	Contingent Approval

Dialysis Centers – Establish/Construct **Exhibit #19**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	111504 B	Mills Pond Dialysis Center, LLC (Suffolk County) Dr. Bhat – Interest Mr. Fensterman - Recusal	Contingent Approval
	111475 B	USRC Lake Plains, Inc. (Orleans County) Dr. Bhat – Interest Mr. Booth - Interest	Contingent Approval

Residential Health Care Facility – Establish **Exhibit #20**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	111540 E	Fulton Operations Associates, LLC d/b/a Fulton Center for Rehabilitation and Healthcare (Fulton County) Mr. Fensterman - Recusal	Contingent Approval

Certificate of Amendment of the Certificate of Incorporation **Exhibit #21**

	Applicant	E.P.R.C. Recommendation
1.	ODA Primary Health Care Center, Inc. Mr. Fensterman – Recusal	Approval

HOME HEALTH AGENCY LICENSURES **Exhibit #22**

Number	Applicant/Facility	E.P.R.C. Recommendation
1758 L	Comfort Home Care, LLC (Nassau, Suffolk Queens and Westchester Counties) Mr. Regan - Interest	Contingent Approval
1778 L	Restoration Home Care Agency, Inc. (Kings, New York, Queens and Richmond Counties) Mr. Regan - Interest	Contingent Approval
1826 L	Marian E. Howell d/b/a Golden Age Home Care (Bronx, New York, Queens, Kings, Richmond and Westchester Counties) Mr. Regan - Interest	Contingent Approval
1852 L	Five Star Home Health Care Agency, Inc. (Bronx, Kings, New York, Queens, Richmond and Westchester Counties) Mr. Regan - Interest	Contingent Approval

1952 L	Paramount Homecare Agency, Inc. (Bronx, Kings, Nassau, New York, Queens and Richmond Counties) Mr. Regan - Interest	Contingent Approval
1947 L	Surfside Manor Home for Adults, LLC d/b/a Surfside Manor LHCSA (Queens County) Mr. Regan - Interest	Contingent Approval
1705 L	Bestcare, Inc. (Nassau, Suffolk, Kings, Richmond, Queens, New York, Bronx, Dutchess, Rockland, Putnam, and Westchester Counties) Mr. Regan - Interest	Contingent Approval
2073 L	VNA Home Health Services, Inc. (Westchester and Putnam Counties) Mr. Regan - Interest	Contingent Approval

Public Health and Health Planning Council

Project # 092069-B

WNY Medical Management, LLC

County: **Erie (Buffalo)** ***Program:*** **Ambulatory Surgery Center**
Purpose: **Establishment and Construction** ***Submitted:*** **May 4, 2009**

Executive Summary

Description

WNY Medical Management, LLC, a existing limited liability company, requests approval to establish and construct an Article 28 diagnostic and treatment center to be certified as a single-specialty ambulatory surgery center (ASC) for the provision of pain management procedures. The ASC will be located at 700 Michigan Avenue, Buffalo. WNY Medical Management, LLC is comprised of six physician partners as follows:

Proposed Member	*Interest*
Pratbha Bansal, MD	16.66%
William N. Capicotto, MD	16.67%
Cameron B. Huckell, MD	16.67%
Frank J. Muscaro, MD	16.67%
Joseph E. Serghany, MD	16.67%
Romanth Waghmarae, MD	16.66%

The proposed physician members, who will be providing services at the site, are board-certified physicians specializing in the following areas:

Proposed Member	*Board Certification*
Pratbha Bansal, MD	Physiatrist
William N. Capicotto, MD	Orthopedic Surgeon
Cameron B. Huckell, MD	Orthopedic Surgeon
Frank J. Muscaro, MD	Radiologist
Joseph E. Serghany, MD	Radiologist
Romanth Waghmarae, MD	Anesthesiologist

The proposed physician members will continue their private practices. Dr. Pratbha Bansal and Dr. Romanth Waghmarae are trained in pain management.

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 $237,890.

DOH Recommendation

Contingent approval for a 5-year limited life.

Need Summary

The proposed ASC will treat patients with acute or chronic pain. Buffalo General Hospital will provide back-up services for the proposed center.

Based on the current volume of procedures that are provided in the physician's private practices, the center expects to perform 2,000 procedures in the first 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.

Budget:	Revenues:	$ 986,112
	Expenses:	774,085
	Gain/(Loss):	$ 212,027

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

Architectural Summary

The proposed project for the construction fit-out of a 3400 SF single-specialty ambulatory surgical facility in a two-story, 30,000 SF medical office building. Two Class-A operating rooms are provided, each to be equipped with a C-Arm imaging system. The waiting and reception area provided is to be shared with an adjacent non-Article 28 medical imaging facility.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

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

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. 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 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, CSL]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
6. The submission of State Hospital Code (SHC) Drawings for review, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
7. A physicist's letter of certification for proposed construction of shielding for the project components involving ionizing radiation shall be submitted by a physicist licensed to practice in New York State and approved by the Department. [AER]
8. Submission of a photocopy of the applicant's executed proposed articles of organization, which are acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's executed operating agreement, which is acceptable to the Department. [CSL]
10. Submission of a photocopy of an executed facility lease agreement, which is acceptable to the Department. [CSL]
11. Submission of an assumed name, if applicable, which is acceptable to the Department. [HSP]

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 Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the start of construction. [AER]

6. The applicant shall complete construction by February 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]
7. Per 10NYRCC: 715.3(b)(3), rooms shall be provided for post operative recovery of surgical patients with at least one bed per operating room. [AER]
8. As a fully compliant EES system is not provided, normal operating procedures shall be limited to those not requiring the use of patient life support systems that may require the continuous availability of electrical power. [AER]
9. The submitted plans indicated provisions for class 'A' operating rooms only. In the event that epidural or other procedures are to be performed such that an operating room class designation of 'B' or 'C', per Guidelines 3.7-2, can be properly applied to any space provided, operating room(s) shall be sized and otherwise provisioned as required by regulation. Revisions to the plan shall be approved by the Department. [AER]
10. The proposed facility and an adjacent non-Article-28 medical facility are configured to share a single waiting/reception area. The physical and operational separations required by CMS shall be provided at all times. [AER]

Council Action Date
December 8, 2011.

Need Analysis

Background

WNY Medical Management, LLC requests approval to establish and construct a single-specialty ambulatory surgery center specializing in pain management procedures. The proposed center will include two procedure rooms, a recovery area, and an area for pain management interventions.

The physician members are board-certified in the following areas:

Physician	*Specialty*	*First Year Procedures*
Pratbha Bansal, M.D.	*Physiatrist*	*490*
William N. Capicotto, M.D.	*Orthopedist*	*20*
Cameron B. Huckell, M.D.	*Orthopedist*	*20*
Frank J. Muscaro, M.D.	*Radiologist*	*-*
Joseph E. Serghany, M.D.	*Radiologist*	*-*
Romanth Waghmarae, M.D.	*Anesthesiologist*	*1,470*
		2,000

The applicant projects that based on the volume of procedures performed in the physician's private practices that the center will perform 2,000 procedures in the first year of operation and 2,400 procedures in the third year of operation.

The center will have a sliding-fee scale for patients without insurance. The applicant expects that 2 percent of patients will qualify for charity care.

Existing Freestanding Ambulatory Surgery Centers-Erie County	
Erie County Facilities	*Procedures*
Ambulatory Surgery Center of WNY	8,824
Buffalo Ambulatory Surgery Center	8,619
Buffalo Surgery Center	4,525
Center for Ambulatory Surgery	13,186
Endoscopy Center of WNY	9,410
Eye Health Associates	4,202
Millard Fillmore Surgery Center	6,386
Sterling Surgical Center	3,661

SOURCE: SPARCS

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.

Programmatic Analysis

Program Proposal

Establish a diagnostic and treatment center that will also be federally certified as an ambulatory surgery center.

Proposed Operator	**WNY Medical Management**
Operator Type	LLC
Site Address	700 Michigan Avenue, Buffalo
Surgical Specialties	Pain Management
Operating Rooms	0
Procedure Rooms	2

Staffing (1st Year / 3rd Year)	5 FTEs / 5 FTEs
Medical Director(s)	Romanth Waghmarae
Emergency, In-Patient and Backup Support Services Agreement	Expected to be provided by Buffalo General Hospital
Distance	Less than 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 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 the LLC are:

Pratibha Bansal, M.D	16.66%
William Capicotto, M.D.	16.66%
Cameron Huckell, M.D.	16.66%
Frank Stet, M.D.	16.66%
Joseph Serghany, M.D.	16.66%
Romanth Waghmarae, M.D.	16.66%

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.

None of the applicants disclosed ownership/operator association with a medical care facility, other than the private practice of medicine.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Sublease Agreement

The applicant has submitted an executed sublease for approximately 3,000 square feet of space on the first floor at 700 Michigan Avenue in Buffalo, New York, under the terms of the lease agreement summarized below:

Date:	May 1, 2009
Lessor:	WNY Medical Arts Center, L.P.
Lessee:	WNY PET/CT,LLC
Sublessee:	WNY Medical Management, LLC
Term:	Four Years with four two year successive renewal terms upon CON approval.
Rental:	$60,000/year ($20/ sq. ft.)
Provisions:	Tenant shall be responsible for utilities and pro rata share of taxes and operating costs.

Two of the proposed physician members, Dr. Serghany and Dr. Mascaro own the building; therefore the lease will be a non-arm's length lease arrangement. The applicant has submitted letters from real estate brokers attesting to the reasonableness of the per square foot rental.

The other tenants of 700 Michigan Avenue are or will be Pinnacle Orthopedic and Spine specialists, LLP; W.G. Medical, PLLC and WNY PET/CT, LLC.

Total Project Cost and Financing

Total project costs for the acquisition of movable equipment is estimated at $237,890, broken down as follows:

Movable Equipment	$ 234,600
Application Fee	2,000
Additional Processing Fee	1,290
Total Project Cost	$237,890

The applicant will finance the total project costs through proposed members' equity. Presented as BFA Attachment A is the net worth statement of the proposed members, which shows sufficient equity.

Operating Budget

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

	Year One	Year Three
Revenues:	$821,760	$986,112
Expenses:		
Operating	$630,693	$655,093
Depreciation and Rent	118,992	118,992
Total Expenses	$749,685	$774,085
Net Income	$72,075	$212,027
Utilization: (visits)	2,020	2,424
Cost Per Visit	$371.13	$319.34

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

Commercial-Fee-For-Service	40.0%

Commercial-Managed Care	30.0%
Medicare-Fee-For-Service	5.0%
Medicare-Managed Care	20.0%
Medicaid Fee-For-Service	2.0%
Self Pay	1.0%
Charity Care	2.0%

Expense and utilization assumptions are based on the combined historical experience of the proposed physician private practices.

Capability and Feasibility

Total project costs of $237,890 will be financed through equity of the proposed members of WNY Medical Management, LLC. BFA Attachment A is the net worth statement of the proposed members of WNY Medical Management, LLC. , which shows there are sufficient funds available.

Working capital requirements, estimated at $125,080 appear reasonable based on two months of third year expenses and will be provided through equity of the proposed members. Presented as BFA Attachment B, is the pro-forma balance sheet of WNY Medical Management, LLC based on the first day of operation, which indicates positive member's equity position of $405,000.

The submitted budget indicates a net income of $72,075 and $212,027 during the first and third years of operation, respectively. Revenues are based on current reimbursement methodologies for ambulatory surgery services. The budget appears reasonable.

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

Recommendation

From a financial perspective, approval is recommended.

Architectural Analysis

Review Summary:

The proposed project is for a 3400 sf office fit-out to provide a single specialty ambulatory surgery facility with 2 Class-A operating rooms. The two operating rooms are each to be equipped with a C-Arm imaging system. Other spaces include a waiting and reception room, five changing cubicles, patient locker area, accessible patient toilet, 2 offices, staff break room, staff toilet. Clinical support spaces include a nurses station, 1 exam room, accessible patient toilet, 2 curtained recovery bays, soils room and clean storage.

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	Net Worth Statement of Proposed Members
BFA Attachment B	Pro-forma Balance Sheet of WNY Medical Management, LLC
BFA Attachment C	Establishment Checklist for Ambulatory Care Sites
BHFP Attachment	Map

Supplemental Information

Outreach

Below are presented summaries of responses by hospitals to letters from the Department asking for information on the impact of the proposed ambulatory surgery center (ASC) in their service areas. There follows a summary of the applicant's response to DOH's request for information on the proposed facility's volume of surgical cases, the sources of those cases, and on how staff will be recruited and retained by the ASC.

Facility: Erie County Medical Center
462 Grider Street
Buffalo, New York 114201

No response.

Facility: Kaleida Health
c/o Buffalo General Hospital
100 High Street
Buffalo, New York 14203

No response.

Facility: Mercy Hospital
565 Abbott Road
Buffalo, New York 14209

No response.

Facility: Sisters of Charity Hospital
2157 Main Street
Buffalo, New York 14214

No response.

Supplemental Information from Applicant

- Need and Sources of Cases

The applicant states that the facility will fulfill an unmet need in the community by virtue of its location in the heart of downtown Buffalo, where there are few, if any, pain management physicians. Those who seek care in the suburbs or other locations will find care available with less hardship and expense. Those in the city downtown area who have been unable to avail themselves of pain management services elsewhere will have access to such care for the first time. The applicant also expects that the facility's dedication to pain management will result in more efficient service focused on the particular needs of pain management patients, which will also help bring in patients. The applicant also anticipates that the facility's single-specialty designation will attract other pain management physicians to the facility, which will further increase volume.

- Staff Recruitment and Retnetion

The applicant physicians have been able to retain staff on a long-term basis in their office practices, and they expect to continue this success by providing employee training specific to pain management services, clear ongoing direction to employees, a competitive benefit package, and a congenial work environment.

- Office-Based Cases

The applicant expects that less that 10 percent of the procedures to be performed at the proposed ASC are of a category that could be performed in an office 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 8th day of December, 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 certified as a single specialty ambulatory surgery center specializing in pain management 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:	FACILITY/APPLICANT:
092069 B	WNY Medical Management, LLC

APPROVAL CONTINGENT UPON:

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

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. 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 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, CSL]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
6. The submission of State Hospital Code (SHC) Drawings for review, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
7. A physicist's letter of certification for proposed construction of shielding for the project components involving ionizing radiation shall be submitted by a physicist licensed to practice in New York State and approved by the Department. [AER]
8. Submission of a photocopy of the applicant's executed proposed articles of organization, which are acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's executed operating agreement, which is acceptable to the Department. [CSL]
10. Submission of a photocopy of an executed facility lease agreement, which is acceptable to the Department. [CSL]
11. Submission of an assumed name, if applicable, which is acceptable to the Department. [HSP]

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 Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the start of construction. [AER]
6. The applicant shall complete construction by February 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]
7. Per 10NYRCC: 715.3(b)(3), rooms shall be provided for post operative recovery of surgical patients with at least one bed per operating room. [AER]
8. As a fully compliant EES system is not provided, normal operating procedures shall be limited to those not requiring the use of patient life support systems that may require the continuous availability of electrical power. [AER]
9. The submitted plans indicated provisions for class 'A' operating rooms only. In the event that epidural or other procedures are to be performed such that an operating room class designation of 'B' or 'C', per Guidelines 3.7-2, can be properly applied to any space provided, operating room(s) shall be sized and otherwise provisioned as required by regulation. Revisions to the plan shall be approved by the Department. [AER]
10. The proposed facility and an adjacent non-Article-28 medical facility are configured to share a single waiting/reception area. The physical and operational separations required by CMS shall be provided at all times. [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 # 111362-B

Upstate Gastroenterology, LLC d/b/a University Gastroenterology at the Philip G. Holtzapple Endoscopy Center

County: **Onondaga (Syracuse)** ***Program:*** **Ambulatory Surgery Center**
Purpose: **Establishment and Construction** ***Submitted:*** **April 7, 2011**

Executive Summary

Description

Upstate Gastroenterology, LLC d/b/a University Gastroenterology at the Philip G. Holtzapple Endoscopy Center, an existing New York State limited liability company, requests approval to establish and construct a single-specialty freestanding ambulatory surgery center (FASC) to perform endoscopy and colonoscopy services. This application is for the conversion of an existing not-for-profit private practice, which is run through the Department of Medicine Medical Service Group at the SUNY Health Science Center at Syracuse, Inc. (DOM). The Center will be located in leased space on the second floor at 1000 East Genesee Street, Suite 206, Syracuse.

The facility will enter into a Professional Employer Agreement with MedBest Medical Management, Inc., to provide services including but not limited to: management, administrative, information system, and other non-medical services to the facility.

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 $222,339.

DOH Recommendation

Contingent approval for a 5-year limited life.

Need Summary

The proposed Center will provide a specialized resource for the communities of Onondaga County under a regulated Article 28 entity.

The number of procedures to perform is projected as follows:

Current Year:	0
First Year:	2,060
Third Year:	2,207

The procedures projected for the Center are currently being performed in the not-for-profit office setting of the three participating gastroenterologists through the DOM.

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

Project costs will be met with cash.

Year 3 Budget:	*Revenues:*	*$ 1,218,986*
	Expenses:	*1,050,537*
	Gain/(Loss):	*$ 168,449*

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

Architectural Summary

This CON proposes to reconfigure an existing 6,896 SF single-specialty ASC with 4 procedure rooms. Two existing patient recovery bays will be removed allowing additional floor area for the 8 remaining patient holding areas, which are to serve as either patient prep or recovery areas as schedule dictates. Administrative offices, staff facilities, and services are provided via separate rear entrance, while patients and a reception/ work area are accessed from a front public entrance. The procedure rooms and other clinical spaces are situated between these front and rear administrative areas.

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 building sublease that is acceptable to the Department of Health. [BFA, CSL]
6. Submission of an executed Professional Employer Agreement and an executed Employee Sublease Agreement that is acceptable to the Department of Health. [BFA, CSL]
7. Submission of a photocopy of the applicant's executed proposed amended articles of organization, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's executed proposed amended operating agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's executed professional employer agreement, acceptable to the Department. [CSL]

Approval conditional upon:

1. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
2. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
3. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
4. The clinical space must be used exclusively for the approved purpose. [HSP]
5. The submission of State Hospital Code (SHC) Drawings for review, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
6. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the start of construction. [AER]
7. The applicant shall complete construction by February 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

December 8, 2011.

Need Analysis

Background

Upstate Gastroenterology, LLC, d/b/a University Gastroenterology at the Philip G. Holtzapple Endoscopy Center proposes to establish and construct an Article 28 diagnostic and treatment center to be certified as a single-specialty, freestanding ambulatory surgery center (FASC) providing gastroenterological services at 1000 East Genesee Street, Suite 206, Syracuse. The Center will have four (4) procedure rooms.

The sole member and manager of Upstate Gastroenterology, LLC is the Department of Medicine Medical Service Group at the SUNY Health Science Center at Syracuse, Inc. (DOM), an existing NYS not-for-profit corporation affiliated with the SUNY Upstate Medical University. The DOM is currently accredited to provide office-based surgery by the Accreditation Association for Ambulatory Health Care.

Analysis

The service area for this project is Onondaga County. The proposed project is located in a Federally Designated Health Professional Shortage Area (HPSA) for primary care services. The procedures projected for the Center are currently being performed in the not-for-profit office setting of the three participating gastroenterologists through the DOM.

The number of diagnostic and treatment centers and hospital-based extension clinics in Onondaga County is as follows:

Type of Facility	***Single-Specialty***	***Multi-Specialty***
D&TC	1-Gastroenterology	2
D&TC	3-Endoscopy	0
D&TC	2-Orthopedic	0
Hospital-Extension Clinics	0	3

SOURCE: Onondaga County-HFIS

The proposed Center will provide a specialized resource for the communities of Onondaga County under a regulated Article 28 entity. Its location in a Federally Designated Health Professional Shortage Area will help improve access to gastroenterological care in an underserved area.

The applicant commits to providing charity care for persons without the ability to pay, and to utilize a sliding fee scale for persons who are unable to pay the full charge for services or are uninsured.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

Establish a diagnostic and treatment center which will also be federally certified as an ambulatory surgical center.

Proposed Operator	**Upstate Gastroenterology**
Operator Type	LLC
Doing Business As	University Gastroenterology at the Philip G. Holtzapple Endoscopy Center
Site Address	1000 East Genesee Street, Syracuse
Surgical Specialties	Gastroenterology
Operating Rooms	0

Procedure Rooms	4
Hours of Operation	Monday through Friday from 8:00 am to 4:30 pm (Extended as necessary to accommodate patient needs).
Staffing (1st Year / 3rd Year)	6.05 FTEs / 6.55 FTEs
Medical Director(s)	Ronald D. Szyjkowski
Emergency, In-Patient and Backup Support Services Agreement	Will be provided by University Hospital SUNY Health Science Center
Distance	0.5 miles and 3 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 that 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 sole member and manager of Upstate Gastroenterology, LLC is the Department of Medicine Medical Service Group at the SUNY Health Science Center at Syracuse, Inc. (DOM). DOM is an existing not-for-profit corporation affiliated with the State University of New York Upstate Medical University. The Board of Directors of DOM is as follows:

Name
Michael C. Iannuzzi, MD
Vincent E. Frechette, MD
Sara J. Grethlein, MD
Bernard J. Poiesz, MD
Ruth S. Weinstock, MD

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's and relatives' ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management (relative to Medicaid fraud and abuse), the Office of Professional Medical Conduct, and the Education Department databases.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action. Based on this information, staff concluded that the 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.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Background

The proposed member of Upstate Gastroenterology, LLC d/b/a University Gastroenterology at the Philip G. Holtzapple Endoscopy Center is shown below:

Department of Medicine Medical Service Group at the SUNY Health Science Center at Syracuse, Inc (DOM)	100%

Presented as BFA Attachment A, are financial statements for the Department of Medicine Medical Service Group at the SUNY Health Science Center at Syracuse, Inc. (DOM).

Professional Employer Agreement

Upstate Gastroenterology, LLC d/b/a Upstate Gastroenterology at the Philip G. Holtzapple Endoscopy Center will enter into a Professional Employer Agreement with MedBest Medical Management, Inc. Medbest would provide management, administrative, information system and other non-medical services to the facility for the development of an outpatient endoscopy center.

The applicant has submitted a proposed Professional Employer Agreement, which is summarized below:

Date:	Date of official DOH Approved occupancy
Facility:	Upstate Gastroenterology, LLC
Contractor:	MedBest Medical Management, Inc
Fee:	$92,414 per year for 1.5 staff positions.
Term:	Two years with automatic 2 year renewal terms, unless terminated pursuant to the terms of the agreement.
Duties of the Consultant:	MedBest Medical Management, Inc. as a consultant, will provide the following: a registered nurse and part time clerical staff to the facility.

Employee Sublease Agreement

The facility will also enter into a Employee Sublease Agreement with Department of Medicine Medical Service Group at the SUNY Health Science Center at Syracuse, Inc. (DOM) , to provide personnel including but not limited to Clerical and clinical personnel to the facility.

The applicant has submitted a proposed Employee sublease Agreement, which is summarized below:

Date:	Date of official DOH Approved occupancy
Facility:	Upstate Gastroenterology, LLC
Contractor:	Department of Medicine Medical Service Group at the SUNY Health Science Center at Syracuse, Inc. (DOM).
Fee:	$385,876 per year for 7 staff positions.
Term:	One year with automatic one year renewal terms unless terminated by either party.
Duties of the Contractor:	Department of Medicine Medical Service Group at the SUNY Health Science Center at Syracuse, Inc. (DOM): to provide the facility with 7 staff employees, 1 nursing administrator, 2 clerical staff, 1 registered nurse and 3 licensed practical nurses.

Sublease Rental Agreemennt

The applicant will sublease 6,896 square feet on the second floor of the building at 1000 East Genesee Street, Suite 206, Syracuse (Onondaga County)**,** under the terms of the sublease agreement summarized below:

Lessor:	Business Venture Associates Limited Partnership
Lessee/Sublessor:	Department of Medicine Medical Service Group at the SUNY Health Science Center at Syracuse, Inc
Sublessee:	Upstate Gastroenterology, LLC
Term:	10 years with 2 (5 year) renewal terms
Rental:	$190,192 Per Year ($27.58 per square foot) $15,849.33 per month.
Provisions:	Triple Net Lease

Total Project Cost and Financing

Total project costs for Renovation and Demolition and Other fees is estimated at $222,339, broken down as follows:

Renovation and Demolition	$113,667
Design Contingency	11,367
Construction Contingency	11,367
Architectural/Engineering Fees	22,733
Other Fees (Attorney/accounting fees, consultant fees and architect fees)	60,000
Application Fee	2,000
Additional Processing Fee	1,205
Total Project Cost	$222,339

Project costs are based on an April 1, 2012 construction start date and a 2 month construction period.
The applicant's financing plan appears as follows:

Equity	$ 222,339

Operating Budget

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

	Year One	Year Three
Revenues:	$1,137,936	$1,218,986
Expenses:		
Operating	$796,328	$814,631
Interest		
Depreciation and Rent	258,183	235,906
Total Expenses	$1,054,511	$1,050,537
Net Income	$83,425	$168,449
Utilization: (Visit)	2,060	2,207
Cost Per Visit	$511.90	$476.00

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

Commercial fee- for-service	15.00 %
Commercial Managed Care	35.00 %
Medicare fee-for-service	35.00 %
Medicare Managed Care	2.00 %
Medicaid fee-for-service	4.00 %

Medicaid Managed Care	6.00 %
Private Pay	1.00 %
Charity Care	2.00 %

Expense assumptions are based on the experience of the private gastroenterology practice as well as the projections and experience of other freestanding ambulatory surgery centers in New York State. Utilization for the first year of operation is based on the participating physicians' current procedures being performed in the private practice office with year three having a slight increase of 7%.

Capability and Feasibility

The initiation of operations as a financially viable entity will be provided as equity by the proposed member. Working capital requirements, estimated at $175,090 appear reasonable based on two months of third year expenses. The facility will provide the total working capital for this project from cash on hand.

Presented as BFA Attachment A is the 2010 internal Financial statements for Department of Medicine Medical Service Group at the SUNY Health Science Center at Syracuse, Inc (DOM) ., which indicates the availability of sufficient funds for the stated levels of equity. Presented as BFA Attachment B is the pro-forma balance sheet of as of the first day of operation, which indicates positive member's equity position of $469,324.

The submitted budget indicates a net income of $83,425 and $168,449 would be maintained during the first and third years of operation, respectively.

Recommendation

From a financial perspective, contingent approval is recommended.

Architectural Analysis

Background

The proposed project entails the renovation of 475 sf in an existing single specialty ambulatory surgery facility totaling 6896 sf. The facility comprises 4 procedure rooms at 254 sf, 217 sf, 217 sf, and 251 sf. Separate entrances are provided for patients and staff. A staff and services entrance provides access to 4 administrative offices at 136 sf, 136 sf, 146 sf and 117 sf; an education room, 295 sf; separate women's and men's locker rooms with toilets, 127 sf and 86 sf; soiled holding, 70 sf; medical gas storage, and housekeeping.

The public/patient entrance provides access to a 544 sf waiting area, 195 sf reception space, and a single office. Situated and providing through access between these two administrative areas is an open plan patient holding area with 8 curtained treatment bays serving alternately for patient prep and patient recovery as scheduling dictates.

Two existing patient recovery bays are to be eliminated in the proposed scheme to allow for provision of minimum area requirements in the 8 remaining bays and the reconfiguration of the nurses station and office. Scope decontamination at 71 sf, processing at 150 sf, and storage at 61 sf are accessed from a restricted corridor serving the procedure rooms. Approximately 1200 sf of acoustical ceiling tile will be replaced in connection with the formation of a new ducted air return.

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	2010 Internal financial statement for Department of Medicine Medical Service Group at the SUNY Health Science Center at Syracuse, Inc. (DOM)
BFA Attachment B	Pro-forma Balance Sheet of Upstate Gastroenterology, LLC
BFA Attachment C	Organizational Chart Upstate Gastroenterology, LLC
BFA Attachment D	Establishment Checklist for Upstate Gastroenterology, LLC d/b/a Upstate Gastroenterology at the Philip G. Holtzapple Endoscopy Center
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: Crouse Hospital
736 Irving Avenue
Syracuse, New York 13210

No response.

Facility: St. Joseph's Hospital Center
301 Prospect Avenue
Syracuse, New York 13203

No response.

Facility: University Hospital SUNY Health Science Center
750 East Adams Street
Syracuse, New York 13210

No response.

Supplemental Information from Applicant

- Need and Sources of Cases

The applicant states that the projected utilization for the proposed ASC is based on the current office-based caseload of the participating gastroenterologists who have committed to perform cases at the facility. The applicant also cites

growing local demand for ambulatory surgical procedures, as evinced by data showing a compound annual growth rate of 21.4% in procedures performed in freestanding ASC's in the Central New York region between 2000 and 2010. The applicant also states that performing cases in a facility that is under the control of its sole member, the Department of Medicine Medical Service Group at the SUNY Health Sceince Center at Syracuse, Inc., an existing, New York State, nor-for-profit corporation that works closely with University Hospital, will result in greater convenience and efficiency for patients and physicians, which will foster utilization of the proposed ASC.

- Staff Recruitment and Retnetion

The applicant states that 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 the existing staff will, for the most part, meet the needs of the proposed diagnostic and treatment center, which will minimize or eliminate any concern regarding loss of staff by hospitals to the proposed ASC.

- Office-Based Cases

As noted, the ASC's expected cases will come from the not-for-profit private practice of the participating physicians. All of these cases are currently being performed as office-based procedures in the private practice setting. The applicant projects first-year utilization to 2,060 procedures (representing 1,873 cases) and third-year utilization to be 2,207 procedures (representing 2,006 cases). All of these cases could otherwise be performed in the participating physicians' private office, based upon their current experience.

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 8th day of December, 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 free standing ambulatory surgery center to perform endoscopy and colonoscopy services, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:	FACILITY/APPLICANT:
111362 B	Upstate Gastroenterology, LLC d/b/a University Gastroenterology at the Philip G. Holtzapple Endoscopy Center

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 building sublease that is acceptable to the Department of Health. [BFA, CSL]
6. Submission of an executed Professional Employer Agreement and an executed Employee Sublease Agreement that is acceptable to the Department of Health. [BFA, CSL]
7. Submission of a photocopy of the applicant's executed proposed amended articles of organization, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's executed proposed amended operating agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's executed professional employer agreement, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
2. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
3. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
4. The clinical space must be used exclusively for the approved purpose. [HSP]
5. The submission of State Hospital Code (SHC) Drawings for review, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
6. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the start of construction. [AER]
7. The applicant shall complete construction by February 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 # 111504-B

Mills Pond Dialysis Center, LLC

County: **Suffolk (St. James)** ***Program:*** **Dialysis Services**
Purpose: **Establishment and Construction** ***Submitted:*** **June 13, 2011**

Executive Summary

Description

Mills Pond Dialysis Center, LLC, a newly-organized limited liability company, requests approval to establish and construct a diagnostic and treatment center (DTC) to provide a 12-station end stage renal disease dialysis service. The facility will be open to the general public, as well as serve those dialysis patients residing at JOPAL at St. James, LLC d/b/a Mills Pond Nursing and Rehabilitation Center, a 252-bed proprietary residential health care facility (RHCF) located at 273 Moriches Road, St. James. The applicant will lease space at Mills Pond Nursing and Rehabilitation Center and perform renovations to accommodate the dialysis stations.

The proposed members of Mills Pond Dialysis Center, LLC, and their ownership percentages are as follows:

Joseph F Carillo II	33.33%
Pasquale DeBenedictis	33.34%
Alex Solovey	33.33%

Total project costs are estimated at $2,202,439.

DOH Recommendation

Contingent approval.

Need Summary

There is a need in Suffolk County for additional dialysis stations. According to the Department's methodology, there is presently a need for 324 stations to treat existing patients in Suffolk County. Currently, there are 291 stations, leaving an unmet need of 33 stations.

Upon completion of this project, there will be an unmet need for 21 stations.

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 via equity of $220,244 and a bank loan of $1,982,195 (10 yrs. @ 7.0%).

Budget:		
	Revenues:	*$ 3,122,104*
	Expenses:	*2,940,792*
	Gain/(Loss):	*$ 181,311*

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 proposing the fit-out of a 12-station dialysis clinic at the 250 bed Mills Pond Nursing and Rehabilitation Center. Existing storage and office space located at the RHCF's basement level is to be repurposed for the proposed facility.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fIfty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a statement from the applicant, acceptable to the Department, that the proposed financial/referral structure has been assessed with the consultation of legal counsel, in light of anti-kickback and self-referral laws, and it is concluded that proceeding with the proposal is acceptable. [RNR, CSL]
3. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
4. Submission of an executed facility lease agreement, acceptable to the Department. [BFA, CSL]
5. Submission of an executed equipment lease, acceptable to the Department. [BFA]
6. Submission of a loan commitment, acceptable to the Department. [BFA]
7. Submission of a Working Capital Loan commitment, acceptable to the Department. [BFA]
8. Submission of a photocopy of the applicant's executed proposed articles of organization, which are acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's executed operating 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 start of construction. [AER]
7. The applicant shall complete construction by April 1, 2014 upon the filing of Final Construction Documents in accordance with 10 NYCRR section 710.7. [AER]
8. All sliding doors provided, including those located at the proposed Isolation Room, shall be provided with a break-away feature which shall not obstruct the path of egress during that mode of use in accord with the requirements of NFPA 101. [AER]
9. The reception/waiting area shall be configured to provide for private interactions between reception personnel and patients. [AER]
10. Floor drains shall be provided as required by 10NYCRR. [AER]
11. In compliance with NFPA 101, not more than 50% of the required exits shall discharge through areas on the level of discharge. [AER]
12. Applicant shall confirm the provision of sufficient storage space for the RHCF with the loss of storage space to be repurposed for the proposed facility. [AER]

Council Action Date

December 8, 2011.

Need Analysis

Background

The applicant is seeking approval to establish and construct a 12-station chronic dialysis facility in a designated space at JOPAL at St. James, LLC d/b/a Mills Pond Nursing & Rehabilitation Center, located at 273 Moriches Road, St. James, New York. The facility will be operated by a newly established entity called Mills Pond Dialysis Center, LLC.

Population

The service area for this application is Suffolk County.

2009 Estimated:	1,493,350		
Ages 65 and Over:	13.4%	State Average:	13.4%
Nonwhite:	19.2%	State Average:	34.3%

The Department tracks statistics on populations with a higher probability of contracting End Stage Renal Disease (ESRD), which requires dialysis.

The cohort representing those over the age of 65 is the fastest growing demographically on Long Island and represent the largest users of dialysis services. In Suffolk County, the 65+ cohort represents 13.4% of the population, which is consistent with the Statewide average.

Minority groups are also at a greater risk of developing Type II Diabetes which is the leading cause of end-stage renal disease (ESRD). In Suffolk County, the non-white population is 19.2% which is substantially lower than the Statewide average of 34.3%

Capacity

The Department's methodology to estimate capacity for chronic dialysis stations is as follows:

- One free standing station represents 702 treatments per year. This is based on the expectation that the center will operate 2.5 patient shifts per day at 6 days per week (15 patients per week). This is a potential 780 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 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 291 operating Dialysis Stations in Suffolk and 9 in pipeline. This project will add 12 free standing stations to the pipeline status, for a total of 21 total pipeline stations.

- Based upon the DOH dialysis need methodology, existing stations in Suffolk could treat a total of 1310 patients annually. Upon all projects being completed in Suffolk County 1,404 residents will be able to receive treatment.

- Based upon a conservative estimate of a three percent annual increase in patients treated in Suffolk County facilities and Suffolk County residents receiving treatment, the current 291 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 by 2015, even after the completion of this project.

County Need	***2009***		***2015***	
	Patients	*Residents*	*Patients*	*Residents*
Treated	1455	1409	1738	1683
Free Standing Stations Needed	324	314	387	374
Current Total Stations	291	291	291	291
Unmet Need	*33*	*23*	*96*	*83*

As seen in the table above, there will still be significant need in Suffolk County for additional dialysis stations in 2015. Although all area residents are being treated, Suffolk County has a large number of tourists and visitors in a given year, among whom there are individuals in need of dialysis.

Conclusion

This proposed center will expand dialysis capacity for Suffolk residents and visitors and help to ensure that services are available to treat patients with ESRD.

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Background

Establish a diagnostic and treatment center to provide chronic renal dialysis services.

The center will be located within JOPAL at St. James, LLC d/b/a Mills Pond Nursing & Rehabilitation Center. The housing of the proposed dialysis unit within the residential health care facility will not result in a reduction of space for the current nursing home services. The chronic renal dialysis facility will have a separate outside entrance for direct access to the Center, as well as access for residents of the nursing home via a common corridor.

Proposed Operator	**Mills Pond Dialysis Center**
Operator Type	LLC
Site Address	273 Moriches Road, St. James
Stations	12
Shifts/Hours/Schedule	One shift per day, increasing to three shifts per day by the third year
Staffing (1st Year / 3rd Year)	10.5 FTEs/19.0 FTEs
Medical Director(s)	Mark Allen Finger
Emergency, In-Patient and Backup Support Services Agreement	Expected to be provided by Huntington Hospital
Distance	19.68 miles and 32 minutes 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, who are the same as the operators of the nursing home, are:

Joseph F. Carillo II	33 1/3%
Pasquale DeBenedictis	33 1/3%
Alex Solovey	33 1/3%

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 applicants 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.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Background

The proposed members each have ownership interests of 33.33% respectively, in Barnwell Nursing and Rehabilitation Center, LLC, effective November 2003. Presented as BFA Attachment C, is a financial summary of Barnwell Nursing and Rehabilitation Center, LLC. Joseph F. Carillo II also has an 11.11% ownership interest in Carillon Nursing and Rehabilitation Center, LLC.

Presented as BFA Attachment D, is a financial summary of Carillon Nursing and Rehabilitation Center, LLC.
All three proposed members have acquired an ownership interest in East Neck Nursing and Rehabilitation Center, Inc. (Joseph F. Carillo II 26.68%; Pasquale DeBenedicitis 15%; Alex Solovey 15%). Presented as BFA Attachment E, is a financial summary of East Neck Nursing and Rehabilitation Center, Inc. All three proposed members have also acquired an ownership interest in Jopal at St. James LLC d/b/a Mills Pond Nursing and Rehabilitation Center (Joseph F. Carillo II 33.33%; Pasquale DeBenedicitis 33.34%; Alex Solovey 33.34%). As they have just purchased their shares in the facility, no financial summary is available at this time.

Draft Lease Rental Agreement

The applicant has submitted a draft lease rental agreement for the site to be occupied. The terms are summarized below:

Premises:	4,700 square feet located at 273 Moriches Road, St. James, NY
Lessor:	Jopal, at St. James, LLC d/b/a Mills Pond Nursing and Rehabilitation Center
Lessee:	Mills Pond Dialysis Center, LLC
Rental:	$339,312 ($72.19 per sq. ft.) for year one, with a 1% increase, each year thereafter
Term:	10 years with 2 subsequent 5-year renewal terms
Provisions:	The lessee shall be responsible for real estate taxes, repairs, insurance and telephone service

The applicant has indicated that the lease arrangement will be a non-arms-length lease arrangement, since the proposed members of Mills Pond Dialysis Center, LLC, have ownership interests in Jopal, at St. James, LLC d/b/a Mills Pond Nursing and Rehabilitation Center

Total Project Cost and Financing

Total project cost for renovations and the acquisition of moveable equipment, is estimated at $2,202,439, broken down as follows:

Renovation and Demolition	$1,086,650
Design Contingency	121,025
Construction Contingency	121,025
Fixed Equipment	123,600
Architect/Engineering Fees	94,000
Other Fees	75,000
Moveable Equipment	453,612
Financing Costs	81,065
Interim Interest Expense	32,426
CON Application Fee	2,000
CON Additional Processing Fee	12,036
Total Project Cost	$2,202,439

Project costs are based on a construction start date of 12/1/2011, and a six-month construction period. The applicant's financing plan is as follows:

Equity	$220,244
Loan Capital One Bank (7% interest 10 Year term)	1,982,195

Operating Budget

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

	Year One	Year Three
Revenues	$1,310,723	$3,122,104
Expenses:		
Operating	$1,238,285	$2,416,262
Capital	524,530	524,530
Total Expenses	$1,762,815	$2,940,792
Net Income	($452,093)	$181,311
Utilization: (treatments)	4,896	11,808
Cost Per Treatment	$360.05	$249.05

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

	Year 1	Year 3
Medicare	76.48%	77.56%
Medicaid	11.76%	11.22%
Commercial/Other	11.76%	11.22%

Expense and utilization assumptions are based on the experience of existing, comparably sized chronic renal dialysis centers.

Capability and Feasibility

The issue of capability is centered on the applicant's ability to meet the total project cost, working capital requirements, and initiate operations as a financially viable entity.

Total project cost of $2,202,439 will be met through equity and debt financing. $1,982,195 will be covered through a loan at the above stated terms.

The balance of $220,244 will be provided in the form of equity from the proposed members' personal resources. Presented as BFA Attachment A, is a summary net worth of the proposed members, which shows sufficient funds for the stated level of equity.

Working capital requirements estimated at $490,132 appear reasonable based on two months of third year expenses; the proposed members will provide equity of $245,066 toward working capital and borrow the remainder. A letter of interest has been provided for the working capital loan, indicating repayment terms of 7% interest over five (5) years. Capital One Bank has supplied a letter of interest for the working capital loan.

Presented as BFA Attachment A, is a summary net worth statement of the proposed members of Mills Pond Dialysis Center, LLC. As shown, there are sufficient funds for the stated levels of equity. Presented as BFA Attachment B, is the pro-forma balance sheet of Mills Pond Dialysis Center, LLC, as of the first day of operation, which indicates a positive member's equity position of $245,066.

The issue of feasibility is centered on the applicant's ability to meet expenses with revenues and maintain a viable operating entity. The submitted budget indicates a net loss of $452,093 during the first year of operation and a net income of $181,311 during the third year of operation. The first year loss will be offset from working capital. Revenues are based on current reimbursement methodologies for dialysis services.

Presented as BFA Attachment C, is a financial summary of Barnwell Nursing and Rehabilitation Center, LLC. As shown on BFA Attachment C, the facility has a positive working capital and equity position, and generated an average net income of $377,025, for the period 2008-2010.

Presented as BFA Attachment D, is a financial summary of Carillon Nursing and Rehabilitation Center, LLC. As shown on BFA Attachment D, the facility has maintained positive working capital and equity positions, and generated an average net income of $670,766, for the period 2008-2010.

Presented as BFA Attachment E, is the financial Summary of East Neck Nursing and Rehabilitation Center, Inc. As shown on BFA Attachment E, the facility has maintained positive working capital and equity positions, and generated an average net income of $572,455 for the period 2008-2010.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Architectural Analysis

Background

The proposed project is for the construction a 12 station dialysis clinic by renovating existing storage and office space in the basement level of an existing 3 story RHCF. The individual treatment areas are typically 88 sf, exceeding the Guidelines 80 sf minimum, and are configured to allow for direct observation from one of two nursing stations. One isolation room is also provided at 100 sf. A Waiting and reception area, an administrative office and other support rooms are provided in spaces contiguous with the open treatment area. Provided across a public corridor, are men's and women' staff locker rooms with toilets, and an 88 sf office. An adjacent water treatment room, 228 sf, is also accessed through the corridor.

Environmental Review

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

Recommendation

From an architectural perspective, approval is recommended.

Attachments

BFA Attachment A	Summary Net Worth Statement, Members of Mills Pond Dialysis Center, LLC
BFA Attachment B	Pro- forma Balance Sheet of Mills Pond Dialysis Center, LLC
BFA Attachment C	Financial Summary, Barnwell Nursing and Rehabilitation Center, LLC 2008-2010
BFA Attachment D	Financial Summary, Carillon Nursing and Rehabilitation Center, LLC 2008-2010
BFA Attachment E	Financial Summary, East Neck Nursing and Rehabilitation Center, Inc. 2008-2010
BFA Attachment F	Establishment Checklist Mills Pond Dialysis Center, LLC
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 8th day of December, 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 12-station renal dialysis center to be located within Mills Road Nursing 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:	FACILITY/APPLICANT:
111504-B	Mills Pond Dialysis Center, LLC

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fIfty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a statement from the applicant, acceptable to the Department, that the proposed financial/referral structure has been assessed with the consultation of legal counsel, in light of anti-kickback and self-referral laws, and it is concluded that proceeding with the proposal is acceptable. [RNR, CSL]
3. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
4. Submission of an executed facility lease agreement, acceptable to the Department. [BFA, CSL]
5. Submission of an executed equipment lease, acceptable to the Department. [BFA]
6. Submission of a loan commitment, acceptable to the Department. [BFA]
7. Submission of a Working Capital Loan commitment, acceptable to the Department. [BFA]
8. Submission of a photocopy of the applicant's executed proposed articles of organization, which are acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's executed operating 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 start of construction. [AER]
7. The applicant shall complete construction by April 1, 2014 upon the filing of Final Construction Documents in accordance with 10 NYCRR section 710.7. [AER]
8. All sliding doors provided, including those located at the proposed Isolation Room, shall be provided with a break-away feature which shall not obstruct the path of egress during that mode of use in accord with the requirements of NFPA 101. [AER]
9. The reception/waiting area shall be configured to provide for private interactions between reception personnel and patients. [AER]
10. Floor drains shall be provided as required by 10NYCRR. [AER]
11. In compliance with NFPA 101, not more than 50% of the required exits shall discharge through areas on the level of discharge. [AER]
12. Applicant shall confirm the provision of sufficient storage space for the RHCF with the loss of storage space to be repurposed for the proposed facility. [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 # 111475-B

USRC Lake Plains, Inc.

County: **Orleans (Medina)** ***Program:*** **Dialysis Services**
Purpose: **Establishment and Construction** ***Submitted:*** **May 31, 2011**

Executive Summary

Description

USRC Lake Plains, Inc., an existing proprietary corporation, requests approval for the purchase for two existing end-stage renal disease (ESRD) hospital extension clinics currently operated by Orleans Community Health – Medina Memorial Hospital. The sites are located at 11020 W. Center Street, Medina, and 587 East Main Street, Suite 250, Batavia, respectively.

The proposed members of USRC Lake Plains, Inc. are as follows:

US Renal Care, Inc.	68%
WNYCKD, LLC	20%
LEDP of BATAVIA, LLC	10%
Orleans Community Health, Inc.	2%

There will be no change in the number of stations.

DOH Recommendation

Contingent approval.

Need Summary

The services and stations offered by these two facilities will continue to provide for area residents. The shifts offered by the facilities will also continue to support the working individual and allow for treatment during off peak hours.

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 project costs associated with this application. The purchase price of $2,200,000 is to be entirely funded through equity.

Budget:	*Revenues:*	*$ 6,012,660*
	Expenses:	*5,509,950*
	Gain/(Loss):	*$ 502,710*

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

Architectural Summary

As this involves the acquisition of two existing Article 28 ESRD extension clinics, the Bureau of Architecture and Engineering Facility Planning has no comment on the 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 statement from the applicant, acceptable to the Department, that the proposed financial/referral structure has been assessed with the consultation of legal counsel, in light of anti-kickback and self-referral laws, and it is concluded that proceeding with the proposal is acceptable. [RNR, CSL]
3. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
4. Submission of an executed administrative service agreement that is acceptable to the Department. [BFA, CSL]
5. Submission of an executed sub-lease or assignment agreement for the Batavia site, demonstrating site control that is acceptable to the Department. [BFA, CSL]
6. Submission of a photocopy of the applicant's executed proposed amended certificate of incorporation, which is acceptable to the Department. [CSL]
7. Submission of a photocopy of a sample stock certificate, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of an executed shareholder agreement, if applicable, which is acceptable to the Department. [CSL]
9. Submission of a photocopy of an executed certificate of assumed name, if applicable, which is acceptable to the Department. [CSL, HSP]
10. Submission of a photocopy of the US Renal Care, Inc.'s executed certificate of incorporation and any amendments thereto, which are acceptable to the Department. [CSL]
11. Submission of a photocopy of LEDP of Batavia, LLC's executed articles of organization and operating agreement and any amendments thereto, which are acceptable to the Department. [CSL]
12. Submission of a photocopy of WNYCKD, LLC's executed articles of organization and operating agreement and any amendments thereto, which are acceptable to the Department. [CSL]
13. Submission of a photocopy of Orleans Community Health, Inc.'s executed certificate of incorporation and bylaws and any amendments thereto, which are 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

December 8, 2011.

Need Analysis

Background

USRC Lake Plains, Inc., an existing proprietary corporation, has entered into an asset purchase agreement for 2 existing end stage renal dialysis station (ESRD) hospital extension clinics currently operated by Orleans Community Health-Medina Memorial Hospital. The applicant also plans to provide home dialysis training at the Batavia site, as well as social work and nutritional services at both sites.

Site # 1
Lake Plains Outpatient Center
11020 W. Center Street 587,
Medina, NY 14103 (Orleans County)
-- 10 ESRD stations

Site # 2
Lake Plains Dialysis at Batavia
East Main Street, Suite 350,
Batavia, NY 14020 (Genesee County)
-- 16 ESRD stations

Service Area

The service area for this application is Orleans and Genesee County.

Orleans County

2010 Population:	42,883		
Ages 65 and Over 2009:	14.4%	State Average:	13.4%
Nonwhite 2010:	10.2%	State Average:	41.7%

Orlean County's average elderly population is higher then the overall state average, but the minority population is much lower than the state average.

Genesee County

2010 Population:	60,079		
Ages 65 and Over 2009:	15.6%	State Average:	13.4%
Nonwhite 2010:	7.1%	State Average:	41.7%

Genesee County's average elderly population is higher then the overall state average, but the minority population is much lower than the state average.

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 methodology, hospital-based 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.

As seen in the table below there will be a need in Orleans County for 5 additional dialysis stations in 2015:

Orleans County Dialysis Need				
	2009		*2015*	
	Patients	*Residents*	*Patients*	*Residents*
Treated	75	75	92	92
Free Standing Stations Needed	17	17	21	21
Current Total Stations	16	16	16	16
Unmet Need	1	1	5	5

As seen in the table below there will still be no need in Genesee County for additional dialysis stations in 2015:

Genesee County Dialysis Need				
	2009		*2015*	
	Patients	*Residents*	*Patients*	*Residents*
Treated	34	34	42	42
Free Standing Stations Needed	8	8	9	9
Current Total Stations	10	10	10	10
Unmet Need	-2	-2	-1	-1

Conclusion

Because this project involves only a change of ownership and no alteration in existing dialysis stations, it will result in no change to community resources.

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Background

Establish a diagnostic and treatment center and one extension clinic to provide chronic renal dialysis services by purchasing two locations currently operated by Medina Memorial Hospital.

Proposed Operator	**USRC Lake Plains, Inc.**	
Operator Type	Proprietary corporation	
Doing Business As	Medina Dialysis, an affiliate of U.S. Renal Care, Inc.	Batavia Dialysis, an affiliate of U.S. Renal Care, Inc.
Site Address	11020 W Center St Ext Medina, New YOrk	587 E Main St Batavia, New York
Stations	10	16
Shifts/Hours/Schedule	Monday through Saturday, 6am to 4pm	Monday through Saturday, 3 days 6:30am to 10pm and 3 days 6:30am to 6pm
Staffing (1st Year / 3rd Year)	12.5 FTEs / 12.5 FTEs	20.5 FTEs / 21.5 FTEs
Medical Director	Rebeca Denise Monk	
Emergency, In-Patient and Backup Support Services Agreement	Expected to be provided by Medina Memorial Hospital	
Distance	1 mile and 3 minutes travel time	26 miles and 41 minutes 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.

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 Shareholders of USRC Lake Plains, Inc. are:

Name	
U.S. Renal Care	68%
WNYCKD, LLC	20%
LEDP of Batavia, LLC	10%
Orleans Community Health, Inc.	2%

The Directors of USRC Lake Plains will be:

Name	Title
Stephen Pirri	President / Director
James Shelton	Vice President / Treasurer / Director
David Eldridge	Secretary / Director
Heather Wheat	Director
Wajid Choudhry	Director

U.S. Renal Care is a (USRC) is a corporation formed under the laws of Delaware and is privately held. USRC's principal stockholders are International Life Sciences Fund III (LPI), L.P (which owns 30.88% of USRC stock) and Thoma Cressey Fund VIII, L.P. (which owns 24.12% of USRC stock). USRC is involved in the operation of approximately 40 dialysis facilities in Texas and Arkansas.

WNYCKD, LLC and LEDP of Batavia, LLC are private physician practices and have the following members:

Name	
WNYCKD, LLC	
Wajid Choudhry, MD	37.50%
Ala Dahhan, MD	37.50%
Sheharyar Khokhar, MD	16.67%
Amol Shrikhande, MD	8.33%
LEDP of Batavia, LLC	
Heather Wheat, MD	25%
Arundathi Namassivaya, MD	25%
Kristin Matteson, DO	25%
Maria Del Castillo, MD	25%

Orleans Community Health is the not-for-profit operator of Medina Memorial Hospital.

U.S. Renal Care, Inc. and the physicians in LEDP of Batavia, LLC have been approved as a shareholders of three other dialysis centers which are not yet operational.

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 and operators were checked against the Office of the Inspector General of the U.S. Department of Health and Human Services (relative to Medicare fraud and abuse), the NYS Office of Medicaid Management (relative to Medicaid fraud and abuse), the Office of Professional Medical Conduct, and the Education Department databases.

John Byrnes, a director of U.S. Renal Care, Inc. who has served as the CEO of Lincare Holdings, Inc. disclosed a 2006 settlement agreement between Lincare Holdings, Inc. and the federal Office of the Inspector General. Lincare Holdings, Inc., which provides home oxygen and respiratory therapy services in 47 states, agreed to pay approximately 12 million dollars to the federal government without any admission of wrongdoing by Lincare Holdings Inc. Nephrology Associates of WNY (Drs. Matteson, Namassivaya and Wheat) disclosed to the US Attorneys General's office in Buffalo, a Medicare overpayment made to Nephrology Associates of WNY; this matter was settled in 2009. US Renal Care disclosed six pending civil lawsuits filed by private parties (i.e. employment discrimination cases.

The Office of the Inspector General for the U.S. Department of Health and Human Services (relative to Medicare fraud and abuse), the NYS Office of Medicaid Management (relative to Medicaid fraud and abuse), the Office of Professional Medical Conduct**,** the Education Department and state regulatory bodies overseeing operations of US Renal Care indicated no issues pertaining to any of the listed directors, executives, or majority shareholders.

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

Background

US Renal Care, Inc. is a privately held multi-state outpatient dialysis service. US Renal Care, Inc. (USRC) works in partnership with nephrologists to develop, acquire and operate outpatient treatment centers for persons suffering from end stage renal dialysis. USRC, which is based in Dallas, Texas, completed its acquisition of Dialysis Corporation of America, Inc. (DCA), in 2010.

WNYCKD, LLC is owned by Wajid Chouldhry, M.D. (37.5%), Ala Dahan, M.D. (37.5%), Shehararyar Khokar, M.D. (16.667%), and Amol Shrikhande, M.D. (8.333%).

LEDP of Batavia, LLC is owned equally (25% each) by Maria C.V. DelCastillo, M.D., Kristen Matteson, D.O., Andrundathi Namassivaya, M.D., and Heather Wheat, M.D.

Orleans Community Health, Inc. is a not-for-profit acute care hospital located in Medina, New York. The hospital provides inpatient, outpatient, emergency care and long term care services.

Contribution and Purchase Agreement

The applicant has submitted an executed Capital Contribution and Purchase Agreement dated May 9, 2011.

Capital Contribution:	
US Renal Care	$1,496,000
WNYCKD	440,000
LEDP of Batavia, LLC	220,000
Orleans Community Health, Inc.	44,000
Total:	$2,200,000

The capital contribution will be paid from member equity.

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 by the facility and/or surcharges, arrangements 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 Rental Agreement

The applicant has submitted an executed existing lease agreement for the Batavia site. A sub-lease assignment is pending. The site will be subleased by applicant at the stated terms summarized below:

Dated:	January 9, 2009
Landlord:	Eastown Plaza Associates, LLC
Lessee:	Medina Memorial Health Care System, Inc.
Sub-lessee:	USRC Lake Plains, Inc.
Premises:	7,800 sq. ft. located at store #10, Eastown Plaza, 587 East Main Street, Suite 350, Batavia, NY.
Rental and Term:	Beginning: April 1, 2009, minimum annual rent $60,450 ($5,037.50 monthly), April 1, 2010, minimum annual rent $62,400 ($5,200.00 monthly), April 1, 2011, minimum annual rent $64,350 ($5,362.50 monthly), April 1, 2012, minimum annual rent $66,300 ($5,525.00 monthly), April 1, 2013, minimum annual rent $68,250 ($5,697.50 monthly), April 1, 2014, minimum annual rent $70,200 ($5,850.00 monthly), April 1, 2015, minimum annual rent $72,150 ($6,012.50 monthly).
Common Areas:	Tenant or customers, employees and visitors shall have access to all vacant, landscaped or improved area in shopping center provided bylandlord for common use, such as parking areas, driveways, aisles, sidewalks, loading docks.
Provisions:	The lessee shall be responsible for utilities, commercial general liability insurance, maintenance of premises, common areas and taxes.

The lease agreement is an arm's-length transaction since neither the landlord or lessee are related. USRC Lake Plains, Inc. has submitted letters from licensed real estate brokers attesting to the reasonableness of the rent.

The applicant has submitted an executed lease agreement for the Medina site. The site will be leased by applicant at the stated terms summarized below:

Dated:	February 14, 2011
Landlord:	Orleans Community Health, Inc.
Lessee:	USRC Lake Plains, Inc.
Premises:	4,000 sq. ft. located at 11020 West Center Street, Medina, NY
Rental:	Beginning on commencement date, $10.00 per sq. ft. per year ($40,000), payable monthly ($3,333.33). Rent shall increase 1% annually.
Term:	Expires in 10 years. Tenant has right to renew for two 5-year renewal option periods. Rent during option period shall be the then annual fair market rent.

Provisions:	The lesee shall be responsible for utilities, commercial general liability insurance, maintenance of premises, common area and taxes.

The landlord, Orleans Community Health, Inc. is a minority shareholder in USRC, Lake Plains, Inc. The applicant has submitted letters from licensed real estate brokers attesting to the reasonableness of the rent.

Administrative Services Agreement

The applicant has submitted a draft administrative services agreement, the terms of which are summarized below:

Facility Operator	USRC Lake Plains, Inc.
Provider:	USRC Lake Plains Administrative Services, LLC
Services Provided:	• Personnel training, monitoring and oversight • Provide supplies and inventory • Make arrangements for the purchase and delivery of all prescription drugs and medicine • Perform all patient billing and collecting functions • Provide bookkeeping and accounting procedures • Manage and account for the clinic's funds • Arrange for appropriate commercially reasonable amounts of hazard insurance and liability insurance • Recommend operational policies and procedures • Provide access to selected proprietary software • Furnish all medical equipment, office equipment, fixtures, and furniture • Advise and assist in the development of quality assurance and review programs • Apply for all licenses, permits, Medicare and Medicaid provider numbers • Advise and assist in the development of a program for assuring compliance with all applicable federal, state, and local laws • Provide legal consultation • Perform other acts and make such other expenditures as are appropriate for operation of the clinic • Employ or engage and make available sufficient non-clinical personnel and administrative staff
Term:	10 years
Compensation:	Year 1 $659,523. The fee will be adjusted annually to continue to reflect fair market value. Fee adjustments will be ongoing on annual basis based upon mutual consent to annual fee.

Proposed members of applicant, US Renal Care, Inc. and LEDP of Batavia are also members of USRC Lake Plains Administrative Services, LLC. Therefore, the administrative services agreement is a non- arm's-length agreement.

Operating Budget

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

US Renal Care Lake Plains – Medina

	Year One	Year Three
Revenues:	$1,528,880	$1,932,641
Expenses:		
Operating	$1,667,211	$1,817,969
Capital	$69,049	$67,370
Total Expenses:	$1,736,260	$1,885,339

Net Income (loss):	($207,380)	$47,301
Utilization: (treatments):	5,711	6,203
Cost per treatment:		
Operating:	$291.93	$293.08
Capital:	12.09	10.86
Total:	$304.02	$303.94

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

	Year One	Year Three
Commercial Fee-for-Service	1.2%	2.9%
Commercial Managed Care	3.8%	4.3%
Medicare Fee-for-Service	70.9%	68.9%
Medicare Managed Care	21.6%	21.0%
Charity/Bad debt	2.5%	2.9%

Expense and utilization assumptions are based on the existing facility and US Renal Care experience.

US Renal Care Lake Plains – Batavia

	Year One	Year Three
Revenues:	$3,227,635	$4,080,019
Expenses:		
Operating	$3,182,623	$3,486,784
Capital	$133,157	$137,817
Total Expenses:	$3,315,780	$3,624,611
Net Income (loss):	($88,145)	$455,408
Utilization: (treatments)	12,057	13,094
Cost per treatment:		
Operating:	$263.96	$266.29
Capital:	11.05	10.53
Total:	$275.01	$276.82

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

	Year One	Year Three
Commercial Fee-for-Service	1.1%	2.9%
Commercial Managed Care	3.8%	4.6%
Medicare Fee-for-Service	56.4%	53.5%
Medicare Managed Care	26.9%	26.7%
Medicaid Fee-for-Service	1.2%	1.3%
Charity/Bad debt	2.6%	2.9%
Other	8.0%	8.0%

Expense and utilization assumptions are based on the existing facility and US Renal Care experience.

The following is a combined year one and year three budget of the two facilities:

	Year One	Year Three
Revenues:	$4,756,515	$6,012,660
Expenses:	$5,052,040	$5,509,950
Net Income:	($295,525)	$502,710

Capability and Feasibility

There are no capital project costs associated with this application. Contribution and purchase requirements, which total $2,200,000, will be furnished by each respective member through equity contributions at previously stated member requirements. Wajid Choudhry, M.D., Ala Dahhan, M.D., and Sheharyar Khokar, M.D. of WNYCKD have submitted affidavits indicating they are willing to contribute resources disproportionate to their membership interests.

Presented as BFA Attachment A are the net worth statements of the proposed natural members.

Presented as BFA Attachment B and C are the financial summaries of US Renal Care, Inc. It is important to note, as illustrated in the Balance Sheet Summary, Attachment C, that in June 2011, the Board of Directors of USRC approved a dividend to be paid to all shareholders of record. The dividend of $137.5M was funded via additional debt. This impacted the Long Term Liabilities and Equity sections of the balance sheet. US Renal Care maintained its credit ratings with the credit rating institutions of Standard & Poor's and Moody's. Despite the shift in equity from $127,250,661 to ($12,211,175), working capital was not impacted and US Renal Care continues to be able to meet all its obligations. US Renal Care, Inc. averaged $9,694,213 net income during 2009 and 2010. Internal financial statements through June 30, 2011 show $3,980,050 net income for the 1st half of the year.

Presented as BFA Attachment D and E are the financial statements for Orleans Community Health, Inc. Review of each of the financial summaries indicates sufficient financial resources for each perspective equity requirement for each proposed member.

Working capital contributions are $305,204 and $537,568 for Medina and Batavia facilities, respectively. Working capital requirements are estimated at $842,006 based on two months of first year budgeted expenses. The applicant has furnished combined $842,772 working capital for the two facilities. 50% ($421,386) is provided as equity, with the balance furnished through an existing line of credit.

Presented as BFA Attachment F and G, are the pro-forma balance sheets of US Renal Care Lake Plains – Medina and Batavia, as of the first day of operation, which indicates positive member's equity position of $859,745 and $1,761,641, respectively.

The submitted budget projects a loss of $295,525 in year one and net income of $502,710 in year three. Revenues are based on prevailing reimbursement methodologies for dialysis services. Reimbursement will be determined on an average rate by chronic renal dialysis centers and region enhanced by the applicable service intensity weight (SIW). The budget appears reasonable.

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 contingent approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A Net worth of proposed members

BFA Attachment B	Financial Summary, US Renal Care, Inc. 2009/2010
BFA Attachment C	Financial Summary, US Renal Care, Inc. – Internal
BFA Attachment D	Financial Summary, Orleans Community Health, Inc. 2009/2010
BFA Attachment E	Financial Summary, Orleans Community Health, Inc. – Internal
BFA Attachment F	Pro-forma Balance Sheet – US Renal Care, Lake Plains – Medina
BFA Attachment G	Pro-forma Balance Sheet – US Renal Care, Lake Plains – Batavia
BFA Attachment H	Organizational Chart
BFA Attachment I	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 8th day of December, 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 purchase two existing end-stage renal disease hospital extension clinics currently operated by Orleans Community Hospital – Medina Memorial 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:	FACILITY/APPLICANT:
111475-B	USRC Lake Plains, Inc.

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fIfty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a statement from the applicant, acceptable to the Department, that the proposed financial/referral structure has been assessed with the consultation of legal counsel, in light of anti-kickback and self-referral laws, and it is concluded that proceeding with the proposal is acceptable. [RNR, CSL]
3. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
4. Submission of an executed administrative service agreement that is acceptable to the Department. [BFA, CSL]
5. Submission of an executed sub-lease or assignment agreement for the Batavia site, demonstrating site control that is acceptable to the Department. [BFA, CSL]
6. Submission of a photocopy of the applicant's executed proposed amended certificate of incorporation, which is acceptable to the Department. [CSL]
7. Submission of a photocopy of a sample stock certificate, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of an executed shareholder agreement, if applicable, which is acceptable to the Department. [CSL]
9. Submission of a photocopy of an executed certificate of assumed name, if applicable, which is acceptable to the Department. [CSL, HSP]
10. Submission of a photocopy of the US Renal Care, Inc.'s executed certificate of incorporation and any amendments thereto, which are acceptable to the Department. [CSL]
11. Submission of a photocopy of LEDP of Batavia, LLC's executed articles of organization and operating agreement and any amendments thereto, which are acceptable to the Department. [CSL]
12. Submission of a photocopy of WNYCKD, LLC's executed articles of organization and operating agreement and any amendments thereto, which are acceptable to the Department. [CSL]
13. Submission of a photocopy of Orleans Community Health, Inc.'s executed certificate of incorporation and bylaws and any amendments thereto, which are 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 # 111540-E

Fulton Operations Associates, LLC d/b/a Fulton Center for Rehabilitation and Healthcare

County: **Fulton (Gloversville)**
Purpose: **Establishment**

Program: **Residential Health Care Facility**
Submitted: **June 26, 2011**

Executive Summary

Description

Fulton Operations Associates, LLC, d/b/a Fulton Center for Rehabilitation and Healthcare, is seeking approval for a change in ownership of Fulton County Residential Health Care Facility (RHCF), a 176-bed county-owned RHCF located at 847 County Highway, Gloversville. Upon approval, the facility will be known as Fulton Center for Rehabilitation and Healthcare. Ownership of the operation of the facility before and after the proposed change is as follows:

Current Owner
Fulton County Residential Health Care Facility
-- County Owned

Proposed Owner
Fulton Operating Associates, LLC
d/b/a Fulton Center for Rehabilitation & Healthcare
MEMBERS:

-- Kenneth Rozenberg	62%
-- Jeremy Strauss	25%
-- Jeremy Sicklick	3%
-- Amir Abrahamchik	10%

The members have ownership interests in the following nursing homes:

- *University Nursing Home* (Bronx County)
- *Williamsbridge Manor Nursing Home* (Bronx County)
- *Dutchess Center for Rehab & Healthcare* (Dutchess County)
- *Brooklyn Center for Rehab & Healthcare* (Kings County)
- *Suffolk Center for Nursing and Rehab* (Suffolk County)
- *Queens Center for Rehab & Residential Healthcare* (Queens County)
- *Stonehedge Health and Rehabilitation – Rome* (Oneida County)
- *Stonehedge Health and Rehabilitation – Chittenango* (Madison County)
- *Bronx Center for Rehabilitation and Health* (Bronx County)
- *Bushwick Center for Rehabilitation and Health Care* (Kings County)
- *Boro Park Center for Rehabilitation* (Kings County)

The real estate will be purchased by Fulton Land Associates, LLC, which will be owned by Daryl Hagler (99%) and Jon Hagler (1%). Fulton Land Associates, LLC will enter into a lease agreement granting site control to Fulton Operating Associates, LLC through an arms-length relationship.

DOH Recommendation

Contingent approval.

Need Summary

Upon approval, there will be no change in beds or services. Occupancy rates for the facility showed a slight decrease from 97.9% in 2008 to 96.7% in 2009.

Program Summary

No adverse information has been received concerning the character and competency of any of the applicants.

Financial Summary

The operational purchase price of $2,020,000 will be met with equity of $870,000 and a bank loan of $1,150,000 (20 yrs. @ 5.91%). The real estate purchase price of $1,500,000 will be with a bank loan of $1,500,000 (20 yrs. @ 5.91%).

Budget:		
	Revenues:	*$ 11,567,218*
	Expenses:	*11,366,796*
	Gain/(Loss):	*$ 200,422*

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

Architectural Summary

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of 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 of Health. [BFA]
3. Submission of an executed working capital loan that is acceptable to the Department of Health. [BFA]

Council Action Date

December 8, 2011.

Need Analysis

Background

Fulton Operations Associates LLC proposes to become the operator for the Fulton County Residential Health Care Facility, a 176 bed residential health care facility located at 847 County Highway, Gloversville, Fulton County.

Analysis

County RHCF Bed Need	*Fulton*
2016 Projected Need	411
Current Beds	360
Beds Under Construction	0
Total Resources	360
Unmet Need	51

RHCF Utilization	*2007*	*2008*	*2009*
Fulton County Residential Health Care	Did Not Report	97.8%	96.7%
Fulton County	99.0%	98.8%	98.0%

Fulton County Residential Health Care Facility reported occupancy rates at or above that of the 97% planning optimum for 2008 and 2009. Fulton County Residential Health Care Facility had 13 physical A's and 9 physical B's with a CMI of .926 in 2010.

Conclusion

There will be no change in beds or services at this facility. Fulton County Residential Health Care Facility has been operating at or above the 97% planning optimum. There is an unmet need of 51 RHCF beds in Fulton County.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Facility Information

	Existing	*Proposed*
Facility Name	Fulton County Residential Health Care Facility	Fulton Center for Rehabilitation and Healthcare
Address	837 County Highway 22 Johnstown, NY 12078	Same
RHCF Capacity	176	Same
ADHC Program Capacity	N/A	Same
Type of Operator	County	Limited Liability Company
Class of Operator	Public	Proprietary
Operator	County of Fulton	Fulton Operations Associates, LLC MEMBERS: Kenneth Rozenberg 62% -- managing member Jeremy Strauss 25% Amir Abramchik 10% Jeffrey Sicklick 3%

- FACILITIES REVIEWED:

Residential Health Care Facilities	
Williamsbridge Manor Nursing Home	11/1/01 to present
Bronx Center for Rehabilitation & Health	11/1/01 to present
University Nursing Home	11/1/01 to present
Dutchess Center for Rehabilitation	8/1/04 to present
Queens Center for Rehabilitation	6/1/04 to present
Brooklyn Center for Rehabilitation & Residential Health Care	3/1/07 to present
Bushwick Center for Rehabilitation and Health Care	11/1/01 to present
Boro Park Center for Rehabilitation	5/1/11 to present
Suffolk Center for Rehabilitation	5/1/07 to present
Rome Center for Rehabilitation and Health Care	11/1/11 to present
Chittenango Center for Rehabilitation and Health Care	11/1/11 to present
Holliswood Care Center, Inc.	11/1/10 to present
Receiverships	
Stonehedge Health & Rehabilitation Center-Rome	7/08 to 4/11
Stonehedge Health & Rehabilitation Center-Chittenango	7/2008 to 4/11
Wartburg Receiver, LLC	6/08 to 5/11
Waterfront Health Care Center, Inc.	8/1/11 to present
Licensed Home Care Services Agency	
Amazing Home Care	5/1/06 to present
Certified Home Health Agency	
Alpine Home Health Care	7/08 to present
Ambulance Company	
Senior Care Emergency Ambulance Services, Inc.	6/1/05 to present

- 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 has been employed as CEO of Bronx Center for Rehabilitation & Health Care since January, 1998. Mr. Rozenberg discloses the following health facility interests:

Williamsbridge Manor Nursing Home	11/19/96 to present
Bronx Center for Rehabilitation & Health	10/1/97 to present
University Nursing Home	8/1/01 to present
Dutchess Center for Rehabilitation	8/1/04 to present
Queens Center for Rehabilitation	6/1/04 to present
Brooklyn Center for Rehabilitation & Residential Health Care	3/1/07 to present
Stonehedge Health & Rehabilitation Center-Rome (receiver)	7/2008 to 4/11
Stonehedge Health & Rehabilitation Center-Chittenango (receiver)	7/2008 to 4/11
Rome Center for Rehabilitation and Health Care	5/1/11 to present
Chittenango Center for Rehabilitation and Health Care	5/1/11 to present
Bushwick Center for Rehabilitation and Health Care	5/1/11 to present
Wartburg Nursing Home (receiver)	6/08 to 5/11
Boro Park Center for Rehabilitation	5/1/11 to present
Holliswood Care Center, Inc.	11/1/10 to present
Alpine Home Health Care	7/08 to present

Amazing Home Care	5/1/06 to present
Senior Care Emergency Ambulance Services, Inc.	6/1/05 to present
Waterfront Health Care Center, Inc.	8/1/11 to present

Jeremy B. Strauss has been employed as Executive Director of Dutchess Center for Rehabilitation since April, 2003. Mr. Strauss discloses the following health facility interests:

Dutchess Center for Rehabilitation	8/1/04 to present
Queens Center for Rehabilitation	6/1/04 to present
Brooklyn Center for Rehabilitation & Residential Health Care	3/1/07 to present
Suffolk Center for Rehabilitation	5/1/07 to present
Rome Center for Rehabilitation and Health Care	5/1/11 to present
Chittenango Center for Rehabilitation and Health Care	5/1/11 to present
Bushwick Center for Rehabilitation and Health Care	5/1/11 to present
Boro Park Center for Rehabilitation	5/1/11 to present
Senior Care Emergency Ambulance Services, Inc.	5/1/05 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, a health care finance company in The Bronx. Mr. Abramchik discloses the following health facility interest:

Rome Center for Rehabilitation and Health Care	5/1/11 to present
Chittenango Center for Rehabilitation and Health Care	5/1/11 to present

Jeffrey N. Sicklick is a nursing home administrator in good standing in the states of New York and New Jersey. Mr. Sicklick has been employed as Administrator of Record at Bronx Center for Rehabilitation & Health since October, 1997. Mr. Sicklick previously served as Administrator of Record at Queens Center for Rehabilitation from June, 2004 to August, 2004 and Dutchess Center for Rehabilitation from May, 2003 to September, 2003. Mr. Sicklick discloses the following health facility interests:

Dutchess Center for Rehabilitation	8/1/04 to present
Queens Center for Rehabilitation	8/1/04 to present
Bushwick Center for Rehabilitation and Health Care	5/1/11 to present
Boro Park Center for Rehabilitation	5/1/11 to present
Rome Center for Rehabilitation and Health Care	5/1/11 to present
Chittenango Center for Rehabilitation and Health Care	5/1/11 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 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 a substantially consistent high level of care, since there were no repeat enforcements.

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 a 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.

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.

Project Review

No changes in the program or physical environment are proposed in this application. No administrative services/consulting agreement is proposed in this application.

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:	May 16, 2011
Seller:	County of Fulton
Purchaser:	Fulton Operating Associates, LLC
Purchased Assets:	All assets used in operation of the facility, including all of Seller's rights to continue to participate in the Programs, including, but not limited to the rights of the Seller, to the extent transferable, pursuant to the Payor contracts, all rights to

	provide services to residents at the Facility and the corresponding rights to receive reimbursement; to the extent transferable, all licenses, certificates and permits held or owned by Seller relating to the ownership or operation of the Facility and the Assets; all of Seller's rights, title and interests, in all other Contracts; true and correct copies of the financials and other books, records, information and title documents necessary for the Buyer to operate the Facility on or after the Closing Date; books, records, medical charts and information pertaining to the residents; furniture and equipment; copies of all financial, accounting and operating data and records; all computer software, programs and similar systems owned or leased by or licensed to the Facility; Seller's rights to intellectual property; Seller's Medicare and Medicaid provider numbers and provider agreements; all security deposits and prepayments; all resident funds held in trust for the Residents; all telephone numbers and the fax numbers associated with the Premises and all other assets of Seller used in the operation of the Facility other than the Excluded Assets.
Excluded Assets:	All cash on hand or in banks, cash equivalents, other investments and Pre-Closing, Receivables; the Seller's rights, title and interests in the insurance policies covering the seller, its officers, directors, employees and agents, and any claims for refunds or recovering under any insurance policy; interest in claims against third parties of insurance paid or payable related to the period prior to the Closing Date or to any Excluded Liabilities; the Seller's rights, title and interest in and to any rebates, refunds, settlements from class actions or other legal proceedings and/or other amounts due to the Seller, related to the operation of the Facility for periods prior to the Closing; all accounts and loan receivable, regardless of when billed, relating to Services rendered by the Facility prior to the Closing Date; all retroactive rate increases and/or lump sum payments resulting from rate appeals with respect to third party payments rendered at the Facility prior to the Closing Date; all payments; all payments or cash equivalent credits relating to the Facility resulting from claims, insurance premium rate reductions or insurance for periods prior to the Closing Date; all insurance policies not transferred to Buyer; all motor vehicles of every kind or description and all rights and interests of Seller under and pursuant to this Agreement.
Liabilities Assumed:	The Buyer shall only assume at the Closing, the obligations of Seller exclusively arising on and after the Closing Date with respect to the Assets; all accounts and loans payable; any and all liabilities or obligations related to the Assets, the ownership or operation of the Facility and/or the Real Property, arising from operations to any period prior to the Closing Date, other than the assume Liabilities; any and all amounts due or to become due to Programs and/or payor as a result of audit, rate change or otherwise, related to goods or services rendered at the Facility prior to the Closing Date, including but not limited to overpayment obligations; all cash receipt assessments related to all revenue received by the Facility before and after the Closing Date relating to services rendered prior to the Closing Date; any and all liabilities arising from or relating to collective bargaining or other labor or union contracts or agreements relating to the Facility and any and all obligations of the Seller pursuant to this agreement, the transaction documents, the land sale contract and the documents executed in connection therewith.
Purchase Price:	$2,020,000
Payment of Purchase Price:	A deposit of $101,000 to be held in escrow; upon execution of this agreement by the County Executive, after the approval of the Fulton County Legislature, the Buyer shall pay an additional sum of $101,000 to the Escrow Agent and the balance of the Purchase Price shall be paid at the Closing by Buyer to Seller.

The applicant's financing plan to meet the operating purchase price is as follows:

Equity (members)	$870,000
Bank Loan (5.91% interest rate for a 20 year term)	$1,150,000

The applicant has provided an original affidavit, acceptable to the Department of Health, 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.

Land Purchase and Sale Agreement

The change in realty ownership will be effectuated in accordance with the executed purchase agreement, the terms of which are summarized below:

Date:	May 16, 2011
Seller:	County of Fulton
Purchaser:	Fulton Land Associates, LLC
Transaction:	Real estate located at 847 Cohwy 122, Gloversville, New York. The Buyer agrees to purchase, all rights, title and interest in the Premises. The sale includes all fixtures attached or appurtenant to the Premises including without limitation building systems, furnaces, air conditioning, pipes, conduits, generation facilities, wires, pumps, transmission devices and the like that may exist upon the areas conveyed.
Purchase Price:	$1,500,000
Payment of Purchase Price:	$1,500,000 at Closing

The real estate entities financing plan for the purchase of the real estate is as follows:

Bank Loan (5.91% interest rate for a 20 year term)	$1,500,000

Lease Rental Agreement

Facility occupancy is subject to the executed lease agreement, the terms of which are summarized as follows:

Date:	June 1, 2011
Premises:	RHCF located at 847 Cohwy 122, Gloversville, New York.
Lessor:	Fulton Land Associates, LLC
Lessee:	Fulton Operations Associates, LLC
Term:	30 years
Rental:	Lessee shall pay to Lessor during the term of this Lease a net annual basic rent in the amount equal to the sum of the aggregate debt service payments required to be made by Lessor during such year with respect to mortgages encumbering the Demised Premises or portions thereof, plus $200,000. The rental payments will be approximately $324,025.

The lease arrangement is an arms-length lease arrangement. The useful life of the facility is eight years. Currently, the facility is based on the interest and depreciation reimbursement methodology. After the change in ownership, capital reimbursement will be based on the return of and on equity reimbursement methodology.

Operating Budget

Following is a summary of the submitted operating budget for the RHCF, presented in 2011 dollars, for the first year subsequent to the change in ownership:

	Per Diem	Total
Revenues:		
Medicaid	$175.03	$7,893,236
Medicare	375.00	1,875,407
Private Pay	270.51	1,798,575
Total Revenues		$11,567,218
Expenses:		
Operating	$178.27	$10,306,982
Capital	18.33	1,059,814
Total Expenses	$196.60	$11,366,796
Net Income		$200,422
Utilization: (patient days)		57,816
Occupancy		90.00%

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

- The capital component of the Medicaid rate is based on the return of and on equity reimbursement methodology.
- Expenses include lease rental payments.
- Overall utilization is projected at 90.00%, while utilization by payor source is as follows:

Medicaid	78.00%
Medicare	10.50%
Private Pay	11.50%

- Breakeven occupancy is projected at 88.59%.

Capability and Feasibility

The purchase price of $2,020,000 for the operations will be met as follows: Equity of $870,000 for the proposed members of Fulton Operating Associates, LLC and a bank loan of $1,150,000 at an interest rate of 5.91% for a twenty year term. The purchase price of $1,500,000 for the real estate will be financed via a bank loan at an interest rate of 5.91% for a twenty year term.

Working capital requirements are estimated at $1,894,466, based on two months of first year expenses. The proposed members of Fulton Operating Associates, LLC will provide equity of $947,233. The remainder, $947,233, will be financed via a bank loan at an interest rate of 5.00% for a five year term. A letter of interest has been provided by a 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 are the personal net worth statements of the proposed members of Fulton Operating Associates, LLC, which indicates the availability of sufficient funds for the operation purchase price and the working capital requirement.

Presented as BFA Attachment C, is the pro-forma balance sheet of Fulton Operating Associates, LLC d/b/a Fulton Center for Rehabilitation & Healthcare, which indicates a positive member's equity of $1,817,233 as of the first day of operation.

Presented as BFA Attachment N, is the pro-forma balance sheet of Fulton Land Associates, LLC, which indicates a positive member's equity position of $413,652.

The submitted budget indicates a net income of $200,422. The following is a comparison of the historical and projected revenues and expenses:

2010 Historical Revenues	$11,919,388
2010 Historical Expenses	16,965,907
2010 Excess of Revenues over Expenses	$(5,046,519)
Incremental Income	$(352,170)
Incremental Expenses	(5,599,111)
Incremental Net Income	$5,246,941
Projected Net Income	$200,422

The applicant projected a slight occupancy decrease of 1.98% from 2010, to the first year after the change in ownership as a result of being conservative. Also, Medicare and Private Pay utilization is increasing by 3.54% and 0.17%, respectively. The reason for the increase is because of the change in admission practices and the member's historical experience in operating other nursing homes. Incremental expenses include rent expense and the difference between the current year and average historical levels. Incremental expenses are decreasing because of a renegotiation of employee benefits, which results in a decrease from almost 60% to 30%.

Presented as BFA Attachment B, is a financial summary of Fulton County Residential Health Care Facility. As shown on Attachment C, the facility had an average positive working capital position and an average positive net asset position from the period 2008 through 2010. Also, the facility incurred an average operating loss of $4,335,943 during the period 2008 through 2010. The applicant has indicated that the reason for the historical losses were the result of the facility being faced with financial challenges including employee healthcare costs, large increases in NYS Retirement System assessments, and substantial delays in reimbursement aid. To address the historical losses, the facility, with the assistance of the Nursing Home Administrator and the Board of Supervisors, set priorities to reduce spending on equipment purchases and began a systematic effort to realign staffing, utilizing Licenses Practical Nurses in roles that had traditionally been carried out by Registered Nurses; several positions were abolished from clerical and housekeeping departments to effectuate payroll savings, and additional realignment of staffing was implemented in early 2011, to reduce costs. Also, the facility continues to receive assistance from the County to offset the losses.

Review of BFA Attachment D, financial summary for University Nursing Home, 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 $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. Also, the facility 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 that 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 $440,648 for the period shown.

Review of BFA Attachment G, financial summary for Brooklyn Center for Rehabilitation, indicates that the facility has maintained an average negative working capital position and an average positive equity position. Also, the facility experienced an average net loss of $907,483 for the period shown. This facility was acquired in March 2007, which the new operator has submitted for rebasing. The applicant indicates that the facility has a rate appeal from Medicaid, 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 maintained an average negative working capital position and an average negative equity position. Also, the facility experienced an average net income of $122,845 for the period shown.

Review of BFA Attachment I, financial summary for Queens Center for Rehabilitation, indicates that 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 BFA Attachment J, financial summary for Stonehedge Health and Rehabilitation, Rome, New York indicates that 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 for the period shown.

Review of BFA Attachment K, financial summary for Stonehedge Health and Rehabilitation, Chittenango, New York indicates that 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 for the period shown.

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.

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 Statement of Proposed Members
BFA Attachment B	Financial Summary- Fulton County Residential Healthcare Facility
BFA Attachment C	Pro-forma Balance Sheet- Fulton Operating Associates, LLC
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)
BFA Attachment K	Financial Summary- Stonehedge Health and Rehabilitation (Chittenango)
BFA Attachment L	Financial Summary, Bronx Center for Rehabilitation
BFA Attachment M	Establishment Checklist
BFA Attachment N	Pro-forma Balance Sheet of Fulton Land Associates, LLC

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 8th day of December, 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 ownership of the Fulton County Residential Health Care Facility from The County of Fulton to Fulton Operations Associates, LLC, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:	FACILITY/APPLICANT:
111540 E	Fulton Operations Associates, LLC d/b/a Fulton Center for Rehabilitation and 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 of Health. [BFA]
3. Submission of an executed working capital loan that is acceptable to the Department of Health. [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

New York State Department Of Health
Division of Legal Affairs
Memorandum

TO: Public Health Council

FROM: James E. Dering, General Counsel

DATE: October 21, 2011

SUBJECT: Proposed Certificate of Amendment of the Certificate of Incorporation of ODA Primary Health Care Center, Inc.

Attached is the proposed Certificate of Amendment of the Certificate of Incorporation of ODA Primary Health Care Center, Inc. This not-for-profit corporation seeks approval to change its name to "ODA Primary Health Care Center, Inc." The corporation is currently licensed to operate an Article 28 health care center located in Kings County. Public Health Council approval for a change of corporate name is required by Not-for-Profit Corporation Law § 804 (a) and 10 NYCRR § 600.11 (a) (1).

Also attached is a letter, dated September 1, 2011, from James Dunn, a paralegal of the legal firm representing ODA Primary Health Care Center, Inc. As explained in that letter, the name change is due to the entity providing services from several locations and not just one center.

The proposed Certificate of Amendment is in legally acceptable form.

Attachments

CERTIFICATE OF AMENDMENT

OF THE

CERTIFICATE OF INCORPORATION

OF

ODA PRIMARY HEALTH CARE CENTER, INC.

(Under Section 803 of the Not-for-Profit Corporation Law)

IT IS HEREBY CERTIFIED THAT:

1. The name of the corporation is ODA PRIMARY HEALTH CARE CENTER, INC. (the "Corporation"). The Corporation was formed under the ODA ECONOMIC DEVELOPMENT CORPORATION.

2. The Certificate of Incorporation of the Corporation was filed by the Department of State on April 23, 1974. The Corporation was formed under Section 102 of the Not-for-Profit Corporation Law of the State of New York.

3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law of the State of New York and is a Type C corporation under Section 201 of said law and shall remain a Type C corporation after this Amendment is effectuated.

4. The purpose of this Amendment is to change the name of the Corporation from ODA PRIMARY HEALTH CARE CENTER, INC. to ODA PRIMARY HEALTH CARE NETWORK, INC. As such, Paragraph 1 of the Certificate of Incorporation of the Corporation, which states the name of the Corporation, is hereby amended in its entirety to read as follows:

"The name of the Corporation is ODA PRIMARY HEALTH CARE NETWORK, INC."

5. This Amendment was approved by resolutions of the Board of Directors of the Corporation, duly adopted in accordance with the Bylaws of the Corporation and the New York Not-for-Profit Corporation Law.

6. The Secretary of State is hereby designated as agent of the Corporation upon whom process against the Corporation may be served. The address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is 14-16 Heyward Street, Brooklyn, New York 11211.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment as of the 3 day of February, 2011.

Name:
Title:

Corporation duly adopted the foregoing resolutions by a vote of not less than two-thirds of the entire Board at a meeting of the Board, duly called and held on _____, 2011, at which meeting a quorum was present and acting throughout, and that such resolutions have not been revoked or amendment as remain in full force and effect.

Dated: February 3, 2011

Name: Naftali Ausch
Title: Secretary

CERTIFICATE OF INCORPORATION

of

GDA ECONOMIC DEVELOPMENT CORPORATION
Under section 402 of the Not-for-Profit Corporation Law

IT IS HEREBY CERTIFIED THAT:

(1) The name of the corporation is GDA ECONOMIC DEVELOPMENT CORPORATION.

(2) The corporation is a corporation as defined in subparagraph (a)(5) of section 102 (Definitions) of the Not-for-Profit Corporation Law.

(3) The purpose or purposes for which the corporation is formed are:

a) To encourage and assist in the development of the community and the economic growth and advancement of minority groups therein whose participation in the free enterprise system is hampered because of social or economic disadvantages by providing and rendering business counseling to members of such minority groups conducting or intending to conduct small businesses and by advising and counseling such persons and firms with respect to managerial, technical and financial matters relating to their said businesses.

b) Nothing herein shall authorize this corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in Not-for-Profit Corporations Law, section 404 (b)-(p) or Executive Law, section 757 nor engage in the practice of law.

c) In furtherance of its corporate purposes the corporation shall have all general powers enumerated in Section 202-Not-for-Profit Corporations Law together with the power to solicit grants and contributions for corporate purposes

(4) It is the intention of this corporation at all times to qualify and remain qualified as exempt from income tax under Sec. 501(C) (3) of the United States Internal Revenue

Code of 1954, as the same may from time to time be amended.

Accordingly,

a) No part of the income of the corporation shall inure to the benefit of any member, trustee, director, officer of the corporation, or any private individual (except that reasonable compensation may be paid for services rendered to or for the corporation affecting one or more of its purposes) and no member, trustee, officer of the corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the corporation.

b) No part of the activities of the corporation shall be the carrying on propaganda, or otherwise attempting to influence legislation, or participation in, or intervening in (including the publication or distribution of statements) any political campaign on behalf of any candidate for public office.

c)In the event of diasolution, all the remaining assets and property of the corporation shall after necessary expenses thereof be distributed to such organizations as shall qualify under Section 501 (c) (3) of the Internal Revenue Code of 1954, as amended, subject to an order of a Justice of the Supreme Court of the State of New York.

(d)The corporation shall distribute its income for each taxable year at such time and in such manner as not to subject it to tax under Section 4942 of the Internal Revenue Code of 1954, as amended, and the corporation shall not(1) engage in any act of self-dealing as defined in Section 4941 (d) of the Code (2) retain any excess business holdings as defined in Section 4943(c) of the Code (3) make any inveatments in such manner as to subject the corporation to tax under Section 4944 of the Code or (4) make any taxable expenditures as defined in Section 4945 (d) of the Code.

(5) The corporation shall be a Type C corporation pursuant to section 201 of the Not-for-Profit Corporations Law.

(6) The names and addresses of the initial directors are:

LEOPOLD LEWKOVITZ	177 Penn St., Brooklyn, NY
SENDER DEUTSCH	557 Bedford Av., Brooklyn, NY
EFROIM STEIN	1157 53rd St., Brooklyn, NY

(7) The lawful public or quasi-public objective of this Corporation is to encourage, promote and assist community development and the economic advancement of disadvantaged minority groups therein by providing business counseling to members of such minority groups conducting or intending to conduct small businesses with respect to managerial, technical and financial matters relating thereto.

(8) The office of the Corporation is to be located in the City of New York, County of Kings, State of New York.

(9) The territory in which the activities of the corporation are principally to be conducted is: the Borough of Brooklyn, County of Kings, City and State of New York.

(10) The post office address to which the Secretary of State shall mail a copy of any notice required by law is:

82 Lee Avenue
Brooklyn, New York

(11) Prior to the delivery to the Department of State for filing, all approvals and consents, if any, required by law will be endorsed upon or annexed to this certificate.

IN WITNESS WHEREOF, the undersigned incorporators and each of them being at least nineteen years of age, affirm that the statements made herein are true under the penalties of perjury.

Dated, March 29th 1974.

LEOPOLD LEWKOVITZ
177 Penn St., Brooklyn, NY

Signature

SENDER DEUTSCH
557 Bedford Ave, Brooklyn, NY

Signature

EFROIM STEIN
1157 53rd St., Brooklyn, NY

Signature

I, the undersigned Justice of the Supreme Court of the State of New York, Second Judicial District, do hereby approve the Foregoing Certificate of Incorporation of

ODA ECONOMIC DEVELOPMENT CORPORATION.

Dated, April 4 1974
Brooklyn NY

J.S.C.
HON. FRANK J. FINO

Notice of Application Waived
(This is not to be deemed an approval on behalf of any Department or Agency of the State of New York nor an assumption of activities otherwise limited by law.)

Dated: April 1, 1974

LOUIS J. LEFKOWITZ
Attorney General

By: Herbert J. Wallenstein
Deputy Attorney General

4

The following is a true copy of a Resolution adopted by the Board of Directors of ODA CAPITAL CORPORATION at a meeting of the said Board at 82 Lee Avenue, Brooklyn, N.Y. on March 27, 1974, 10:00 a.m.

WHEREAS there has been proposed the formation of a not-for-profit corporation under the name of ODA CAPITAL DEVELOPMENT CORP. and the Secretary of State has requested the expression of an opinion of this Board concerning the similarity of the proposed name to that of this business corporation.

NOW THEREFORE, be it resolved that in the opinion of this Board the above mentioned proposed name does not so nearly resemble that of this corporation as to tend to confuse or deceive and [illegible] to the use of such name.

[illegible]
President
Leopold Lewkovitz

[illegible]
Secretary
Joseph Green

Certification

STATE OF NEW YORK } ss.:
COUNTY OF KINGS }

No 32367

I, ANTHONY N. DURSO, Clerk of the County of Kings and Clerk of the Supreme Court of the State of New York in and for said County (said Court being a Court of Record) DO HEREBY CERTIFY that I have compared the annexed with the original CERT. OF INCORPORATION filed in my office May 30, 1974 and that the same is a true transcript thereof and of the whole of such original.

In Testimony Whereof, I have hereunder set my hand and affixed the seal of said County and Court, this [illegible] day of MAY 12 1981 19[illegible]

Clerk

Comparer

Cashier

Pay CASHIER $ 4

Received $ 4

83-2105-10M-716361791 346

[illegible] Revenue

CERTIFICATE OF AMENDMENT

of the

CERTIFICATE OF INCORPORATION

of

ODA ECONOMIC DEVELOPMENT CORPORATION

Under Section 803 of the
Not-For-Profit Corporation Law

The undersigned, being the President and Secretary of ODA ECONOMIC DEVELOPMENT CORPORATION, do hereby certify and set forth:

1. The name of the Corporation is ODA ECONOMIC DEVELOPMENT CORPORATION.

2. The Certificate of Incorporation of ODA ECONOMIC DEVELOPMENT CORPORATION was filed by the Department of State on April 23, 1974. The said Corporation was formed under the Not-For-Profit Corporation Law of the State of New York.

3. ODA ECONOMIC DEVELOPMENT CORPORATION is a Corporation as defined in subparagraph (a) (5) of Section 102 of the Not-For-Profit Corporation Law and is a Type C corporation under Section 201 of said law.

4. The Certificate of Incorporation of ODA ECONOMIC DEVELOPMENT CORPORATION is hereby amended to effect a change in the corporate name, purposes and notice address, pursuant to Section 301 of the Not-For-Profit Corporation Law. Paragraph (1) of the Certificate of Incorporation is hereby amended as follows:

"(1) The name of the corporation is ODA PRIMARY HEALTH CARE CENTER, INC."

Paragraph (3) of the Certificate of Incorporation is hereby amended as follows:

"(3) The purpose or purposes for which the corporation is formed are:

> a) To manage and provide primary health care and to further the general health and welfare of members of the community: to operate a health care center pursuant to Article 28 of the Public Health Law of the State of New York, to include without limitation medical, dental, pharmaceutical, health education, to advise and counsel members of the community as to their general health and welfare: and to promote and assist general community development, welfare, service, health, and related projects. All income received from current activities shall be allocable to current activities and all income from future activities shall be allocable to future activities.

Paragraph (9) of the Certificate of Incorporation is hereby amended as follows:

"(9) The post office address to which the Secretary of State shall mail a copy of any process [illegible] is:

14-16 Heyward Street, Brooklyn, NY 11211."

5. This Amendment to the Certificate of Incorporation of ODA ECONOMIC DEVELOPMENT CORPORATION was authorized by the consent, dated June 17, 1993, of a majority of the members of the entire Board of Directors of the Corporation.

6. The Secretary of State is hereby designated as agent of the corporation upon whom process against it may be served.

The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him is 14-16 Heyward Street, Brooklyn, NY 11211.

IN WITNESS WHEREOF, we hereto sign our names this 24th day of June, 1993 and affirm that the statements herein are true under penalty of perjury.

YITCHAK SCHLESINGER, President

NAFTALI E. AUSCH, Secretary

STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

September 27, 1993

Marshall G. Kaplan, Esq.
Suite 1H
40 Clinton Street
Brooklyn, New York 11201

Re: Certificate of Amendment of the Certificate of Incorporation of ODA Economic Development Corporation

Dear Mr. Kaplan:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 24th day of September, 1993, I hereby certify that the Certificate of Amendment of the Certificate of Incorporation of ODA Economic Development Corporation hereafter to be known as ODA Primary Health Care Center, Inc. dated June 1993 is approved.

Sincerely,

Karen S. Westervelt

Karen S. Westervelt
Executive Secretary

RESOLUTION

RESOLVED, that the Public Health Council, on this 24th day of September, 1993, approves the filing of the Certificate of Amendment to the Certificate of Incorporation of ODA Economic Development Corporation hereafter to be known as ODA Primary Health Care Center, Inc. dated June 1993.

The undersigned has no objection to the granting of Judicial approval hereon and waives statutory notice.

THE UNDERSIGNED HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON AND WAIVES STATUTORY NOTICE.

ROBERT ABRAMS, ATTORNEY GEN.
STATE OF NEW YORK

by Laura Weiner
ASSISTANT ATTORNEY GENERAL

ROBERT ABRAMS
ATTORNEY GENERAL
STATE OF NEW YORK

by: _____

Date: _____

I, WILLIAM T BELLARD, a Justice of the Supreme Court of the State of New York for the SECOND Judicial District do hereby approve the foregoing Certificate of Amendment of the Certificate of Incorporation of ODA ECONOMIC DEVELOPMENT CORPORATION and consent that the same be filed.

Date: OCT 5 1993

WTB
J.S.C.

(Last Amended March __, 2008)

BY - LAWS

OF

ODA PRIMARY HEALTH CARE CENTER, INC.

ARTICLE I - OFFICES

The official name of this organization shall be: ODA Primary Health Care Center, Inc., (hereinafter the "Corporation").

The principal office of the Corporation shall be in the City of New York, County of Kings, State of New York. The Corporation may also have offices at such other places within or without this State as the board may from time to time determine or the business of the Corporation may require.

ARTICLE II - PURPOSES

The Corporation shall have such purposes as set forth in the Corporation's Certificate of Incorporation.

ARTICLE III - MEMBERSHIP

Section A - Corporate Membership

The Corporation shall have no members. The term "member," as used in these By-Laws, shall refer solely to members of the Board of Directors and/or members of Board committees.

Section B - Board Membership

Membership by resolution adopted by a majority of the entire members of the Board of Directors (hereinafter the "Board") shall be open to adult citizens who are residents of the Corporation's catchment area, or who maintain places of business therein, of good character, and approved by the Board as set forth herein. The Board shall be established in accordance with the Federal statute, regulations and related implementing policies established by the U.S. Department of Health and Human Services, Health Resources and Services Administration ("HRSA") governing operation of the Corporation's federally qualified health center (hereinafter "Health Center").

ARTICLE IV – BOARD OF DIRECTORS

Section A - Responsibility

The Board shall be responsible for the general management and supervision of the affairs of the Corporation and shall, without limitation thereto, have the following functions and responsibilities:

1. The Board shall have sole authority for the establishment of policy in the conduct of the Corporation.

2. The Board shall hold regularly scheduled meetings, at least once each month, for which minutes shall be kept.

3. The Board shall have specific responsibility for:

   a. Approving the selection and dismissal of, and annually evaluating, the Executive Director;

   b. Establishing personnel policies and procedures, including selection and dismissal procedures, salary and benefit scales, employee grievance procedures, and equal opportunity practices;

   c. Adopting policies for financial management practices, including a system to assure accountability for resources, approval of the annual project budgets, priorities, eligibility for services including criteria for partial payment schedules, and long-range financial planning;

   d. Adopting the Health Center's health care policies including scope and availability of services, location and hours of services, and quality of care audit procedures;

   e. Ensuring quality assurance and evaluating the Health Center's services utilization patterns, productivity, patient satisfaction, achievement of project objectives, and development of a process for hearing and resolving patient grievances;

   f. Assuring that the Corporation and its activities are operated in compliance with applicable Federal, State and local laws and regulations;

   g. Evaluating the Corporation=s achievements and program direction on an annual basis and using the knowledge gained to revise its mission, goals, objectives, plans and budgets as may be appropriate and necessary;

h. Evaluating itself periodically for efficiency, effectiveness, and compliance with all requirements imposed upon federally qualified health centers ("FQHCs");

i. Selecting the independent auditor and officially accepting the annual audit report.

4. Granting privileges to the medical staff of the Health Center; and confirming the appointment from such medical staff of a Medical Director to be responsible to the Board through the Executive Director for the medical administration and coordination of all clinical services provided by resolution adopted by a majority of the entire Board.

5. Approve the bylaws and regulations of the medical staff of the Health Center.

6. Develop and maintain a suitable liaison with the medical staff of the Health Center by means of a joint conference committee or such other means as the Board shall deem appropriate.

7. Define the committees of the Board and the functions and responsibilities thereof.

8. Delegating authority and responsibility for administration and management of the Health Center to the Executive Director, by resolution adopted by a majority of the entire Board, who will have complete authority in all matters relating to the conduct of the program not specifically assigned by law and regulation to the Board. The Executive Director shall have the authority to employ, supervise, and discharge all personnel in accordance with the policies established by the Board. The Executive Director is an agent of the Board and shall be accountable to the Board.

The Board in the exercise of its authority and responsibilities shall not enter into any agreement limiting its responsibility for the establishment of policies and the management and operation of the Health Center.

Section B - Compensation

No member(s) of the Board (hereinafter a "Director" or "Directors") shall be compensated for his or her services to the Corporation, but the Board may provide for the reimbursement of all reasonable expenses incurred by any Director(s) in carrying out the business of the Corporation. As such, expenses may be authorized by the Board in accordance with established policies.

Section C - Programs, Fees

The Board shall establish a schedule of charges and a schedule of discounts and minimum fees considering economic differences between patients, providing that such schedules will be established in conformity with, and pursuant to, regulations and provisions of the various governmental funding sources and applicable Federal, State and local laws and regulations.

Section D - Number

There shall be a minimum of between eleven (11) and seventeen (17) voting Directors. Each Director shall be at least nineteen (19) years of age. No Director shall be an employee of the Corporation, or spouse, child, parent, brother, or sister, by blood or marriage, of an employee.

User Members. At least 51% of the Directors shall be individuals who are served by the Health Center and who, as a group, represent the individuals being served by the Health Center in terms of demographic factors, such as race, ethnicity and sex, etc. User members should utilize the Health Center as their principal source of primary care and should have used the Health Center's services within the last two (2) years. A legal guardian of a user who is a dependent child or adult, or a legal sponsor of an immigrant, may also be considered a user.

Non-User Members. The remaining non-user Directors shall be selected on the basis of their standing in the community and interest in the Health Center, and its programs and shall be selected for their expertise in community affairs, local government, finance and banking, legal affairs, trade unions and/or other commercial and industrial concerns or social service agencies within the community. No more than one half of the non-user Directors selected from the community may be individuals who derive more than 10% of their annual income from the health care industry. The person who is employed by the Corporation as Executive Director shall serve as an ex-officio, non-voting Director and shall attend all meetings of the Board and the Executive Committee, unless the Board requests the Executive Director's absence during evaluation of the Executive Director's performance. In concert with the cultural and religious requirements of the community, the Board meetings will be held with the men and women physically separated, provided that all Directors who are participating in the meeting shall be able to hear, and be heard by, all other Directors at such meeting. However, each motion presented for voting will be compiled jointly and reflected thereby in the minutes.

Section E - Terms of Office

Each Director shall serve for a term of three (3) years, unless the Director is filling a vacancy for an unexpired term. The term of a Director shall begin on the day elected. For the purpose of staggering the terms, the Board, exclusive of the *ex-officio* member, shall be divided into three (3) classes, as equal in number as possible. In addition to the selection of Directors filling unexpired terms, if any, the members of the one class whose terms are expiring shall be selected by the vote of the entire Board at each Annual Meeting. The above appointment shall not shorten the term of any incumbent Director. The procedure for selecting one-third of the Directors serving on the Board each year is designed to insure a greater responsiveness to the needs of the community served by the Health Center and to provide continuity in the structure of the Board. No Director may serve more than three (3) successive full terms unless the Board approves additional time based on expertise not available otherwise.

Section F - Nominations for Board Membership

The Nominating Committee shall, prior to the 60th day before the date of the Annual Meeting, nominate one or more candidates to succeed any Director whose term is due to expire on June 30th of that year, and shall forward to the Board a complete list of such candidates.

Section G - Vacancies

Should a vacancy occur on the Board by reason of death, disqualification or otherwise between annual elections, the Board may select an interim Director, based upon the recommendations of the Nominating Committee, from among those persons who would otherwise be eligible for selection to the position in which the vacancy occurred. A Director selected to fill such a vacancy shall hold office for the duration of the unexpired term.

Section H - Resignation

A Director may resign at any time by giving written notice to the Board, the Chair or the Secretary/Treasurer of the Corporation. Unless otherwise specified in the notice, the resignation shall take effect upon acknowledgement of receipt thereof by the Board or such officer, and the acceptance of the resignation shall not be necessary to make it effective. Resignation of a Director shall create a vacancy, and a new Director shall be selected in accordance with Section G of this Article.

Section I - Removal

A Director shall be automatically removed from office if he/she has three (3) unexcused absences at regular meetings of the Board in any fiscal year, unless waived by the Chair for just cause. A Director may also be removed for cause by the affirmative vote of two-thirds of Directors holding office at any regular or special meeting of the Board. Removal of a Director shall create a vacancy, and a new Director shall be elected in accordance with Section G of this Article.

Section J - Regular Meetings of the Board

Regular meetings of the Board shall be held at 6 p.m. on a specific date, and at a location, designated by the Board, provided, however, that the Board shall meet at least monthly, for which Minutes shall be kept. The regular meeting of the Board in June shall also serve as the Board's Annual Meeting.

Section K - Special Meetings of the Board

Special meetings of the Board may be called by the Chair of the Corporation, or by written demand signed by three (3) Directors. Notice of the time and place of such meeting shall be given by written notice mailed to the Directors' last known residence addresses by the Secretary/Treasurer at least five (5) days prior to the date of the meeting or by telephone or telegraphic notice at least 24 hours prior to the meeting. Notice of a special meeting need not be given to any Director who submits a written waiver thereof, whether before of after such meeting, nor to any Director who attends the meeting without protesting prior thereto, or at its commencement the lack of notice to him.

Section L - Quorum

A majority of the number of Directors then in office must be present to constitute a quorum for the transaction of business, except that a two-thirds (2/3) majority of the total Board membership shall constitute a quorum to amend the Bylaws. A quorum once established shall not be broken by the subsequent withdrawal of any Director.

Section M - Conduct of Meetings

Each Director shall have one (1) vote. Unless otherwise provided by law or these Bylaws, the vote of a majority of Directors at any Regular or Special Meeting shall be sufficient for transaction of any business provided that a quorum has been established.

Section N - Powers of Individual Directors

No individual Director shall speak or act for the Board except as may be specifically authorized by the Board. Directors shall refrain from giving personal advice or directives to any staff of the Corporation.

Section O - Executive Session

The Board may conduct all or any part of a meeting in executive session for such purposes as it deems necessary, including, but not limited to, discussion of litigation (actual or threatened), evaluation of personnel or discussion of personnel issues, or receipt of the results of an annual audit. The Board shall invite the Executive Director, except when conducting his or her performance evaluation, and may invite such other persons as it deems appropriate to attend an executive session. The public and staff personnel are excluded from executive sessions except when invited to give testimony or advice, after which they will be excused.

Section P - Action Without Meeting.

Any action required or permitted to be taken at any meeting of the Board, or a committee of the Board, may be taken without a meeting if the text of the action or resolution agreed upon is sent to all Directors then in office or all committee members, as applicable, provided that all Directors then in office or all committee members, as applicable, consent in writing to such action or resolution. Such consent in writing shall have the same force and effect as a vote of the Board or a committee, as applicable, at a meeting thereof, and may be described as such in any document executed by the Corporation.

Section Q - Telephonic or Electronic Meeting.

Any or all Directors may participate in a meeting of the Board, or a committee of the Board, as applicable, by telephone or by any other means of communication so long as all Directors who are participating in the meeting can hear all other Directors, and such participation shall constitute presence in person at the meeting.

Section R - Indemnification of Individuals and Insurance.

The Corporation shall indemnify each person (including the heirs, executors, administrators or estate of such person) who serves as a Director, Officer or employee of the Corporation and who is made a party to an action, suit, or proceeding (whether civil, administrative, or investigative) by reason of the fact that such person is or was a Director, Officer or employee of the Corporation, or serves or served any other enterprise at the request of the Corporation, against all expenses and costs (including attorneys' fees), liabilities judgments, fines, and amounts paid or to be paid in settlement, incurred in connection with such action, suit, or proceeding, if he or she acted in good faith in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation, and with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. Such Director, Officer or employee shall be indemnified by the Corporation to the full extent required by the applicable provisions of New York law, as now existing or hereafter amended. Indemnification under this Article shall not be made by the Corporation in any case where a court determines that the alleged act or failure to act giving rise to the claim for

indemnification is expressly prohibited by existing New York law or any successor statute in effect at the time of such alleged action or failure to take action. The Board shall have the power to purchase and maintain insurance on behalf of any person who is or was a Director, Officer, or employee of the Corporation against any liability asserted against him/her and incurred by him/her in any such capacity or arising out of his status as such whether or not the Corporation would have power to indemnify him/her against such liability under these Bylaws or any applicable laws or governmental regulations. The provisions of this Article shall be an addition to the rights that the Directors and Officers of the Corporation have under the Certificate of Incorporation or New York law, and nothing herein shall be deemed to diminish or otherwise restrict such person's right to indemnification under any such other provision.

ARTICLE V - OFFICERS

Section A - Election and Appointment of Officers

The officers of the Corporation shall include a Chair, Vice Chair, and Secretary/Treasurer who shall be elected annually by and from the Board, and such other officers as the Board may deem appropriate. The officers shall be elected and appointed by the Board at a regular Board meeting. No person shall serve in any one office of the Corporation for more than six (6) years in succession, unless so requested by resolution of the Board.

Section B - Resignation, Removal, Vacancies

An officer may resign at any time by giving written notice to the Chair. If the Chair is the resigning officer, the written notice shall be given to the Secretary/Treasurer. An officer may be removed at any time, with or without cause, by the Board by a two-thirds vote of the Directors present and voting at any special meeting called for such purpose. If an office becomes or is vacant for any reason, a successor shall be elected or appointed by and from the Board to hold office for the duration of the unexpired term.

Section C - Chair

The Chair shall preside at all meetings of the Board and the Executive Committee. The Chair shall have the authority, along with any other officers authorized by the Board, to sign on behalf of the Corporation, deeds, mortgages, bonds, contracts or other instruments approved by the Board for execution. With the exception of the Executive Committee, the Chair shall recommend, and the Executive Committee shall appoint and may alter the composition of, the members of each committee of the Board.

Section D - Vice Chair

The Vice Chair shall preside as Chair in the absence of the Chair. The Vice Chair shall perform such other duties as from time to time may be assigned to him or her by the Chair or by the Board.

Section E - Secretary/Treasurer

The Secretary/Treasurer shall keep or cause to be kept an accurate record of the proceedings of all meetings of the Board and of the membership, including all votes. The Secretary/Treasurer shall also have general charge of all records of the Board, and shall insure that all notices are duly given in accordance with the provisions of these Bylaws or as required by law. The Secretary/Treasurer shall be the custodian of the corporate seal and shall insure that the seal is affixed to all documents, the execution of which is duly authorized by the Board. The Secretary/Treasurer shall act as primary liaison between the Board and the independent certified public accountant serving the Corporation, and shall serve as Chair of the Finance Committee. The Secretary/Treasurer shall ensure that all funds of the Corporation are deposited to the credit of the Corporation in such banks and depositories and under such terms and conditions as may be determined by the full Board. The Secretary/Treasurer shall develop or cause to be developed such financial reports as are requested by the Board to keep the Directors informed of the financial condition of the Corporation.

Section F - Executive Director

The Executive Director is an agent of the Board and shall be accountable to the Board. The Executive Director shall be responsible for the day-to-day care, supervision, direction and management of the Corporation, subject to the oversight of the Board and in furtherance of the policies, priorities and programs established by the Board. The Executive Director serves as the administrative, fiscal, and community agent of the Board in the implementation of Board policy, in the overall pursuit of the Corporation=s mission, and in the provision of leadership to the Corporation's employees. The Executive Director shall have the authority to employ, supervise, and discharge all personnel in accordance with the policies established by the Board. The Executive Director, or his or her designee, shall attend all meetings of the Board and the Executive Committee, unless the Board requests the Executive Director's absence during evaluation of the Executive Director's performance in Executive Session. The Executive Director shall perform such other duties and exercise such other powers as may be assigned by the Board.

ARTICLE VI - EXECUTIVE COMMITTEE

Section A - Members

The Executive Committee shall be composed of the Chair, Vice Chair and Secretary/Treasurer, and any other officer(s) appointed by resolution adopted by a majority of the entire Board, to act with the authority of the Board between meetings of the Board. If no other officers are appointed to the Executive Committee, then one or more Directors may be appointed to the Executive Committee by resolution adopted by a majority of the entire Board.

Section B - Powers

The Executive Committee shall have such authority and power as the resolution creating it provides, but shall have no authority as to matters that New York Not-for-Profit Corporation Law, as now or hereafter enacted, prohibits it from considering or acting upon and shall have no authority as to the following matters:

1. The filling of vacancies on the Board.

2. The amendment or repeal of the By-Laws or the adoption of new By-Laws.

3. The amendment or repeal of any resolution of the Board, which by its terms shall not be so amendable or repealable.

Section C - Meetings

Meetings of the Executive Committee may be called by any member of the Executive Committee. Any action taken by the Executive Committee will be reported to the next meeting of the Board.

Section D - Quorum

A majority of the members of the Executive Committee must be present to constitute a quorum for the conduct of business.

Section E - Contracts, Loans, Checks and Drafts, Deposits

Contracts

The Board may authorize the Executive Director or any officer or officers, agent or agents to enter into any contract or execute and deliver any instrument on behalf of the corporation and such authority may be generally given or conformed to specific instances.

Loans

No loans shall be contracted on behalf of the corporation and no evidence of indebtedness shall be issued in its name, unless authorized by a resolution of the Board with the exception of utilization of the standing corporate line of credit necessary to maintain an adequate cash flow for ODA operation.

Checks & Drafts

All checks, drafts or other orders for the payment of money issued in the name of the Corporation shall be signed by the Executive Director, or such officer or officers, and in such manner, as shall from time to time be determined by resolution of the Board.

Deposits

All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such depositories as the Board shall determine.

ARTICLE VII - OTHER COMMITTEES

Section A - Nominating Committee

The Executive Committee shall appoint a standing committee for the purpose of recommending candidates to serve on the Board which shall be the Nominating Committee. The number of members of the Nominating Committee shall be determined from time to time, but shall not be less than three (3) Directors. Appointment to serve on the Nominating Committee shall not be construed as preventing the nomination of any committee member who is otherwise eligible to be nominated. The Nominating Committee shall take such action as it shall deem necessary to assure that the composition of the Board complies with the requirements of Section D in Article IV hereof. Such actions shall include, but not limited to, identifying the type of Director required to a representative Board, soliciting candidates by posting the criteria for candidates and directions for applications on the Health Center community bulletin board and other Health Center communications as it shall deem necessary, collecting and reviewing resumes of candidates and interviewing such candidates as it shall deem necessary.

Section B - Other Standing Committees

Additional standing committees of the Board shall include the Personnel, Finance and Quality Assurance committees.

Personnel Committee. The Personnel Committee shall be responsible for reviewing and, if necessary, making recommendations regarding the personnel policies of the corporation, employment practices, employee benefits, and personnel relations, and for reporting on issues related to compliance of the policies with all federal, state, and local laws.

Finance Committee. The Finance Committee shall be responsible for monitoring and making recommendations to the Board regarding the financial status and policies of the corporation, including fiscal planning, budgeting, policy development, and financial performance, reviewing financial statements of the Corporation, and reporting on and overseeing the annual independent financial audit process (with the final annual audited report to be presented to the Board).

Quality Assurance Committee. The Quality Assurance Committee shall be responsible for monitoring and making recommendations for the implementation and improvement of the quality assurance/quality improvement program of the corporation. In addition to Director representatives, the Committee shall include appropriate members of the medical staff and the Medical Director.

Section C - General

The Board may, by resolution adopted by a majority of the entire Board, create such other standing or special committees as it deems appropriate. Planning and Development activities will involve members of the Executive Committee as a minimum.

a. The chairperson and all of the members of each committee shall hold office for one (1) year or until their successors are appointed and approved. Other than the Executive Committee, the chairperson of a committee shall have the power to fill any vacancies that occur on the committee for the remainder of the year.

Except as specified in these Bylaws, persons may be appointed to committees in an advisory and consulting capacity who are not Directors. The Chair or his/her designee shall be an advisory and consulting member of each committee. Members of the medical staff may be considered for appointment on committees. All advisory and consulting members of each committee shall have non-voting status.

Reports: Except as otherwise provided in these Bylaws, or in the Board's resolution appointing a special committee, all committees of the Board shall maintain written minutes of their meetings which shall be available to the Board. Each committee shall report in writing to the full Board, as necessary, in the form of reports or recommendations.

Meetings: All committees of the Board shall meet at such time and place as designated by the chairperson of the committee and as often as necessary to accomplish its duties.

b. Quorum: The quorum for Committee meetings shall be a majority of the number of Directors appointed to such Committee.

ARTICLE VIII - PROCEDURE AND CONDUCT

The Annual Meeting, and all Board Meetings, shall be conducted in general conformity with Robert's Rules of Order, except as may otherwise be provided by these By-Laws.

ARTICLE IX - CONFLICT OF INTEREST

Section A

Each Director has a fiduciary duty to the Corporation and must give it his/her loyalty. No Director shall be an employee of the Corporation, or spouse or child, parent, brother or sister, by blood or marriage of such an employee.

Section B

No Director or his/her immediate family shall be a contractor, vendor or otherwise derive monetary gain from the Corporation unless it is specifically approved by the Board as being in the best interest of the Corporation and the process set forth in Section C of this Article has been followed. Moreover, no employee, contractor, agent, officer or member of the Board may participate in the selection, award or administration of a contract in which Federal funds are used, in which he/she or his/her immediate family or partner has a direct or indirect financial interest or with whom he/she is negotiating or has any arrangement concerning prospective employment.

Section C

Any Director having a direct or indirect financial or other interest in a contract or other transaction between the Corporation and a third party shall give prompt, full and frank disclosure of his/her interest to the Board and/or the Executive Director. Upon such disclosure, the Board shall determine in closed session by majority vote, whether the disclosure shows that a conflict of interest exists or can reasonably be construed to exist. If a conflict is deemed to exist, such person must absent him/herself from the area where the discussions or deliberations with respect to such contract or transactions are being conducted. In addition, such person shall not vote on the contract or transaction, nor shall such person attempt to influence the decision of other Directors in any way. However, such person may be called upon to present factual information or to respond to

questions from Directors. Such person may be counted in determining the existence of a quorum at any meeting where the contract or transaction is under discussion of being voted upon. The minutes of the meeting shall reflect the disclosure made, the vote thereon, the abstention from voting and participation, and whether a quorum was present. In addition, should a Director feel that another Director, who has not made a disclosure, might possibly have a conflict, it is his/her responsibility to bring this to the attention of the Board.

ARTICLE X - AMENDMENTS

The Bylaws of this Corporation may be added to, amended or repealed in whole or in part at any regular or special meeting or the Board by a quorum as defined for such purpose in Article IV Section L herein, provided that the text of any proposed amendment has been delivered to each Director by mail at their last known residence address, or by hand-delivery at a Board meeting, at least thirty (30) days prior to Board action thereon. Any Director may petition the Board to amend the Bylaws.

ARTICLE XI - LIMITATIONS

Section A - Exempt Activities

No Director, officer, employee, consultant, or agent of the Corporation shall take any action or carry on any activity, by or on behalf of the Corporation, not permitted to be taken or carried on by an organization: (i) exempt from federal income taxation under Internal Revenue Code Section 501(c)(3); and (ii) contributions to which are deductible under Internal Revenue Code Section 170(c)(2).

Section B - Sharing in Corporate Earnings, Dissolution

No Director, officer, or employee of, or any other person connected with, the Corporation, or any other private individual, shall receive at any time any of the net earnings or pecuniary profit from the operations of the Corporation, provided that this prohibition shall not prevent either the payment to any such person of reasonable compensation for services rendered to or for the benefit of the Corporation or the reimbursement of expenses incurred by any such person on behalf of the Corporation, in connection with effecting any of the purposes of the Corporation. No Director shall be entitled to share in the distribution of any of the corporate assets upon the dissolution of the Corporation. All such persons shall be deemed to have expressly consented and agreed that upon such dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, the assets of the Corporation, after all debts have been satisfied, then remaining in the hands of the Board, shall be distributed, transferred, conveyed, delivered and paid over, in such amounts as the Board may determine, or as may be determined by a court of competent jurisdiction upon the application of the Board, exclusively to a charitable, religious, scientific, literary or educational organization (i) which then qualifies for exemption from

Federal income taxation under the provisions of Code Section 501(c)(3) and the Treasury Regulations thereunder (as they now exist or as they may hereafter be amended) and (ii) contributions to which are deductible under Code Section 170(c)(2) and the Treasury Regulations thereunder (as they now exist or as they hereafter may be amended).

Section C - Prohibition Against Political Activities and Limitations on Lobbying

The Corporation shall not participate, or intervene, in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office. No substantial part of the activities of the Corporation shall consist of carrying on propaganda, or otherwise attempting to influence, legislation, except to the extent permitted by law for nonprofit, tax-exempt organizations.

GARFUNKEL WILD, P.C.
ATTORNEYS AT LAW
111 GREAT NECK ROAD • GREAT NECK, NEW YORK 11021
TEL. (516) 393-2200 • FAX (516) 466-5964

FILE NO.: 12164.0009
REPLY TO: New York

WRITER'S EMAIL: jdunne@garfunkelwild.com
WRITER'S DIRECT DIAL: (516) 393-2239

September 1, 2011

Director, Bureau of House Counsel
Division of Legal Affairs
NYS Department of Health
Corning Tower
Rm 2484
Empire State Plaza
Albany, New York 12237

Re: ODA PRIMARY HEALTH CARE CENTER, INC. ("Corporation")

To Whom It May Concern:

Our firm is legal counsel to ODA Primary Healthcare Center, Inc. (the "Corporation"). Enclosed on behalf of the Corporation is an executed copy of a proposed Certificate of Amendment to the Certificate of Incorporation, dated February 3, 2011, the Certificate of Incorporation, prior amendment to the Certificate of Incorporation and the Corporation's bylaws.

The Certificate of Incorporation is being amended to change the name of the Corporation from ODA PRIMARY HEALTH CARE CENTER, INC. to ODA PRIMARY HEALTH CARE NETWORK, INC. The reason for the change is due to the Corporation providing services from several locations. As such, Paragraph 1 of the Certificate of Incorporation of the Corporation, which states the name of the Corporation, shall be amended in its entirety to read as follows:

"The name of the Corporation is ODA PRIMARY HEALTH CARE NETWORK, INC."

There is NO change to the purpose.

Please review the proposed Certificate of Amendment and, if acceptable, enclose the appropriate consent to us so that we may complete the filing process.

In addition, please acknowledge your receipt of the enclosed by providing your stamp or signature in the space provided below on the enclosed copy of this letter and by returning same to the undersigned in the enclosed, postage-paid, self-addressed envelope.

Please feel free to contact me if you have any questions or concerns.

Very truly yours,

James Dunne
Paralegal

JD:Enclosure

ACKNOWLEDGEMENT OF RECEIPT

I hereby acknowledge receipt of the proposed Certificate of Amendment to the Certificate of Incorporation of ODA PRIMARY HEALTH CARE CENTER, INC.

_____
Name

Date

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 8th day of December, 2011, approves the filing of the Certificate of Amendment of the Certificate of Incorporation of ODA Primary Health Care Center, Inc., dated February 3, 2011.

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

November/December 2011

Home Health Agency Licensures **Exhibit #12**

Number	Applicant/Facility
1758 L	Comfort Home Care, LLC (Nassau, Suffolk Queens and Westchester Counties)
1778 L	Restoration Home Care Agency, Inc. (Kings, New York, Queens and Richmond Counties)
1826 L	Marian E. Howell d/b/a Golden Age Home Care (Bronx, New York, Queens, Kings, Richmond and Westchester Counties)
1852 L	Five Star Home Health Care Agency, Inc. (Bronx, Kings, New York, Queens, Richmond and Westchester Counties)
1952 L	Paramount Homecare Agency, Inc. (Bronx, Kings, Nassau, New York, Queens and Richmond Counties)
1911 L	The Gerry Homes (Chautauqua County)
1947 L	Surfside Manor Home for Adults, LLC d/b/a Surfside Manor LHCSA (Queens County)
2050 L	Delaware County Public Health Services (Delaware County)

2051 L	Madison County Department of Health (Madison County)
2058 L	Wayne County Public Health (Wayne County)
2067 L	Herkimer County Public Health Nursing Service (Herkimer County)
1705 L	Bestcare, Inc. (Nassau, Suffolk, Kings, Richmond, Queens, New York, Bronx, Dutchess, Rockland, Putnam, and Westchester Counties)
2073 L	VNA Home Health Services, Inc. (Westchester and Putnam Counties)

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Comfort Home Care, LLC
Address:	Brooklyn
County:	Kings
Structure:	Limited Liability Company
Application Number:	1758-L

Description of Project:

Comfort 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 Comfort Home Care, LLC comprises the following individuals:

Dawn V. Wickline, RN – 50%
Registered Nurse, Nassau University Medical Center

Miriam Markowitz-Leonard, RN – 50%
Staff and Charge Nurse, Nassau University Medical Center

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 1404 Cayuga Avenue, North Bellmore, New York 11710:

Nassau Suffolk Queens Westchester

The applicant proposes to provide the following health care services:

Nursing Home Health Aide Personal Care Homemaker Housekeeper

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation:	Contingent Approval
Date:	November 4, 2011

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Restoration Home Care Agency, Inc
Address:	Carmel
County:	Putnam
Structure:	For-Profit
Application Number:	1778-L

Description of Project:

Restoration Home 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 200 shares of stock, which are owned as follows:

Michael A. Alcindor – 70 shares

Vernon Dye – 70 shares

June Mapp – 30 shares

Janice E. Mason, RN – 30 shares

The proposed Board Members of Restoration Home Care Agency, Inc comprises the following individuals:

Michael A. Alcindor – Chief Executive Officer
Food Service, Department of Education,
Bushwick Campus

Vernon Dye – Chief Operating Officer
Campus Manager, Academy of Urban Planning
High School

June Mapp – Chief Financial Officer
Teacher, Department of Education,
Bushwick Campus

Janice E. Mason, RN – Administrator
Registered Nurse, New York Health Harbor

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 862 East 59th Street, Brooklyn, New York 11234:

Kings New York Queens Richmond

The applicant proposes to provide the following health care services:

Nursing Home Health Aide Personal Care Nutrition
Housekeeper Homemaker

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: November 7, 2011

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Golden Age Home Care
Address: Bronx
County: Bronx
Structure: Sole Proprietorship
Application Number: 1826-L

Description of Project:

Marian E. Howell dba Golden Age Home Care, a sole proprietorship, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The sole proprietor of Golden Age Home Care consists of the following individual:

Marian E. Howell, HHA, Nursing Assistant/Aide -
Self-employed nursing assistant

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 1043 East 223rd Street, Bronx, New York 10466:

Bronx New York Queens Kings Richmond Westchester

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: November 7, 2011

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Five Star Home Health Care Agency, Inc
Address:	Carmel
County:	Putnam
Structure:	For-Profit
Application Number:	1852-L

Description of Project:

Five Star 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 200 shares of stock, which are owned as follows:

Igor Vernovsky – 100 Shares
President, General Company, Inc.

Mariya Offengeym, RN – 100 Shares
Registered Nurse, Extended Home Care

The proposed Board of Directors of Five Star Home Health Care Agency, Inc., comprises the following individual:

Igor Vernovsky – President
(Previously Disclosed)

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 2236 79th Street, Brooklyn, New York 11214:

Bronx	Kings	New York	Queens
Richmond	Westchester		

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		

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:	November 7, 2011

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Paramount Homecare Agency, Inc.
Address:	Hewlett
County:	Nassau
Structure:	For-Profit Corporation
Application Number:	1952-L

Description of Project:

Paramount Homecare Agency, 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:

Michael Pinter, HHA – President – 100 Shares
Vice President, First Maridan Mortgage

Reuben U. Grabel – Vice President – 100 Shares
Student

The Board of Directors of Paramount Homecare Agency, Inc. comprises the following individuals:

Michael Pinter, HHA – President
(Previously Disclosed)

Reuben U. Grabel – Vice President
(Previously Disclosed)

Ava L. Saltzman, RN – Director
Registered Nurse, Empire State Home Care Services

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 61-43 186th Street, Fresh Meadows, New York 11365:

Bronx	Kings	Nassau	New York
Queens	Richmond		

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Medical Social Services
Occupational Therapy	Physical Therapy	Nutrition	Speech-Language Pathology
Homemaker	Housekeeper	Audiology	Respiratory Therapy

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation:	Contingent Approval
Date:	September 22, 2011

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Surfside Manor Home for Adults, LLC d/b/a Surfside Manor LHCSA
Address:	Rockaway Beach
County:	Queens
Structure:	For-Profit
Application Number:	1947-L

Description of Project:

Surfside Manor Home for Adults, LLC d/b/a Surfside Manor LHCSA, a Limited Liability Company, requests approval to obtain licensure as a home care agency under Article 36 of the Public Health Law.

This application is requesting approval to establish a licensed home care services agency (LHCSA) associated with a new Assisted Living Program (ALP). This LHCSA will be associated with Surfside Manor Home for Adults, LLC. This project is part of an approved HEAL-NY Phase 12 Grant.

The members of Surfside Manor Home for Adults, LLC d/b/a Surfside Manor LHCSA, LLC comprise the following individuals:

Bert Fried – Member – 50%
Operator/Administrator, Mermaid Manor Home for Adults

Affiliations:
Seaview Manor, LLC – Adult Home
Mermaid Manor Home for Adults – Adult Home
Ocean Promenade Nursing Center
Surfside Manor Home for Adults LHCSA, LLC d/b/a Extracare Home Care Agency
Surfside Manor Home for Adults LLHCSA, LLC
Mermaid Manor Home for Adults LHCSA, LLC

Tivadar Marcovici – Member – 50%
Chief Operating Office, SE Management Corp.(Real Estate Management Company)

Affiliations:
Seaview Manor, LLC – Adult Home
Mermaid Manor Home for Adults – Adult Home
Ocean Promenade Nursing Center –
Surfside Manor Home for Adults LHCSA, LLC d/b/a Extracare Home Care Agency
Surfside Manor Home for Adults LLHCSA, LLC
Mermaid Manor Home for Adults LHCSA, LLC

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 Queens County from an office located at 95-02 Rockaway Beach Boulevard, Rockaway Beach, New York 11693.

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

A 10 year review of the operations of the following facilities was performed as part of this review

Seaview Manor, LLC
Mermaid Manor Home for Adults
Ocean Promenade Nursing Center
Surfside Manor Home for Adults LHCSA, LLC d/b/a Extracare Home Care Agency
Surfside Manor Home for Adults LLHCSA, LLC
Mermaid Manor Home for Adults LHCSA, LLC

The information provided by the Bureau of Quality Assurance and Surveillance indicated that the residential health care facilities reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Bureau of Quality Assurance and Licensure indicated that the home care agency provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent code violations.

The information provided by the Bureau of Adult Care Facility Quality and Surveillance indicated that the Adult Homes reviewed 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: November 2, 2011

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Bestcare, Inc.
Address: Levitown
County: Nassau
Structure: For-Profit
Application Number: 1705-L

Description of Project:

Bestcare, Inc., a business corporation, requests approval to appoint a Directed Trustee of the Employee Stock Ownership Plan Trust (ESOP) which owns all of the shares of the Bestcare, Inc.

Bestcare, Inc. was previously approved by the Public Health Council at its November 18, 2005 meeting and subsequently licensed as 1400L001-009. At that time, the company transferred all the authorized voting and non-voting shares to an Employee Stock Ownership Plan Trust (ESOP).

The Directed Trustee of the ESOP Trust comprises the following individual:

Duane E. Tolander – Trustee
Self-employed, CPA, Independent Trustee
Affiliations:

- L. Woerner, Inc, d/b/a HCR, Independent Trustee for the ESOP Transaction – 6/1/06 – 11/29/06

The Trustees of the ESOP Trust comprise the following individuals:

Lawrence Weiner – Chairman/CEO, ESOP Trustee
Chairman/CEO, Bestcare, Inc.
Affiliations:

- Accredited Home Care Services
  Chairman/Director – 11/86 – Present
- Best Island Care, Inc.
  President – 6/86 – Present
- Best Care Home Health Services, LLC
  President/CEO – 6/00 – Present

Bernhard R. Schiel – President/COO, ESOP Trustee
President/COO, Bestcare, Inc.
Affiliations:

- Accredited Home Care Services
  Director – 11/86 – Present
- Best Island Care, Inc.
  Director – 11/86 – Present
- Best Care Home Health Services, LLC
  Exec. VP/COO – 6/00 – Present

Since the time the Class B preferred shares were originally transferred to the ESOP in 2003, Lawrence Weiner and Bernhard Schiel have served as trustees. They will continue to serve in this role. Both also serve on the governing body of Bestcare, Inc.

The Board of Trustees of Bestcare, Inc. comprises the following individuals:

Lawrence Wiener –Chairman/CEO
(Previously disclosed)

Bernhard R. Schiel – President/COO
(Previously disclosed)

Richard Feliciano – CFO/Vice-President/CPA
CFO/Vice-President Finance, Bestcare, Inc.
Affiliations:

- Best Island Care, Inc.
  Vice-President – 2000 – Present
- Best Care Home Health Services, LLC
  Vice-President – 2000 – Present

Brian A. Schiel – Vice-President
Vice-President, Bestcare, Inc.

Mitchell S. Wiener, Esq. – Vice-President
General Counsel, Bestcare, Inc.

Susan Wiener – Treasurer/Asst. Secretary
Retired
Affiliation:

- Accredited Home Care Services
  Director – 2000 – Present
- Bestcare, Inc.
  Vice-President – 1981 – 2002
- Best Care Home Health Services, LLC
  Personnel Director, Treasurer/Assistant
  Secretary– 2000 – Present

The applicant will continue to serve the residents of the following counties from offices located at:

1400L001		
3000 Hempstead Turnpike, Suite 207 Levittown, New York 11756	Nassau Suffolk	
1400L002		
70-50 Austin Street Forest Hills, New York 11375	Kings Richmond Nassau	Queens New York Bronx
1400L003		
35 E. Grassy Sprain Road, Ste 405 Yonkers, New York 10710	Dutchess Rockland Bronx	Putnam Westchester
1400L004		
1781 Flatbush Avenue Brooklyn, New York 11210	Kings Richmond	New York
1400L005		
57 Park Ave, 2nd Fl Bayshore, New York 10466	Suffolk	Nassau
1400L006		
4119 White Plains Rd. Bronx, New York 10466	Bronx	New York
1400L007		
60 Bay Street, Suite 706 Staten Island, New York 10301	Richmond	
1400L0008		
5-9 Union Square, West New York, New York 10003	Kings Richmond	New York
1400L009		
814 East 233Rd St Brooklyn, New York 10466	Bronx	Kings

The applicant will continue to provide the following health care services:

Nursing	Personal Care	Home Health Aide
Homemaker	Housekeeper	

A 10 year review of the operations of the following facilities was performed as part of this review (unless otherwise noted)

- Bestcare Home Health Services, Inc. (1/24/02-present) State of New Jersey
- Accrediated Home Care Services – 0417L001 LHCSA
- Best Island Care – 1149L001 LHCSA
- L. Woerner d/b/a HCR – 1447L001

The information provided by the out-of-state regulatory agencies in the state of New Jersey indicated there have not been any enforcement actions against the above licensed agencies.

The information provided by the Bureau of Quality Assurance and Licensure has indicated that the Licensed Home Care Services Agency's provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent code violations.

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: October 18, 2011

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	VNA Home Health Services, Inc.
Address:	Tarrytown
County:	Westchester
Structure:	Not-for-Profit Corporation
Application Number:	2073-L

Description of Project:

VNA Home Health Services, Inc., a not-for-profit corporation, requests approval for a change in ownership under Article 36 of the Public Health Law. VNA Home Health Services, Inc. was previously approved by the Public Health Council at its November 17, 1995 meeting and subsequently licensed as 9799L001.

District Nursing Association of Northern Westchester County, Inc. d/b/a Visiting Nurse Association of Hudson Valley, the sole member of VNA Home Health Services, Inc. has filed a certificate of need application to change its sponsorship by adding Putnam Hospital Center to its governance structure, enabling Putnam Hospital Center to elect two of the directors of the VNA of Hudson Valley. In the proposed structure, the directors of VNA of Hudson Valley, VNA Home Health Services, Inc.'s sole member, would be elected by Sound Shore Health System, Inc., Putnam Hospital Center and VNA and Hospice Care Foundation. Putnam Hospital Center would elect two directors with the remaining board members elected in equal numbers by the VNA of Hudson Valley and Sound Shore Health System, Inc.

The members of the Board of Directors of VNA Home Health Services, Inc. are as follows:

George Erbe, Chairperson
Retired
Affiliations: Sound Shore Medical Center of Westchester, Pinnacle Healthcare, Inc., VNA of Hudson Valley

Janet Ready, R.N., Vice Chairperson, Secretary
COO, Vassar Brothers Medical Center
Affiliation: VNA of Hudson Valley

John Heimerdinger, Treasurer
Retired
Affiliation: Westchester Medical Center, VNA of Hudson Valley

Charles Barton
Retired

Albert Farina
CFO, Sound Shore Medical Center of Westchester

Richard Halevy
Self-employed consultant in PR
Affiliation: VNA of Hudson Valley

Carla Herman, R.N.
Director of Planning, Westchester Medical Center
Affiliations: Childrens Rehabilitation Center, VNA of Hudson Valley

John Spicer
President/CEO
Mount Vernon Hospital and Sound Shore Medical Center of Westchester
Affiliations: VNA of Hudson Valley, Westchester Health Care Corporation

Clark Walter, Esq.
SVP/General Counsel,
Sound Shore Medical Center of
Westchester
Affiliation: VNA of Hudson Valley

The members of the Board of Directors of Visiting Nurse Association of Hudson Valley are as follows:

George Erbe, Chairperson
(disclosed above)

Janet Ready, R.N., Vice Chairperson, Secretary
(disclosed above)

John Heimerdinger, Treasurer
(disclosed above)

Charles Barton
(disclosed above)

Peter Burchell
Financial Advisor, UBS
Financial Service, Inc.

Albert Farina
(disclosed above)

Richard Halevy
(disclosed above)

Carla Herman, R.N.
(disclosed above)

John Spicer
(disclosed above)

Clark Walter, Esq.
(disclosed above)

The members of the Board of Directors of Sound Shore Health System, Inc. are as follows:

Mauro Romita, Esq., Chairperson
President/COO, Castle Oil Corp.
Affiliations: Sound Shore Medical
Center of Westchester,
Pinnacle Healthcare, Inc.

Darren DeVerna, Vice Chairperson
President, Production Resource Group
(entertainment technology)
Affiliations: Mount Vernon Hospital,
Pinnacle Healthcare, Inc.

Richard Naclerio, Secretary
Retired
Affiliation: Mount Vernon Hospital

Lawrence Ruisi, Treasurer
Retired
Affiliations: Sound Shore Medical Center
of Westchester, Pinnacle Healthcare, Inc.

Robert Balachandran, Esq.
President/CEO, BellRow Enterprises
(consulting)
Affiliation: Sound Shore Medical
Center of Westchester

Vincent Bufano
Retired
Affiliations: Mount Vernon Hospital,
Pinnacle Healthcare, Inc.

Pat Capasso
Manager/Sales, Pascap Co., Inc.
(scrap metal processing)
Affiliation: Mount Vernon Hospital

Daniel Cremins
Executive VP, H.J. Kalikow & Co.
(real estate)
Affiliation: Sound Shore Medical Center
of Westchester

George Erbe
(disclosed above)

Louis Frost, Esq.
Partner, Davidson, Dawson & Clark, LLP
Affiliation: Sound Shore Medical Center
of Westchester

Lorri Gorman, CPA
Unemployed
Affiliation: Sound Shore Medical Center of Westchester

Maryellen Johnston
Sales, Write On Larchmont (stationery sales)
Affiliation: Sound Shore Medical Center of Westchester

Charles McCabe
Retired
Affiliation: Sound Shore Medical Center of Westchester

Thomas McEvoy
Retired
Affiliation: Sound Shore Medical Center of Westchester

Carol Petrillo
Unemployed
Affiliation: Sound Shore Medical Center of Westchester

Richard Petrillo, M.D.
Chairman, Department of Medicine, Mount Vernon Hospital

Jeffrey Powers
CEO, Powers Fasteners, Inc. (tool and fastener manufacturing)
Affiliation: Sound Shore Medical Center of Westchester

John Spicer
(disclosed above)

Stephen Tenore
Funeral Director, Lloyd Maxey & Sons Beauchamp Chapel, Inc.
Funeral Director, Sisto & Paino, Inc.
Affiliation: Sound Shore Medical Center of Westchester

Danna Wood Webb, Esq.
self-employed attorney
Affiliation: Mount Vernon Hospital

The members of the Board of Directors of VNA and Hospice Care Foundation are as follows:

Peter Burchell, Chairperson
(disclosed above)

Hope Levene, First Vice Chairperson and Secretary
Retired

John Heimerdinger, Treasurer
(disclosed above)

Charles Barton
(disclosed above)

George Erbe
(disclosed above)

Adela Elow
Retired

Virginia Flood
Retired

Richard Halevy
(disclosed above)

Sue Kelly
Retired

The members of the Board of Directors of Putnam Hospital Center are as follows:

Keiren Farquhar, Chairperson
Medical Rescue Coordinator, Putnam County Department of Health

Jeffrey Redfield, First Vice Chairperson
VP Organization Strategy, Victorinox (manufacturing)

Robert Morini, Second Vice Chairperson
Regional VP, Houlehan Lawrence, Inc. (real estate)

Paul Camarda, Secretary
Self-employed, Camarda Realty Investments, LLC

Raymond Durkin
Partner, Durkin Brothers
(fuel oil supplier)

James Dusenbury
Retired

Kevin Dwyer
Owner, Dwyer Agency
(real estate/insurance)

Karen Fleming
Director of Human Resources,
Powers Fasteners, Inc.
(construction fasteners)

William Gerstner
Partner, Saw Mill Capital, LLC

Donna McGregor, CPA
President/CEO, Putnam Hospital Center
Affiliation: The Ambulatory Surgery Center of Westchester

Loretta Molinari, R.N.
Branch Manager, Visiting Nurse Services in Putnam

John Neubauer
President, John W. Neubauer Audio Visual Products, Inc.
Affiliations: HANYS, Health Quest Systems, Inc.

Janusz Rudnicki, M.D.
OB/Gyn, Mount Kisco Medical Group

Wayne Ryder
CEO, Putnam National Bank

The members of the Board of Directors of Health Quest Systems, Inc.are as follows:

Steven Lant, Chairperson
President/CEO, C.H. Energy Group, Inc.

Robert Dyson, First Vice Chairperson
Investment Services, Patterson Planning & Services, Inc.

James Brudvig
VP for Administration, Bard College

Joseph DiVestea
Financial Advisor, Merrill Lynch

Thomas Eastwood
Retired
Affiliation: Putnam Hospital Center

Keiren Farquhar
(disclosed above)

Sunil Khurana, M.D.
CEO, Premier Medical Group
Affiliation: Vassar Brothers Medical Center

Mary Madden
President/CEO, Hudson Valley Federal Credit Union

Michael Moses, M.D.
President, Cross River Anesthesiologist Services

Michael Nesheiwat, M.D.
Physician, Putnam Family Medicine, PC

Wayne Nussbickel
President/CEO, N & S Supply
(wholesale plumbing & heating)

Gregory Rakow
President, Fraleigh & Rakow, Inc.
(insurance)

Michael Weber
President/CEO, Health Quest Systems, Inc.

Lillian Weigert, Esq.
Attorney, Gellert & Klein, PC

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department, the New York Physician Profile and the Office of Professional Medical Conduct, where appropriate, indicates no issues with the licenses of the health care professionals associated with this application.

Certificates of Good Standing have been received for all attorneys.

The applicant proposes to serve the residents of the following counties from an office located at 540 White Plains Road, Suite 300, Tarrytown, New York 10591:

Westchester	Putnam

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Physical Therapy
Speech Language Pathology	Medical Social Services	

A ten year review of the following facilities was performed as part of this review:

Children's Rehabilitation Center
Mount Vernon Hospital
Putnam Hospital Center
Sound Shore Medical Center of Westchester
The Ambulatory Surgery Center of Westchester
Vassar Brothers Medical Center
VNA of Hudson Valley

A review of the hospitals and diagnostic and treatment centers by the Division of Certification and Surveillance determined that the facilities have exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations.

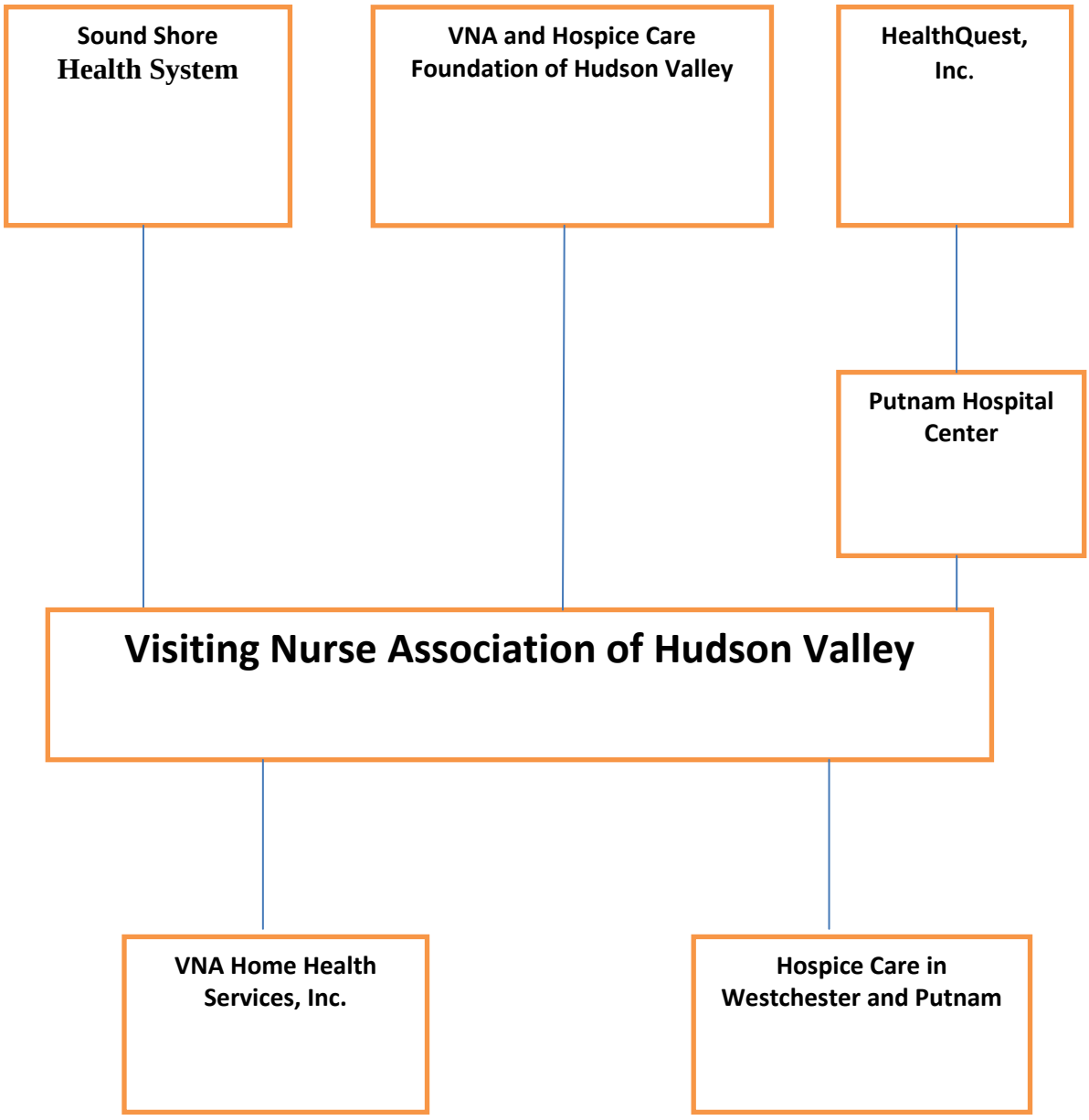
A review of the certified home health agency by the Bureau of Quality Assurance and Licensure determined that the agency has exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

<u>Contingency</u>
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:	November 2, 2011

Proposed Organizational Chart
Visiting Nurse Association of Hudson Valley



RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 8th day of December, 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:
1758 L	Comfort Home Care, LLC (Nassau, Suffolk, Queens and Westchester Counties)
1778 L	Restoration Home Care Agency, Inc. (Kings, New York, Queens and Richmond Counties)
1826 L	Marian E. Howell d/b/a Golden Age Home Care (Bronx, New York, Queens, Kings, Richmond and Westchester Counties)
1852 L	Five Star Home Health Care Agency, Inc. (Bronx, Kings, New York, Queens, Richmond and Westchester Counties)
1952 L	Paramount Homecare Agency, Inc. (Bronx, Kings, Nassau, New York, Queens and Richmond Counties)

1911 L	The Gerry Homes (Chautauqua County)
1947 L	Surfside Manor Home for Adults, LLC d/b/a Surfside Manor LHCSA (Queens County)
2050 L	Delaware County Public Health Services (Delaware County)
2051 L	Madison County Department of Health (Madison County)
2058 L	Wayne County Public Health (Wayne County)
2067 L	Herkimer County Public Health Nursing Service (Herkimer County)
1705 L	Bestcare, Inc. (Nassau, Suffolk, Kings, Richmond, Queens, New York, Bronx, Dutchess, Rockland, Putnam, and Westchester Counties)
2073 L	VNA Home Health Services, Inc. (Westchester and Putnam Counties)

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

December 8, 2011

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

C. Proposed Resolution for Adoption **Exhibit #23**

Michael Stone, Assistant Counsel, DLA

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

December 8, 2011

C. PROPOSED RESOLUTION FOR ADOPTION **Exhibit #23**

Michael Stone, Assistant Counsel, DLA

RESOLUTION

WHEREAS, this Council has found that the New York State Electronic Certificate of Need system has enabled the Department of Health to process certificate of need applications more efficiently while affording applicants improved communication and transparency, it is hereby

RESOLVED, that, pursuant to Public Health Law sections 2801-a (2), 3606 (2), and 4004 (2), the Public Health and Health Planning Council hereby prescribes that all submissions of applications for establishment made pursuant to those sections of the Public Health Law shall be accepted only through the New York State Electronic Certificate of Need system, as developed by the Department of Health, as of January 1, 2012.