STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

AGENDA

April 5, 2012

Immediately Following the Special Establishment and Project Review Committee Meeting Scheduled for 10:00 a.m.

OGS Concourse Meeting Room #6
Albany, New York

I. INTRODUCTION OF OBSERVERS

Dr. William Streck, Chairman

II. APPROVAL OF MINUTES

February 2, 2012 **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 Health Systems Management Activities

Richard Cook, Deputy Commissioner, Office of Health Systems Management

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

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

D. Report of the Office of Health Insurance Programs Activities

Jason Helgerson, Deputy Commissioner, Office of Health Insurance Programs

E. Report of the Office of Public Health Activities

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

IV. PUBLIC HEALTH SERVICES

Report on the Activities of the Committee on Public Health

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

V. HEALTH POLICY

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

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

B. Update on the Results of Legislation Signed by Governor Cuomo Creating a Certificate of Still Birth

Guy Warner, Director, Vital Records

VI. GUIDING POLICIES FOR PUBLIC HEALTH AND HEALTH PLANNING COUNCIL CORRESPONDENCE AND MEETING DELIBERATIONS

Discussion

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

VII. REGULATION

Report of the Committee on Codes, Regulations and Legislation — Exhibit #2

Angel Gutiérrrez, M.D., Chair

For Adoption

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)

For Discussion

Part 757 of Title 10 NYCRR – Chronic Renal Dialysis Services

Sections 405.9 and 405.5 of Title 10 NYCRR –
Release of a Deceased Person From a Hospital

Section 405.13, 405.22, 405.30 and 405.31 of Title 10 NYCRR –
Organ Transplant Provisions

VIII. PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

Report of the Committee on Establishment and Project Review

Jeffrey Kraut, Chair

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

NO APPLICATIONS

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Diagnostic and Treatment Center – Construction **Exhibit #3**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	121076 C	Institute for Urban Family Health/Sidney Hillman Center (New York County) Mr. Fassler - Interest	Contingent Approval

Residential Health Care Facility – Construction **Exhibit #4**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	121079 C	Boro Park Operating Co., LLC d/b/a Boro Park Center for Rehabilitation and Healthcare (Kings County) Mr. Fassler - Recusal	Contingent Approval

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

Residential Health Care Facility – Construct **Exhibit #5**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	102376 C	Albany County Nursing Home (Albany County)	To be presented at the Special Establishment/Project Review Committee on 4/5/12

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 #6**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	112222 B	Brooklyn SC, LLC (Kings County)	Contingent Approval
2.	112287 B	Plastic Surgery Center of Westchester (Westchester County)	Contingent Approval
3.	112347 E	Executive Woods Ambulatory Surgery Center, LLC	Approval

(Albany County)

Diagnostic and Treatment Center – Establish/Construct **Exhibit #7**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	112261 E	E & A Medical Solutions, LLC d/b/a Forest Hills Health Center (Queens County)	Contingent Approval

Residential Health Care Facility – Establish **Exhibit #8**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	112136 E	Hopkins Ventures, LLC d/b/a Hopkins Center for Rehabilitation and Healthcare (Kings County)	Contingent Approval
2.	112275 E	Rockville Operating, LLC d/b/a Advanced Center for Rehabilitation and Nursing at Rockville (Nassau County)	Contingent Approval
3.	112348 E	St. James Operating, LLC d/b/a St. James Rehabilitation and Healthcare Center (Suffolk County)	Contingent Approval

Certificate of Incorporation **Exhibit #9**

	Applicant	E.P.R.C. Recommendation
1.	Oswego Health Foundation	Approval

Certificate of Amendment of the Certificate of Incorporation **Exhibit #10**

	Applicant	E.P.R.C. Recommendation
1.	United Cerebral Palsy and Handicapped Children's Association of Chemung County, Inc.	Approval

Certificate of Dissolution **Exhibit #11**

	Applicant	**E.P.R.C. Recommendation**
1.	Lutheran Center for the Aging, Inc.	Approval

HOME HEALTH AGENCY LICENSURES **Exhibit #12**

Number	**Applicant/Facility**	**E.P.R.C. Recommendation**
2106-L	St. Lawrence County Public Health Department (St. Lawrence County)	Contingent Approval
2068-L	Hudson Valley Home Health Care, LLC (Westchester, Putnam, Ulster, Rockland, Dutchess, Orange, and Sullivan Counties)	Contingent Approval
2075-L	Golden Acres Home for Adults SP, LLC (Rockland, Putnam, Bronx, Orange, Ulster, Sullivan, Dutchess and Westchester Counties)	Contingent Approval
2034-L	Robynwood, LLC d/b/a Robynwood Home Care (Chenango, Delaware, Otsego, and Schoharie Counties)	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 – Establish **Exhibit #13**

	Number	**Applicant/Facility**	**E.P.R.C. Recommendation**
1.	121051 E	Corning Hospital	Contingent Approval

(Steuben County)
Mr. Booth - Interest

Diagnostic and Treatment Centers – Establish/Construct **Exhibit #14**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	112184 B	Huther Doyle Memorial Institute, Inc. (Monroe County) Mr. Booth – Interest	Contingent Approval
2.	112343 B	Corning Centerway (Steuben County) Mr. Booth - Interest	Contingent Approval

Hospice – Establish/Construct **Exhibit #15**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	102454 E	Compassionate Care Hospice of New York, Inc. (Bronx County) Ms. Regan – Interest	Contingent Approval
2.	112211 B	Jacob Perlow Hospice Corporation d/b/a MJHS Hospice and Palliative Care (Kings County) Mr. Fassler – Interest Ms. Regan - Interest	Contingent Approval

Certified Home Health Agencies – Establish **Exhibit #16**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	111413 E	Genesee Region Home Care Association, Inc. d/b/a Lifetime Care (Schuyler County) Mr. Booth – Recusal Ms. Hines – Recusal	Contingent Approval

Residential Health Care Facility – Establish **Exhibit #17**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	111456 E	4800 Bear Road Operating Company, LLC d/b/a Elderwood at Liverpool (Onondaga County) Mr. Booth - Interest	Contingent Approval
2.	111462 E	1818 Como Park Boulevard Operating Company, LLC d/b/a Elderwood at Lancaster (Erie County) Mr. Booth - Interest	Contingent Approval
3.	111463 E	20 Bassett Road Operating Company, LLC d/b/a Elderwood Health Care at Williamsville (Erie County) Mr. Booth - Interest	Contingent Approval
4.	111466 E	2600 Niagara Falls Boulevard Operating Company, LLC d/b/a Elderwood at Wheatfield (Niagara County) Mr. Booth - Interest	Contingent Approval
5.	111467 E	4459 Bailey Avenue Operating Company, LLC d/b/a Elderwood at Amherst (Erie County) Mr. Booth - Interest	Contingent Approval
6.	111468 E	2850 Grand Island Boulevard Operating Company, LLC d/b/a Elderwood at Grand Island (Erie County) Mr. Booth - Interest	Contingent Approval
7.	111469 E	225 Bennett Road Operating Company, LLC d/b/a Elderwood at Cheektowaga	Contingent Approval

		(Erie County) Mr. Booth - Interest	
8.	111470 E	5775 Maelou Drive Operating Company, LLC d/b/a Elderwood at Hamburg (Erie County) Mr. Booth - Interest	Contingent Approval
9.	111471 E	37 North Chemung Operating Company, LLC d/b/a Elderwood at Waverly (Tioga County) Mr. Booth - Interest	Contingent Approval
10.	112218 E	Waterfront Operations Associations, LLC d/b/a Waterfront Center for Rehabilitation and Healthcare (Erie County) Mr. Fassler – Recusal Mr. Booth - Interest	Contingent Approval

HOME HEALTH AGENCY LICENSURES **Exhibit #18**

Number	Applicant/Facility	E.P.R.C. Recommendation
1691-L	ABC Home Care, Inc. (Bronx, Richmond, Kings, New York and Queens Counties) Ms. Regan - Interest	Contingent Approval
1882-L	BaCOR Healthcare Solutions Group, LLC d/b/a BaCOR Care for Life (Nassau and Richmond Counties) Ms. Regan - Interest	Contingent Approval
1716-L	Elite Home Care Service Agency, Inc. (New York, Nassau, Kings, Queens, Bronx and Richmond Counties) Ms. Regan - Interest	Contingent Approval

1634-L	Healing Touch Home Care, Inc. (Bronx, Kings, New York, Queens and Richmond Counties) Ms. Regan - Interest	Contingent Approval
1962-L	Louis Career Development Center, Inc., d/b/a Smart Home Care Agency (New York, Nassau, Kings, Queens, Bronx, and Richmond Counties) Ms. Regan - Interest	Contingent Approval
1996-L	Steps in Home Care, Inc. (Westchester, Nassau, Bronx, and New York Counties) Ms. Regan - Interest	Contingent Approval
1906-L	JS Homecare Agency of NY, Inc. (Bronx, Richmond, Kings, Westchester, New York, Queens, Dutchess, Suffolk, Nassau, Sullivan, Orange, Rockland, Putnam and Ulster Counties) Ms. Hines – Interest Ms. Regan - Interest	Contingent Approval
1901-L	Heritage Christian Services, Inc. Genesee, Wayne, Livingston, Monroe, Erie, Niagara, and Ontario Counties) Mr. Booth - Interest	Contingent Approval
2107-L	Niagara County Department of Health (Niagara County) Mr. Booth - Interest	Contingent Approval
2108-L	Tompkins County Health Department (Tomkins County) Mr. Booth - Interest	Contingent Approval

2096-L	Yates County Public Health (Yates County) Mr. Booth - Interest	Contingent Approval
2010-L	Samaritan Senior Village, Inc. (Jefferson, Lewis, and St. Lawrence Counties) Mr. Booth - Interest	Contingent Approval
2028-L	229 Bennett Road Operating Company, LLC d/b/a Elderwood Home Care at Cheektowaga (Erie County) Mr. Booth - Interest	Contingent Approval
2029-L	580 Orchard Park Road Operating Company, LLC d/b/a Elderwood Home Care at West Seneca (Erie County) Mr. Booth - Interest	Contingent Approval
2030-L	76 Buffalo Street Operating Company, LLC d/b/a Elderwood Home Care at Hamburg (Erie County) Mr. Booth - Interest	Contingent Approval
2031-L	44 Ball Street Operating Company, LLC d/b/a Elderwood Home Care at Waverly (Tioga County) Mr. Booth - 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

Ambulatory Surgery Center – Establish/Construct **Exhibit #19**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	112382 B	North Country Eye Center (Saratoga County)	Contingent Approval

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

Ambulatory Surgery Center – Establish/Construct **Exhibit # 20**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	112086 B	1504 Richmond, LLC d/b/a Richmond Surgery Center (Richmond County) Mr. Kraut – Recusal	No Recommendation

X. PROFESSIONAL

Report of the Committee on Health Personnel and Interprofessional Relations

Dr. Theodore Strange, Chair
One Case

XI. NEXT MEETING

May 24, 2012 - NYC
June 7, 2012 - NYC

XII. ADJOURNMENT

State of New York
Public Health and Health Planning Council
Annual Meeting

Minutes
February 2, 2012

The meeting of the Public Health and Health Planning Council was held on Thursday, February 2, 2012, 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. Ellen Grant
Dr. Angel Gutiérrez
Ms. Victoria Hines
Mr. Robert Hurlbut
Mr. Arthur Levin
Mr. Jeffrey Kraut
Dr. Glenn Martin
Dr. John Palmer
Ms. Ellen Rautenberg
Ms. Susan Regan
Mr. Peter Robinson
Dr. John Rugge
Dr. Theodore Strange
Dr. Ann Marie Theresa Sullivan
Dr. Anderson Torres
Dr. Patsy Yang
Commissioner Shah (ex-officio)

DEPARTMENT OF HEALTH STAFF PRESENT:

Dr. Guthrie Birkhead
Ms. Rachel Block
Anna Colello (Albany via video)
Ms. Barbara DelCogliano (Albany via video)
Mr. Christopher Delker
Mr. James Dering
Ms. Ellen Flink (Albany via video)
Ms. Sandy Haff
Mr. Jason Helgerson
Ms. Mary Ellen Hennessy
Ms. Celeste Johnson
Ms. Lora Lefebvre
Ms. Karen Lipson
Ms. Karen Madden
Mr. Keith McCarthy (Albany via video)
Dr. John Milliren
Ms. Joan Cleary Miron (Albany via vid
Ms. Sylvia Pirani
Ms. Linda Rush (Albany via video)
Ms. Kelly Seebald (Albany via video)
Ms. Lisa Thomson

INTRODUCTION:

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

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

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

MEETING OVERVIEW:

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

APPROVAL OF THE MINUTES OF DECEMBER 8, 2011:

Dr. Streck asked for a motion to approve the December 8, 2011 Minutes of the Public Health and Health Planning Council meeting. Dr. Berliner motioned for approval which was seconded by Dr. Gutiérrez. The minutes were unanimously adopted. Please refer to page 7 of the attached transcript.

ELECTION OF OFFICERS

As outlined in the Council's bylaws, Dr. Streck motioned for the appointment of Mr. Jeffrey Kraut to serve as the Council's Vice Chair. This motion was seconded by Dr. Gutiérrez. The motioned carried. Please see page 7 of the attached transcript.

Dr. Streck announced the Standing Committee and Ad Hoc Committee Chairs and stated members can reference their Committee assignments with the chart they have been given. See the attached document for Committee assignments.

REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

Dr. Streck introduced Commissioner Shah who presented the Report of the Department of Health.

Executive Budget Proposal

Commissioner Shah began his report by addressing Governor Cuomo's executive budget proposal for the 2012/2013 state fiscal year released on January 17, 2012. He commends the efforts on the part of the Department in working with the Governor's office and state legislature on these proposals. Dr. Shah highlighted some of the items included in these proposals.

Dr. Shah first addressed Medicaid spending. It was agreed upon last year, that spending will increase by four percent for an approximate 614 million dollars, in order to ensure that New York will be able to meet the needs of Medicaid beneficiaries while still maintaining a tight rein on spending growth. Dr. Shah adds that the Medicaid Redesign Team has made great strides in reforming and restructuring the Medicaid program, and there are continued efforts in the transition to a care management system.

Dr. Shah continues on to discuss the creation of a health insurance exchange which is a priority of the Governor. Governor Cuomo's budget called for the enactment of a health exchange, which will assist an estimated one million New Yorkers in obtaining health insurance coverage. The development of such an exchange began a year ago and Commissioner Shah is confident that the Department will be able to come to an agreement this year.

Commissioner Shah also commented on local Medicaid cost. He reported that through the work of the MRT, New York took decisive action in order to control the overall Medicaid spending growth last year. The Governor has proposed a plan to help control Medicaid spending at the low level by calling for a phased in 100 percent state takeover of local Medicaid growth. Under this proposal, the existing three percent caps on growth will be reduced to two percent in 2013, drop to one percent in 2014, and be eliminated entirely in 2015. This plan will save counties approximately 1.2 billion dollars over the next five years.

The Commissioner concluded his discussion of the executive budget proposals by suggesting that these three proposals exemplify the New York reform, revitalization and accountability and adds that the Department will continue to work with the executive chamber and legislature to make sure that all of these goals are implemented. Dr. Shah will keep the PHHPC members apprised of these efforts.

Doctors Across New York Program

Dr. Shah went on to briefly address the Department's continued effort to respond to the shortages of primary care and specialized care providers. He reports that The Doctors Across New York Program has been working to alleviate these shortages by providing critical support to recruit and retain physicians in underserved areas across the state. This is done through salary or productivity enhancement, sign-on bonuses, loan repayments or direct funding.

Dr. Shah indicated that in late December, the Department announced 500,000 dollars in state funding for five health care centers under the Doctors Across New York Program, the physician practice support component. He explained that each of the five awardees will receive 100,000 dollars over two years, and all of them have made multiyear commitment to providing services in underserved areas. Two of the grant recipients, Ellis Hospital in Schenectady and Dr. Alseny Balde in the Bronx received inner city awards for Family Medicine. Additionally, three providers received rural awards, Nathan Littauer Hospital Association in Gloversville for urology, FLH Medical, PC in Geneva for psychiatry, and Geneva General Hospital for general surgery.

Dr. Shah praised The Doctors Across New York Program as it has played an important role in addressing health care provider shortages in many communities. He advised that there is an additional 12 million dollars that is still available to health care providers who apply for grants by March 30th of 2012.

Obesity

Dr. Shah transitioned into the discussion of obesity, which is another critical health challenge the Department faces. Obesity is a public health epidemic that often starts at a young age. The Department in conjunction with the State Education Department has tracked a weigh status of school children in New York State outside of New York City which has its own fitness and tracking system. The Department will soon be issuing a report on these findings.

Dr. Shah announced that the results of this report are alarming. Thirty-two percent of children in New York public schools are either overweight or obese. The data are based on information obtained during the 2008/2009 school year and the 2009/2010 school year. Approximately 17 percent of school children were found to be obese, which means having a body mass index, or BMI, greater than the 95th percentile of all children. An additional 15 percent are overweight with a BMI between the 85th and 95th percentile.

Dr. Shah advised that The Department has shared this information with local health departments and school districts, and will continue to work with them on local planning efforts to improve child and adolescent health. The high prevalence of childhood weight problems is cause for concern. Obese and overweight children face a much greater risk of developing serious health problems such as diabetes, asthma, coronary disease. New York has numerous programs designed to promote healthier lifestyles and prevent childhood obesity, including the Healthy Schools New York Initiative. The Healthy Schools New York initiative is a collaboration between the Department of Health and the State Education Department that focuses on healthy eating and control activities. The Department is working with state and local partners to provide students with free or low cost nutritious meals, and to create a healthier environment.

Dr. Shah stated that evidence shows that children who are at a healthy weight achieve better educational outcomes. Obesity is a challenge across the nation and even globally. This data from the student weight and status report will help the Department meet this challenge and develop and expand evidence-base programs to reverse the prevalence of obesity amongst children.

Influenza

Dr. Shah concludes his report by addressing flu in New York State. It has not been a major problem this winter. The number of hospitalizations due to flu has been very low this season, with only ten hospitalizations with flu in the first week of January. In fact, the numbers of hospitalizations have averaged just ten cases per week over the past month compared with hundreds of hospitalized patients during the same period last year. He adds that it is too early to figure out why these numbers are so low or to declare this a very mild flu season. The typical peak time for flu cases is approaching and the Department expects to see flu activity pickup considerably in the next couple months. Therefore, there is still time to get your flu shots.

Dr. Shah thanked Dr. Birkhead and everyone in Public Health at the state and local levels who have been active in educating the public about promoting flu vaccination. In light of the high numbers of cases of H1N1 just a few years ago, this is good news.

Dr. Streck thanked Commissioner Shah for his report and opened the floor for questions and comments from council members.

To review Dr. Shah's full report and the questions and comments please refer to pages 9 through 17 of the attached transcript.

Dr. Streck thanked Dr. Shah for his report and moved to the next item on the agenda and introduced Ms. Lefebvre to give the Report on the Activities of the Office of Health Systems Management.

REPORT OF THE OFFICE OF HEALTH SYSTEMS MANAGEMENT ACTIVITIES

Ms. Lefebvre thanked Dr. Streck and advised the council that she will report on two items. She intends to provide the council with a brief update on HEAL request for grant applications that the Department has out as well as an update on CON design satisfaction, provided by Mr. Abel.

HEAL UPDATE

Ms. Lefebvre reports the MRT Group, specifically the Brooklyn Workgroup and the Payment Reform Workgroup have been looking for ways that the state could support in assisting the existing provider network out there to deliver structural change trying to get out of the four walls oftentimes of the hospitals or nursing homes and really start directing itself toward taking care health outcomes in the communities.

She states that the OHSM issued a request for grant applications on November 28, 2011. The OHSM is looking for applications that support the principles of development of meaningful primary care in communities, rescaling acute care infrastructure, or asking for the creation of a provider network that focus on improving population health.

Ms. Lefebvre announced that the grants that are available are both capital grants and temporary operating assistance. There is 450 million dollars available both in HEAL and acting federal funds, as well as a temporary Medicaid rate adjustment that will be made available for good applications. She added that this is the last significant allocation of HEAL dollars that will be available for New York State. The Department successfully persuaded the federal government to extend the approval of the waiver through March of 2014, at which time the money that is available to the Department needs to be expended.

Ms. Lefebvre advised that applications are due back to the Department February 10, 2012. This time frame was provided at the request of the provider community in order to allow more time to prepare applications. There was also a conference held on January 13, 2012, in order to clarify what it was the OHSM was looking for as well as answer

questions. The OHSM is excited about repeating some creative kind of transformative applications, which will have some very real and positive impacts on population health in the communities that providers serve.

Ms. Lefebvre concluded her HEAL update and was prepared to respond to any question.

Dr. Streck opened the floor for questions, of which there were none, and turned the floor over to Mr. Abel to report on CON redesign satisfaction.

CON Redesign

Mr. Abel began his report by addressing the user feedback as the electronic CON application and tracking process has been in use for thirteen months. From the end of October 2011 through November 2011, the Division of Health Facility Planning (DHFP) had made up a user satisfaction survey for NYSE-CON and Mr. Abel reports that the DHFP has received a good amount of feedback.

The survey was comprised of 26 multiple-choice questions, which takes about ten minutes to complete. The purpose of this survey was to obtain feedback from health care facilities, agencies, consultants and the general public who is using the system for searches. There were 55 respondents, 29 from hospital staff, five consultants, four from long term care facilities, two from ENTC and fifteen other respondents. Thirty-four reported that they had submitted construction applications, nine had submitted establishment applications. There were 18 respondents that reported they had submitted between one and three applications, ten submitted four to seven, and nine submitted eight applications. Mr. Abel believes that this survey rendered a good representation of NYSE-CON users.

In terms of satisfaction, Mr. Abel reports that the DHFP aw that 46 percent reported that it took less time electronically than through the hardcopy process to prepare and submit an application and 43 percent reported that it took about the same amount of time as the previous method. Thirty-five percent reported that uploading documents on NYSE-CON is very easy. Only three percent of users reported that the electronic application system was difficult for them. Fifty-seven and a half percent found the new system east or very easy to review their application online through the NYSE-CON system, 30 percent found it not to be difficult, and 12 reported having difficulty. Eighty-six percent found the correspondence function to be useful.

Mr. Abel stated that one of the major suggestions received from NYSECON survey respondents was that they would like to be able to get additional information on status updates of their CON as it was progressing though the review cycle. Participants reported that they liked having less paper, the ease of submission, the speed of the DOH response to applications and being able to review their application online. Mr. Abel informed the council that the DHFP has already implemented a number of suggestions that came through the NYSECON survey process. Mr. Abel proceeded to address the problems and concerns the respondents had. Thirty-eight percent of respondents said they were able to resolve their issues without any assistance from the DOH. Of the respondents that required assistance from the DOH, twenty- one or twenty-four reported that their experience was either good, very good, or excellent. Three respondents found DOH assistance to be poor.

Dr. Streck thanked Mr. Abel for his report and opened the floor to questions and comments from the council.

To review the full report Office of Health Systems Management and the questions and comments please refer to pages 17 through 25 of the attached transcript.

Dr. Streck proceeded to introducing Ms. Block who reported on the activities of the Office of Health Information Technology Transformation.

REPORT OF THE OFFICE OF HEALTH INFORMATION TECHNOLOGY TRANSFORMATION ACTIVITIES

Ms. Block began her report stating that she will be providing two quick updates for the council on issues previously discussed.

Substance Abuse and Mental Health

Ms. Block reports that in the last six months the OHITT received two communications from the Substance Abuse Mental Health Administration in Washington regarding clarifications on policy issues relating to the sharing of mental health and substance abuse information in the context of Health Information Technology and Health Information Exchange activities.

Ms. Block assured the Council that this has been a topic of great interest for the Department since many of our Heal 17 programs in fact envision the collaboration of behavioral health with acute care and primary care systems, and now with the advent of health homes and many of the other initiatives that we're enhancing.

Ms. Block suggests that with this most recent communication the Department thinks that it has enough clarification from Stamford to reevaluate the policies that it has implemented thus far, and hopefully announce an update to those policies in the very near future that will clarify for our stakeholders and hopefully facilitate the availability and appropriate use of that information in conjunction with federal policies. Ms. Block is confident that the OHITT will have a more detailed update before the next Council meeting.

Meaningful Use

Ms. Block had two brief announcements to share with the council in regard to Meaningful Use. She advised that at the last council meeting OHITT was able to announce the soft launch of the Medicaid registration system. That is now up and running. The Department already has over 2000 eligible professionals registered in the system, and everyday there is significant volume of new registrations.

The OHITT has been asked to work with the federal government to accelerate the process by which eligible professionals are registering both for Medicare and Medicaid, and are working closely with the key stakeholders across New York state to accomplish that goal.

Ms. Block reports the Department is anticipating the publication of Stage 1 of meaningful use requirements probably next week. She believes that it will create a great flurry of discussion across the IT community. The OHITT will provide the council with an update at the next council meeting.

Dr. Streck thanked Ms. Block for her report and opened the floor to questions and comments from the council.

To review the full report on the Activities of the Office of Health Information Technology Transformation and the questions and comments please refer to pages 25 through 28 of the attached transcript.

Dr. Streck proceeded to introducing Mr. Helgerson who reported on the activities of the Office of Health Insurance Programs Initiatives.

REPORT OF THE OFFICE OF HEALTH INSURANCE PROGRAMS ACTIVITIES

Mr. Helgerson began his report by addressing the executive budget. He touched upon additional themes and issues that the Commissioner did not directly address but thought might be of interest to the council.

MEDICAID BUDGET PROPOSAL

Mr. Helgerson first addressed important items in the Governor's Medicaid budget proposal this year. After many years of traditional cost containment efforts, across the board reduction, and other sorts of draconian efforts particularly targeted that provider community. The Governor's executive budget contains none of those actions for the first time in a number of years. He state that the key reasons for that were the Governor's commitment, which he is fulfilling, of allowing the budget to grow by four percent, but also to the success of many of the reforms enacted in the last budget which came out of the work of the Medicaid Redesign Team.

Mr. Helgerson reminded the Council that the team was passed as finding a considerable amount of money in savings. The state share was about 2.2 billion within all the funds terms or gross terms in state and in the federal amounted to account as well total about 4 million dollars in spending reductions in this fiscal year. The value of those grow into next year, and it is the key reason why we are able to live within the four percent world without any traditional cost containment.

Mr. Helgerson moved on to addressing how the proposal also moves for the number of the Phase 2 MRT initiatives. MRT was really sort of two committees, as some people put it. The first was tasked with finding immediate budgetary savings. And the second, which has been meeting throughout the spring, summer, and into the fall, concluded its work in December on a Phase 2, a second effort where we broke it into ten workgroups, work on a variety of different topics across the entire expansive program, they came up with many recommendations. Twenty-five of those recommendations are actually included in the Governor's proposed budget. The Department is very excited to move with some of those important reforms.

Mr. Helgerson next expanded upon what the Commissioner discussed about the takeover of growth in the county contribution to Medicaid expenses. He goes on to inform the Council that what the Governor also proposed is a fundamental change in the state and local relationship when it comes to administration of the Medicaid program. New York has historically relied upon a few other states in the country, on local- governments to play a key role in administration, whether in eligibility determination or other functions, fee for service system, those local districts have played a vital role. What this budget does is really change that system fundamentally. It's basically a five year state takeover of Medicaid administration.

Mr. Helgerson provided the Council with a sense of the scale of this change. He stated that there are 5500 county and city workers across the state who is taking an interest in this particular outcome. Over the next five years, the work of those individuals is going to have to be transferred to the state. The major expansion that is going to work for the Department of Health or they're proposing to add 120 FTEs, and the only part of state government that will be getting new FTEs on any scale in this budget as we take on that responsibility.

Mr. Helgerson was happy to announce that there is a workgroup of stakeholders chaired by Steve Acquerio and Ann Monroe who co-chairs with a similar group as part of Phase 2 MRT. They are going to work with stakeholders to advise the Department on how to effectively implement, which is a very complex new initiative.

Mr. Helgerson concluded his remarks on the Medicaid budget by advising the Council that there are a couple of documents available on the MRT website. One is a PowerPoint presentation and it's presented in a webinar. The webinar itself is also available on the website, which summarizes the Medicaid budget in more detail. There is also a matrix on there, which Mr. Helgerson finds to be very useful in tracking particular initiatives that were included in the Governor's budget back to the work of the individual work groups, so you can actually see which of those recommendations the Governor has moved forward with.

Mr. Helgerson added that the Department is going to, for the first time, try to do a Twitter Q and A live on February 3, 2012 at 8:30 a.m. He stated that he hopes that this will be a good opportunity for the Department to answer questions pertaining to the Governor's proposed Budget and Medicaid.

Phase One Proposal

Mr. Helgerson moved on to discuss the implementation of the Phase 1 proposal. He reminded the Council that there were 78 reforms included that were adopted by the legislature that came out of the MRT process. The Department has been working fast and furious to try to implement these as quickly and effectively as possible.

Mr. Helgerson advised that we now live within a world where there is a Medicaid global spending cap that the state share of the Department controls of Medicaid budget, which is the vast majority of the Medicaid budget. That spending cap basically assumed that the Department of Health would be able to hold Medicaid spending in this fiscal year compared to last fiscal year at a less than one percent rate of growth. Mr. Helgerson provided as an example; when this budget process was started before MRT began its work, DOB estimated that the growth rate was going to be about 13 percent. The key reasons why the DOH had to find so many saving were to bring that growth rate down to what the Governor initially proposed, but the Department of Health really went into the fiscal year with some risk, a lot of unknowns, particularly around enrollment. So far, through November Mr. Helgerson is able to say that the Department is under the global spending cap amount through November by an impressive $4 million, which some people may sound like a lot of money, but in the Medicaid world it is .001 percent total. Therefore, the Department is very closely managing this budget.

Mr. Helgerson added that one of the best things coming out of MRT was the creation of the lower spending cap and how it has forced the state to track expenses in this very large and complex program far more closely than ever before. And so, there is information on how we're doing at the global committee cap, it's also available on the website because we are publishing a monthly report.

Mr. Helgerson continued on to provided a quick update on three important initiatives that came out of the Phase 1 recommendation. He points out, as the Commissioner said, we are moving to a care management for all strategies really over the next three years, proposing a fundamental change to the Medicaid program by really ending fee for service and moving virtually all services and all populations into manage care, that's a real fundamental change for this population. Roughly half of the total Medicaid budget is in fee for service, tens of billions of dollars moving away from directing and for providers to plan on a capitation basis.

Long Term Care

Mr. Helgerson suggests one of the big areas of movement is in long-term care, particularly home and community based long-term care, which is a cost category that has really been a major driver of cost for Medicaid. The Department, is beginning this spring with moves to mandatory managed long-term care. It's to take us two years to fully phase that in and the Department needs to work with the federal government in getting full approval but preparing for that important initiative.

Health Homes

Following long-term care, Mr. Helgerson addressed Health Homes. He mentioned how Dr. Rugge was describing some of the challenges that he at least in an effort up in the Adirondack that created Health Homes. It really is an exciting but very challenging initiative, which is really trying to bring together providers from across the various care silos working together sharing information, really targeting new resources at a population that is really a major challenge for the Medicaid program. These are our highest cost, highest needs of Medicaid members, traditionally the ones bouncing between behavioral health providers, the physical health care, the acute care system, these are the individuals in and out of the emergency room 50 times a year. The Department is trying through Health Homes to really build networks of providers to work together focusing on this population.

Mr. Helgerson advises that the Office of Health Insurance Programs is very excited about some of the first wave of Health Homes that are moving forward. Beginning next week the first enrollees will be enrolled into Health Homes as we move forward with sort of ten phase one counties.

Mr. Helgerson concludes his report by addressing patients that are in medical homes. He states that he is with Dr. Rugge on this as well. This is one of our leading lights on medical homes. The state for quite a while has had an effort around trying to incentivize providers to become patient center medical homes and achieve NQA accreditation. Back in the beginning of 2011 we had a little bit less than 800,000 individuals of Medicaid patients who were benefiting from services provided to patients in medical homes. I can report today that it's over 1.4 million. It has seen a substantial increase in the number of practices, physicians who have met those criteria, and that it inherently meant that there are more Medicaid patients who are benefiting from high quality, highly coordinated service.

Dr. Streck opened the floor to questions and comments from the council.

To review the full report of the Activities of the Office of Health Insurance Programs and the questions and comments please refer to pages 28 through 44 of the attached transcript.

PUBLIC HEALTH SERVICES

Dr. Streck proceeded to introducing Dr. Birkhead who will provide the council with a report on the activities of the Office of Public Health.

REPORT OF THE OFFICE OF PUBLIC HEALTH ACTIVITIES

Dr. Streck introduced Dr. Birkhead to address activities of the Office of Public Health.

Dr. Birkhead reported on the results of the Ad Hoc Committee that was held on February 1, 2012. This meeting dealt with the specifics which were established several meetings ago to address the new round of the State Health Improvement Plans. Dr. Birkhead also informed the Council that Dr. Boufford would also be reporting on the Public Health Committee.

Dr. Birkhead explained that the State Health Improvement Plan concerned itself with a Prevention Agenda from 2008 through 2012. We are now in the initial stages of planning for the next round of the Improvement Plan from 2013 through 2017. The first meeting of the stakeholders group which is a widely constituted group that includes all sectors of the public health system. This Ad Hoc Committee will help guide the work of the State Health Department in setting up a State Health Improvement Plan. Goals and principles as well as the criteria for selecting priorities were discussed.

Dr. Birkhead explained that the vision of the overall plan is that “New York is the Healthiest State.” Health considerations should be considered in ALL policy changes whether it is the Health Department, transportation or agriculture, etc. Eliminating health disparities was a major theme and the major focus of the activities. Data that actually details slides from the February 1, 2012 session will be posted on the website.

Dr. Birkhead said the goal of strengthening the State and local public health infrastructure including the ability of that infrastructure to engage in a partnership and stakeholders at the State and local level to promote a sustainable public/private partnership was widely discussed. There is a need to develop ways of encouraging collaboration at all levels of State agencies, local agencies and private enterprises to support the public health infrastructure.

Dr. Birkhead felt that one means of accomplishing this goal is strengthening the integration of public health and the personal health care systems. The Department must help communities become aware of their local health problems and how to address them.

Using slides Dr. Birkhead illustrated that the government plays a role in coordinating, convening and developing policies, but that accomplishing the goal of strengthening the health infrastructure involves effort of local communities as well as other sectors including business, media, academia, etc.—the system is everybody's responsibility and everybody needs to work on improving the system.

Dr. Birkhead presented the next section of slides which indicated the dichotomy or the paradox of the belief that access to medical care accounts for a minority of health status. A minority, whether it be 10 or 20 or 30 percent, are believed to be influenced or not influenced by the medical care system so that behavioral, environmental, and genetic factors need to be considered in the realm of what the public health system tries to influence.

Dr. Birkhead stated that the Ad Hoc Committee concluded the meeting by discussing the point that access to health care will be greatly improved by the implementation of health reforms. The Committee agreed that insurance is necessary but not sufficient for equal access to health care so there will still be a public health role in providing this access. Preventative services rated A or B by the U. S. Preventative Services Task Force are to be provided in the new systems. A lot of time is spent in public health trying to fill gaps and assure that preventative services are provided so removing barriers is important.

Dr. Birkhead expressed that a major focus of our efforts is to develop children's health home models to go along with adult health homes in an effort to improve coordination of care in the public health arena and to support preventative services and community base services to the MRT proposals. As Commissioner Shah referenced there is a number of proposals that are now moving forward in the Governor's budget around MRTs that support what had been traditionally public health services but are now able to cover for Medicaid children.

Dr. Birkhead led a discussion on selecting the priority areas on which to focus and the development of the criteria to select those priorities. Priority areas might include the morbidity and mortality of disease burden, a premature mortality and morbidity of diseases and the health risk conveyed. Are there evidence-base interventions that we can employ? If not, what efforts would be feasible on which to focus? We need to consider existing r and potential resources and how to align these resources with our priorities. Question to ask is whether there is community and partner support that the community recognizes as priority areas. Health departments are the convener of these efforts and in some ways direct them at the State and local level because they have the leverage to make change. We can move the needle in terms of health disparities. In terms of actual causes to support, health is another way of looking at this and is there a way to monitor what they're doing.

Dr. Birkhead stated that the current prevention agenda has ten priority areas that range from access to care to chronic environmental maternal child health, and infectious diseases. Mental health and substance abuse were also discussed. These two areas are where the public health part of the State Health Department does not have any levers to pull. It was agreed that unless populations don't address substance use and mental health issues, then we are not going to make headway on the physical health issues that people are facing.

In conclusion, Dr. Birkhead felt that the Committee concurred that focus should be in the area of chronic diseases and not a disease specific focus with emphasis on risk factors, obesity and physical activities, nutrition and access to screening for cancer; in particular, where we might use disease measures as outcome measures. This lead to a definition of a healthy environment; does a health environment only include just food and water or does this also apply to the local home environment and other kinds of environment and how this impacts. This area needs more amplification. Having healthy mothers, babies and children, controlling infectious diseases, childhood immunization are areas that were discussed for priorities.

Dr. Birkhead advised that the Committee plans to meet several more times by June to develop these priority areas and then by year's end develop a plan to engage the public health system in supporting these priorities. We will then be ready to move ahead in 2013.

Dr. Streck thanked Dr. Birkhead for her report and asked for questions or comments. To review Dr. Birkhead's complete report and the Council member's comments and questions, please refer to pages 44 through 58 of the attached transcript.

Report on the Activities of the Committee on Public Health

Dr. Streck introduces Dr. Boufford to give her report on the activities of the Committee on Public Health and the Ad Hoc Committee.

Dr. Boufford listed the three priorities of the Public Health Committee. (1) Working with Dr. Birkhead and his colleagues on planning and goals, (2) Being an advisory to the Department on renewal and the revitalization of the S H I T for the next four years, the State Health Improvement Plan, and the accreditation application in which the State will be applying for accreditation in the new voluntary system, and (3) picking one of the new priorities and focusing our efforts on the Committee to support those of the Department and other involved stakeholders.

Dr. Boufford stated that the Ad Hoc Committee is constituted in two ways: Volunteers from the Public Health Committee and twenty-one volunteers from across the state. These individuals represent a very exciting and diverse area including local health departments, medical society professionals, business representatives, public health leadership, nursing leadership, organizations including Medicaid.

Dr. Boufford explained the meeting was started by reviewing the progress of the prevention agenda. The Committee reviewed the current status of New York State health conditions and then began the process of developing priorities and setting criteria for those priorities. The Committee would like to design a system to involve broader stakeholders and then developing those ideas into a final decision. A number of indicators were presented.

Dr. Boufford advised that the other review process included the partnership process. Through a legislative activity, we were able to get a concurrent review of the local health department health planning plan submission and the hospital community benefit plan submission. This proved quite helpful. Reminder, we are off by one year but from 2013 forward this will become current. Analyzing the effects of the partnership process brought excellent engagement between hospitals and local health departments. Access to care being the number one concurrence, chronic disease being number two, and tobacco being number three. While there were good initial meetings and some collaborative planning, there collaborations began to deterioration due in large part to resource availability. A small amount of money, 7 million dollars was made available for grant programs to support activities in a number of local areas. The money did help in sustaining their partnerships and continuing implementation and evaluation.

Dr. Boufford went on to say that the topic of metrics was discussed. There is not a lot of measurement of what was done. This was due to the fact that timeframes were shorter but also a very heavy concern of the complete ones going forward that we will be able to measure, define metrics in the first instance and then be able to track and measure them. Again, the resources in public health data are poor, and I think that raises an issue certainly for racial groups and for other HIT programs on how to capture information from some of the clinical providers.

Dr. Boufford felt that the overall New York state health data is about a key position. The plans indicate two things in characteristic: increase in the aging population and decrease in the birth rate with significant increase in the diversity of the statewide population. The highest avoidable mortality factors are tobacco, exercise, die and alcohol and that is where we will be developing methods to prevent these things. They affect a whole set of chronic disease.

Dr. Boufford listed the outcomes of the meeting: Strategies being developed that really reflect an appreciation of the broader determinative health—things that really help people make healthy choices; and Control. Can there be a goal out there where the health departments can't control all the variables in making change. The questions are how we develop collaborations and partnerships that make each other mutually accountable. Can we get appropriate collaboration across the difference agencies in government as well as with the public and private sector? With decentralization the State can't really assume they can have a large impact. The State can set statewide priorities, but the application will be at the local level.

Dr. Boufford elaborated on the MRT process. She explained that one of the challenges of this process is that the process moves very quickly and it is very complex. Also, we stayed with the MCH because it represents a large focus of MRT. It is very important to link the complimentary public health and prevention set of activities.

Dr. Boufford also explained that the Committee had a long and productive discussion on the merits of keeping mental health and substance abuse on the agenda. Even with all the caveats of how hard it is on the prevention side and the community base side to intervene, we need to be in a partnership with the provider community.

Dr. Boufford went on to mention the metrics issue can include multiple chronic diseases but that we must also look at diabetes, heart disease, and pulmonary diseases. Metrics can provide excellent data. The Committee felt that the merits of including oral health should be included on the agenda. Dentists argue that early evidence of certain chronic diseases such as diabetes can be seen in the dentist's office. The Committee is going to have further discussion on this topic.

Going forward, the Committee would like to reach out to the stakeholder community in a timely manner to obtain data sets. Therefore, the Committee will communicate through e-mail and then have another face-to-face meeting within a month to finalize the basics and then reach out to their constituents throughout the state. After this information is gathered, the Committee will have a final set of recommendations by the June meeting. Workshops will meet over the summer finalizing recommendations goals, criteria and metrics, for the November meeting. Interim reports will be issued as the workshops meet.

Please refer to Pages 59 through 68 to view the full discussion.

HEALTH POLICY

Dr. Streck introduced Dr. Rugge who will report on health policy.

Report on Activities of the Committee on Health Planning

Dr, Rugge reported that the Health Planning Committee is working hard to address the charge that has been given to us by Commissioner Shah. This was a two-part charge:

(1) To develop recommendations for consideration by this Council at the June 2 for administrative streamlining of the process that currently exists. This process was started at a special meeting on January 18 and will continue through a series of meeting until the June meeting.

(2) To reform and re-conceptualize the CON process in light of all the payment and delivery system changes that we are experiencing. This work will help set the table for further action in 2013 and in the Governor's agenda. Dr. Rugge thanked Mr. Delker, Ms. Lipson, Ms. Madden and special advisor Dr. Alaigh for their help in giving us a broader perspective on CON.

Dr. Rugge reported that there was a shared understanding or consensus about the rational for CON as it now exists. Four goals were agreed upon by the Department.

A slide presentation presented the benefits of CON, its drawbacks and those inherent to the kind of reviews were discussed. Also presented were the shortcomings of the current system and how they could be approved. The Committee welcomes contributions from everyone here and all members of the public and key stakeholders.

Dr. Rugge stated that the Committee then moved to all the stakeholder's recommendations that had been submitted to date regarding administrative streamlining. After much discussion and editing, the Committee has some seven suggestions that could well turn into recommendations for the full council to consider. These suggestions will then be referred back to the Department for further consideration. This referral will generate another series of additional ideas that will be subject to further discussion at the next meeting which will be on March 21, 2012.

Dr. Rugge went on to say that the topic of this meeting will be Why CON? The Committee will draft a repurposing statement taking into effect how CON is now intended to serve and how in light of all the changes we have been experiencing we will redefine the purpose. The main idea to be discussed will be why we need CON in view of all the new incentives and all the new forces occurring. CON is only one of many tools available and currently in play in a larger economy. We need to understand how this tool connects to all the others and strike a balance to meet competitive market dynamics.

Dr. Rugge stated that following the meeting on March 22, 2012, Commissioner Shah will be joined by Commissioners Burke, Hogan and Sanchez to look at how CON may integrate physical health behavior and mental health service to the developmentally disabled and to those with substance abuse issues.

Dr. Rugge stated that there will also be a joint meeting with the Public Health Committee with the goal of understanding how health planning needs are to be organized community by community and region by region and eventually at the statewide level. As we are fully aware, CON is very difficult to undertake unless there is some kind of organized health planning activity that provides a basis for decision making when the projects come one by one to the Project Review and Establishment Committee.

Dr. Rugge concluded his report. To review the complete report, please see pages 69 through 74 of the attached transcript.

Dr. Streck thanked Dr. Rugge and his Committee for all their hard work. The meeting briefly adjourned. The Council went into Executive Session for the Report of the Committee on Health Personnel and Interprofessional Relations.

REGULATION

The Council reconvened into public session. Dr. Streck introduced Dr. Gutiérrez to present the report on the Report of the Committee on Codes, Regulations and Legislation.

For Emergency Adoption

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

Dr. Gutierrez began his report introducing a regulation for emergency adoption emergency adoption concerning limitations of operator certificates. Last year's event required a temporary recreation of facilities in the New York metropolitan area, relocation of facilities in Broome and Dyer County due to flooding because Section 401.2 limits an operators operating certificate to the site of operation set forth in the operating certificate. An operator's affected facility is not able to care for his patients or residents at any other site until the Commissioner has approved the Certificate of Need application for the relocation of the facility. This amendment 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 certificate in times of emergency. It was adopted as an emergency at the October 6 and December 8, 2011 at the Full Council meeting. Dr. Gutiérrez motion for emergency adoption which was seconded by Dr. Berliner. The motion carried. Please see pages 75 through 78 of the attached transcript.

For Adoption

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

Dr. Gutiérrez moved to the next item the adoption of the identical permanent version of the amendment communications of operating certificate proposal was also in the Codes agenda for regular adoption. Dr. Gutiérrez moved the regulation for adoption. Dr. Berliner seconded the motion. The motion carried. See page 77 of the attached transcript for the vote.

For Discussion

11-24 Amendment of Parts 763 and 766 of Title 10 NYCRR (Certified Home Health Agency (CHHA) and Licensed Home Care Services Agency (LHCSA) Requirements)

Lastly, Dr. Gutiérrez described the next item for discussion regarding Certified Home Health Agency and Licensed Home Care Services Agency Amendments. This regulation will incorporate two recommendations from the Medicaid Redesign Team. The first recommendation would add a requirement that the plans of care and medical orders required for patients of CHHA and LHCSA address the patient needs for care. The second recommendation would eliminate the need for a physician to serve on the quality improvement committee of the LHCSA. This measure would also remove the requirement of the CHHA to provide more than one quality service directly to coincide with the federal standards. It also changes the maximum period of time that may lapse before the comprehensive assessment is reviewed from 62 to 60 days which is also the federal standard. Dr. Gutiérrez concluded his report. Dr. Streck inquired if there were questions from Council members. Hearing none, Dr. Streck moved to the next item on the agenda. To review the report, please see pages 77 through 79 of the attached transcript.

Dr. Streck called upon Mr. Kraut to give his report on the Committee on Establishment and Project Review.

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 #4**

	Number	Applicant/Facility	Council Action
1.	112074 C	University Hospital (Suffolk County)	Contingent Approval

Diagnostic and Treatment Center – Construction **Exhibit #5**

	Number	Applicant/Facility	Council Action
1.	112250 C	Smile New York Outreach, LLC d/b/a Smile Program Mobile Dentists (Queens County)	Contingent Approval

Long Term Home Health Care Program – Construction **Exhibit #6**

	Number	Applicant/Facility	Council Action
1.	112116 C	Dominican Sisters Family Health Service, Inc. (Westchester County)	Contingent Approval

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

	Number	Applicant/Facility	Council Action
1.	112206 T	St. Mary's Healthcare (Montgomery County)	Contingent Approval

Mr. Kraut began his report by introducing applications in Category 1 and motioned for approval. Dr. Berliner seconded the motion. The motion carried. Please see pages 79 through 81 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

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

	Number	Applicant/Facility	Council Action
1.	112059 C	New York Presbyterian Hospital – New York Weill Medical Center (New York County) Ms. Regan - Interest	Contingent Approval

Mr. Kraut moved to Category 2 and introduced application number 112059 and stated for the record that Ms. Regan has declared an interest. Mr. Kraut motioned for approval which was seconded by Dr. Gutiérrez. Members discussed this application and the motion failed. There was further discussion regarding the psychiatric services, the loss associated with psychiatric beds, and the length of stay for the outpatient unit. Dr. Boufford motioned for approval adding a contingency to state that submission of documentation of approval by the Commissioner of the Office of Mental Health after considering the deliberations of the New York State Mental Health Services Council. The new motion was seconded by Dr. Grant. Please see pages 81 through 109 of the attached transcript to review the complete discussion.

2.	112259 C	North Shore University Hospital (Nassau County) Mr. Kraut – Recusal	Contingent Approval

Mr. Fensterman and Mr. Kraut declared a conflict on application 112259 and exited the meeting room. Dr. Strange indicated an interest. Mr. Booth briefly described the application and motioned for approval. The motion was seconded by Dr. Berliner. The motion carried with Dr. Strange's noted interest and Mr. Fensterman and Mr. Kraut's recusals. Mr. Fensterman and Mr. Kraut re-entered the meeting room. Please see pages 109 and 110 of the attached transcript.

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

Residential Health Care Facility – Construction **Exhibit #9**

	Number	Applicant/Facility	Council Action
1.	111435 C	The Wartburg Home (Westchester County) Mr. Fassler - Interest	Contingent Approval

Mr. Kraut introduced application 111435 and noted for the record Mr. Fassler's interest. Mr. Kraut motioned for approval which was seconded by Dr. Berliner. The motion carried with one opposed. Please see page 110 and 111 in the transcript.

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

Diagnostic and Treatment Center – Construction **Exhibit #10**

	Number	Applicant/Facility	Council Action
1.	101018 C	Doctors United, Inc. (New York County)	Disapproved

Mr. Kraut advised that Mr. Fensterman has declared a conflict and exited the meeting room. Mr. Kraut then described application 101018 and stated the Department is recommending disapproval based on need only. Mr. Kraut motioned for disapproval which was seconded by Dr. Gutiérrez. Application 101018 was disapproved with Mr. Fensterman's recorded recusal. Mr. Fensterman entered the meeting room. Please see pages 112 through 117 of the attached transcript.

CATEGORY 6: Applications for Individual Consideration/Discussion

Residential Health Care Facility – Construction **Addendum**

	Number	Applicant/Facility	Council Action
1.	112344 C	Coler-Goldwater Specialty Hospital and Nursing Facility Goldwater Nursing Facility site (New York County) Dr. Boufford – Recusal Dr. Sullivan – Recusal Mr. Fassler - Interest	Contingent Approval

Mr. Kraut stated that Dr. Boufford and Dr. Sullivan are recusing and have left the meeting room and noted Mr. Fassler's interest. Mr. Kraut briefly described application 112344 and motioned or approval. Dr. Berliner seconded the motion. The motion carried with Dr. Boufford and Dr. Sullivan's recusals as well as Mr. Fasslers recorded interest. Please see pages 117 through 119 of the 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

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

	Number	Applicant/Facility	Council Action
1.	101164 B	Mobile Health Services, LLC (New York County)	Contingent Approval
2.	112142 E	Primary Health Care Plus, Inc. (Nassau County)	Approval

Residential Health Care Facility – Establish **Exhibit #12**

	Number	Applicant/Facility	Council Action
1.	101068 E	Guilderland Center Rehabilitation and Extended Care Facility Operating Company, LLC d/b/a Guilderland Center Rehabilitation and Extended Care Facility (Albany County)	Contingent Approval

Certificate of Amendment of the Certificate of Incorporation **Exhibit #13**

	Applicant	Council Action
1.	BMA, Medical Foundation, Inc.	Approval

Certificate of Dissolution **Exhibit #14**

	Applicant	Council Action
1.	Mary McClellan Hospital, Inc	Approval

HOME HEALTH AGENCY LICENSURES **Exhibit #15**

Number	Applicant/Facility	Council Action
1959 L	Stat Staff Professionals, Inc. (Saratoga, Warren, Albany, Greene, Franklin, Washington, Rensselaer, Columbia, Clinton, Fulton, Otsego, Ulster, Essex, Montgomery, Schoharie, Hamilton, Schenectady, and Delaware Counties)	Contingent Approval

Mr. Kraut introduced Category 1 and briefly described the applications. Mr. Kraut motioned for approval of all application is Category 1. Dr. Berliner seconded the motion. The motion carried. See pages 119 through 122 of the attached transcript.

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Acute Care Services – Establish **Exhibit #16**

	Number	Applicant/Facility	Council Action
1.	112185 E	Inter-Lakes Health, Inc. (Essex County) Mr. Booth –Interest Dr. Rugge- Interest	Contingent Approval

Mr. Kraut noted for the record that Mr. Booth and Dr. Rugge have interests in application 112185 and described the application. Mr. Kraut motioned for approval, Dr. Gutiérrez seconded the motion to approve. The motion carried. Please see pages 122 and 123 of the attached transcript.

Ambulatory Surgery Centers – Establish/Construct **Exhibit #17**

	Number	Applicant/Facility	Council Action
1.	112244 E	Unity Linden Oaks Surgery Center, LLC (Monroe County) Mr. Booth – Interest Ms. Hines – Recusal Mr. Robinson – Recusal	Contingent Approval

Ms. Hines and Mr. Robinson exited the meeting room declaring a conflict on application 112244 and Mr. Booth has a noted interest. Mr. Kraut explained the application, moved to approve the application which was seconded by Dr. Berliner. The motion carried with Ms. Hines and Mr. Robinson's recusal and Mr. Booth's noted interest. Ms. Hines and Mr. Robinson re-entered the meeting room. Please see pages 123 and 124 of the transcript.

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

	Number	Applicant/Facility	Council Action
1.	102239 E	North Shore University Hospital, Inc., d/b/a North Shore Home Care (Nassau County) Mr. Fensterman – Recusal Mr. Kraut – Recusal Dr. Strange - Interest	Approval

Mr. Fensterman and Mr. Kraut exited the meeting room declaring a conflict on application 102239. Dr. Strange noted an interest. Mr. Booth described the application and moved to approve the application which was seconded by Dr. Gutierrez. The motion to approve carried with Mr. Fensterman and Mr. Kraut's recusals and Dr. Strange's interest. Mr. Fensterman and Mr. Kraut re-entered the meeting room. Please see pages 124 through 126 of the attached transcript.

Residential Health Care Facility – Establish **Exhibit #19**

	Number	Applicant/Facility	Council Action
1.	112218 E	Waterfront Operations Associates, LLC d/b/a Waterfront Center for Rehabilitation and Health Care (Erie County) Mr. Booth - Interest Mr. Fassler – Recusal	**DEFERRED AT THE DEPARTMENT'S REQUEST**

Mr. Kraut advised the Council that application 112218 has been deferred at the Department's request. See page 126 of the attached transcript.

<u>HOME HEALTH AGENCY LICENSURES</u> **Exhibit #20**

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1994 L	Independent Living for Seniors, Inc. (Monroe and Wayne Counties) Mr. Booth – Interest Ms. Hines- Recusal Mr. Robinson – Recusal	Contingent Approval

Ms. Hines and Mr. Robinson exited the room declaring a recusal on licensure 1994 L and Mr. Booth declared an interest. Mr. Kraut described the licensure and moved to approve with Dr. Berliner seconded the motion. The motion to approve carried with Ms. Hines and Mr. Robinson's recusals and Mr. Booth's interest. Ms. Hines and Mr. Robinson re-entered the room. Please see pages 126 and 127 of the attached transcript.

<u>CATEGORY 3</u>: Applications Recommended for Approval with the Following:

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

Ambulatory Surgery Centers – Establish/Construct **Exhibit #21**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	111552 B	The Surgery Center of Bayside, LLC (Queens County)	Contingent Approval
2.	112032 B	PBGS, LLC d/b/a Downtown Brooklyn Gynecology Center (Kings County)	Contingent Approval

Mr. Kraut introduced applications in Category 3 and briefly described the applications and noted one member opposing both applications. He then moved the applications for approval which was seconded by Dr. Berliner. The motion to approve the applications carried. Please see pages 127 through128 of the attached transcript.

CATEGORY 4: Applications Recommended for Approval with the Following:

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

HOME HEALTH AGENCY LICENSURES **Exhibit #22**

Number	Applicant/Facility	Council Action
1640 L	Acute Care Experts, Inc. (Bronx, Queens, Kings, Richmond, Nassau, and New York Counties) Ms. Regan – Interest	Contingent Approval
1956 L	Advantage Management Associates, Inc. d/b/a Advantage Homecare Agency (New York, Westchester, Kings, Queens, Bronx, and Richmond Counties) Ms. Regan – Interest	Contingent Approval
1678 L	Amazing Grace Home Care Services, LLC (New York, Bronx, Kings, Richmond, and Queens Counties) Ms. Regan – Interest	Contingent Approval
1696 L	Diana's Angels, Inc. (Putnum, Bronx, Westchester and Dutchess Counties) Ms. Regan – Interest	Contingent Approval
1957 L	Evergreen Choice, LLC (New York, Bronx, Kings, Richmond and Queens Counties) Ms. Regan – Interest	Contingent Approval
1668 L	Five Borough Home Care, Inc. (Bronx, Kings, New York, Richmond, and Queens Counties) Ms. Regan – Interest	Contingent Approval

1733 L	Heritage Homecare Services, Inc. (New York, Kings, Queens, Bronx, Nassau, Suffolk and Richmond Counties) Ms. Regan – Interest	Contingent Approval
1835 L	Longevity Care, LLC (Westchester County) Ms. Regan – Interest	Contingent Approval
2004 L	Long Island Living Center, LLC d/b/a Long Island Living Center (Bronx, Kings, and Queens Counties) Ms. Regan – Interest	Contingent Approval
2079 L	Metrostar Home Care, LLC (Kings, Bronx, Queens, Richmond, New York and Nassau Counties) Ms. Regan – Interest	Contingent Approval
1875 L	ALJUD Licensed Home Care Services, LLC (Nassau and Suffolk Counties) Ms. Regan – Interest	Contingent Approval

Mr. Kraut then moved to the licensure applications in Category 4. He noted Ms. Regan's interest on all applications. He made a motion for approval and Dr. Berliner seconded the motion. The motion to approve all the licensure applications carried. Please refer to pages 128 through 131 of the attached transcript.

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 **Exhibit #23**

	Number	Applicant/Facility	Council Action
1.	111096 E	L. Woerner, Inc., d/b/a HCR (Schoharie County) Mr. Booth - Recusal Ms. Hines – Recusal	Contingent Approval

2.	121027 E	L. Woerner, Inc. d/b/a HCR (Delaware County) Mr. Booth – Recusal Ms. Hines - Recusal	Contingent Approval

Residential Health Care Facility – Establish **Exhibit #24**

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

Mr. Kraut then moved to applications in Category 6 for individual consideration. Ms. Hines and Mr. Booth exited the room declaring a conflict on applications 111096-E and 111027-E. Mr. Kraut described both applications and moved them for approval. Dr. Berliner seconded the motion which was carried. Both Ms. Hines and Mr. Booth re-entered the room.

Mr. Kraut moved to the final application 112021-E. He described that the application was moved for approval at the November 17, 2011 Establishment and Project Review Committee, but was deferred at the Full Council meeting on December 8, 2011. After considerable discussion, Mr. Kraut made a motion to approve the application which Dr. Gutiérrez seconded the motion. The motion to approve carried. Please see pages 132 through136 of the attached transcript. Mr. Kraut concluded his report

Dr. Streck thanked Mr. Kraut for his report.

ADJOURNMENT:

Dr. Streck adjourned the meeting.

1
2 STATE OF NEW YORK PUBLIC HEALTH AND HEALTH PLANNING
3 COUNCIL
4 ___
5 ANNUAL MEETING
6 ___
7
8 February 2, 2012
9 10:15 a.m.
10
11 90 Church Street
12 New York, New York
13
14 BEFORE: Dr. William Streck, Chairman
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2 COUNCIL MEMBERS:

3

4 DR. HOWARD BERLINER

5 MR. CHRISTOPHER BOOTH

6 DR. JO IVEY BOUFFORD

7 MR. MICHAEL FASSLER

8 MR. HOWARD FENSTERMAN

9 DR. ELLEN GRANT, PH.D

10 DR. ANGEL GUTIERREZ, M.D.

11 MS. VICTORIA HINES

12 MR. ROBERT HURLBUT

13 MR. JEFF KRAUT

14 MR. ARTHUR LEVIN

15 DR. GLENN MARTIN, M.D.

16 DR. JOHN PALMER, PH.D

17 MS. ELLEN RAUTENBERG

18 MS. SUSAN REGAN

19 MR. PETER ROBINSON

20 DR. JOHN RUGGE, M.D.

21 DR. THEODORE STRANGE, M.D.

22 DR. ANN MARIE THERESA SULLIVAN, M.D.

23 DR. ANDERSON TORRES, PH.D

24 DR. PATSY YANG, PH.D

25 COMMISSIONER SHAH

1

2

3 STAFF:

4

5 DR. GUTHRIE BIRKHEAD, M.D.

6 MS. RACHEL BLOCK

7 MS. KAREN MADDEN

8 MS. CELESTE JOHNSON

9 MR. ROBERT SCHMIDT

10 MR. CHRIS DELKER

11 MS. LARA LEFEBVRE

12 MR. CHARLES ABEL

13 MR. JASON HELQERSON

14 MR. JAMES DERING

15 DR. NIRAV SHAH, M.D.

16 MS. COLLEEN FROST

17 MS. LISA THOMSON

18 MS. SANDRA HAFF

19

20 GUEST:

21

22 DR. POONAM ALAIGH

23

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25

1 P R O C E E D I N G S
2 DR. STRECK: Good morning, everyone.
3 Welcome to the Public Health and Health Planning
4 Council meeting. I'm Dr. William Streck, I'm the
5 Chair of the Council. We are beginning at 10:15.
6 Everyone's silent preparation for the meeting is
7 greatly appreciated. We just started at this time
8 because we had anticipated that we would have
9 longer earlier meetings, but having published the
10 10:15 start time that's why we have been appearing
11 to be quite ineffective and effectual here for the
12 last 15 minutes, so. We are now beginning the
13 meeting. In doing so I want to outline how we're
14 going to approach the meeting. We're going to
15 change the itinerary a little bit this morning.
16 I'd like to remind the council members
17 and staff that the meeting is subject to the Open
18 Meeting Law. Webcast can be accessed at the
19 Department of Health's website, and they are
20 available no later then seven days after the
21 meeting and for 30 days thereafter.
22 We do have ground rules. We have
23 synchronized captioning, so it's important not to
24 speak over one another. The first time you speak
25 we would ask that you identify yourself as a

2 council member or staff member. Microphones are
3 hot. That means they pick up ruffling sounds and
4 sidebar conversations, so those should be limited.
5 There is a record of appearance form for
6 the audience that is at the entrance to the meeting
7 and it is required by New York, the New York State
8 Commission of Public integrity that you fill out
9 that form, and we appreciate your compliance.
10 I'd like to give you a brief overview of
11 what we'll cover today. We'll have the Department
12 of Health report. We will hear from Commissioner
13 Shah. Ms. Lefebvre will give an update on the
14 Office of Health Systems Management activity. Ms.
15 Block will report on the activities of the Office
16 of Health Information Technology Transformation.
17 Mr. Helqerson will give an update on the Office of
18 Health Insurance Programs activities, and Dr.
19 Birkhead will give a report on the activities of
20 the Office of Public Health. Those all fall under
21 the category of our Department of Health reports.
22 The next category is that of Public
23 Health Services where Dr. Boufford will give an
24 update on the initiatives of the Committee on
25 Public Health. Under the category of Health

1 PHHPC ANNUAL MEETING
2 Policy, Dr. Rugge will give a report on the
3 activities of the Health Planning Committee as well
4 as the Committee recommendations for designated
5 stroke center.
6 At the conclusion of those reports we
7 will break for lunch, and we hope to do that
8 somewhere around 11:30 at which time the full
9 council will go into executive session from 11:30
10 to noon. We will then break for lunch. We will
11 resume at 12:30, 12:30 or so. At that time we will
12 begin with the report of the committees. Dr.
13 Gutierrez will present the recommendations of the
14 Codes and Regulations Committee. From there we
15 will advance to the Project Review Recommendations
16 and Establishment actions.
17 I would ask that members of the council
18 and most of our guests are aware that there are
19 policies in terms of conflicts of interests, and I
20 would ask that council members be sure if they have
21 declared any conflicts or interest and are planning
22 to deal with the issues, with those issues
23 recognized.
24 We do batch applications, as some of you
25 may be aware, to facilitate a more effective review

2 of the programs, and you will see that batching
3 process in the way when we cover Establishment and
4 Project Review. So, those are the ground rules.
5 Our next agenda item is the adoption of
6 the minutes from the last meeting. I would
7 entertain a motion for adoption of the December 8,
8 2011 Public Health and Health Planning Council
9 A VOICE: So moved.
10 DR. STRECK: Moved and seconded.
11 Those in favor "Aye."
12 (A chorus of "Ayes.")
13 DR. STRECK: Thank you.
14 This is also the annual meeting of the
15 Public Health and Health Planning Council, and as
16 prescribed by the bylaws, the Chair makes the
17 motion for election of the Vice Chair and I would,
18 therefore, make the motion to elect Mr. Kraut as
19 the Vice Chair of the Council.
20 May I have a second.
21 A VOICE: Second.
22 DR. STRECK: We have a motion and a
23 second.
24 Those in favor "Aye."
25 (A chorus of "Ayes.")

1 PHHPC ANNUAL MEETING
2 DR. STRECK: Opposed?
3 Okay, Jeff, pretty good.
4 Committee assignments are available in
5 front of each of the council members. There's a
6 document. I'll just briefly review the committee
7 chairs and co-chairs for our group. The Committee
8 on Codes and Regulations and Legislation, Dr.
9 Gutierrez is Chair, Dr. Palmer is Vice Chair. The
10 Committee on Establishment and Project Review,
11 Chair Mr. Kraut and Vice Chair Mr. Christopher
12 Booth. The Committee on Public Health, the Chair
13 is Dr. Boufford, Vice Chair Dr. Torres. Dr.
14 Strange has joined the Committee on Public Health.
15 The Committee on Health Planning, Dr. Rugge is
16 Chair, Dr. Grant as Vice Chair, and the Committee
17 on Health Personnel and Interprofessional
18 Relations, Dr. Strange is Chair and Dr. Bhat as
19 Vice Chair. An Ad Hoc Committee to lead the
20 state's health improvement plan will be chaired by
21 Dr. Boufford and the membership of that distinguish
22 group is also attached. So, with that, those are
23 our housekeeping duties for the annual meeting, the
24 rules of engagement for today, and it's now my
25 pleasure to turn the microphone over to Dr. Shah

2 for a report on the Department's activity.

3 COMMISSIONER SHAH: Thank you, Dr.

4 Streck. Good morning.

5 On January 17th Governor Cuomo released

6 his executive budget proposal for the 2012/2013

7 state fiscal year. So plans continue to great

8 progress we've made last year and serve as a

9 blueprint for the Governor's vision for a new New

10 York. Department staff has been actively working

11 with the Governor's office and the State

12 legislature on these budget proposals. And I

13 wanted to highlight a few of the health related

14 items on the executive budget.

15 First, Medicaid spending. As agreed

16 upon last year, will increase by four percent for

17 an approximate $614 million. This funding increase

18 will ensure that New York is able to meet the needs

19 of Medicaid beneficiaries while maintaining a tight

20 rein on spending growth. Over the past few years

21 the Medicaid Redesign Team has made great strides

22 in reforming and restructuring our Medicaid

23 program. These efforts, including a transition to

24 a care management system are continuing.

25 Another key program and priority of the

1 PHHPC ANNUAL MEETING
2 Governor is the creation of a health insurance
3 exchange. Governor Cuomo's executive budget called
4 for the enactment of a health exchange, which will
5 assist an estimated one million New Yorkers obtain
6 health insurance coverage. The development of that
7 health insurance exchange began a year ago, and I
8 am confident we will be able to reach agreement
9 this year.
10 The final budget related item I want to
11 mention is local Medicaid cost. Last year through
12 the work of the MRT, New York took a decisive
13 action to control overall Medicaid spending growth.
14 As these efforts continue, the Governor has
15 proposed a plan to help control Medicaid spending
16 at the low level. The executive budget called for
17 a phased in 100 percent state takeover of local
18 Medicaid growth. Under this proposal the existing
19 three percent cap on growth will be reduced to two
20 percent in 2013, then drop to one percent in 2014
21 and will be eliminated entirely in 2015. This plan
22 will save counties approximately $1.2 billion over
23 the next five years.
24 These three proposals exemplify the
25 major theme of Governor Cuomo's strategy for New

2 York reform, revitalization and accountability.
3 The Department will continue to work with the
4 executive chamber and legislature to make sure that
5 all of these goals are implemented, and I will keep
6 you appraised of these efforts.
7 I would like to talk briefly about the
8 Department's continued effort to address shortages
9 of primary care and specialized care providers.
10 The Doctors Across New York Program has been
11 working to alleviates these shortages. The program
12 provides critical support to recruit and retain
13 physicians in underserved areas across the state
14 through salary or productivity enhancement, sign-on
15 bonuses, loan repayments or direct funding.
16 In late December the Department
17 announced $500,000 in state funding for five health
18 care centers under the Doctors Across New York
19 Program, the physician practice support component.
20 Each of the five awardees will receive $100,000
21 over two years, and all of them have made multiyear
22 commitment to providing services in underserved
23 areas. Two of the grant recipients, Ellis Hospital
24 in Schenectady and Dr. Alisani Alday in the Bronx,
25 received intercity awards from Family Medicine. In

2 addition, three providers received rural awards.
3 These include Nathan Littauer Hospital in
4 Gloversville, FLH Medical, PC in Geneva, and Geneva
5 General Hospital in general surgery. The Doctors
6 Across New York Program has played an important
7 role in addressing health care provider shortages
8 in many communities, and I'm pleased to announce
9 that an additional $12 million is still available
10 to health care providers who apply for grants by
11 March 30th of 2012.
12 Another critical health challenge we
13 face is obesity. Obesity is a public health
14 epidemic that often starts at a young age. The
15 Department in conjunction with the State Education
16 Department has tracked a weigh status of school
17 children in New York state outside of New York City
18 which has its own fitness and tracking system.
19 We'll soon be issuing a report on these findings.
20 The results are alarming.
21 Thirty-two percent of children in New
22 York public schools are either overweight or obese.
23 The data are based on information obtained during
24 the 2008/2009 school year and the 2009/2010 school
25 year. Approximately 17 percent of school children

2 were found to be obese. That means having a body
3 mass index, or BMI, greater than the 95th
4 percentile of all children. An additional 15
5 percent are overweight with a BMI between the 85th
6 and 95th percentile.
7 The Department has shared this
8 information with local health departments and
9 school districts, and we will continue to work with
10 them on local planning efforts to improve child and
11 adolescent health.
12 Clearly, the high prevalence of
13 childhood weight problems is cause for concern.
14 Obese and overweight children face a much greater
15 risk of developing serious health problems such as
16 diabetes, asthma, coronary disease ultimately. New
17 York has numerous programs designed to promote
18 healthier lifestyles and prevent childhood obesity,
19 including the Healthy Schools New York Initiative.
20 This initiative is a collaboration
21 between the Department of Health and the State
22 Education Department that focuses on healthy eating
23 and control activities. We are working with state
24 and local partners to provide students with free or
25 low cost nutritious meals, and to create a

2 healthier environment.

3 Evidence shows that children who are at

4 a healthy weight achieve better educational

5 outcomes. We know that obesity is a challenge.

6 Not only here in New York but across our nation and

7 even globally. This data from our student weight

8 and status report will help us meet this challenge

9 and develop and expand evidence-base programs to

10 reverse the prevalence of obesity amongst children.

11 I would like to conclude my remarks on a

12 positive note. So far this winter flu has not been

13 a major problem in New York state. The number of

14 hospitalizations due to flu has been very low this

15 season, only ten hospitalizations with flu in the

16 first week of January. In fact, the number of

17 hospitalizations have averaged just ten cases per

18 week over the past month compared with hundreds of

19 hospitalized patients during the same period last

20 year. It's too early to figure out why these

21 numbers are so low or to declare this a very mild

22 flu season. We're approaching the typical peak

23 time for flu cases, and we expect we will see flu

24 activity to pickup considerably in the next couple

25 months. And so, that means there's still time to

2 get your flu shots.

3 I want to thank Dr. Birkhead and

4 everyone in Public Health at the state and local

5 levels who have been active in educating the public

6 about promoting flu vaccination. In light of the

7 high numbers of cases of H1N1 just a few years ago,

8 this is good news. Let's hope the number of flu

9 cases and hospitalizations remain low.

10 Thank you very much.

11 DR. STRECK: Thank you, Commissioner.

12 Are there questions or comments for the

13 Commissioner?

14 Dr. Berliner.

15 DR. BERLINER: Commissioner, will the

16 Department be reintroducing its attempt to have

17 mandatory flu vaccination for health workers?

18 COMMISSIONER SHAH: The question related

19 to mandatory flu vaccinations for health workers.

20 Certainly if you're getting care in any hospital

21 system, if your mom or dad is in a hospital, you

22 would like them to be exposed to immunized folks as

23 opposed to folks that may transmit a flu to them.

24 And it is a public health priority to see that that

25 policy ultimately is achieved. It's a matter of

2 question right now how best to achieve it because
3 there are other stakeholders who yet need to be
4 convinced. And so, we are actively working on
5 that.
6 DR. BERLINER: Thank you.
7 DR. STRECK: Ms. Rautenberg.
8 Ms. RAUTENBERG: Will the budget have
9 any good news for the Department? I think you have
10 been worried and have voiced that about your own
11 staffing at the department.
12 COMMISSION SHAH: So, the budget is what
13 it is. It includes a two and half percent cut
14 across all of the agencies and that applies to
15 health as well. In the grand scheme of things it
16 could be much worse. And the reality is that we
17 found ways to work with partners in different ways
18 to expand our ability get things done on a tighter
19 budget. I'll give you a specific example.
20 The Department of Health in public
21 health is moving less -- is moving away from a
22 service base approach and more toward a policy base
23 approach. When we can get Medicaid to cover led,
24 asthma and other things that are included in the
25 current budget, it means that we need fewer folks

1
2 in the Department of Health to do these activities
3 because the health care system are taking care of
4 it under the Medicaid program. And I think that's
5 an important initiative and the future is more
6 along those lines. Less service, more policy from
7 the Department of Health, as it should be.
8 DR. STRECK: Mr. Fassler.
9 MR. FASSLER: Will there be any new
10 initiative for housing people who are disabled in
11 nursing homes?
12 COMMISSIONER SHAH: As part of the
13 Medicaid Redesign Team's recommendation, we have
14 specific proposals that are being advanced on
15 supportive housing, not only for the disabled but
16 for behavioral health populations and others. So,
17 there is good news on that front.
18 DR. STRECK: Other comments or questions
19 for the Commissioner?
20 Thank you, Commissioner.
21 COMMISSIONER SHAH: Thank you.
22 DR. STRECK: We will now move to a
23 report from the Office of Health Systems
24 Management. Ms. Lefebvre.
25 MS. LEFEBVRE: Thank you. Good morning.

1 PHHPC ANNUAL MEETING
2 I have two items today. I'm going to provide you
3 with a brief update on Heal request for grant
4 applications that we have out, and also Charley
5 will give you a brief update on the CON
6 satisfaction, design satisfaction. So, for the
7 Heal update.
8 In keeping with -- you hear a lot about
9 MRT and certainly all the work that the MRT Group
10 has done, specifically the Brooklyn Workgroup and
11 the Payment Reform Workgroup really was looking for
12 ways that the state could support assisting the
13 provider network, the existing provider network out
14 there to deliver structural change trying to get
15 out of the four walls oftentimes of the hospitals
16 or nursing homes and really start directing itself
17 toward taking care of communities and outcomes,
18 health outcomes in the communities.
19 In keeping with that, we issued a
20 request for grant application on November 28th. We
21 were looking for applications and we are looking
22 for applications that support the principles of
23 development of meaningful primary care in
24 communities, rescaling the acute care, you know,
25 infrastructure and also creating or asking for the

1 PHHPC ANNUAL MEETING
2 creation of provider network that focus on
3 improving population health.
4 The grants that are available are both
5 capital grants and also temporary operating
6 assistance. There's $450 million available both in
7 Heal and acting federal funds, and there's also a
8 temporary Medicaid rate adjustment that will be
9 made available for good applications. This is the
10 last significant allocation of Heal -- dollars that
11 will be available for New York state. We
12 successfully persuaded the federal government to
13 extend the approval of the waiver. They did so
14 through March of 2014. And the money that is
15 available to us needs to be expended by that point
16 in time, so this is really the last effort and then
17 we're going to push to get the money spent.
18 Applications are due back into the
19 Department in February, February 10th. Based on
20 request from the provider community we extended
21 that time frame in January. And I think folks felt
22 like they needed a little more time to prepare
23 applications, so we extended that. We also held a
24 conference on January 13th to try to get more
25 clarity on what it is we were looking for and

1
2 certainly answer any questions that folks had about
3 that. So, we're really excited about repeating
4 some creative kind of transformative applications,
5 what will have some very real and positive impact
6 on population health in the community, in the
7 communities that providers serve. That's about it
8 on the Heal update for us.
9 If there are any questions I can answer
10 them now or if not I'll turn it over to Charley.
11 DR. STRECK: Questions for Laura?
12 I think we will just stick with her
13 topic and then move to Charley.
14 Any questions on the Heal process?
15 Okay. Thank you.
16 Mr. Abel.
17 MR. ABEL: Hello. It's been over 13
18 months now that we had our new electronic CON
19 application and tracking process in place. We
20 implemented it in December of 2010. And so, we
21 thought it would be a good opportunity for us to
22 take a look at how the users are responding to it.
23 So, at the end of October and through November we
24 put up a users, Nicecon users satisfaction survey
25 using a survey monthly on line and we got a good

2 amount of feedback. The survey consist of 26
3 multiple choice questions, takes about ten minutes
4 to complete and, of course, the purpose is to get
5 feedback from health care facilities, agencies,
6 consultants and the general public who are using
7 the system for searches.
8 We had 55 respondents. 29 from hospital
9 staff, five from consultants, four from long-term
10 care facilities, two from ENTC and about 15 other
11 types of respondents. Thirty-four reported that
12 they had submitted a construction application, nine
13 had reported that they submitted establishment
14 applications, 18 respondents reported that they
15 submitted from one to three applications, ten
16 submitted four to seven, nine submitted more than
17 eight applications. So, I think we got a good
18 selection of folks who have had varied experience
19 with the Nicecon product.
20 What we saw in terms of results, 46
21 percent reported that it took less time than the
22 hardcopy application process that preceded Nicecon
23 to prepare and submit an application. Forth-three
24 percent reported that it took about the same time
25 to submit. Almost 35 percent reported uploading

1
2 documents to Nicecon is easy, very easy. Only
3 about three percent reported that that was a
4 difficult process for them. Fifty-seven and a half
5 percent of respondents found it easy or very easy
6 to review their application on line through
7 Nicecon, 30 percent found it not to be difficult,
8 12 percent did report that it was difficult.
9 Seventy-nine percent found the search function to
10 be intuitive. Eighty-six percent found the
11 correspondence function, meaning the applicant and
12 the Department to be useful.
13 Comments and suggestions, one of the big
14 suggestions was that the respondents report that
15 they wanted to get additional information on status
16 updates of their CON as it was progressing through
17 the review cycle. Participants said that they
18 liked having less paper, the ease of submission,
19 the speed of DOH response to applications and being
20 able to see their application on line. Already we
21 have implemented a number of suggestions that came
22 through the Nicecon survey process. Things that
23 were easily implemented are now in place. So, we
24 were able to be responsive to applicant's
25 suggestions in a number of areas that make

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2 usability easier.
3 In terms of when problems or concerns
4 arose with respect to using the product, the
5 Nicecon product, 38 respondents said they could
6 resolve their issues without any assistance from
7 DOH. Twenty-one or twenty-four respondents raise
8 that their experience in seeking assistance from
9 DOH to be either good, very good or excellent,
10 three found it to be poor. Twenty of 23
11 respondents rated the quality of the assistance
12 they received from DOH to be either good, very good
13 or excellent.
14 We concluded that survey at the end of
15 November and we just wanted to be sure that we
16 reported back on our findings.
17 DR. STRECK: Thank you.
18 Are there questions or comments?
19 Mr. Kraut.
20 MR. KRAUT: Charley, when we -- and
21 congratulations, by the way, on giving birth to the
22 system and the issue. When we were conceptualizing
23 the possibility of Nicecon, it was going to be
24 rolled out in multiple phases. And one of the
25 future phases was enhancing community engagement

2 and awareness, you know, by pushing out e-mails and
3 things. Could you comment, is there yet another
4 phase of functionality that's in the works?
5 MR. ABEL: Multiple phases. The Nicecon
6 application is absolutely evolutionary. We wanted
7 to put out an effective mechanism for allowing the
8 applicant community to upload applications, to view
9 their -- to be able to correspond electronically
10 with the Department, and we wanted the public to be
11 able to have an opportunity and application that
12 would allow them to search through the applications
13 that were submitted in a more effective manner.
14 And, frankly, we want something that's going to
15 create a more efficient process for the reviewer.
16 You know, what we have in place is only the first
17 phase of the progression that will ultimately bring
18 more CON application information to the general
19 public, be able to view more specific information
20 about the application and other mechanisms to allow
21 the public when they are interested in a particular
22 application or particular region rather than coming
23 into the system to look for applications that had
24 been submitted. We hope that the system
25 functionality can progress to be more proactive and

2 be able to go out, and when folks have expressed an
3 interest in something be able to alert individuals
4 when their applications have been submitted that
5 meet that criteria.
6 Clearly we want additional functionality
7 to help reviewers be efficient in their reviews,
8 and we also want improved functionality to allow
9 applicants to upload their data in a more efficient
10 manner. Right now the -- essentially the browse
11 and upload functions there's different schedules
12 that apply to a CON application, it works, it kind
13 of duplicates electronically what we had in place
14 on a paper process, but we want to go beyond that
15 and create forms to be able to capture the data
16 that is being uploaded for a CON application so we
17 can use that data more efficiently, so the public
18 can use that data more efficiently, and ultimately
19 we have a better product.
20 DR. STRECK: Other comments or
21 questions?
22 Thank you for those reports.
23 We'll now move to Ms. Block who will
24 report on the activities of the Office of Health
25 Information Technology Transformation.

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2 MS. BLOCK: Thank you, Mr. Chairman.
3 Just two quick updates for the council on issues
4 that we discussed in the past.
5 In the last six months or so we received
6 two communications from the Substance Abuse Mental
7 Health Administration in Washington regarding
8 clarifications on policy issues relating to the
9 sharing of mental health and substance abuse
10 information in the context of Health Information
11 Technology and Health Information Exchange
12 activities.
13 This has been a topic of great interest
14 for us since many of our Heal 17 programs in fact
15 envision the collaboration of behavioral health
16 with acute care and primary care systems, and also,
17 obviously, now with the advent of health homes and
18 many of the other initiatives that we're enhancing.
19 With this most recent communication we
20 think that we have enough clarification from
21 Stamford to reevaluate the policies that we have
22 implemented thus far, and hopefully announce an
23 update to those policies in the very near future
24 that will clarify for our stakeholders and
25 hopefully facilitate the availability and

1
2 appropriate use of that information in conjunction
3 with federal policies. So, I'm sure we'll have a
4 more detailed update on that before the next
5 council meeting.
6 Also with regard to meaningful use, two
7 brief announcements. At the last council meeting
8 we were able to announce the soft launch of the
9 Medicaid registration system. That is now up and
10 running. We have over 2000 eligible professionals
11 already registered in the system, and everyday we
12 are getting significant volumes of new
13 registrations there.
14 We have been asked to work with the
15 federal government to really accelerate the process
16 by which eligible professionals are registering
17 both for Medicare and Medicaid, and we're working
18 closely with the key stakeholders across New York
19 state to accomplish that goal.
20 The other is that we are anticipating
21 the publication of Stage 1 of meaningful use
22 requirements probably next week, and I'm sure that
23 will create a great flurry of discussion across the
24 IT community. And we'll get the council an update
25 on that at the next council meeting as well.

2 Thank you.

3 DR. STRECK: Questions?

4 Dr. Palmer.

5 DR. PALMER: I jut want to say we can't
6 clarify those issues with the federal government
7 too quickly because that particular population dies
8 about 20 years sooner than the average person in
9 the state. Thank you.

10 DR. STRECK: Other comments or
11 questions?

12 Thank you.

13 Next we have Mr. Jason Helqerson here to
14 give us an update on the Office of Health Insurance
15 Programs Initiatives. Mr. Helqerson, as you know,
16 oversaw the Medicaid Redesign Team implementation
17 process and quite remarkable efforts came with
18 Governor Cuomo's early activities. I was thrilled
19 to serve on that expansive and ever expanding
20 group, I would say. But the final product is, I
21 think about to be released. But the work over a
22 wide range various in the state was quite
23 remarkable, and Jason's ability to keep track, in
24 my mind, was remarkable as well. So, I'm just glad
25 to have you here and welcome your report.

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2 MR. HELQERSON: Thank you, Chairman.
3 It's a pleasure to be here today to give you an
4 update on a couple different items. First off,
5 regarding the executive budget, so I have down a
6 couple of additional themes or issues that the
7 Commissioner did not directly address, but I think
8 might be a bit of interest for the this group.
9 First off, I think what was important
10 about the Governor's Medicaid budget proposal this
11 year is what's actually not in it. After many
12 years of traditional cost containment efforts,
13 across the board reduction, other sort of draconian
14 efforts particularly targeted that provider
15 community. The Governor's executive budget
16 contains none of those such actions for the first
17 time in a number of years. Key reasons for that
18 are the Governor's commitment, which he is
19 fulfilling, of allowing the budget to grow by four
20 percent, but also to the success of many of the
21 reforms enacted in the last budget which came out
22 of the work of the Medicaid Redesign Team.
23 People might remember that team was
24 passed as finding a considerable amount of money in
25 savings. The state share was about 2.2 billion

2 within all the funds terms or gross terms in state
3 and in the federal amounted to account as well
4 total about $4 million in spending reductions in
5 this fiscal year. And the value of those grow into
6 next year, and it's the key reason why we're able
7 to live within the four percent world without any
8 traditional cost containment.
9 Secondly, the proposal also moves for
10 the number of the Phase 2 MRT initiatives. As you
11 remember, MRT was really sort of two committees, as
12 some people said. The first was tasked with
13 finding immediate budgetary savings. And the
14 second, which has been meeting throughout the
15 spring, summer into the fall and concluded its work
16 in December on a Phase 2, a second effort where we
17 broke it into ten workgroups, work on a variety of
18 different topics across the entire expansive
19 program, they came up with many recommendations.
20 Twenty-five of those recommendations are actually
21 included in the Governor's proposed budget. And
22 so, we're very excited to move with some of those
23 important reforms.
24 Next, while the Commissioner talked
25 about the takeover of growth in the county

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2 contribution to Medicaid expenses, what the
3 Governor also proposed is a fundamental change in
4 the state and local relationship when it comes to
5 administration of the Medicaid program. New York
6 has historically relied, like a few other states in
7 the country, on local -- governments to really play
8 a key roll in administration, whether that's
9 eligibility determination or other functions, fee
10 for service system, those local districts have
11 played a vital role. What this budget does is
12 really change that system fundamentally. It's
13 basically a five year state takeover of Medicaid
14 administration.
15 To give you a sense of the scale of this
16 change. There are 5500 county and city workers
17 across the state who are taking an interest in this
18 particular outcome. So, the next five years the
19 work of those individuals are going to have to be
20 transferred to the state. The major change, the
21 major expansion that is going to work for the
22 Department of Health or they're proposing to add
23 120 FTEs, and the only part of state government
24 that will be getting new FTEs on any scale in this
25 budget as we take on that responsibility.

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2 I'm also happy to say that there's a
3 workgroup of stakeholders chaired by Steve Acquerio
4 and Ann Monroe who co-chairs with a similar group
5 as part of Phase 2 MRT. So, they're going to work
6 with stakeholders to advise the Department on how
7 to effectively implement, which is a very complex
8 new initiative.
9 And then finally in terms of more
10 information on the Medicaid budget. There's a
11 couple documents that are available on the MRT
12 website. First off, it's a power point
13 presentation and it's presented in a webinar. The
14 webinar itself is also available on the website
15 that we did yesterday that summarizes the Medicaid
16 budget in more detail. There's also a matrix out
17 there that I think is very valuable in order for
18 tracking particular initiatives that were included
19 in the Governor's budget back to the work of the
20 individual workgroups, so you can actually see
21 which of those recommendations the Governor has
22 moved forward.
23 And then finally, we're going to try
24 something new. Taking a lesson out of the
25 Governor's playbook. We're going to try to do a

2 twitter Q and A live, I've never done this before,
3 tomorrow morning at 8:30. And so, hopefully it
4 will be a good opportunity for us to answer
5 questions about the Governor's proposed budget to
6 Medicaid.
7 Next, I just wanted to give a quick
8 update in terms of implementation of Phase 1
9 proposal. As you might remember, there were 78
10 reforms included that were adopted by the
11 legislature that came out of the MRT process. And
12 so, we've been working fast and furious to try to
13 implement these as quickly and effectively as we
14 can.
15 First and foremost, I think people are
16 aware we now live within a world where we have
17 Medicaid global spending cap that -- the state
18 share of the DOH control of Medicaid budget, which
19 is the vast majority of the Medicaid budget. That
20 spending cap basically assumed that we would be
21 able to hold Medicaid spending in this fiscal year
22 compared to last fiscal year at a less than one
23 percent rate of growth. I'll give you a
24 comparison.
25 When we started this budget process

2 before MRT began it work, DOB estimated that the
3 growth rate was going to be about 13 percent. So,
4 a lot of the key reasons why we had to find so much
5 savings was to bring that growth rate down to what
6 the Governor's initially proposed, but we really
7 went into the fiscal year with some risk, a lot of
8 unknowns, particularly around enrollment. But so
9 far around through November I'm able to say that we
10 are under the global spending cap amount through
11 November by an impressive $4 million, which some
12 people may sound like a lot of money, but in the
13 Medicaid world it's .001 percent total. So, we are
14 very, very much managing this budget extremely
15 closely.
16 And I think one of the best things
17 coming out of MRT was the creation of the lower
18 spending cap and how it has forced the state to
19 track expenses in this very large and complex
20 program far more closely than ever before. And so,
21 there is information on how we're doing at the
22 global committee cap, it's also available on the
23 website because we are publishing a monthly report.
24 COMMISSIONER SHAH: No superpowers.
25 MR. HELQERSON: No superpowers yet. We

2 do see that the Commissioner has superpowers and he
3 has got a cape in his closet which we're hoping to
4 not have to use, but he is right.
5 And then finally, just a quick update on
6 sort of three important initiatives that came out
7 of the Phase 1 recommendation. As the Commissioner
8 said, we are moving to a care management for all
9 strategies really over the next three years,
10 proposing a fundamental change to the Medicaid
11 program by really ending fee for service and moving
12 virtually all services and all populations into
13 manage care, that's a real fundamental change for
14 this population. Roughly half of the total
15 Medicaid -- in fee for service. So, you're talking
16 about tens of billions of dollars moving away from
17 directing and for providers to plan on a caputation
18 basis.
19 One of the big areas of movement is in
20 long-term care, particularly home and community
21 base long-term care, which is a cost category that
22 has really been a major driver of cost for us of
23 Medicaid. We're beginning this spring with moves
24 to mandatory managed long-term care. It's to take
25 us two years to fully phase that in, but we're very

1
2 excited and need to work with the federal
3 government getting full approval but preparing for
4 that important initiative.
5 Also Health Homes, Rachel mentioned them
6 earlier and Dr. Rugge was describing some of the
7 challenges that he -- at least an effort up in the
8 Adirondack that created Health Homes. It really is
9 an exciting but very challenging initiative, which
10 is really trying to bring together providers from
11 across the various care silos working together
12 sharing information, really targeting new resources
13 at a population that is really a major challenge
14 for the Medicaid program. These are our highest
15 cost, highest needs of Medicaid members,
16 traditionally the ones bouncing between behavioral
17 health providers, the physical health care, the
18 acute care system, these are the individuals in and
19 out of the emergency room 50 times a year, very
20 challenging population that our past systems and
21 efforts really haven't worked that well on. And
22 so, we're trying through Health Homes to really
23 build networks of providers to work together
24 focusing on this population.
25 We're very excited about some of the

1
2 first wave of Health Homes that are moving forward.
3 And I'm happy to say that beginning next week the
4 very first enrollees will be enrolled into Health
5 Homes as we move forward with sort of ten phase one
6 counties, so I'm very excited with that.
7 And then finally, patients that are
8 medical homes. I sit next to Dr. Rugge here on
9 this as well. This is one of our leading lights on
10 medical homes. The state for quite a while has had
11 an effort around trying to incentivive providers to
12 become patient center medical homes and achieve NQA
13 accreditation. Back in the beginning of 2011 we
14 had a little bit less than 800,000 individuals of
15 Medicaid patients who were benefiting from services
16 provided by patients in medical homes. I can
17 report today that it's over 1.4 million. So, it's
18 seen a substantial increase in the number of
19 practices, physicians who have met those criteria,
20 and that it inherently meant that there are more
21 Medicaid patients who are benefiting from high
22 quality, highly coordinated service. Thank you.
23 DR. STRECK: Questions or comments?
24 Dr. Grant.
25 DR. GRANT: -- Commissioner Shah, is

2 there anything that is going to talk about the --
3 ECO?
4 MR. HELQERSON: Certainly. We as part
5 of Phase 1 of MRT approved language to create, I
6 think it's five pilots, five or seven pilots, ECO
7 pilots, and we are in conversations with a number
8 of different entities both lage group practices,
9 IPAs as well as a couple of hospitals. We do have
10 one Medicare pioneer ACO which is Montefiore, right
11 here in New York City, who is pursuing that. And
12 so, we remain very interested in working with
13 providers who are willing to come together to
14 accomplish this.
15 DR. GRANT: Thank you.
16 DR. STRECK: Mr. Fassler.
17 MR. FASSLER: Two questions. Regarding
18 the home care patients, is the April 1st date still
19 in effect or has that been changed?
20 Mr. HELQERSON: So, the April 1st date
21 is right now challenged because we need federal
22 approval. And when you back up from April 1 where
23 we sit today at the very beginning of February,
24 it's a little bit of a challenge. So, we're in the
25 process -- not that we had problems with federal

2 approval, it's just that it's a complex thing,
3 there's a lot of steps involved in it. So, we may
4 very well have to modify that date, but hopefully
5 the slippage won't be --
6 MR. FASSLER: Second question. In terms
7 of the nursing home population, is there data yet
8 in terms of what we are facing in that population
9 of managed care?
10 MR. HELQERSON: Very good question.
11 What we're in the process of doing right now is
12 putting together a very detailed document that will
13 really layout the multiyear plan for basically the
14 entire population and also the entire span. It's
15 not just people, but also their services that are
16 carved out and at what point they will be moving
17 in. But yes, existing nursing home population is a
18 key question in terms of when exactly we will begin
19 that migration.
20 MR. FASSLER: Thank you.
21 DR. STRECK: Ms. Rautenberg.
22 MS. RAUTENBERG: With increase in the
23 patients in primary care medical homes, are we
24 seeing any improvement in the indicators in the
25 prevention agenda that we can attribute to primary

2 care medical homes?

3 MR. HELQERSON: Sure. In fact, we're in
4 the process and Dr. Foster Gassin, who is the Chief
5 Medical Officer for the Medicaid program, is
6 actually in the early stages of doing an evaluation
7 to try to figure out what has been the impact and
8 the benefits of patients home medical homes. So, I
9 think what might make sense, he gets that analysis
10 a little bit more complete so then we come back to
11 this group and do a more formal presentation. But
12 that is -- the state is spending millions trying to
13 encourage the question are we getting the outcomes
14 we would hope.

15 DR. STRECK: Jason, in terms of
16 population in trying to keep them under caputation,
17 what about the mental health and OP -- group, are
18 those in the cue to be incorporated, and what is
19 the time span for that?

20 MR. HELQERSON: Certainly. First in
21 terms of the people with significant persistent
22 mental illness. One of the recommendations coming
23 out of Phase 2 we actually had a group that focused
24 on behavioral health issues, was actually the
25 creation of a special needs plan for people with

2 significant persistent medical illness, modeled to
3 -- extent on a special needs plan program that
4 operates for people with AID/HIV, that would be
5 specially designed to meet the needs of people who,
6 as Mr. Hogan, the Commissioner of Mental Health
7 said, is really sort of the deep end of the pool.
8 Folks who have significant needs, people coming out
9 of inpatient psych situations and really need
10 intensive highly coordinated behavioral health
11 care. It's true that behavioral health while it's
12 not in and of itself a major cost category for the
13 program, those individuals who have behavioral
14 health drive a lot of our cost overall because they
15 end up -- they also have complex health care
16 conditions. So, we're particularly excited about
17 that particular initiative.
18 We also have behavioral health
19 organizations which is an effort to bring carved
20 out services to begin care management, for those
21 service that initiative is already up and running.
22 We have behavioral health organizations now running
23 in all parts of the state. And the value in terms
24 of the developmental disabled community, we are
25 actually on a somewhat separate track but a very

2 similar path with regard to the depopulation,
3 roughly a 100,000 developmentally disabled
4 individuals. So, a part of one of the largest most
5 complex DD systems in the country that in essence
6 is overseen by the office of people with
7 developmental disabilities because sometimes people
8 have to hear that. I was surprised when I heard it
9 when I came to New York, that there are 23,000
10 employees who work for the office of people with
11 developmental disabilities, that's roughly a third
12 of the total work force. It's a very large and
13 very complex system with, obviously, a long and
14 challenged history, but the path forward there.
15 And we're in the process of working with CMS,
16 hopefully in the final phase, working with CMS on a
17 waiver that basically will move them from what is a
18 sort of uncoordinated fee for service system to a
19 much more coordinated care management system where
20 they will, in essence, look to create a contract
21 with highly specialized care management
22 organizations to initially model on our managed
23 long-term care plans starting with the long-term
24 care services, but eventually envisioning fully
25 integrated care management. So, bringing in the

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2 acute, the behavioral health, and they're looking
3 at a five year time horizon for that population.
4 So, it will be a really major restructuring of the
5 DD population, but very much the move is toward
6 caputation.
7 DR. STRECK: Other questions or comments
8 for Mr. Helqerson?
9 Thank you much.
10 I'm sorry. Dr. Palmer.
11 DR. PALMER: Just one. Yesterday I was
12 able to sit in on discussions of the state health
13 improvement plan, and I'm wondering in the planning
14 that the state is going to run for the DD
15 population, is there integration of the work that
16 the -- improving of the health plan going forward
17 is doing with the planning that you're doing now?
18 MR. HELQERSON: That's a good question.
19 I don't know the answer to it. I'll follow-up. It
20 certainly seems like it should considering that's a
21 huge part of the health care or broader long-term
22 care infrastructure. We want to make sure, I think
23 it is our role, sort of the Department of Health,
24 to make sure that those very systems are talking.
25 So, I will follow-up with Commissioner Berk to make

2 sure that's happening.

3 DR. STRECK: Dr. Birkhead, do you have a

4 comment on that?

5 DR. BIRKHEAD: I'll address that in my

6 next comments here and Dr. Boufford as well with

7 the public health education.

8 DR. STRECK: Well, talk about a perfect

9 segway, here we are. Next is Dr. Birkhead to

10 answer Dr. Palmer's question and to address other

11 activities of the Office of Public Health.

12 DR. BIRKHEAD: Thank you very much. I'm

13 going to speak from a set of color slides that

14 people have at their desk. I won't project them,

15 get people riled up. So, I am going to report on a

16 meeting that we had yesterday of the Ad Hoc

17 Committee of the specifics which you established a

18 couple meetings ago to look at the new round of

19 state health improvement plans. I will talk about

20 what we presented at the meeting and Dr. Boufford

21 will talk about some of the discussions in her

22 report on the Public Health Committee.

23 So, people are familiar with a

24 prevention agenda. That's been our state health

25 improvement plan from 2008 through this year, 2012,

2 and we're in the initial stages of planning for the
3 next round of state health improvement plans, the
4 next five year period 2013 to 17.
5 And yesterday we had the first meeting
6 of our stakeholder group. This is a widely
7 constituted group that includes all sectors of the
8 public health system. And I'll show you subsequent
9 slides of what that system is, but we are heavily
10 using this committee to help guide the work of the
11 State Health Department in setting up a state
12 health improvement plan.
13 At the meeting yesterday we talked about
14 the goals and principles as well as the criteria
15 for selecting priorities in the next phases of
16 this.
17 The vision for the overall plan is
18 fairly simply stated, that New York is the
19 healthiest state, that is our overall vision.
20 The goals, and these are some of the
21 goals that we talked about yesterday and we will
22 add to this based on the discussion, but our two
23 advance say health in all policies approach in New
24 York. That is in any sector or among other state
25 agencies as they are considering policy changes for

2 example in transportation or agriculture that
3 health considerations also be included.
4 Eliminating health disparities was a
5 major theme yesterday and seems to be a major focus
6 or our activities, and we have a lot of data that
7 actually details slides from yesterday's session
8 and will be posted on the website.
9 Strengthening the state and local public
10 health infrastructure, and included in that the
11 ability of that infrastructure to engage in
12 partnership and stakeholders at the state and local
13 level to promote a sustainable public private
14 partnership was discussed a lot.
15 We had a number of cross cutting
16 principles that we talked about, encouraging
17 collaboration at all levels between public and
18 private, at the state level between public and
19 private and public and public. In order words,
20 engaged the other state government agencies and
21 similarly at the local level and in so doing
22 support the public health infrastructure.
23 Strengthening the integration of public
24 health and the personal health care systems, and
25 that I think gets -- we'll get to the discussion

2 from Dr. Palmer with the question about how do we
3 integrate the public health efforts with the
4 clinical care systems, and that's an ongoing
5 challenge and opportunity, I think, to really make
6 a difference in both arenas.
7 And building awareness and capacity in
8 local communities of what their health problems are
9 and how to address them.
10 We have what we call the bubble slide
11 here which is the public health system to really
12 make the point that it's not simply a governmental
13 effort, but the government certainly plays a role
14 in coordinating, convening and developing policies,
15 but this is really an effort that involves
16 communities to health care systems and other
17 sectors like employers and business, the media,
18 academia, and we added a few more bubbles from
19 yesterday to this diagram to really make the point
20 that the system is everybody's responsibility and
21 everybody needs to work on improving the system.
22 The next couple of slides just indicate
23 sort of the dichotomy or the paradox that we have
24 that we believe that access to medical care only
25 accounts for a minority of health status. We had

2 discussion yesterday whether it's ten percent or 20
3 percent or 30 percent, but it's a minority of
4 health status that is believed to be influenced or
5 uninfluenceable in the medical care system, so that
6 behavioral factors, environmental factors and
7 genetic factors need to also be considered in the
8 realm of what the public health tries to influence.
9 But the funding is always been in balance here, and
10 whether the numbers are off by a few percentage
11 points, the point is that it's less than ten
12 percent of our health care expenditures in a sort
13 of public health sector.
14 And then finally we talked about the
15 context in which we're operating out of health
16 reform over the next couple years, health
17 insurance, and presumably then access to care will
18 be greatly improved by the implementation of health
19 reforms. I think we agreed on the committee that
20 insurance doesn't equal access, but is necessary
21 but not sufficient for access, so there will still
22 be a public health role in the system with access
23 to care.
24 Preventative services rated A or B by
25 the U.S. Preventative Services Task Force are to be

1
2 provided in the new systems. So, that's good news
3 in terms of public health. We spend a lot of time
4 now in public health trying to fill gaps and assure
5 that preventative services are provided, so
6 removing barriers there is important.
7 Improving coordination of care through
8 health homes, and we on the public health side are
9 helping develop specifically children's health home
10 models to go along with the adult health home
11 models that we have, and we assume maternal to
12 child health is a major focus of our efforts in the
13 public health arena.
14 And to support preventative services and
15 community base services to the MRT proposals. As
16 Commissioner Shah referenced, there's a number of
17 proposals that are now moving forward in the
18 Governor's budget around MRTs that support what had
19 been traditionally public health services, but now
20 being able to cover for Medicaid children primarily
21 through the proposal.
22 We talked about criteria, and the next
23 phase of this effort will be sort of selecting our
24 priority areas to focus on. So, we talked about
25 criteria to select those priorities, those would

1
2 include disease burden, what is the morbidity and
3 mortality, a premature mortality and morbidity of
4 diseases and health risk conveyed. Are there
5 preventible. In other words, evidence-base
6 interventions that we can employ. If they're not,
7 then I guess it's questionable what our efforts
8 there would focus on.
9 What is the feasibility in terms of
10 existing resources and potential resources, how
11 would we try to align resources with what the
12 priorities would be. Is there a community and
13 partner support that the community recognizes as
14 priority areas for them, if they don't then you're
15 in trouble. And the health departments who are, as
16 I mentioned, the convener of these efforts and in
17 some ways direct them at the state and local level
18 because they have the leverage in order to make the
19 changes. And, you know, can we move the needle in
20 terms of health disparities. And in terms of
21 actual causes to support health is another way of
22 looking at this, and is there a way to monitor what
23 they're doing.
24 So, those are the things that the
25 Committee talked about. The current prevention

2 agenda has ten priority areas which are listed on
3 the next slide that range from access to care to
4 chronic environmental maternal child health,
5 infectious diseases. Mental health and substance
6 abuse are on this list and we had quite a bit of a
7 discussion yesterday about that. Those are areas
8 where the public health part of the State Health
9 Department does not have any levers to pull. And I
10 think we agreed in the end that, and Dr. Boufford
11 can comment on this, that needed to be there
12 because of the prior discussion that these
13 populations just don't address substance use and
14 mental health issues, then you're not going to make
15 headway on the physical health issues that people
16 are facing.
17 So, we talked about limiting the
18 proposed focus areas and had quite a bit of
19 discussion. These slides really just help guide
20 that discussion and don't represent the conclusions
21 on the Committee which we will work on and try to
22 get to you, but I think the focus is certainly in
23 the area of chronic diseases was not to be a
24 disease specific focus, but to be more focusing on
25 risk factors, obesity, physical activities,

2 nutrition and access to screening for cancer in
3 particular where we might use disease measures as
4 outcome measures, but the real focus would not be a
5 disease specific focus.
6 Some discussion about what it means to
7 have a healthy environment. Is that just food and
8 water or does that also apply to the local home
9 environment and other kinds of environmental impact
10 on people, not just what you normally think of.
11 So, I think we'll be amplifying that area as well.
12 Healthy mothers, babies and children is
13 sort of mom and apple pie literally. And I think
14 we will keep the component there and try to focus
15 -- the challenge now will be to focus on areas
16 where we can make progress there.
17 Controlling infectious diseases. I
18 think, again, that's a traditional public health
19 area. But as some members pointed out in the
20 discussion yesterday, when we have a crisis
21 infectious disease outbreak or H1N1 then everybody
22 moves into lock steps. So, we may need to think
23 more critically about what it means to have a
24 priority in this area. I think childhood
25 immunization certainly would fit in that arena. I

2 think this final slide will be delineated much more
3 fully and Dr. Boufford will comment more about the
4 discussion that we had.
5 Our plan with this group is to have a
6 couple meetings by June and then to have
7 established the priorities by that time. And then
8 in the second half of the year talk about how we
9 engage the public health system in supporting these
10 priorities and then be ready in 2013 to move ahead
11 with improved state health improvement plan. So,
12 we'll be reporting on this in a couple meetings
13 with the council going forward. So, that's my
14 report.
15 I can answer questions, but you may want
16 to have Dr. Boufford amplify the discussion
17 yesterday.
18 DR. STRECK: Questions or comments for
19 Dr. Birkhead?
20 Dr. Berliner.
21 DR. BERLINER: Dr. Birkhead, the vision
22 is for New York to become the heathiest state,
23 where do we stand now?
24 DR. BIRKHEAD: We actually had
25 discussions yesterday. There are a number of

2 rankings out there. One of the most prominent ones
3 list us as I think number 18. There are about 25
4 different factors totaled up into an index. So,
5 we're in the middle of the path. And we agree that
6 our goal is not to stay at number 18, but to try
7 and move away.
8 DR. BERLINER: Thank you.
9 A VOICE: I'd just like to say that it's
10 much appreciated that we attempt to really
11 integrate with mental health and substance abuse
12 issues with anything that comes out of this kind of
13 preventable agenda. Even when you think of things
14 like healthy moms and healthy babies, often there's
15 issues of postpartum depression, stress, et cetera,
16 is critical, but it's not kind of emphasized when
17 those things come out. And then there's maybe
18 depression initiative which comes out and fails to
19 emphasize sometime the other important health. So,
20 the more we can integrate as those initiatives come
21 out and make sure it's coordinated, I think we get
22 more, you know, bang for our buck in what we're
23 doing in terms of relative to reaching the
24 populations. So, I think that's even greater if we
25 incorporate.

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2 DR. STRECK: Mr. Kraut.
3 MR. KRAUT: You know, I listened, you
4 know, you talk about New York being the healthiest
5 state and the importance of New York, you know, you
6 and your colleagues exchanging information with
7 other states across the country reminded me of when
8 we were at the SHRPHC we were notified two years
9 ago that the Department of Health's travel had been
10 curtailed which prevented you and your colleagues
11 in the Department of Public Health from attending
12 the national meetings of the public health
13 association. And I suspect that is still an issue
14 in the Department and I would, I don't know if
15 that's in fact the case, but if it is, I would like
16 to know it because then I would like to just make
17 another comment.
18 DR. BIRKHEAD: No. I think we're
19 obviously making a lot more use of electronic
20 communications. There are webinars occurring
21 frequently. And are federal partners seeking --
22 primary ones recognize that also their budgets are
23 squeezed. So, I think we're seeing much more in
24 the way of electronic meetings and communications
25 and there still are in person meetings and we get

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2 people at every critical meeting that happens.
3 MR. KRAUT: I would just say that it's
4 important for New York to be represented in person,
5 not necessarily in amorphus webinar where there are
6 important meetings. And that to the degree the
7 Commissioner we had raised the issue that if that
8 still continues to be a restriction in the
9 Department's budget, that, you know, from the
10 Public Health and the Public Health Committee that
11 it behooves us to find the funding, if not within
12 the budget but maybe outside the Department within
13 the ethical guidelines to have some discretionary
14 dollars so you are represented.
15 DR. BIRKHEAD: Thank you.
16 MR. KRAUT: I just wanted to throw that
17 out there.
18 DR. STRECK: Gus, in view of your
19 extensive portion of the budget that you represent
20 on your draft here, instruct me if you look at the
21 goals in the public health initiatives which are, I
22 think, noble and socially oriented they, at least
23 in the health arena, align pretty well with the
24 insurance industry's goals of making money in terms
25 of delivering services. And I mean, they're pretty

2 compatible. It would benefit most insurance
3 companies to have all these initiatives to be part
4 of their population management. And it just struck
5 me looking at this today, do we have any crosswalk
6 discussions with the insurance industry? How are
7 they involved in this process whereas they would
8 have, you know, a very legitimate interest in the
9 success of the public health initiative?
10 DR. BIRKHEAD: The insurance industry is
11 a key stakeholder, and we have representatives from
12 the -- Association, for example, a member of the
13 group that met yesterday. So, they are a key part
14 of the public health system that I highlighted.
15 You're right that I think our only goals are an
16 alignment. Part of the difficulty is that
17 prevention, which is what the focus of public
18 health activity is, may take time to benefit. Each
19 child may not develop a medical cost or condition
20 that will lead to medical cost the next two years,
21 but maybe later on down the line. So, you need to
22 have a somewhat longer view. But there's quite a
23 bit on return of investment work now being done
24 with the public health and primary prevention that
25 are part of our discussions now and hope to make

2 those forms.

3 DR. STRECK: Thank you.

4 Other comments or questions for Dr.

5 Birkhead?

6 Dr. Boufford.

7 DR. BOUFFORD: Thank you. I'm just

8 going to do a little color commentary on what Gus

9 said. First of all, just to remind everyone, the

10 Public Health Committee has sort of three

11 priorities for the year. One is working with John

12 and his colleagues on planning and goals, we'll be

13 talking about that. The second we had a number of,

14 actually all joint meetings I think since that

15 process started on the CON modernization. The

16 second one is being advisory to the Department on

17 the renewal and the revitalization of the S H I T

18 for the next four years and the state health

19 improvement plan and the accreditation application

20 that the state will be applying for accreditation

21 in the new voluntary system. And then finally,

22 once the new priorities are set, going forward we

23 commit ourselves to picking one of those and seeing

24 where we might move the needle by really focusing

25 our efforts on the Committee to support those of

2 the Department and other involved stakeholders.
3 We met yesterday, as Gus said, in Troy
4 and New York City for four hours, for five hours,
5 actually, from 12 to 4. And the group that met is
6 called the Ad Hoc Committee to lead the state's
7 health improvement planning process. And the goal
8 being to come up with recommendations to you, as
9 Gus said, November of this year for beginning in
10 2013 for the next four years. And the Committee is
11 constituted in two ways. One, we're volunteers
12 from the Public Health Committee. Six of our
13 colleagues volunteered, and I was delighted that
14 three or four other members of SPHHPC were with us
15 the whole time yesterday, even though they're not
16 members, which was really great. And then we have
17 21 volunteers from across the state. These were
18 individuals, some of them had been in part
19 representing organizations, statewide
20 organizations. The goal being that their statewide
21 umbrella would then provide the sort of mechanism
22 of reaching into the local health departments, the
23 local community level for action. We have Medical
24 Society Professional Association, the New York --
25 the West New York Eastern Business -- a new

2 representative from IBM who joined us. We really
3 wanted to go after more business representation
4 which we had not had previously. Public health
5 leadership, nursing leadership and come to add a
6 few foundations. We were delighted that New York
7 State Health Foundation joined us for the meeting
8 and representatives from Greater New York and HANY.
9 So, it's a very wide group, a number of asset
10 organizations including Medicaid matters and
11 others, cancer society. So, it was really, really
12 exciting. I think a very engaged group, a very
13 sophisticated group in terms of these discussions.
14 We had some fantastic support and
15 analytic data available. There's never enough data
16 for people in public health, but. We had a lot of
17 really good information from Gus and his staff,
18 especially Sylvia Pirani and a new colleague
19 Ms. Trems, Julia Trems, I'm mispronouncing her
20 name, stepped in on the data side, and she was
21 really, really helpful.
22 The goals of this Committee are to -- we
23 started up the meeting to take a look back over
24 progress on the prevention agenda, take a look at
25 the current status of New York state health

2 conditions, and then going through this process
3 that Gus just described to you, begin to develop
4 priority setting criteria for a new set of
5 priorities for the coming four years, and then
6 design a way to involve broader stakeholders and
7 consulting on the draft of those ideas and then
8 using that input to refine the final decision.
9 Just a few observations on the review
10 process of the prevention agenda. There were 51
11 indicators, 35 we're going in the right direction,
12 three were actually met, 14, however, we're going
13 in the wrong direction. A number of those were in
14 areas of adult obesity, alcohol use, diabetes,
15 STDs, and some increase rates of hospitalization
16 which were something that really creates that
17 bridge, I think, between what we're trying to do to
18 prevent these issues and the cost in the overall
19 health care system.
20 The other review process was looking at
21 the partnership process, which you will recall
22 through a legislative activity we were able to get
23 a concurrent review of the local health department
24 health planning plan submission and the hospital
25 community benefit plan submission, and that proved

1
2 to be quite helpful. I think we're delighted that
3 that's going to be possible. Again, we're off by
4 one year, but then from 2013 on it will become
5 current again.
6 In analyzing the effects of the
7 partnership process, there was I think a good bit
8 of engagement between hospitals and local health
9 departments, a good concurrence of agendas. The
10 access to care being the number one, chronic
11 disease being number two, and tobacco being number
12 three, and most of them shared that in their top
13 five.
14 What we did find, however, while there
15 were good initial meetings and some collaborative
16 planning, the collaborations begin to kind of
17 deteriorate. I mean, a lot of it is timeframe, but
18 there were less and less apparent in the
19 implementation stages and in the evaluation
20 process, and some of that is directly related to
21 resource availability.
22 There was a small amount of money made
23 available, 7 million, for grant program to support
24 activities in a number of the local areas. And
25 those, I think those districts and communities that

2 were able to get that small amount, that amount of
3 money through the grant did better in sustaining
4 their partnerships and went further along that
5 continuum of implementation and evaluation. So
6 that's really a issue. That's why you see that
7 goal of sustainable partnerships there, that
8 they're building that capacity.
9 The other thing that came out a lot is
10 the metrics, so we don't have lot of measurement of
11 what was done. Some, again, because the timeframes
12 were shorter, but it was, I think, a very heavy
13 concern of the complete ones going forward that we
14 will be able to measure, define metrics in the
15 first instance and then be able to track and
16 measure them. Again, the resources in public
17 health data are poor and I think that raises an
18 issue certainly for racial groups and for the other
19 HIT programs just to figure out how to capture
20 information from some of the clinical providers.
21 The overall New York state health data,
22 as Gus mentioned, is about a key position. When we
23 looked at the plans we see two things in
24 characteristics, not surprising, increase in the
25 aging population and decrease in the birth rate and

1
2 much significant increase in the diversity of the
3 statewide population. So, those also present their
4 challenges. The highest avoidable mortality
5 factors are tobacco, exercise, diet and alcohol,
6 and that's where we'll start thinking in terms of
7 what we can do to prevent these things. They
8 affect a whole set of these chronic diseases.
9 As Gus mentioned, just to highlight the
10 areas where we spent a lot of time and there was a
11 lot of consensus, is that we want to see the
12 strategies that are developed really reflect an
13 appreciation of the broader determinative health,
14 the things that really help people make healthy
15 choices in the communities in which they live. And
16 there was a lot of discussion about the control
17 issue. This comes up in all of these
18 conversations. Can we put a goal out there where
19 the health department can't control all the
20 variables involved in making change. This is,
21 obviously, a concern in the provider community as
22 well, how can we be expected to act on community
23 health interventions that are beyond our direct
24 control. So, I think this issue there's some
25 tension that speaks to the value of these

2 collaborations and partnerships in trying to make
3 each other mutually accountable, but it's going to
4 be an issue. And I think it will an interesting
5 debate as we go forward and we come up with a final
6 set of goals for the plan.
7 The issue of health and all speaks to
8 can we get appropriate collaboration across the
9 different agencies in government as well as with
10 the public and private sector. We do want to build
11 capacity at the local level because, obviously, in
12 the further decentralized area the state can't
13 really assume that they can have that kind of
14 impact. And also one thing is very clear, we can
15 set statewide priorities, but the applications will
16 be at the local level. They're going to pick
17 issues that are relevant to them, they're going to
18 design how to tackle them in ways that are relevant
19 to them. So, if they have an active business
20 community, some community business community would
21 be quite involved. Others say they may not be able
22 to be involved as closely, same as other kinds of
23 leadership.
24 On the context side Gus mentioned the
25 MRT process. I was glad to see that the question

2 was asked. I think one of the challenges really is
3 that the MRT process moves very quickly and it's
4 very complex. Where are the opportunities to see
5 an impact on some of these priorities going to be
6 selected. We stayed with the MCH, one, largely
7 because -- on health because we know the it's a big
8 focus of MRT. We want to look at the complimentary
9 public health and prevention set of activities to
10 link to there, but very important.
11 As Gus said, in the last slide stuff
12 that you have here, long and productive discussion
13 about how can mental health and substance abuse not
14 be there. With all of the caveats of how hard it
15 is on the prevention side and the community base
16 side to intervene, but we need to do that and then
17 we need to do it in partnership with the provider
18 community. I think the realization that it is very
19 much a hidden factor in so many areas, and that
20 will be a challenge I think in putting together the
21 agenda.
22 The notion of risk factors for multiple
23 chronic diseases rather than falling into the
24 sometimes trap of dealing with the silos of
25 disease, but specific care. And, again, the

1
2 metrics issue can include diseases, as Gus said,
3 and probably the best data available in cancer, but
4 we don't want to not look at the diabetes, heart
5 disease, pulmonary disease, consequences of exactly
6 the same risk factors.
7 And the other thing I would mention is
8 oral health. It came up in our discussion again.
9 Sometimes the hidden issue, we talked about a lot
10 in the context of maternal child health agenda, but
11 also arguably some of the chronic disease
12 prevention, some of the dentist argue that the
13 first manifestation of diabetes is seen in the
14 dentist's office, and the connections aren't made
15 often. They will claim they can see early evidence
16 of other chronic diseases and gingivitis and other
17 things. And interestingly, men who won't go to the
18 doctor go to the dentist. So, there is an
19 interesting potential there. And so, we're going
20 to stalk with that a little. We weren't convinced
21 it needed to be a -- list, but it ought to be there
22 somewhere.
23 And our plan is to revise this sort of
24 data set, which would be kind of the go out to the
25 stakeholder community data set very quickly, have

2 comments by e-mail from the Committee and then have
3 one face-to-face meeting maybe within a month if we
4 can do that so to sort of finalize the basis on
5 which they will then do outreach to their
6 constituents throughout the state. Bring that
7 information back, give them a couple months, six to
8 eight weeks to do that consultation, and with that
9 information we would need to get in June and then
10 come up with the final set of recommendations.
11 Workgroup will be reporting to you during that
12 period. Workgroups on each of the priorities would
13 meet over the summer and then have recommendations,
14 specific recommendations around the issue of goals,
15 criteria and metrics, et cetera, for the November
16 meeting of this committee. So, that's it.
17 DR. STRECK: Thank you. So, you
18 anticipate the full report at the November meeting?
19 I'm just looking ahead at our agenda.
20 DR. BOUFFORD: There will be interim
21 reports, but that's our target.
22 DR. BIRKHEAD: Yes.
23 DR. STRECK: Thank you.
24 Next is Dr. Rugge with a report on
25 health policy.

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2 DR. RUGGE: It's always good to follow
3 Dr. Birkhead and Dr. Boufford. It's always good to
4 follow the public health discussion. It makes you
5 feel like with health planning we represent the 99
6 percent to occupy.
7 The Health Planning Committee is working
8 hard to address the charge that has been given to
9 it in no small part by Commissioner Shah. Thank
10 you for that. It is a two-part charge. The first
11 is to develop recommendations for consideration by
12 this council in the June 2 meeting for
13 administrative streamlining of the process that
14 currently exist, presuming that we can streamline
15 CON as the Governor is trying to streamline all of
16 the state government. And we began that discussion
17 on a special meeting on January 18th and continued
18 on the 19th and will be continuing that through a
19 series of meetings until June.
20 At the same time are undertaking a
21 larger effort to reform and reconceptualize the CON
22 process in light of all the payment and delivery
23 system changes that we are experiencing. This is
24 the exercise leading the report in the fall that
25 will hopefully help to set the table for further

2 action in 203 in the Governor's agenda.
3 We have been helped enormously by the
4 staff, Chris Delker, Sharon Lipson, Karen Madden,
5 and also by -- particularly on -- and as our
6 special advisor Dr. Poonam Alaigh who has been
7 enormously helpful in terms of giving a broader
8 perspective on CON. All these documents, I
9 presume, have been distributed to members of the
10 council and are available to members of the public
11 and would recommend them because they are our
12 starting points for a shared understanding of CON
13 as it is now.
14 At our last meeting we reviewed I think
15 a shared understanding of consensus about the
16 rational for CON as it has and are now performing.
17 We actually agree on four overall goals as
18 suggested by the Department. We then began to
19 consider the benefits of CON, its drawbacks and
20 those inherent to the kind of reviews that were
21 undertaken. And then going on to shortcomings of
22 areas where the current process could be approved,
23 but we are not addressing adequately.
24 This slide indicates the benefits as we
25 currently understand them. These have been -- by

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2 the Committee or -- and, obviously, for further
3 amendment and revision by members of the council,
4 and we would welcome contribution from everybody at
5 this time and for sure all members of the public
6 and key stakeholders who have really provided the
7 basis for all the deliberations we have been doing.
8 This list constitutes the drawbacks as
9 we understand them. And the shortcomings also
10 represents a longer list, too long to put on one
11 slide. Again, all this material will be
12 distributed for everyone's reading pleasure.
13 Based on the -- census, the Committee
14 then moved to all the stakeholder recommendations
15 that have been submitted to date regarding
16 administrative streamlining and essentially
17 condensed, and edited those suggestions, added to
18 and have some seven suggestions that could well
19 turn into recommendations for the full council to
20 consider.
21 These have been referred back to the
22 Department so that we as a Committee and vision of
23 the council can understand implications intended
24 and unintended that proceed along these lines may
25 have.

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2 This is what the Committee has yet to
3 see, is another series of additional ideas that
4 have been generated by the Department on the basis
5 of the referral that we have made. It will be
6 subject to further discussion at the next meeting.
7 All this will shortly be available to
8 everyone, and will require digestion at the next
9 meeting.
10 We next meet in a special session on the
11 afternoon of March 21 with a two-part agenda for
12 the Committee. One is to begin to draft, a
13 repurpose statement having agreed on how CON is now
14 intended to service, how in light of all the
15 changes that we're experiencing we would redefine
16 the purpose of the reconsidered CON starting with a
17 basic question. Why CON? Why do we need it at all
18 in light of all the new incentives and all the new
19 forces playing out? That's part two.
20 I think a fundamental understanding came
21 from a discussion at our last meeting, CON is only
22 one of many tools available at the state and
23 currently in play in a larger economy. We need to
24 understand how this tool connects to all the
25 others, that we're not reaching too far with CON

2 and trying to do too much, but also understand they
3 need to be balanced and currently meet the public
4 oversight even in the competitive market dynamics.
5 Following that meeting Commissioner Shah
6 has -- to convene the other commissioners who -- on
7 the issues we take before Commissioners Berk, Hogan
8 and Sanchez will join him for a discussion at the
9 regular committee meeting coming up on March 22.
10 And one of our priorities is to look at how CON may
11 integrate physical health behavior and mental
12 health services service to the developmentally
13 disabled and to those with substance abuse issues.
14 In the course of this we also have to
15 have a joint meeting with the Public Health
16 Committee to begin to understand how health
17 planning needs are to be organized community by
18 community and region by region and eventually at
19 the statewide level, because after all, CON is very
20 difficult to undertake unless there's some kind of
21 organized health planning activity that provides a
22 basis for decision-making when the projects come
23 one by one to the Project Review and Establishment
24 Committee.
25 That's all we have been able to do so

2 far, but we expect to do much more in the coming
3 months.
4 DR. STRECK: Thank you, John. Thank
5 you. That documents a lot of work and it's very
6 nice -- of that work.
7 Are there any comments or questions?
8 If not we will look forward to the
9 report on the next series of meetings. And in
10 fact, both of these reports as they mature through
11 the year will be important ones for the council.
12 We have to make certain we allow for a full
13 consideration, so thank you.
14 We're now going to adjourn the public
15 part of this meeting. Ask all guests if they would
16 absent themselves, seek lunch, refreshment and
17 entertain elsewhere.
18 We're going to have an executive session
19 of the full council that will probably last perhaps
20 30 minutes which we would then break for lunch.
21 So, we will resume not before -- we will not begin
22 before 12:35.
23 MR. KRAUT: 12:15.
24 DR. STRECK: We will adjourn in a to
25 follow mode.

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2 MR. KRAUT: Right.
3 DR. STRECK: We will adjourn. We will
4 conduct this, break for lunch and we will resume.
5 If I were offering advice, I would say be back by
6 12:20. Thank you.
7 (Break was taken.)
8 DR. STRECK: Welcome back everyone to
9 the Public Health Council. For new arrivals, I'm
10 Dr. William Streck, the Chair of the council. I
11 just remind you that we're being webcast. We do
12 have appearance forms outside in the lobby if you
13 wish to have your attendance reported.
14 We're now continuing and beginning that
15 part of the council deliberations that involve the
16 report of the standing committees of the Public
17 Health and Health Planning Council. And we will
18 begin with the Codes and Regulations Committee
19 chaired by Dr. Gutierrez.
20 DR. GUTIERREZ: Good afternoon and thank
21 you, Dr. Streck. The Codes Regulations and
22 Legislation committee reviewed two regulations
23 earlier today. One for both emergency and regular
24 adoption and one for discussion.
25 The first item on the agenda was an

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2 emergency adoption concerning limitations of
3 operator certificates. Last years event required a
4 temporary recreation of facilities in the New York
5 metropolitan area, relocation of facilities in
6 Broome and Dyer County due to flooding because
7 Section 401.2 limits an operators operating
8 certificate to the site of operation set forth in
9 the operating certificate. An operator's affected
10 facility is not able to care for his patients or
11 residents at any other site until the Commissioner
12 has approved the Certificate of Need application
13 for the relocation of the facility. This amendment
14 gives operators of hospitals as defined under
15 Article 28 of the Public Health Law, the ability to
16 temporarily operate at sites not designated on
17 their operating certificate in times of emergency.
18 It was adopted as an emergency at the October 6 and
19 December 8, 2011 full council meeting. After a
20 motion and second the Codes Committee unanimously
21 voted to recommend emergency adoption to the full
22 council, and I so move.
23 DR. STRECK: There is a motion.
24 May I have a second, please.
25 DR. BERLINER: Second.

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2 DR. STRECK: Thank you.
3 Is there a discussion on this emergency
4 recommendation?
5 Hearing no discussion I would ask for
6 those who are in favor of the recommendation as
7 proposed say "Aye."
8 (A chorus of "Ayes.")
9 DR. STRECK: Opposed?
10 Thank you.
11 DR. GUTIERREZ: And a identical
12 permanent version of the amendment communications
13 of operating certificate proposal was also in the
14 Codes agenda for regular adoption. After a motion
15 and a second the Codes Committee unanimously voted
16 to recommend adoption to the full council, and I so
17 move.
18 DR. BERLINER: Second.
19 DR. STRECK: There is a motion to
20 approve and a second.
21 Is there further discussion on the
22 motion?
23 Hearing none, those in favor "Aye."
24 (A chorus of "Ayes.")
25 DR. STRECK: Opposed?

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2 Thank you. The motion carries.
3 DR. GUTIERREZ: The next proposal was a
4 discussion item regarding Certified Home Health
5 Agency and Licensed Home Care Services Agency
6 Amendments. This regulation will incorporate two
7 recommendations from the Medicaid Redesign Team.
8 The first recommendation would add a requirement
9 that the plans of care and medical orders required
10 for patients of CHHA and LHCSA address the patient
11 needs for -- care. The second recommendation would
12 eliminate the need for a physician to serve on the
13 quality improvement committee of the LHCSA. This
14 measure would also remove the requirement of the
15 CHHA to provide more than one quality service
16 directly to coincide with the federal standards.
17 It also changes the maximum period of time that may
18 lapse before the comprehensive assessment is
19 reviewed from 62 to 60 days which is also the
20 federal standard.
21 And that, Mr. Chairman, concludes my
22 report.
23 DR. STRECK: Comments?
24 Questions?
25 Hearing none.

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2 Thank you.
3 That concludes the Codes and Regulations
4 report. We will you now move to the Establishment
5 and Project Review. Just to remind everyone, we do
6 this in batches and there are two series here.
7 There's a Project Review batch and then an
8 Establishment batch. Same protocols in terms of
9 doing things. I'll turn the Chair over to
10 Mr. Kraut.
11 MR. KRAUT: Thank you, Chairman. We're
12 going to move first to Category 1 application,
13 these are applications that are recommend for
14 approval where there have been no issues, recusals,
15 abstentions or interest declared by Committee
16 members.
17 The following application is 112074 C,
18 University Hospital in Suffolk which is to expand
19 its bone marrow transplant unit through the
20 certification of an additional six BMP beds which
21 will bring the unit certified bed count to 10.
22 OHSM recommends approval with conditions
23 and contingencies. The Establishment Project
24 Review Committee is recommending approval as well.
25 There was no discussion.

1 PHHPC ANNUAL MEETING
2 Application 112250 C, Smile New York
3 Outreach, LLC doing business as Smile Program
4 Mobile Dentists in Queens County to expand the
5 service area of a mobile diagnostics treatment
6 center to provide dental services to children in
7 Westchester County schools through the school base
8 center dental program.
9 OHSM recommended approval for a five
10 year limited life with conditions and contingencies
11 is recommend. The Establishment Review Committee
12 also similarly recommends that approval for a five
13 year limited life with conditions and
14 contingencies. There was no discussion.
15 Application 112116 C, Dominican Sisters
16 Family Health Service, Inc. of Westchester County
17 to increase the long-term home health care program
18 by 50 slots in the Bronx County, 50 slots in Kings
19 County, 50 slots in Queens County and 75 slots in
20 New York County.
21 OHSM recommended approval with a
22 condition and a contingency as recommended the
23 Establishment Committee also recommended approval
24 with a condition and contingency as recommended.
25 There was no discussion.

1 PHHPC ANNUAL MEETING
2 Application 112206 T, St. Mary's Health
3 Care in Montgomery County, to create a 11 bed
4 transitional care demonstration project.
5 OHSM recommended approval with
6 conditions and contingencies. The Project Review
7 Committee recommended approval with conditions and
8 contingencies. There was no discussion.
9 And I so move these applications.
10 DR. BERLINER: Second.
11 DR. STRECK: These applications have
12 been moved and seconded unencumbered by criticisms,
13 recusals or otherwise.
14 Is there any discussion on any of these
15 applications?
16 Hearing none I would ask for those who
17 are in favor of the applications as presented and
18 seconded to say "Aye."
19 (A chorus of "Ayes.")
20 DR. STRECK: Opposed?
21 The group is approved. Thank you.
22 MR. KRAUT: The next Category 2
23 applications that are recommended for approval,
24 however, we have either recusals but no dissent by
25 either the HSA or the Establishment and Project

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2 Review Committee. I'm going to call the first
3 application. New York 112059 C, New York
4 Presbyterian Hospital, the New York Weill Medical
5 Center in New York County. An interest has been
6 declared by Ms. Regan. Convert 32 of a 68
7 in-patient psychiatric bed to in-patient medical
8 surgical beds and add 12 new surgical beds to its
9 overall medical surgical bed capacity to create a
10 44 bed medical surgical unit to be located on the
11 south wing of the 11th floor of the Greenberg
12 Pavilion.
13 OHSM recommended approval with
14 conditions and contingencies. The Establishment
15 Project Review Committee also recommended approval
16 with conditions and contingencies.
17 There was discussion about the questions
18 regarding the psychiatric services, the loss
19 associated with psychiatric beds, and the length of
20 stay for the outpatient unit. In a roll call vote
21 the motion was passed seven in favor, three in
22 opposition to bring it to the full council and I so
23 move.
24 A VOICE: Second.
25 DR. STRECK: So, the application or the

2 recommendation has been moved and seconded.
3 Is there a discussion on this
4 application?
5 Dr. Martin.
6 DR. MARTIN: Thank you, Mr. Chairman. I
7 am one of the people that voted against it the
8 first time at the Committee level I just want to
9 explain a little bit to the full committee my
10 views. My concern was the downsizing of the
11 psychiatric service not the increase to the medical
12 service in particular. This is a very significant
13 drop in the inpatient beds at a hospital that has
14 been running traditionally in the last five year I
15 believe the numbers were in the 85 to 90 percent
16 range maybe a little lower. Recently on their
17 inpatient service that in testimony they
18 acknowledged a transfer between five and 600
19 patients out of their emergency room out of area
20 mainly because of lack of beds at the time --
21 because of a preference and the fact that they will
22 be closing their beds before they open their CPEP,
23 which can I understand the need to do it from a
24 physical plant point of view, but the fact is is
25 that it is one of the really turning arguments that

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2 they'll be able to provide the necessary
3 psychiatric needs of the neighborhood by extensive
4 use of CPEP and outpatient. The CPEP won't even be
5 in place and I am concerned that the negative
6 impact on the mental health provision for the --
7 size and the catchment area are just not adequately
8 taken care of.
9 DR. STRECK: Thank you, Dr. Martin.
10 Dr. Palmer.
11 DR. PALMER: I echo those concerns. In
12 addition I think the loss of beds that St.
13 Vincent's in Manhattan adds to the concern about
14 the loss of these particular beds. In addition,
15 there are ten child adolescent beds that go along
16 with the loss of these beds. The child and
17 adolescent beds in the borough of Manhattan have
18 long been sent to be under the needs for these
19 inpatient services. And to take these out without
20 explanation I think is of concern. So, I quote
21 those concerns that have been made.
22 DR. STRECK: Dr. Sullivan.
23 DR. SULLIVAN: I would just like to the
24 echo the concerns both Dr. Palmer and Dr. Martin.
25 I think it's important to be aware that throughout

1
2 New York city there's also the 90 to 95 percent
3 occupancy on psych beds and that recall those of us
4 who operate those and those of us who very busy
5 psychiatric emergency rooms call all over the city
6 sometimes to find access to beds. And I think that
7 while I also don't quite understand the numbers
8 that have been suggested relative to being able to
9 cover what really is a hefty number of psychiatric
10 beds coming down by just having your CPEP as a
11 partial hospital fund. So, I think this is
12 something that can impact even a larger geographic
13 area then the particular area the hospital is in,
14 so I think it's kind of very serious. And my other
15 concern is if this should go through, is anyone
16 monitoring to see what the impact really is on
17 those rounds of hospital. Is there some way to get
18 some feedback? Because often beds that come down
19 in St. Vincent's, they come down in borough of
20 Queens and they come down from a number of
21 hospitals and we're all suffering from the issue
22 how to move some of these patients. Now, I know
23 the long-term plan of the state is maybe we don't
24 need as many inpatient psychiatric beds, but
25 transition times are very difficult -- and for this

2 to come down at this point in time when we're at a
3 high occupancy across the city.
4 There's also something mentioned about
5 underserved patients. I don't understand how
6 underserved patients can sometimes move up to out
7 of New York city which is where often they get
8 referred then up to, Westchester or other places
9 there's no need for transportation -- so, I just
10 think this is coming at a time when the city is --
11 mental health inpatient beds are at super capacity
12 and -- I think is very scary.
13 DR. STRECK: Other comments?
14 Mr. Fensterman and then Ms. Regan.
15 MR. FENSTERMAN: Mr. Chairman, I know
16 the chairman of the Committee says there was vote
17 seven to three?
18 MR. KRAUT: Yes.
19 MR. FENSTERMAN: I didn't have the
20 opportunity to go to that committee hearing. I
21 heard three physicians in opposition and I haven't
22 heard anybody speak up as to the reason why the
23 vote was seven to three, so if it would be possible
24 somebody to articulate why there was seven votes
25 the other way I would appreciate hearing.

2 DR. STRECK: I'm not sure we will get to
3 that. I'm not sure where Ms. Regan will be on that
4 tail.
5 MS. REGAN: I was on the positive side.
6 I'll give the argument. Well, what we heard from
7 the hospital was that their med/surge occupancy is
8 way over their capacity and several back ups in the
9 emergency room. So, that is an issue that they
10 needed to address. The thing that concerns me, and
11 maybe we need to get a little more information.
12 Apparently OMH has reviewed this application and
13 has been working consistently with New York
14 hospitals to work out this arrangement and that OMH
15 has been persuaded that those psychiatric needs
16 would be met. We're not really in a position to
17 second guess them and maybe the thing to do now is
18 to get something more from them other than just
19 their -- you know, maybe they did adequately look
20 into this as was represented to us, but apparently
21 there's still an issue.
22 DR. STRECK: Dr. Strange.
23 DR. STRANGE: To follow-up on some
24 points because, again, similar to you,
25 Mr. Fensterman, what was the occupancy on the psych

2 unit previous to this and was the occupancy was
3 less than a hundred percent, is that the reason why
4 this is -- your point with occupancy on the
5 med/surge unit was way over and -- clearly there's
6 concerns in that population and we agree coming
7 from Staten Island we're oftentimes looking
8 elsewhere for psych beds, but I can't imagine if --
9 occupancy for their psych beds, that this would
10 have been, you know, even entertained by OMH at
11 that point, so there's some information I would
12 like.
13 DR. STRECK: Dr. Martin.
14 DR. MARTIN: Just two things. One is
15 the mental hygiene service council that would be
16 reviewing this in a --- committee doesn't get to it
17 until tomorrow. So, we can all talk about the
18 timing and the coordination that we had this
19 morning, about how well it's working now.
20 The other issue was, again, I'm sure
21 I'll be corrected if I misspeak, we're not talking
22 about over a 100 such beds on medicine, they were
23 running I believe around 90 to 95 percent it was
24 making it difficult to put people on the
25 specialized floor that they wanted and the like.

2 And I made the come last time I thought maybe it
3 was interesting that when medicine runs between 90
4 and 95 we increase the beds, but when psych runs
5 between 85 to 90 we cut them in half, and with the
6 -- we're transferring five or 600 people out of the
7 emergency room. So, I'm not saying that there is
8 no need to expand, there's no doubt there's a need
9 to expand the medical beds, but it's just the
10 client as a whole I have dealt with.
11 DR. STRECK: Ms. Abel, do you have some
12 information that might help us in terms of some of
13 the questions that have emerged?
14 MR. ABEL: Just in terms of point of
15 clarification. OMH will take this associated bar
16 application to its council tomorrow, as was
17 previously stated. We're advancing this project
18 and the Department still believes a recommendation
19 for approval based on a few factors. One multiple
20 phone calls, conference calls that we have had with
21 New York Presbyterian and OMH throughout the review
22 process and OMH's verbal consent for it to be
23 advanced to this council. We have a contingency,
24 number two, for final OMH approval. This project
25 will not be able to move forward unless that

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2 contingency can be satisfied. We do defer to OMH
3 on this particular expertise with respect to the
4 number of beds and within the service area and this
5 application.
6 DR. STRECK: So, in a sense the motion
7 --- I'm sorry. Dr. Boufford.
8 DR. BOUFFORD: I wanted to clarify your
9 issue of OMH versus the council meeting tomorrow.
10 It sounds like OMH has verbally said okay but the
11 council might have a different position? I'm
12 trying to understand the sequencing vis-à-vis our
13 decision-making.
14 MR. ABEL: Yes, that's possible, OMH has
15 given a verbal. We would not advance such a
16 project to this council without having a verbal
17 approval from OMH, and we do have that contingency
18 for ultimate approval.
19 DR. BOUFFORD: Assuming that the council
20 says no, then it would be off.
21 DR. STRECK: The contingency specific to
22 the council, I guess, is what Dr. Boufford is
23 asking.
24 MR. ABEL: I don't know as the -- who is
25 the decision-maker throughout that process on OMH.

2 It could be the council or it could be the
3 Commissioner of OMH. On construction applications
4 here, this body has a recommendation, has the
5 responsibility to make a recommendation to the
6 Commissioner of DOH and the Commissioner of Health
7 has the ultimate responsibility and authority to
8 approve or disapprove an application.
9 DR. STRECK: Mr. Kraut.
10 MR. KRAUT: My understanding, just to
11 maybe expand on that a bit, is OMH is -- just as
12 OHSM recommended approval of this application, OMH
13 was recommending approval on the par application.
14 As far as who has the final say, you know, I defer
15 to that. But I also -- I think I was one of the
16 individuals, no, I know I was one of the
17 individuals who voted in favor. So, just to
18 respond to the question and not to take anything
19 away from the concerns expressed by Drs. Palmer,
20 Martin and Sullivan, which I think are valid.
21 Anybody in the mental health field can't help but
22 feel the whole service is under attack in many
23 respects and whether its policy, a supply side
24 policy and demand side policy. But the
25 recognition, at least this applicant recognized

2 that the removal of these beds, and, you know, we
3 can argue whether the, you know, the inpatient is
4 but a little part of that continuum of care, and
5 albeit an important one and albeit a critical one,
6 they have made the effort to replace a good part of
7 that with, you know, the day hospital treatments
8 and other ambulatory care. I note today that the
9 state announced the closure of Kings Borough
10 Psychiatric and its desire to reduce the bed supply
11 or possibly consolidate, and I only know as we look
12 ahead in our mental health beds, particularly
13 looking at that continuum of care and the role of
14 beds, as we've seen the pressure on length of stay
15 and the decline with what we think is happening is
16 we're going to at some point in time need fewer
17 beds, not today because of the nature that we don't
18 have housing and other options for discharge, but
19 certainly in the future. And we're also believing
20 that we probably have to co-locate more beds in
21 fewer places just to make that program manage more
22 efficiently.
23 I just was struck at least by the
24 applicant's recognition of some of those trends and
25 trying to balance the needs of medical/surgical and

2 the mental health recognizing, you know, Dr.
3 Martin you made the point, you know, when the two
4 are chosen why does the medical/surgical always
5 kind of win out, and there's a lot of reasons that
6 you're well a care of. But, you know, I felt that
7 here this was kind of with where the future was
8 going and, again, that applicant made a very cogent
9 argument in my mind that it was trying to mitigate
10 what it was concerned about and that's why I voted
11 for the application.
12 DR. STRECK: Dr. Sullivan.
13 DR. SULLIVAN: Again, I am not
14 disagreeing with some sense of the future that the
15 mental health will probably involve a significant
16 number of decrease in inpatient beds, but I think
17 at this point in time the system is not designed,
18 in my opinion in New York city, to be able to
19 handle the kind of -- that talks about here very
20 easily and I'm just concerned that while, and
21 especially that come up after the beds are down, I
22 think is something that really needs to be thought
23 about because we're being proposed is a way out of
24 this is not going to be there when those beds come
25 down. So, I'm just saying that I think it requires

2 a little more thought and the impact it can have on
3 the entire system of care, and I'm not saying that
4 the future may be a very different place, but at
5 the timing and this particular situation in New
6 York city right now.
7 DR. STRECK: Mr. Booth.
8 MR. BOOTH: I voted for it as well and
9 my reasoning is that, you know, the mental health
10 process and the Office of Mental Health can
11 determine the impact on the mental health. I don't
12 think we have the information, the process, et
13 cetera, in making the determination on the mental
14 health side. I look at it and say we're looking at
15 the needs of the medical side and the Office of
16 Mental Health will take care of what the
17 implications are on the other side and obviously if
18 they have a problem with it and they think it could
19 have negative impact they would say no.
20 DR. STRECK: Any additional comments?
21 Dr. Palmer and Dr. Boufford.
22 DR. PALMER: I was concerned, again, by
23 the presentation because it really identified about
24 a thousand patients a year that would be negatively
25 impacted by this, less than a thousand patients

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2 that they felt would need inpatient services. They
3 had an answer for some of those patients as we
4 talked about as CPEP, but the CPEP alone couldn't
5 just make an adjustment for those, that number of
6 patients that they were short through comes their
7 door requiring service at least at some point. So,
8 a big concern about what kind of plans that were
9 going to be made for these patients plus whatever
10 other patients were involved.

11 DR. STRECK: Dr. Boufford.

12 DR. BOUFFORD: I wondered if the
13 Committee considered just delaying until getting
14 the full benefit of the analysis on the OMH side.
15 I mean, I think one of these is we're trying to sit
16 here and being more holistic in our thinking about
17 the mind and body in terms of services. And so, it
18 seem to be that that would be an option as to defer
19 a pending the full -- I'm assuming many of these
20 issues would to have to get sort of thrashed out
21 and their council proceedings and, you know, the
22 Commissioner's position after he received them.

23 DR. STRECK: Are there additional
24 comments?

25 Ms. Regan.

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2 MS. REGAN: I'm agreeing with that and I
3 do feel like, you know, we don't really have what
4 we need to comfortably go ahead with this. What
5 about the possibility of modifying our contingency
6 to be a little more -- maybe seeking the input from
7 the, I don't know, is the Commission you mentioned
8 a group like this one is, it an expert citizens
9 commission?
10 A VOICE: Yes.
11 MS. REGAN: Maybe we can seek their
12 input in terms of what our contingency ought to be,
13 which I guess would require us to defer.
14 DR. STRECK: Mr. Kraut.
15 MR. KRAUT: My, and correct me if I'm
16 wrong, Charley, but my recollection is, if we vote
17 for the motion that's made and the Mental Health
18 Services Council denies the par application, I
19 believe it has to return -- you have to correct me,
20 does it then return back to the applicant to amend,
21 because don't you need both approvals to go
22 forward?
23 MR. ABEL: I cannot -- I am not positive
24 if the New York State Mental Health Council
25 functions in the same capacity as if it does and

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2 that is a recommending body to the Commission. I
3 don't know that is a fundamental opinion of -- I
4 think to in answer to your question. But I would
5 just like to say that, you know, to the extent
6 that, and I, you know, said it so many times, time
7 is money and with respect to facilities being able
8 to reconfigure themselves in a timely fashion to
9 meet the patient needs, we have affixed a
10 contingency to this project such that for OMH
11 approval and that's under a presumption for a five
12 year -- the Commissioner of OMH has the ultimate
13 authority over that par application. Clearly if
14 that is not the case, if the Mental Health Council
15 is the ultimate decision-maker on that application,
16 we could make that modification to the contingency
17 such that this would not -- this application and
18 project would not be delayed by virtue of the
19 timing differences between the councils, two month
20 delay, conceivably it could even more than that, is
21 a significant delay for the applicant, I believe.
22 DR. STRECK: Mr. Kraut.
23 MR. KRAUT: I understand that. I would
24 just suggest once you clarify this issue if we are
25 the deciding council, then we shouldn't be acting

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2 until we have the benefit of the Mental Health
3 Council in my opinion just because we find
4 ourselves in this position kind of deferring or not
5 deferring and we're not sure, and that's just a
6 coordination issue maybe with, you know, OMH and
7 OHSM, but it would be helpful to avoid these in the
8 future, but I do hear what you're saying about not
9 delaying but allowing it to go through if, you
10 know...
11 DR. STRECK: Mr. Booth.
12 MR. BOOTH: What's to prevent the other
13 council from doing the same thing? Going back to
14 my point, I think we each have our own obligation
15 and we should be fulfilling our one obligation and
16 acting on our own experience. We talk about
17 streamlining CON. And I'm saying I think we're
18 trying to broaden in the scope of our review in
19 this case to take in other legitimate factors that
20 are the responsibility of different organizations.
21 DR. STRECK: Mr. Fensterman.
22 MR. FENSTERMAN: One of the difficulties
23 that I'm having is that I don't quite know what the
24 purviews and responsibilities of those other
25 organizations, and that's the difficulty I'm

2 having. And I guess I have a question for the
3 Establishment Chairman. Is it your view now given
4 what you just said that you were supporting
5 deferral of this?
6 MR. KRAUT: Actually, I'm motivated by
7 what Mr. Booth said. So, I'm rescind what I said.
8 I mean, I think it still should be coordinated just
9 for the sake of benefiting, but I think you have an
10 obligation to act and I have no problem acting
11 today based on the facts I have.
12 DR. STRECK: Let me try to organize our
13 options here. There is a recommendation to approve
14 with the contingency as written specifying that OMH
15 must approve. There was a suggestion from
16 Ms. Regan and Mr. Abel that we could modify the
17 recommendation for approval to say that the OMH
18 council must approve. There is the option to defer
19 which would require defeating the motion on the
20 floor and then introducing a motion to defer. I
21 think those are the four options that have emerged
22 from this discussion. So, three of those are not
23 applicable if on the first vote the motion passes,
24 and that would require 13 votes of this group. So,
25 I think those are the four options. But the first

2 option is we must deal with the one on the floor
3 and seconded and that is the original motion from
4 the Committee for approval.
5 So, is there more discussion before I
6 ask for that vote?
7 Ms. Madden.
8 MS. MADDEN: I just checked the OMH
9 website. The Mental Health Services Council bylaws
10 that state their positive use and make
11 recommendations to the full council -- so, that
12 would be the recommendation to approve it.
13 DR. STRECK: So, it's very parallel to
14 us, it's very parallel to this process.
15 MR. KRAUT: But then that's -- what's
16 the length of time of that process? They're going
17 to have the first step in that process tomorrow.
18 So, it goes from there and then it goes to the full
19 council, which is two weeks later, then it goes to
20 their Commissioner.
21 MS. MADDEN: Their bylaws don't state a
22 timeline for that, but they have 90 days to act on
23 this.
24 DR. STRECK: Thank you for that update.
25 I think it still keeps the fours options the same.

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2 Other questions or comment?
3 DR. STRANGE: Just one clarification, if
4 we defeat the option on the table now we would then
5 go to option two or three?
6 DR. STRECK: We would go to any option
7 that any council member put out as a motion.
8 Dr. Martin.
9 DR. MARTIN: As far as I recall the
10 Committee meeting is in the morning, the full
11 council is in the afternoon. It will all be
12 tomorrow. If we were to defer it the full council
13 will be able to act on the recommendation tomorrow.
14 DR. STRECK: They're, obviously, more
15 efficient than we are.
16 So, just to clarify. Option to approve,
17 two different modifications or defer. The later of
18 the three, of the later three, one or -- would have
19 to be introduced by a council member, and that only
20 applies if the motion that is now on the floor does
21 not pass.
22 So, if there's no further discussion I
23 would ask for those who are in favor of the motion
24 as initially presented by the Project Review
25 Committee to approve the recommendation with the

2 reference to OMH approval, the non-specific
3 reference to OMH approval that is now before the
4 group. Those in favor of that please raise your
5 hand. Nine votes. So, the floor is open for
6 additional motions because that motion did not
7 pass.
8 Dr. Boufford.
9 DR. BOUFFORD: I would, in the spirit of
10 comprise, I'll move that we add contingency of
11 approval by the county, whatever the name of the
12 council is, the Mental Health Council and the
13 Commissioner, you know, on behalf of the
14 Department, obviously that we want too, that if
15 that goes through fully and it's fully debated,
16 then I would then defer to their expertise or
17 judgement, but I think that's important.
18 DR. STRECK: There's a motion and a
19 second that we specify that the OMH council or its
20 official name we'll use and the Commissioner of
21 Mental Health we would require their approval as a
22 contingency for the approval that has been
23 presented by the group. So, we would amend our
24 original motion to that effect. I think that could
25 be a friendly amendment to the Chairman. Are you

2 willing to accept that as a -- no. Actually no.
3 So, this is an entirely new motion to that effect.
4 Okay. A motion made and seconded along those
5 terms.
6 Discussion?
7 Charley.
8 MR. ABEL: Just as a procedural matter,
9 it is possible, because we've seen in this council,
10 I think that the Mental Health Services council to
11 either disapprove or take no action on this
12 project, in which case, as Karen had described the
13 process is here, the matter would ultimately go on
14 to the Commissioner and the Commissioner could
15 approve that project. So, by having the
16 contingency as you explained, it would seem to
17 require both approval of the OMH Commissioner and
18 the council, and in which case if the scenario went
19 as I previously described, we would not be able to
20 satisfy this contingency.
21 DR. BOUFFORD: What if we -- I don't
22 know the right way to frame it, but what if the
23 issue was that the Commissioner is in full
24 possession of the deliberation of the council
25 before making that decision or something that sort

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2 of says their debates, their deliberations ought to
3 be available to the Commissioner. I mean, if they
4 say no I would, who knows, we, may override them,
5 but that is him asserting expertise or authority.
6 MR. ABEL: Which is the intent of the
7 original contingency. I don't mind making the
8 modification.
9 DR. BOUFFORD: Because it isn't
10 specific.
11 DR. STRECK: Dr. Gutierrez.
12 Dr. GUTIERREZ: Procedurally is Mental
13 Health Council participating in the Certificate of
14 Need, because I think that's a CON issue?
15 DR. STRECK: Well, we are the CON
16 pathway. We are making our pathway subject to a
17 non-CON contingency by this motion.
18 DR. GUTIERREZ: So if they say this is
19 okay -- with the motion as it is, we have okayed it
20 already?
21 DR. STRECK: Yes, that's correct. That
22 is the intent of this motion.
23 MR. KRAUT: A clarification, but if they
24 take no action, would we then also assume it is
25 approved?

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2 DR. STRECK: I think not.
3 MR. KRAUT: Well, I mean, because we --
4 I will argue strenuously against just sending this
5 application into a limbo. I would just say that
6 that's unfair to the applicant, it's unfair to the
7 process. So, what happens if there is no action
8 taken? I would just say after the council, if you
9 would consider it, if the council meets and says
10 approved, the contingency has been fulfilled and
11 it's approved. If they take no action, we still
12 allow the contingency to be approved. That they've
13 taken no action, they acted. They've taken no
14 action. And if they said no then what happens?
15 I'm trying to understand. So, if they say no they
16 can't fulfill that contingency, and then our
17 approval is not granted.
18 DR. BOUFFORD: I think what I was trying
19 to say was that whatever their process, whatever --
20 that they would deliberate and whatever the outcome
21 of that deliberation was, would have been completed
22 and then the Commissioner would make a decision,
23 that's what -- you know, if it's a no action, if
24 it's wonderful, if it's terrible and you can still
25 act, you know, that's okay. I mean, it's not

1
2 contingent on that language.
3 DR. STRECK: Following the consideration
4 by the Council on Mental Health and with the
5 Commissioner's approval. Is that what it's going
6 to require? Following deliberation by the council
7 and with the Commissioner's approval this can go.
8 So, we are approval the CON and leaving it up to
9 the Commissioner of Mental Health which is where
10 it's been, actually, at the beginning of this
11 discussion.
12 MR. KRAUT: Is it Mental Health or DOH?
13 This is an Article 28 action.
14 DR. STRECK: We're deferring it to --
15 are contingency empowers the Commissioner of Mental
16 Health to stop this. I mean, that's our
17 contingency. We said that in the beginning.
18 A VOICE: That's the current
19 contingency.
20 MR. KRAUT: Oh, okay.
21 A VOICE: And I think what we're doing
22 is modifying the contingency to make sure that we
23 know the --
24 MR. KRAUT: Okay.
25 DR. STRECK: Yes, Mr. Fensterman.

1 PHHPC ANNUAL MEETING
2 MR. FENSTERMAN: This is for our council
3 hearing, I believe that at one point several
4 meetings ago I had asked you, and I just want to be
5 clear about it, that we as a council have the
6 authority to consider such other matters as we deem
7 relevant and appropriate, which is a catchall
8 phrase. And I think what's happening here is that
9 we have our strict purview of what we look at when
10 we handle as a CON, and now this catchall phrase
11 which is in the purview of our authority, consider
12 such others matter that we deem relevant and
13 appropriate, it's very obvious that many of the
14 council members are very concerned about the
15 opinion as an agency that's specialized in this
16 area. So, I think that's what is inherently a
17 problem. So, if we're going make that a
18 contingency, then we need to recognize that that's
19 what we're doing, we're falling into that catchall
20 phrase, not look at what another agency's views are
21 on an area that we believe it has expertise in.
22 DR. STRECK: We are recognizing that we
23 are not making it a precedent.
24 DR. BOUFFORD: I just have one comment.
25 I don't want to prolong it, but I think in the

1

2 spirit of what you're saying is a very important
3 issue. What we're really talking about, you know,
4 fundamentally CON and community needs and community
5 health needs, and I don't think we are stopping at
6 the neck in terms of the conversations we have. I
7 mean, if you look at the comorbidities of people
8 with mental illness on the medical side, I mean
9 it's -- so, we had this discussion this morning, so
10 enough said. So, I think to me it's a perfect
11 conversation around getting expertise and advice on
12 community need questions which we are not in,
13 perhaps, in the best position to opine on. So, it
14 seems to be quite reasonable for us to ask these
15 questions and take advantage of that expertise.
16 DR. STRECK: Ms. Rautenberg.
17 MS. RAUTENBERG: And also that three of
18 our members who seem closest to the site situation
19 in northern Manhattan, Queens, have spoken against
20 this proposal, so.
21 DR. STRECK: Well, we have the motion
22 that's on the floor in the sense returns us to the
23 original motion with a clarification sought based
24 on the concerns expressed by members of the
25 council, I think that's where we are now. We want

2 to know exactly what that contingency says, we have
3 now clarified that with the second motion. And if
4 there is no further discussion on the motion that
5 is on the floor, I would ask for those in favor of
6 that motion to raise your hand.
7 And those opposed?
8 We have to do this again.
9 Those in favor, because we do need an
10 absolute number.
11 MS. FROST: We stopped counting at 14.
12 You want the exact count?
13 DR. STRECK: Yes. Up again, please.
14 MS. FROST: 19.
15 DR. STRECK: And those opposed.
16 MS. FROST: Two.
17 DR. STRECK: So the motion carries.
18 Thank you for that thoughtful discussion.
19 Mr. Booth will take the next item.
20 MR. BOOTH: The next application is
21 112259 C, North Shore University Hospital. Recusal
22 by both Mr. Kraut and Mr. Fensterman, both of whom
23 who have left the room. Undertake a major
24 modernization concerning an -- service with no
25 changes to beds.

1 PHHPC ANNUAL MEETING
2 Both OHSM and the Committee recommend
3 approval with conditions and contingencies.
4 DR. BERLINER: Second.
5 DR. STRECK: The motion has been moved
6 and seconded.
7 Is there a discussion on the motion?
8 Dr. Strange.
9 DR. STRANGE: My apologies, I have an
10 interest -- North Shore system, but I have no input
11 into anything.
12 DR. STRECK: I will note an interest.
13 Thank you.
14 Further discussion, comments on the
15 motion as presented?
16 Hearing none, those in favor of the
17 motion please say "Aye."
18 (A chorus of "Ayes.")
19 DR. STRECK: Opposed.
20 Thank you. That motion passes.
21 MR. KRAUT: In Category 4, applications
22 recommended for approval with the following Public
23 Health Council member recusals, Establishment and
24 Project Review Committee descend for a contrary
25 recommendation by the HSA.

1 PHHPC ANNUAL MEETING

2 I'm going to call application 111435 C,
3 the Wartburg Home in Westchester County. An
4 interest has been declared by Mr. Fassler, who is
5 an applicant who is a member of Leading Age New
6 York. To certify 30 residential health care
7 facility beds, construction replacement nursing
8 facility to house 50 beds and the relocation of the
9 medical and social adult day care health care
10 programs. The total RHCF beds will decrease from
11 240 to 210.

12 OHSM is recommending approval with
13 conditions and contingencies. The project Review
14 Committee concurred with one member opposing, and I
15 so move it.

16 MR. BERLINER: Second.

17 DR. STRECK: The motion has been moved
18 and seconded.

19 Is there a discussion on the proposal as
20 noted?

21 Hearing none those in favor "Aye."

22 (A chorus of "Ayes.")

23 DR. STRECK: Opposed?

24 Thank you. The motion carries.

25 There was an opposed.

1 PHHPC ANNUAL MEETING
2 MR. KRAUT: Category 5, applications
3 recommended for disapproval by OHSM or
4 Establishment and Project Review Committee without
5 recusals.
6 I'll call application 101018 C, Doctors
7 United, Inc. of New York County certified extension
8 clinic at 1977 Seventh in New York. The applicant
9 request certification for health fares, nutrition,
10 podiatry, primary medical care and physical therapy
11 at the proposed extension site.
12 OHSM recommended disapproval based on
13 need only. The Project Review Committee
14 Establishment recommended disapproval. The
15 discussion was held regarding the model of care and
16 public needs. And we have a recusal from
17 Mr. Fensterman, who is out of the room. And I so
18 move.
19 DR. STRECK: So we have a motion and a
20 second on this proposal.
21 MR. KRAUT: We received a letter. You
22 want me to --
23 DR. STRECK: You should mention that we
24 have received a letter essentially requesting
25 deferral.

1 PHHPC ANNUAL MEETING
2 MR. KRAUT: We received a -- during the
3 Committee there was discussion regarding the model
4 of care as was indicated and the lack of primary
5 care and the concern about the amount of primary
6 care in the neighborhood. It was very -- I guess
7 physical therapy or habitation therapy
8 concentrated. The applicant indicated a
9 willingness to revise the model of care, but a
10 motion had been made and a recommendation to
11 disapprove. In the interim we received, members of
12 the council and the Department received a letter
13 asking for a deferral of that application. What we
14 are -- similar to one of the previous projects we
15 have -- a motion has been made and seconded. Was
16 it seconded?
17 MS. THOMSON: Yes.
18 MR. KRAUT: So, we have to vote on the
19 motion in order to grant deferral of that motion
20 would have to be turned down and an alternate
21 motion made for a deferral based on the information
22 you had received.
23 DR. STRECK: Thank you for that
24 clarification.
25 I would ask, just as Mr. Kraut is

1
2 Chairman of the committee, are there, or Mr. Abel,
3 are there substantial reasons to not consider the
4 deferral request? I mean, I think that would be
5 the first question the group might want some
6 information about.
7 MR. ABEL: First, just to make clear,
8 the Department didn't receive the information until
9 yesterday. I wasn't able to review the material.
10 Only three hours ago I began reviewing it. I
11 haven't been able to review it in its entirety. I
12 seek comment though, just to respond to the cover
13 letter that is attached to the letter for this
14 Commission. First of all, one could have been lead
15 to believe that one solicited this -- there i s a
16 regulation citation that is in the opening
17 paragraph that gives me the impression that the
18 Department or this council should review this as a
19 modification or that the applicant has the right to
20 file this modification under that citation is
21 incorrect. Correct citation, that citations for
22 establishment projects that have received approval
23 by the council but not yet issued an operating
24 certificate. I did take a look at the specialties,
25 the lines of service service lines of products

1 PHHPC ANNUAL MEETING
2 proposed by the applicant. Many of those are
3 specialties and -- to be primary care. But beyond
4 that we have not had an opportunity to review the
5 material, and at this point we are recommending,
6 continue to recommend disapproval of the
7 application.
8 DR. STRECK: Thank you.
9 Comments or questions?
10 Mr. Kraut, any further comments?
11 MR. KRAUT: No.
12 DR. STRECK: So, the recommendation
13 presented by the Committee moved and seconded is
14 for disapproval, request, a late arriving request
15 for deferral had been addressed.
16 Any further discussion?
17 Hearing none I would ask for those in
18 favor of the motion as presented to say "Aye."
19 (A chorus of "Ayes.")
20 DR. STRECK: Those opposed?
21 The motion passes. Thank you.
22 MR. ROBINSON: Just a question about the
23 -- we heard the Department's recommendation of the
24 issue of a deferral, any comments, Jeff, from you
25 or the staff on that?

1 PHHPC ANNUAL MEETING
2 MR. KRAUT: Well, if the council was so
3 predisposed to have the, you know, they had to vote
4 no on the --
5 MR. ROBINSON: That's why I'm asking.
6 MR. KRAUT: I mean, I personally, you
7 know, if there was a way I guess to withdrawn it
8 before we acted it would have been beneficial, but
9 I'm assuming they're going come to back to us with
10 a revised application.
11 MR. ROBINSON: I guess my question is --
12 MR. KRAUT: This is without prejudice,
13 isn't it?
14 MR. ROBINSON: I don't know. I guess
15 the question really is, do we need a motion for
16 deferral now that there has been a disapproval or
17 the does the same process occur whether we defer or
18 not now.
19 MR. ABEL: I believe I told the
20 applicant that we would have no problem accepting a
21 new application, but given the fact that we were
22 recommending disapproval that the Committee was
23 recommending unanimous disapproval, now it seems as
24 though the council has acted. I think the matter
25 is taken care of.

1 PHHPC ANNUAL MEETING
2 MR. KRAUT: I think procedurally we're
3 bound to bring the recommendation of the Committee
4 to council for voting up or down.
5 DR. STRECK: We'll continue now with --
6 that was really the Project Review part of, Project
7 Review and Establishment. We will now move to the
8 Establishment section where we will, again, go
9 through these six categories of applications.
10 Mr. Kraut.
11 MR. KRAUT: Now I'm going to Category 6,
12 which is an application for an individual
13 consideration discussion. This is application 112
14 -- hold on a second. You want to clarify.
15 DR. STRECK: I thought we did not have
16 any applications for --
17 MR. KRAUT: This was taken up at a
18 special meeting of the Project Review this morning.
19 DR. STRECK: I apologize, so we're still
20 in Project Review. Thank you.
21 MR. KRAUT: So, that's are Category 6
22 applications for individual consideration and
23 discussion. This is 112344 C, Coler-Goldwater
24 Specialty Hospital and Nursing Facility Goldwater
25 Nursing Facility site in New York County. We have

2 a recusal from Dr. Sullivan and Dr. Boufford who
3 are leaving the room. And an interest declared by
4 Mr. Fassler. The applicant is a member of the CCLC
5 in which he is an officer, and similarly an
6 interest declared by Dr. Martin.
7 Dr. Boufford and Dr. Sullivan have left
8 the room.
9 Coler-Goldwater Specialty Hospital and
10 Nursing Facility located at One Main Street,
11 Roosevelt Island is the Goldwater site is seeking
12 approval to reduce the number of beds for its
13 proposed replacement RHCF approved CON number
14 102253 C to 164 beds. In addition, as part of that
15 total bed count this amendment request permission
16 to certify 20 ventilator dependent vent beds and an
17 additional 12 ventilator capable vent capable beds
18 for future expansion.
19 OHSM recommends approving with
20 conditions and contingencies. And this morning at
21 a Special Meeting of the Establishment and Project
22 Review Committee, they upheld the same approval
23 with conditions and contingencies. And I so move.
24 DR. BERLINER: Second.
25 DR. STRECK: The motion has been moved

1 PHHPC ANNUAL MEETING

2 and seconded for approval.

3 Is there a discussion on this project?

4 Hearing none I would ask for those who

5 are in favor of the project to say "Aye."

6 (A chorus of "Ayes.")

7 DR. STRECK: Opposed?

8 Thank you.

9 MR. KRAUT: Thank you. We'll ask Dr.

10 Boufford and Dr. Sullivan to return.

11 We're now going to turn to applications

12 for establishment and construction those in

13 Category 1. These are applications recommended for

14 approval, no issues, recusals, abstentions or

15 interest were declared. Therefore, I'm going to

16 move them as a single batch.

17 Application 101164 B, Mobile Health

18 Service, LLC, to establish and construct and

19 Article 28 D&TC that will consist of a main site at

20 229 West 36th Street, New York, and four extension

21 clinics located in Brooklyn, Hempstead, Staten

22 Island and Queens. For the record, I'd like to

23 note that contingency number five should read,

24 submission of a written agreement that a percentage

25 on total visits annually by Medicaid Managed Care

1
2 and fee for service beneficiaries in the aggregate
3 to the approved extension clinics will be at least
4 30 percent.
5 OHSM recommends approval with conditions
6 and contingencies. The Establishment and Project
7 Review Committee recommended approval with
8 conditions and contingencies. There was no
9 discussion of this application.
10 Application 112142 E, Primary Health
11 Care Plus, Inc., Nassau County, certify the
12 permanent life of the diagnostic and treatment
13 center previously approved for a five year limited
14 life through project number 051049.
15 OHSM recommended approval with
16 conditions and the Establishment Project Review
17 Committee similarly recommended approval with
18 conditions. There was no discussion.
19 Application 101068 E, Guilderland Center
20 Rehabilitation and Extended Care Facility Operating
21 Company, LLC, doing business as the Guilderland
22 Center Rehabilitation and Extended Care Facility in
23 Albany County, to establish the Guilderland Center
24 Rehabilitation and Extension Care Facility
25 Operating Company LLC doing business as the

2 Guilderland Center Rehabilitation Extension Care
3 Facility as the new operator of the Guilderland
4 Center Nursing Home.
5 OHSM approval with contingencies is
6 recommended, the Establishment and Project Review
7 approval with contingencies also was recommended.
8 There was no discussion on this application.
9 We have Certificate of Amendment of the
10 Certificates of Incorporation for the BMA, Medical
11 Foundation, Inc.. The foundation seeks approval to
12 add to its powers and purposes the ability to raise
13 funds for New York Hospital Medical Center of
14 Queens and change its corporate name to the New
15 York Hospital Queens Foundation Inc..
16 OHSM recommended approval, the Project
17 Review Establishment recommended approval with no
18 discussion.
19 The Certificate of Dissolution for the
20 Mary McClellan Hospital, Inc.. Mary McClellan
21 ceased operations and surrender its operating
22 certificate to the Department in 2003.
23 OHSM recommends approval, the
24 Establishment Project Review recommended approval
25 with no discussion.

1 PHHPC ANNUAL MEETING
2 We have Home Health Agency Licensures.
3 1959 L, Stat Staff Professionals, Inc. serving
4 Saratoga, Warren, Albany, Greene, Franklin,
5 Washington, Rensselaer, Columbia, Clinton, Fulton,
6 Otsego, Ulster, Essex, Montgomery, Schoharie,
7 Hamilton, Schenectady, and Delaware Counties.
8 OHSM recommended approval, the
9 Establishment Project Review recommended approval
10 with no discussions.
11 And I so move the batch.
12 MR. BERLINER: Second.
13 DR. STRECK: Discussion on the motion?
14 Hearing none, those in favor "Aye."
15 (A chorus of "Ayes.")
16 DR. STRECK: Opposed?
17 Thank you.
18 MR. KRAUT: I next move applications
19 recommended for approval with the following, a
20 member recusal, without dissent by the HSA, without
21 dissent by Establishment and Project Review.
22 The first application is 112185 E,
23 Inter-Lakes Health, Inc., Essex County. An
24 interest has been declared by Mr. Booth, who is an
25 employer contracting with the providers for medical

2 care, and another interest had been declared by Dr.
3 Rugge whose organization contracts for services
4 with Inter-Lakes. The application is to establish
5 Inter-Lakes Health, Inc. as the co-operator of the
6 84 beds Moses Ludington Company, Inc., and a 15 bed
7 Moses Ludington Hospital, Inc..
8 OHSM recommends approval with
9 contingencies is recommended, and Establishment
10 Project Review recommended approval with
11 contingencies was recommended. There was no
12 discussion.
13 Also move -- oh, wait. No. We're going
14 to move that separately because we have a recusal
15 on the next one.
16 Motion made and seconded.
17 Discussion?
18 Those in favor of the motion "Aye."
19 (A chorus of "Ayes.")
20 DR. STRECK: Opposed?
21 Thank you.
22 MR. KRAUT: Now I'm to call application
23 112244 E, Unity Linden Oaks Surgery Center, LLC in
24 Monroe County. Recusal by Ms. Hines and Mr.
25 Robinson who are leaving the room. And an interest

2 declared by Mr. Booth who is an employer
3 contracting with the providers of care.
4 Both Ms. Hines and Mr. Robinson have
5 left the room.
6 Unity Linden Oaks Surgery Center, a
7 limited liability company request approval to
8 become the operator of Linden Oaks Surgery Center
9 and an existing Article 28 freestanding ambulatory
10 surgery center.
11 OHSM recommends approval with
12 contingencies. The Establishment and Project
13 Review recommended approval with contingences. No
14 discussion was held on the application. And I so
15 move.
16 DR. BERLINER: Second.
17 DR. STRECK: Moved and seconded.
18 Is there a discussion?
19 Hearing none, those in five "Aye."
20 (A chorus of "Ayes.")
21 DR. STRECK: Opposed?
22 Thank you.
23 MR. KRAUT: Ms. Hines and Mr. Robinson
24 will return to the room and I will turn over the
25 Chair to Mr. Booth.

1 PHHPC ANNUAL MEETING
2 MR. BOOTH: Next application is 102239
3 E, North Shore University Hospital d/b/a North
4 Shore Home Care. Recusal by Mr. Kraut, who has
5 left the room, as well as Mr. Fensterman who left
6 the room.
7 To assume operations at the St.
8 Vincent's Catholic Medical Center certified home
9 health agency in Westchester, New York, Richmond
10 and Bronx and Kings County.
11 Both OHSM and the Committee recommend
12 approval with an effective date of September 20,
13 2010 which is the date of the actual court ordered
14 sale and transfer of assets from St. Vincent's
15 Catholic Medical Centers Home Help Agency, CHHA to
16 North Shore University Hospital, d/b/a North Shore
17 Home Care, CHHA. There was no discussion. And I
18 move.
19 A VOICE: Second.
20 DR. STRECK: Moved and seconded.
21 Is there a discussion?
22 Dr. Strange.
23 DR. STRANGE: Once again I declare an
24 interest just by my affiliation with North Shore.
25 DR. STRECK: Noted.

1 PHHPC ANNUAL MEETING
2 Other comments?
3 Hearing none those in favor "Aye."
4 (A chorus of "Ayes.")
5 DR. STRECK: Opposed?
6 Thank you.
7 MR. KRAUT: I'll now call application
8 112218 E, Waterfront Operations Associates, LLC,
9 doing business as Waterfront Center for
10 Rehabilitation and Health Care, Erie County. This
11 application has been deferred at the Department's
12 request.
13 Next application is 1994 L, it's a Home
14 Health Agency Licensure, Independent Living for
15 Seniors, Inc. in Monroe and Wayne Counties. We
16 have a recusal by Ms. Hines and Mr. Robinson, who
17 are leaving the room. And an interest declared by
18 Mr. Booth who is an employer contracting with these
19 providers for medical care. Both Ms. Hines and Mr.
20 Robinson have left the room.
21 OHSM has recommended approval. The
22 Establishment and Project Review had recommended
23 approval. There was no discussion on the
24 application. And I so move.
25 DR. BERLINER: Second.

1 PHHPC ANNUAL MEETING
2 DR. STRECK: Moved and seconded.
3 Any discussion?
4 Hearing none, those in favor "Aye." Let
5 me try that again.
6 (A chorus of "Ayes.")
7 DR. STRECK: Those opposes?
8 Thank you.
9 MR. KRAUT: We'll ask Ms. Hines and
10 Mr. Robinson to return.
11 Now I'll move to Category 3 applications
12 recommended for approval with the following, no
13 Public Health Health and Planning council member
14 recusals, Establishment and Project Review
15 Committee dissent, no dissent or contrary
16 recommendation by the HSA.
17 Application 11552 B, The Surgery Center
18 of Bayside, LLC, Queens County, to establish and
19 construction a multi-specialty freestanding
20 ambulatory surgery center to be located at 45-64
21 Francis Louis Boulevard in Bayside.
22 OHSM recommends approval for a five year
23 limited life with conditions and contingencies, the
24 Establishment and Project Review recommends
25 approval for a five year limited life with

2 conditions and contingencies was recommend one
3 member was opposing.
4 Application 112032 B, PBGS, LLC doing
5 business as the Downtown Brooklyn Gynecologic
6 Center in Kings County to establish and construct a
7 single specialty freestanding ambulatory surgery
8 center to be located at 81 Willoughby Street in
9 Brooklyn.
10 OHSM recommends approval for a five year
11 limited life with conditions and contingencies and
12 the Establishment and Project Review recommends
13 approval for a five year limited life with
14 conditions and contingencies with one more
15 opposing. And I so move these two applications.
16 DR. BERLINER: Second.
17 DR. STRECK: Move and seconded.
18 Discussion?
19 Hearing none, those in favor "Aye."
20 (A chorus of "Ayes.")
21 DR. STRECK: Opposed?
22 Thank you.
23 MR. KRAUT: I'll move Category 4,
24 applications recommended for approval with the
25 following member recusals, Establishment and

1 PHHPC ANNUAL MEETING
2 Project Review Committee dissent or contrary
3 recommendation by the HSA.
4 Application 1640, Acute Care Experts,
5 Inc., Bronx, Queens, Kings, Richmond, Nassau, and
6 New York Counties. An interest was declared by
7 Ms. Regan.
8 1956 L, Advantage Management Associates,
9 Inc., doing business as Advantage Homecare Agency,
10 New York, Westchester, Kings, Queens, Bronx, and
11 Richmond Counties. An interest declared by Ms.
12 Regan.
13 Application 1678 L, Amazing Grace Home
14 Care Services serving New York, Bronx, Kings,
15 Richmond, and Queens Counties. An interest
16 declared by Ms. Regan.
17 1696 L, Diana's Angels, Inc., Putmun,
18 Bronx, Westchester and Dutchess Counties. An
19 interest is declared by Ms. Regan.
20 1957 L, Evergreen Choice, LLC, New York,
21 Bronx, Kings, Richmond and Queens Counties.
22 Actually, all the applications will have -- I'll
23 state that Ms. Regan is declaring an interest this
24 group.
25 1668 L, Five Borough Home Care, Inc.,

1 PHHPC ANNUAL MEETING
2 Bronx, Kings, New York, Richmond, and Queens,
3 Counties.
4 1733 L, Heritage Homecare Services,
5 Inc., New York, Kings, Queens, Bronx, Nassau,
6 Suffolk and Richmond Counties.
7 1835 L, Longevity Care, LLC, Westchester
8 County.
9 2004 L, Long Island Living Center, LLC,
10 doing business as the Long Island Living Center,
11 Bronx, Kings, and Queens Counties.
12 2079 L, Metrostar Home Care, LLC, Kings,
13 Bronx, Queens, Richmond, New York and Nassau
14 Counties.
15 1875 L, ALJUD Licensed Home Care
16 Services, LLC, Nassau and Suffolk Counties.
17 All the applications that I'm moving
18 have an interest declared by Ms. Regan.
19 OHSM is recommending approval.
20 Establishment and Project Review recommends
21 approval with one member opposing. I so move.
22 DR. BERLINER: Second.
23 DR. STRECK: Moved and second.
24 Discussion on any of these application
25 from any member of the council?

1 PHHPC ANNUAL MEETING
2 Hearing none those in favor of the
3 recommendation please say "Aye."
4 (A chorus of "Ayes.")
5 DR. STRECK: Opposed?
6 Thank you.
7 MR. KRAUT: Category 5, applications for
8 individual consideration and discussion.
9 Application 111096 E, L. Woerner, Inc.,
10 doing business as HCR, Schoharie County. A recusal
11 by Ms. Hines, who is leveling the room. I'll call
12 another application, 121027 E, L. Woerner, Inc.,
13 doing business as HCR in Delaware County, also a
14 recusal by Ms. Hines. Oh, I'm sorry. And
15 Mr. Booth. So, the first application, 111096 E, L.
16 Woerner, Inc., doing business as HCR is to acquire
17 the Schoharie County Department of Health CHHA
18 serving Schoharie County.
19 OHSM recommends approval with conditions
20 is recommended. This morning the Establishment and
21 Project Review Committee met to consider this
22 application, also recommends approval.
23 The second application 121027 E, is to
24 acquire the Delaware County C H H A, the CHHA, and
25 long-term home health care program.

1 PHHPC ANNUAL MEETING

2 OHSM recommended approval with

3 conditions and contingencies. This morning in a

4 meeting of the Establishment and Project Review

5 Committee, they similarly recommended approval with

6 conditions and contingencies. Both these

7 applications Ms. Hines and Mr. Booth have declared

8 a recusal. And I so move.

9 DR. BERLINER: Second.

10 DR. STRECK: These have been moved and

11 seconded.

12 Any discussion?

13 Hearing none, those in favor "Aye."

14 (A chorus of "Ayes.")

15 DR. STRECK: Opposed?

16 Thank you.

17 MR. KRAUT: Now we'll ask Ms. Hines and

18 Mr. Booth to return.

19 I'll now call application 112031 E,

20 Alliance Health Associates, Inc., doing business as

21 the Lindens Garden Rehabilitation and Nursing

22 Center in Kings County to establish Alliance Health

23 Associates, Inc., doing business as Linden Gardens

24 Rehabilitation and Nursing Center as the new

25 operator of Ruby Western Manor Residential Health

1 PHHPC ANNUAL MEETING
2 Care Facility.
3 OHSM recommended approval with
4 contingencies. The Establishment and Project
5 Review recommended approval with contingencies
6 initially at the November 17, 2011 meeting. The
7 application was subsequently deferred at the
8 December 8, 2011 full council meeting. You have in
9 your, you should have received or have in your
10 place today a memorandum dated February 1, 2012
11 from our general counsel James Dering regarding
12 this application. If you recall there was an issue
13 here about a proposed stockholder and that
14 stockholder's role in the character and competence
15 review. And maybe I'll turn it over to the
16 Department to elaborate on that.
17 MR. DERING: As indicated, there was an
18 issue with regard to the stock ownership of the
19 entity. There was --
20 MR. KRAUT: I so move the application.
21 Sorry.
22 DR. STRECK: Now we have moved and
23 seconded the application. So now Mr. Dering, you
24 may begin.
25 MR. DERING: As stated, there was an

1

2 issue with regard to the ownership of the entity.
3 There was a full opportunity given to the party to
4 provide information on that. Based on the
5 information that was submitted the Department feels
6 that it would be appropriate to move forward,
7 whether the parties decided to have litigation with
8 regard to the -- dispute is a different issue and
9 depending on how that turned out there could be
10 changes with regard to the ownership and we come
11 before the council in the future.
12 DR. STRECK: There were concerns
13 expressed that the meeting this morning some of the
14 individuals associated with -- were not aware of
15 the meeting or something to that effect?
16 MR. DERING: It's my understanding that
17 this meeting is posted, so there was public notice
18 of that. There was an opportunity for people to
19 provide comments at that time. There had been a
20 prior opportunity to provide written submissions
21 which people in entities took advantage of. This
22 was previously with the Committee before, went to
23 the full council it had been deferred. So, there
24 have been many opportunities to provide input and
25 comment with regard to this matter.

1 PHHPC ANNUAL MEETING
2 DR. STRECK: Thank you.
3 We have a motion and a second on the
4 floor.
5 Is there further discussion on this
6 application as presented?
7 Mr. Fensterman.
8 MR. FENSTERMAN: Yes, Mr. Chairman, I
9 just want to ask, Mr. Dering, just for the record,
10 when was the notice of this mornings meeting
11 posted.
12 MR. DERING: I would have to defer to --
13 MS. FROST: The meeting materials went
14 out last Friday.
15 MR. FENSTERMAN: Is that timeframe in
16 accordance with our rules and regulations of giving
17 adequate notice.
18 MS. FROST: Yes, that's what's been
19 historically done.
20 MR. FENSTERMAN: I just want our general
21 counsel, do you agree with Ms. Frost's statement?
22 MR. DERING: Yes. I think it would be
23 in compliance with the Open Meetings Law.
24 MR. FENSTERMAN: That's all I wanted to
25 know.

2 DR. STRECK: Any further discussion on
3 the motion?
4 Hearing none, those in favor of the
5 motion as presented please say.
6 (A chorus of "Ayes.")
7 DR. STRECK: Those opposed?
8 So the motion carries and the
9 recommendation is approved.
10 MR. KRAUT: That concludes the report of
11 the Committee. I would only share some late
12 breaking information with the council.
13 Punxsutawney Phil saw his shadow, so we're having
14 six more weeks of winter. However, Staten Island
15 Chuck disagreed and predicts an early spring, but
16 he was -- he disagreed with Malverne Mel who he
17 proposed six more weeks. But I can only tell you
18 both Staten Island Chuck and Malverne Mel agreed
19 that they predict that the Giants will win this
20 weekend. I so move a recommendation by the council
21 to sustain that opinion.
22 That concludes our report.
23 DR. STRECK: Are there other issues that
24 anyone wishes to bring before the council?
25 If not we will adjourn the Public Health

1 PHHPC ANNUAL MEETING

2 Health Planning Council. Thank you for your

3 commitment and attention. We are adjourned.

4 (Time noted: 1:35 p.m.)

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1
2 C E R T I F I C A T I O N
3
4 I, SHERRY SPALLIERO, a Court Reporter
5 and Notary Public, within and for the State of New
6 York, do hereby certify that I reported the
7 proceedings in the within-entitled matter, on
8 February 2, 2012, and that this is an accurate
9 transcription of these proceedings.
10 IN WITNESS WHEREOF, I have hereunto set
11 my hand this _____ day of February 2012.
12
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15 ________________________
16 SHERRY SPALLIERO
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PHHPC STANDING COMMITTEES

COMMITTEE ON CODES, REGULATIONS AND LEGISLATION

Reviews new or revised regulations relating to medical facility operational and structural standards, including quality of care and the need for the facilities and/or services. Reviews amendments to the State Sanitary Code and other matters referred by the Commissioner. The Codes Committee will also include work of the SHRPC's Fiscal Policy Committee which was charged to review proposed changes to part 86 of the State Hospital Code concerning medical facility rates of Reimbursement.

NUMBER: 9

CHAIR – Angel Gutierrrez, M.D.	
VICE CHAIR – John Palmer, Ph.D.	
Jodumutt Bhat, M.D.	
Jo Ivey Boufford, M.D.	
Michael Fassler	
Robert Hurlbut	
John Rugge, M.D.	
Ann Marie Theresa Sullivan, M.D.	
Patsy Yang, Dr.P.H.	

COMMITTEE ON ESTABLISHMENT AND PROJECT REVIEW

Responsible for reviewing the CON applications involving construction, service changes or establishment, and transfers of ownership.

NUMBER: 13

CHAIR – Jeffrey Kraut	
VICE CHAIR – Christopher Booth	**Glenn Martin, M.D**
Howard Berliner	**Susan Regan**
Howard Fensterman	**Peter Robinson**
Ellen Grant, Ph.D.	**Ann Marie Theresa Sullivan, M.D**
Angel Gutierrrez, M.D.	**Anderson Torres, Ph.D.**
Victoria G. Hines	
Arthur Levin	

COMMITTEE ON PUBLIC HEALTH

Charged with addressing the statewide governmental public health infrastructure (including workforce, IT, laboratory and other organizational capacity consistent with the Essential Public Health Functions) and support actions to assure readiness for future public health agency accreditation and public health workforce certification. It will also promote interagency collaborations across government to support a "Health in All Policies" approach by State leadership. These activities would be combined with the current Ad Hoc Prevention Committee of PHC.

NUMBER: 10

CHAIR – Jo Ivey Boufford, M.D.	
VICE CHAIR – Anderson Torres, Ph.D.	**Susan Regan**
Christopher Booth	**Theodore Strange, M.D.**
Carla Boutin-Foster, M.D	**Patsy Yang, Dr.P.H.**
Angel Gutierrrez, M.D.	
Victoria G. Hines	
Arthur Levin	
Ellen Rautenberg	

COMMITTEE ON HEALTH PLANNING

Advises the Council on need-methodologies, health facility plans, and emerging health care issues. Monitors major health care initiatives and advises the Council on progress and/or problems. The Committee will also include functions from the SHPRC's Committee on Major Medical Equipment and Appropriateness whose responsibilities were to develop and review appropriateness standards (Part 708) for various services. The Committee evaluates high technology equipment, and advises the Council on such specialized services as organ transplants. The Committee will also take into consideration matters relative to the collaboration with the Rural Health Council. The Committee will also handle matters that were considered under the SHPRC's Information Systems Review Committee whose general purpose was to advance a framework for CON to ensure interoperable health information technology is an underpinning to health care delivery and supports health care stakeholders. Advise the DOH on health information policy relevant to health care stakeholders.

NUMBER: 12

CHAIR – John Rugge, M.D.	
VICE CHAIR – Ellen Grant, Ph.D.	**Glenn Martin, M.D.**
Howard Berliner	**John Palmer, Ph.D.**
Christopher Booth	**Ellen Rautenberg**
Jo Ivey Boufford, M.D.	**Peter Robinson**
Michael Fassler	
Jeffrey Kraut	
Arthur Levin	

COMMITTEE ON HEALTH PERSONNEL AND INTERPROFESSIONAL RELATIONS Pursuant to 2801-b of the Public Health Law, the Council also considers verified complaints submitted by physicians, podiatrists, optometrists, dentists, and licensed midwives whose hospital privileges have been terminated, suspended or denied. **NUMBER: 5**	
CHAIR- Dr. Theodore Strange	
VICE CHAIR – Jodumutt Bhat, M.D.	
Howard Fensterman	
Robert Hurlbut	
Susan Regan	

AD HOC COMMITTEE TO LEAD THE STATE HEALTH IMPROVEMENT PLAN

The Public Health Committee of PHHPC has established an Ad Hoc Committee to oversee the development of the next state health improvement plan. The current state health department five year plan, the *Prevention Agenda toward the Healthiest State*, ends in 2012.

The new five year plan will make an assessment of the current health status of the state's residents, describe progress to date in meeting the *Prevention Agenda* objectives, identify the state's public health priorities for the next five year period and describe evidence based strategies that the state and communities will pursue to address the priorities.

Members of the new Ad Hoc Committee include PHHPC Public Health Committee members and public health stakeholders.

CHAIR- Jo Ivey Boufford, M.D.	
Carla Boutin-Foster, M.D	**Renee Gecsedi**
Angel Gutierrez, M.D.	**Raymond Goldsteen**
Victoria G. Hines	**Jean Hudson, MD**
Ellen Rautenberg	**Cheryl Hunter-Grant**
Patsy Yang, Dr.P.H.	**James Knickman**
Samuel Arce, MD	**Paul Macielak**
Ann Morse Abdella	**Laurel Pickering**
Lloyd Bishop	**Kyu Rhee, MD**
Kate Breslin	**Elizabeth Swain**
Alvaro Carrascal, MD	**Linda Wagner**
Christina Chang	**Sue Ellen Wagner**
Patricia Clancy	**Susan Waltman**
Kira Geraci Ciardullo, MD	**Judy Wessler**
Kevin Jobin-Davis	

2/6/12 Updated

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

April 5, 2012

Report of the Committee on Codes, Regulations and Legislation **Exhibit #2**

Angel Gutiérrrez, M.D., Chair

For Adoption

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)

For Discussion

Part 757 of Title 10 NYCRR – Chronic Renal Dialysis Services

For Discussion

Sections 405.9 and 405.5 of Title 10 NYCRR –
Release of a Deceased Person From a Hospital

For Discussion

Section 405.13, 405.22, 405.30 and 405.31 of Title 10 NYCRR –
Organ Transplant Provisions

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.

403.1 Applicability

403.2 Definitions

403.3 General Requirements

403.4 Responsibilities of State Approved Education or Training Programs

403.5 Responsibilities of Home Care Services Entities

403.6 Responsibilities of Home Care Services Workers and Trainees

403.7 Other responsibilities

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

(d) 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)(a) 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.

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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.

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 of the Public Health Law, Part 757 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Part 757 Chronic Renal Dialysis Services is REPEALED in its entirety, and New Part 757 is added as follows:

PART 757 CHRONIC RENAL DIALYSIS SERVICES

(Statutory authority: Public Health Law §2803)

Sec.

§757.1 Pertinent federal standards.

§757.2 Additional requirements for approved dialysis centers.

§757.3 Chronic renal dialysis service staffing.

§757.1 Pertinent federal standards.

Operators of health care facilities that provide chronic dialysis services shall comply with the federal codes and standards referred to in this subdivision. If a conflict occurs between the following codes and standards or between them and regulations elsewhere in this Chapter, then compliance with the more restrictive regulation is required. The following codes and standards are hereby incorporated by reference, with the same force and effect as if fully set forth at length herein. Copies of such codes and standards are available for inspection and copying at the Regulatory Affairs Unit, New York State Department of Health, Corning Tower, Empire State Plaza, Albany, NY 12237. Copies also available from the publisher or issuing organization at the addresses listed below.

(a) Title 42 of the Code of Federal Regulations, Public Health Part 494, *Conditions for Coverage for End-Stage Renal Disease Facilities,* 2008 edition. These regulations are published by the Office of the Federal Register National Archives and Records Administration. Copies may be obtained from the Superintendent of Documents, United States Government Printing Office, Washington, D. C. 20402.

(b) In the document entitled "Guidelines for the Prevention of Intravascular Catheter Related Infections", the provisions entitled "Recommendations for Placement of Intravascular Catheters in Adults and Children", Parts I -IV; and "Central Venous Catheters, Including PICCs, Hemodialysis and Pulmonary Artery Catheters in Adult and Pediatric Patients", pages 16 through 18, Morbidity and Mortality Weekly Report, volume 51, number RR-10, August 9, 2002. This publication is available for inspection at the CMS Information Resource Center, 7500 Security Boulevard, Central Building, Baltimore, MD or at the National Archives and Records Administration, United States Government Printing Office, Washington, D. C. 20402.

(c) "Dialysate For Hemodialysis ANSI/AAMI RD52: 2004". This document is published in 2004 by the Association for the Advancement of Medical Instrumentation (AAMI). Copies are available from the Association for the Advancement of Medical Instrumentation, 3300 Washington Boulevard, Suite 400, Arlington VA 22201-4598 and from the National Archives and Records Administration, United States Government Printing Office, Washington, D. C. 20402.

(d) "Reuse of Hemodialyzers ANSI/AAMI RD47:2002", third edition and RD47:2002/A1:2003.). Copies are available from the Association for the Advancement of Medical Instrumentation, 3300 Washington Boulevard, Suite 400, Arlington VA 22201-4598 and the National Archives and Records Administration, United States Government Printing Office, Washington, D. C. 20402.

(e) "Recommendation for Preventing Transmission of Infections Among Chronic Hemodialysis Patients", Morbidity and Mortality Weekly Report, volume 50, number RR-05, April 27, 2001. This publication is available for inspection at the CMS Information Resource Center, 7500 Security Boulevard, Central Building, Baltimore, MD or at the National Archives and Records Administration, United States Government Printing Office, Washington, D. C. 20402.

§757.2 Additional requirements for approved dialysis centers.

(a) Whenever referred to in this section, the following definitions shall have the following meanings:

(1) *Dialysis station.* A dialysis station is an individual treatment area that provides space to accommodate the dialysis equipment and the routine and emergency care indicated, and has sufficient separation from other dialysis stations to afford protection from cross-contamination with blood-borne pathogens. A hemodialysis station shall be equipped with a chair or a bed, a hemodialysis machine, and access to a purified water source and dialysate concentrates.

(2) *End-Stage Renal Disease (ESRD) network.* ESRD networks are government contract organizations that collect and share data and other information between Centers for Medicare and Medicaid Services (CMS) and Medicare approved dialysis facilities within a specific geographic area.

(3) *Approved dialysis center.* An approved dialysis center is a facility authorized by CMS to provide dialysis services and licensed by the New York State Department of Health to provide such dialysis services.

(b) Chronic renal dialysis service providers shall comply with Parts 751 and 752 of this Subchapter.

(c) The governing body, medical director, and operator shall comply with the following requirements:

(1) *Pediatrics*. Approved dialysis centers that treat pediatric patients on other than an emergency basis, shall have the consultation services of a board certified or otherwise qualified pediatric nephrologist. Such approved centers or facilities treating pediatric patients must follow current CMS approved clinical practice standards for evaluating and monitoring the pediatric patient population in this area.

(2) *Water and Dialysate Quality*. Each approved dialysis centers shall ensure that its water treatment and dialysate supply systems protect hemodialysis patients from adverse effects arising from known chemical and microbial contaminates that may be found in water and improperly prepared dialysate. Each approved dialysis center shall ensure that the water and dialysate is correctly formulated as required by this Part and that policies and procedures related to water treatment, dialysate, and reuse are understandable shall include, but not be limited to, the following:

(i) water and dialysate shall be sampled on the following schedule:

(A) for microbiological examination at least once each month, and

(B) for chemical examination water shall be sampled at least once every three months; and

(ii) water samples shall be examined in a laboratory approved by the Department for the analysis of potable water by the Department of Health (see section 502 of the Public Health Law).

§ 757.3 Chronic renal dialysis service staffing.

(a) *Governing Body Responsibilities.* In addition to other responsibilities set forth in this Chapter, the governing body of an approved dialysis center shall be responsible for the following:

(1) Assuring that a registered professional nurse (RN) is present, on duty and available to provide nursing services at all times when patients are present at the facility.

(2) Determining, if specially trained licensed practical nurses (LPNs), under the supervision of a qualified RN, nurse practitioner (NP), or physician, are authorized to perform intravenous therapy procedures in accordance with the provisions set forth in Section 400.15 of this Chapter.

(3) Determining, if LPNs working in chronic hemodialysis outpatient settings will be allowed to access and provide care to patients with central venous catheters under the direction of a RN under the following conditions:

(i) Facilities that choose to participate in the program allowing LPNs to access central venous catheters must include the training and competency requirements in the facility's policies and procedures and review and update such policies and procedures at least annually, or more frequently as determined appropriate by the facility and made available to all services and units of the facility ;

(ii) The governing body will be responsible for identifying the LPN candidates determined to be eligible for completion of a training curriculum to access and provide care to patients with central venous catheters. Such training is to be accomplished with the understanding that the final determination for an LPN to provide this service will be at the discretion of the supervising RN;

(iii) Assurance that the LPN successfully completes an initial and thereafter an annual training program for central venous access which includes successful completion of a written examination and competency demonstration. This training must be approved by the governing body and the medical director. Onsite documentation of such training must be maintained;

(d) The governing body shall review and approve policy and procedures that define the minimum experience and training qualifications of all patient care technicians (PCTs) who provide services in an approved dialysis center as well as the services that PCTs are authorized to perform. The governing body shall maintain documentation that demonstrates that PCTs in their facility are currently certified by a CMS approved national commercial dialysis technician certification organization within 18 months post hire. Such PCTs must complete a training program approved by the medical director and the governing body, carried out under the direction of a registered professional nurse.

(b) Approved dialysis facility employees and contract staff must meet the personnel qualifications and demonstrated competencies necessary to serve collectively the comprehensive needs of the patients. In addition:

(1) *Registered Professional Nurse*. All registered professional nurses (RNs) working in an approved dialysis facility must hold an active New York State license to practice as set forth in Article 139 of the Education Law and in accordance with the Education Commissioner's regulations. In the chronic hemodialysis outpatient setting, supervising RN responsibilities also include:

(i) Non-catheter patient assessment and documentation that must be completed within 60 minutes of initiation of dialysis;

(ii) Catheter patient assessment and documentation that must be completed within 45 minutes of initiation of dialysis;

(iii) A clear understanding of the LPN training program at that facility to ensure a thorough understanding of the tasks that may be delegated to the LPN(s) under their supervision;

(iv) The ultimate responsibility for nursing care for the dialysis patient. Delegation of tasks to the LPN are at the discretion of the RN; and

(v) Direct supervision of all LPN activities in accordance with New York State Education Law.

(vi) Direct supervision of unlicensed staff that have dialysis care responsibilities.

(2) Licensed Practical Nurse. All licensed practical nurses (LPNs) working in an approved dialysis facility must hold an active New York State license to practice as set forth in Article 139 of the Education Law and in accordance with the New York Education Commissioner's regulations. LPN responsibilities shall be consistent with the

authorization and training provided by the facility. In addition, LPNs practicing at approved facilities and who have received training and demonstrated the competencies required by such approved facilities may access and provide care to patients with central venous catheters with the understanding that the final determination for an LPN to provide this service will be at the discretion of the supervising RN.

(3) *Qualified Social Worker.* The facility must have a qualified social worker who is licensed and registered by the New York State Education Department to practice as a licensed master social worker (LMSW) or licensed clinical social worker (LCSW), with the scope of practice defined in Article 154 of the Education Law.

(4) *Patient Care (Dialysis) Technician. A patient care technician (PCT)* is an unlicensed, certified, assistive staff member who has responsibility for direct patient care under the supervision of the RN.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The statutory authority for the promulgation of this regulation is contained in Public Health Law (PHL) section 2803. Section 2803 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 and promotion of the health of the residents of New York State by requiring the efficient provision and proper utilization of health services, of the highest quality at a reasonable cost, including chronic renal dialysis services.

Needs and Benefits:

Part 757 of Title 10 of the New York Codes Rules and Regulations (NYCRR) outlines the chronic renal dialysis requirements for services provided in New York State renal dialysis facilities. This regulation currently specifies that these facilities must comply

with the regulations contained in Title 42 of the Code for Federal Regulations (CFR), Public Health, Part 405, Subpart U – Conditions for Coverage of Suppliers of End State Renal Disease (ESRD) Service, (42 CFR Part 405), 1988 edition. In 2008 the 42 CFR Medicare and Medicaid Programs Conditions for Coverage for End-Stage Renal Disease (ESRD) Facilities were amended. As a result, Part 757 of 10 NYCRR is outdated and also needs to be amended to be in compliance with the new federal provisions.

The 2008 federal regulatory amendments establish new conditions for coverage that dialysis facilities must meet to be certified under the Medicare Conditions for Coverage. It establishes performance expectations for facilities and encourages patients to participate in their plan of care and treatment. It also reflects advances in dialysis technology and standard care practices.

The federal ESRD requirements were first adopted in 1976. They have been amended several times since 1976, but they have not been comprehensively revised since then. New York State's current Part 757 provisions in Title 10 NYCRR incorporate by reference the provisions contained in the 1988 edition of the federal ESRD regulations.

The federal ESRD conditions for coverage (health and safety provisions for dialysis facilities) have been moved from existing 42 CFR Part 405, Subpart U, to a new 42 CFR Part 494, where they will follow regulations establishing standards for other Medicare providers (hospitals, long-term care facilities and home health agencies).

It is imperative that the provisions in Part 757 10 NYCRR be updated to be in compliance with the updated federal Medicare Conditions for Coverage for End State Renal Disease Facilities and better regulate current technology and practice in the field of ESRD care..

Costs:

Medical facilities that provide chronic renal dialysis services are already required to meet these requirements pursuant to the federal Conditions for Coverage for End Stage Renal Disease (ESRD). This regulation will not impose any additional costs.

Local Government Mandates:

This provision does not impose any additional mandates on local governments.

Paperwork:

There is no additional paperwork required as a result of this proposal.

Duplication:

This regulation does not duplicate any other State or federal regulation. It incorporates by reference amended federal standards and clarifies such standards for New York State chronic renal dialysis services.

Alternatives:

There are no viable alternatives. The current regulations in Part 757 are outdated and do not reflect current technology and practice. Federal changes in 42 CFR Part 494 renders the provisions in Part 757 that were incorporated by reference as obsolete.

Federal Standards:

This proposal incorporates by reference and conforms to the federal changes in 42 CFR Part 494. In addition it clarifies certain definitions, water and dialysate quality provisions and personnel provisions specific to New York State standards.

Compliance Schedule:

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

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REGULATORY FLEXIBILITY ANALYSIS

Effect of Rule:

There are 246 ESRD sites in New York State and 120 ESRD operators. There are 8 large operators (100 employees or more) and 113 small operators (1 to 99 employees). Of the 246 ESRD sites, 73 are run by large operators and 173 are run by small operators.

Compliance Requirements:

Chapter 524 of the Laws of 2011 requires agencies to include a "cure period" or other opportunity for ameliorative action to prevent the imposition of penalties on the party or parties subject to enforcement when developing a regulation or explain in the Regulatory Flexibility Analysis why one was not included. ESRD facilities are already in compliance with these provisions as this measure incorporates by reference amended federal standards and clarifies such standards for New York State chronic renal dialysis services. Therefore a cure period was not included in the rule.

Professional Services:

No additional professional standards are required as a result of this proposal. This measure incorporates by reference amended federal standards and clarifies such standards for New York State chronic renal dialysis services.

Compliance Costs:

None. This measure incorporates by reference amended federal standards and clarifies such standards for New York State chronic renal dialysis services.

Economic and Technological Feasibility:

This proposal is economically and technologically feasible.

Minimizing Adverse Impact:

There is no adverse impact.

Small Business and Local Government Participation:

Outreach to the affected parties is being conducted. Organizations who represent the affected parties and the public can also obtain the agenda of the Codes, Regulations and Legislation Committee of the Public Health and Health Planning Council (PHHPC) and the proposed regulation on the Department's website. The public, including any affected party, is invited to comment during the Codes and Regulations Committee meeting.

Dear Chief Executive Officer (CEO) letters were sent to affected parties outlining the components to the federal rule summarizing the general requirements that apply and linking them to the full text of the ruling online and a Departmental contact for any questions.

RURAL AREA FLEXIBILITY ANALYSIS

No Rural Area Flexibility Analysis is required pursuant to section 202-bb (4) (a) of the State Administration Procedure Act (SAPA). It is apparent, from the nature of the proposed amendment that it will not impose any adverse impact on rural areas, and the rule does not impose any new reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

JOB IMPACT STATEMENT

No Job Impact Statement is required pursuant to section 201-a (2) (a) of the State Administration Procedure Act (SAPA). It is apparent, from the nature of the proposed amendment, that it will have no impact on jobs and employment opportunities.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Sections 2803, and 4351 of the Public Health Law, Section 405.9 and Section 405.25 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York are hereby amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Paragraph (9) of subdivision (f) of Section 405.9 is amended to read as follows:

(9) A dead body, including a stillborn infant or fetus estimated by an attending physician to have completed 20 weeks of gestation, shall be [delivered] released only to a licensed funeral director or undertaker or his/her agent[.], and only after all donor and recovery responsibilities have been met by the hospital and the existing networks for the recovery of organs and tissues. If, at the time of death, the patient was diagnosed as having a specific communicable or infectious disease, including but not limited to those diseases designated in Part 2 of this Title, a written report of such disease shall accompany the body when it is released to the funeral director or his/her agent.

Subdivision (a) of Section 405.25 is amended to add new paragraphs (5) and (6) to read as follows:

(5) *reasonably available* shall mean that a person to be contacted can be contacted without undue effort and is willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.

(6) *domestic partner* shall mean a person who, with respect to another person:

(i) is formally a party in a domestic partnership or similar relationship with the other person, entered into pursuant to the laws of the United States or any state, local or foreign jurisdiction, or registered as the domestic partner of the person with any registry maintained by the employer of either party or any state, municipality, or foreign jurisdiction; or

(ii) is formally recognized as a beneficiary or covered person under the other person's employment benefits or health insurance; or

(iii) is dependent or mutually interdependent on the other person for support, as evidenced by the totality of the circumstances indicating a mutual intent to be domestic partners including but not limited to: common ownership or joint leasing of real or personal property; common householding, shared income or shared

expenses; children in common; signs of intent to marry or become domestic partners under subparagraph (i) or (ii) of this paragraph; or the length of the personal relationship of the persons.

Each party to a domestic partnership shall be considered to be the domestic partner of the other party. "Domestic partner" shall not include a person who is related to the other person by blood in a manner that would bar marriage to the other person in New York state. "Domestic partner" shall also not include any person who is less than eighteen years of age or who is the adopted child of the other person or who is related by blood in a manner that would bar marriage in New York state to a person who is the lawful spouse of the other person.

Paragraph (1) of subdivision (b) of Section 405.25 is amended to read as follows:

(1) protocol for timely notification of the organ procurement organization, eye bank or other tissue bank upon the death or imminent death of every patient, including provisions specifying that for ventilator patients declared brain dead, the organ procurement provider must be notified and be able to determine suitability for donation prior to removal of such patients from the ventilator;

(i) when recovery responsibilities will be met by an organ procurement organization (OPO), eye bank or other tissue bank, the hospital shall make available to such OPO, eye bank or other tissue bank information regarding the choice of funeral firm, name and phone number of funeral firm, contact information and other pertinent information, to the extent available, to assure that the decedent is handled in a prompt and sensitive manner appropriate to the wishes of the patient, family or other responsible party.

Paragraph (3) of subdivision (b) of Section 405.25 is amended to read as follows:

(3) [a] procedures for documenting in the patient's medical record:

(i) notification of the organ procurement organization, eye bank or other applicable tissue bank(s) upon the death or imminent death of every patient [, and the results of such notification and requests for consent or absence of a request];

(ii) requests for consent or the absence of a request, and the results of such notifications and requests; and

(iii) information specific to a decedent's wishes or the wishes of the or other responsible party regarding choice of funeral firm, name and

phone number of funeral firm, to the extent available, and documentation that such funeral firm has been notified when recovery activities are expected to be completed to allow for the prompt release of the body.

Paragraph (1) of subdivision (c) of Section 405.25 is amended to read as follows:

(c) (1) Where a patient is a suitable candidate for organ, eye or other tissue donation and where the patient has not properly executed an organ donor card, or other legally recognized authorization for organ, eye or other tissue donation, or otherwise given written authorization for such donation, the designated requestor shall, [in a timely manner,]at the time of death or imminent death of a hospital patient, [request the persons listed below,] cause a timely request [the persons listed below] to be made to any of the following persons, in the order of priority stated.[,] When persons in prior classes are not reasonably available, willing and able to act, and in the absence of actual notice of contrary intentions by the decedent, or actual notice of opposition by a person or persons in the highest priority available of the classes specified in this subdivision, or other reason to believe that an anatomic gift is contrary to the decedent's religious beliefs, to consent to the gift of [all useful organs, tissues and/or other body parts] any part of the decedent's body for any purpose specified in article forty-three of the public health law:

(i) the person designated as the decedent's health care agent under public health law article twenty-nine-C, subject to any written statement in the health care proxy form;

(ii) the person designated as the decedent's agent in a written instrument under public health law article forty-two, subject to any written statement in the written instrument;

[(i)] (iii) the spouse, if not legally separated from the patient, or the domestic partner;

[(ii)] (iv) a son or daughter 18 years of age or older;

[(iii)] (v) either parent;

[(iv)] (vi) a brother or sister 18 years of age or older, or;

[v)](vii) a guardian of the person of the decedent at the time of his[/] or her death.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The authority for the promulgation of this regulation is contained in Public Health Law (PHL) Sections 2803, and 4351. PHL Section 2803 outlines the powers and duties of the Commissioner. It also 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. PHL Section 4351 requires hospital administrators to notify organ procurement organizations, eye banks and other tissue banks of all potential organ and tissue donors and requires the Commissioner to establish regulations concerning the procedures to be followed in requesting the donation.

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. The legislative objective of Section 4351 is to increase organ and tissue donation by setting forth a process to ensure hospital administrators notify organ procurement organizations, eye banks and other

tissue banks when the death of an individual has occurred or is imminent so that a request for consent to an anatomical gift can be made.

Needs and Benefits:

PHL Article 43-A, often referred to as the Routine Referral Law, contains provisions addressing the process for requesting consent to an anatomical gift, providing a list of those who can provide such consent, and providing for determination of suitability for organ and tissue donation, when a death occurs or is imminent in a hospital. Chapter 348 of the Laws of 2009 amended PHL Section 4351 to modify the provisions addressing who can provide consent for organ and tissue donation, and clarifying the meaning of "reasonably available," making certain changes to the regulations necessary. Changes to the regulations are also being made in response to reports of bodies being removed from a hospital before a determination regarding donation status and arrangements for donation and recovery had been made. Some eye banks and other tissue banks claim that when that happens tissue recovery has occurred in a funeral establishment. The Department has sought, and continues to seek, to curtail any tissue recovery in funeral establishments.

If tissue recovery is prohibited in a funeral establishment and a dead body is removed from a hospital before a determination is made that the deceased is an organ or tissue donor, valuable organs or tissue could be lost that might otherwise be recovered. In order to prevent such loss and to prevent frustration of the wishes of the donor, a

determination should be made before discharge from the hospital that the deceased is an organ or tissue donor and that arrangements have been made for recovery.

Of the 793 tissue banks and nontransplant anatomic banks licensed by the Department, 107 banks recover, from deceased donors, tissue for transplantation, and/or nontransplant anatomic parts for research and education. Currently, no New York State funeral firms are licensed to recover tissue for transplantation from deceased donors. No funeral firms are licensed to recover nontransplant anatomic parts for research and education.

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

None. Hospitals are already required to make referrals for possible organ and tissue donation and to document the results of such requests in the patient's medical record. The proposed amendments simply clarify and reflect the statutory requirements.

Cost to State and Local Government:

State and local government agencies that operate a general hospital would be affected to the same extent as other regulated parties.

Cost to the Department of Health:

There are no additional costs to the Department as a result of this regulation.

Local Government Mandates:

The regulation imposes no new program, service, duty, or responsibility on any county, city, town, village, school district, fire district, or other special district not already required by statute. A municipal government or district that operates a general hospital would be affected as described herein to the same extent as other regulated parties.

Paperwork:

No additional paperwork is required. PHL Section 4351 already requires the hospital to document determinations that the deceased is not an organ or tissue donor . This regulation only clarifies what information must be recorded in that process.

Duplication:

This regulation does not duplicate any other state or federal law or regulation. It does clarify that before discharging a dead body, a determination regarding donation status and arrangements for recovery must be made.

Alternative Approaches:

There are no other viable alternative approaches, as the regulations simply clarify, or are otherwise being amended to conform to, current statutory requirements. Furthermore, if this regulation is not adopted, dead bodies might still be removed from a hospital before the determination regarding donation status and arrangements for recovery have been made. These provisions reduce that risk by clarifying that the provisions in PHL Section 4351 be followed and documented before releasing the body to a licensed funeral director or undertaker or his/her agent.

Federal Standards:

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

Compliance Schedule:

This proposal will be effective upon publication of a Notice of Adoption in the New York State Register.

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REGULATORY FLEXIBILITY ANALYSIS
FOR SMALL BUSINESS AND LOCAL GOVERNMENTS

Effect of Rule:

This proposal will impact funeral establishments, eye banks, and other tissue banks, organ procurement organizations (OPOs), nontransplant anatomic banks, and general hospitals. There are 1485 funeral establishments in New York State. Multiple funeral firms may be registered from a single establishment. In New York State there are 1870 funeral firms, all of which are small businesses. None of the eye or other tissue banks licensed to recover tissue in New York State are operated by small businesses or local governments. One nontransplant anatomic bank that recovers whole bodies for medical education is operated by a local government. None of the other non-transplant anatomic banks currently licensed to recover tissue in New York are operated by a small business or local government. Of the 234 general hospitals in New York State, 3 are considered small businesses.

Compliance Requirements:

A general hospital shall deliver a dead body, including a stillborn or fetus estimated by an attending physician to have completed 20 weeks of gestation, to a licensed funeral director or undertaker or his/her agent only after a determination has been made regarding donation status and arrangements for recovery as set forth in Public

Health Law Section 4351. In order to make a preliminary determination of the suitability for organ donation, the hospital must already notify the OPO, eye bank or tissue bank of the death or imminent death of every patient, and must document that notification in the patient's medical record, as well as document requests (or absence of requests) for consent to donation, and the results of such notifications and requests**. When recovery responsibilities will be met by an organ procurement organization (OPO), eye bank or other tissue bank, the hospital shall make available to the OPO, eye bank or other tissue bank information regarding the choice of funeral firm, name and phone number of such funeral firm, contact information and other pertinent information, to the extent available, to assure that the decedent is handled in a prompt and sensitive manner appropriate to the wishes of the patient, family or other responsible party. The hospital must also document that the funeral firm has been notified when recovery activities are expected to be completed to allow for the prompt release of the body. Where contact with the OPO, is not required under criteria developed regionally by the OPO subject to the approval of such criteria by the Department, the hospital must contact the appropriate eye bank or other tissue bank. All hospitals shall select at least one eye bank or tissue bank for the recovery of tissue and notify the OPO of its choice of tissue procurement providers. If a hospital selects more than one eye bank or tissue bank as a procurement provider, it may specify a rotation of referrals for purposes of tissue recovery. Where the OPO, eye bank or tissue bank is contacted, it must, in consultation with the hospital, after appropriate medical screening (which may include serological testing if applicable) determine suitability for organ, eye tissue and other tissue donation, as appropriate. When an OPO is contacted, it must contact the appropriate eye bank or tissue bank with respect to

suitability for eye tissue or other tissue donation. If the eye bank or other tissue bank determines that organ, eye tissue or other tissue donation is not appropriate based on established medical criteria, this must be noted by hospital personnel on the patient's medical record and no further action with respect to organ, eye tissue or other tissue donation is necessary.

Professional Services:

Hospital professional staff will need to consult with the OPO, tissue or eye bank regarding donation status and arrangements for recovery as set forth in PHL Section 4351 and document that the deceased is not an organ or tissue donor before releasing the body to a licensed funeral director or undertaker or his/her agent. All responsibilities must be met by the hospital and the contracted OPO, eye and tissue bank for the recovery of organs and tissues. Those obligations have already been imposed by Article 43-A. This revision, while reinforcing existing hospital recovery duties, will support regulatory revisions proposed for 10 NYCRR Parts 77 (Funeral Directing, Undertaking and Embalming) and 10 NYCRR 52 (Tissue Banks and Nontransplant Anatomic Banks) to eliminate the inappropriate recovery of tissue in funeral establishments.

Compliance Costs:

Hospitals are already required to make referrals for possible organ and tissue donation and to document the results of such requests in the patient's medical record.

State and local government agencies that operate a general hospital would be affected to the same extent as other regulated parties.

Economic and Technological Feasibility:

Public Health Law (PHL) Section 4351 already sets forth the process hospital administrators, organ procurement organizations, eye banks and other tissue banks must follow to request consent for an anatomical gift. These provisions simply clarify that process and will not require any additional funding or other resources. There will be no need for any additional technology or technical support. This proposal is economically and technically feasible.

Minimizing Adverse Impact:

Chapter 524 of the Laws of 2011 requires agencies to include a “cure period” or other opportunity for ameliorative action to prevent the imposition of penalties on the party or parties subject to enforcement when developing a regulation or explain in the Regulatory Flexibility Analysis why one was not included.

Upon review of this proposal it was determined that the Routine Referral Law is already in effect. These provisions merely clarify that provisions in PHL Section 4351 be followed and documented before releasing the body to a licensed funeral director or undertaker or his/her agent and do not fundamentally change obligations under the

existing regulations. As the rule does not involve the establishment or modification of a violation or penalties associated with a violation, a cure period is not required and was not included in this rule.

Small Business and Local Government Participation:

Outreach to the affected parties is being conducted. They include general hospitals, funeral directors, and all organ procurement organizations (OPOs), eye banks and other tissue banks doing business in New York State. Also, organizations representing the affected parties are given notice of this proposal 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 Codes and Regulations Committee meeting.

RURAL AREA FLEXIBILITY ANALYSIS

Effect of Rule:

All rural areas in New York State (43 counties with a population of less than 200,000 population and 9 counties with townships with population densities of 150 persons or less per square mile) will be affected by this rule the same as all other areas of the State. This proposal will impact funeral establishments, eye banks, and other tissue banks, nontransplant anatomic banks, organ procurement organizations (OPOs), and general hospitals. There are 1485 funeral establishments in New York State. Multiple funeral firms may be registered from a single establishment. In New York State there are 1870 funeral firms. There are approximately 540 funeral firms in rural areas in New York State. There are 234 general hospitals in New York State, including 47 hospitals that meet the definition of a rural hospital as defined in Section 700.2 of Title 10 of the New York Codes Rules and Regulations (10 NYCRR section 700.2).

Compliance Requirements:

A general hospital shall deliver a dead body, including a stillborn or fetus estimated by an attending physician to have completed 20 weeks of gestation, to a

licensed funeral director or undertaker or his/her agent only after a determination has been made regarding donation status and arrangements for recovery as set forth in Public Health Law Section 4351. In order to make a preliminary determination of the suitability for organ donation, the hospital must notify the OPO, eye bank or tissue bank of the death or imminent death of every patient, and must document that notification in the patient's medical record, as well as document requests (or absence of requests) for consent to donation, and the results of such notifications and requests. When recovery responsibilities will be met by an organ procurement organization (OPO), eye bank or other tissue bank, the hospital shall make available to the OPO, eye bank or other tissue bank information regarding the choice of funeral firm, name and phone number of such funeral firm, contact information and other pertinent information, to the extent available, to assure that the decedent is handled in a prompt and sensitive manner appropriate to the wishes of the patient, family or other responsible party. The hospital must also document that the funeral firm has been notified when recovery activities are expected to be completed to allow for the prompt release of the body. Where contact with the OPO, is not required under criteria developed regionally by the OPO subject to the approval of such criteria by the Department, the hospital must contact the appropriate eye bank or other tissue bank. All hospitals shall select at least one eye bank or tissue bank for the recovery of tissue and notify the OPO of its choice of tissue procurement providers. If a hospital selects more than one eye bank or tissue bank as a procurement provider, it may specify a rotation of referrals for purposes of tissue recovery. Where the OPO, eye bank or tissue bank is contacted, it must, in consultation with the hospital, after appropriate medical screening (which may include serological testing if applicable) determine

suitability for organ, eye tissue and other tissue donation, as appropriate. When an OPO is contacted, it must contact the appropriate eye bank or tissue bank with respect to suitability for eye tissue or other tissue donation. If the eye bank or other tissue bank determines that organ, eye tissue or other tissue donation is not appropriate based on established medical criteria, this must be noted by hospital personnel on the patient's medical record and no further action with respect to organ, eye tissue or other tissue donation is necessary.

Professional Services:

Hospital professional staff must consult with the OPO, tissue or eye bank regarding donation status and arrangements for recovery as set forth in PHL Section 4351 and document that the deceased is not an organ or tissue donor before releasing the body to a licensed funeral director or undertaker or his/her agent. All responsibilities must be met by the hospital and the contracted OPO, eye and tissue bank for the recovery of organs and tissues. The proposed amendments, while reinforcing hospital recovery duties already imposed by statute, will support additional regulatory revisions proposed for 10 NYCRR Parts 77 (Funeral Directing, Undertaking and Embalming) and 10 NYCRR 52 (Tissue Banks and Nontransplant Anatomic Banks) to eliminate the inappropriate recovery of tissue in funeral establishments.

Compliance Costs:

Hospitals are already required to make referrals for possible organ and tissue donation and to document the results of such requests in the patient's medical record. Rural hospitals would be affected to the same extent as other regulated parties.

Economic and Technological Feasibility:

Public Health Law (PHL) Section 4351 already sets forth the process hospital administrators, organ procurement organizations, eye banks and other tissue banks must follow to request consent for an anatomical gift. These provisions clarify that process and will not require any additional funding or other resources. There will be no need for any additional technology or technical support. This proposal is economically and technically feasible.

Minimizing Adverse Impact:

The Routine Referral Law is already in effect. These provisions merely clarify that provisions in PHL Section 4351 be followed and documented before releasing the body to a licensed funeral director or undertaker or his/her agent, and do not fundamentally change the obligations under the existing regulations.

Rural Area Participation:

Outreach to the affected parties is being conducted. They include general hospitals, funeral directors, and all organ procurement organizations (OPOs), eye banks and other tissue banks doing business in New York State. Also, organizations that represent the affected parties, including those who represent rural areas, are given notice of this proposal 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 Codes and Regulations Committee meeting.

JOB IMPACT STATEMENT

A Job Impact Statement is not included because the Department has concluded that the proposed regulatory amendments will not have a substantial adverse effect on jobs and employment opportunities. The basis for that conclusion is that these amendments merely clarify the obligations set forth in Section 4351 of the Public Health Law and require that they be followed and compliance documented before releasing the body to a licensed funeral director or undertaker and his/her agent. The amendments do not fundamentally change any obligations under the existing regulations.

SUMMARY OF EXPRESS TERMS

This proposal amends Section 405.13, repeals Subdivisions (b) and (j) of Section 405.22 and adds Sections 405.30 and 405.31 to Part 405 (Hospitals – Minimum Standards) of Title 10 of the Official Code of Rules and Regulations of the State of New York (10 NYCRR) particularly as they relate to organ transplant and donor services. Hospitals as referred to in Part 405 are general hospitals.

Section 405.13 of Part 405 pertains to anesthesia services. This amendment specifies that hospitals providing living liver donor transplants must also comply with the provisions contained in the newly added Section 405.31, subdivision (o) paragraph (2). Section 405.31 sets forth the living donor transplantation services provisions. Subdivision (o) of Section 405.31 outlines the living adult donor to adult recipient liver transplantation services provisions and paragraph (2) proposes the anesthesia requirements within Section 405.31.

Section 405.22 contains the critical care and special care services provisions. This measure repeals the organ transplant center and live liver transplantation services contained within Section 405.22 in subdivisions (b) and (j) respectively.

Two new sections are created in this proposal. Section 405.30 sets forth the organ and vascularized composite allograft transplant services/programs provisions. Section 405.31, as stated above, sets forth the living donor transplantation services provisions.

The organ and vascularized composite allograft transplant services/programs provisions in Section 405.30 define the terms " living donor", "organ", "organ procurement organization (OPO)", "organ trafficking", "patient", "qualified mental health professional", "qualified social worker", "recipient", "transplant center", "transplant commercialism", "transplant program", "transplant services", "transplant tourism", "travel for transplant", and "vascularized composite allograft". This section specifies general requirements for hospitals that provide transplant services, and also outlines organization and staffing and quality assessment and performance improvement (QAPI) requirements.

Section 405.31 outlines the living donor transplantation services requirements. It specifies that hospitals performing living donor transplants shall comply with the requirements of this section, section 405.30 (See above) and with subdivision (a) of Section 405.22 of this Part. Section 405.22 subdivision (a) contains the general provisions of the critical care and special care services requirements. Section 405.31 also defines a donor advocate as a person or team responsible for ensuring that the rights and interests of the living donor and the prospective living donor are protected. It sets forth donor advocate responsibilities, donor advocate requirements, education of the donor requirements, informed consent provisions, disclosure requirements, risks, primary

medical evaluation and psychosocial provisions, recipient criteria, donor management, imaging service, discharge planning and post-discharge requirements. This section contains the living adult donor to adult recipient liver transplantation services provisions and outlines the surgical team, anesthesia, postoperative care, and minimum medical and nursing staffing requirements.

EXPRESS TERMS

Pursuant to the authority vested in the Public Health and Health Planning Council and subject to the approval by the Commissioner of Health pursuant to Sections 2800 and 2803 of the Public Health Law, Section 405.13 is amended, Subdivisions (b) and (j) of Section 405.22 are repealed, and new Sections 405.30 and 405.31 are added to Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

The introductory paragraph of section 405.13 of Part 405 is amended to read as follows:

405.13 Anesthesia services.

If anesthesia services are provided within a hospital, the hospital shall develop, implement and keep current effective written policies and procedures regarding staff privileges, the administration of anesthetics, the maintenance of safety controls and the integration of such services with other related services of the hospital to protect the health and safety of the patients in accordance with generally accepted standards of medical practice and patient care. Hospitals providing living liver donor transplants shall also comply with the provisions contained in Section 405.31 (o) (2).

405.22 Critical care and special care services.

Section 405.22 of Part 405 is amended to repeal Subdivisions (b) and (j), of such section. Subdivision (b) shall read as follows:

(b) Reserved.

A new Section 405.30 of Part 405 is added to read as follows:

405.30 Organ and Vascularized Composite Allograft Transplant Services/Programs.

(a) *Definitions.* For purposes of this section, unless the context indicates otherwise, the following shall have the following meanings:

(1) *Living donor* is an individual who donates an organ or a vascularized composite allograft while alive.

(2) *Organ* means a human kidney, heart, liver, lung, pancreas, uterus, stomach, intestine, and/or any other tissue requiring revascularization and/or immunosuppression in the recipient.

(3) *Organ procurement organization* (OPO) means a facility or institution engaged in procuring organs and/or vascularized composite allografts for transplantation,

and therapy purposes, or as authorized by law for education and research but does not include:

(i) facilities or institutions which permit procurement activities to be conducted on their premises by employees or agents of an approved organ procurement organization; or

(ii) facilities or consortia of facilities which conduct transplantation activities in accordance with article 28 of this chapter when the organ is procured through an approved organ procurement organization, or from a living donor.

(4) *Organ trafficking* is the recruitment, transport, transfer, harboring or receipt of living or deceased persons or their organs by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving to, or the receiving by, a third party of payments or benefits to achieve the transfer of control over the potential donor, for the purpose of exploitation by the removal of organs for transplantation.

(5) *Patient* means either the living donor or the recipient:

(i) Adult means a patient 18 years of age or older at the time of the transplant;

(ii) Pediatric patient means a patient who has not reached his or her eighteenth birthday at the time of the transplant.

(6) *Qualified mental health professional* shall mean a psychiatrist, psychologist, or qualified social worker assigned to evaluate the potential recipient and/ or living donor.

(7) *Qualified social worker* shall mean a person who is licensed and registered by the State Education Department to practice as a licensed master social worker (LMSW) or licensed clinical social worker (LCSW), within the scope of practice defined in Article 154 of the Education Law.

(8) *Recipient* is an individual who receives transplanted organs, or a vascularized composite allograft.

(9) *Transplant center* means a unit within a hospital that performs transplants, including but not limited to activities such as qualifying patients for transplant, registering patients on the national wait list, performing transplant surgery and providing care before and after transplant. A transplant center may include one or more transplant programs.

(10) *Transplant commercialism* is a policy or practice in which an organ is treated as a commodity, including being bought, sold, or used for material gain.

(11) *Transplant program* means the persons or entity that provides organ specific transplant services within a transplant center.

(12) *Transplant services* means the provision of organ, living donor and or vascularized composite allograft transplants and other medical and surgical specialty services required for the care of transplant recipients and living donors.

(13) *Transplant tourism* is travel for transplant that involves organ trafficking and/or transplant commercialism.

(14) *Travel for transplant* is the movement of organs, vascularized composite allografts, donors, recipients, or transplant professionals who travel across jurisdictional borders for transplant purposes.

(15) *Vascularized composite allograft* means a contiguous segment of mixed allogeneic tissues whose relationships have been altered only at the segment boundaries and whose transplantation requires revascularization and/or immunosuppression in the recipient. Vascularized composite allografts include, but are not limited to, hand, face, and other such contiguous segments.

(b) *General requirements.* Hospitals shall not admit patients for transplantation services unless the hospital is specifically approved by the Department to provide transplant services. Transplant services for pediatric patients shall only be provided in a hospital approved by the Department to provide transplant services. Hospitals that provide pediatric transplant services must comply with subdivision (a) of Section 405.22 of this Part and must develop and adhere to written policies and procedures specific to pediatric patients.

In addition, the following standards apply to all transplant centers and programs:

(1) Transplant services, or any new Institutional Review Board (IRB) approved medical/surgical treatments which require the expertise of transplant medical/ surgical care including but not limited to transplant immunology, shall be performed only in hospitals approved by the department to perform such transplant services.

(2) The hospital shall be a member of the Organ and Procurement and Transplantation Network (OPTN) approved by the Secretary, U.S. Department of Health and Human Services (HHS) and shall abide by its rules and requirements.

(3) When fully operational, to ensure quality of care, the hospital shall perform at least 10 liver transplants per year if an approved liver, transplant program, or at least 10 human heart transplants if an approved heart transplant program, or at least 10 kidney

transplants a year if an approved kidney transplant program, or at least 10 lung transplants per year if an approved lung transplant program. The department will monitor outcomes for graft and patient survival.

(4) The hospital shall participate in a patient registry program with an organ procurement organization designated by the Secretary of the U. S. Department of Health and Human Services. Each facility performing transplant services shall inform a patient awaiting transplantation of the prohibition against being placed on multiple facility waiting lists within New York State before arranging for the placement of the patient on the waiting list.

(5) Every hospital performing transplant services shall maintain written criteria for the selection of patients for such services which shall be consistent with professional standards of practice, applied consistently, and made available to the public.

(6) The hospital shall maintain a record of:

(i) all patients who are referred for transplantation and the date of their referral;

(ii) the results of the evaluation of all candidates for transplantation which documents the reasons a candidate is determined to be either suitable or unsuitable for transplantation;

(iii) the psychosocial evaluation;

(iv) the date a suitable candidate is selected for transplantation;

(v) the reasons for, and date of, any declination of a matching organ or vascularized composite allograft offered to a potential recipient;

(vi) the date the transplantation surgery occurred;

(vii) documentation of donor and recipient blood type;

(viii) the donor's United Network for Organ Sharing (UNOS) identification number; and

(ix) the organs or vascularized composite allografts utilized;

(7) The hospital will ensure that appropriate informed consent is obtained from both the recipient and the donor. The process for obtaining such consent shall include the provision of information, at a minimum of the following:

(i) the evaluation process used to determine suitability for transplant;

(ii) the surgical procedure including the post-operative period;

(iii) the availability of alternative treatments;

(iv) organ donor risk factors that could affect the success of the graft or the health of the patient, including, but not limited to, the donor's history, condition or age of the organs or vascularized composite allografts used, and the recipient's potential risk of contracting the human immunodeficiency virus (HIV) and other infectious diseases if the disease cannot be detected in an infected donor;

(v) if applicable, providing adequate information to the recipient to ensure his or her understanding regarding the risks to the living donor;

(vi) potential medical and psychosocial risks;

(vii) the national and transplant center outcomes for recipients;

(viii) the patient's right to refuse transplantation, or to refuse to be a donor; and

(ix) the effect that provision of transplant services provided in a facility not approved as a Medicare-approved transplant center could have on the recipient's ability to have his or her immunosuppressive drugs paid for under Medicare Part B.

(8) The hospital must utilize an organized system for follow-up of patients after discharge, including maintenance of records on the long-term survival of persons who have received a transplant or who have made a living donation. Transplant centers must follow the health of each donor for at least two years post-donation.

(9) The hospital shall ensure that written procedures are maintained and implemented for the receipt, identification, and verification of all organs and vascularized composite allografts for transplantation.

(10) The hospital shall develop and maintain written infection control policies and procedures specific to the transplant services as an integral part of the hospital's infection control program.

(11) The hospital shall ensure that the infection control program utilizes sufficient professional and laboratory resources to address transplant-related transmissible infections, including discovery, identification and management of complications from organisms associated with transplants whether commonly or uncommonly encountered.

(12) Each transplant center shall develop and implement a policy that establishes its formalized process of communication with OPOs, center's clinical staff, the department and as appropriate, local/city departments of health with regard to suspected and confirmed donor disease transmission. This policy shall include:

(i) identification of a patient safety contact, with coverage so that there is a person available on a 24 hour, 7 days a week, 365 days a year basis, to be the primary contact for possible disease transmission events;

(ii) a procedure to promptly contact the OPO that recovered the organ whenever a suspected disease transmission has occurred;

(iii) prompt communication and documentation after awareness of the suspected transmission;

(iv) identification of an infectious disease resource to be available to them to assist in the evaluation of a potential disease transmission; and

(v) notification and documentation to the program director or designee, of the transplant program, and mechanisms to ensure that the information is acted upon in a timely manner.

(13) Every transplant center shall develop and implement a policy on travel for transplant including, transplant tourism, transplant commercialism and organ trafficking. At a minimum, such policy shall include:

(i) a requirement that the transplant team inform all potential donors and recipients of the state and federal laws prohibiting the sale of organs or vascularized composite allografts;

(ii) a requirement that the medical risks of receiving an organ or vascularized composite allografts in a foreign country, in particular, the risk of infectious disease transmission to and from the recipient, are explained to the potential recipient;

(iii) patient education regarding transplant tourism including the ethical and safety concerns, such as poor communication and documentation regarding the transplant from the foreign transplant center, which can contribute to post-operative complications.

(iv) information that participation in transplant commercialism and or organ trafficking may violate the laws of the countries involved as well as international treaties or conventions; and

(v) obtaining a written attestation from the living donor attesting that the donor has not received anything of value in exchange for the donation, aside from reimbursement for expenses associated with the donation to the extent allowed by New York State and

US federal law. The recipient must also attest in writing that he or she has not offered and is not aware of any offers of valuable consideration to the donor for their donation, except as allowed by New York State or US federal law.

(14) Transplant centers that provide liver transplant services must join and be a member in good standing of a recognized consortium organization providing quality assurance, peer review, data sharing, and best practices collaboration activities for liver transplant services. If such a consortium(s) exists for other transplant services, such as heart or kidney, transplant centers must join the appropriate organization relevant to the transplants it performs and be a member in good standing.

(15) Review and Approval. Site visits to and/or data and record reviews from existing and prospective new transplant centers by the department, or other designees of the commissioner shall be made as deemed appropriate by the department, as an adjunct to initial approval and/or for consideration of continued approval. Such site visits and reviews shall include, but not be limited to evaluation of data, review of service-specific quality of care, and compliance with minimum standards as set forth in this section.

(16) Closure.

(i) Failure to meet one or more statutory or regulatory requirements or inactivity in a program for a period of 12 months or approval to serve as a transplant center.

(ii) Voluntary closure. The hospital must give written notification, including a closure plan acceptable to the department at least 60 days prior to planned discontinuance

of transplant services. No transplant service shall discontinue operation without first obtaining written approval from the department.

(17) Notification of significant changes. A hospital must notify the department in writing within 7 days of any significant changes in its transplantation services including, but not limited to: (a) any temporary or permanent suspension of services, (b) departure of or change in the physician program director, (c) unavailability of the transplant surgeon or physician of more than 15 days, if a program is without a physician credentialed to perform one or more of the procedures or services of the transplant service as a result of such unavailability, or (d) inability to meet workload requirements.

(18) Data collection and reporting. Data and other governmental and accrediting body reports shall be maintained and made available to the Department upon request.

(c) *Organization and staffing.*

(1) The director of the transplant center, in addition to the requirements in paragraph (1) of subdivision (a) of section 405.22 of this Part, shall be a qualified specialist with previous experience and demonstrated competence in the transplant service. The director is responsible for planning, organizing, conducting, and directing the transplant center and must devote sufficient time to carry out these responsibilities including, but not limited to overseeing the transplant center's quality assurance and performance improvement (QAPI) program.

(2) Each transplant center shall have on-site a qualified transplant physician and a qualified transplant surgeon who may also fulfill the requirement as director of the service.

(3) The hospital shall provide a clinical transplant coordinator and sufficient staff to coordinate the activities of the transplant center, including patient follow-up after discharge. The clinical transplant coordinator shall be a registered professional nurse, registered physician assistant, or nurse practitioner, licensed and currently registered or certified to practice in New York State.

(4) The hospital shall ensure that all staff members providing transplant services are prepared for their responsibilities through ongoing education, experience, demonstrated competence and completion of in-service education programs as needed.

(5) From admission to discharge, patient care evaluation, planning and management shall be performed by a multidisciplinary care team involved with the care of the patient; (which includes, at a minimum physicians; both medical and surgical, nursing, social services, the clinical transplant coordinator, nutrition services as needed and pharmacy as needed), and shall include plans for post discharge follow-up of the patient. The patient and, as appropriate, the patient’s family shall be involved and have input into the patient’s care plan.

(6) The transplant center shall make available nutritional assessments and diet counseling services to all transplant recipients and donors.

(7) The transplant center shall make psychiatric and social services available to patients to assist with psychosocial problems of the patients, as it relates to the donation, and to allow them to participate as members of the health care team responsible for the patient's care. Such professionals shall be skilled in individual and family counseling, shall understand the entire donation and transplantation process, and be able to provide information on financial issues and community resources.

(d) *Quality assessment and performance improvement (QAPI) programs.*

(1) The transplant center must develop, implement and maintain a written, comprehensive, data driven QAPI program to monitor and evaluate performance of all transplantation services, including services provided under contract or arrangement;

(2) The transplant center's QAPI program must use objective measures to evaluate the center's performance with regard to transplantation activities and outcomes. Outcome measures may include, but are not limited to: patient and donor selection criteria, accuracy of the waiting list in accordance with the Organ Procurement Transplantation Network (OPTN) waiting list requirements, accuracy of donor and recipient matching, patient and donor management, techniques for organ and vascularized

composite allograft recovery, consent practices, patient education, patient satisfaction, and patient rights;

(3) The transplant center must take actions that result in ongoing performance improvements and track performance to ensure that improvements are sustained;

(4) A transplant center must establish and implement written policies to address and document adverse events that occur during any phase of an organ or vascularized composite allograft transplantation case;

(5) The policies must address, at a minimum, the process for the identification, reporting, analysis, and prevention of adverse events;

(6) The transplant center must conduct a thorough analysis of and document any adverse event and must utilize the analysis to effect changes in the transplant center's policies and practices to prevent repeat incidents.

(e) *Organ and vascularized composite allograft acceptance criteria.*

(1) In consultation with an organ procurement organization, the hospital shall develop and uniformly apply organ and vascularized composite allograft acceptance criteria and establish written policies and procedures to ensure the medical suitability of organs and vascularized composite allografts to be transplanted. Hospitals shall also develop and

uniformly apply acceptance criteria for living donors. Such acceptance criteria shall be consistent with professional standards of practice, and shall ensure that the living donor is at least eighteen (18) years of age at the time of the initial living donor evaluation. Specific medical conditions of the donor shall be determined by the transplant surgeon through the donor's medical history, appropriate clinical laboratory testing and other confirmation methods and must be documented in the recipient's medical record. An emancipated minor as defined in Public Health Law Section 2504 may be considered for a living donation in the case of a living donation from an emancipated minor parent to his or her child.

(2) Written organ and vascularized composite allograft acceptance criteria shall be specific for each type of organ or vascularized composite allograft and shall describe those medical conditions and circumstances which would make the potential donor ineligible.

(3) Written organ and vascularized composite allograft acceptance criteria shall describe those medical conditions for which medical discretion may be exercised. The potential recipient will be fully informed of the risks and benefits of that the particular solid organ or vascularized composite allograft.

A new Section 405.31 of Part 405 is added to read as follows:

Section 405.31 Living donor transplantation services.

Hospitals performing living donor transplants shall comply with the requirements of this section, section 405.30 and with subdivision (a) of Section 405.22 of this Part. In addition, the following standards apply to all living donor transplant services:

(a) Definition.

(1) *Donor advocate* is a person or a team responsible for ensuring that the rights and interests of the living donor and the prospective living donor are protected.

(b) *Donor advocate responsibilities.* A donor advocate shall be established for any living donor transplantation program. The transplant program shall, as appropriate, consult with an ethicist, and a psychiatrist or other qualified mental health professional, as defined in Section 405.30 (a)(11) of this Part; (Discuss) The donor advocate's primary responsibility is to support the donor, beginning with the donor evaluation process and continuing through donation, the postoperative period, and discharge, and to ensure that there are appropriate referrals for post discharge care. The advocate shall assist the donor in making informed decisions and balancing external/family pressures to donate. The advocate must evaluate the donor and make a recommendation concerning donor suitability and ensure that the needs of the donor are fulfilled promptly and in accordance with best medical practice. The advocate shall:

(1) Structure the process of informed consent;

(2) Safeguard the interests and well being of the donor;

(3) Explain the evaluation process, what to expect, what it means to be a donor;

(4) Verify that such living donor is at least 18 years of age at the time of the initial transplant evaluation related to the transplant procedure or is an emancipated minor donating to his or her child;

(5) Ensure all decisions made by the donor are informed and not coerced by:

(i) evaluating whether there is monetary or property enrichment for the donor, and ensuring the donor signs an attestation as specified in Paragraph (4) of this subdivision ;

(ii) evaluating whether there is overt coercion to donate by family or others;

(iii) assessing the donor's intellectual and emotional capability of participating in a balanced discussion of potential risks and benefits;

(iv) providing information to the donor about the medical, psychosocial, and financial implications of the living donation for the potential donor and about the recipient's options for deceased donation transplant, including risks and outcomes;

(v) ensuring the donor understands that he or she may decline to donate at any time prior to his or her surgery; and

(vi) if requested by the donor, assisting the donor in the preparation of a general statement of unsuitability for donation, which shall not include falsified medical information.

(6) consult with the surgical team regarding donor suitability before issuing a formal recommendation;

(7) transmit donor advocate findings in writing to the surgical team. The transmittal shall include the reasons for the donor advocate's recommendation. The final determination of donor suitability rests with the attending surgeons of the surgical team;

(8) The potential donor will be advised of the donor advocate's recommendation. At least one attending surgeon and, the donor advocate shall make themselves available to the potential donor upon his or her request to discuss the donor advocate's recommendation; and

(9) assure there is continuity of care during hospitalization and assure that there are appropriate referrals for post-discharge care.

(c) *Donor Advocate requirements.*

(1) Such donor advocate or, in the case of multiple members of a donor advocate team, at least one member of the donor advocate team must not participate in the care of transplant recipients. The advocate's interests shall be centered on the well being of the living donor.

(2) The donor advocate shall not receive any direct or indirect benefit from recommending continuation of the donor's participation.

(3) The status of the donor advocate at the transplant center may not be affected by recommending for or against donation.

(4) The donor advocate shall be medically sophisticated in transplantation and aware of relevant statistics such as center volume and outcome data, and be able to explain such information to the potential donor.

(5) The donor advocate shall have sufficient preparation in his or her role to recommend that a specific donor is or is not a candidate for living donation.

(6) The donor advocate shall have a comprehensive working knowledge of living donor transplantation.

(d) Education of the donor.

In order to ensure that the potential donor advocate has the knowledge and capacity to exercise informed consent, the advocate shall do the following:

(1) thoroughly evaluate the intellectual and emotional capacity of the potential donor to exercise legally and ethically adequate informed consent as described in paragraph (c) of this subdivision;

(2) devise a process appropriate for each individual potential donor to inform him or her orally and in writing about the risks and benefits of medical interventions;

(3) evaluate whether there is a thorough understanding of the elements of the decision;

(4) evaluate whether the potential donor's decision is voluntary;

(5) inform the potential donor that the donor advocate may recommend against donation and that the advocate's recommendation will be given significant consideration in the surgical team's decision. The reasons for the advocate's decision shall be explained to the donor; and

(6) advise the potential donor of the opportunity to discuss donation with others who have donated in the past and assist in making arrangements to do so, if requested by the donor.

(e) *Informed Consent.* A person who gives consent to be a living donor shall be competent, willing to donate, free from coercion, medically and psychosocially suitable, fully informed of the risks and benefits as a donor, fully informed of the risks, benefits and any alternative treatments available to the recipient, at least eighteen (18) years of age at the time of the initial donor's evaluation related to the transplant procedure, and be likely to benefit in a way not involving the transfer of money or

property in connection with the donation, other than reimbursement of donation-related expenses as allowed by law. Informed consent shall include:

(1) informed understanding:

(i) all information shall be presented to the potential donor in a language or manner understandable to him or her, consistent with his or her education level;

(ii) The potential donor shall be given the opportunity and adequate time to assimilate the information provided, ask questions and have questions answered;

(iii) The donor shall identify the family and loved ones who shall be given the opportunity to discuss openly with the donor advocate and the surgical team their concerns in a safe and non-threatening environment; and

(iv) The potential donor shall be informed with regard to the need for postoperative, long-term follow-up and testing by the transplant center. The need and importance for long term follow-up and annual primary care shall also be provided to the donor.

(f) *Disclosure Requirements.*

(1) The donation process shall be explained to the potential donor. This explanation shall address, at a minimum:

(i) donor evaluation procedure;

(ii) surgical procedure;

(iii) recuperative period;

(iv) short and long term follow-up care;

(v) alternative donation and transplant procedures;

(vi) potential psychological benefits and detriments to the donor;

(vii) transplant center and surgeon specific statistics of donor and recipient outcomes;

(viii) confidentiality of the donor's information and decision;

(ix) donor's ability to opt out at any point in the process up to the time of surgery; and

(x) information about how the transplant center will follow the health of the donor for at least ten years post donation.

(2) The transplant team and the donor advocate shall disclose their institutional affiliations to the potential donor.

(g) *Risks.* Risks shall be fully explained to the potential donor. The explanation shall include:

(1) Physical;

(i) potential for surgical complications including risk of donor death;

(ii) potential for organ failure and the need for transplantation,

(iii) potential for other medical complications including long-term complications;

(iv) scars;

(v) pain;

(vi) fatigue;

(vii) abdominal and/or bowel symptoms such as bloating and nausea;

(2) Psychosocial

(i) potential for problems with body image;

(ii) possibility of recipient death;

(iii) possibility of recipient rejection and need for retransplantation;

(iv) possibility of recurrent disease in the recipient;

(v) possibility of adjustment disorder post surgery;

(vi) possible impact on donor's family;

(vii) possible impact on recipient's family; and

(viii) potential impact of donation on the donor's lifestyle.

(3) Financial.

(i) out of pocket expenses;

(ii) possible loss of employment;

(iii) potential impact on ability to obtain future employment;

(iv) potential for disability benefits and need for assistance completing relevant paperwork; and

(v) possible impact on ability to obtain health and life insurance.

(4) Documentation. The entire disclosure and consent process shall be documented in the donor's medical record, which shall be maintained separate and distinct from the recipient's medical record. The donor shall sign a document attesting that the donor has not received anything of value in exchange for the donation, aside from reimbursement for expenses associated with the donation to the extent allowed by New York State or federal law. The recipient will also sign a document attesting that he or she has not offered to the donor, nor is aware of any offer or provision to the donor of anything of value in exchange for the donation, aside from reimbursement for expenses associated with the donation to the extent allowed by New York State or federal law.

(h) *Primary Medical Evaluation.* A medical evaluation of the potential donor shall be made by an appropriate medical physician. Appropriate laboratory and imaging studies shall be done. Additionally, the following shall also be assessed:

(1) compatibility of the potential donor to the recipient;

(2) general health of, and surgical risk for, the potential donor;

(3) co-morbidities and significant medical conditions that impact the potential donor's suitability;

(4) the potential donor's vulnerability to infection, blood loss, or delayed wound healing; and the potential donor's personal and family medical history.

(i) *Psychosocial.*

(1) A psychosocial evaluation of the potential donor shall be made by the qualified mental health professional, as defined in Section 405.30 (a) (11) of this Title. The evaluation shall include, but not be limited to: consideration of the donor's current and past history of: any psychiatric illness, physical abuse, sexual abuse, alcohol abuse, and substance abuse.

(2) Social work services shall be provided in accordance with Section 405.28 of this Part as well as any additional requirements established in this subdivision.

(j) *Recipient Criteria.* The transplant center must establish written policies and procedures governing recipient eligibility for living donation. At a minimum, such policies and procedures shall:

(1) ensure the patient meets the center's written eligibility criteria as specified in paragraph (5) of subdivision (b) and subdivision (e) of Section 405.30 of this Part;

(2) ensure the recipient has received information regarding specific risks and benefits, alternative treatments and expected outcome of the transplantation;

(3) establish conditions which require recipient exclusion; and

(4) ensure that the benefits to both the donor and the recipient outweigh the risks before any living transplant is performed.

(k) *Donor Management.*

(1) The donor surgeon shall have the primary responsibility for the donor's care and welfare throughout his or her hospital stay.

(i) The donor surgeon is responsible for making the final determination regarding a donor's suitability after reviewing and considering the donor's medical, psychological, and social history; the donor's current medical, psychological and social status; the recommendation of the donor advocate, all consultative reports; and the standards set forth in this subdivision.

(ii) If the donor surgeon decides to proceed with a donation after receiving an adverse recommendation from the donor advocate, the surgeon shall document the reasons for doing so in the patient's medical record.

(l) *Imaging Service Requirements.*

Hospitals performing living donor transplantation shall have adequate imaging services and staff support appropriate to evaluate recipients and living donors. Radiologists with experience in interventional procedures (angiography) and ultrasound imaging studies in the living donor and recipient, must be available at all times including weekends and holidays. If there is an emergent complication requiring imaging services, these patients should be prioritized for access to such imaging services by the hospital.

(m) *Discharge Planning Requirements.*

The hospital shall comply with the discharge planning requirements contained in Section 405.9 of this Part as well as the following:

(1) The donor advocate shall be available to the donor from pre-admission to post-discharge.

(2) A detailed, written discharge plan shall be developed, given to the donor and provided to all health care professionals involved in the donor's case, including the donor's primary care physician.

(3) This plan shall be reviewed with the donor by a health care professional such as a registered professional nurse, Qualified Social Worker or transplant coordinator.

(4) The plan shall include, at a minimum, instructions on:

(i) activities;

(ii) diet;

(iii) medication for pain; and

(iv) wound care.

(5) The patient shall be provided with a 24-hour contact number that he/she can call with questions. The responder shall be available when needed and knowledgeable about living donation.

(6) Information shall include the name, address and telephone number of the surgeon and instructions for the follow-up visit.

(7) Instructions for family members or caregivers shall be provided.

(n) *Post-Discharge Requirements.*

(1) Medical follow-up shall meet generally accepted standards for someone who has undergone a major transplantation procedure. This follow-up shall include:

(i) postoperative visits with the donor's surgeon(s);

(ii) follow-up coordinated with the donor's primary care physician to assess wound healing and to monitor for signs/symptoms of infection;

(iii) laboratory studies as appropriate; and

(iv) a written summary of the donor's condition, which shall be provided to the donor and his or her primary care physician upon the donor's discharge from the hospital.

(2) The hospital shall provide or arrange for follow-up social/psychological supports directly related to the donation as needed, which may include measure such as:

(i) visits with a social worker familiar with organ transplantation issues;

(ii) visits with a psychologist or psychiatrist familiar with organ transplantation issues;

(iii) participation in a professionally run support group

(iv) participation in a center sponsored computer donor listserve or bulletin board to share patient concerns; and

(v) invitation to a donor recognition event, such as an annual recognition ceremony or presentation of a donor medal.

(3) Donors shall be informed of the option to discuss financial/insurance concerns with the transplant center's financial coordinator.

(4) Hospitals shall report to the department such information as the department shall require to assist the department in assessing the quality of care provided; determining routine or unusual complications or outcomes, and identifying potential improvements to donor education, screening, consent, preoperative, surgical and postoperative care and follow-up. Such information shall include, but not be limited to:

(i) donor demographics;

(a) preoperative medical and psychosocial information;

(b) surgical information and complications;

(c) hospital staff training and experience,

(d) recipient outcome; and

(e) immediate and long-term postoperative care, complications, and impact on quality of life.

(5) Hospitals shall track the donor and his or her condition for at least ten years post donation in accordance with the provisions set forth in Section 405.30 (b) (8) of this Part.

o) *Living Adult Donor to Adult Recipient Liver Transplantation Services.*

(1) Surgical Team Requirements:

(i) At least two liver transplant attending surgeons with experience as established in subparagraph (v) of this paragraph shall participate in the surgery of the donor. These two surgeons shall be present for the critical parts of the surgery including the live parenchymal transection. They both shall be available and scrubbed if needed for complications, however, only one surgeon need be present for the remainder of the donor operation.

(ii) A third liver transplant attending surgeon shall be present in the recipient operating room. This surgeon must have experience in deceased liver transplantation.

(iii) All three surgeons shall be board certified or board admissible in general surgery or have foreign certification determined to be equivalent by the New York State Department of Health.

(iv) All three surgeons shall have demonstrated experience in liver transplant surgery.

(v) (As per new pending UNOS requirements) Except as provided in clause (f) below, 1 of the 2 surgeons must demonstrate experience as the primary surgeon or first assistant in 20 major hepatic surgeries (to include living donor hepatectomies or major hepatic resections), 7 of which must have been live donor hepatectomies within the prior 5 year period. The other of the 2 surgeons must be either a liver transplant surgeon or hepatabiliary surgeon practicing at a transplant hospital and must have performed at least 20 major liver resections within the prior 5 year period. Both of the surgeons must be available during the donor hepatic resection.

(2) Anesthesia Requirements;

(i) There shall be two separate attending anesthesiologists; one each for the living adult liver transplantation donor and recipient operations. These anesthesiologists

shall be present for the critical anesthetic and surgical portions of the procedures and immediately available at all other times. As one case is completed, either anesthesiologist may take responsibility for the ongoing case. The anesthesiologists shall have experience in liver transplant anesthesia and/or major hepatic resection surgery and/or cardiac surgery anesthesia;

(ii) There shall be two separate anesthesia teams in two operating rooms (one for the donor, one for the recipient); and

(iii) These teams shall each be directed by a separate attending anesthesiologist for the living donor and the recipient procedure. In addition to the attending anesthesiologist who shall be present as specified in clause (a) above, at least one member of the anesthesia team who is an anesthesiologist, chief resident, fellow (postgraduate year 3, 4, or 5), and/or qualified certified registered nurse anesthetist shall be present and responsible, under the direction of the attending anesthesiologist, for the evaluation and care of the patient through all phases of the procedure pertaining to the administration of, and recovery from, anesthesia. All team members shall have ongoing education and training in liver and/or cardiac surgery and have had anesthesia responsibility for major liver resections.

(3) Postoperative Care Requirements. Donors shall receive postoperative care consistent with the following:

(i) Day 0-1: Living adult liver donors shall receive intensive care (ICU or PACU) for at least 24 hours, at a minimum;

(ii) Day 2: If stable and cleared for transfer by the transplant team after the first 24 hour period, donors shall be cared for in a hospital unit that is dedicated to the care of transplant recipients or a hospital unit in which patients who undergo major hepatobiliary resectional surgery are cared for. Living liver donors may be cared for on another unit if a specific medical condition of the donor warrants such a transfer and the transfer is documented in the donor's medical record;

(iii) The donor shall be evaluated at least daily by one of the qualified liver transplant attending physicians with documentation in the medical record;

(iv) The transplant team shall be responsible for the pain management of the donor. In institutions where a pain management team is available, the transplant team may delegate its responsibility to this team. However, there shall be a written protocol in place for assessment and management of donor pain;

(v) The patient care staff shall be familiar with the common complications associated with the donor and recipient operations and have appropriate monitoring in place to detect these problems should they arise; and

(vi) If there is an emergent complication requiring reoperation, these patients shall be prioritized by the hospital for access to the operating room by the institution.

(4) Minimum Medical Staffing Requirements.

(i) There shall be a 24-hour, seven day-a-week continuous coverage of the transplant service by general surgery residents at the postgraduate year 2 level or higher, transplant fellows, nurse practitioners or physician assistants. Between the hours of 6 p.m. and 8 a.m. on weekdays and at all times on the weekends and holidays, the covering residents, fellows, nurse practitioners, or physician assistants should be dedicated to the transplant service and not covering other surgical or nonsurgical patients. An attending transplant surgeon shall be available immediately as a resource for the residents, fellows, nurse practitioners or physician assistants at all times.

(ii) Any patient with abnormal vital signs or unusual symptoms shall be evaluated immediately. Notification to the appropriate senior medical staff member (fellow, chief resident, attending) shall be made in accordance with written hospital policy and procedures and in no case no more than 30 minutes after abnormal vital signs or unusual symptoms have were first observed.

(5) Nursing Minimum Staffing Requirements.

(i) Nursing staff shall have ongoing education and training in live donor liver transplantation nursing care (donor and recipient). This shall include education in the

pain management issues particular to the donor. The registered professional nursing ratio shall be at least one registered professional nurse for every two patients (1:2) in the ICU/PACU level setting, increased as appropriate for the acuity level of the patients.

(ii) After the donor is transferred from the ICU/PACU, the registered professional nursing ratio shall be at least 1:4 on all shifts, increased as appropriate for the acuity level of the patients

(iii) The same registered professional nurse shall not take care of both the donor and the recipient.

(iv) The nursing service shall provide the potential donor with pre-surgical information.

(v) The names and contact numbers of the transplant team shall be posted on all units receiving transplant donors.

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

April 5, 2012

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Diagnostic and Treatment Center – Construction **Exhibit #3**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	121076 C	Institute for Urban Family Health/Sidney Hillman Center (New York County)	Contingent Approval

Public Health and Health Planning Council

Project # 121076-C
Institute for Urban Family Health/Sidney Hillman Center

County: **New York (New York)**
Purpose: **Construction**
Program: **Diagnostic and Treatment Center**
Submitted: **February 9, 2012**

Executive Summary

Description
The Institute for Family Health (IFH), an existing not-for-profit corporation and federally-qualified health center (FQHC) network founded in 1983, requests approval to relocate its existing health center known as The Family Health Center at North General. The center will be moved from 1879 Madison Avenue, Harlem, to 1824 Madison Avenue, Harlem.

This CON amends and supersedes CON #111539-C, which was contingently approved on October 27, 2011 as an administrative review. The original project cost under CON #111539-C was $14,726,223. As the cost has risen to $25,729,905, it is above the threshold for an administrative review and must be processed as a full review before the Public Health and Health Planning Council. The applicant has already begun construction on the facility, per the construction start letter issued in January 2012 for CON #111539-C.

The building was purchased on June 30, 2011 by IFH Properties, LLC, a Delaware-based not-for-profit, and will be leased back to IFH. IFH Properties, LLC is a subsidiary entity whose sole member is IFH. The Department of Health and the Federal Bureau of Primary Care, along with IFH, agreed that the facility would have to be moved within a two-year period from the original opening date in July 2010 and at such time as the facility was able to obtain significant financial support from a HEAL 19 grant in order to facilitate the process. As the facility has been awarded the HEAL 19 grant, the facility is now applying to move the current operations.

Total project costs are estimated at $25,729,905.

DOH Recommendation
Contingent approval.

Need Summary
IFH operates 17 full-time health centers and 9 part-time centers, through its Section 330 community health center grant program. Currently, the applicant provides the following services: comprehensive primary care, pediatrics, podiatry, OB/GYN, dental, mental health, HIV clinic, rehabilitation medicine, gastroenterology, cardiology, neurology, urology, dermatology and ophthalmology; it also operates a nearby school-based health center.

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 $380,951 in accumulated funds, a $15,200,000 HEAL 19 grant, a $4,200,000 grant from NYC Economic Development Corp and $5,948,954 from New Market Tax Credits.

Budget:		
	Revenues:	*$ 15,440,000*
	Expenses:	*15,149,000*
	Gain/(Loss):	*$ 295,000*

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 renovation of 28,483 SF of an existing 5-story office building with a cellar. An addition totaling 7,342 SF will be added to the second through fifth floors above the roof of the first floor.

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 forty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed building lease that is acceptable to the Department. [BFA]
3. Submission of an executed New Market Tax Credit financing document that is acceptable to the Department. [BFA]

Approval conditional upon:

1. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
2. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
3. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
4. The clinical space must be used exclusively for the approved purpose. [HSP]
5. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
6. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
7. The applicant shall complete construction by December 31, 2014. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval, and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

State Council Recommendation
April 5, 2012

Need Analysis

Background

The Institute for Family Health, a federally qualified health center (FQHC), requests approval to relocate an extension clinic from 1879 Madison Avenue in Harlem to a new facility that is three blocks away at 1824 Madison Avenue.

The Institute for Family Health operates 17 full-time health centers and 9 part-time centers through its section 330 community health center grant program. It is fully accredited by the Joint Commission on Accreditation of Health Care Organizations and certified as a Level 3 NCQA Patient Centered Medical Home.

The current extension clinic is located at North General Hospital (which closed on June 30, 2010). The services currently provided at 1879 Madison Avenue will be moved to the new site at 1824 Madison Avenue.The Institute received a HEAL 19 grant to facilitate the proposed relocation on June 30, 2011.

The majority of patients currently served by the North General extension clinic are from Central and East Harlem. Both of these areas are designated as medically underserved areas and health professional shortage areas.

The services currently provided at 1879 Madison Avenue will be moved to the new site at 1824 Madison Avenue.

The Institute accepts all patients regardless of income, age, sex, or race.

Analysis

Facility Visit Volume

Description	Current Year	1st Full Year of Project	3rd Full Year of Project
Primary Care	12,527	23,919	28,714
Pediatrics	2,530	4,830	5,798
Podiatry	880	1,680	2,017
Gynecology/Prenatal	3,960	7,560	9,075
Dental	2,374	4,533	5,442
Mental Health Clinic	6,809	13,000	15,606
HIV Clinic	3,630	6,930	8,319
Rehab Medicine	314	600	720
Gastroenterology	367	700	840
Cardiology	314	600	720
Neurology	157	300	360
Urology	210	400	480
Dermatology	157	300	360
Ophthalmology	262	500	600
Total	*34,491*	*65,852*	*79,051*

The Institute for Family Health at North General offers primary care, mental health, and dental services for adults and children, as well as a number of specialties mentioned above. Since the Institute assumed operation of the clinic at the North General site, in 2010, it has provided 34,491 visits in total, including primary care, dental, mental health and specialty services. As previously noted, the vast majority of patients served come from the neighborhoods of Central Harlem and East Harlem. Central Harlem comprises 30 census tracts, all of which are Medically Underserved Areas (#02390) and Health Professional Shortage Areas. East Harlem comprises 25 census tracts, 24 of which are Medically Underserved Areas (#02388) and 25 of which are Health Professional Shortages Areas. In addition to North General, three federally qualified health centers provide services in Central and East Harlem: Helen B. Atkinson Health Center, Boriken Neighborhood Health Center, and Settlement Health Center. The community is also served by Mount Sinai, Harlem Hospital Center, and Metropolitan Hospital Center. Despite these resources, more than one quarter of residents in the community – or approximately 65,000 people – report not having a doctor and roughly 13% - or about 38,000 people – reported being in need of care but not receiving it. Further, approximately 10% of residents – nearly 26,000 people – went without health insurance at some time during the past year.

Recommendation
From a need perspective, approval is recommended.

Programmatic Analysis

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.

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

Recommendation
From a programmatic perspective, approval is recommended.

Financial Analysis

Total Project Cost and Financing
Total project cost for land and building acquisition, renovation and demolition, and the acquisition of moveable equipment, is estimated at $25,729,905, broken down as follows:

Land Acquisition	$259,448
Building Acquisition	3,340,552
Renovation & Demolition	13,303,529
Design Contingency	1,368,199
Construction Contingency	1,878,577
Architect/Engineering Fees	1,000,000
Construction Manager Fees	1,460,957
Other Fees (consultant)	775,515
Moveable Equipment	2,071,368
Telecommunications	155,250
CON Processing Fees	1,250
Additional CON Processing Fees	115,260
Total Project Cost	$25,729,905

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

The applicant's financing plan appears as follows:

Equity	$380,951
HEAL19 Grant	15,200,000
NYC Economic Development Corp	4,200,000
New Market Tax credits	5,948,954

Construction on the project has already begun based on the approval of CON 111539, which is amended and superseded by this project. Construction began in January 2012.

Asset Purchase Agreements

The change in ownership of real estate will be effectuated in accordance with the terms of the Asset Purchase Agreement, summarized below:

Date:	March 2, 2012
Seller:	The institute for Family Health
Purchaser:	IFH Properties, LLC
Assets Transferred:	Land, Building and Premises known as the annex, located at 1824 Madison Avenue, Harlem, NY
Liabilities Assumed:	None
Purchase Price:	$3,774,000
Payment Of Purchase Price:	In full at closing through wire transfer.

Lease Agreement and Medicaid Capital Reimbursement

Facility occupancy is subject to an executed lease agreement, the terms of which are summarized as follows:

Date:	March 2, 2012
Premises:	1824 Madison Avenue, New York, NY
Lessor:	IFH Properties, LLC
Lessee:	The Institute for Family Health
Term:	30 year
Annual Rental:	Years 1-2 $355,000, Years 3-5$ 356,000, Year 6 $357,000, Year 7 $992,000, Year * $1,609,000, Year 9-10 $1,610,000, Years 11-12 $1,611,000, Years 13-15 $1,612,000, Years 16-17 $1,613,000, Years 18-19 $1,614,000, Years 20-21 $1,615,000, Year 22 $1,616,000, Years 23-24 $1,617,000, Year 25 $1,618,000 and Years 26-30 $1,619,000
Type:	Triple net lease.

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the landlord and operating entity.

Operating Budget

The applicant has submitted an operating budget, in 2011 dollars, which is summarized below:

	Year One	Year Three
Revenues	$13,697,991	$15,444,000
Expenses:		
Operating	$12,644,000	$14,391,000
Capital	746,000	758,000
Total Expenses	$13,390,000	$15,149,000
Excess of Revenues over Expenses:	$307,991	$295,000
Utilization: (visits)	65,852	79,051
Cost Per Visit	$203.33	$191.64

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

Medicaid Fee-for-Service	31.80%
Medicaid Managed Care	34.90%
Medicare Fee-For Service	13.80%
Medicare Managed Care	4.80%
Private Pay	6.00%
Commercial Fee-For-Service	5.90%
Commercial Managed Care	2.80%

Expense and utilization assumptions are based on the historical experience of the applicant, adjusted for volume generated by the additional square footage at the new facility.

Capability and Feasibility

The issue of capability is centered on the applicant's ability to meet the total project cost. The applicant will provide $5,948,954 via new market tax credits, $15,200,000 via HEAL19 grant funds, $4,200,000 from NYC Economic Development Corp. grant, with the remainder of $380,951 provided via equity from accumulated funds. Presented as BFA Attachment A, is a financial summary of The Institute for Family Health (IFH), which indicates the availability of sufficient funds for the equity contribution.

The issue of feasibility is centered on the applicant's ability to offset expenses with revenues and maintain a viable operating entity. The submitted budget projects an excess of revenues over expenses of $307,991, and $295,000 during the first and third years, respectively. The budget appears reasonable.

As shown on Attachment A, the applicant has maintained positive working capital and net asset positions, and achieved excess revenues of $697,153 for 2009, the most current certified financial statement. BFA Attachment B shows the interim balance sheet for 2010 and 2011, indicating that the facility has maintained both positive working capital and net asset positions. The interim income statement for 2011 shows that the facility has maintained positive excess revenues of $12,803,384.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Architectural Analysis

Background

This project involves the renovation of 28,483 SF of an existing 5-story office building with a cellar. An addition totaling 7,342 SF will be added to the second through fifth floors above the roof of the first floor. The construction classification is type II (222). The building is fully sprinklered.

- CELLAR (6,069 SF renovation)

The cellar will include a waiting room with a reception area, clerical office space, 15 dental operatories, charting, clean holding, sterilization prep, autoclave, lab and storage. There will also be toilet rooms, a janitor's closet, electrical, plumbing and pump rooms.

- FIRST FLOOR (6,069 SF renovation)

The first floor will include the main lobby for the building with a reception area that will have a self-check-in area and a registration area. An immediate care center will be located on this level and will include 3 point of care (exam) rooms, an x-ray room, lab and medication room, so this area can serve as a self-supporting clinic. There will also be offices, toilet rooms, a janitor's closet, building maintenance, storage and a receiving/mail room.

- SECOND FLOOR (3,966 SF renovation, 1,513 SF new construction)

The second floor will include a mental health practice, the compass program and W.I.C.. Mental health will have a waiting and reception area, 8 counseling rooms, 1 family counseling room, a large group room, plus supporting office space and storage.

The compass program will have 2 counseling rooms, a manager's and a director's office as well as space for support staff. Toilet rooms and a janitor's closet will also be provided on this floor.

The W.I.C. program, not included in this certificate of need project, will be located on this floor.

- THIRD AND FOURTH FLOORS (4,126 SF renovation, 1,943 SF new construction each floor)

The third and fourth floors are the main clinic areas for family practice. Each floor will include a waiting room, 15 point of care (exam) rooms, 1 treatment room, offices, lab, medication, clean, soiled and storage. In addition, there will be toilet rooms and a janitor's closet. A precepting room for the residency program will also be included.

- FIFTH FLOOR (4,126 SF renovation, 1,943 SF new construction)

The fifth floor will be a non-clinical floor. The residency program will be located on this floor along with the outreach program. The residency program will have 5 shared faculty offices and administrative offices. Also, the residents will have a workroom. Outreach will have 2 offices, space for 5 facilitators and storage.

There will also be 2 large conference rooms, a lounge and lunch room. These rooms will be versatile and will be able to be opened into one large meeting space for the Institute or for community events. In addition, there will be toilet rooms on this floor.

Environmental Review

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

This review is based on drawings dated October 11, 2011 submitted under certificate of need project # 111539.

Recommendation

From an architectural perspective, approval is recommended.

Attachments

BFA Attachment A	Financial Summary of the Institute for Family Health 2009
BFA Attachment B	Interim Financial Summary of the Institute for Family Health 2010-2011

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

April 5, 2012

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Residential Health Care Facility – Construction **Exhibit #4**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	121079 C	Boro Park Operating Co., LLC d/b/a Boro Park Center for Rehabilitation and Healthcare (Kings County) Mr. Fassler - Recusal	Contingent Approval

Public Health and Health Planning Council

Project # 121079-C
Boro Park Operating Co., LLC
d/b/a Boro Park Center for Rehabilitation and Healthcare

County: **Kings (Brooklyn)**
Purpose: **Construction**
Program: **Residential Health Care Facility**
Submitted: **February 13, 2012**

Executive Summary

Description
Boro Park Operating Co., LLC, the existing operator of the 354-bed Boro Park Center for Rehabilitation and Healthcare (Boro Park) located at 4915 10th Avenue, Brooklyn, requests approval to acquire 156 residential health care facility (RHCF) beds from Cabrini Center for Nursing and Rehabilitation, a 240-bed RHCF located less than 11 miles away in Manhattan which is slated for closure.

While the applicant is currently licensed for 354 beds, it has the capacity to house 510 licensed beds, which was the number of RHCF beds licensed at one time when the facility was operated by MJG Nursing Home Company, Inc. as Metropolitan Jewish Geriatric Center. After the completion of this application, the nursing home will be certified for 510 beds.

The current members of Boro Park Operating Co., LLC are as follows:

Jeremy Strauss	2.00%
Boro Park KR Holding, LLC	98.00%

The members of Boro Park KR Holding, LLC are Kenneth Rozenberg (98.98%) and Jeffrey Sicklick (1.02%). The current members commenced operating the facility on May 1, 2011.

Total project costs are estimated at $4,814,353.

DOH Recommendation
Contingent approval

Need Summary
The closure of Cabrini Center for Nursing and Rehabilitation will result in the discharge of 234 patients. Through this CON, Boro Park will transfer 156 patients from Cabrini. Boro Park will have a total of 510 RHCF beds following the completion of this project.

The projected 2016 bed need for the New York City region is 6,982. Occupancy at Boro Park was 97.5% in 2010, 93.1% in Kings County, and 94.8% in the New York City region.

Program Summary
Boro Park Center for Rehabilitation and Healthcare is currently in substantial compliance with all applicable codes, rules and regulations. Subject to the noted contingencies for acceptable floor plans, approval is recommended.

Financial Summary
The acquisition price for the 156 beds is $3,600,000, which will be met via bank loan of $3,600,000 (10 yrs. @ 6.00%). Total project costs will be met with $1,214,353 equity and a $3,600,000 bank loan (10 yrs. @ 6.00%).

Budget:		
	Revenues	$58,239,528
	Expenses	50,259,340
	Net Income	$7,980,188

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

Architectural Summary
The space for the additional beds currently exists. Only minor renovations will be required to recondition the space on the second and third floors of the existing facility for the incoming population.

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 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 and programmatic review and approval of the final floor plans. [LTC]
3. Submission of a bank loan for the construction portion that is acceptable to the Department of Health. [BFA]
4. Submission of a bank loan for the purchase of the beds that is acceptable to the Department of Health. [BFA]
5. Submission of a working capital loan that is acceptable to the Department of Health. [BFA]
6. The submission of an architect's letter of certification confirming the newly acquired beds will be compliant with the 2010 FGI, Facility Guidelines Institute for new residential health care facility beds. [AER]

Council Action Date
April 5, 2012.

Need Analysis

Background
Boro Park Center for Rehabilitation and Healthcare, a 354-bed residential health care facility (RHCF) located at 4915 10th Avenue, Brooklyn (Kings County), seeks approval to acquire 156 RHCF beds from Cabrini Center for Nursing and Rehabilitation, which is slated for closure.

Analysis
Staff will be retained during expansion and a family setting for patients will be set up. Boro Park Center currently has 354 beds and will have a total bed count of 510 with the addition of 156 beds from Cabrini.

Boro Park Center	
Current Beds	354
Change Upon Project Completion	156
Final Bed Count	510

Boro Park Center has had consistent occupancy from 2008 to 2010 of approximately 98%. Cabrini's occupancy has been approximately 97% for the same time period.

RHCF Bed Need	***New York City***
2016 Projected Need	51,071
Current Beds	43,454
Beds Under Construction	635
Total Resources	44,089
Unmet Need	6,982

Notwithstanding that there is an indication of need in a planning area for additional residential health care facility beds as determined in accordance with subdivisions (d) or (e) of 10 NYCRR 709.3, there shall be a rebuttable presumption that there is no need for any additional residential health care facility beds in such planning area if the overall occupancy rate for existing residential health care facility beds in such planning area is less than 97% based on the most recently available data. It shall be the responsibility of the applicant in such instances to demonstrate that there is a need for additional RHCF beds despite the less than 97% occupancy rate in the applicant's planning area utilizing the factors set forth in subdivision (h) of 10 NYCRR 709.3.

The applicant addressed the above regulation to the Department's satisfaction. Some local factor arguments addressed the closure of Cabrini Center for Nursing and Rehabilitation. The loss of the 240 beds would put a strain on the local long-term care system. With Boro Park absorbing some of the beds and discharged patients they will help relieve some of this strain in the area. In addition it will also allow for area jobs to be retained.

RHCF Occupancy	***2008***	***2009***	***2010***
Boro Park Center	98.0%	97.7%	97.5%
Cabrini Center for Rehab	97.4%	97.2%	97.2%
Kings County	*92.1%*	*93.7%*	*93.1%*
New York City	*94.5%*	*95.0%*	*94.8%*

Both Boro Park Center for Rehabilitation and Healthcare and Cabrini Center are operating over the 97% planning optimum for all years in question and both facilities are also over the county and regional averages for 2008 to 2010. The New York City region has a projected 2016 bed need of 6,982.

Conclusion

Upon completion of this project Boro Park Center will acquire 156 beds, and accept transfer of the same number of patients from Cabrini, which is closing. Boro Park Center will have a total of 510 beds.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Facility Information

	Existing	*Proposed*
Facility Name	Boro Park Center for Rehabilitation and Healthcare	Same
Address	4915 Tenth Avenue Brooklyn, New York 11219	Same
RHCF Capacity	354	510
ADHCP Capacity	N/A	N/A
Type Of Operator	Limited Liability Company	Same
Class Of Operator	Proprietary	Same
Operator	Boro Park Operating Company, LLC	Same

Program

Boro Park Center for Rehabilitation and Health Care (Boro Park) is a 354 bed proprietary nursing home located in Brooklyn. Boro Park is proposing to certify 156 additional beds to be located in vacant space on the second and third floors. The proposed project would essentially restore the bed configuration in place when the facility was operated by MJG Nursing Home Company, Inc., a voluntary nursing home operator. In 2009, Metropolitan Jewish Geriatric Center had decertified the 156 beds as part of a Rightsizing application. Boro Park acquired the nursing home from MJG on May 1, 2011. The applicant has agreed to accept up to 156 residents of Cabrini Center.

The programs and services that will be offered to these additional 156 residents will be identical to the programs currently offered at the facility.

Physical Environment

The second and third floors share a very similar floor plan layout and the applicant is proposing to place 78 beds on each of those floors. Each 78 bed nursing unit includes two staff work stations, and three bathing areas. Minor renovation work is being proposed along with cosmetic upgrades.

The applicant is proposing to convert office space to a resident dining room and a smaller resident “private dining room”. The floor plans submitted for review do not illustrate sufficient dining space for all of the residents on each of the floors, even when the “private dining room” is included.

The applicant is proposing to refurbish small open areas next to the nurses stations to be used as resident lounges. There are no other resident activity areas located on the floor and these small open areas appear unsuitable for resident group activities.

All of the other work proposed on these two floors is cosmetic in nature including wall and floor finishes.

Floor plan layouts have been submitted for each typical resident bedroom configuration. The floor plans available for review do not include dressers in the bedrooms. Also, floors plans available for review do not substantiate that the toilet rooms associated with the bedrooms are accessible by residents in wheelchairs.

Compliance

Boro Park Center for Rehabilitation and Healthcare is currently in substantial compliance with all applicable codes, rules and regulations.

Conclusion

No changes in program are proposed as part of this application. The floor plans available for review are generally acceptable except for the following items which remain to be resolved.

- Resident dining on the two floors appears to be insufficient for all residents to dine at a single seating.
- Resident lounge/activity areas are not of adequate size or design to allow for resident group activities.
- Bedrooms do not include a dresser for each resident.
- The toilet rooms associated with the resident bedrooms are not wheelchair accessible as currently configured.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Background

Jeremy Strauss has ownership interests in the following nursing homes: Dutchess Center for Rehabilitation (BFA Attachment D), Queens Center for Rehabilitation (BFA Attachment E), Brooklyn Center for Rehabilitation (BFA Attachment I) and Suffolk Center for Rehabilitation (BFA Attachment H).

Kenneth Rozenberg has ownership interests in the following nursing homes: Williamsbridge Manor Nursing Home (BFA Attachment C), Bronx Center for Rehabilitation & Health (BFA Attachment G), University Nursing Home (BFA Attachment F), Dutchess Center for Rehabilitation (BFA Attachment D), Queens Center for Rehabilitation (BFA Attachment E) and Brooklyn Center for Rehabilitation (BFA Attachment I).

Jeffrey Sicklick has ownership interests in the following nursing homes: Dutchess Center for Rehabilitation (BFA Attachment D) and Queens Center for Rehabilitation (BFA Attachment E). Also, the members of the applicant have ownership interests in Bushwick Center for Rehabilitation, which they acquired the interests in May 20, 2011, and Chittenango Center for Rehabilitation and Health Care, which they acquired interests on May 1, 2011. There is no financial data available for these two facilities.

Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement for the purchase of the 156 beds, which is summarized below:

Date:	March 13, 2012
Purpose:	Purchaser desires to purchase 156 skilled nursing home beds
Seller:	Cabrini Center for Nursing and Rehabilitation
Purchaser:	Boro Park Operating Co., LLC
Purchase Price:	$3,600,000
Payment of Purchase Price:	$500,000 down payment upon the execution of this agreement. $3,100,000 Due at Closing

Total Project Cost and Financing

Total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at $4,814,353, further broken down as follows:

Renovation and Demolition	$3,400,000
Design Contingency	340,000
Construction Contingency	340,000
Architect/Engineering Fees	272,000

Moveable Equipment	354,510
Financing Costs	43,520
Interim Interest Expense	36,000
CON Fee	2,000
Additional Processing Fee	26,323
Total Project Cost	$4,814,353

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

The applicant's financing plan appears as follows:

Equity (members)	$1,214,353
Bank Loan (6.00% interest rate for a ten year term)	3,600,000

Operating Budget

The applicant has submitted an operating budget for the 510-bed facility, in 2012 dollars, for the third year after the acquisition of the 156 beds, which is summarized below:

	Per Diem	Total
Revenues:		
Medicaid*	$287.15	$36,492,718
Medicaid Managed Care	270.45	922,235
Medicare	468.22	9,959,116
Medicare Managed Care	472.11	4,915,137
Private Pay	411.86	1,471,180
Commercial Managed Care	366.75	4,479,142
Total Revenues		$58,239,528
Expenses:		
Operating	$243.39	$43,313,520
Capital	39.03	6,945,820
Total Expenses	$282.42	$50,259,340
Net Income		$7,980,188
Utilization: (patient days)		177,960

** Includes Assessment Revenues.*

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

- Expenses include lease rental.
- Expenses for the 156 beds during the first and third years are estimated at $13,480,419 and $13,377,133, respectively. Revenues for the 156 beds during the first and third years are estimated at $15,266,665 and $15,226,665, respectively.
- Budgeted case mix of 1.0759 was utilized, which is based on their current experience.
- The capital component of the Medicaid rate is based on the return on and return of equity.
- Private and Medicare rates are consistent with historical experience.
- Medicaid rates are based on actual 2011 rates with no trend to 2012 and adjustment for incremental capital.
- Overall utilization for year three is projected at 95.60%. Utilization by payor source is expected as follows:

Medicaid	71.41%
Medicaid Managed Care	1.91%
Medicare	11.95%
Medicare Managed Care	5.85%
Private Pay	2.00%
Commercial Managed Care	6.88%

- Breakeven occupancy is projected at 80.00%.

Capability and Feasibility

The purchase price for the 156 beds is $3,600,000 and will be met as follows: bank loan of $3,600,000 at an interest rate of 6.00% for a ten year term. Also, there is a total project cost of $4,814,353, which will be met as follows: equity of $1,214,353 and a bank loan of $3,600,000 at an interest rate of 6.00% for a ten year term. Bank letter of interests have been provided for the purchase of the beds and financing related to the renovations.

Working capital requirements are estimated at $1,979,522, which is equivalent to two months of incremental third year expenses. The applicant will finance $989,761 at an interest rate of 6.00% for a five year term. The remainder, $989,761, will be met via equity from the members of Boro Park Operating Co., LLC. Presented as BFA Attachment A are the personal net worth statements of the members of Boro Park Operating Co., LLC, which indicates the availability of sufficient funds for the equity portion of the bed purchase, total project cost and the working capital requirement.

The submitted budget indicates a net income of $7,980,188 for the third year after the purchase of the 156 beds. The budget appears reasonable. As shown on Attachment B, the facility achieved a net income of $3,138,263 from May 1, 2011 through September 30, 2011, for the operation of a 354-bed facility. The additional projected net income would result from operating an additional 156 beds and operating during a twelve month period.

Presented as BFA Attachment B is the September 30, 2011 internal financial statements of Boro Park Center for Rehabilitation and Healthcare. As shown on Attachment B, the facility had a negative working capital position and a positive net asset position through September 30, 2011. Also, the facility achieved a net income of $3,138,263 through September 30, 2011.

Presented as BFA Attachment C is a financial summary of Williamsbridge Manor Nursing Home, indicates that the facility has maintained a negative working capital position and a positive equity position and experienced an average net income of $376,218.

Presented as BFA Attachment D is a financial summary of Dutchess Center for Rehabilitation, indicates a negative working capital position and a positive net asset position and experienced an average net income of $440,648. Also, the facility achieved a net income of $1,934,234 through October 31, 2011.

Presented as BFA Attachment E is a financial summary of Queens Center for Rehabilitation, indicates a negative working capital position and a positive net asset position and experienced an average net income of $566,018. Also, the facility achieved a net income of $2,566,361 through October 31, 2011.

Presented as BFA Attachment F is a financial summary of University Nursing Home, indicates a positive working capital position and a positive net asset position and experienced an average net income of $415,645. Also, the facility achieved a net income of $629,913 through September 30, 2011.

Presented as BFA Attachment G is a financial summary of Bronx Center for Rehabilitation & Health, indicates a positive working capital position and a positive net asset position and experienced an average net income of $1,073,647. Also, the facility achieved a net income of $3,074,725 through October 31, 2011.

Presented as BFA Attachment H is a financial summary of Suffolk Center for Rehabilitation, indicates a negative working capital position and a negative net asset position and experienced an average net income of $122,845. The facility incurred a net loss of $996,608 in 2008. The facility is awaiting its rebased Medicaid rate as a result of the

recent change in ownership. The applicant indicates once the facility reflects the current operator's Medicaid expenses, the operating loss will be eliminated. Also, the facility achieved a net income of $856,820 through June 30, 2011.

Presented as BFA Attachment I is a financial summary for Brooklyn Center for Rehabilitation indicates that the facility has a negative working capital position and a positive net asset position and experienced an average net income of $270,803. This facility was acquired in March 2007, at which the new operator has submitted for rebasing. The applicant indicates that the facility has not been getting the proper reimbursement rate from Medicaid, which would offset the losses.
This was not promulgated until 2009. Also, the facility achieved a net income of $3,823,775 through September 30, 2011.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Architectural Analysis

Review Summary

This project will include renovations to nurse stations, dining rooms, recreation rooms, resident rooms, tub rooms and resident room toilets. Renovations will expand resident lounge space with the conversion of underutilized office space. Some additional barrier free toilets will be configured adjacent to these new amenity spaces. All existing toilet rooms and tub rooms will be gut renovated.

Additionally, an undefined area near the nursing stations will be configured as a lounge through the installation of new finishes. The existing second and third floors are currently vacant, but are already built to accommodate 78 nursing beds each. The configuration of these vacant floors is consistent with the level of care provided in the rest of the facility.

The cellar level contains the facilities maintenance, mechanical and service areas along with a central kitchen. The first (ground) floor houses the building's main entry along with central loading and materials handling areas. Central administration and a variety of resident amenity areas are also situated on the first floor. The majority of the proposed work will be cosmetic in nature including furnishings and finishes.

The alterations will be phased in such a manner as to have minimum impact on the facility and to maintain the safety and welfare of the residents. All work will be done in vacant space.

Environmental Review

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

Recommendation

From an architectural perspective, contingent approval is recommended.

Attachments

BFA Attachment A Personal Net Worth Statement

BFA Attachment B	September 30, 2011 internal financial statement of Boro Park Center for Rehabilitation
BFA Attachment C	Financial Summary - Williamsbridge Manor Nursing Home
BFA Attachment D	Financial Summary - Dutchess Center for Rehabilitation
BFA Attachment E	Financial Summary - Queens Center for Rehabilitation
BFA Attachment F	Financial Summary - University Nursing Home
BFA Attachment G	Financial Summary - Bronx Center for Rehabilitation & Health
BFA Attachment H	Financial Summary - Suffolk Center for Rehabilitation
BFA Attachment I	Financial Summary - Brooklyn Center for Rehabilitation

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

April 5, 2012

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 6: Applications for Individual Consideration/Discussion

Residential Health Care Facility – Construct **Exhibit #5**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	102376 C	Albany County Nursing Home (Albany County)	To be presented at the Special Establishment/Project Review Committee on 4/5/12

Public Health and Health Planning Council

Project # 102376-C
Albany County Nursing Home

County: **Albany (Albany)**
Purpose: **Construction**
Program: **Residential Health Care Facility**
Submitted: **November 15, 2010**

Executive Summary

Description
Albany County Nursing Home, a 250-bed county-owned residential health care facility (RHCF), requests approval to construct a 200-bed replacement facility and certify a 30-slot adult day health care program (ADHCP). The 200-bed facility will consist of 180 RHCF beds and 20 ventilator-dependent beds. Currently, the facility does not consist of any ventilator-dependent beds.

This new facility will be constructed on land adjacent to the existing facility, which has reached the end of its useful life. The County is proposing that this new facility will address deficiencies in the existing building, including a lack of air conditioning, storage space and sprinkler system.

Construction of this new facility will comply with the recommendations of the Commission on Health Care Facilities in the 21st Century (the "Berger Commission"). The Commission recommended the merger of Ann Lee Infirmary and Albany County Nursing Home, building a modern unified facility, and downsizing the number of nursing home beds. Ann Lee and Albany County Nursing Home have been merged at the recommended number of RHCF beds.

Total project costs are estimated at $70,938,554.

DOH Recommendation
Contingent approval.

Need Summary
Albany County Nursing Home proposes to decertify 50 RHCF beds and certify a 30-slot ADHCP. The decertification of 50 RHCF beds will help Albany County reach an ideal planning optimum as the County exceeds the RHCF bed need by 65 beds. There is no need to review patient displacement due to the number of available beds in the county.

This project is a recommendation of the Commission on Health Care Facilities in the 21st Century to combine Ann Lee Infirmary, reduce RHCF beds in Albany County, and replace an outdated facility.

RHCF Need – Albany County	
2016 Projected Need	1,844
Current Beds	1,889
Beds Under Construction	20
Total Resources	1,909
Unmet Need	-65

Albany County is above the established need by 65 RHCF beds.

Program Summary
The replacement of the Albany County Nursing Home with a modern nursing facility will provide a significantly improved residential environment. The facility design is in keeping with contemporary nursing home design concepts; however several noted issues should be addressed and incorporated into the final design.

Financial Summary
Project costs will be met via General Obligation Bonds (30 yrs. @ 4.00%).

Budget:	Revenues:	$ 24,547,018
	Expenses:	50,813,787
	Gain/(Loss):	$ (26,266,769)

The projected operating deficit will be funded by Albany County. The applicant provided a letter from the new Albany County Executive's Office, dated March 16, 2012, indicating the County's continued financial support for the project. Also, the applicant provided documentation from the County Legislature, adopted March 12, 2012, supporting the submission of this Certificate of Need application.

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

Architectural Summary
The proposed replacement RHCF includes 200 RHCF beds and new attached ADHCP. The new facility will be a two-story building with a total of 187,590 SF. The existing facility will be decommissioned.

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 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 and acceptable programmatic review and approval of final floor plans.[LTC]
3. Submission of the County Bond and Note Resolution that is acceptable to the Department of Health. Included with the submitted bond and note resolution, must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt.[BFA]

Approval conditional upon:

1. An acceptable plan for reducing census at the existing 250 bed Albany County Nursing Home, which may include the transfer of residents to other facilities, must be submitted to the Capital District Regional Office for review and approval before the transfer of residents from the facility.[LTC]
2. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
3. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's request for, and Department's granting approval for the start of construction. [AER]
4. The applicant shall start construction on or before April 1, 2012 and complete construction by April 1, 2015 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
April 5, 2012.

Need Analysis

Background
Albany County Nursing Home is a 250 bed public residential health care facility located at Albany-Shaker Road, Albany. The facility is seeking approval to construct a 200 bed replacement facility and certify a 30 – slot adult day health care program.

Albany County Nursing Home has utilization above that of Albany County for 2008 and 2010 but was slightly below in 2009 as shown in Table 1.

Table 1: RHCF/Albany/Albany County Nursing Home Occupancy Rates			
Facility/County/Region	*2008*	*2009*	*2010*
Albany County Nursing Home	102.3%	94.0%	95.25%
Albany	99.03%	94.6%	94.45%

At the end January 2010, Albany County Nursing Home had a case mix index of .94 with 17 Physical A's and 10 Physical B's.

Albany County Nursing Home seeks to build a new facility to improved service for their residents. The new facility will have 50 fewer beds than the current facility.

Recommendation
From a need perspective, approval is recommended.

Programmatic Analysis

Facility Information

	Existing	*Proposed*
Facility Name	Albany County Nursing Home	Same
Address	Heritage Lane-County Road 151 Albany, NY 12211	Same
RHCF Capacity	250	200
ADHC Program Capacity	0	30
Type of Operator	County	Same
Class of Operator	Public	Same
Operator	Albany County	Same

Albany County Nursing Home is a 250 bed nursing home located at 780 Albany Shaker Road, Albany. Consistent with the Berger Commission recommendation of January 1, 2007, Albany County closed the antiquated Ann Lee Home, a sister 175 bed nursing home, and relocated those residents into the Albany County Nursing Home with the total bed complement downsized to 250 beds. In conformance with the second part of the Berger recommendation, Albany County has now submitted a proposal to replace the Albany County Nursing Home building with a new, reduced capacity nursing home of 200 beds, to be located on adjacent County-owned land which was the former Heritage Park baseball field. The state of the art nursing facility will include a 20 bed ventilator dependent bed unit and a 30 slot adult day health care program.

The addition of ventilator dependent beds will offer a significantly needed service to the Capital District, since there is only a single ventilator unit operating in the entire Northeastern New York planning region--an 18 bed unit located at Pathways Nursing and Rehabilitation Center in Schenectady County. The ventilator unit will comply with the code requirements of 10 NYCRR 713-4.5, including piped in oxygen and suction in all 20 rooms, a shower area large enough to accommodate stretchers and an equipment room with a hand washing sink. The single resident rooms will

be generously sized at 220 square feet in order to accommodate bariatric and hospice residents. The rooms will feature wide doors and accommodations and associated lifts for the bariatric residents, and additional space in the rooms for family members of hospice residents.

The new nursing home will also include two specialty units, a secured 30 bed behavioral unit and a 30 bed dementia unit. The applicant is continuing to develop the program for the operation of these units. As an adjunct to the short term rehabilitation program, the proposed facility will offer “home bound training” in two efficiency apartments located adjacent to Nursing Unit “A”. The intention of the program is to ensure that residents discharged back to their homes will be able to resume the tasks of daily living, including cooking, cleaning and personal care activities.

The nursing home will certify outpatient therapy services, which will include a hydrotherapy pool, through its rehabilitation department. Adjacent to the outpatient rehabilitation program the nursing home will operate a 30 slot adult day health care program. The program will operate in full compliance with 10 NYCRR 425.5 and 714.4.

Physical Environment

The single story nursing units are all located on the main floor, arranged in three 40-bed conventional SNF units, a 20-bed ventilator/bariatric/hospice unit and twin 30-bed secured units. The three conventional units and ventilator unit will be square buildings with a central hallway with rooms facing the outside or interior courtyard. The two secured units will be triangular shaped and located at the upper end of the site, with rooms facing the outside or center courtyard. All nursing units will contain 100% single bedded rooms with ADA-compliant bathrooms which include individual showers. Each nursing unit will include necessary lounge and dining space, and an adequate number of isolation rooms.

The adult day health care program and outpatient services program will be accessed through a separate entrance on the lower end or rear of the site. The adult day health care program will be constructed as fully compliant with 10 NYCRR 714.4. The lower level will extend below the “A” and “B” Buildings with additional access through elevators in the central connector adjacent to the training apartments. Ancillary services and offices including pharmacy, dental, recreation therapy and optometry are all situated in the lower area, as well as mechanical and support functions including the laundry, medical records and central storage.

Compliance

Albany County Nursing Home is in current compliance with all codes, rules and regulations.

Conclusion

The replacement of the Albany County Nursing Home with a modern nursing facility will implement the second phase of the Berger recommendation and provide a significantly improved residential environment. The facility design is in keeping with contemporary nursing home design concepts. However several issues should be addressed and incorporated into the final design:

1. Showers in the resident bedrooms must be a minimum dimension of 4’ by 5’ to ensure handicap accessibility.
2. Plans must demonstrate dining space in compliance with 10 NYCRR 713-2.6.
3. Plans must demonstrate lounge space in compliance with 10 NYCRR 713-3.9.
4. A toilet available for resident use must be located adjacent to all dining areas.
5. A toilet available for resident use must be located adjacent to the beauty parlor and lounge areas by the atrium.
6. The applicant may entertain the option of incorporating a few double rooms, or special accommodations such as adjoining rooms, in the design for couples. This would provide an additional home-like enhancement and choice normally provided for residents admitted to a residential health care facility.
7. Programmatic information reflecting the design of the two secure units should be submitted with final design drawings.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Total Project Cost and Financing

Total project cost, which is for new construction, architect/engineering fees, construction manager fees and the acquisition of moveable equipment, is estimated at $70,938,554, further itemized as follows:

New Construction	$47,745,047
Site Development	3,979,205
Design Contingency	4,137,408
Construction Contingency	2,585,649
Architect/Engineering Fees	3,674,383
Construction Manager Fees	2,096,687
Moveable Equipment	2,921,658
Telecommunications	15,000
Financing Costs	925,500
Interim Interest Expense	2,468,000
CON Fee	2,000
Additional Processing Fee	388,017
Total Project Cost	$70,938,554

Project costs are based on an July 1, 2012 construction start date and a 18-month construction period.

The costs for this project, excluding the CON fees and the additional processing fees, are broken down as follows:

Nursing Facility	$69,805,032
Adult Day Health Care Program	743,505

Based on a mid-point of construction in 2013, the Bureau of Architectural and Engineering Facility Planning has determined that the respective costs exceed the construction cap per bed. As a result, the total allowable reimbursement is limited to $55,805,522.

Reimbursable project cost will be $55,805,522, as shown below:

Nursing Facility Beds - $268,000 x 180	$48,240,000
Ventilator Dependent - $268,000 x 1.20% allowance x 20	6,432,000
ADHCP Costs	743,505
CON Application Fee	2,000
Additional Processing Fee	388,017
Total Reimbursable Project Cost	$55,805,522

The applicant's financing plan appears as follows:

General Obligation Bonds (4.00% for thirty years)	$70,938,554

The Department of Health has determined that reimbursement for interest expenses should be limited to 85% of the allowed reimbursable project cost for reimbursement purposes instead of 75% reimbursement limit due to the applicant decertifying 50 beds and the facility's financial hardship.

Operating Budget

The applicant has submitted an operating budget for the whole facility, in 2011 dollars, for the third year after the replacement facility. The budget is summarized below:

Nursing Facility & Ventilator Beds

	Per Diem	Total
Medicaid (Nursing Facility)	$265.31	$12,419,788
Medicaid (Ventilator)	537.47	3,269,482
Medicare (Nursing Facility)	450.01	4,213,013
Medicare (Ventilator)	449.79	252,784
Private Pay (Nursing Facility)	449.96	1,404,338
Private Pay (Ventilator)	600.61	174,178
Commercial (Nursing Facility)	449.96	1,404,338
Other		659,434
Total Revenues		$23,797,355
Expenses:		
Operating	$651.75	$45,199,001
Capital	70.87	4,914,926
Total Expenses	$722.62	$50,113,927
Excess of Revenues over Expenses		($26,316,572)
Utilization: (patient days)		
Nursing Facility Patient Days		62,416
Ventilator Dependent		6,934
Occupancy Nursing Facility		95.00%
Occupancy Ventilator Dependent		94.98%

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

- The capital component of Medicaid revenues is based on the interest and depreciation reimbursement methodology.
- The case mix index for the nursing facility is .9400 and the case mix index for the ventilator dependent beds is 1.55.

Utilization for the nursing facility beds, broken down by payor source, for the third year after the completion of the replacement facility is as follows:

Medicaid Fee-For-Service	75.00%
Medicare Fee-For-Service	15.00%
Commercial Fee-For-Service	5.00%
Private Pay	5.00%

Utilization for the ventilator dependent beds, broken down by payor source, for the third year after the completion of the replacement facility is as follows:

Medicaid Fee-For-Service	87.71%
Medicare Fee-For-Service	8.10%
Private Pay	4.19%

ADHCP

Revenues	$749,663
Expenses	699,860
Excess of Revenues over Expenses	$49,803
Utilization: (visits)	7,020
Cost Per Visit	$99.69

The ADHCP will be 100% Medicaid.

Also, the applicant has projected additional expenses of $7,417,079 for retiree health care costs, which are included within the budget.

The combined revenues and expenses for the facility for the third year are as follows:

Revenues	$24,547,018
Expenses	50,813,787
Excess of Revenues over Expenses	($26,266,769)

Capability and Feasibility

Project costs of $70,938,554 will be met via General Obligation Bonds at an interest rate of approximately 4.00% for thirty years.

The submitted budget indicates an operating loss of $26,266,769 during the third year after project completion. Revenues are based on current reimbursement methodologies, plus incremental capital reimbursement of Medicaid. The losses will be offset by Albany County.

The applicant provided a letter from the new County of Albany Office of The Executive (dated March 16, 2012) indicating the County's willingness to continue financial support for the nursing home. Also, the applicant provided documentation from the legislature (adopted March 12, 2012) supporting and directing the submission of this certificate of need application. This project is imperative to the facility in that a modern structure will enable the facility to remain competitive with other nursing homes in the geographical area. Also, with this application, the facility is reducing their certified bed capacity. The reduction in Medicaid occupancy for the SNF beds reflects management's belief that a new facility with single occupancy rooms will increase Private Pay and Medicare sub-acute occupancy and reduce Medicaid occupancy.

The applicant has indicated that incremental expenses will increase by $12,440,967 from the current year (2010) to the third year after project completion. The applicant has indicated that the increases are primarily in the following categories:

- Salaries and wages are increasing by approximately $3,000,000 due to the additional 14.9FTE's and salary increases.
- Employee Benefits are increasing by approximately $6,000,000 due to the employee benefits for the new hires, trend factor of 1% for employee benefits and retiree health insurance increases by 10% per year.
- Additional accrual of approximately $7,400,000 related to the retiree health care.
- Other direct expenses, which consists of cafeteria and other ancillary expenses, is projected to increase by approximately $700,000.
- Interest expense will increase by approximately $2,400,000 due to the proposed financing.
- Depreciation expense is projected to increase by approximately $1,700,000.

Presented as BFA Attachment A, is a financial summary for Albany County Nursing Home. As shown on Attachment A, the facility had an average positive working capital position and an average negative net asset position from 2008 through 2010. The facility incurred an average operating excess expenses over revenues of $21,919,164 from 2008 through 2010. To offset the average operating losses, the facility received average inter-governmental transfer funds of $5,498,459 and average County subsidies of $14,070,681 from 2008 through 2010. The applicant has indicated that the reasons for the historical losses are as follows: the cost of employee benefits and the State Retirement System for employees. As a public facility, Albany County Nursing Home provides a benefit package that exceeds

those found in the private sector. Since 2008, facility administration and County policymakers have taken a number of proactive steps to either improve revenues or decrease operational deficits. Those include, but are not necessarily limited to: a reduction in staff size of over 100 positions; a reorganization of the therapy department resulting in a nearly 60% increase in Medicare Part A revenues, and more than 100% increase in Medicare Part B revenues; reviewing departmental budgets and adjusting them to be more in line with industry standards; revamping the facility's purchasing system to ensure better monitoring of costs; implementing regular and periodic budget reviews with facility Department heads to ensure both adequate staffing levels as well as cost control, and a reorganization of the facility's MDS and resident assessment process to promote and facilitate a maximization of Medicaid revenues. As stated in a previous section, the County of Albany Office of The Executive has provided a letter stating that the County will continue to support this RHCF project. Also, the applicant provided documentation from the legislature supporting and directing the submission of this certificate of need application.

The applicant provided the County's 2010 certified financial statements, and it appears that the County has sufficient resources to continue to offset the losses.

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 includes 187,590 SF of new construction. The replacement skilled nursing facility is 182,403 SF and will be constructed adjacent to the existing facility. Attached to the skilled nursing facility will be a new 5,187 SF adult day health care facility with its own dedicated entrance. The facility will be of type II (222) construction and will be fully sprinklered.

- First Floor (119,553 SF of new construction)

The first floor will consist of 119,553 SF of new construction and will include 3 forty-bed units, 1 thirty-bed secured unit, 1 thirty-bed dementia unit and 1 twenty-bed multi-purpose unit for bariatric, ventilator and hospice residents.

This level will also include an entrance lobby, multi-purpose room, gift shop, café/ice cream parlor, beauty parlor, central dining room, administrative offices and public toilet rooms.

Each nursing unit typically includes a waiting and reception area, private dining, lounge/living, meditation, conference and consultation rooms. Also included are team work stations, dietary/social work stations, charting/nurse's office, clean workroom/pantry, medication, nourishment, tub, linen, laundry, soiled holding and equipment storage rooms. Each resident room will be single bed occupancy with a handicap accessible bathroom and shower.

- Ground Floor (68,037 SF of new construction)

The ground floor will consist of 68,037 SF of new construction and will include a clinical area as well as physical, occupational and hydro-therapy spaces. It will also include the support facilities such as dietary, laundry, maintenance, housekeeping, staff lockers, general storage, mechanical spaces and loading dock.

A 30-registrant adult day health care facility will also be located on the ground floor and will share common facilities such as therapy and food service. The adult day health care facility will have its own dedicated entrance.

There will also be a separate outpatient rehabilitation entrance and waiting area.

Environmental Review

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

Recommendation
From an architectural perspective, approval is recommended.

Attachments

BFA Attachment A Financial Summary for Albany County Nursing Home

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

April 5, 2012

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 #6**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	112222 B	Brooklyn SC, LLC (Kings County)	Contingent Approval
2.	112287 B	Plastic Surgery Center of Westchester (Westchester County)	Contingent Approval
3.	112347 E	Executive Woods Ambulatory Surgery Center, LLC (Albany County)	Approval

Diagnostic and Treatment Center – Establish/Construct **Exhibit #7**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	112261 E	E & A Medical Solutions, LLC d/b/a Forest Hills Health Center (Queens County)	Contingent Approval

Residential Health Care Facility – Establish **Exhibit #8**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	112136 E	Hopkins Ventures, LLC d/b/a Hopkins Center for Rehabilitation and Healthcare (Kings County)	Contingent Approval
2.	112275 E	Rockville Operating, LLC d/b/a Advanced Center for Rehabilitation and Nursing at Rockville (Nassau County)	Contingent Approval
3.	112348 E	St. James Operating, LLC d/b/a St. James Rehabilitation and Healthcare Center (Suffolk County)	Contingent Approval

Certificate of Incorporation **Exhibit #9**

	Applicant	E.P.R.C. Recommendation
1.	Oswego Health Foundation	Approval

Certificate of Amendment of the Certificate of Incorporation **Exhibit #10**

	Applicant	E.P.R.C. Recommendation
1.	United Cerebral Palsy and Handicapped Children's Association of Chemung County, Inc.	Approval

Certificate of Dissolution **Exhibit #11**

	Applicant	E.P.R.C. Recommendation
1.	Lutheran Center for the Aging, Inc.	Approval

HOME HEALTH AGENCY LICENSURES **Exhibit #12**

Number	Applicant/Facility	E.P.R.C. Recommendation
2106-L	St. Lawrence County Public Health Department (St. Lawrence County)	Contingent Approval
2068-L	Hudson Valley Home Health Care, LLC (Westchester, Putnam, Ulster, Rockland, Dutchess, Orange, and Sullivan Counties)	Contingent Approval
2075-L	Golden Acres Home for Adults SP, LLC (Rockland, Putnam, Bronx, Orange, Ulster, Sullivan, Dutchess and Westchester Counties)	Contingent Approval
2034-L	Robynwood, LLC d/b/a Robynwood Home Care (Chenango, Delaware, Otsego, and Schoharie Counties)	Contingent Approval

Public Health and Health Planning Council

Project # 112222-B

Brooklyn SC, LLC

County: **Kings (Brooklyn)**
Purpose: **Establishment and Construction**
Program: **Ambulatory Surgery Center**
Submitted: **October 14, 2011**

Executive Summary

Description

Brooklyn SC, LLC, an existing limited liability company, requests approval to establish and construct a multi-specialty freestanding ambulatory surgery center (FASC), to be located in leased space at 6002 Bay Parkway, Brooklyn. Kings County will be the primary service area for this FASC. The proposed FASC will have two operating rooms and seven procedure rooms and will provide orthopedic surgery, gastroenterology, urology and in-vitro fertilization procedures.

The proposed members of Brooklyn SC, LLC consist of eleven individual physicians who are Class A members (91.65%), Friedlander & Associates, LLC, which are Class B members (3.35%), and MMC Community Horizons, Inc., which are Class C members (5.0%). Maimonides Medical Center is the passive sole member of MMC Community Horizons, Inc. The proposed Class A membership interest is as follows:

Proposed Members and Membership Interest	
Class A	
Dr. Richard A. Fazio	0.0837%
Dr. Eliot Fuhrer	0.0586%
Dr. Richard V. Grazi	0.0355%
Dr. Kadirawel Iswara	0.1005%
Dr. Robert E. Kodsi	0.2680%
Dr. Seth Lapin	0.0335%
Dr. Jian Jun Li	0.0839%
Dr. Ira E. Mayer	0.0335%
Dr. Sam Moskowitz	0.1005%
Dr. David B. Seifer	0.0355%
Dr. Eliot H. Zimbalist	0.0833%
Total Class A Membership Interest	*0.9165%*

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 $8,453,697.

DOH Recommendation

Contingent approval for a 5-year limited life.

Need Summary

From 2008 to 2009, the number of ambulatory surgery patients receiving gastroenterology and endoscopy services at free standing ASCs in Kings County increased by 29 percent.

The physician members of Brooklyn SC, LLC and other participating physicians have medical practices within the service area of the proposed FASC and will perform appropriate procedures at the FASC.

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 $845,697 in equity and a bank loan of $7,608,000 @ 5.5% over seven years.

Budget:	*Revenues:*	*$ 11,056,231*
	Expenses:	*9,819,104*
	Gain/(Loss):	*$ 1,237,127*

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

Architectural Summary

The proposed FASC will have 2 operating rooms and 7 procedure rooms, and provide orthopedic surgery, gastroenterology, urology and in-vitro fertilization procedures.

Recommendations

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

Office of Health Systems Management
Approval for 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. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the Department of Health beginning in the second year of operation. Said reports shall include:

    - Data showing actual utilization including procedures;
    - Data showing breakdown of visits by payor source;
    - Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
    - Data showing number of emergency transfers to a hospital;
    - Data showing percentage of charity care provided, and
    - Number of nosocomial infections recorded during the year in question. [RNR]

3. Submission by the governing body of the ambulatory surgery center of an organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women, and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
4. Submission of 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 statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing these efforts and the results. [RNR]
6. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
7. Submission of an assumed name, acceptable to the Department, if applicable. [HSP]
8. Submission of a commitment acceptable to the Department, 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]
9. Submission of an executed working capital loan commitment that is acceptable to the Department. [BFA]
10. Submission of an executed Administrative and Consulting Agreement that is acceptable to the Department. [BFA]
11. This project approval is contingent upon written confirmation by CMS that the proposed mixing of functions between the FASC procedure rooms and adjacent private laboratory for the purposes of providing concurrent in-vitro fertilization procedures is permitted. [AER]
12. Submission of an executed lease that is acceptable to the Department. [CSL]
13. Submission of an executed copy of the Amendment to the Articles of Organization of Brooklyn SC, LLC, that is acceptable to the Department. [CSL]

Approval conditional upon:

1. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
2. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
3. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
4. The clinical space must be used exclusively for the approved purpose. [HSP]
5. The submission of State Hospital Code (SHC) Drawings for review 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 January 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
April 5, 2012.

Need Analysis

Background
Brooklyn SC, LLC is requesting approval to establish and construct a multi-specialty freestanding ambulatory surgical center (FASC) to provide orthopedic surgery, gastroenterology, urology, and in-vitro fertilization procedures. It will have two operating rooms and seven procedure rooms and will be located at 6002 Bay Parkway, Brooklyn.

The primary service area for the proposed project is Kings County.

The number of projected procedures is as follows:

Current Year:	0
First Year:	16,444
Third Year:	17,445

Brooklyn SC, LLC will address the needs of patients currently served the physician member's offices and other non-hospital settings. Brooklyn SC will provide services to all persons in need of care without regard to ability to pay or source of payment and two percent of revenues will be dedicated to charity care.

Brooklyn SC will enter into a transfer and affiliation agreement with Maimonides Medical Center for provision of backup and emergency services. The hospital is located approximately 2.19 miles or nine minutes from the proposed ASC.

The proposed center will be open Monday-Friday 7:00 a.m. to 6:00 p.m.

Currently, Kings County has a total of 21 multi-specialty ambulatory surgery centers. Five are freestanding D & TCs, one is a Hospital Extension Clinic, and 15 are hospital-based. None of these are in the zip code 11204 where the proposed facility will be located. The County also has a total of eight freestanding ASCs. Two are single specialty-gastroenterology ASCs; one is in zip code 11204, which is the same zip code as that of the proposed ASC's location, and the other is in zip code 11214. This information is summarized in the following tables:

Kings County Surgical Facility Types

Type of Facility	*Single Specialty with (Zip Code)*	*Multi-Specialty*
D & TCs	8: 1-Orthopedic (11234) 2-Opthamology (11230, 11229) 1-Gastroenterology plus Lithotripsy O/P (11204) 1-Gastroenterology (11214) Limited Life-3/16 3-Endoscopy (2 in 11209, 1 in 11235-untill 4/2014)	5
D & TC Extension Clinics	0	1
Hospitals	0	15
Total	8	21

Source: HFIS

Kings County Facilities Gastroenterology and Endoscopy Ambulatory Surgery Patient Volume			
Facility	*2008*	*2009*	*% Change 2008-9*
Digestive Disease Center	5,293	7,504	
Endoscopic Ambulatory Specialty Center	675	662	
Endscpc Diagnostic & Treatment Center LLC	2,504	2,762	
Gastroenterology Care, Inc.-opened 3/11			
Greater NY Endoscopy Surgical-opened 4/2009		1	
Total	8,472	10,929	29.0%

Source: SPARCS: 2008-09

Recommendation

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

Programmatic Analysis

Background

Establish a diagnostic and treatment center that will also be federally certified as an ambulatory surgery center.

Proposed Operator	**Brooklyn SC**
Operator Type	LLC
Site Address	6002 Bay Parkway, Brooklyn
Surgical Specialties	Multispecialty including: Orthopedic Gastroenterology Urology IVF procedures
Operating Rooms	2
Procedure Rooms	7
Hours of Operation	Monday through Friday from 7:00 am to 6:00 pm (Extended as necessary to accommodate patient needs).
Staffing (1st Year / 3rd Year)	47.70 FTEs / 50.35 FTEs
Medical Director(s)	Ira E. Mayer
Emergency, In-Patient and Backup Support Services Agreement	Expected to be provided by Maimonides Medical Center
Distance	2.19 miles or 9 minutes
On-call service	Access to the facility's on-call physician during hours when the facility is closed.

Integration with Community Resources

The center plans to work closely with its patients to educate them regarding the availability of primary care services offered by local providers including providing all patients information concerning such availability upon departure. The center intends to promote the accessibility of its services for all persons in need of such services, with a particular emphasis on improving access for the traditionally under-served populations.

Additionally Maimonides has received recognition as a Level 3 Patient-Centered Medical Home (PCMH) and has recently been conditionally approved by the Department as a Medicaid Health Home. This application has been developed in conjunction with Maimonides, and the applicant believes that this association with Maimonides will enable it to benefit from and participate in the Maimonides PCMH and Medicaid Health Home.

The facility intends to utilize an Electronic Medical Record system and become fully integrated with the Brooklyn Health Information Exchange, an established Regional Health Information Organization.

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. The Center intends to review the list acceptable procedures annually and as needed to determine the appropriateness of adding new procedures consistent with individual physician expertise.

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:

Class A (91.65%)		
Richard A. Fazio, MD	8.37%	Manager
Elliott Fuhrer, MD	5.86%	Manager
Richard V. Grazi, MD	3.55%	
Kadirawel Iswara, MD	10.05%	
Robert E. Kodsi, MD	26.80%	Manager
Seth Lapin, MD	3.35%	Manager
Jian Jun Li, MD	8.39%	
Ira E. Mayer, MD	3.35%	
Sam Moskowitz, MD	10.05%	
David B. Seifer, MD	3.55%	
Eliot H. Zimbalist, MD	8.33%	
Class B (3.35%)		
Friedlander & Associates, LLC (F&A)	3.35%	
Class A Members of F&A		
Charles Friedlander, MD (50%)		
Giovanna Guerci (15%)		
Richard Ventimiglia (15%)		
Class B Members of F&A		
John Ackert, MD (4%)		
James Salick, MD (4%)		
Alex Sherman, MD (4%)		
Hillel Tobias, MD (4%)		
Scott Weber, MD (4%)		
Class C (5.00%)		
MMC Community Horizons, LLC	5.00%	
Pamela Brier		
Robert Naldi		Manager
Martin Payson		

Each Class A members is a physician and all intend to perform procedures at the center.

The Class B member, Friedland & Associates, LLC is also a member of an operational licensed ambulatory surgery center in Brooklyn and some of the members of Friedland & Associates are also members of another operational licensed ambulatory surgery center in Manhattan. Additionally, this applicant intends to enter into a consulting services agreement with the Friedlander & Associates.

The Class C member, MMHC Community Horizons, Inc. is a not-for-profit whose sole passive member is Maimonides Medical Center. The initial directors of MMHC Community Horizons are employees of Maimonides.

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

Administrative and Consulting Services Agreement

The proposed center will enter into an administrative and consulting services agreement with Friedlander & Associates, LLC, which will ensure that the operations and finances of the Center are maintained. Though non-arm's length, the terms of the administrative and consulting service agreement appear to comply with Department of Health guidelines. The annual fee of $75,000 for a term of ten years appears reasonable for the level of services provided.

Lease Agreement

The applicant will lease approximately 15,000 square feet of space on a portion of the fourth and fifth floors of 6002 Bay Parkway, Brooklyn, NY under the terms of the executed lease agreement summarized below:

Date:	May 16, 2011
Landlord:	Bay Parkway Group, LLC
Tenant:	Brooklyn SC, LLC
Term:	15 Years with two five year renewal options
Rental:	$540,000($36.00 per sq. ft) for the first year with an annual increase of 1% for the second year, 2% for year three through five and 3% for the next ten years compounded annually.
Provisions:	Taxes, insurance, utilities and maintenance

The applicant has indicated that the lease will be a non-arm's length lease arrangement, and has submitted letters of opinion from licensed commercial real estate brokers attesting to the reasonableness of the per square foot rental.

Total Project Cost and Financing

Total project costs for new construction and the acquisition of movable equipment is estimated at $8,453,697, itemized as follows:

Renovation & Demolition	$ 3,125,720
Design Contingency	312,572
Construction Contingency	156,286
Architect/Engineering Fees	470,400
Other Fees (Consulting)	47,250
Movable Equipment	4,163,655
Telecommunications	34,545
Financing Costs	30,000
Interim Interest Expense	65,039
Application Fee	2,000
Additional Processing Fee	46,230
Total Project Cost	$8,453,697

Project costs are based on a July 1, 2012 construction start date and a six month construction period. The applicant's financing plan appears as follows:

Equity	$ 845,697
Bank Loan @5.5% over seven years	$ 7,608,000

A letter of interest has been submitted by M &T Bank.

Operating Budget

The applicant has submitted an operating budget in 2012 dollars, for the first and third years of operation, summarized below:

	Year One	Year Three
Revenues:	$10,421,558	$11,056,231
Expenses:		
Operating	$7,130,265	$7,480,515
Interest	459,690	340,484
Depreciation and Rent	1,977,497	1,998,105
Total Expenses	$9,567,452	$9,819,104
Net Income	$854,106	$1,237,127
Utilization: (procedures)	16,444	17,445
Cost Per Procedure	$581.82	$562.86

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

	Years One and Three
Commercial Insurance-Fee-For-Service	10.0%
Commercial Insurance-Managed Care	51.0%
Medicare Fee-For-Service	27.0%
Medicare Managed Care	2.0%
Medicaid Fee-For-Service	2.0%
Medicaid Managed Care	4.0%
Self Pay	2.0%
Charity Care	2.0%

Expense and utilization assumptions are based on the combined historical experience of the physician's private practice and Maimonides Hospital. The Class A members intend to maintain their private practices and upon approval of this project, will move the surgical component of their practices to the Article 28 FASC.

Capability and Feasibility

The project cost of $8,453,697 will be satisfied by $845,697 of members equity and a bank loan of $ 7,608,000 @5.5% over seven years. A letter of interest has been submitted by the applicant from M&T Bank.

Working capital requirements, estimated at $1,636,517, appear reasonable based on two months of third year expenses. The applicant will finance $750,000 via a loan at an interest rate 6.75% for a five year term, for which a letter of interest from M&T Bank has been provided. The remainder, $886,517, will be provided as equity by the proposed members. Presented as BFA Attachment A and B is a summary of net worth statements of Class A and Class B proposed members of Brooklyn SC, LLC, respectively, which indicates the availability of sufficient funds for the stated levels of equity. Presented as BFA Attachment C, is the financial statements of Maimonides Medical Center, Class C, which indicates the availability of sufficient funds for the stated levels of equity. Presented as BFA Attachment D, is the pro-forma balance sheet of Brooklyn SC, LLC as of the first day of operation, which indicates positive member's equity position of $1,732,214.

The submitted budget indicates a net income of $854,106 and $1,237,127 during the first and third years of operation, respectively. The budget appears reasonable.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Architectural Analysis

Background

The proposed facility will be a multi specialty ambulatory surgery and GI endoscopy facility providing GI endoscopy screening and procedures, in addition to general and specialty surgery procedures. The center will be located on the fourth and fifth floors of a medical building and will consist of a total of 19,997 SF.

The fourth floor will consist of a waiting area, toilet rooms, reception, registration, coat closet room, admin office, consultation room, exam room, patient education room, medical records, men and women locker rooms, break room and IT room. The fourth floor clinical space will consist of 3 nurse stations, nourishment area, 2 dressing rooms, 21 pre-op post-op recovery rooms, 4 patient toilets, staff toilet, 5 endoscopy procedure rooms, 2 OR's, sub-sterile room, clean workroom, soiled workroom, clean scope rooms, soiled scope room and medical storage. Support spaces will include an equipment supply room, crash cart area, 5 storage rooms, receiving room, mechanical room and janitor closet.

The fifth floor will consist of a waiting room, office, locker room, staff toilet, conference room, patient toilet, patient locker room, nurse station, 4 pre-op post op recovery rooms, 2 procedure rooms, clean workroom, soiled workroom, storage rooms and janitor closet.

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	Summary Net Worth Statement of Proposed Class A Members of Brooklyn SC, LLC
BFA Attachment B	Summary Net Worth Statement of Proposed Class B Members of Brooklyn SC, LLC
BFA Attachment C	Financial Summary of Maimonides Medical Center
BFA Attachment D	Pro-forma Balance Sheet
BFA Attachment E	Organizational Chart
BFA Attachment F	Establishment Checklist
BHFP Attachment	Map

Supplemental Information

Outreach

Below are presented summaries of responses by hospitals to letters from the Department asking for information on the impact of the proposed ambulatory surgery center (ASC) in their service areas. There follows a summary of the applicant's response to DOH's request for information on the proposed facility's volume of surgical cases, the sources of those cases, and on how staff will be recruited and retained by the ASC.

Facility: Lutheran Medical Center
150 55th Street
Brooklyn, New York 11220

No response.

Facility: NY Community Hospital of Brooklyn
2525 Kings Highway
Brooklyn, New York 11229

No response.

Facility: Beth Israel Medical Center
3201 Kings Highway
Brooklyn, New York 11239

No response.

Supplemental Information from Applicant

- Need and Sources of Cases

The applicant states that all of the projected caseload will come from office-based procedures currently performed in the private practice of the physicians who have committed to perform cases at the proposed ASC. The applicant also cites data showing a continued growth in Kings County in the number of persons 45 years and older, which is the primary service group for ambulatory surgery.

- 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

As noted, the applicant states that all of the ASC's projected cases will be drawn from those currently performed in the private office practices of the physicians who have committed to operating at the proposed facility.

OHSM Comment

The absence of any comments in opposition to this application from hospitals in the proposed service area provides no basis for reversal or modification of the recommendation for five-year limited life approval of the proposed ASC based on public need, financial feasibility and operator character and competence.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 5th day of April, 2012, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a multi-specialty freestanding ambulatory surgery center, 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:
112222-B	Brooklyn, SC, LLC

APPROVAL CONTINGENT UPON:

Approval for 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. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the Department of Health beginning in the second year of operation. Said reports shall include:

   - Data showing actual utilization including procedures;
   - Data showing breakdown of visits by payor source;
   - Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
   - Data showing number of emergency transfers to a hospital;
   - Data showing percentage of charity care provided, and
   - Number of nosocomial infections recorded during the year in question. [RNR]

3. Submission by the governing body of the ambulatory surgery center of an organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women, and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
4. Submission of 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 statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing these efforts and the results. [RNR]
6. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
7. Submission of an assumed name, acceptable to the Department, if applicable. [HSP]
8. Submission of a commitment acceptable to the Department, 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]

9. Submission of an executed working capital loan commitment that is acceptable to the Department. [BFA]
10. Submission of an executed Administrative and Consulting Agreement that is acceptable to the Department. [BFA]
11. This project approval is contingent upon written confirmation by CMS that the proposed mixing of functions between the FASC procedure rooms and adjacent private laboratory for the purposes of providing concurrent in-vitro fertilization procedures is permitted. [AER]
12. Submission of an executed lease that is acceptable to the Department. [CSL]
13. Submission of an executed copy of the Amendment to the Articles of Organization of Brooklyn SC, LLC, that is acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
2. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
3. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
4. The clinical space must be used exclusively for the approved purpose. [HSP]
5. The submission of State Hospital Code (SHC) Drawings for review 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 January 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 # 112287-B
Plastic Surgery Center of Westchester, LLC

County: **Westchester (Harrison)**
Program: **Ambulatory Surgery Center**
Purpose: **Establishment and Construction**
Submitted: **November 14, 2011**

Executive Summary

Description

The Plastic Surgery Center of Westchester, LLC (PSCW), an existing proprietary limited liability corporation, was approved as a single-specialty ambulatory surgery center in the specialty of plastic/reconstructive surgery by the Public Health Council on October 5, 2010, and began operation in July 2011. Via this CON, the applicant seeks approval to add ophthalmology and transfer 43% membership interest from the 2 current members (21.5% each) to six new proposed physician members, each of whom is a board certified ophthalmologist.

Samuel J. Beran, M.D. and Joshua A. Greenwald, M.D., the two existing members of PSCW, will continue to be the Co-Medical Directors. The membership interests before and after the transfer are as follows:

Current	Interest
Samuel Beran, M.D.	50.00%
Joshua Greenwald, M.D.	50.00%
Proposed	**Interest**
Samuel Beran, M.D.	28.50%
Joshua Greenwald, M.D.	28.50%
Bradley Scharf, M.D.	10.00%
James Gordon, M.D.	10.00%
Seth Potash, M.D.	6.33%
Allen Greenbaum, M.D.	6.33%
Edmund Farris, M.D.	6.34%
Neil Katz, M.D.	4.00%

Upon approval, the applicant will change its name to The Plastic and Eye Surgery Center of Westchester. The applicant will continue to lease space at 440 Mamaroneck Avenue, Harrison, which includes two operating rooms and two procedures rooms, and enter into an administrative service agreement with DEC Merritt, LLC to provide services including but not limited to staffing, marketing, budgeting, billing and collections, credentialing and insurance planning.

Total project costs are estimated at $177,761.

DOH Recommendation

Contingent approval.

Need Summary

In the first year, the six new members propose to perform a total of 2,838 ophthalmology procedures. These procedures are currently performed in a private practice setting in Westchester County. None of the projected cases will migrate to PSCW from local hospitals or other freestanding ambulatory surgery centers.

Program Summary

Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

Financial Summary

Project costs will be met with equity from The Plastic Surgery Center of Westchester.

Incremental Budget:		
	Revenues:	*$ 2,267,978*
	Expenses:	*1,352,686*
	Gain/(Loss):	*$ 915,292*

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

Architectural Summary

This project action is for addition of service and transfer of ownership 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

<u>Approval for limited life of five years to expire on July 6, 2016, as issued in the original five-year limited life approval for CON # 072092 is recommended contingent upon</u>:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the Department of Health beginning in the second year of operation. Said reports shall include:

    - Data showing actual utilization including procedures;
    - Data showing breakdown of visits by payor source;
    - Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
    - Data showing number of emergency transfers to a hospital;
    - Data showing percentage of charity care provided, and
    - Number of nosocomial infections recorded during the year in question. [RNR]

3. Submission by the governing body of the ambulatory surgery center of an organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women, and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
4. Submission of 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]

Council Action Date

April 5, 2012.

Need Analysis

Background
Plastic Surgery Center of Westchester (PSCW), an existing single-specialty freestanding ambulatory surgery center, seeks approval to add ophthalmology as a specialty service and transfer 43% of the membership interest to six new members. PSCW is located at 440 Mamaroneck Avenue, Harrison. PSCW proposes to change its name to The Plastic and Eye Surgery Center of Westchester.

PSCW was approved under CON #072092-B as an Article 28 diagnostic and treatment center (D&TC). It is certified as a single-specialty freestanding D&TC for a limited life of five years. PSCW became operational on July 6, 2011 for a limited life of five years.

The primary service area is Westchester County.

In the first year, the six new members propose to perform a total of 2,838 ophthalmology procedures. These procedures are currently performed in a private practice setting in Westchester County. None of the projected cases will migrate to PSCW from local hospitals or other FASCs.

The number of projected procedures is as follows:

Current Year	
Plastic/Reconstructive Surgery:	1,980
Ophthalmology:	0
Total:	*1,980*
First Year	
Plastic/Reconstructive Surgery:	1,980
Ophthalmology:	2,838
Total:	*4,818*
Third Year	
Plastic/Reconstructive Surgery:	1,980
Ophthalmology:	3,010
Total:	*4,990*

PSCW has an existing transfer and affiliation agreement for backup and emergency services with White Plains Hospital Center, which is located 4.8 miles and 13 minutes from PSCW.

PSCW is committed to serving all persons in need without regard to their source of payment or the ability to pay. Their operating budget projects three (3) percent of cases will be for charity care.

There is currently one single specialty-ophthalmology D&TC in Westchester County. The County also has three multi specialty D&TCs.

Facility	*Single Specialty*	*Multi Specialty*
D&TC	1-Ophthalomology	---
D&TC	---	3

Source: NYSDOH HFIS

Conclusion
The proposed project will add ophthalmology services to an existing single specialty freestanding ambulatory surgery center and transfer partial ownership to six new members, all of whom are board certified ophthalmologists.

Recommendation
From a need perspective, contingent approval is recommended.

Programmatic Analysis

Background
With the addition of ophthalmological surgery the center will change its name to The Plastic and Eye Surgery Center of Westchester to reflect the expanded scope of service.

Character and Competence
The applicant is requesting to add six additional members to the LLC. Upon approval the members of the LLC will be:

Name		
Bradley H. Scharf, MD	10.0%	(Subject of CON)
James R. Gordon, MD	10.0%	(Subject of CON)
Seth D. Potash, MD	6.33%	(Subject of CON)
Allen S. Greenbaum, MD	6.33%	(Subject of CON)
Edmund P. Farris, MD	6.33%	(Subject of CON)
Neil R. Katz, MD	4.0%	(Subject of CON)
Samuel Beran, MD	28.5%	
Joshua Greenwald, MD	28.5%	

The proposed new members are all practicing physicians in private practice.

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, approval is recommended.

Financial Analysis

Subscription Agreements
The applicant has submitted executed subscription agreements from the proposed members, the terms of which are summarized below:

Date:	October 31, 2011
Purpose:	Purchase 6.33% of membership interest each
Seller:	The Plastic Surgery Center of Westchester, LLC
Members:	Seth Potash, M.D., Allen Greenbaum, M.D. and Edmund Farris, M.D.

Purchase Price:	$63,333.33 each/payable in full upon submission of the executed subscription agreement.

Date:	October 31, 2011
Purpose:	Purchase 4% of membership interest
Seller:	The Plastic Surgery Center of Westchester, LLC
Member:	Neil Katz, M.D.
Purchase Price:	$40,000 payable in full upon submission of the executed subscription agreement.

Date:	October 31, 2011
Purpose:	Purchase 10% of membership interest each
Seller:	The Plastic Surgery Center of Westchester, LLC
Members:	Bradley Scharf, M.D. and James Gordon, M.D.
Purchase Price:	$100,000 each/payable in full upon submission of the executed subscription agreement.

The proposed members have been given a promissory note for their payment of the subscription agreement. Upon approval, the promissory note will be converted into membership interests. Presented as Attachment A are the net worth statements of the proposed members showing sufficient funds to cover the individual purchase prices.

Administrative Services Agreement

The Plastic Surgery Center of Westchester, LLC will enter into an Administrative Services Agreement with DEC Merritt, LLC. The consultant would provide certain professional business and administrative services to the ambulatory surgery center relating to the operation of the facility.

The applicant has submitted an executed agreement, which is summarized below:

Facility:	The Plastic Surgery Center of Westchester, LLC
Contractor:	DEC Merritt, LLC
Duties of the Contractor:	Coordinate recruitment of additional physicians; oversee process of securing third-party financing; business planning and production of budgets; review of policies and procedures; assist with accreditation and licensure process; provide bookkeeping and accounting functions; billing and collections, materials administration; human resource administration; credentialing; support services and insurance planning.
Term:	30 months, with the option to renew yearly.
Compensation:	$225,000 per year

DEC Merritt, LLC is a non-related party. Therefore, the administrative services agreement is an arm's length agreement.

Total Project Cost and Financing

Total project costs are estimated at $177,761, broken down as follows:

Consultant Fees	$50,000
Movable Equipment	124,800
Application Fee	2,000
Additional Processing Fee	961
Total Project Cost	$177,761

The applicant will finance total project costs of $177,761 with equity from The Plastic Surgery Center of Westchester.

Operating Budget

The applicant has provided first and third year incremental budgets, in 2012 dollars, summarized below:

	Year One	Year Three
Revenues	$1,869,608	$2,267,978
Expenses		
Operating	$1,075,330	$1,243,466
Capital	145,556	109,220
Total Expenses	$1,220,886	$1,352,686
Net Income	$648,722	$915,292
Utilization (procedures)	1,863	2,259
Cost per procedure	$655.33	$598.80

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

	Years One and Three
Commercial Fee for Service	37.0%
Commercial Managed Care	3.0%
Medicare Fee for Service	52.0%
Medicare Managed Care	2.0%
Medicaid Fee for Service	0.5%
Medicaid Managed Care	1.5%
Private Pay	1.0%
Charity Care	3.0%

Expenses and utilization assumptions are based on historical experience of the proposed members providing services through their private practices. Each proposed member has provided a referral letter in support of utilization projections.

Capability and Feasibility

Total project costs of $177,761 will be met with equity from The Plastic Surgery Center of Westchester. Presented as BFA Attachment A, is an internal financial summary of The Plastic Surgery Center of Westchester, LLC as of December 31, 2011, which indicates the availability of sufficient funds.

The submitted budget indicates a net income of $648,722 and $915,292 during the first and third years of operation, respectively. The budget appears reasonable.

As shown on BFA Attachment A, internal financial summary of The Plastic Surgery Center of Westchester as of December 31, 2011, the facility has maintained positive working capital, experienced negative equity and a net loss of $592,904. The negative equity and net loss are based on the first five months of operation in 2011 and were due to start up costs and lag in accounts receivable. Presented as Attachment C, internal financial summary of The Plastic Surgery Center of Westchester as of January 31, 2012, the facility has generated a net income of $54,678.

Based on the preceding, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Net worth statements of purchasing members
BFA Attachment B	Internal financial summary as of December 31, 2011, The Plastic Surgery Center of Westchester, LLC
BFA Attachment C	Internal Financial Summary as of January 31, 2012, The Plastic Surgery Center of Westchester, 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 5th day of April, 2012, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to add ophthalmology to an existing single-specialty freestanding ambulatory surgery center and transfer 43 percent of the membership interest to six new members, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:	FACILITY/APPLICANT:
112287-B	Plastic Surgery Center of Westchester, LLC

APPROVAL CONTINGENT UPON:

Approval for limited life of five years to expire on July 6, 2016, as issued in the original five-year limited life approval for CON # 072092 is recommended contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the Department of Health beginning in the second year of operation. Said reports shall include:

    - Data showing actual utilization including procedures;
    - Data showing breakdown of visits by payor source;
    - Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
    - Data showing number of emergency transfers to a hospital;
    - Data showing percentage of charity care provided, and
    - Number of nosocomial infections recorded during the year in question. [RNR]

3. Submission by the governing body of the ambulatory surgery center of an organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women, and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
4. Submission of 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]

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 # 112347-E
Executive Woods Ambulatory Surgery Center, LLC

County: **Albany (Albany)**
Purpose: **Establishment**
Program: **Ambulatory Surgery Center**
Submitted: **December 14, 2011**

Executive Summary

Description

Executive Woods Ambulatory Surgery Center, LLC, an existing Article 28 ambulatory surgery center located at 3 Atrium Drive, Albany, requests approval for a change in 3.333% of the membership ownership. William Montgomery, M.D. will assume the shares currently owned by James Furlong, M.D., who is retiring from the practice. Ownership, before and after the proposed transaction, is as follows:

Current Membership	Interest
Leonard Goldstock, M.D.	6.667%
John Kavanaugh, M.D.	6.667%
Suheil Khuri, M.D.	6.667%
John Whalen, M.D.	6.667%
Joseph Fay ,M.D.	6.667%
Frederick Fletcher, M.D.	6.667%
J.David Abraham, M.D.	6.667%
Richard L. Katz, M.D.	6.667%
Christopher DeCamp, M.D.	6.667%
James Alfandre, M.D.	6.667%
David Dixon, M.D.	6.667%
Luke Rigolisi, M.D.	6.667%
Kyle Flik, M.D.	6.667%
Frank Congiusta, M.D	6.667%
Charles Buttaci, M.D	3.333%
James Furlong, M.D.	3.333%

Proposed Membership	Interest
Leonard Goldstock, M.D.	6.667%
John Kavanaugh, M.D.	6.667%
Suheil Khuri, M.D.	6.667%
John Whalen, M.D.	6.667%
Joseph Fay ,M.D.	6.667%
Frederick Fletcher, M.D.	6.667%
J.David Abraham, M.D.	6.667%
Richard L. Katz, M.D.	6.667%
Christopher DeCamp, M.D.	6.667%
James Alfandre, M.D.	6.667%
David Dixon, M.D.	6.667%
Luke Rigolisi, M.D.	6.667%
Kyle Flik, M.D.	6.667%
Frank Congiusta, M.D	6.667%
Charles Buttaci, M.D	3.333%
William Montgomery, M.D.	3.333%

Executive Woods Ambulatory Surgery Center, LLC is certified as a single-specialty freestanding ambulatory surgery center in the discipline of Orthopedics. This transfer would bring the five-year aggregation transfer percentage to more than 25 percent. Per PHL Section 2801-a (4)(b), this requires a full review before the Public Health and Health Planning Council.

DOH Recommendation

Approval.

Need Summary

There will be no change in the current services as a result of the proposed transaction.

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

The asset purchase price of $37,500 will be met via equity from the proposed member personal resources. It appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and approval is recommended.

Architectural Summary

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

Recommendations

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

Office of Health Systems Management
Approval.

Council Action Date
April 5, 2012.

Need Analysis

Background

Executive Woods Ambulatory Surgery Center, LLC (EWASC), located at 3 Atrium Drive, Albany, seeks approval to transfer 3.333% ownership interest to a new member from a retiring member, bringing the 5-year aggregation percentage to more than 25%.

EWASC is owned by surgeons who are partners of Northeast Orthopedics, LLP, an orthopedic surgery practice in Albany. The policy of the practice is to allow new partners the opportunity to become members of the EWASC. In the past, EWASC has issued additional membership interests with prior notice to the Public Health Council.

The ownership changes that EWASC propose result in the transfer of ownership to over 25 percent. EWASC proposes to issue five units of membership interest, representing 3.33 percent ownership interest, to William H. Montgomery, M.D., who is a new partner in the medical practice, and reduce the number of units owned by James P. Furlong, M.D. by five due to his pending retirement from this ASC.

Physicians	*Current Number of Units*	*Current Sharing Interest*	*Proposed Number of Units*	*Proposed Sharing Interest*
James Furlong, M.D. (Pending Retirement)	5	3.333%	0	0%
William Montgomery, M.D. (New Partner)	0	0%	5	3.333%
Remaining 15 M.D.s	145	96.671%	145	96.671%
Total Above	*150*	*100.004%*	*150*	*100.004%*
Total M.D.s will be 16 (includes W. Montgomery, excludes J. Furlong)				

The number of ambulatory surgery patients at EWASC increased 8.3 percent from 2008 to 2009 and decreased 3.2 percent from 2009 to 2010 as follows:

2008: 4,123
2009: 4,464
2010: 4,320
Source: SPARCS, 2008-10

EWASC is adding a physician partner as another physician retires. EWASC is not planning any changes in its services as a result of this project.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

Establish Dr. William Montgomery as a new member of the limited liability company and remove one member who is withdrawing due to retirement.

Character and Competence

Upon approval the members of the LLC will be:

William Montgomery, MD	3.333% (subject of CON)
Leonard Goldstock, MD	6.667%
John Kavanaugh, MD	6.667%

Suhil Khuri, MD	6.667%
John Whalen, MD	6.667%
Joseph Fay, MD	6.667%
Frederick Fletcher, MD	6.667%
J. David Abraham, MD	6.667%
Richard Katz, MD	6.667%
Christopher DeCamp, MD	6.667%
James Alfandre, MD	6.667%
David Dixon, MD	6.667%
Luke Rigolosi, MD	6.667%
Kyle Flik, MD	6.667%
Frank Congiusta, MD	6.667%
Charles Buttaci, MD	3.333%

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, approval is recommended.

Financial Analysis

Amendment to the Operating Agreement

In accordance with the amendment to the operating agreement among the existing members of Executive Woods Ambulatory Surgery Center, LLC, and William H. Montgomery, M.D., Dr. Montgomery will make a capital contribution of $37,500 for his 3.333% interest. The contribution will be satisfied from personal resources.

Capability and Feasibility

The issue of capability is centered upon the proposed member's ability to meet his capital contribution, to be derived from personal resources. Presented as BFA Attachment A, is a summary net worth statement for William H. Montgomery, M.D., which indicates the availability of sufficient resources.

There are no significant issues of feasibility associated with this application. Presented as BFA Attachment B, is the audited financial summary of Executive Woods Ambulatory Surgery Center, LLC. As shown on attachment B, the facility achieved net operating income of $1,919,217 and $1,569,046 in 2010 and 2009, respectively. Attachment C, the internal financial summary of the Executive Woods Ambulatory Surgery Center, LLC, shows net operating income of $1,838,154 for 2011. During this period, the applicant has maintained positive working capital and net asset position.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Net Worth Statement, William H. Montgomery, M.D.
BFA Attachment B	Financial Summary of Executive Woods Ambulatory Center (2010 and 2009- Audited)
BFA Attachment C	Financial Summary of Executive Woods Ambulatory Center (2011- Internal)
BFA Attachment D	Establishment Checklist for Ambulatory Care

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 5th day of April, 2012, 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 change in 3.333% of the membership ownership, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:	FACILITY/APPLICANT:
112347-E	Executive Woods Ambulatory Surgery Center, LLC

APPROVAL CONTINGENT UPON:

N/A

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 # 112261-E

E & A Medical Solutions, LLC
d/b/a Forest Hills Health Center

County: **Queens (Forest Hills)**
Purpose: **Establishment**
Program: **Diagnostic and Treatment Center**
Submitted: **November 2, 2011**

Executive Summary

Description
E & A Medical Solutions, LLC, d/b/a Forest Hills Health Center, a recently formed limited liability company, requests approval to assume ownership of the AllHealth Diagnostic and Treatment Center's main site, at 68-60 Austin Street, Forest Hills. The other sites will continue to be operated by B & L Health, Inc. d/b/a AllHealth Diagnostic and Treatment Center (AllHealth).

The sole member of E & A Medical Solutions, LLC is Alexi Gevorgyan.

DOH Recommendation
Contingent approval.

Need Summary
The proposed services to be provided at the Center are the same as those currently reflected on AllHealth's operating certificate, with the exception of clinic part time services: audiology, dental, health fairs, nutritional, optometry, pediatric, podiatry, prenatal, primary medical services, psychology, occupational therapy, physical therapy and speech language pathology.

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
The purchase price of $250,000 will be met as follows: $15,000 Non-Refundable Deposit transferred to Seller on June 24, 2011; $35,000 Non-Refundable Deposit transferred to Seller on the date of the execution of this agreement; $50,000 transferred to an Escrow Agent on

the date of execution of this agreement and $150,000 at closing. The amount due at closing will be paid from the sole members personal resources.

Budget:		
	Revenues:	*$ 1,269,777*
	Expenses:	*1,250,662*
	Gain/(Loss):	*$ 19,115*

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

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

Recommendations

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

Office of Health Systems Management
Approval contingent upon:

1. Submission of a comprehensive plan to achieve the 'Prevention Agenda's 2013 Objectives' in the identified service area. Provide an annual progress report for the first three years after the change in ownership. [RNR]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of an executed lease assignment that is acceptable to the Department. [BFA]
4. Submission of a working capital loan commitment that is acceptable to the Department. [BFA]
5. Submission of a Certificate of Assumed Name that is acceptable to the Department. [CSL]
6. Submission of an executed Amended and Restated Articles of Organization that is acceptable to the Department. [CSL]
7. Submission of an Operating Agreement that is acceptable to the Department. [CSL]
8. Submission of evidence of site control that is acceptable to the Department. [CSL]

Approval conditional upon:

1. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
2. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
3. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
4. The clinical space must be used exclusively for the approved purpose. [HSP]

Council Action Date
April 5, 2012.

Need Analysis

Background

E & A Medical Solutions, LLC, d/b/a Forest Hills Health Center, a recently formed limited liability company, seeks approval to assume ownership of an existing Article 28 facility, Allhealth Diagnostic and Treatment Center, located at 68-60 Austin Street, Forest Hills, Queens County. B & L Health, Inc., the current operator of Allhealth Diagnostic and Treatment Center, will retain ownership of the existing three extension clinics in Brooklyn: Allhealth D&TC-Brooklyn, Allhealth D& TC-Brooklyn 2, and Allhealth D&TC-Mobile Van. There will no change in the services provided at the facility following the completion of this project.

Need Summary

Projected utilization is as follows:

Current Year:	10,848
First Year:	10,848
Third Year:	11,932

Analysis

The primary service area includes the following:

11375 - Forest Hills
11374 - Rego Park
11367 - Kew Gardens Hills
11365 - Flushing
11366 - Fresh Meadows
11373 - Elmhurst
11368 - Corona
11379 - Middle Village
11378 - Maspeth, and
11385 - Glendale

The following services are currently provided as listed on the facility's operating certificate:

Audiology O/P	Dental O/P	Health Fairs O/P
Nutritional O/P	Optometry O/P	Pediatric O/P
Podiatry O/P	Prenatal O/P	Primary Medical Care O/P
Psychology O/P	Therapy Occupational O/P	Therapy Physical O/P
Therapy Speech Language Pathology O/P		

The applicant plans to continue providing these services and will assume the existing transfer and affiliation agreement between Allhealth and NorthShore University Hospital at Forest Hills, which is 1.01 miles and three minutes' travel time from the Center. The hours of operation will be Monday-Thursday, 9:00 a.m.-8:00 p.m. and Friday-Sunday, 9:00 a.m.-5:00 p.m.

The applicant reports that the Center will serve all patients without regard to their ability to pay or the source of payment; the proposed operating budget provides for charity care, self-pay, and a sliding fee scale.

Conclusion

The new operator will continue providing the same services that are being provided currently.

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Background
Establish a diagnostic and treatment center.

Proposed Operator	E & A Medical Solutions
Operator Type	LLC
Doing Business As	Forest Hills Health Center
Site Address	68-60 Austin Street, Forest Hills
Services	Audiology, Dental, Health Fairs, Nutritional, Optometry, Pediatrics, Primary Care, Prenatal, Physical Therapy, Psychology, Occupational Therapy, Podiatry, Speech Therapy
Hours of Operation	Seven days a week including evening hours.
Staffing (1st Year / 3rd Year)	11.2 FTEs / 12.5 FTEs
Medical Director(s)	Lilia Mailian-Oganova
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Forest Hills Hospital; 1 mile and 3 minutes in distance

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 sole member of the LLC is:

Name	
Araksya Gevorgyan	100%

The proposed member has been the administrator and business manager of several private medical practices for over ten years as well as the owner of a medical practice management and consulting business. The proposed medical director is board certified in internal medicine.

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

Asset Purchase Agreement

The change in operational ownership will be effectuated in accordance with an executed asset purchase agreement; the terms are summarized as follows:

Date:	September 21, 2011
Seller:	B & L Health, Inc. d/b/a AllHealth Diagnostic and Treatment Center
Buyer:	E & A Medical Solutions, LLC
Assets Transferred:	Equipment, furniture, furnishings, supplies and similar property, books and records relating to the assets and patients of the Clinic only, telephone and fax numbers, mailing lists, computers, computer software and manufacturers warranties; Seller's goodwill and business associated with the Clinic, all benefits, proceeds and other amounts payable under any policy of insurance; copies of client lists, patient files and medical records of any and all clients served by the Clinic; if assignable and specifically requested by Buyer, Seller's rights and corresponding duties under its supplies/vendor agreements regarding the Clinic; all other intangible assets owned by Seller and principally used in the business of the Clinic, including but not limited to trade secrets and intellectual property and all accounts receivable and cash of the Clinic only for services rendered after the Closing Date.
Asset Excluded and Retained by Seller:	Seller's accounting records relating to the Clinic that the Seller is required to retain under applicable laws; Seller's cash, cash equivalents and notes receivable relating to the Clinic prior to the Closing Date; Seller's financial records, cancelled checks and bank statements relating to the Clinic prior to the Closing Date; any claims, refunds, rights, actions and litigation by Seller relating to the Clinic arising or accruing from operations prior to the Closing Date; Seller's tax records and tax returns, accounting records and general ledger or other books of account relating to the Clinic that Seller is required to retain under applicable laws; the name "AllHealth"; all contracts and contract rights, obligations and liabilities relating to the Clinic, except as assigned to Buyer by agreement of the parties; insurance policies and prepaid premiums regarding the Clinic and other prepaid expenses; the Seller's Federal Tax Identification Number, and government and non-government provider agreements and supplier agreements and numbers and all accounts receivable and Cash of the Clinic for services rendered before or on the Closing Date.
Assumed Liabilities:	None
Purchase Price:	$250,000
Payment of Purchase Price:	$15,000 Non-Refundable Deposit transferred to Seller on June 24,2011 $35,000 Non-Refundable Deposit transferred to Seller on the date of the execution of this agreement $50,000 (Escrow Agent) transferred to an Escrow Agent on the date of execution of this agreement. $150,000 in cash at Closing

The applicant has submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, not withstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility.

Lease Rental Agreement
The applicant will have the current lease assigned to them for the site that they will occupy, of which the terms are summarized below:

Premises:	3,000 square feet located at 68-60 Austin Street, Forest Hills, New York
Lessor:	68-60 Austin Realty Corp.
Lessee:	AllHealth Diagnostic and Treatment Center
Term:	Expires June 30, 2027
Rental:	7/01/2013- 6/30/2014- $132,063.21 ($44.02 per sq. ft.) 7/01/2014- 6/30/2015- $138,666.15 ($46.22 per sq. ft.) 7/01/2015- 6/30/2016- $145,599.30 ($48.53 per sq. ft.) 7/01/2016- 6/30/2017- $152,878.95 ($50.95 per sq. ft.) 7/01/2017- 6/30/2018- $160,523.16 ($53.50 per sq. ft.) After 7/01/2017- 6/30/2018, the lease will increase 5% annually.
Provisions:	The lessee shall be responsible for real estate taxes and utilities.

The applicant provided a draft lease assignment for the site. As a contingency of approval, the applicant must provide an executed lease assignment. The applicant has indicated that the lease will be an arm's length lease arrangement.

Operating Budget
The applicant has submitted an operating budget, in 2012 dollars, for the first year subsequent to the change in ownership:

Revenues:	
Medicaid Fee-For-Service	$253,955
Medicaid Managed Care	698,377
Medicare Fee-For-Service	55,870
Medicare Managed Care	83,805
Commercial Fee-For-Service	101,582
Private Pay	76,188
Total Revenues	$1,269,777
Expenses:	
Operating	$1,118,542
Capital	132,120
Total Expenses	$1,250,662
Net Income	$19,115
Visits	10,848
Cost Per Visit	$115.28

Utilization by payor source for the first year is broken down as follows:

Medicaid Fee-For-Service	20.00%
Medicaid Managed Care	54.99%
Medicare Fee-For-Service	4.00%

Medicare Managed Care	6.00%
Commercial Fee-For-Service	6.99%
Private Pay	4.99%
Charity Care	3.03%

Expense and utilization assumptions are based on the historical experience of AllHealth Diagnostic and Treatment Center in operating the site located at 68-60 Austin Street, Forest Hills.

Capability and Feasibility

The purchase price of $250,000 will be met as follows: $15,000 Non-Refundable Deposit transferred to Seller on June 24, 2011; $35,000 Non-Refundable Deposit transferred to Seller on the date of the execution of this agreement; $50,000 transferred to an Escrow Agent on the date of execution of this agreement and $150,000 at closing. The amount due at closing will be paid from the sole member's personal resources.

Working capital requirements are estimated at $208,444, based on two months of first year expenses. The applicant will finance $104,222 at an interest rate of 7.56% for a five year term. The remainder, $104,222, will be provided by the sole member.

Presented as BFA Attachment A is the personal net worth statement of the sole member of E & A Medical Solutions, LLC, Alexi Gevorgyan, which indicates the availability of sufficient funds to meet the equity contribution for the purchase price and working capital. Presented as BFA Attachment B is the pro-forma balance sheet of E & A Medical Solutions, LLC, which indicates a positive members equity position of $297,908.

The submitted budget indicates a net income of $19,115 during the first year after the change in ownership. The applicant's budget appears reasonable. Revenues are based on current reimbursement methodologies for diagnostic and treatment services.

Presented as BFA Attachment C, is the 2010 certified financial statements of B & L Health, Inc. As shown on Attachment C, the facility had a positive working capital position and a negative stockholders deficit during 2010. Also, the facility incurred an operating loss of $89,769 during 2010. The applicant has indicated that the reason for the losses is that the facility lost key professional staff during this time period and it resulted in direct revenues losses. The current operator implemented the following steps to improve operations: marketing/advertisement to enhance patient volume through various channels; decrease administrative and overhead costs; emphasis on broadening the range of outpatient services as well as improve service, quality of care offering one-stop solution, where patients can visit any specialists they need; renegotiating contracts with health insurance companies and suppliers; implementation of electronic medical records, which will also help cut costs by reducing the supply volume and conduct patient satisfaction surveys in order to improve the clinic services to suit patient needs. The applicant has indicated that 2011 financial data is not available.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Personal Net Worth Statement of Sole Member
BFA Attachment B	Pro-forma Balance Sheet
BFA Attachment C	2010 certified financial statements of B & L Health, Inc.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 5th day of April, 2012, 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 assume ownership of the AllHealth Diagnostic and Treatment Center's main site at 68-60 Austin Street, Forest Hills, 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:
112261-E	E & A Medical Solutions, LLC d/b/a Forest Hills Health Center

APPROVAL CONTINGENT UPON:

1. Submission of a comprehensive plan to achieve the 'Prevention Agenda's 2013 Objectives' in the identified service area. Provide an annual progress report for the first three years after the change in ownership. [RNR]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of an executed lease assignment that is acceptable to the Department. [BFA]
4. Submission of a working capital loan commitment that is acceptable to the Department. [BFA]
5. Submission of a Certificate of Assumed Name that is acceptable to the Department. [CSL]
6. Submission of an executed Amended and Restated Articles of Organization that is acceptable to the Department. [CSL]
7. Submission of an Operating Agreement that is acceptable to the Department. [CSL]
8. Submission of evidence of site control that is acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
2. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
3. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
4. The clinical space must be used exclusively for the approved purpose. [HSP]

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 # 112136-E

Hopkins Ventures, LLC
d/b/a Hopkins Center for Rehabilitation and Healthcare

County: **Kings (Brooklyn)**
Purpose: **Establishment**
Program: **Residential Health Care Facility**
Submitted: **September 2, 2011**

Executive Summary

Description

Hopkins Ventures, LLC, the sole member of KFG Operating I, LLC, doing business as Hopkins Center for Rehabilitation and Healthcare, a 288-bed residential health care facility (RHCF) located at 155 Dean Street, Brooklyn, is proposing to transfer 39% of its membership interests to six new members of the limited liability company.

The transfer of membership interest will increase the number of members of Hopkins Ventures, LLC from four to ten members. The transfer of membership interest will not result in the withdrawal of any current members of Hopkins Ventures, LLC. Operation of the facility will not change as a result of this application. The current members commenced operating the facility on March 24, 2011.

The current and proposed ownership of Hopkins Ventures, LLC are as follows:

Current	Pct.	Proposed	Pct.
Esther Traube	40.0	Esther Traube	30.0
Charles-Edouard Gros	30.0	Charles-Edouard Gros	20.0
Bernard Fuchs	25.0	Bernard Fuchs	6.0
Eli Lieber	5.0	Eli Lieber	5.0
		Marvin Rubin	30.0
		Gerald Fuchs	3.0
		Tova Fuchs	1.5
		Deborah Freund	1.5
		Miriam Ostreicher	1.5
		Sandra Edelstein	1.5

DOH Recommendation

Contingent approval.

Need Summary

Utilization at Hopkins Center for Rehabilitation and Healthcare has been consistent from 2008 to 2010, ranging from 98.1 percent to 97%.

RHCF Need – NYC Region	
2016 Projected Need	51,071
Current Beds	43,027
Beds under Const.	1,533
Total Resources	44,560
Unmet Need	6,511

There will be no change in beds or services with approval of this application.

Program Summary

No negative information has been received concerning the character and competence of the above applicants.

Financial Summary

The new members will purchase their membership interests as follows: Marvin Rubin (30%) for $30.00; Tova Fuchs (1.5%) for $10.00; Deborah Freund (1.5%) for $10.00; Miriam Ostreicher (1.5%) for $10.00; Gerald Fuchs (3.0%) for $10.00 and Sandra Edelstein (1.5%) for $10.00

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

Architectural Summary

This project is for establishment action only; therefore, no Architectural 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 of the applicant's Restated Articles of Organization, as filed with the Secretary of State. [CSL]

Council Action Date
April 5, 2012.

Need Analysis

Background
Hopkins Center for Rehabilitation and Healthcare is a 288 bed Residential Health Care Facility located at 155 Dean St., Brooklyn, Kings County. The facility is requesting approval to transfer 39% of its ownership interest to six new members.

RHCF Utilization	*2008*	*2009*	*2010*
Hopkins Center for Rehabilitation	98.1%	98.1%	97.0%
Kings County	92.1%	93.7%	93.1%

The facility has achieved occupancy rates at or over the planning optimum of 97% for all years under consideration.

Hopkins is a well-utilized facility, and the approval of the requested change in ownership interest will result in no diminution of capacity or services.

Recommendation
From a need perspective, approval is recommended.

Programmatic Analysis

Facility Information

	Existing	*Proposed*
Facility Name	Hopkins Center for Rehabilitation and Healthcare	Same
Address	155 Dean Street Brooklyn, NY. 11217	Same
RHCF Capacity	288	Same
ADHC Program Capacity	N/A	N/A
Type of Operator	LLC	LLC
Class of Operator	Proprietary	Proprietary
Operator	Hopkins Ventures, LLC Members: Esther Traube……… 40.0% Charles-Edouard Gros 30.0% Bernard Fuchs…………..25.0% Eli Lieber……….……….5.0%	Hopkins Ventures, LLC Members: Esther Traube………….....30.0% Charles-Edouard Gros……20.0% Bernard Fuchs……………..6.0% Eli Lieber……….……...…...5.0% Marvin Rubin………….….30.0% Gerald Fuchs……………….3.0% Tova Fuchs………………….1.5% Deborah Freund…………….1.5% Miriam Ostreicher…………..1.5% Sandra Edelstein…………...1.5%

Character and Competence

- INDIVIDUAL BACKGROUND REVIEW:

Marvin Rubin has management experience with the Hamilton Park Nursing and Rehabilitation Center (SNF) in Brooklyn, New York and has accounting experience from Norwood Terrace (SNF) and Queens Nassau Nursing Home (SNF).

Mr. Rubin discloses no ownership interest in health care facilities.

Gerald Fuchs holds a NYS Nursing Home Administrator's License (#05314) in good standing. He has experience as an assistant administrator at Cold Spring Hills (SNF) in Woodbury, New York (June 2008-July 2009) and at Hopkins Center for Rehabilitation and Healthcare in Brooklyn, New York (April 2011-present).

Mr. Fuchs discloses no ownership interest in health care facilities.

Tova Fuchs discloses no licenses nor has she disclosed any ownership interest in health care facilities.

Deborah Freund discloses no licenses nor has she disclosed any ownership interest in health care facilities.

Sandra Edelstein holds an expired Special Education Certification from the NYS Education Department (106667987). She has disclosed no ownership interest in health care facilities.

Miriam (Michelle) Ostreicher discloses no licenses nor has she disclosed any ownership interest in health care facilities.

The four existing member of Hopkins Ventures, LLC were reviewed as part of the initial facility establishment and were not subject to a character and competence review for this CON.

Conclusion
No negative information has been received concerning the character and competence of the above applicants.

An inquiry to Office of the Attorney General Medicaid Fraud Control Unit yielded no past or current substantiated complaints for the new members as well as for Tiferes Investors, an investment company to which 4 of the 6 proposed new members on this CON were Member Investors.

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

Membership Purchase Agreement
The applicant has provided an executed assignment and assumption agreements, which is summarized below:

Date:	June 15, 2011
Assignor:	Charles-Edouard Gross
Assignee:	Marvin Rubin
Membership Interest:	The assignee will purchase 10% membership interests in the Company.
Purchase Price:	$10.00

Date:	June15, 2011

Assignor: Bernard Fuchs
Assignee: Marvin Rubin
Membership Interest The assignee will purchase 10% membership interests in the Company
Purchase Price $10.00

Date: June 15, 2011
Assignor: Esther Traube
Assignee: Marvin Rubin
Membership Interest: The assignee will purchase 10% membership interests in the Company.
Purchase Price: $10.00

Date: June 15, 2011
Assignor: Bernard Fuchs
Assignee: Deborah Freund
Membership Interest: The assignee will purchase 1.5% membership interests in the Company.
Purchase Price: $10.00

Date: June 15, 2011
Assignor: Bernard Fuchs
Assignee: Gerald Fuchs
Membership Interest: The assignee will purchase 3.0% membership interests in the Company.
Purchase Price: $10.00

Date: June 15, 2011
Assignor: Bernard Fuchs
Assignee: Tova Fuchs
Membership Interest: The assignee will purchase 1.5% membership interests in the Company.
Purchase Price: $10.00

Date: June 15, 2011
Assignor: Bernard Fuchs
Assignee: Miriam Ostreicher
Membership Interest: The assignee will purchase 1.5% membership interests in the Company.
Purchase Price: $10.00

Date: June 15, 2011
Assignor: Bernard Fuchs
Assignee: Sandra Edelstein
Membership Interest: The assignee will purchase 1.5% membership interests in the Company.
Purchase Price: $10.00

Capability and Feasibility

The new members will purchase their membership interests as follows: Marvin Rubin (30%) for $30.00;Tova Fuchs (1.5%) for $10.00; Deborah Freund (1.5%) for $10.00; Miriam Ostreicher (1.5%) for $10.00; Gerald Fuchs (3.00%) for $10.00 and Sandra Edelstein (1.5%) for $10.00. Presented as BFA Attachment A are the net worth statement of the new members, which indicates the availability of sufficient funds to meet their purchase price responsibility.

There are no issues of feasibility associated with this application.

Presented as BFA Attachment B is the November 30, 2011 internal financial statements of Hopkins Center for Rehabilitation and Health Care. As shown on Attachment B, the facility had a negative working capital position and a positive net asset position. Also, the facility achieved a net income of $1,364,194 through November 30, 2011.

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

Recommendation
From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Personal Net Worth Statement of Proposed Members of Hopkins Center for Rehabilitation and Health Care
BFA Attachment B	November 30, 2011 internal financial statements of Hopkins Center for Rehabilitation and Health Care.

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 5th day of April, 2012, 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 39% of its membership interests to six new members of the limited liability company, 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:
112136-E	Hopkins Ventures, LLC d/b/a Hopkins Center for Rehabilitation and Healthcare

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of the applicant's Restated Articles of Organization, as filed with the Secretary of State. [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 # 112275-E

Rockville Operating, LLC
d/b/a Advanced Center for Rehabilitation and Nursing at Rockville

County: **Nassau (Rockville Centre)**
Purpose: **Establishment**
Program: **Residential Health Care Facility**
Submitted: **November 8, 2011**

Executive Summary

Description

Rockville Operating LLC, d/b/a as Advanced Center for Rehabilitation and Nursing at Rockville (the Center), is seeking approval to establish a new operator of Rockville Nursing Center, Inc., an existing 158-bed residential health care facility (RHCF) located at 41 Maine Avenue, Rockville Centre. Ownership of the operation and real estate before and after the requested change is as follows:

Operation:

Before		*After*	
Rockville Nursing Center, Inc.		Rockville Operating, LLC	
Members	Int.	Members	Int.
Daniel Putterman	20%	Sharon Einhorn	35%
Michael Putterman	20%	Devorah Freidman	35%
Jonathon Lewis	15%	Israel Minzer	10%
Jordan Lewis	15%	Benjamin Einhorn	7%
Tobi Putterman	15%	Ernest Schlesinger	5%
Eric Putterman	15%	Yossie Zucker	5%
		Dov Minzer	1%
		Naftail Minzer	1%
		Rivka Sussman	1%

Real Property:

Before		*After*	
Rickvale Associates, LLC		Rockville Property, LLC	
Member	Int.	Members	Int.
Arnold Putterman	100%	Neil Einhorn	35%
		Mark Friedman	35%
		Israel Minzer	10%
		Benjamin Einhorn	7%
		Ernest Schlesinger	5%
		Yossie Zucker	5%
		Dov Minzer	1%
		Naftali Minzer	1%
		Rivka Sussman	1%

The proposed majority members of Rockville Operating, LLC are Sharon Einhorn (35%) and Devorah Freidman (35%) who will be the managing members.

DOH Recommendation

Contingent approval.

Need Summary

Rockville Nursing Center, Inc and Nassau County had decreased utilization from 2008 to 2010. Occupancy at the Rockville Nursing Center decreased from 96% in 2008 to 95.5% in 2010 while overall occupancy in Nassau County decreased from 95.2% to 92.3%.

Program Summary

No changes in the program or physical environment are proposed in this application. No administrative services/consulting agreement is proposed in this application.

Financial Summary

Purchase price is $8,000,000 for operations and $7,800,000 for realty interests. The applicant will pay cash in the amount of $1,600,000 and borrow $6,400,000 for a term of 10 years at a rate of 5.26% for the operating entity. The real estate interests of $7,800,000 will be financed through a bank loan of $5,800,000 (10 yrs. @ 5.26%) and a promissory note of $2,000,000 from the seller (3 yrs. @ 7.0%).

Budget:	Revenues:	$ 16,405,801
	Expenses:	15,943,416
	Gain/(Loss):	$ 462,385

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.

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 programmatically acceptable name for the facility. [LTC]
2. Submission of an executed building lease that is acceptable to the Department of Health. [BFA]
3. Submission of a working capital loan commitment that is acceptable to the Department of Health. [BFA]

Council Action Date
April 5, 2012.

Need Analysis

Background

Rockville Operating LLC, doing business as Advanced Center for Rehabilitation and Nursing Rockville, proposes to be established as the operator of Rockville Nursing Center, Inc., a 158 bed residential health care facility (RHCF), located at 41 Main Ave., Rockville Center, Nassau County.

Rockville Nursing Center's utilization is higher than Nassau County for 2008, 2009, and 2010 as shown in Table 1 below:

RHCF Occupancy	***2008***	***2009***	***2010***
Rockville Nursing Center	96.0%	95.3%	95.5%
Nassau County	95.2%	94.03%	92.3%

The facility's occupancy is above the county's average each year under consideration but did not surpass the 97% planning optimum for 2008, 2009 or 2010. As indicated below in Table 2, the project 2016 bed need for Long Island is 1,353.

RHCF Bed Need	***Long Island***
2016 Projected Need	16,962
Current Beds	16,000
Beds Under Construction	-391
Total Resources	15,609
Unmet Need	1,353

Conclusion

There will be no change in beds or services upon approval. Utilization at Rockville Nursing Center was 95.5% in 2010. The projected 2016 bed need for Long Island is 1,353.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Facility Information

	Existing	*Proposed*
Facility Name	Rockville Nursing Center, Inc.	Advanced Center for Rehabilitation and Nursing at Rockville
Address	41 Maine Avenue Rockville Center, NY. 11570	Same
RHCF Capacity	158	Same
ADHC Program Capacity	N/A	N/A
Type of Operator	LLC	LLC
Class of Operator	Proprietary	Proprietary

Operator	Rockville Nursing Center, Inc. Members: Neal Einhorn…………………35% Mark Friedman…………….…35% Israel Minzer……………..…..10% Benjamin Einhorn………..……7% Ernest Schlesinger…………….5% Yossie Zucker……………..…..5% Dov Minzer……………………..1% Naftali Minzer………………..…1% Rivka Sussman………………..1%	Rockville Operating LLC Managing Member: Sharon Einhorn……………..…..35% Devorah Friedman………..…35% Members: Israel Minzer…………..……..10% Benjamin Einhorn……………………..……7% Ernest Schlesinger……………5% Yossie Zucker………………….5% Dov Minzer……………………..1% Naftali Minzer………………..…1% Rivka Sussman…………..……1%

Character and Competence

- FACILITIES REVIEWED:

Residential Health Care Facilities

Sans Souci Rehabilitation and Nursing Center	October 2009-present
Bellhaven Center for Rehabilitation and Nursing	March 2010-present
Dumont Center for Rehabilitation and Nursing	August 2010-present

- INDIVIDUAL BACKGROUND REVIEW:

Sharon Einhorn has disclosed ownership interest in the Bellhaven Center for Rehabilitation and Nursing (March 2010-present) and the Dumont Center for Rehabilitation and Nursing (August 2010-present).

Devorah Friedman holds a NYS speech pathologist license and is considered to be in good standing.

Ms. Friedman has disclosed ownership in the Bellhaven Center for Rehabilitation and Nursing (March 2010-present) and the San Souci Rehabilitation and Nursing Center (October 2009-present).

Israel Minzer has disclosed ownership interest in the Dumont Center for Rehabilitation and Nursing (August 2010-present).

Benjamin Einhorn holds a NYS CPA license and is in good standing. He discloses no ownership interest in health care facilities.

Ernest Schlessinger has disclosed ownership interest in the Bellhaven Center for Rehabilitation and Nursing (March 2010-present) and the Dumont Center for Rehabilitation and Nursing (August 2010-present).

Yossie Zucker holds a NYS CPA license and is in good standing. He discloses no ownership interest in health care facilities.

Dov Minzer has ownership interest in the Bellhaven Center for Rehabilitation and Nursing (March 2010-present), the Dumont Center for Rehabilitation and Nursing (August 2010-present), and the San Souci Rehabilitation and Nursing Center (October 2009-present).

Naftali Minzer has ownership interest in the Bellhaven Center for Rehabilitation and Nursing (March 2010-present), the Dumont Center for Rehabilitation and Nursing (August 2010-present), and the San Souci Rehabilitation and Nursing Center (October 2009-present).

Rivka Sussman has ownership interest in the Bellhaven Center for Rehabilitation and Nursing (March 2010-present), the Dumont Center for Rehabilitation and Nursing (August 2010-present), and the San Souci Rehabilitation and Nursing Center (October 2009-present).

Character and Competence – Analysis:
No negative information has been received concerning the character and competence of the above applicants. An inquiry to Office of the Attorney General Medicaid Fraud Control Unit yielded no past or current substantiated complaints for the new members

A review of the Sans Souci Nursing Home for the period reveals the following:

- The facility was fined $10,000 pursuant to a Stipulation and Order for surveillance findings on February 11, 2011. Deficiencies were found under 10 NYCRR 415.12(j): Quality of Care – Hydration.

A review of operations for the Sans Souci Rehabilitation and Nursing Center for the period results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of Bellhaven Center for Rehabilitation and Nursing and Dumont Center for Rehabilitation and Nursing reveals that a substantially consistent high level of care has been provided since there were no enforcements for the time period reviewed.

The proposed name "Advanced Center" is misleading to the public; accordingly the applicant has been requested to submit a revised name as a contingency of approval.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Background

Ernest Schlesinger and Sharon Einhorn both have ownership interests in the following nursing homes: Dumont Center for Rehabilitation and Nursing and Bellhaven Center for Rehabilitation and Nursing. Rivka Sussman has ownership interests in the following nursing homes: Sans Souci Rehabilitation and Nursing and Bellhaven Center for Rehabilitation and Nursing. Dov Minzer, Devorah Freidman and Naftail Minzer have ownership interest the following nursing homes: Bellhaven Center for Rehabilitation and Nursing, Sans Souci Rehabilitation and Nursing, and Dumont Nursing Home. Israel Minzer has ownership interest in Dumont Nursing Home. There are currently no financial statements for Bellhaven Center for Rehabilitation and Nursing or Dumont Nursing Home as they were not acquired until 2010. San Souci Rehabilitation and Nursing Center was acquired in October 2009 at which a financial summary for 2010 is presented in BFA Attachment D.

Asset Purchase Agreement

The change in operational ownership will be effectuated in accordance with an executed asset purchase agreement, the terms of which are summarized as follows:

Date	September 28, 2011
Seller:	Rockville Nursing Center, Inc.
Buyer:	Rockville Operating LLC
Assets Transferred:	All tangible assets used in the business whether owned or leased; Non-Fixed Equipment; assigned contracts, provided that with respect to the Assigned Contracts, Buyer shall assume only those contractual obligations and liabilities under the assigned contracts arising from and after the Closing Date; all residential records and accounts receivable; Medicare and Medicaid provider numbers; any and all Permits of the Company related solely to Business issued by a Governmental Entity; resident/patient prepayments; security deposits relating solely to the Business and all telephone numbers and facsimile numbers.

Excluded Assets:	Cash and cash equivalents, bank accounts, certificates of deposit and investment accounts of the seller; Business Contracts that will not be assumed by the buyer; Corporate Records and personal items; Tax Refunds or obligations; All credits related to NAMI audits of the business prior to closing date and retained accounts receivable.
Assumed Liabilities:	All of the claims, liabilities and obligations of any kind or nature incurred in the conduct of the Business or the use of the Purchased Assets, but only to the extent that the same arise from and after the Closing Date; all liabilities and obligations listed of the Company under the assigned contracts only to the extent that the same arises from and after the Closing Date.
Purchase Price:	$8,000,000 of which $400,000 is being held in an escrow account with a balance due of $7,600,000
Payment of Purchase Price:	On the Closing Date, Buyer shall deliver to the Company by wire transfer to the bank account designated by the Company $1,600,000 at the Closing. The residual $6,400.000 will be paid via loan at closing.

The operational purchase price will be met as follows:

Equity (Provided by Rockville Operating LLC)	$1,600,000
Financed by Rockville Operating LLC (5.26 interest rate for 10 years)	$6,400,000

The applicant submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently, there are no outstanding Medicaid liabilities.

Real Property Purchase Agreement

The change in real property ownership will be effectuated in accordance with an executed purchase agreement, the terms of which are summarized below:

Date:	September 28, 2011
Seller:	Rickvale Associates, LLC
Buyer:	Rockville Property, LLC
Purchase Price:	$7,800,000
Payment of Purchase Price:	Buyer shall sign a promissory note for $2,000,000 at a rate of 7% for three years with the seller. Also, a bank loan for $5,800,000 at an interest rate of 5.26% for 10 years.

The total financing for the operating and the real estate, which also includes financing fees and closing costs, are as follows:

Equity	$1,600,000
Financed (5.26% interest rate for 10 years)	$12,200,000
Promissory Note (Real Estate) 7% for 3 years	$2,000,000

Lease Rental Agreement

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

Premises:	1035 East Street, Brooklyn, New York 11210
Lessor:	Rockville Property, LLC
Lessee:	Rockville Operating, LLC
Term:	35 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 mortgages encumbering the Demised Premises or portions thereof, plus insurance, taxes and maintenance fees. The total annual rental payments are estimated at $422,313 annually ($35,192.75 per month).

Currently, Medicaid capital cost reimbursement is based on the return on/return of equity reimbursement.

After the change in ownership, capital reimbursement will continue to be based on the return of and return on equity reimbursement methodology. The estimated useful life of the facility is 10 years.

Operating Budget

The applicant has submitted an operating budget, in 2012 dollars, for the first year subsequent to the change in ownership:

	Per Diem	Total
Revenues:		
Medicaid FFS	$227.08	$9,378,177
Medicare FFS	504.48	3,207,477
Private	415.50	3,073,072
**Other (Assessment Revenue)	15.34	747,075
Total Revenues		$16,405,801
Expenses:		
Operating	$269.65	$14,845,217
Capital	19.95	1,098,199
Total Expenses	$289.60	$15,943,416
Net Income		$462,385
Utilization: (patient days)		55,053
Occupancy		95.46%

***Assessment revenue represents 6% of gross receipts that the state assesses nursing homes on all non-Medicare revenue.*

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

- Expenses include lease rental.
- Budgeted case mix of 1.035 was utilized by the facility at the time of CON filing for change in ownership which based on historical experience and current reimbursement methodologies.
- The capital component of the Medicaid rate is based on a return on/return of equity reimbursement methodology.
- Overall utilization for year one is projected at 95.46%. The 2010 certified cost report indicates occupancy rate at 95.46%.

Utilization by payor source is expected as follows:

Medicaid FFS	75%
Medicare FFS	12%
Private	13%

**Breakeven occupancy is projected at 92.77%.*

Capability and Feasibility

The operational purchase price of $8,000,000 will be met from the proposed members' personal resources of $1,600,000 and a bank loan of $6,400,000 at which a letter of interest has been provided. The real estate purchase price is $7,800,000 and will be met as follows: Rockville Property, LLC will sign a promissory note with the seller for $2,000,000 at a rate of 7% for three years and bank loan for $5,800,000 with a term of 10 years at a rate of 5.26%. A letter of interest has been provided in regard to the financing for the promissory note with the seller and the bank loan.

Working capital requirements are estimated at $2,657,236, which appears reasonable based on two-months of first year expenses. The applicant submitted a letter of interest to finance $1,328,618 at an interest rate of 5.26% for five years. The remainder $1,328,618 will be provided as equity by the proposed members of Rockville Operating, LLC. Presented as BFA Attachment E, presents the pro-forma balance sheet of Rockville Operating, LLC. As shown, the facility will initiate operations with $2,928,618 in member equity. It is noted that assets include goodwill of $4,500,000 which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Thus, excluding goodwill, the net asset position would be a negative $1,571,382.

Total member equity requirements for this application are broken down as follows: Sharon Einhorn, 35% member has an equity requirement of $1,025,501, Devorah Freidman, 35% member equity requirement is $1,025,501, Israel Minzer, 10% member equity requirement is $292,861, Benjamin Einhorn, 7% member equity requirement is $205,003, Ernest Schlesinger, 5% member equity requirement is $146,430, Yossie Zucker, 5% member requirement is $146,430, and Dov Minzer, Naftail Minzer, and Rivka Sussman each have an 1% member equity requirement is $29,286 each. The applicant provided an affidavit indicating that Israel Minzer has agreed to contribute equity disproportionate to any member interest if needed. Presented as BFA Attachment A, is the net worth statements of the proposed members of Rockville Operating, LLC, which reveals the availability of sufficient funds for the equity contribution to meet the purchase price and working capital requirement.

The submitted budget indicates a net income of $462,385. Following is the comparison of the historical and projected revenues and expenses:

2010 Historical Revenue:	$15,730,480
2010 Historical Expense:	15,759,332
2010 Net Income:	($28,852)
Incremental Income:	$675,321
Incremental Expense:	184,084
Incremental Net Income:	$462,385

Projected income includes revenue at budgeted occupancy and payor source. Projected expenses include acquisition of capital expenses; expenses at budgeted occupancy and the difference between the current year and projected levels. Although utilization remains constant compared to 2010, incremental income increases due to increased Medicare and Private Pay reimbursement rates trended to 2012. Incremental expenses increased slightly by $184,084. This is due to implementing cost controls and reducing expenses in management services by ($162,247) and administrative services by ($405,900). The budget appears reasonable from a financial perspective.

As shown in Attachment B, the facility has maintained an average negative working capital position of $2,328,853 and an average positive equity position of $1,118,955 for the period shown. Also, the facility achieved an average net gain of $144,722 for 2008 through 2010. During 2010 the facility incurred an operating loss of $28,852. The applicant indicates that a decrease in Medicare and Medicaid revenues was the reason for the loss. The applicant is reviewing current administrative expenses to reduce costs which will result in a positive operating margin for 2012. Also, as shown in BFA Attachment C is the un-audited financial statement for dates January 1, 2011 through November 30, 2011, indicating the facility has a positive working capital position and a negative equity position. The facility also incurred a net loss of $21,819 as of November 30, 2011. The loss is attributable to expense variance in dietary

purchased services over budget by $55,461. The facility instituted inventory controls in the dietary department to insure excessive inventory is no longer purchased.

Presented as BFA Attachment D, is the 2010 financial summary for Sans Souci Rehabilitation and Nursing Center. The facility had a negative working capital position of $770,729 and positive equity position of $816,218. The negative working capital position was due to accounts payable in the amount of $1,056,729. This amount will decrease in the next fiscal year as it is a short term liability. Decreasing short term payable will have a positive impact on the working capital position. Also the facility achieved an operating income of $273,738 during 2010.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Personal Net Worth Statement
BFA Attachment B	Financial Summary for Rockville Nursing Center, Inc.
BFA Attachment C	Internal Financial Statement for Rockville Nursing Center, Inc.
BFA Attachment D	Financial Summary for Sans Souci Rehabilitation & Nursing
BFA Attachment E	Pro-forma Rockville Nursing Center, LLC
BFA Attachment F	Establishment Checklist, Rockville Nursing Center, 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 5th day of April, 2012, 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 Rockville Operating, LLC d/b/a Advanced Center for Rehabilitation and Nursing at Rockville as the new operator of Rockville Nursing Center, Inc., 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:
112275 E	Rockville Operating, LLC d/b/a Advanced Center for Rehabilitation and Nursing at Rockville

APPROVAL CONTINGENT UPON:

1. Submission of a programmatically acceptable name for the facility. [LTC]
2. Submission of an executed building lease that is acceptable to the Department of Health. [BFA]
3. Submission of a working capital loan commitment 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

Public Health and Health Planning Council

Project # 112348-E

St. James Operating, LLC
d/b/a St. James Rehabilitation and Healthcare Center

County: **Suffolk (St. James)**
Purpose: **Establishment**
Program: **Residential Health Care Facility**
Submitted: **December 14, 2011**

Executive Summary

Description

St. James Operating, LLC d/b/a St. James Rehabilitation and Healthcare Center, a limited liability company formed in order to purse this CON, is requesting approval to be established as the new operator of St. James Healthcare Center, LLC, an existing 230-bed for-profit RHCF located at 275 Moriches Road, St. James. Ownership of the operations and real estate before and after the requested change is as follows:

Operation:

Before	After	
St. James Health Center, LLC	St. James Operating, LLC d/b/a St. James Rehabilitation and Healthcare Center	
Members	Members	Int.
** See BFA Attachment A for the Names & Membership Interest of its 69 members*	Sharon Einhorn	25.000%
	Devorah Friedman	25.000%
	Ernest Schlesinger	10.000%
	Isreal Minzer	8.340%
	Meryl Maybruch	8.330%
	Aaron Schlosser	4.165%
	Harold Weinstein	4.165%
	Joseph Goldberger	4.000%
	Steven Sax	3.000%
	Yossie Zucker	3.000%
	Elliot Goldberger	1.000%
	Dov Minzer	1.000%
	Naftali Minzer	1.000%
	Akiva Rudner	1.000%
	Rivka Sussman	1.000%

Real Property:

Before	After	
S.J.N.H. Realty Corporation	St. James Realty NY, LLC	
Members	Members	Int.
**The ownership of S.J.N.H. Realty Corporation is identical to that of the operator – please see BFA Attachment A for the Names & Membership Interest of its 69 members*	Sharon Einhorn	25.000%
	Devorah Friedman	25.000%
	Ernest Schlesinger	10.000%
	Isreal Minzer	8.340%
	Meryl Maybruch	8.33%
	Aaron Schlosser	4.165%
	Harold Weinstein	4.165%
	Joseph Goldberger	4.000%
	Steven Sax	3.000%
	Yossie Zucker	3.000%
	Elliot Goldberger	1.000%
	Dov Minzer	1.000%
	Naftali Minzer	1.000%
	Akiva Rudner	1.000%
	Rivka Sussman	1.000%

DOH Recommendation

Contingent approval.

Need Summary

St. James Rehabilitation and Healthcare Center (Center) had a slight decrease in utilization from 2008 to 2010. Occupancy at the Center decreased from 95.7% in 2008 to 95.1% in 2010 while overall occupancy in Suffolk County decreased from 94.8% to 94.3%.

Program Summary

No changes in the program or physical environment are proposed in this application.

Financial Summary

Operations purchase price of $18,000,000, to be met with $3,603,000 from members' equity and $14,400,000 mortgage (10 yrs. @ 5.26%, 25 yr. amoritization). Real property purchase price of $2,000,000 to be met with member equity of $400,000 in equity and a $1,600,000 mortgage (10 yrs. @ 5.26%, 25 yr. amortization).

Sensitized Budget:	*Revenues:*	*$ 23,884,491*
	Expenses:	*22,210,524*
	Gain/ (Loss):	*$ 1,673,967*

Subject to the 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 a lease rental agreement that is acceptable to the Department of Health. [BFA]
2. Submission of a mortgage commitment that is acceptable to the Department. [BFA]
3. Submission of a working capital commitment that is acceptable to the Department. [BFA]
4. Submission of an original affidavit from the applicant members (or stockholders or partners) making a commitment to personally fund the balloon payment on the proposed mortgage, should terms acceptable to the Department of Health be unavailable at the time of refinancing. [BFA]
5. Submission of a photocopy of the applicant's executed proposed articles of organization, acceptable to the Department. [CSL]

Council Action Date
April 5, 2012.

Need Analysis

Background

St. James Healthcare Center LLC, doing business as St. James Rehabilitation and Healthcare Center (Center), is proposing to be established as the operator of St. James Healthcare Center., a 230-bed residential health care facility (RHCF), located at 275 Moriches Road, St. James, Suffolk County.

The Center's utilization is higher than Suffolk County for 2008, 2009, and 2010 as shown in Table 1 below:

RHCF Occupancy	*2008*	*2009*	*2010*
St. James Rehabilitation	95.7%	96.0%	95.1%
Suffolk County	94.8%	95.4%	94.3%

The facility's occupancy is above the county's average for each year under consideration but did not surpass the 97% planning optimum for 2008, 2009 or 2010. As indicated below in Table 2, the project 2016 bed need for Long Island is 1,353.

RHCF Bed Need	***Long Island***
2016 Projected Need	16,962
Current Beds	16,000
Beds Under Construction	-391
Total Resources	15,609
Unmet Need	1,353

Conclusion

There will be no change in beds or services upon approval. Utilization at St. James Healthcare Center was 95.1% in 2010. The projected 2016 bed need for Long Island is 1,353.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Facility Information

	Existing	*Proposed*
Facility Name	St. James Healthcare Center	St. James Rehabilitation and Healthcare Center
Address	275 Moriches Road St. James, NY. 11780	Same
RHCF Capacity	230	Same
ADHC Program Capacity	N/A	N/A
Type of Operator	LLC	LLC
Class of Operator	Proprietary	Proprietary
Operator	St. James Healthcare Center	St. James Operating, LLC

	Members:		Managing Members:	
	Neal Einhorn	25.000%	Sharon Einhorn	25.000%
	Mark Friedman	25.000%	Devorah Friedman	25.000%
	Ernest Schlesinger	10.000%		
	Israel Minzer	8.340%	Members:	
	Meryl Maybruch	8.330%	Ernest Schlesinger	10.000%
	Aaron Schlosser	4.165%	Israel Minzer	8.340%
	Harold Weinstein	4.165%	Meryl Maybruch	8.330%
	Joseph Goldberger	4.000%	Aaron Schlosser	4.165%
	Steven Sax	3.000%	Harold Weinstein	4.165%
	Yossie Zucker	3.000%	Joseph Goldberger	4.000%
	Elliot Goldberger	1.000%	Steve Sax	3.000%
	Dov Minzer	1.000%	Yossie Zucker	3.000%
	Naftali	1.000%	Eliot Goldberger	1.000%
	Akiva Rudner	1.000%	Dov Minzer	1.000%
	Rivka Sussman	1.000%	Naftali Minzer	1.000%
			Akiva Rudner	1.000%
			Rivka Sussman	1.000%

Character and Competence

- FACILITIES REVIEWED:

Residential Health Care Facilities

San Souci Rehabilitation and Nursing Center	October 2009-present
Bellhaven Center for Rehabilitation and Nursing	March 2010-present
Dumont Center for Rehabilitation and Nursing	August 2010-present
Franklin Center for Rehabilitation and Nursing	January 2004 - December 2009

- INDIVIDUAL BACKGROUND REVIEWS:

Sharon Einhorn discloses ownership interest in the Bellhaven Center for Rehabilitation and Nursing (March 2010-present) as well as the Dumont Center for Rehabilitation and Nursing (August 2010-present).

Devorah Friedman holds a NYS speech pathologist license and is considered to be in good standing. Devorah is the owner and operator of the Bellhaven Center for Rehabilitation and Nursing (March 2010-present).

Devorah Friedman also discloses ownership interest in the Dumont Center for Rehabilitation and Nursing (August 2010-present) and the San Souci Rehabilitation and Nursing Center (October 2009-present).

Ernest Schlesinger discloses ownership interest in the Bellhaven Center for Rehabilitation and Nursing (March 2010-present) as well as the Dumont Center for Rehabilitation and Nursing (August 2010-present).

Israel Minzer has disclosed ownership interest in the Dumont Center for Rehabilitation and Nursing (August 2010-present).

Meryl Maybruch discloses no licenses nor has she disclosed any ownership interest in health care facilities.

Aaron Schlosser discloses no licenses nor has he disclosed any ownership interest in health care facilities.

Harold Weinstein discloses no licenses nor has he disclosed any ownership interest in health care facilities.

Joseph Goldberger was the owner and operator of the Franklin Center for Rehabilitation and Nursing (2004-2009)

Yossie Zucker holds a NYS CPA license and is in good standing. He discloses no ownership interest in health care facilities.

Eliot Goldberger discloses no licenses nor has he disclosed any ownership interest in health care facilities.

Dov Minzer discloses ownership interest in the Bellhaven Center for Rehabilitation and Nursing (March 2010-present), the Dumont Center for Rehabilitation and Nursing (August 2010-present), and the San Souci Rehabilitation and Nursing Center (October 2009-present).

Naftali Minzer has ownership interest in the Bellhaven Center for Rehabilitation and Nursing (March 2010-present), the Dumont Center for Rehabilitation and Nursing (August 2010-present), and the San Souci Rehabilitation and Nursing Center (October 2009-present).

Akiva Rudner holds a NYS Nursing Home Administrator's License (#05314) in good standing. Akiva discloses no ownership interest in health care facilities.

Rivka Sussman has ownership interest in the Bellhaven Center for Rehabilitation and Nursing (March 2010-present), the Dumont Center for Rehabilitation and Nursing (August 2010-present), and the San Souci Rehabilitation and Nursing Center (October 2009-present).

Steven Sax discloses no licenses nor has he disclosed any ownership interest in health care facilities.

Character and Competence – Analysis:
No negative information has been received concerning the character and competence of the above applicants. An inquiry to Office of the Attorney General Medicaid Fraud Control Unit yielded no past or current substantiated complaints for the new members

A review of the Sans Souci Nursing Home for the period reveals the following:

- The facility was fined $10,000 pursuant to a Stipulation and Order for surveillance findings on February 11, 2011. Deficiencies were found under 10 NYCRR 415.12(j): Quality of Care – Hydration.

A review of operations for the Sans Souci Rehabilitation and Nursing Center for the period results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of Bellhaven Center for Rehabilitation and Nursing, Dumont Center for Rehabilitation and Nursing and Franklin Center for Rehabilitation and Nursing reveals that a substantially consistent high level of care has been provided since there were no enforcements for the time period reviewed.

Recommendation
From a programmatic perspective, approval is recommended.

Financial Analysis

Background
BFA Attachment B presents a net worth statement of the proposed members. Several of the proposed members have acquired an ownership interest in three other RHCF facilities between September 2009 and July 2010. These facilities are as follows: Westchester Park, LLC d/b/a Sans Souci Rehabilitation and Nursing Center, Bellhaven Management, LLC d/b/a Bellhaven Center for Rehabilitation and Nursing Care, and Dumont Operating, LLC d/b/a Dumont Center for Rehabilitation and Nursing Care. Presented as BFA Attachments D through F, are the financial results for the three RHCFs as reported on their internal financial statements dated October 31, 2011 and/or November 30, 2011.

Operations Purchase/Sale Agreement
The applicant has submitted an executed agreement to purchase the RHCFs operating interest; the terms are summarized below:

Date:	November 14, 2011
Seller:	St. James Healthcare Center, LLC
Purchaser:	St. James Operating, LLC d/b/a St. James Rehabilitation and Healthcare Center
Assets Transferred Operations:	Rights, title and interest in: equipment, machinery and other tangible personal property; contracts relating to the business; resident deposits; permits; inventory; computer software; building property; business name; provider agreements and provider numbers; procedure manuals, phone numbers, resident and employee records, business records; goodwill; prepaid expenses and security deposits; and domain rights and names.
Excluded Assets:	Cash, accounts receivable, third party claims, refunds, and retroactive rate increases.
Assumed Liabilities:	Those accruing on or after closing date.
Purchase Price:	$18,000,000
Payment of Purchase Price:	$750,000 first escrow deposit $ 600,000 second escrow deposit with the remaining $16,650,000 due at closing.

The purchase price is proposed to be satisfied as follows:

Equity:	St. James Operating, LLC members contribution	$3,603,000
Mortgage:	5.26%, 10-year term with a 25-amortization schedule	14,400,000
Total		$18,003,000

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently, the facility has no outstanding Medicaid audit liabilities.

Real Estate Purchase/Sale Agreement

The applicant has submitted an executed agreement to purchase the real property; the terms are summarized below:

Date:	November 14, 2011
Seller:	S.J.N.H. Realty Corporation
Purchaser:	St. James Realty NY, LLC
Assets :	All rights, title and interest in the parcel of land known as 275 Moriches Road, St. James, New York 11780, and the sewage treatment plant (STP) including all fixtures and equipment.
Assumed Agreements:	Assumes all Seller's rights and duties under the STP Agreements.
Purchase Price:	$2,000,000
Payment of Purchase Price:	$150,000 escrow deposit with the remaining $1,850,000 due at closing.

The purchase price is proposed to be satisfied as follows:

Equity:	St. James Realty NY, LLC members contribution	$400,000
Mortgage:	5.26%, 10-year term with a 25-amortization schedule	1,600,000
Total		$2,000,000

As shown above, the members and their proposed ownership interest of St. James Realty NY, LLC (the real property owners) are identical to St. James Operating, LLC d/b/a St. James Rehabilitation and Healthcare Center (the nursing home operator).

Lease Agreement and Medicaid Capital Reimbursement

The applicant has submitted an executed real estate lease agreement; the terms are summarized below:

Date:	November 29, 2011
Premises:	A 230-bed RHCF located at 275 Moriches Road, St. James, NY 11780
Owner/Landlord:	St. James Realty NY, LLC
Lessee:	St. James Operating, LLC d/b/a St. James Rehabilitation and Healthcare Center
Term:	Thirty-five years
Rent:	$116,500 per year ($9,709 per month)
Provisions:	Triple net lease

The lease arrangement is a non-arm's length agreement. Currently, Medicaid capital reimbursement is based on the return of/return on equity methodology, which will not be altered upon the change in ownership.

Operating Budget

The applicant has provided an operating budget, in 2012 dollars, for the first year subsequent to change in ownership. We have also provided a sensitized budget. The budgets are summarized below:

	Per Diem	Total
Revenues:		
Medicaid*	$243.96	$14,643,810
Medicare	504.35	5,669,346
Private Pay*	395.16	3,656,798
Total Revenues:		$23,969,954
Expenses:		
Operating	$297.69	$21,239,228
Capital	12.06	971,296
Total Expenses:		$22,210,524
Net Income:		$1,759,430
Utilization (resident days)		80,520
Occupancy		95.91%

**Includes assessment revenue of $905,631, which is included with both Medicaid and Private Pay revenues and has been distributed using the percentage of patient days between them. Therefore, Medicaid was allocated 86.64% of the revenues and Private Pay was allocated 13.36% of the revenues.*

Sensitized Budget:

	Per Diem	Total
Revenues:		
Medicaid*	$242.54	$14,558,347
Medicare	504.35	5,669,346
Private Pay *	395.16	3,656,798
Total Revenues:		$23,884,491
Expenses:		
Operating	$297.69	$21,239,228
Capital	12.06	971,296
Total Expenses:		$22,210,524
Net Income:		$1,673,967
Utilization (resident days)		80,520
Occupancy		95.91%

**Includes assessment revenue of $905,631, which is included with both Medicaid and Private Pay revenues and has been distributed using the percentage of patient days between them. Therefore, Medicaid was allocated 86.64% of the revenues and Private Pay was allocated 13.36% of the revenues.*

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

- Expenses include lease rental:
- Medicaid revenues are based on actual 2011 rates with no trend factor to 2012. As nursing Home pricing methodology for Medicaid has changed as of January 1, 2012 we have had to sensitize the budget.
- Medicare and private revenues on actual rates trended to 2012.
- Overall utilization is projected at 95.91%. Utilization for the years from 2006 through 2010 averaged 96.27%.
- Utilization by payor source is anticipated as follows:

Medicaid Fee-for-Service	74.55%
Medicare Fee-for-Service	13.96%
Private/Other	11.49%

- Breakeven utilization and sensitized breakeven utilization is projected at approximately 88.98%.

Capability and Feasibility

St. James Operating, LLC d/b/a St. James Rehabilitation and Healthcare Center proposes to acquire the operating interest of St. James Healthcare Center, a 230-bed RHCF for $18,000,000 plus $3,000 in CON application fees. The members will contribute $3,603,000 in equity and enter into a proposed mortgage with Capital One Bank for $14,400,000 at the above stated terms concurrently, and through St. James Realty NY, LLC. The proposed members have entered into a Real Estate Purchase Agreement with S.J.N.H. Realty Corporation to acquire their real property interest for $2,000,000. The acquisition price will be satisfied through the members' equity contribution of $400,000 and entering into a $1,600,000 proposed mortgage with Capital One Bank at the above stated terms. BFA Attachments B is the proposed members' net worth summaries for St. James Operating, LLC (the operator) and St. James Realty NY, LLC (the Landlord), which reveals sufficient resources to meet all of the equity requirement. It is noted that liquid resources may not be available in proportion to proposed ownership interest. Therefore, Devorah Friedman, Israel Minzer and Joseph Goldberger have provided affidavits stating that they are willing to contribute resources disproportionate to their membership interest.

Working capital is estimated at $3,701,754 and is based on two months of the first year expenses, half of which, or $1,850,877 will be satisfied from members' equity. The remaining $1,850,877 will be satisfied through a five year loan at 5.26% from Capital One Bank. Review of BFA Attachment B, the summary of net worth reveals sufficient resources for working capital equity.

Presented as BFA Attachment C is a pro-forma balance sheet for St. James Operating, LLC d/b/a St. James Rehabilitation and Healthcare Center, which shows operations will start off with $5,450,877 in member's equity. It should be noted that the total assets include $17,848,829 in goodwill, which is not a liquid resource nor is it recognized for Medicaid reimbursement. If goodwill is eliminated from the equation, then the total net asset would become a negative $12,397,952.

The submitted budget indicates $1,759,430 in net income would be generated in the first year after the change in ownership. The sensitized budget indicates that $1,673,967 in net income would be generated in the first year after the change in ownership. Therefore in either situation the operations are profitable. The following is a comparison of the 2010 historical revenues and expenses and projected revenues and expenses and also the sensitized information as well:

Projected Income	$ 23,969,954
Projected Expense	22.210,524
Projected Net Income	$1,759,430
Annual 2010 Income	$22,133,285
Annual 2010 Expense	21,100,949
Annual 2010 Net Income (Loss)	$1,032,336
Incremental Net Income (Loss)	$727,094
Sensitized Projected Income	$ 23,884,491
Sensitized Projected Expense	22.210,524
Sensitized Projected Net Income	$1,673,967
Annual 2010 Income	$22,133,285
Annual 2010 Expense	21,100,949
Annual 2010 Net Income (Loss)	$1,032,336
Sensitized Incremental Net Income (Loss)	$641,631

It is estimated that incremental net revenue for all payors will increase approximately $1,836,669, with an estimated $731,148 coming from Medicaid as the result of changes in rates and $905,631 from assessment revenues. With the sensitized budget, it is estimated that incremental net revenue for all payors will increase approximately $1,751,206, with an estimated 645,685 coming from Medicaid as the result of changes in rates and $905,631 from assessment revenues. According to St. James Healthcare Center, LLC financial statements, the average per day Medicaid revenue increased by $14.11, going from $218.01 in 2010 to $232.12 for the ten months ending October 31, 2012. This increase doesn't include a positive retroactive adjustment of $13.79 per patient day during these ten months.

The balance or $199,890 in incremental revenues comes from Medicare and private payors and is based upon current experience and trending. Operating and capital expenses are expected to increase in the first year by $910,528 and $199,047, respectively. The budget appears reasonable.

It is estimated that the incremental net revenue for all payors will increase approximately $1,836,669, with an estimated $731,148 coming from Medicaid as the result of changes in rates and $905,631 from assessment revenues. According to St. James Healthcare Center, LLC financial statements, the average per day Medicaid revenue increased by $14.11, going from $218.01 in 2010, to $232.12 for the ten months ending October 31, 2012. This increase does not include a positive retroactive adjustment of $13.79 per patient day during these ten months. The balance or $199,890 in incremental revenues comes from Medicare and private payors and is based upon current experience and trending. Operating and capital expenses are expected to increase in the first year by $910,528 and $199,047, respectively. The budget appears reasonable.

As shown on BFA Attachment D, Westchester Park, LLC d/b/a Sans Souci Rehabilitation and Nursing Center shows the RHCF had both positive working capital and net asset positions, and generated $1,956,887 in excess revenues over expenses for the eleven months ending November 30, 2011. Occupancy during this period was at 95.61%.

As shown on BFA Attachment E, Bellhaven Management, LLC d/b/a Bellhaven Center for Rehabilitation and Nursing Care shows the RHCF had both a positive working capital and net asset positions and generated $3,288,997 in excess revenues over expenses for the ten months ending October 31, 2011. Occupancy during this period was 96.10%.

As shown on BFA Attachment F, Dumont Operating, LLC d/b/a Dumont Center for Rehabilitation and Nursing Care shows the RHCF had both negative working capital and net asset positions and generated $3,371,360 in excess revenues over expenses for the eleven months ending November 30, 2011. Occupancy during this period was 94.40%.

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

Recommendation
From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	St. James Health Center, LLC and S.J.N.H. Realty Corporation, List of Members and Membership Interest
BFA Attachment B	Net Worth of Proposed Members, St. James Operating, LLC and St. James Realty NY, LLC
BFA Attachment C	Pro-forma Balance Sheet, St. James Operating, LLC
BFA Attachment D	Financial Summary, Westchester Park, LLC d/b/a Sans Souci Rehabilitation and Nursing Center
BFA Attachment E	Financial Summary, Bellhaven Management, LLC d/b/a Bellhaven Center for Rehabilitation and Nursing Care
BFA Attachment F	Financial Summary, Dumont Operating, LLC d/b/a Dumont Center for Rehabilitation and Nursing Care
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 5th day of April, 2012, 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 St. James Operating, LLC as the new operator of St. James Healthcare 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:
112348 E	St. James Operating, LLC d/b/a St. James Rehabilitation and Healthcare Center

APPROVAL CONTINGENT UPON:

1. Submission of a lease rental agreement that is acceptable to the Department of Health. [BFA]
2. Submission of a mortgage commitment that is acceptable to the Department. [BFA]
3. Submission of a working capital commitment that is acceptable to the Department. [BFA]
4. Submission of an original affidavit from the applicant members (or stockholders or partners) making a commitment to personally fund the balloon payment on the proposed mortgage, should terms acceptable to the Department of Health be unavailable at the time of refinancing. [BFA]
5. Submission of a photocopy of the applicant's executed proposed articles of organization, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

N/A

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York 12180-2299

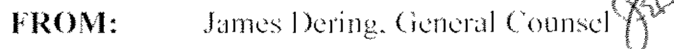
New York State Department of Health

Division of Legal Affairs

Memorandum

TO: Public Health and Health Planning Council

FROM: James Dering, General Counsel



DATE: February 14, 2012

SUBJECT: Oswego Health Foundation

Oswego Health Foundation (Corporation) requests Public Health and Health Planning Council approval of the attached proposed Certificate of Incorporation. The Public Health and Health Planning Council's approval is required by Public Health Law § 2801-a(1) and (6) and Not-For-Profit Corporation Law § 404.

The Corporation is being organized and will be operated for the benefit of its member corporation Oswego Health, Inc. and other not-for-profit organizations affiliated with Oswego Health, Inc. which includes Oswego Hospital, Seneca Hill Manor, Inc., Springside at Seneca Hill, Inc., OH Properties, Inc. and Hospitals Home Health Care, Inc.

Also attached are: a letter from counsel to Oswego Health Foundation requesting approval, letters from Oswego Hospital, The Manor at Seneca Hill, and Hospitals Home Health Care, Inc. acknowledging they will accept funds raised by the Corporation, a description of the proposed fundraising activities and, a list of information regarding the Corporation's initial Board of Directors.

The proposed Certificate of Incorporation is in legally acceptable form.

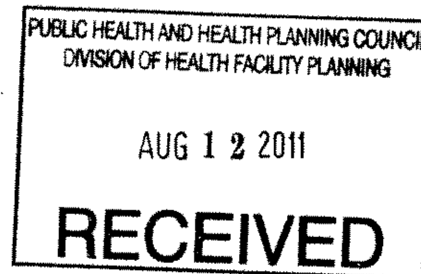
Attachments

HARRIS BEACH PLLC
ATTORNEYS AT LAW

99 GARNSEY ROAD
PITTSFORD, NY 14534
(585) 419-8800

ERIC STONEHILL ESQ.

DIRECT: (585) 419-8641
FAX: (585) 419-8811
ESTONEHILL@HARRISBEACH.COM



July 11, 2011

Colleen Frost
Executive Secretary
Public Health & Health Planning Council
New York State Department of Health
Division of Health Facility Planning
Hedley Building
433 River Street
Troy, NY 12180

Re: Oswego Health Foundation, Inc.

Dear Ms. Frost:

The purpose of this letter is to request approval by the New York State Public Health and Health Planning Council (the "Council") of the proposed Certificate of Incorporation of Oswego Health Foundation, Inc. (the "Foundation") pursuant to Section 2801-a(1) of the New York Public Health Law and Section 404(o) of the New York Not-for-Profit Corporation Law. A copy of the Certificate of Incorporation is enclosed.

By way of background, the Foundation is being organized for the purposes of soliciting and managing funds for Oswego Hospital, which operates the only general acute care hospital in Oswego County; Seneca Hill Manor, Inc., which operates a related residential health care facility in Oswego County; Hospitals Home Health, Inc., which operates a related certified home health care services agency in Oswego County; and several of their unregulated affiliates, including but not limited to Oswego Health, which is the parent corporation through sole membership of Oswego Hospital and Seneca Hill Manor, Inc. (Oswego Hospital is one of the two members of Hospitals Home Health Care, Inc.) Oswego Health will also be the sole member of the Foundation. All of the entities to be supported by the Foundation are New York not-for-profit corporations that are tax exempt under Section 501(c)(3) of the Internal Revenue Code.

Oswego Hospital and its affiliates have experienced a period of extremely rapid change and development in recent years. Major events have included the renovation and expansion of the Hospital's main campus in the City of Oswego; the acquisition of the assets of A. L. Lee Memorial Hospital and the development of an urgent care center and ambulatory service facility at Lee's former site in the City of Fulton; and the acquisition and renovation of the ambulatory facility of Lifetime Health in Central Square, among others. All of these initiatives and other activities of Oswego Hospital and its affiliates require capital beyond the substantial amounts

HARRIS BEACH PLLC
ATTORNEYS AT LAW

granted for them by the State of New York. The Boards of Oswego Health, Oswego Hospital, Seneca Hill Manor, Inc., Hospitals Home Health Care, Inc. and the other named beneficiaries in the Certificate have concluded that a dedicated development foundation will more effectively attract philanthropic support on their behalf as an integrated health care system than they can do directly and individually. The Foundation is substantially similar to dozens of like organizations that have previously been approved by the New York Public Health Council throughout the last three decades to support hospitals and their related health care systems in the State of New York.

We would be pleased to discuss this matter further with the Council's legal counsel or other staff and to provide any additional information that they may need.

Sincerely,

HARRIS BEACH PLLC

Eric Stonehill

ES:slc
enclosure
c: Ann Gilpin, President & CEO

CERTIFICATE OF INCORPORATION

OF

OSWEGO HEALTH FOUNDATION

Under Section 402 of the Not-for-Profit Corporation Law

The undersigned, for the purpose of forming a not-for-profit corporation pursuant to the Not-for-Profit Corporation Law of New York, hereby certifies:

1. The name of the corporation is: Oswego Health Foundation.

2. The corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law, in that it is not formed for pecuniary profit or financial gain, and no part of the assets, income or profit of the corporation shall be distributable to, or inure to the benefit of, its members, directors, officers or any other private person.

3. The corporation is organized and shall be operated exclusively to provide funds to or for the benefit of Oswego Health, Inc., a New York not-for-profit corporation, and its not-for-profit, tax exempt affiliates, currently including, but not limited to, Oswego Hospital, Seneca Hill Manor, Inc., Springside at Seneca Hill, Inc., OH Properties, Inc. and Hospitals Home Health Care, Inc. To this end the corporation shall:

(a) solicit, accept, acknowledge, hold, invest, reinvest and administer gifts, grants, bequests, contributions, devises, benefits of trusts, endowments and property of any kind, without limitation as to amount or value;

(b) use, disburse or pay the income or principal thereof exclusively for the foregoing purposes; and

(c) do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof, but not for the pecuniary profit of any private person.

4. In furtherance of its corporation purposes, the corporation shall have all general powers enumbered in Section 202 of the Not-for-Profit Corporation Law, together with the power to solicit and receive grants, bequests and contributions from private and public sources.

5. Nothing contained herein shall authorize this corporation, directly or indirectly, to engage in, or include among its purposes, any of the activities mentioned in sections 404(a)-(n), (p)-(s) or (u)-(w) of the Not-for-Profit Corporation Law. Furthermore, the only activity mentioned in Sections 404(o) and (t) of the Not-for-Profit Corporation Law in which the corporation may engage will be the solicitation of contributions for the activities described therein. Nothing in this certificate shall authorize the corporation to establish or maintain any hospital or health related facility.

6. Nothing contained in this Certificate of Incorporation shall authorize the corporation to establish, operate, construct, lease or maintain a hospital or to provide hospital service or health related service or to operate a home care services agency, a hospice or a health maintenance organization, or to provide a comprehensive health services plan, as defined in and covered by Articles 28, 36, 40 and 44, respectively, of the Public Health Law. In addition, the corporation's purposes do not authorize the corporation to establish, operate or maintain an adult home, residence for adults or enriched housing program as provided for by Article 7 of the Social Services Law.

7. Nothing contained in this Certificate of Incorporation shall authorize the corporation to provide Early Intervention services without obtaining all approvals required by Title II-A of Article 25 of the Public Health Law, Title 10 of the Codes, Rules and Regulations of the State of New York or any other applicable law or regulation.

8. In addition to all other rights and powers of membership prescribed by the laws of the State of New York or the Certificate of Incorporation or Bylaws of this corporation, the following governance and management powers shall be reserved to and shall be exercised only by the member(s) of the corporation:

(a) to elect or appoint, fix the number of, and remove, with or without cause, the directors of the corporation;

(b) to appoint and remove, with or without cause, the chief executive officer of the corporation (regardless of title);

(c) to amend or repeal the Certificate of Incorporation and Bylaws, and to adopt any new or restated Certificate of Incorporation or Bylaws, of the corporation;

(d) to approve any plan of merger, consolidation, dissolution or liquidation of the corporation; and

(e) to approve any corporate reorganization of the corporation and the establishment, merger, consolidation, reorganization or dissolution of any organizational relationship of the corporation, including but not limited to subsidiary corporations, partnerships or joint ventures of the corporation.

For the purposes of the foregoing, the power of the member(s) to approve includes: (i) the power to initiate and direct action by the corporation without a prior recommendation of the corporation's Board of Directors or other governing or managing body; and (ii) the power to accept, reject or modify a recommendation of the corporation's Board of Directors or other governing or managing body and to direct action by the corporation upon such determination or return the matter to the Board or other governing or managing body for reconsideration with reasons for the rejection and/or suggested changes. The Board of Directors and officers of the corporation shall not take any action requiring the approval of the member(s) until the member(s) shall have exercised their reserved powers and communicated their determination in writing to the Board.

9. The corporation is a Type B corporation under Section 201 of the Not-for-Profit Corporation Law.

10. Notwithstanding any other provision of this Certificate, the corporation is organized and shall be operated exclusively for charitable, religious, scientific and educational purposes as specified in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and shall not carry on any activities not permitted to be carried on by an organization exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or by an organization, contributions to which are deductible under Section 170(c)(2) of such Code.

11. No part of the assets, income, profits or earnings of the corporation shall inure to the benefit of any member, trustee, director or officer of the corporation, or any other private person, 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, director or officer of the corporation, or any other private person, shall be entitled to share in the distribution of any of the corporate assets on dissolution of the corporation.

12. No substantial part of the activities of the corporation shall be carrying on propaganda, or otherwise attempting to influence legislation, except as otherwise provided by Section 501(h) of the Internal Revenue Code of 1986, as amended, and the corporation shall not participate in, or intervene in, including the publication or distribution of statements, any political campaign on behalf of any candidate for public office.

13. In the event of dissolution, all the remaining assets and property of the corporation shall, after necessary expenses thereof, be distributed to one or more of the not-for-profit affiliates of the corporation, provided that the distributee(s) shall then qualify under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, subject to an order of a Justice of the Supreme Court of the State of New York. If none of the corporation's not-for-profit affiliates shall so qualify at the time of dissolution, then distribution shall be made to such other organization or organizations that are organized and operated exclusively for religious, charitable, educational or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, subject to an order of a Justice of the Supreme Court of the State of New York. For the purpose of this paragraph, an "affiliate" shall mean any of the organizations identified in paragraph 3 above and any other not-for-profit organization which controls, is controlled by, or is under common control with the corporation, and any other not-for-profit organization which expressly and specifically includes among its purposes the benefit or support of the corporation or its affiliates.

14. In any taxable year in which the corporation is a private foundation as defined by Section 509 of the Internal Revenue Code of 1986, as amended, the corporation shall:

(a) not engage in any act of self-dealing that is subject to tax under Section 4941 of the Code;

(b) not distribute its income for each taxable year at such time and in such manner as to subject the corporation to tax on undistributed income under Section 4942 of the Code;

(c) not retain any excess business holdings in such manner as to subject the corporation to tax under Section 4943 of the Code;

(d) not make any investments in such manner as to subject the corporation to tax under Section 4944 of the Code; and

(e) not make any taxable expenditures that are subject to tax under Section 4945 of the Code.

15. The number of directors constituting the entire Board of Directors of the corporation shall not be less than three (3). Subject to such limitation, the number shall be fixed by the bylaws pursuant to Section 702 of the Not-for-Profit Corporation Law. The names and addresses of the initial directors are:

Name	Address
Ann C. Gilpin	6 Jordans Way Oswego, New York 13126
Thomas Schneider	10 Margaret Street Oswego, New York 13126
Chris R. Burritt	4077 County Route 57 Oswego, New York 13126

16. The office of the corporation is to be located in the County of Oswego, State of New York.

17. The Secretary of State is hereby designated as the agent of the corporation upon whom process against it may be served, and the post office address to which the Secretary of State shall mail a copy of any process against the corporation that may be served upon him is President, Oswego Health Foundation, 110 West Sixth Street, Oswego, New York 13126.

18. The subscriber is of the age of eighteen years or over.

IN WITNESS WHEREOF, the undersigned has subscribed this Certificate of Incorporation this 26 day of October, 2011.

Ann C. Gilpin
6 Jordans Way
Oswego, New York 13126

079093 1484200 3
10/25/2011 2 05 pm

Oswego Health Foundation
Description of Fundraising Techniques

Oswego Health Foundation will operate programs that are designed to strengthen the relationship between Oswego Health, Inc. and its tax exempt affiliates, including principally Oswego Hospital, and their various constituencies. These programs are in the areas of communication, volunteer service, and philanthropy. The Foundation is being established to conduct regular fund development efforts as well as provide for specific capital needs.

The Foundation will function through the following types of program activities:

The **ANNUAL SUPPORT** function of the Foundation will develop a broad base of support and generate a large number of gifts. Relevant activities will include campaigns involving mailings, telephone calls, and fundraising events.

The **COMMUNITY RELATIONS** function of the Foundation will not be involved in fund-raising per se, but will publicize and support activities which provide service to the community and promote the not-profit health care delivery mission of Oswego Health and its operating not-for-profit tax exempt affiliates.

The **PLANNED GIVING** function of the Foundation will involve members of the professional community and encourage estate planning that results in end-of-life donations of life insurance, bequests, etc.

The **CORPORATE/FOUNDATION** function of the Foundation will encourage large gifts and grants from local and national corporations and foundations. The Foundation will also look to develop programs for corporations and industry that help to strengthen their relationship with Oswego Health and its affiliates.

The **SPECIAL PROSPECTS** function of the Foundation will be to seek and secure large gifts from individuals. Since this cultivation process is on a personal basis and needs a special person to make such contacts, this activity will require a small, elite volunteer base that is able to identify others with the capability of making large gifts to the institution. Additional activities will include determining capital campaign feasibility and capital campaign implementation.

Oswego Health Foundation, Inc.
Initial Board of Directors

Ann C. Gilpin

Address: 6 Jordans Way
Oswego, New York 13126

Occupation: Healthcare Administrator, President and CEO

Affiliations: Oswego Health, Inc.-President and CEO & Board of Directors
110 W. Sixth Street
Oswego, NY 13126

Oswego Hospital-President and CEO & Board of Directors
110 W. Sixth Street
Oswego, NY 13126

Seneca Hill Manor, Inc.-President and CEO & Board of Directors
20 Manor Drive
Oswego, NY 13126

Springside at Seneca Hill, Inc.-President and CEO & Board of Directors
Co. Route 45A
Oswego, NY 13126

O.H. Services, Inc.-President and CEO & Board of Directors
110 W. Sixth Street
Oswego, NY. 13126

Hospitals Home Health Care, Inc. –Board of Directors
113 Schuyler Street
Fulton, NY 13069

OH Properties, Inc.-President & CEO and Board of Directors
110 W. Sixth Street
Oswego, N.Y. 13126

Ontario Medical Practice, P.C.-Secretary , Board of Directors
110 W. Sixth Street
Oswego, NY 13126

Iroquois Healthcare Alliance Association-Board of Directors
17 Executive Park Drive
Clifton Park, NY 12065

United Iroquois Shared Services-Board of Directors
17 Executive Park Drive
Clifton Park, NY 12065

Health Advancement Collaborative of Central New York, Inc. and Central New York Health Systems Agency-Board of Directors
109 S. Warren Street, State Tower Bldg Suite 1011
Syracuse, NY 13202

Ann C. Gilpin cont'd

Operation Oswego County, Inc.-Board of Directors
70 East First Street
Oswego, NY 13126

Thomas Schneider

Address: 10 Margaret Street
Oswego, New York 13126

Occupation: President & CEO-Bank

Affiliations: Oswego Health, Inc.-Chairman, Board of Directors
110 W. Sixth Street
Oswego, NY 13126

Oswego Hospital-Chairman, Board of Directors
110 W. Sixth Street
Oswego, NY 13126

Seneca Hill Manor, Inc.-Chairman, Board of Directors
20 Manor Drive
Oswego, NY 13126

Springside at Seneca Hill, Inc.-Chairman, Board of Directors
Co. Route 45A
Oswego, NY 13126

Hospitals Home Health Care, Inc.-Chairman, Board of Directors
113 Schuyler Street
Fulton, NY 13069

OH Properties, Inc.-Chairman, Board of Directors
110 W. Sixth Street
Oswego, N.Y. 13126

FitzGibbons Insurance Agency
44 E. Bridge Street
Oswego, NY 13126
(Pathfinder Bank has executed a Memorandum of Intent and Understanding to acquire 51% of the FitzGibbons Insurance agency. I am President and CEO of Pathfinder Bank and less than a 1% owner.)

Chris R. Burritt

Address: 4977 County Route 57
Oswego, NY 13126

Occupation: Automotive Dealership-Owner

Affiliations: Oswego Health, Inc.-Vice Chairman,Board of Directors
110 W. Sixth Street
Oswego, NY 13126

Oswego Hospital-Vice Chairman, Board of Directors
110 W. Sixth Street
Oswego, NY 13126

Seneca Hill Manor, Inc.-Vice Chairman, Board of Directors
20 Manor Drive
Oswego, NY 13126

Springside at Seneca Hill, Inc.-Vice Chairman, Board of Directors
Co. Route 45A
Oswego, NY 13126

Hospitals Home Health Care, Inc.-Vice Chairman,Board of Directors
113 Schuyler Street
Fulton, NY 13069

OH Properties, Inc.-Vice Chairman, Board of Directors
110 W. Sixth Street
Oswego, N.Y. 13126

October 25, 2011

Colleen Frost
Executive Secretary
Public Health & Health Planning Council
New York State Department of Health
Division of Health Facility Planning
Hedley Building
433 River Street
Troy, NY 12180

Re: Oswego Health Foundation, Inc.

Dear Ms. Frost:

Pursuant to the request of Mary T. Callahan in the Bureau of Legal Affairs, I am writing in support of the application for approval of the Certificate of Incorporation of Oswego Health Foundation, Inc. (the "Foundation"). The application was initially submitted to you by letter from Eric Stonehill of Harris Beach PLLC dated July 11, 2011.

The Board of Directors of Hospitals Home Health Care, Inc. adopted the attached resolution on July 6, 2011 acknowledging the proposed incorporation of the Foundation and stating the willingness of Hospitals Home Health Care, Inc. to accept funds raised by the Foundation on its behalf.

Sincerely,

Ann C. Gilpin
President and CEO

c: Mary T. Callahan
New York State Department of Health
Bureau of Legal Affairs

Eric Stonehill, Esq.

315-349-5511
110 West Sixth Street, Oswego, N.Y. 13126
www.oswegohealth.org

The Manor at Seneca Hill

An Affiliate of Oswego Health

October 25, 2011

Colleen Frost
Executive Secretary
Public Health & Health Planning Council
New York State Department of Health
Division of Health Facility Planning
Hedley Building
433 River Street
Troy, NY 12180

Re: Oswego Health Foundation, Inc.

Dear Ms. Frost:

Pursuant to the request of Mary T. Callahan in the Bureau of Legal Affairs, I am writing in support of the application for approval of the Certificate of Incorporation of Oswego Health Foundation, Inc. (the "Foundation"). The application was initially submitted to you by letter from Eric Stonehill of Harris Beach PLLC dated July 11, 2011.

The Board of Directors of Seneca Hill Manor, Inc. adopted the attached resolution on July 6, 2011 acknowledging the proposed incorporation of the Foundation and stating the willingness of Seneca Hill Manor, Inc. to accept funds raised by the Foundation on its behalf.

Sincerely,

Ann C. Gilpin

Ann C. Gilpin
President and CEO

c: Mary T. Callahan
New York State Department of Health
Bureau of Legal Affairs

Eric Stonehill, Esq.

20 Manor Drive • Oswego, New York 13126 • (315) 349-5300

Certified Home Health Care Agency

113 Schuyler Street, Suite 3
Fulton, New York 13069
(315) 598-1544
(866) 625-4392
Fax (315) 598-6868

A Partnership of Oswego Health and St. Joseph's Hospital Health Center

October 25, 2011

Colleen Frost
Executive Secretary
Public Health & Health Planning Council
New York State Department of Health
Division of Health Facility Planning
Hedley Building
433 River Street
Troy, NY 12180

Re: Oswego Health Foundation, Inc.

Dear Ms. Frost:

Pursuant to the request of Mary T. Callahan in the Bureau of Legal Affairs, I am writing in support of the application for approval of the Certificate of Incorporation of Oswego Health Foundation, Inc. (the "Foundation"). The application was initially submitted to you by letter from Eric Stonehill of Harris Beach PLLC dated July 11, 2011.

The Board of Directors of Hospitals Home Health Care, Inc. adopted the attached resolution on July 6, 2011 acknowledging the proposed incorporation of the Foundation and stating the willingness of Hospitals Home Health Care, Inc. to accept funds raised by the Foundation on its behalf.

Sincerely,

Ann C. Gilpin

Ann C. Gilpin
President and CEO

c: Mary T. Callahan
New York State Department of Health
Bureau of Legal Affairs

Eric Stonehill, Esq.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 5th day of April, 2012, approves the filing of the Certificate of Incorporation of Oswego Health Foundation, dated October 26, 2011.

STATE OF NEW YORK - DEPARTMENT OF HEALTH

MEMORANDUM

TO: Public Health and Health Planning Council (Council)

FROM: James E. Dering, General Counsel

DATE: March 6, 2012 JED

SUBJECT: Proposed Change in Corporate Name of United Cerebral Palsy and Handicapped Children's Association of Chemung County, Inc. (UCP)

Attached for the Council's review and approval is a photocopy of a proposed Certificate of Amendment to UCP's Certificate of Incorporation. UCP is seeking the Council's approval to change its corporate name to "Able2 Enhancing Potential, Inc." which it believes is a simpler, more memorable name that better describes the services that UCP provides to handicapped individuals. The Council's approval for this name change is required pursuant to section 804(a)(i) 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 § 600.11(a)(1).

UCP was originally incorporated on February 27, 1950, pursuant to the Membership Corporation Law. At its meeting on July 23, 2010, the Public Health Council consented to the filing of a Certificate of Amendment to UCP's Certificate of Incorporation, changing its corporate name to "Able2, Inc." When UCP attempted to file the Certificate of Amendment with the Department of State, however, the filing was rejected because the proposed name conflicted with the name of an existing New York business entity. UCP now desires to change its corporate name to "Able2 Enhancing Potential, Inc." which does not conflict with the name of any existing New York business entity.

In addition to the proposed Certificate of Amendment, also attached is a letter from UCP's attorney explaining this matter in more detail.

The proposed Certificate of Amendment is legally acceptable in form and the Department has no objection to its filing.

Attachments

Certificate of Amendment

of the

Certificate of Incorporation

of

UNITED CEREBRAL PALSY AND HANDICAPPED CHILDREN'S ASSOCIATION OF CHEMUNG COUNTY, INC.

Pursuant to Section 803 of the Not-for-Profit Corporation Law

The undersigned, for the purpose of amending the Certificate of Incorporation of United Cerebral Palsy and Handicapped Children's Association of Chemung County, Inc., pursuant to the provisions of the Not-for-Profit Corporation Law of the State of New York, does hereby make, subscribe and acknowledge this Certificate as follows:

1. The name of the Corporation is UNITED CEREBRAL PALSY AND HANDICAPPED CHILDREN'S ASSOCIATION OF CHEMUNG COUNTY, INC.

2. The name under which the Corporation was formed was CHEMUNG COUNTY CEREBRAL PALSY AND HANDICAPPED CHILDREN'S ASSOCIATION, INC.

3. The Certificate of Incorporation was filed by the Department of State on February 27, 1950, pursuant to the Membership Corporations Law.

9. Prior to the delivery of this Certificate of Amendment to the Secretary of State for filing, all approvals or consents required by law will be endorsed upon or annexed hereto.

IN WITNESS WHEREOF, the undersigned has subscribed this Certificate and affirms the statements herein as true under the penalties of perjury this 26th day of April, 2010.

Mark Peters
Executive Director

SAYLES & EVANS
ATTORNEYS AT LAW
ONE WEST CHURCH STREET
ELMIRA, NEW YORK 14901
(607) 734-2271
FAX (607) 734-1754

JAMES F. YOUNG
JOHN R. ALEXANDER
LAWRENCE LeCLAIR
CLOVER M. DRINKWATER
STEVEN E. AGAN
CONRAD R. WOLAN
ANTHONY F. PAGANO
SETH T. HILAND

AARON T. ALSHEIMER

aalsheimer@saylesevans.com

ALAN PARSONS
LEWIS W. MORSE, JR.
J. PHILIP HUNTER
CYNTHIA S. HUTCHINSON
OF COUNSEL

October 25, 2010

Ms. Colleen M. Frost, Executive Secretary
Public Health Council
c/o State of New York Department of Health
Corning Tower Building
Room 1441
Albany, NY 12237

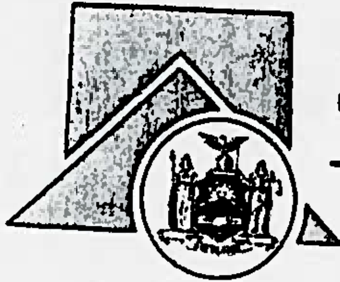
Re: Certificate of Amendment of the Certificate of Incorporation of United Cerebral Palsy and Handicapped Children's Association of Chemung County, Inc.

Dear Ms. Frost:

I am writing on behalf of United Cerebral Palsy and Handicapped Children's Association of Chemung County, Inc. ("Applicant"). On July 23, 2010, the Public Health Council consented to the filing of a Certificate of Amendment of Applicant's Certificate of Incorporation (the "Certificate of Amendment" or "Certificate"). The sole purpose of the Certificate of Amendment was to change Applicant's corporate name to "Able2, Inc."

Upon receipt of your letter announcing the Public Health Council's consent, Applicant submitted the Certificate of Amendment to the Department of State for filing. However. the filing was not completed because the Department of State determined that the proposed name conflicted with the name of an existing New York limited liability company. In order to proceed with changing its corporate name, Applicant revised the Certificate of Amendment to set forth a modified proposed name – "Able2 Enhancing Potential, Inc." – that does not conflict with the name of an existing entity. Like the original proposed name, the modified name was selected so that Applicant might operate under a name that is simpler and more memorable, yet still indicative of the services Applicant provides to handicapped individuals.

The purpose of this letter is to inquire as to whether the revised Certificate of Amendment must be approved by the Public Health Council prior to filing, or if the original consent granted in July is sufficient. I contacted Michael Stone at the Division of Legal Affairs to discuss this matter, and he recommended that I submit the revised Certificate to your office for consideration. Enclosed please find an updated copy of the Certificate of Amendment which



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

July 26, 2010

Aaron Alsheimer
Sayles & Evans
Attorneys at Law
One West Church Street
Elmira, New York 14901

Re: Certificate of Amendment of the Certificate of Incorporation of United Cerebral Palsy and Handicapped Children's Association of Chemung County, Inc.

Dear Mr. Alsheimer:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 23rd day of July, 2010, I hereby certify that the Public Health Council consents to the filing of the Certificate of Amendment of the Certificate of Incorporation of United Cerebral Palsy and Handicapped Children's Association of Chemung County, Inc., dated April 26, 2010.

Sincerely,

Colleen M. Frost

Colleen M. Frost
Executive Secretary

/cf

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 5th day of April, 2012, approves the filing of the Certificate of Amendment of Certificate of Incorporation of United Cerebral Palsy and Handicapped Children's Association of Chemung County, Inc., dated April 26, 2010.

STATE OF NEW YORK - DEPARTMENT OF HEALTH

MEMORANDUM

TO: Public Health and Health Planning Council (Council)

FROM: James E. Dering, General Counsel

DATE: March 6, 2012

SUBJECT: Proposed Certificate of Dissolution for Lutheran Center for the Aging, Inc.

Attached for the Council's review and approval is a photocopy of a proposed Certificate of Dissolution for Lutheran Center for the Aging, Inc. (Corporation). The Council's approval to file this Certificate of Dissolution is required pursuant to Not-for-Profit Corporation Law (N-F-PCL) §§ 1002(c) and 1003(b)(1); and Title 10 (Health) of the Official Compilation of the Codes, Rules and Regulations of the State of New York § 650.1.

The Corporation's Certificate of Incorporation was filed on May 13, 1980 and it was approved to establish and operate a 353-bed residential health care facility in Smithtown. The Corporation transferred ownership and operation of the facility, through an asset transfer, to Avalon Gardens Rehabilitation and Health Care Center, LLC. The Corporation's operating certificate was surrendered and closed out, effective May 12, 2003. Since the Corporation had no assets to distribute, pursuant to N-F-PCL §§ 1002(d) and 1003(b)(2), its Plan of Dissolution and Distribution of Assets (Plan) did not require judicial approval. The Corporation was only required to file the Plan with the Office of the Attorney General (OAG). Also attached are photocopies of the cover letter from the Corporation's attorney filing the Plan with the OAG and the Plan.

The Certificate of Dissolution is in legally acceptable form and the Department has no objection to its filing.

Attachments

CERTIFICATE OF DISSOLUTION OF
LUTHERAN CENTER FOR THE AGING, INC.
UNDER N.Y. NOT-FOR-PROFIT CORP. LAW §1003

WE THE UNDERSIGNED, the President and Secretary respectively of Lutheran Center for the Aging, Inc. hereby certify:

1. The name of this corporation is Lutheran Center for the Aging, Inc. The name under which the corporation was formed is Lutheran Nursing Home Center for the Aging, Inc.

2. The Certificate of Incorporation of Lutheran Nursing Home Center for the Aging, Inc. was filed in the office of the Secretary of State of New York on December 6, 1977 and a Certificate of Amendment changing the name to Lutheran Center for the Aging Inc. was filed in the office of the Secretary of State of New York on May 13, 1980.

3. The name and address of the directors of the corporation are as follows:

John F. Ruth 174 Mariomi Road New Canaan, CT 06840	John Mesloh 6 Andover Court Garden City, NY 11530	Thomas Keon 6 Village Way Smithtown, NY 11787

4. The names, titles and addressees of the officers of the corporation are as follows:

Frank Tripodi, President/Chief Executive Officer
277 North Avenue, Suite 201
New Rochelle, NY 10801

5. At the time of dissolution Lutheran Center for the Aging, Inc. is a Type B corporation.

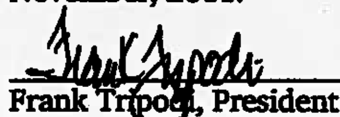
6. The corporation holds no assets for distribution which are legally required to be used for a particular purpose.

7. Lutheran Center for the Aging, Inc. elects to dissolve.

8. The dissolution of Lutheran Center for the Aging, Inc. was authorized by unanimous vote of the Board of Directors upon the consent of its sole member in accordance with the provisions of its By-laws.

9. A certified copy of the plan of dissolution of Lutheran Center for the Aging, Inc. which contains the statement that the corporation has no assets to distribute at the time of dissolution has been duly filed with the Attorney General of the State of New York pursuant to the N.Y. Not-for-Profit Corp. Law §1002(d).

IN WITNESS WHEREOF, the undersigned have signed this Certificate this 26th day of November, 2011.


Frank Tripodi, President

Thomas Keon, Secretary

McCABE & MACK LLP

ATTORNEYS AT LAW

63 WASHINGTON STREET
POST OFFICE BOX 509
POUGHKEEPSIE, NY 12602-0509
TELEPHONE: (845) 486-6800
FAX: (845) 486-7621

www.mccm.com

J. JOSEPH McGOWAN
DAVID L. POSNER
ELLEN L. BAKER
SCOTT D. BERGIN
RICHARD R. DuVALL
LANCE PORTMAN
RICHARD J. OLSON
MATTHEW V. MIRABILE
KIMBERLY HUNT LEE
KAREN FOLSTER LESPERANCE
REBECCA M. BLAHUT
IAN C. LINDARS
SEAN M. KEMP
JESSICA J. GLASS
NOELLE M. PECORA
MICHAEL P. BERSAK

PHILLIP SHATZ
MICHAEL A. HAYES, JR.
HAROLD L. MANGOLD
ALBERT M. ROSENBLATT
THOMAS D. MAHAR, JR.
RALPH A. BEISNER
JESSICA L. VINALL

JOHN E. MACK
(1874-1958)
JOSEPH A. McCABE
(1890-1973)
EDWARD J. MACK
(1910-1998)
JOSEPH C. McCABE
(1925-1981)

DIRECT TELEPHONE: (845) 486-6896
E-MAIL: rolson@mccm.com

December 6, 2011

Nicholas Garin, Esq.
Office of the Attorney General
Poughkeepsie Regional Office
One Civic Center Plaza, Suite 401
Poughkeepsie, NY 12601

Re: Lutheran Center for Aging, Inc.
Certificate of Dissolution
Our File: 12592+1

Dear Nick:

Enclosed herewith is a certified copy of the Plan of Dissolution in the captioned matter.

If you need anything further please advise.

Very truly yours,

McCABE & MACK LLP

RICHARD J. OLSON

RJO/me

PLAN OF DISSOLUTION AND DISTRIBUTION OF ASSETS OF LUTHERAN CENTER FOR AGING, INC.

The Board of Directors of Lutheran Center for Aging, Inc. (the "Corporation") at a special meeting duly convened on the 16th day of November, 2011, to consider the advisability of voluntarily dissolving this Corporation and it being the unanimous opinion of the Board that it is advisable and in the best interests of the Corporation to effect such a resolution, and the Board having adopted by unanimous vote a plan for a voluntary dissolution of this Corporation and does hereby recommend to the sole member of the Corporation, The Lutheran Care Network f/k/a Wartburg Lutheran Services, Inc. that this Corporation be dissolved in accordance with the following plan.

PROCEDURE FOR DISSOLUTION

A. The Corporation has no assets to distribute, all assets of the Corporation previously were sold and thereafter distributed pursuant to ARTICLE XIV of the Corporation's By-laws to its sole Member The Lutheran Care Network f/k/a Wartburg Lutheran Services, Inc.

B. Upon resolution of the Board of Directors adopting this Plan of Dissolution the Board must submit it to a vote of its sole member for approval.

C. Within ten (10) days after the adoption of this Plan by the Board of Directors together with the consent of its sole member, a certified copy of such Plan shall be filed with the Attorney General of the State of New York pursuant to the Not-for-Profit Corporation Law of the State of New York.

D. The Board recommends the following plan be approved by the membership:

1. The Corporation shall proceed with obtaining all necessary votes and approves required for the dissolution of the Corporation and thereafter file the Certificate of Dissolution with the Secretary of State.

E. The Corporation shall carry out the plan of dissolution as expeditiously as possible, but in any event within 270 days from the dated of this Plan, or such additional or extended period of time not less than 30 days nor more than one year as the Attorney General of the State of New York may allow upon a showing of good cause by the Corporation that the Plan cannot be carried out within the prescribed time.

F. A certificate of dissolution shall be executed, and all approvals required under the N.Y. Not-for-Profit Corp. Law §1002 shall be obtained prior to the filing the certificate of dissolution with the Department of State of the State of new York as required by law.

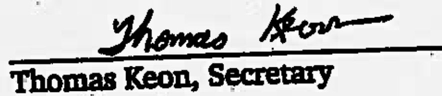
G. The approval of the dissolution of the Corporation shall be obtained from the Commissioner of Health of the State of New York.

CERTIFICATION

State of New York)
)ss.:
County of Westchester)

I, Thomas Keon Secretary of the Lutheran Home for Aging, Inc. hereby certify that a special meeting of the Board of Directors of the Corporation was held at Concordia College on the 16th day of November, 2011 and the within resolution was duly submitted and passed by a unanimous vote of the Directors.

Dated: November 18th, 2011



Thomas Keon, Secretary

Sworn to before me this
21st day of November, 2011

Notary Public

LARAINE FELLEGARA
Notary Public, State of New York
No. 4883752
Qualified in Westchester County
Commission Expires January 28, 2015

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 5th day of April, 2012, approves the filing of the Certificate of Dissolution of Lutheran Center for the Aging, Inc., dated November 26, 2011.

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	St. Lawrence County Public Health Department
Address:	Canton
County:	St. Lawrence
Structure:	Public
Application Number:	2106-L

Description of Project:

St. Lawrence County Public Health Department, 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 (CHHA), a long term home health care program (LTHHCP) and a diagnostic and treatment center. St. Lawrence County is in the process of closing their CHHA and LTHHCP. St. Lawrence County Public Health Department 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 St. Lawrence County from an office located at: 80 State Highway 310, Suite 2, Canton, New York 13617.

The applicant proposes to provide the following health care services:

Nursing	Physical Therapy	Occupational Therapy
Speech Language Pathology	Audiology	Medical Social Services
Nutrition		

The information provided by the Division of Home and Community Based Services 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: March 5, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Hudson Valley Home Health Care, LLC
Address: Middletown
County: Orange
Structure: Limited Liability Company
Application Number: 2068-L

Description of Project:

Hudson Valley Home Health Care, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. Hudson Valley Home Health Care, LLC is the proposed LHCSA associated with The Hamlet at Wallkill, LLC, a proposed new 80-bed assisted living program (ALP).

The members of Hudson Valley Home Health Care, LLC comprise the following individuals:

Michael Benenson, NHA, 33.5%
Manager, Filben Development, LLC
(real estate)
Affiliations:
Flushing Manor Nursing Home
(2008 – present)
Flushing Manor Care Center
(1974 – present)
Flushing Manor Dialysis Center
(2008 – present)
Dr. William O. Benenson Rehabilitation Pavilion
(1996 – present)

Richard Filaski, 25%
Manager, Lask Building (real estate)
Manager, Filben Development, LLC
Affiliations:
Medford Hamlet ALP and ALR
(1992 – present)

David Filaski, 25%
Manager, Filben Development, LLC
Project Manager, Lask Building
Affiliations:
Medford Hamlet ALP and ALR
(1992 – present)

Joshua Benenson, 16.5%
Manager, Filben Development, LLC
Affiliations:
Medford Hamlet ALP and ALR
(1992 – present)

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Bureau of Professional Credentialing has indicated that Michael Benenson, NHA license #00050, holds a NHA license in good standing and the Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or his license.

The applicant proposes to serve the residents of the following counties from an office located at 21 Riverside Drive, Middletown, New York 10940:

Westchester
Rockland
Orange
Putnam
Dutchess
Sullivan
Ulster

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech Language Pathology	Audiology	Medical Social Services
Nutrition	Housekeeper	

A ten year review of the following facilities/agencies was performed as part of this review (unless otherwise noted):

Flushing Manor Nursing Home (2008 – present)
Flushing Manor Care Center
Flushing Manor Dialysis Center (2008 – present)
Dr. William O. Benenson Rehabilitation Pavilion
Medford Hamlet ALP and ALR

Flushing Manor Care Center was fined one thousand dollars ($1,000) pursuant to a stipulation and order dated May 29, 2007 for surveillance findings of February 26, 2004. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.

Flushing Manor Geriatric Center d/b/a Dr. William O. Benenson Rehabilitation Pavilion was fined six thousand dollars ($6,000) pursuant to a stipulation and order dated August 28, 2007 for surveillance findings of June 22, 2006 and July 26, 2006. Deficiencies were found under 10 NYCRR for June 22, 2006: 415.4(b) Resident Behavior and Facility Practices: Staff Treatment of Residents, 415.12(h)(2) Quality of Care: Accidents and for July 26, 2006: 415.12 Quality of Care.

The information provided by the Bureau of Quality Assurance for Nursing Homes has indicated that the nursing homes 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 Division of Certification and Surveillance has determined that the diagnostic and treatment center has exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the Bureau of Adult Care Facility Quality and Surveillance has indicated that the ALP and ALR reviewed have 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.

Contingeny
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: February 29, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Golden Acres Home for Adults SP, LLC
Address:	Spring Valley
County:	Rockland
Structure:	Limited Liability Company
Application Number:	2075-L

Description of Project:

Golden Acres Home for Adults SP, LLC, a limited liability company, requests approval for a change in ownership under Article 36 of the Public Health Law. This proposal seeks to transfer ownership of Golden Acres Home for Adults, LLC which is solely owned by Jacob Schonberger, to Golden Acres Home for Adults SP, LLC, controlled by his sons, Philip and Steven Schonberger.

Golden Acres Home for Adults, LLC was previously approved as a home care services agency by the Public Health Council at its January 21, 2005 meeting and subsequently licensed as 1326L001.

The members of Golden Acres Home for Adults SP, LLC comprise the following individuals:

Philip Schonberger, 50%
Adult Home Administrator
Administrator, Evergreen Court Home for Adults

Steven Schonberger, 50%
Adult Home Administrator
Manager of adult homes and ALPs owned by Jacob Schonberger

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 continue to serve the residents of the following counties from an office located at 35 Prospect Street, Spring Valley, New York 10977:

Rockland	Orange	Dutchess
Putnam	Ulster	Westchester
Bronx	Sullivan	

The applicant proposes to continue to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech Language Pathology	Medical Social Services	Nutrition
Homemaker	Housekeeper	

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: February 21, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Robynwood, LLC d/b/a Robynwood Home Care
Address: Oneonta
County: Otesgo
Structure: Limited Liability Company
Application Number: 2034-L

Description of Project:

Robynwood, LLC dba Robynwood Home Care, a limited liability company, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Robynwood, LLC d/b/a Robynwood Home Care was previously approved as a home care services agency by the Public Health Council at its September 24, 1994 meeting and subsequently licensed as 9445L001. At that time it was wholly owned by Jeremy Allen.

The members of Robynwood, LLC dba Robynwood Home Care comprise the following individuals:

Richard R. Thompson – 90%
Managing Member, LanCo Development, LLC

Affiliations:
- Secretary/Treasurer, Amerisist of Warrenton (2000-2005)
- Secretary/Treasurer, Amerisist of Front Royal (1999-2005)
- Secretary/Treasurer, Amerisist of Culpeper (1999-2005)
- Secretary/Treasurer, Amerisist of Manassas (1999-2005)
- Secretary/Treasurer, Amerisist of Orange (1999-2005)
- Secretary/Treasurer, Amerisist of Stephen City (1999-2005)
- Secretary/Treasurer, Amerisist of Louisa (1999-2005)

Jennifer V. Randall – 5%
Controller, Jeremy Allen dba Robynwood Home for Adults and LHCSA

Patricia A. Sowa, RN – 5%
Controller, Jeremy Allen dba Robynwood Home for Adults and LHCSA

The Office of the Professions of the State Education Department, indicate no issues with the licensure of the health professional associated with this application.

A search of the individuals (and entities, where appropriate) named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A review of the operations of the following facilities was performed as part of this review:

Amerisist of Warrenton (2000-2005)
Amerisist of Front Royal (1999-2005)
Amerisist of Culpeper (1999-2005)

Amerisist of Manassas (1999-2005)
Amerisist of Orange (1999-2005)
Amerisist of Stephen City (1999-2005)
Amerisist of Louisa (1999-2005)

The information provided by the State of Virginia regulatory agency has indicated that facilities affiliated with this application have provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The applicant proposes to serve the residents of the following counties from an office located at 43 Walnut Street, Oneonta, New York 13820:

Chenango	Delaware	Otsego	Schoharie

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care

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: March 12, 2012

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 5th day of April, 2012, 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:
1691-L	ABC Home Care, Inc. (Bronx, Richmond, Kings, New York and Queens Counties)
1882-L	BaCOR Healthcare Solutions Group, LLC d/b/a BaCOR Care for Life (Nassau and Richmond Counties)
1716-L	Elite Home Care Service Agency, Inc. (New York, Nassau, Kings, Queens, Bronx and Richmond Counties)
1634-L	Healing Touch Home Care, Inc. (Bronx, Kings, New York, Queens and Richmond Counties)

1901-L	Heritage Christian Services, Inc. Genesee, Wayne, Livingston, Monroe, Erie, Niagara, and Ontario Counties)
1906-L	JS Homecare Agency of NY, Inc. (Bronx, Richmond, Kings, Westchester, New York, Queens, Dutchess, Suffolk, Nassau, Sullivan, Orange, Rockland, Putnam and Ulster Counties)
1962-L	Louis Career Development Center, Inc., d/b/a Smart Home Care Agency (New York, Nassau, Kings, Queens, Bronx, and Richmond Counties)
1996-L	Steps in Home Care, Inc. (Westchester, Nassau, Bronx, and New York Counties)
2107-L	Niagara County Department of Health (Niagara County)
2106-L	St. Lawrence County Public Health Department (St. Lawrence County)
2108-L	Tompkins County Health Department (Tomkins County)
2096-L	Yates County Public Health (Yates County)
2068-L	Hudson Valley Home Health Care, LLC (Westchester, Putnam, Ulster, Rockland, Dutchess, Orange, and Sullivan Counties)
2010-L	Samaritan Senior Village, Inc. (Jefferson, Lewis, and St. Lawrence Counties)

2075-L	Golden Acres Home for Adults SP, LLC (Rockland, Putnam, Bronx, Orange, Ulster, Sullivan, Dutchess and Westchester Counties)
2034-L	Robynwood, LLC d/b/a Robynwood Home Care (Chenango, Delaware, Otsego, and Schoharie Counties)
2028-L	229 Bennett Road Operating Company, LLC d/b/a Elderwood Home Care at Cheektowaga (Erie County)
2029-L	580 Orchard Park Road Operating Company, LLC d/b/a Elderwood Home Care at West Seneca (Erie County)
2030-L	76 Buffalo Street Operating Company, LLC d/b/a Elderwood Home Care at Hamburg (Erie County)
2031-L	44 Ball Street Operating Company, LLC d/b/a Elderwood Home Care at Waverly (Tioga County)

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

April 5, 2012

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

Acute Care Services – Establish **Exhibit #13**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	121051 E	Corning Hospital (Steuben County) Mr. Booth - Interest	Contingent Approval

Diagnostic and Treatment Centers – Establish/Construct **Exhibit #14**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	112184 B	Huther Doyle Memorial Institute, Inc. (Monroe County) Mr. Booth – Interest	Contingent Approval
2.	112343 B	Corning Centerway (Steuben County) Mr. Booth - Interest	Contingent Approval

Hospice – Establish/Construct **Exhibit #15**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	102454 E	Compassionate Care Hospice of New York, Inc. (Bronx County) Ms. Regan – Interest	Contingent Approval
2.	112211 B	Jacob Perlow Hospice Corporation d/b/a MJHS Hospice and Palliative Care (Kings County) Mr. Fassler – Interest Ms. Regan - Interest	Contingent Approval

Certified Home Health Agencies – Establish **Exhibit #16**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	111413 E	Genesee Region Home Care Association, Inc. d/b/a Lifetime Care (Schuyler County) Mr. Booth – Recusal Ms. Hines – Recusal	Contingent Approval

Residential Health Care Facility – Establish **Exhibit #17**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	111456 E	4800 Bear Road Operating Company, LLC d/b/a Elderwood at Liverpool (Onondaga County) Mr. Booth - Interest	Contingent Approval

2.	111462 E	1818 Como Park Boulevard Operating Company, LLC d/b/a Elderwood at Lancaster (Erie County) Mr. Booth - Interest	Contingent Approval
3.	111463 E	20 Bassett Road Operating Company, LLC d/b/a Elderwood Health Care at Williamsville (Erie County) Mr. Booth - Interest	Contingent Approval
4.	111466 E	2600 Niagara Falls Boulevard Operating Company, LLC d/b/a Elderwood at Wheatfield (Niagara County) Mr. Booth - Interest	Contingent Approval
5.	111467 E	4459 Bailey Avenue Operating Company, LLC d/b/a Elderwood at Amherst (Erie County) Mr. Booth - Interest	Contingent Approval
6.	111468 E	2850 Grand Island Boulevard Operating Company, LLC d/b/a Elderwood at Grand Island (Erie County) Mr. Booth - Interest	Contingent Approval
7.	111469 E	225 Bennett Road Operating Company, LLC d/b/a Elderwood at Cheektowaga (Erie County) Mr. Booth - Interest	Contingent Approval

8.	111470 E	5775 Maelou Drive Operating Company, LLC d/b/a Elderwood at Hamburg (Erie County) Mr. Booth - Interest	Contingent Approval
9.	111471 E	37 North Chemung Operating Company, LLC d/b/a Elderwood at Waverly (Tioga County) Mr. Booth - Interest	Contingent Approval
10.	112218 E	Waterfront Operations Associations, LLC d/b/a Waterfront Center for Rehabilitation and Healthcare (Erie County) Mr. Fassler – Recusal	Contingent Approval

HOME HEALTH AGENCY LICENSURES **Exhibit #18**

Number	Applicant/Facility	E.P.R.C. Recommendation
1691-L	ABC Home Care, Inc. (Bronx, Richmond, Kings, New York and Queens Counties) Ms. Regan - Interest	Contingent Approval
1882-L	BaCOR Healthcare Solutions Group, LLC d/b/a BaCOR Care for Life (Nassau and Richmond Counties) Ms. Regan - Interest	Contingent Approval
1716-L	Elite Home Care Service Agency, Inc. (New York, Nassau, Kings, Queens, Bronx and Richmond Counties) Ms. Regan - Interest	Contingent Approval

1634-L	Healing Touch Home Care, Inc. (Bronx, Kings, New York, Queens and Richmond Counties) Ms. Regan - Interest	Contingent Approval
1962-L	Louis Career Development Center, Inc., d/b/a Smart Home Care Agency (New York, Nassau, Kings, Queens, Bronx, and Richmond Counties) Ms. Regan - Interest	Contingent Approval
1996-L	Steps in Home Care, Inc. (Westchester, Nassau, Bronx, and New York Counties) Ms. Regan - Interest	Contingent Approval
1906-L	JS Homecare Agency of NY, Inc. (Bronx, Richmond, Kings, Westchester, New York, Queens, Dutchess, Suffolk, Nassau, Sullivan, Orange, Rockland, Putnam and Ulster Counties) Ms. Hines – Interest Ms. Regan - Interest	Contingent Approval
1901-L	Heritage Christian Services, Inc. Genesee, Wayne, Livingston, Monroe, Erie, Niagara, and Ontario Counties) Mr. Booth - Interest	Contingent Approval
2107-L	Niagara County Department of Health (Niagara County) Mr. Booth - Interest	Contingent Approval
2108-L	Tompkins County Health Department (Tomkins County) Mr. Booth - Interest	Contingent Approval

2096-L	Yates County Public Health (Yates County) Mr. Booth - Interest	Contingent Approval
2010-L	Samaritan Senior Village, Inc. (Jefferson, Lewis, and St. Lawrence Counties) Mr. Booth - Interest	Contingent Approval
2028-L	229 Bennett Road Operating Company, LLC d/b/a Elderwood Home Care at Cheektowaga (Erie County) Mr. Booth - Interest	Contingent Approval
2029-L	580 Orchard Park Road Operating Company, LLC d/b/a Elderwood Home Care at West Seneca (Erie County) Mr. Booth - Interest	Contingent Approval
2030-L	76 Buffalo Street Operating Company, LLC d/b/a Elderwood Home Care at Hamburg (Erie County) Mr. Booth - Interest	Contingent Approval
2031-L	44 Ball Street Operating Company, LLC d/b/a Elderwood Home Care at Waverly (Tioga County) Mr. Booth - Interest	Contingent Approval

Public Health and Health Planning Council

Project # 121051-E

Corning Hospital

County: **Steuben (Corning)**
Purpose: **Establishment**
Program: **Acute Care Services**
Submitted: **January 26, 2012**

Executive Summary

Description

Guthrie Health, a Pennsylvania-based not-for-profit corporation located at Guthrie Square, Sayre, Pennsylvania, is seeking approval to merge Guthrie Healthcare System and Guthrie Clinic, Ltd. into a corporation known as Guthrie Health. Concurrently, as the surviving entity, Guthrie Health will become the co-operator of Guthrie Same Day Surgery, an existing article 28 ambulatory surgery center. Guthrie Health, the parent organization, will be the Surviving Corporation.

Post-restructuring Guthrie Health will assume all of the assets, liabilities and employees of Guthrie Healthcare System (GHS) and Guthrie Clinic, Ltd. (GC). Concurrently, as the surviving entity, Guthrie Health will become the co-operator of Guthrie Same Day Surgery, an existing article 28 ambulatory surgery center.

As background, in 2001, GHS and GC entered into an alignment agreement (CON #002411-E) that brought the two health care institutions together as sole members of Guthrie Health. Guthrie Health, a not-for-profit organization, has direct oversight for both GC and GHS, and is responsible for the overall strategic, financial and operational direction of the organization.

Guthrie Health and affiliates principally serve residents in Northern Central Pennsylvania and Southern Central New York and provide a broad range of the health care services, which include: inpatient, outpatient and emergency care, home care services, and primary and specialty care services. Guthrie Health and affiliates conduct medical research and provide educational programs.

Guthrie Clinic, Ltd., under a companion CON #112343-B, is seeking approval to convert the 14 New York private practices into ten diagnostic and treatment center clinics.

The providers for the four closing sites (Elmira, Corning First Street, Apalachin and Bath) will be transferred to other nearby Guthrie Clinic locations. The applicant states they will continue to seek a new location in Bath, New York for an Article 28 extension clinic in the future.

DOH Recommendation

Contingent approval.

Need Summary

Guthrie Health is submitting this application to consolidate Corning Hospital and the Guthrie Same Day Surgery Center into a single cohesive organization. Through this structure, the entire organization will be managed under one board with one mission. The reorganization will allow the corporation to achieve economies of scale and to continue to provide, and possibly expand, services.

Program Summary

Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

Financial Summary

There are no project costs, nor significant issues of capability or feasibility associated with this application.

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 of the executed Certificate of Amendment of the Application for Authority of Guthrie Health, acceptable to the Department. [CSL}
2. Submission of a photocopy of the executed Articles of Merger of Guthrie Healthcare System and Guthrie Clinic, Ltd. into Guthrie Health, acceptable to the Department. [CSL]
3. Submission of a photocopy of the finalized and executed Agreement and Plan of Merger by and among Guthrie Healthcare System, Guthrie Clinic, Ltd. and Guthrie Health, acceptable to the Department. [CSL]
4. Submission of a photocopy of the finalized and executed Plan of Conversion of Guthrie Clinic, Ltd., acceptable to the Department. [CSL]
5. Submission of a photocopy of the executed Articles of Conversion of Guthrie Clinic Ltd., acceptable to the Department. [CSL]

Council Action Date
April 5, 2012.

Need Analysis

Background
Guthrie Health, an existing not-for-profit corporation, requests approval, through the merger of Guthrie Healthcare System and Guthrie Clinic, Ltd into Guthrie Health, to be the surviving entity and thus the operator of Corning Hospital, a 99-bed acute care hospital located at 176 Denison Parkway East, Coming, Steuben County. Concurrently, as the surviving entity, Guthrie Health will become the co-operator of Guthrie Same Day Surgery, Inc., an existing article 28 ambulatory surgery center located at 31 Arnot Road Horseheads, Chemung County.

A companion application, CON #112343-B, was also submitted to reorganize the Guthrie Health clinics into one organization. Upon completion of this project, all services at the hospital and the surgery center will remain the same.

Corning Hospital has the following certified beds and services:

Table 1: Corning Hospital Certified Beds

Bed Category	*Current Beds*
Medical / Surgical	78
Intensive Care	8
Maternity	8
Pediatric	5
Total Beds	*99*

Table 2: Corning Hospital Certified Services

Service	*Services Upon Completion*
Ambulatory Surgery - Multi Specialty	✓
Clinical Laboratory Service	✓
Coronary Care	✓
CT Scanner	✓
Emergency Department	✓
Intensive Care	✓
Linear Accelerator	✓(on-site)
Lithotripsy	✓
Magnetic Resonance Imaging	✓
Maternity	✓
Medical Social Services	✓
Medical/Surgical	✓
Nuclear Medicine - Diagnostic	✓
Outpatient Surgery	✓
Pharmaceutical Service	✓
Primary Medical Care O/P	✓
Radiology – Diagnostic	✓
Radiology – Therapeutic	✓(on-site)
Respiratory Care	✓(correction)
Therapy - Occupational	✓(on-site)
Therapy - Physical	✓(on-site)
Therapy - Respiratory	✓(correction)
Therapy – Speech Language Pathology	✓(on-site)

Corning Hospital is authorized to operate 3 hospital extension clinics, providing services that include Primary Medical Care, Therapeutic Radiology, Occupational Therapy, Physical Therapy, Speech Language Pathology, and Physical Medicine and Rehabilitation.

Corning Hospital State Designation:

- Level 1 Perinatal Center;
- Stroke Center.

Table 3: Guthrie Same Day Surgery Center, Inc: Certified Services
Ambulatory Surgery - Multi Specialty
Radiology - Diagnostic O/P

Conclusion
The restructuring request will create a comprehensive, fully integrated healthcare system for the residents of the Southern Tier of New York.

Recommendation
From a need perspective, approval is recommended.

Programmatic Analysis

Character and Competence
The board members of the Guthrie Health are:

Joseph A. Scopelliti, MD	Co-CEO
Mark Stensager	Co-CEO
Michael W. Donnelly	Chair
Terence M. Devine, MD	Vice-Chair
William H. Ransom III	Secretary
Edward L. Jones, MD	Treasurer
Ethan Arnold, MPH	
Kyra Bannister, MD	
Kenneth R. Levitzky, Esq	
H. Eugene Lindsey, MD	
A. John Peck, Esq	
David Pfisterer, Esq	
Philip J. Roche, Esq	
Douglas a. Trostle, 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 ownership interest in other health care facilities. Licensed individuals were checked against the NYS Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases, as well as the U.S. Department of Health and Human Services Office of the Inspector General database.

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.

- Corning Hospital entered into a corporate integrity agreement with the Office of the Inspector General that covered the timeframe from September 2002 – September 2005 as the result of improper physician level billing. The final report was submitted in January 2006

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.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Background

The current structure of Guthrie Health integrates a multi-specialty group practice under GC (see companion CON #112343-B) and several hospitals under GHS, through a broad parental powers delegate from GC and GHS. The applicant states that the overall corporate structure is cumbersome, with its duplication of governance and management, along with the current co-CEO (Chief Executive Officer) structure, which may not be sustainable.

Restructuring Guthrie Health will simplify the system-wide governance, management and corporate structure, enhance organizational stability with a single CEO, and achieve greater operating efficiencies, which further reduces the costs and unnecessary duplication of services and equipment. It further strengthens Guthrie's integrated system to meet the challenges from the changing health care environment.

After the restructuring, Guthrie Health will have no corporate members. Its board of directors will consist of eighteen directors: ten of the directors will be independent individuals who represent the broad interest of the public, and eight of the directors will be medical, administrative and other professionals.

Description of Entities

Guthrie Health System is the sole corporate member of the following:

- *Robert Packer Hospital* – established in 1885, is a community-based 238-bed tertiary care teaching hospital located in Sayre, Pennsylvania that offers a full complement of medical and surgical services, along with a number of specialized programs.

- *Troy Community Hospital* – established in 1950, is a community-based 25-bed critical access hospital in Troy, Pennsylvania, approximately 32 miles southwest of Sayre, Pennsylvania. It offers a full range of medical and surgical care, and is a swing-bed facility that specializes in a respiratory therapy/ventilator management program. It is anticipated that a portion of the proceeds of the Guthrie Health Series 2011 Bonds will be used to construct and equip a new 25-bed critical access hospital on a new site in Troy, Pennsylvania.

- *Corning Hospital* – a 99-bed, full service community hospital in Corning, New York that is a New York State designated Stroke Center, and offers a broad range of inpatient and outpatient services. On December 8, 2011, under CON 112030, the Public Health and Health Planning Council (PHHPC) gave Corning Hospital contingent approval to construct a 270,908 square foot replacement facility at an estimated cost of $149,995,908. The new hospital will be located on approximately 68 acres of vacant land 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 location. Upon completion of this project, the total certified beds will decrease by 34 beds, bringing the new licensed inpatient capacity to 65-beds.

- *Guthrie Same Day Surgery Center Inc.* – a not-for-profit multi-specialty freestanding ambulatory surgery center located at 31 Arnot Road, (2nd level) Horseheads, NY.

- *Guthrie Home Care* – provides a broad range of home health services. One of its divisions is a Medicare-certified home health agency that provides skilled home health services, home health aide services, and a number of specialized in-home services for homebound residents of all ages throughout Bradford, Tioga and Sullivan Counties of Pennsylvania. Another division provides hospice services.

- *Guthrie Health System* is the sole corporate member of the following: Donald Guthrie Foundation for Education and Research, Inc. (as part if the restructuring, Guthrie Health Systems will transfer $5 million to the foundation, which will be renamed the Donald Guthrie Foundation); Robert Parker School of Nursing; Sayre House of Hope (housing for family members of patients who travel to Sayre campus) and Twin Management Corporation, a medical supply provider.

Presented as BFA Attachments C & D are Guthrie Health's current and proposed organizational charts.

Capability and Feasibility

There are no project costs, nor significant issues of capability or feasibility associated with this application.

Presented as BFA Attachment A is Guthrie Health and Affiliates certified financial statement for June 30, 2010 and 2011, which shows they generated an average excess of revenues over expenses totaling $79,421,000, and had both a positive average working capital and equity position for the same time period. Presented as BFA Attachment E, is the pro-forma balance sheet, which estimates that Guthrie Health and Affiliates combined net assets will be approximately $543,515,000.

Presented as BFA Attachment B is Guthrie Clinic Ltd's., June 30, 2011 financial analysis, showing the clinic had $212,369,354 in Net Revenues for all locations, with $53,541,673 coming from New York State (as shown above) and $158,827,682 from locations in Pennsylvania. Also shown on Attachment B, the Clinic's sites incurred a total loss of $22,051,831 (of which NYS sites loss was $8,673,098, as shown above and the Pennsylvania locations incurred losses were $13,378,733). Please note that these losses have been absorbed by Guthrie Health and Guthrie Health System.

For the fiscal year (FY) ending June 30, 2011, Net Assets totaled $543,895,000, an increase of $111,267,000 from the prior year. At the end of FY 2011, their investment account stood at $388,146,000, an increase of $54,520,000 over the preceding year.

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, approval is recommended.

Attachments

BFA Attachment A	Financial Summary for 2010 and 2011, Guthrie Health and Affiliates
BFA Attachment B	New York and Pennsylvania June 30, 2011 financial results for Guthrie Clinic, Ltd.
BFA Attachment C	Current Organizational Chart for Guthrie Health
BFA Attachment D	Proposed Organizational Chart for Guthrie Health
BFA Attachment E	Pro-forma Balance Sheet for Guthrie Health and Affiliates
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 5th day of April, 2012, 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 merger Guthrie Healthcare System and Guthrie Clinic, Ltd. into a corporation known as Guthrie Health, 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:
121051-E	Corning Hospital

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of the executed Certificate of Amendment of the Application for Authority of Guthrie Health, acceptable to the Department. [CSL]
2. Submission of a photocopy of the executed Articles of Merger of Guthrie Healthcare System and Guthrie Clinic, Ltd. into Guthrie Health, acceptable to the Department. [CSL]
3. Submission of a photocopy of the finalized and executed Agreement and Plan of Merger by and among Guthrie Healthcare System, Guthrie Clinic, Ltd. and Guthrie Health, acceptable to the Department. [CSL]
4. Submission of a photocopy of the finalized and executed Plan of Conversion of Guthrie Clinic, Ltd., acceptable to the Department. [CSL]
5. Submission of a photocopy of the executed Articles of Conversion of Guthrie Clinic Ltd., 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 # 112184-B
Huther Doyle Memorial Institute, Inc.

County: **Monroe (Rochester)**
Purpose: **Establishment and Construction**
Program: **Diagnostic and Treatment Center**
Submitted: **September 26, 2011**

Executive Summary

Description
Huther Doyle Memorial Institute, Inc. (Huther Doyle), a New York not-for-profit corporation, requests approval to establish and construct an Article 28 diagnostic and treatment center (D&TC) to provide primary care and specialty services, including gynecology, at 360 East Avenue, Rochester. The first and second floors of 360 East Avenue are utilized by Huther Doyle for its OASAS Part 822 Chemical Dependence Outpatient Services Program.

Total project costs are estimated at $72,184.

DOH Recommendation
Contingent approval for a 5-year limited life.

Need Summary
Huther Doyle is an OASAS 822 licensed provider for chemical dependency outpatient services, including prevention, recovery, psychology, and managed addiction treatment.

Huther Doyle serves approximately 2,000 patients each year, 85% of whom are Medicaid eligible. At this time, the facility wishes to become established as an Article 28 D&TC to expand services to include primary medical care, as almost 50% of their patients have no primary care physician.

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.

Incremental Budget:	*Revenues:*	*$ 872,811*
	Expenses:	*573,750*
	Gain/(Loss):	*$ 299,061*

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

Architectural Summary
The 10,000 SF center will be located on the third floor of an existing building with renovations planned to accommodate the proposed facility. It will include seven exam rooms, waiting area, triage/clean utility and soiled utility rooms, administrative offices, and adequate support space to accommodate the current and future needs of the community.

Recommendations

Health Systems Agency

The Finger Lakes HSA recommends approval of this project.

Office of Health Systems Management

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

1. Submission of a written commitment that at least 5 percent of total visits to the approved clinic annually will be uninsured or under-insured patients by the second year of operation upon issuance of the operating certificate. [RNR]
2. Submission of a written commitment that the percentage of total visits annually by Medicaid Managed Care and Fee-for-Service beneficiaries, in the aggregate, to the HDMI will be at least 60 percent. [RNR]
3. Submission of an executed transfer and affiliation agreement, acceptable to the Department of Health, with a local acute care hospital. [HSP]
4. Submission of a photocopy of the applicant's revised Lease, with The Fitch Building, LLC, as landlord, which must be acceptable to the Department. [BFA, CSL]
5. Submission of photocopies of the applicant's Certificate of Incorporation, and any amendments thereto or restatements thereof, as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
6. Submission of a photocopy of revisions to the applicant's Bylaws, which must be acceptable to the Department. [CSL]
7. Submission of a complete list of the applicant's officers and directors, clearly indicating each individual's position as an officer and/or a director, which must be acceptable to the Department. [CSL]
8. Submission of the original of Schedule 13A, "Assurances from Article 28 Applicants" from the Certificate of Need application, which must be acceptable to the Department. [CSL]
9. Submission of the original of an affidavit from the Chair of the applicant's Board of Directors verifying that the correct name of the applicant is "Huther-Doyle Memorial Institute, Inc." and not "Huther Doyle Memorial Institute, Inc.", as it is sometimes referred to in the application, which must be acceptable to the Department. [CSL]

Approval conditional upon:

1. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
2. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
3. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
4. The clinical space must be used exclusively for the approved purpose. [HSP]
5. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
6. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01 prior to the applicant's start of construction. [AER]
7. The applicant shall complete construction before April 30, 2014. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

April 5, 2012.

Need Analysis

Background
Huther Doyle Memorial Institute, Inc. (Huther Doyle) is seeking approval to establish and construct a diagnostic and treatment center to provide primary care at 360 East Avenue, Rochester.

Analysis
Huther Doyle has been providing OASAS-certified Chemical Dependence O/P services since 1977. It has been providing prevention, treatment and recovery services under an OASAS license to the local community for over 20 years.

Huther Doyle's primary service area is the Rochester metropolitan area. From January 2010 through September 2010, HDMI served 1,362 patients.

The applicant proposes to offer the following:

- Primary Care and Specialty Program services including medical services 40 hours each week over a minimum of five days, to start.
- Gynecology services offered approximately eight hours per month, over two or three sessions per month.

The projected number of visits for Primary Care is as follows:

Current Year:	0
First Year:	4,530
Third Tear:	8,364

The projected number of visits for outpatient chemical dependency is as follows:

Current Year:	69,862
First Year:	68,710
Third Tear:	68,710

The service area is in both a primary care and mental health care services Health Professional Shortage Area, (HPSA).

There are a total of ten facilities providing primary care services within a 1.25 mile radius of the proposed clinic site:

Type of Facility with Primary Care Services	Number within 1.25 Mile Radius of 14604
D&TC	1
D&TC Extension Clinic	2
School-Based Hospital Extension Clinic	2
Hospital Extension Clinic	5
Total	*10*

The table below provides information on the number of Medicaid recipients as well as the number of HMO enrollment in the twenty zip codes within a 1.25 mile radius of the proposed location in zip code 14604.

These data indicate the following:

a) The Medicaid population is 40 percent.

b) The primary care utilization is significantly lower at 4.0 average annual primary care visits per Medicaid client than that of the State at 5.77 annual primary care visits. The normative rate is 3.5 to 4 visits per year, used as a standard for managed care planning and federally qualified health centers.

Population -	**45,686**				**CON #112184 Huther Doyle**
Zip Code	*Total Medicaid Recipients*	*HMO Enrollment*	*MA Fee for Service Recipients*	*Annual Primary Care Visits*	*Primary Care Use per eligible Year*
14602	31	3	28	98	3.52
14603	138	38	100	274	2.73
14604	1,220	284	936	4,024	4.3
14605	7,999	4,840	3,159	10,818	3.42
14607	2,521	945	1,576	6,244	3.96
14608	6,216	3,703	2,513	11,680	4.65
14614	128	34	94	332	3.53
14638					
14639					
14643	1	0	1		
14644					
14646					
14647	1	0	1		
14649					
14650					
14651					
14652					
14653					
14692	159	9	150	760	5.06
14694					
Total	18,413	9,856	8,557	34,230	4
Statewide					5.77
M-Caid Recipients as % of Serv Area Pop.					40.3%
HMO Enroll as % of Total M-Caid recipients					53.5%
MA Fee for Service as % of Total M-Caid recipients					46.5%

Prevention Quality Indicators (PQIs):
The rates for the following PQIs in the 20 zip code area are poorer than those for the State:

PQI	**Description**	**Adjusted Rate**	**State-Rate**
1	Diabetes short-term complication	94.05	37.24
3	Diabetes long-term complication	166.36	105.85
5	Chronic obstructive pulmonary disease	227.94	156.96
7	Hypertension	44.67	40.21
8	Congestive heart failure	558.73	334.36
9	Low birth weight (Percentage of Births)	8.82	5.75
12	Urinary tract infection	192.89	139.25
15	Adult asthma	242.16	126
16	Lower-extremity amputation among patients with diabetes	43.27	30.14

Source: Medicaid Data 2008

Conclusion
Huther Doyle Memorial Institute, Inc. proposed to establish a diagnostic and treatment center to provide primary care services to patients currently receiving chemical dependency outpatient services. Eighty-five percent of HDMI's patients are Medicaid eligible, and approximately 50% do not have a primary care provider.

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

Proposed Operator	**Huther Doyle Memorial Institute**
Operator Type	Not-fof-Profit Corporation
Site Address	360 East Avenue, Rochester
Services	Primary Medical Care Chemical Dependency - Rehabilitation
Hours of Operation	A minimum of forty hours and five days per week. Hours and days will expand if needed.
Staffing (1st Year / 3rd Year)	77.1 FTEs / 79.2 FTEs
Medical Director(s)	Clifford J. Hurley
Emergency, In-Patient and Backup Support Services Agreement	Expected to be provided by Rochester General Hospital
Distance	4.5 miles and 8 minutes

Character and Competence
The board members are:

Name	Position
Brett Sobieraski	Chair
Shelly Marketell	Vice Chair
Eugene O'Connor	Secretary
Louis Nau	Treasurer
Wanda Acevedo	
Malcolm Boyd	
Norene Cenette Burdine	
Zetta Denno	
Kim Dyce Faucette	
Hilda Escher Rosario	
Michael Green	
Brian Logan	
Vi Luong	
Douglas Lustic	
Patrick O'Flynn	
Peter Pecor	
Christopher Wilkins	
Roger Zaenglein	

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's and relatives' ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management (relative to Medicaid fraud and abuse), the Office of Professional Medical Conduct, and the Education Department databases.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action. Based on this information, staff concluded that the applicant have provided a substantially consistent high level of care as defined in New York State Public Health Law 2810(a)(3) and 10NYCRR 600.2 during the past 10 years.

Conclusion
Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

Recommendation
From a programmatic perspective, contingent is recommended.

Financial Analysis

Lease Agreement
The applicant has submitted a draft lease for approximately 10,000 square feet of space on the third floor at 360 East Avenue in Rochester, New York, under the terms of the lease agreement summarized below:

Lessor:	The Fitch Building, LLC
Lessee:	Huther Doyle Memorial Institute, Inc.
Term:	Nine years and six months with a ten year renewal term
Rental:	$169,500/year (16.95/ sq. ft.)
Provisions:	Tenant shall be responsible for utilities and insurance costs.

The lease will be an arm's-length lease arrangement, and the applicant has submitted letters of opinion from licensed commercial real estate brokers attesting to the reasonableness of the per square foot rental.

Total Project Cost and Financing
Total project costs for the renovations and acquisition of movable equipment is estimated at $72,184, itemized as follows:

Other Fees	20,000
Movable Equipment	49,800
Application Fee	2,000
Additional Processing Fee	384
Total Project Cost	$72,184

The applicant will finance the total project costs through equity. Presented as BFA Attachment A, is the financial statement of Huther Doyle Memorial Institute, Inc., which shows sufficient equity.

Operating Budget
The applicant has submitted an incremental operating budget in 2012 dollars under the Article 28 program, for the first and third years of operation, summarized below:

	Year One	Year Three
Revenues:		
Patient Revenues	$472,753	$872,811
Expenses:		
Operating	$313,878	$490,361
Depreciation and Rent	81,761	83,389
Total Expenses	$395,639	$573,750
Net Income(Loss)	$77,114	$299,061
Utilization: (visits)	4,530	8,364
Cost Per Visit	$87.34	$68.60

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

Medicaid-Managed Care	8.0%
Medicaid Fee-For-Service	82.4%
Commercial-Managed Care	5.7%
Charity Care	3.9%

Expense and utilization assumptions are based on the historical experience of the current outpatient services under the Part 822 Chemical Dependence Outpatient Services Program, whose patients are mainly Medicaid Fee-for-Service.

Capability and Feasibility

Total project costs of $72,184 will be financed through equity of Huther Doyle Memorial Institute, Inc. BFA Attachment A is the financial summary of Huther Doyle Memorial Institute, Inc., which shows there are sufficient funds available.

Working capital requirements, estimated at $95,625 appear reasonable based on two months of third year incremental expenses and will be provided through the current operation. Huther Doyle is an existing operation for Chemical Dependence outpatient services. As shown on BFA Attachments A and B, Huther Doyle maintained positive working capital, net assets and a net profit of $2,947 in 2011 and an average net profit of $129,300 in 2009-2010. Presented as BFA Attachment C, is the pro-forma balance sheet of Huther Doyle Memorial Institute, Inc., based on the first day of operation, which indicates a positive net asset position of $1,037,332.

The submitted budget indicates a net profit of $77,114 and $299,061 during the first and third years of operation, respectively. Revenues are based on current reimbursement methodologies for diagnostic & treatment center's services. The budget appears reasonable.

Based on the preceding, and subject to 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 proposed facility will consist of 4,880 SF and will include a waiting area with public toilet, telephone and drinking fountain. The new facility will include seven examination rooms, a dictation/workroom, administrative offices, staff

lounge and lockers, conference room, ADA compliant patient toilet, staff toilet room, housekeeping closet, utility room, 2 soiled utility room and 3 storage rooms.

Parking will be available on street level with 37 patient parking spaces located in a shared parking lot with an additional 24 spaces to be added as part of the lease and renovations.

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	2011 Internal Financial Summary for Huther Doyle Memorial Institute, Inc.
BFA Attachment B	2009-2010 Financial Summary for Huther Doyle Memorial Institute, Inc.
BFA Attachment C	Pro-forma Balance Sheet of Huther Doyle Memorial Institute, Inc.
BFA Attachment D	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 5th day of April, 2012, 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 an Article 28 diagnostic and treatment center to provide primary care and specialty 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:
112184-B	Huther Doyle Memorial Institute, Inc.

APPROVAL CONTINGENT UPON:

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

1. Submission of a written commitment that at least 5 percent of total visits to the approved clinic annually will be uninsured or under-insured patients by the second year of operation upon issuance of the operating certificate. [RNR]
2. Submission of a written commitment that the percentage of total visits annually by Medicaid Managed Care and Fee-for-Service beneficiaries, in the aggregate, to the HDMI will be at least 60 percent. [RNR]
3. Submission of an executed transfer and affiliation agreement, acceptable to the Department of Health, with a local acute care hospital. [HSP]
4. Submission of a photocopy of the applicant's revised Lease, with The Fitch Building, LLC, as landlord, which must be acceptable to the Department. [BFA, CSL]
5. Submission of photocopies of the applicant's Certificate of Incorporation, and any amendments thereto or restatements thereof, as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
6. Submission of a photocopy of revisions to the applicant's Bylaws, which must be acceptable to the Department. [CSL]
7. Submission of a complete list of the applicant's officers and directors, clearly indicating each individual's position as an officer and/or a director, which must be acceptable to the Department. [CSL]
8. Submission of the original of Schedule 13A, "Assurances from Article 28 Applicants" from the Certificate of Need application, which must be acceptable to the Department. [CSL]
9. Submission of the original of an affidavit from the Chair of the applicant's Board of Directors verifying that the correct name of the applicant is "Huther-Doyle Memorial Institute, Inc." and not "Huther Doyle Memorial Institute, Inc.", as it is sometimes referred to in the application, which must be acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
2. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
3. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
4. The clinical space must be used exclusively for the approved purpose. [HSP]
5. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
6. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01 prior to the applicant's start of construction. [AER]
7. The applicant shall complete construction before April 30, 2014. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York 12180-2299

Public Health and Health Planning Council

Project # 112343-B

Corning Centerway

County: Steuben (Corning) **Program:** Diagnostic and Treatment Center
Purpose: Establishment and Construction **Submitted:** December 9, 2011

Executive Summary

Description

Guthrie Health, a Pennsylvania-based not-for-profit corporation, is seeking approval to convert 14 private practice clinic sites operated in New York State by Guthrie Clinic, Ltd. into 10 diagnostic and treatment centers (D&TCs). Guthrie Clinic, Ltd. is a not-for-profit corporation organized as a professional corporation under Pennsylvania law, with the authority to conduct business in New York State.

In a companion application (CON #121051-E), Guthrie Health requests permission to reorganize at the corporate level. The reorganization will merge Guthrie Healthcare System (GHS) and Guthrie Clinic, Ltd. (GC) into the parent organization, Guthrie Health, who will be the survivor and assume all GHS and GC assets, liabilities and employees. The purpose of the merger is to simplify the corporate structure, eliminate duplications of governance and management, and achieve greater operating efficiencies.

GC currently operates 26 private practice sites with 265 physicians – 14 sites are in New York's Southern Tier and 12 sites are in Pennsylvania's Northern Tier. The proposed ten New York D&TC sites to result from this CON are as follows:

Site	Address	County
Big Flats	31 Arnot Road, Horseheads	Chemung
Vestal	2517 Vestal Parkway, Vestal	Broome
Centerway	130 Center Way, Corning	Steuben
Steuben	123 Conhocton Street, Corning	Steuben
Erwin	9768 Liberty Drive, Painted Post	Steuben
Watkins Glen	One First Street, Watkins Glen	Schuyler
Ithaca	1780 Hanshaw Road, Ithaca	Tompkins
Waverly	29 N. Chemung Street, Waverly	Tioga
Owego	1246 State Route 38, Owego	Tioga
Pine City	1001 Carl Street, Southport	Chemung

The providers from the four closing sites (Elmira, Corning First Street, Apalachin and Bath) will be transferred to other nearby GC locations, and their patients will be offered the opportunity to continue to see their current providers at the new locations. Also, the applicant states they will continue to seek a new location in Bath, New York for an Article 28 extension clinic in the future.

Total project costs are estimated at $11,757,842.

DOH Recommendation

Contingent approval.

Need Summary

As with the overall Guthrie Health restructuring, the conversion of these private practice clinic sites will allow the D&TCs to operate more efficiently, thereby benefitting the communities they serve.

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

Guthrie Health will satisfy the costs by contributing $8,957,842 in equity and use a portion its September 8, 2011 bond issuance to fund 68% of Owego sub-project 9; this amount totals $2,800,000.

Budget:		
	Revenues:	*$ 62,754,019*
	Expenses:	*71,422,103*
	Gain/(Loss):	*$ (8,668,084)*

Once the Guthrie Health reorganization takes place, GC will cease to exist as a separate entity. All the components of Guthrie Health, taken together, will be profitable. As with any large, multi-faceted healthcare operation, certain program areas, when viewed on a stand-alone basis, generate a surplus, while others operate at a loss.

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

Architectural Summary

Eight of the ten sites will require moderate renovations to meet Article 28 standards, while the remaining two (Owego and Pine City) will require new construction.

Recommendations

Health Systems Agency
The Finger Lakes HSA 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 executed transfer and affiliation agreements, acceptable to the Department, with local acute care hospitals. [HSP]
3. Submission of an executed purchase and sale agreement conveying 20.22 acres of real property, that is acceptable to the Department. [BFA]
4. This project is approved contingent upon submission of an architectural/engineering letter of certification for Subproject 10, Pine City Clinic for either the existing site at 1243 Pennsylvania Avenue in Pine City or for the new proposed building on land that has not yet been confirmed. [AER]
5. Exceptions to code compliance have been noted at 8 of the 10 proposed sites within the architectural narratives and referenced on the architectural certification letters. These items include shared space in a proposed Ambulatory Surgery Center, non-compliant ADA maneuvering clearances at door locations, and egress corridors with non-compliant minimum width. A submitted plan of correction is required for each noted deficiency or the submission of a waiver request with appropriate justification submitted for review and approval. This project approval is contingent upon the completion of corrective work or waiver approval for each deficiency noted. [AER]
6. Submission of evidence of site control, acceptable to the Department. [CSL]
7. Submission of a photocopy of the executed Certificate of Amendment of the Application for Authority of Guthrie Health, acceptable to the Department. [CSL]
8. Submission of a photocopy of the executed Articles of Merger of Guthrie Healthcare System and Guthrie Clinic, Ltd. into Guthrie Health, acceptable to the Department. [CSL]
9. Submission of a photocopy of the finalized and executed Agreement and Plan of Merger by and among Guthrie Healthcare System, Guthrie Clinic, Ltd. and Guthrie Health, acceptable to the Department. [CSL]
10. Submission of a photocopy of the finalized and executed Plan of Conversion of Guthrie Clinic, Ltd., acceptable to the Department. [CSL]
11. Submission of a photocopy of the executed Articles of Conversion of Guthrie Clinic, Ltd., acceptable to the Department. [CSL]

Approval conditional upon:

1. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
2. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
3. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
4. The clinical space must be used exclusively for the approved purpose. [HSP]
5. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
6. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant’s start of construction. [AER].
7. The applicant shall complete construction by October 30, 2014. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date
April 5, 2012.

Need Analysis

Background

Guthrie Health is seeking approval to operate 10 Guthrie Clinic, Ltd. (GC) sites in New York State as diagnostic and treatment centers (D&TCs). In addition, Guthrie Health will close 4 other clinic sites that are located in older buildings. The providers currently working at those sites will be transferred to nearby clinic locations and the patients at those sites will be offered the opportunity to continue to see their providers at the nearby locations. Upon project completion, the services at the remaining clinics will remain the same.

The following GC clinics in New York's Southern Tier will be certified as diagnostic and treatment centers:

1. Vestal 2517 Vestal Parkway, Vestal, Broome County

   Certified Services:
   - Clinical Laboratory Services (Phlebotomy)
   - Ophthalmology O/P
   - Optometry O/P
   - Pediatrics O/P (family medicine)
   - Primary Medical Care O/P
   - Radiology – Diagnostic
   - Well Child (family medicine)

   Visits for 2011 exceeded 18,000.

2. Pine City 1001 Carl Street, Southport, Chemung County
   This facility will be relocated from its current address at 1243 Pennsylvania Avenue, Pine City.

   Certified services:
   - Clinical Laboratory Services (Phlebotomy)
   - Primary Medical Care O/P
   - Radiology – Diagnostic

   Visits for 2011 exceeded 18,100.

3. Big Flats 31 Arnot Road, Horseheads, Chemung County

   Certified Services:
   - Clinical Laboratory Services (Phlebotomy)
   - CT Scanner (Mobile Unit)
   - Magnetic Resonance Imaging (MRI) (Mobile Unit)
   - Primary Medical Care O/P
   - Radiology – Diagnostic
   - Therapy – Physical

   Visits for 2011 exceeded 24,000. The transfer of the Elmira staff will also increase utilization at the site.

4. Watkins Glen One First Street, Watkins Glen, Schuyler County

   Certified Services:
   - Clinical Laboratory Services (Phlebotomy)
   - Pediatrics O/P (family medicine)

- Primary Medical Care O/P
- Radiology – Diagnostic
- Well – Child (family medicine)

Visits for 2011 totaled 5,810.

5. Steuben 123 Conhocton Street, Corning, Steuben County

   Certified Services:
   - Clinical Laboratory Services (Phlebotomy)
   - Pediatrics O/P (family medicine)
   - Prenatal O/P
   - Primary Medical Care O/P
   - Radiology – Diagnostic
   - Well – Child (family medicine)

   Visits for 2011 totaled 47,683.

6. Centerway 130 Center Way, Corning, NY 14830 – Steuben County

   Certified Services:
   - Audiology O/P
   - Chemical Dependency – Rehabilitation O/P
   - Clinical Laboratory Services (Phlebotomy)
   - Dental O/P (Orthodontics)
   - Ophthalmology O/P
   - Optometry
   - Pediatrics O/P
   - Prenatal O/P
   - Primary Medical Care O/P
   - Radiology – Diagnostic
   - Well – Child

   The Centerway site will be designated as Guthrie Health's main diagnostic and treatment center and the other 10 sites will be extension clinics. Visits for 2011 totaled 172,016.

7. Erwin 9768 Liberty Drive, Painted Post, NY 14870 – Steuben County

   Certified Services:
   - Clinical Laboratory Services (Phlebotomy)
   - Pediatrics O/P (family medicine)
   - Physical Medicine and Rehabilitation O/P (Physiatry)
   - Primary Medical Care O/P
   - Well – Child

   Visits for 2011 exceeded 11,400.

8. Waverly 29 N. Chemung Street, Waverly, NY 14892 – Tioga County

   Certified Services:
   - Clinical Laboratory Services (Phlebotomy)
   - Prenatal O/P (family medicine)

- Primary Medical Care O/P
- Well – Child (family medicine)

Visits for 2011 totaled 7,661.

9. Owego 1246 State Route 38, Owego, NY 13827 – Tioga County

   Certified Services:
   - Clinical Laboratory Services (Phlebotomy)
   - Prenatal O/P
   - Primary Medical Care O/P
   - Radiology – Diagnostic

   Visits for 2011 totaled 11,183. It is expected that the visits from the Apalachin site (slated for closure) of more that 7,000 will increase the primary care visits at the Owego site to more than 18,600.

10. Ithaca 1780 Hanshaw Road, Ithaca, NY 14850 – Tompkins County

    Certified Services:
    - Ambulatory Surgery - Gastroenterology
    - Clinical Laboratory Services (Phlebotomy)
    - CT Scanner (mobile unit)
    - Magnetic Resonance Imaging (MRI) (mobile unit)
    - Nutritional O/P
    - Pediatrics O/P (family medicine and peds)
    - Primary Medical Care O/P
    - Radiology – Diagnostic
    - Therapy – Physical
    - Well – Child (family medicine)

    Visits for 2011 totaled 58,917.

The applicant states that the above mentioned facilities are not accredited, but following CON approval, they will initiate the Article 28 accreditation process so the facilities may be in compliance at the time of inspections.

The purpose of the consolidation is to simplify the corporate structure and eliminate duplications of governance and management.

Apart from enabling Guthrie Health restructuring to occur, the conversion of private practice sites will allow the D&TCs to operate more efficiently and benefit the communities they serve by:

- Enhancing the continuity and quality of clinical services provided;
- Assuring that financial resources are available to make the necessary investments in infrastructure, equipment, technology and services to meet the current and future needs of the community for high quality care;
- Assuring the financial resources to support the recruitment of needed physicians to serve the residents;
- Insuring continued local availability of highly effective and broadly specialized health care facilities, health care providers and charity care;
- Improving patient access to necessary health care services; and
- Enhancing the system's ability to respond to the requests of payers, purchasers and patients for participation in a broader range of health delivery programs like the accountable care organizations.

Recommendation
From a need perspective, approval is recommended.

Programmatic Analysis

Background
Guthrie Health, an existing not-for-profit corporation, requests approval to establish a diagnostic and treatment center (D&TC), with a total of ten locations. The locations are in Chemung, Broome, Corning, Steuben, Schuyler, Tompkins, and Tioga counties. The D&TCs will be known as Corning Centerway.

Character and Competence
The board members of the Guthrie Health are:

Name	
Joseph A. Scopelliti, MD	Co-CEO
Mark Stensager	Co-CEO
Michael W. Donnelly	Chair
Terence M. Devine, MD	Vice-Chair
William H. Ransom III	Secretary
Edward L. Jones, MD	Treasurer
Ethan Arnold, MPH	
Kyra Bannister, MD	
Kenneth R. Levitzky, Esq	
H. Eugene Lindsey, MD	
A. John Peck, Esq	
David Pfisterer, Esq	
Philip J. Roche, Esq	
Douglas a. Trostle, 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 ownership interest in other health care facilities. Licensed individuals were checked against the NYS Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the U.S. Department of Health and Human Services Office of the Inspector General database.

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.

- Corning Hospital entered into a corporate integrity agreement with the Office of the Inspector General that covered the timeframe from September 2002 – September 2005 as the result of improper physician level billing. The final report was submitted in January 2006

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.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Description of Entities

Guthrie Health System is the sole corporate member of the following:

- *Robert Packer Hospital* – established in 1885, is a community-based 238-bed tertiary care teaching hospital located in Sayre, Pennsylvania, that offers a full complement of medical and surgical services along with a number of specialized programs.

- *Troy Community Hospital* – established in 1950, is a community-based 25-bed critical access hospital in Troy, Pennsylvania, approximately 32 miles southwest of Sayre Pennsylvania. It offers a full range of medical and surgical care and is a swing-bed facility that specializes in respiratory therapy/ventilator management program. It is anticipated that a portion of the proceeds of the Guthrie Health Series 2011 Bonds will be used to construct and equip a new 25-bed critical access hospital on a new site in Troy, Pennsylvania.

- *Corning Hospital* – a 99-bed, full service community hospital in Corning, New York that is a New York State designated Stroke Center and offers a broad range of inpatient and outpatient services. On December 8, 2011, under CON 112030, the Public Health and Health Planning Council (PHHPC) gave Corning Hospital contingent approval to construct a 270,908 square foot replacement facility at an estimated cost of $149,995,908. It will be located on approximately 68 acres of vacant land 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 location. Upon completion of this project, the total certified beds will decrease by 34 beds, bringing the new license inpatient capacity to 65-beds.

- *Guthrie Same Day Surgery Center Inc.* – a not-for-profit multi-specialty freestanding ambulatory surgery center located at 31 Arnot Road (2nd level) Horseheads, NY.

- *Guthrie Home Care* – provides a broad range of home health services. One of its divisions is a Medicare-certified home health agency that provides skilled home health services, home health aid services and a number of specialized in-home services for homebound residents of all ages throughout Bradford, Tioga, and Sullivan Counties of Pennsylvania. Another division provides hospice services.

- *Guthrie Health System* – the sole corporate member of the following: Donald Guthrie Foundation for Education and Research, Inc. (as part of the restructuring, Guthrie Health Systems will transfer $5 million to the foundation, which will be renamed the Donald Guthrie Foundation); Robert Parker School of Nursing; Sayre House of Hope – housing for family members of patients who travel to Sayre campus, and Twin Management Corporation, a medical supply provider.

Presented as BFA Attachments C & D are Guthrie Health's current and proposed organizational charts.

Lease Rental Agreement

The applicant has submitted executed, amended and restated leases for the following sites, the terms are summarized below:

Dated:	October 7, 2011 (original agreement dated 10/1/10)
Premises:	17,500 gross square feet on the first floor of a building located at 31 Arnot Road, Horsehead, New York (Big Flats)
Landlord:	David Lubin ,individually and David Lubin and Mark Weiermiller, as Trustees of

Barbara Carkeet Irrevocable Trust and as Trustees of Enid Lubin Littman Irrevocable Trust

Lessee: Guthrie Clinic, Ltd.
Term: Lease ends on 9/30/19 -10 years from the original date - $323,750 per year at ($18.50 per sq. ft) 5% increase on 10/1/13 and 10/1/16
Provisions: Taxes, Utilities, Maintenance & Insurance

Dated: October 7, 2011 (original agreement dated 2/25/99)
Premises: 8,851 gross square feet on the second floor of a building located at 31 Arnot Road, Horsehead, New York (Big Flats)
Landlord: David Lubin ,individually and David Lubin and Mark Weiermiller, as Trustees of Barbara Carkeet Irrevocable Trust and as Trustees of Enid Lubin Littman Irrevocable Trust
Lessee: Guthrie Clinic, Ltd.
Term: Lease ends on 1/31/19 -20 years from the original date - $130,198.20 per year at ($14.71 per sq. ft) 8.5% increase on 2/1/14
Provisions: Taxes, Utilities, Maintenance & Insurance

Dated: July 1, 2011 (original agreement dated 11/1/05)
Premises: 13,740 gross square at 123 Conhocton Street, Corning, New York
Landlord: Mark Mauer, M.D. & Nadia Mauer d/b/a Camelot Development Corp.
Lessee: Guthrie Clinic, Ltd.
Term: Lease ends on 10/31/15 –renewal Three (3) 5-year terms - $238,389 per year at ($17.35 per sq. ft)
Provisions: Triple Net

Dated: October 17, 2011 (original agreement dated 1/19/10)
Premises: Ground Lease at 29 N. Chemung Street, Waverly, New York (for the land only)
Landlord: Tioga Property Company South, LLC.
Lessee: Guthrie Clinic, Ltd.
Term: Lease ends on 1/31/40 –renewal One (1) 5-year terms - $1,000 per year
Provisions: Triple Net

Of the ten clinic sites, three are leased from non-Guthrie entities: Waverly (Guthrie owns the building but leases the land), Big Flats and Steuben. Documentation for rent reasonableness has been submitted.

A companion CON #121051-E is being processed concurrently, which will merge Guthrie Health System and Guthrie Clinic, Ltd. into Guthrie Health. This reorganization will take the entities, facilities, and staff, and move them under one umbrella, with Guthrie Health being the surviving corporation. At the conclusion of the reorganization, all properties will be either owned or leased by Guthrie Health.

Assignment and Assumption of Option to Purchase Land

The applicant has submitted an executed assignment and assumption of option agreement to effectuate the purchase of 20.22 acres of real property; the terms are summarized below:

Date: May 1, 2009
Description: 1246 State Route 38 Owego, NY (20.22 acres parcel # 116.00-03-23)
Seller: Frank Vultaggio, Mark D. Vultaggio, Richard Vultaggio, and Mary Rose Jaszczynske
Assignor: Balen, LLC
Assignee: Guthrie Health System
Assignment of

Buyer's Interest:	Assignor assigns, transfers, and conveys to Assignee all Assignor's right, title, interest, as Buyer in the Contact.
Assumption of Buyer's Interest in Contract:	Assignee accepts assignment and acknowledges receipt of Contract and related documents and agrees to perform as if the Assignee had been an original party thereto.
Purchase Price:	$400,000

Purchase and Sale Agreement

The applicant has submitted an executed purchase and sale agreement to acquire 3.67 acres of real property, the terms are summarized below:

Dated:	December 8, 2011
Description:	1001 Carl Street, Southport, NY (3.67 acres parcel # 109.11-1-34)
Seller:	Southport Volunteer Fire Department, Inc
Buyer:	Guthrie Healthcare System
Purchase Price:	$400,000

Total Project Cost and Financing

The project costs are estimated at $11,757,842 in order to make the ten sites code compliant – eight sites are in need of moderate renovations totaling $2,375,188, and two sites (Owego and Pine City) will require new construction totaling $9,316,351 plus $66,303 in total CON processing fees for all projects.
Total project cost for new construction, renovation, and equipment is broken down as follows:

Land Acquisition	$825,037
New Construction	4,490,423
Renovation & Demolition	1,280,684
Site Development	1,789,786
Design Contingency	499,878
Construction Contingency	450,456
Planning Consultant Fees	104,030
Architect/Engineering Fees	618,674
Construction Manager Fees	937,919
Other Fees (Consultant)	165,626
Movable Equipment	416,795
Interim Interest Expense	112,231
Con Application Fee	2,000
Additional CON Processing Fee	64,303
Total Project Cost	$11,757,842

Total costs are based on an April 2012 start date, with a seven month construction period.

The applicant's financing plan is as follows:

Equity	$8,957,842
Central Bradford Progress Authority (Pennsylvania) Revenue Bonds Series 2011 – Part of Guthrie Health Issue dated September 8, 2011 (30 year term @ 5.7%)	2,800,000
Total	$11,757,842

On September 8, 2011, Guthrie Health issued $102,370,000 in bonds through the Central Bradford Progress Authority (Series 2011). The proceeds of the Series 2011 Bonds, together with other trustee-held funds, refunded a portion of

the Series 2002A Bonds, refinanced a portion of the Series 2007 Bonds, and provided financing for various equipment and facility projects (including the $2,800,000 as shown above).

Operating Budget

The applicant has submitted the Outpatient operating budget, in 2012 dollars as summarized below:

	*Current Year (6/30/11) New York Impacted Sites	First Year Cumulative	Third Year Cumulative
Revenues:			
Outpatient	$53,541,673	$58,764,714	$62,754,019
Expenses:			
Operating	$58,344,458	$63,893,047	$66,716,577
Capital	3,870,313	4,943,411	4,705,526
Total Expenses	$62,214,771	$68,836,458	$71,422,103
Excess Expenses over Revenues	$(8,673,098)	$(10,071,744)	$(8,668,084)
Visits	421,256	454,456	486,253
Cost per Visit	$147.69	$151.47	$146.88

** Note the "Current Year" Column contains historical data for the twelve months ending June 30, 2011, for Guthrie Clinic's private practice in New York State. It is being shown for comparison purposes.*

The applicant states that Guthrie Clinic has historically operated at a loss, which has been subsidized by Guthrie Health and Guthrie Health Systems. Presented as BFA Attachment B is Guthrie Clinic Ltd's., June 30, 2011 financial analysis, showing the clinic had $212,369,354 in Net Revenues for all locations, with $53,541,673 coming from New York State (as shown above) and $158,827,682 from locations in Pennsylvania. Also shown on Attachment B, the Clinic's sites incurred a total loss of $22,051,831 (of which NYS sites loss was $8,673,098 as shown above, and the Pennsylvania locations incurred losses were $13,378,733). Please note, as stated above, these losses have been absorbed by Guthrie Health and Guthrie Health System. Presented as BFA Attachment A is Guthrie Health and Affiliates certified consolidated financial statements for June 30, 2010 and 2011, which shows an average positive working capital and equity position for the period June 30, 2010 and 2011, and a positive average Net Income position of $79,421,000 for the period June 30, 2010 and 2011.

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

Payor	Outpatient
Medicaid Fee -for-Service	8.60%
Medicaid Managed Care	1.67%
Medicare Fee-for-Service	34.75%
Medicare Managed Care	3.47%
Commercial Fee-for-Service	43.73%
Commercial Managed Care	2.08%
Private & All Other	5.30%
Charity Care	.40%

Utilization is based on historical site data, with some projected growth coming over three years from the recruitment of 12 full time equivalent (FTE) primary care providers. In support of this projection, the applicant states over the past five years they have added 10 FTE primary care physicians.

Capability and Feasibility

Total project costs for the ten sub-projects are estimated at $11,757,842, which will be funded by Guthrie Health as follows: $8,957,842 in equity and $2,800,000 in proceeds from Guthrie Health's issuance of $102,370,000 in bonds on September 8, 2011, through the Central Bradford Progress Authority (Series 2011), as previously described. Review of BFA Attachment A, Guthrie Health and Affiliates June 30, 2011 certified financial statements, indicates sufficient resources are available to meet the equity requirement.

Working capital should be minimal, as services are being converted from the Guthrie Health Clinic Ltd's private practices into the proposed D&TCs.

The applicant projects the proposed D&TC will encounter losses, which will be subsidized from Guthrie Health's profitable operations, as they have in the past. The Clinic estimates that by the third year, incremental revenues and expenses will be about equal, at approximately $9,200,000 each. Revenue assumptions were developed through the combined efforts from a health care consulting firm and the applicant, using current reimbursement methodologies. The budget appears to be reasonable.

Presented as BFA Attachment A is Guthrie Health and Affiliates certified financial statement for June 30, 2010 and 2011, which shows they generated an average excess of revenues over expenses totaling $79,421,000, and had both a positive average working capital and equity position for the same time period. Presented as BFA Attachment E, is the pro-forma balance sheet, which estimates that Guthrie Health and Affiliates combined net assets will be approximately $543,515,000.

For the fiscal year (FY) ending June 30, 2011, Net Assets totaled $543,895,000, an increase of $111,267,000 from the prior year. At the end of FY 2011, their investment account stood at $388,146,000, an increase of $54,520,000 over the preceding year.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Architectural Analysis

Background

This project consists of the acquisition of multiple sites located in Big Flats, Vestal, Centerway, Steuben, Erwin, Watkins Glen, Ithaca, Waverly, Owego and Pine City with minor renovations to the clinics located in Big Flats, Vestal, Centerway, Steuben, Erwin, Watkins Glen, Ithaca and Waverly, NY. The renovation work will primarily consist of upgrades for ADA compliance, separation of waiting rooms, addition of exit signage, and correction of exiting deficiencies. Subproject 10 located in Bath, NY has been removed from the project. New Subproject 10, new construction for the Pine City clinic, did not include an architectural submission.

Subproject No.1

Big Flats Clinic at 31 Arnot Road, Horseheads, NY will consist of 2 stories with a total of 26,595 SF and includes;

- First Floor-18,262 SF

The first floor consists of a waiting room, 8 toilet rooms, reception, 14 offices, staff lounge, 5 nurse stations, 1 procedure room, optical room, work area, scan room, diagnostic testing room, patient education room, contact lenses rooms, laser room and 31 exam rooms. The first floor also includes a laboratory, coumadin clinic, mammography room, x-ray room, film file room, tech work area, dressing area, dark room, medical supplies and drug room. First floor support spaces include a supply room, storage room, machine room, electrical room, utility room, and 2 janitor closets.

- Second floor-8,333 SF

The second floor will consist of a waiting room, reception business office, medical records, admin office, 7 toilet rooms, 3 nurse stations, 3 procedure rooms, patient education room, scheduling room, 13 exam rooms, hot lab, scan room, assessment room and ultrasound room. Second floor support spaces include 3 supply rooms, soiled utility room, clean supply room, med supply, 2 storage rooms, date rooms, electrical room and janitor closet.

Subproject No. 2
Vestal Clinic at 2517 Vestal Parkway, Vestal, NY will consist of 1 story with a total of 9,994 SF and includes;

- First Floor-9,994 SF

The first floor will consist of a waiting room, 7 toilet rooms, 5 offices, admin office lounge,19 exam rooms, 2 treatment rooms, 4 nurse stations, consult room, eye test room, 2 EKG rooms, ED room, stress room, laboratory with specimen room, x-ray with control room, and darkroom. Support spaces will include 2 med storage rooms, supply room, storage room, mail room, greenhouse, mechanical room, utility room and janitor closet.

Subproject No.3
Centerway Clinic at 130 Centerway, Corning NY will consist of 4 stories with a total of 79,732 SF and includes;

- First Floor-19,000 SF

The first floor will consist of a lobby, waiting room, well baby waiting, reception, clerks office with records, 7 toilet rooms, 12 primary care offices, file room, 18 exam rooms, laboratory, 3 dressing rooms, 4 x-ray rooms with control rooms, mammography room, 2 dark rooms, ultrasound room and work room. Support spaces for the first floor include mechanical rooms, electrical room, medical supply storage and janitor's closet.

- Second Floor-20,244 SF

The second floor will consist of a waiting room, reception, clerks office, nurse file room, admin office, 26 primary care offices, 37 exam rooms, 4 nurse's stations, 17 toilet rooms, procedure room, allergy room, stress testing room, echo lab, treatment room, EMG room, chemotherapy room, prep room, nourishment room, infusion room, GI room and coumadin clinic. Support spaces for the second floor include medical supplies storage, electrical closet and janitor's closet.

- Third Floor-20,244 SF

The third floor will consist of 2 waiting rooms, reception, clerks office, admin office, medical records, 36 exam rooms, 14 toilet rooms, 19 primary care offices, 2 nurse stations, 3 secretary areas, procedure room, treatment room, cast room, ENT room, fields room, fitting instruction room, showroom, work room and an x-ray room. Support spaces for the third floor include medical supply storage, 3 storage rooms and electrical closet.

- Fourth Floor-20,244 SF

The fourth floor will include 3 waiting rooms, reception, business office, admin office, 6 primary care offices, library, conference room, staff lounge and kitchen, IT room, orthodontics room, 15 exam rooms, 2 consultation rooms, 3 nurse stations, procedure room, laboratory, dental lab, work room, drug screening prep area, tech area and dental procedure area.

Support spaces for the fourth floor will include a medical records room, 3 file rooms, medical supplies and workroom, soiled work room, clean laundry storage, medical waste storage room, supply room, mechanical room, electrical closet and janitor closet.

Subproject No. 4
Corning-Steuben Clinic at 123 Conhocton Street, Corning, NY will consist of 2 stories with a total of 14,803 SF and includes;

- First Floor-13,889 SF

The first floor will include 3 waiting rooms, children waiting room, reception, 4 admin offices, admin records room, 28 exam rooms, 8 toilets, 4 nurse stations, 4 procedure rooms, stress testing room, 14 primary care offices, diagnostic radiology office, mammography room, x-ray with control room, film file room and laboratory.

Support spaces for the first floor will include 3 medical supply rooms, storage room, electrical room and janitor's closet.

- Second Floor-914 SF

The second floor will consist of general administration space.

Subproject No. 5
Erwin Clinic at 9768 Liberty Drive, Painted Post, NY will consist of 1 story with a total of 5,093 SF and includes;

- First Floor-5,093 SF

The first floor will include 2 waiting rooms, reception, files/workroom, office conference room, 11 exam rooms, 3 toilets, admin office, 3 consultation offices, 2 nurse's stations, 1 procedure room, clean utility room and soiled utility room.

Support spaces for the first floor will include 2 storage rooms and a janitor's closet.

Subproject No. 6
Watkins Glen Clinic at One First Street, Watkins Glen, NY will consist of 1 story with a total of 3,901 SF and includes;

- First Floor- 3,901 SF

The first floor will consist of a lobby, waiting room, 6 toilet rooms, 6 offices, staff lounge, business office, 1 nurse's station, 1 treatment room and 6 exam rooms. The first floor also includes a laboratory, medical supply storage and storage room.

Subproject No. 7
Ithaca Clinic at 1780 Hanshaw Road, Ithaca, NY will consist of 1 story with a total of 24,921 SF and includes;

- First Floor-24,921 SF

The first floor consists of a waiting room, vestibule, 18 toilet rooms, reception, 22 offices, 5 nurse's stations, 3 procedure rooms, allergy testing room, audiology room, chiropractor, work area/room, dexa scan room, reading room, 2 changing rooms, physical therapy, pulmonary function test and 45 exam rooms. The first floor also includes a laboratory, training room, lunch area, shower, mammography room, x-ray and radiology alcove, ultrasound, and infusion. First floor support spaces include 2 mechanical rooms, 9 storage rooms, bio-hazard storage, 3 closets, scope cleaning room, ship/receiving room and 2 janitor closets.

Subproject No. 8
Waverly Clinic at 29 North Chemung Street, Waverly, NY will consist of 1 story with a total of 2,699 SF and includes;

- First Floor- 2,699 SF

The first floor will consist of a waiting room, vestibule, 2 toilet rooms, reception, 2 offices, staff lounge, 1 nurse's station, 6 exam rooms and a laboratory. First floor support spaces include a storage room, mechanical room and janitor's closet.

Subproject No. 9
Proposed Owego Clinic at 1246 State Route 38, Owego, NY will consist of 1 story with a total of 11,969 SF and includes;

- First Floor-11,969 SF

The first floor will consist of 2 waiting rooms and 1 parent/children waiting room, 7 toilet rooms, vestibule, 5 offices, 18 exam rooms, staff lounge, 2 nurse's stations, business office, 2 check out areas, storage/work area, manager's office, doctor's reading room, data closet, vitals room, treatment room, chemo/treatment-1 room, ante room and chemical prep room. The first floor will also include a laboratory, radiology, mammography, tech work room, and a drug room.

First floor support spaces will include a clean supply room, 2 storage rooms, mechanical room, electrical room, trash room and janitor's closet.

Subproject No. 10

Proposed Pine City Clinic at 1001 Carl Street, Elmira, NY will consist of 1 story with a total of 13,150 SF and includes;

- First Floor-13,150 SF

The first floor will consist of a waiting room, 7 toilet rooms, business office, 8 offices, staff lounge, 2 nurse's stations, 2 check out rooms, clinic manager room, conference room, records room, 24 exam rooms and vending room. The first floor will also include a laboratory, radiology room, mammography room, tech work room, vitals room and data closet. First floor support spaces will include a clean supply room, copy/supply room, soiled room, supply equipment room, trash room, general storage room, mechanical/electrical room and janitor's closet.

Environmental Review

The Department has deemed the Owego subproject 9 to be a TYPE I Action and the lead agency shall be the county of Tioga or the authority having jurisdiction.

The Department has deemed the Pine City subproject 10 to be a TYPE I Action and the lead agency shall be the county of Chemung or the authority having jurisdiction.

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

Recommendation

From an architectural perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Financial Summary for June 30, 2010 and 2011, Guthrie Health and Affiliates
BFA Attachment B	New York and Pennsylvania June 30, 2011 financial results for Guthrie Clinic, Ltd.
BFA Attachment C	Current Organizational Chart for Guthrie Health
BFA Attachment D	Proposed Organizational Chart for Guthrie Health
BFA-Attachment E	Pro-forma Balance Sheet for Guthrie Health and Affiliates
BFA-Attachment F	Establishment checklist for Diagnostic and Treatment Center.
BHFP Attachment	Map

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 5th day of April, 2012, 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 convert private practice clinic sites operated in New York State by Guthrie Clinic, Ltd. into 10 diagnostic and treatment centers, 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:
112343-B	Corning Centerway

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 executed transfer and affiliation agreements, acceptable to the Department, with local acute care hospitals. [HSP]
3. Submission of an executed purchase and sale agreement conveying 20.22 acres of real property, that is acceptable to the Department. [BFA]
4. This project is approved contingent upon submission of an architectural/engineering letter of certification for Subproject 10, Pine City Clinic for either the existing site at 1243 Pennsylvania Avenue in Pine City or for the new proposed building on land that has not yet been confirmed. [AER]
5. Exceptions to code compliance have been noted at 8 of the 10 proposed sites within the architectural narratives and referenced on the architectural certification letters. These items include shared space in a proposed Ambulatory Surgery Center, non-compliant ADA maneuvering clearances at door locations, and egress corridors with non-compliant minimum width. A submitted plan of correction is required for each noted deficiency or the submission of a waiver request with appropriate justification submitted for review and approval. This project approval is contingent upon the completion of corrective work or waiver approval for each deficiency noted. [AER]
6. Submission of evidence of site control, acceptable to the Department. [CSL]
7. Submission of a photocopy of the executed Certificate of Amendment of the Application for Authority of Guthrie Health, acceptable to the Department. [CSL]
8. Submission of a photocopy of the executed Articles of Merger of Guthrie Healthcare System and Guthrie Clinic, Ltd. into Guthrie Health, acceptable to the Department. [CSL]
9. Submission of a photocopy of the finalized and executed Agreement and Plan of Merger by and among Guthrie Healthcare System, Guthrie Clinic, Ltd. and Guthrie Health, acceptable to the Department. [CSL]
10. Submission of a photocopy of the finalized and executed Plan of Conversion of Guthrie Clinic, Ltd., acceptable to the Department. [CSL]
11. Submission of a photocopy of the executed Articles of Conversion of Guthrie Clinic, Ltd., acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
2. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
3. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
4. The clinical space must be used exclusively for the approved purpose. [HSP]
5. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]

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

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York 12180-2299

STATE OF NEW YORK – DEPARTMENT OF HEALTH

I N T E R O F F I C E M E M O R A N D U M

TO: Establishment and Project Review Committee
Public Health and Health Planning Council

FROM: Rebecca Fuller Gray, Director
Division of Home and Community Based Services

SUBJECT: Compassionate Care Hospice of New York, LLC
CON # 102454E

DATE: March 8, 2012

Compassionate Care Hospice of New York, LLC was established in 2004 to operate an Article 40 hospice serving Bronx and Kings County. The current sole member of the limited liability company is Ms. Judith Grey. Compassionate Care Hospice of New York, LLC submitted a CON application in December 2010 requesting approval to transfer 90% of the membership of the LLC to Ms. Bella Heching.

This project was presented to the Establishment and Project Review Committee of the PHHPC on July 21, 2011 which resulted in a recommendation for approval. The project was then presented to the PHHPC on August 4, 2011 and council voted to defer the project to allow the Department time to respond to questions raised by members of the council.

The questions raised by the council members at the aforementioned meeting were:

1. How can Ms. Grey effectively be Chief Operating Officer (COO) of this hospice as well as COO of 26 other home care and hospice agencies located in 14 other states?
2. How will decisions concerning clinical matters be made? Who will make the clinical decisions?

To address these concerns, the Department referred these questions to the applicant and the Department's analysis of the applicant's response is described below.

Ms. Grey has been COO of the New York hospice operations since the hospice was initially established. Despite Ms. Grey's responsibilities as COO of home care and hospice agencies located in other states, she has been able to effectively carry out her responsibilities as COO for the New York hospice. Ms. Grey does not have sole responsibility for clinical oversight in New York or for the agencies located in other states. Ms. Grey has management assistance in all locations from individuals who report to her.

In New York, Compassionate Care has a Clinical Coordinator in both its Bronx and Brooklyn offices. The Clinical Coordinators report directly to a Program Director who in turn reports to Ms. Grey. The Job Description for the Program Director requires that the individual serving in this position be a Registered Nurse. The Program Director is responsible for overall management and direction of the hospice operations. The Bronx and Brooklyn offices each have a Clinical Coordinator who reports to the Program Director, and who is responsible for coordinating and managing the interdisciplinary team and the activities of the clinical program. The management structure of

Compassionate Care Hospice of New York, LLC is shown in the organizational chart attached to the Programmatic Analysis.

Upon approval of this CON application, Ms. Heching will hold the position of Chief Financial Officer (CFO). As CFO, Ms. Heching will have primary responsibility for planning, implementing, managing and controlling the financial-related activities of the LLC. The applicant asserts that having Ms. Heching as a co-owner of the New York operations will allow Ms. Grey to spend more time on clinical matters, as Ms. Grey will be relieved of some of her current responsibilities for the hospice's finances, contract negotiations, employee relations, etc. These matters will be overseen by Ms. Heching.

The applicant confirmed that they will amend the LLC Operating Agreement to provide that unanimous member consent is required for: (a) modification of policies and procedures concerning clinical care; and (b) hiring of all executive-level clinical personnel. In addition, the applicant has assured the Department that neither Ms. Grey nor Ms. Heching has any intention of altering the management structure or membership structure of the applicant in the foreseeable future.

Based on our review of the supplemental information supplied by the applicant, the Department continues to recommend that the Certificate of Need application submitted by Compassionate Care Hospice of New York, LLC for a change in the membership of the Limited Liability Company be contingently approved.

Attachment

Public Health and Health Planning Council

Project # 102454-E
Compassionate Care Hospice of New York, Inc.

County: **Bronx (Bronx)**
Purpose: **Establishment**
Program: **Hospice Services**
Submitted: **December 10, 2010**

Executive Summary

Description

Compassionate Care Hospice of New York, LLC (Compassionate Care), an existing Article 40 Hospice program serving Bronx and Kings Counties, requests approval for a change of ownership of 90% membership. Compassionate Care's operations will not change as a result of this application.

Judith I. Grey is currently the sole member of Compassionate Care Hospice of New York, LLC. By this application Ms. Grey will transfer 90% of the Compassionate Care membership interests to Ms. Bella Heching through an assignment and assumption agreement. Ms. Grey will continue to be the Chief Operating Officer. There will be no programmatic changes made as a result of the change of ownership.

Ownership of the operation of Compassionate Care before and after the requested change is as follows:

Current	*Proposed*
Judith I. Grey – 100%	Judith I. Grey – 10%
	Bella Heching – 90%

DOH Recommendation

Contingent approval.

Need Summary

As this project involves only a change in the ownership composition of a hospice, no Need review is required.

Program Summary

A review of all personal qualifying information indicates there is nothing in the background of the two members / managers of the LLC to adversely effect their positions in the organization. The applicant has the appropriate character and competence under Article 40 of the Public Health Law.

Financial Summary

There will be no purchase price for the change in membership interests.

The applicant indicates that the consideration will be the applicant's financial acumen and capital availability to Compassionate Care, as well as the assumption of ongoing liabilities.

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

Architectural Summary

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission to the Department of Health of an amended LLC Operating Agreement to add a provision that unanimous member consent is required for: (a) modification of policies and procedures concerning clinical care; and (b) hiring of all executive-level clinical personnel. [CHA]
2. Submission of an amended Operating Agreement, acceptable to the Department. [CHA, CSL]
3. Submission of evidence of site control, acceptable to the Department. [CSL]
4. Submission of an amended Assignment and Assumption Agreement, acceptable to the Department. [CSL]
5. Submission of a completed Schedule 22, acceptable to the Department. [CSL]

Council Action Date

April 5, 2012.

Programmatic Analysis

Background

Compassionate Care Hospice of New York, LLC, a for-profit limited liability company, was established in 2004 to operate an Article 40 hospice in New York State, serving Bronx and Kings Counties. The hospice operates from its main parent office location at 6661-6663 Broadway, Bronx, New York 10471, and its approved satellite office location at 174 Highlawn Avenue, Suite 1-A, Brooklyn, New York 11223. The LLC corporate office is located at 600 Highland Drive, Suite 624, Westhampton, New Jersey 08060. The current proposal seeks approval for the transfer of 90% of the ownership from Judith Grey to Bella Heching. Ms. Grey will retain 10% of the ownership and the title of Chief Operating Officer. No programmatic changes affecting the hospice will occur as a result of this transaction.

The current sole member of the LLC, with 100% ownership, is Judith Grey. Pursuant to an Assignment and Assumption Agreement signed by both Ms. Grey and Bella Heching, Ms. Grey will assign, and Ms. Heching will assume, 90% of the membership interest in the LLC. Following the transaction, the membership, managers, and officers of the LLC will be as follows:

Judith I. Grey, RN (NYS and NJ), Licensed Assisted Living Administrator (NJ)
Managing Member – 10%
Owner and Chief Operating Officer
Compassionate Care Hospice of New York, LLC
Affiliations: None

Bella Heching
Managing Member – 90%
Owner and Manager
Lincolnwood Fund / Lincolnwood Advisors (Hedge Fund / Investment Portfolios)
Affiliations: None

Although neither Ms. Grey nor Ms. Heching have any ownership interest, LLC membership, partnership, managing membership, stock ownership, board membership, corporate officer, voting rights, or any controlling interest in any other health care facilities, Ms. Grey and Ms. Heching do disclose that Ms. Grey is also employed (as a paid employee only) as the Chief Operating Officer in 26 other home care and hospice agencies, located in 14 other states, that are owned solely by Ms. Heching's husband.

Although Ms. Grey holds the position of COO for these agencies, she does not have sole responsibility for clinical oversight. Ms. Grey has management assistance in all locations from individuals who report to her. In New York, Compassionate Care has a Clinical Coordinator in each of its Bronx and Brooklyn offices. The Clinical Coordinators report directly to a Program Director, who is the Director of Patient Services and who must be a registered nurse. The Program Director in turn reports to Ms. Grey, the Hospice Administrator and COO. The Program Director / Director of Patient Services is responsible for overall management and direction of the hospice operations. The Bronx and Brooklyn offices each have a Clinical Coordinator, who reports to the Program Director, and who is responsible for coordinating and managing the practice location's interdisciplinary team and the activities of the clinical program. The management structure of Compassionate Care Hospice of New York, LLC is shown in the attached organizational chart.

Upon approval of this CON application, Ms. Heching will hold the position of Chief Financial Officer (CFO). As CFO, Ms. Heching will have primary responsibility for planning, implementing, managing and controlling the financial-related activities of the LLC. The applicant asserts that having Ms. Heching as a co-owner of the New York operations will allow Ms. Grey to spend more time on clinical matters, as Ms. Grey will be relieved of some of her current responsibilities for the hospice's finances, contract negotiations, employee relations, etc. These matters will be overseen by Ms. Heching.

A search of the above named members, managers, and affiliations revealed no matches on either the Medicaid Disqualified Provider List or the Office of the Inspector General's Provider Exclusion List. The Office of the

Professions of the NYS Education Department, and the New Jersey Attorney General Division of Consumer Affairs indicate no issues with the professional licenses held by Ms. Grey.

The Division of Home and Community Based Services reviewed the compliance history of Compassionate Care Hospice of New York, LLC. It has been determined that the hospice has exercised sufficient supervisory responsibility to protect the health, safety, and welfare of patients and to prevent the recurrence of code violations. When code violations did occur, it was determined that the operator investigated the circumstances surrounding the violation, and took steps appropriate to the gravity of the violation that a reasonably prudent operator would take to promptly correct and prevent the recurrence of the violation.

A review of all personal qualifying information indicates there is nothing in the background of the two members / managers of the LLC to adversely effect their positions in the organization. The applicant has the appropriate character and competence under Article 40 of the Public Health Law.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Assignment and Assumption Agreement

The applicant provided an executed Assignment and Assumption Agreement (agreement) dated November 29, 2010. The agreement assigns 90% membership interest from Ms. Judith I. Grey to Ms. Bella Heching. As previously noted, no monetary consideration is involved. As stated within the agreement the consideration is that the assignee shall contribute personal assets as needed, to help assume any ongoing liabilities of Compassionate Care.

Capability and Feasibility

There is no purchase price associated with this application and as a result there are no issues of capability. There are no issues of feasibility associated with this application as only membership interests for Compassionate Care are changing.

Presented as BFA Attachment A, is the 2008, 2009 and 2010 internal financial statements of Compassionate Care Hospice of New York, LLC. As shown on Attachment A, the facility had an average negative working capital position and an average positive net asset position during 2008 through 2010. Also, the facility achieved an average operating income of $725,462 during 2008 through 2010. To reverse the 2008 loss of $179,395, Compassionate Care took a number of initiatives, including the appointment of a program director for each of its two New York City locations, appointment of a regional manager, and increased marketing efforts and hiring of marketing staff. These changes helped result in an increase in overall census, and improved cost controls. In 2009 and 2010 the facility returned to profitability averaging net income of $1,268,891 for 2009 and 2010. Attachment B, the 2011 internal financial statement shows positive working capital and net asset position. Also, during 2011, Compassionate Care achieved positive operating income of $3,212,845.

Based on the preceding, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner; and approval is recommended.

Recommendation

From a financial perspective, approval is recommended.

Attachments

CHA Attachment A	Organizational Structure

BFA Attachment A	Financial Summary- Compassionate Care Hospice of New York, LLC – (2008, 2009, 2010 internal financial statements)
BFA Attachment B	Financial Summary – Compassionate Care Hospice of New York, LLC (2011 Internal Financial Statement)
BFA Attachment C	Net Worth Statement – Proposed Members
BFA Attachment D	Organizational Chart – Before and After Membership Change

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 5th day of April, 2012, 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 change of ownership of 90% membership, 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:
102454-E	Compassionate Care Hospice of New York, Inc.

APPROVAL CONTINGENT UPON:

1. Submission to the Department of Health of an amended LLC Operating Agreement to add a provision that unanimous member consent is required for: (a) modification of policies and procedures concerning clinical care; and (b) hiring of all executive-level clinical personnel. [CHA]
2. Submission of an amended Operating Agreement, acceptable to the Department. [CHA, CSL]
3. Submission of evidence of site control, acceptable to the Department. [CSL]
4. Submission of an amended Assignment and Assumption Agreement, acceptable to the Department. [CSL]
5. Submission of a completed Schedule 22, 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 # 112211-B

**Jacob Perlow Hospice Corporation
d/b/a MJHS Hospice and Palliative Care**

County: **Kings (Brooklyn)**
Purpose: **Establishment and Construction**
Program: **Hospice Services**
Submitted: **October 10, 2011**

Executive Summary

Description

Jacob Perlow Hospice Corporation (JPH) d/b/a MJHS Hospice and Palliative Care, a not-for-profit Article 40 hospice, requests approval to acquire the Article 40 hospice license of Metropolitan Jewish Home Care, Inc. (MJHC) d/b/a MJHS Hospice and Palliative Care of Greater New York. Both JPH and MJHC are participating agencies in Metropolitan Jewish Health System (MJHS), and share MJHS, Inc. as their sole corporate member. The resulting agency will be referred to as MJHS Hospice and Palliative Care, and serve a five county area (Brooklyn, Bronx, Manhattan, Queens and Nassau).

In addition to the proposed acquisition and corporate name change, this CON will allow the resulting agency to complete two hospice construction projects approved by the former State Hospital Review and Planning Council in 2008 and 2010 (CON # 082022-C and # 101040-C, respectively).

MJHS is a multi-faceted health system that serves over 40,000 residents in all five boroughs of New York City, as well as in Nassau and Westchester Counties. The system provides three main lines of business (long term care, home care and managed care) via a number of different corporations. The 13 corporations that make up the participating agencies and programs of MJHS are linked in a variety of ways, including management, overlapping boards, corporate membership and/or outright ownership.

DOH Recommendation

Contingent approval.

Need Summary

As this project involves only a change in the ownership of a hospice, no Need recommendation is required.

Program Summary

A review of all personal qualifying information indicates there is nothing in the background of the board members of Jacob Perlow Hospice Corporation to adversely affect their positions on the board. The applicant has the appropriate character and competence under Article 40 of the Public Health Law.

Financial Summary

There is no purchase price associated with this application because the exchange is within entities with the same corporate members.

Budget:		
	Revenues:	*$ 59,242,791*
	Expenses:	*58,452,881*
	Gain/(Loss):	*$ 789,910*

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

Architectural Summary

The only Construction component of this project relates to completion of the two aforementioned CONs, for which Architectural review was already performed and approval recommended. Therefore, no Architectural review is required for this CON.

Recommendations

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

Office of Health Systems Management
Approval contingent upon:

1. Submission to the NYS Department of Health of a NYS Department of State filed, stamped, receipted, state-sealed, and dated copy of the Certificate of Amendment to the Certificate of Incorporation for Jacob Perlow Hospital Corporation, to officially change its name to MJHS Hospice and Palliative Care, Inc. [LTC]
2. Submission of an executed asset purchase agreement that is acceptable to the Department of Health. [BFA, CSL]
3. Submission of the names of the officers and directors of the applicant corporation and indicate the position held by each that is acceptable to the Department. [CSL]
4. Submission of a completed Schedule 3B(III) that is acceptable to the Department. [CSL]
5. Submission of a completed and executed Schedule 22(C) that is acceptable to the Department. [CSL]
6. Submission of evidence of site control that is acceptable to the Department. [CSL]
7. Submission of a Certificate of Amendment to the Certificate of Incorporation in compliance with Section 803 of the Not for Profit Law that is acceptable to the Department. [CSL]
8. Submission of Bylaws that are acceptable to the Department. [CSL]

Council Action Date
April 5, 2012.

Programmatic Analysis

Background

Jacob Perlow Hospice Corporation, d/b/a MJHS Hospice and Palliative Care, a not-for profit Article 40 hospice serving Bronx, Kings, New York, and Queens Counties, is requesting PHHPC approval for the acquisition and merger of Metropolitan Jewish Home Care, Inc., d/b/a MJHS Hospice and Palliative Care of Greater New York, a not-for-profit Article 40 hospice serving Bronx, Kings, Nassau, New York, and Queens Counties, which is operated by Metropolitan Jewish Home Care, Inc., a not-for profit Article 36 CHHA and LTHHCP. Jacob Perlow Hospice Corporation, d/b/a MJHS Hospice and Palliative Care, will merge all the operations of, and approvals for, the hospice operated by Metropolitan Jewish Home Care, Inc., d/b/a MJHS Hospice and Palliative Care of Greater New York, into its existing Jacob Perlow Hospice Corporation, d/b/a MJHS Hospice and Palliative Care operations, resulting in the addition of Nassau County to the approved geographic service area of Jacob Perlow Hospice Corporation, d/b/a MJHS Hospice and Palliative Care, and the ultimate closure of the former Article 40 hospice operated by Metropolitan Jewish Home Care, Inc., d/b/a MJHS Hospice and Palliative Care of Greater New York.

Metropolitan Jewish Health System, Inc. is the passive member (parent) corporation of both Jacob Perlow Hospice Corporation, d/b/a MJHS Hospice and Palliative Care ("the buyer"), and Metropolitan Jewish Home Care, Inc., d/b/a MJHS Hospice and Palliative Care of Greater New York ("the seller"). The proposal serves to merge the two separate hospice agencies within the Metropolitan Jewish Health System family of providers into one hospice agency. Metropolitan Jewish Health System, Inc. would remain the passive member corporation of the surviving Jacob Perlow Hospice Corporation, d/b/a MJHS Hospice and Palliative Care.

The proposal also seeks PHHPC approval for the submission to the NYS Department of State of a Certificate of Amendment to the Certificate of Incorporation for the current Jacob Perlow Hospice Corporation to change its legal corporate name of the surviving hospice agency from Jacob Perlow Hospice Corporation to MJHS Hospice and Palliative Care, Inc., eliminating the need for any assumed name (d/b/a) for the surviving hospice agency.

In addition, the proposal seeks PHHPC approval for the Metropolitan Jewish Health System's surviving hospice agency Jacob Perlow Hospice Corporation (proposed MJHS Hospice and Palliative Care, Inc.) to assume the two current CON construction projects that were SHRPC-approved for Metropolitan Jewish Health System's closing hospice agency Metropolitan Jewish Home Care, Inc., d/b/a MJHS Hospice and Palliative Care of Greater New York (formerly d/b/a Metropolitan Jewish Hospice). Metropolitan Jewish Hospice CON project 082022-C was contingently approved by SHRPC on December 29, 2008, modified and contingently approved on December 27, 2010, and all contingencies satisfied on February 8, 2011, for the construction of a 16-bed hospice residence in Bronx County, pursuant to the 2007-2008 Hospice Residence Pilot Program Demonstration Project RFA. That project has a condition that the new hospice residence must pass the state pre-opening survey and become operational no later than May 1, 2012. Metropolitan Jewish Hospice CON project 101040-C was contingently approved by SHRPC on September 2, 2010, with all contingencies satisfied on December 30, 2011, for the construction of a 16-bed hospice inpatient unit in Kings County. That project has a condition for completion of construction by December 1, 2013. Metropolitan Jewish Health System's surviving hospice agency ('the buyer") Jacob Perlow Hospice Corporation (proposed MJHS Hospice and Palliative Care, Inc.) requests PHHPC approval to assume these two current CON construction projects from Metropolitan Jewish Health System's closing hospice agency ("the seller") Metropolitan Jewish Home Care, Inc., d/b/a MJHS Hospice and Palliative Care of Greater New York (formerly d/b/a Metropolitan Jewish Hospice), and to have both CON projects convert to Jacob Perlow Hospice Corporation (proposed MJHS Hospice and Palliative Care, Inc.) as part of the proposed acquisition and merger.

The governing body of Jacob Perlow Hospice Corporation (proposed MJHS Hospice and Palliative Care, Inc.) is as follows:

Irving Dayan Vice President, Maurice Max, Inc, (Costume Jewelry Manufacturing) Affilations: None	Estere M. DuBolay Owner, Chez Soi (Estate and Asset Management) Affiliations: None

Burton J. Esring	**Eli S. Feldman, NHA**
President, Stony Brook Group (Real Estate Acquisition and Development) Affiliations: None	President and CEO, Metropolitan Jewish Health System, Inc. Affiliations: Metropolitan Jewish Health System, Inc.; MJG Nursing Home Company, Inc.; Metropolitan Jewish Hospice; Shorefront Jewish Geriatric Center, Inc.; MJGC Home Care; Home First, Inc.(MLTCP); HomeFirst LHSCA, Inc.; Metropolitan Jewish Home Care, Inc.; First to Care Home Care, Inc.; Elder Plan (HMO); Menorah Home and Hospital; MJHS Foundation; Menorah Home and Hospital Foundation; Shoefront Towers (HUD Housing); MJGC Corporation; PHCG, Inc. (DME Provider-closed); Institute for Applied Gerentology (Public Health Research Corp-closed); Bensonhurst Housing for the Elderly.
Shmuel Lefkowitz	**Robert Milch, NHA**
President, Prime Resources Group (Real Estate Consulting), Vice President of Community Services, Agudath Israel of America (Non Profit Organization) Affiliations: Metropolitan Jewish Health System, Inc.;OLOM Home Care Inc.; MJG Nursing Home Company, Inc.; Metropolitan Jewish Hospice; Shorefront Jewish Geriatric Center, Inc.; MJGC Home Care; Home First, Inc.(MLTCP); HomeFirst LHSCA, Inc.; Metropolitan Jewish Home Care, Inc.; Elder Plan (HMO); Menorah Home and Hospital; Menorah Home and Hospital Foundation; Shoefront Towers (HUD Housing); Institue for Applied Gerentology; (Public Health Research Corp-closed)	Retired President and CEO, Combined Coordinating Council, Inc. (Hospital Risk management Company) Affiliations: Metropolitan Jewish Health System, Inc; Elder Plan (HMO); Home First, Inc.(MLTCP); HomeFirst LHSCA, Inc.; Metropolitan Jewish Home Care, Inc.; MJG Nursing Home Company, Inc.; Metropolitan Jewish Hospice; Shorefront Jewish Geriatric Center, Inc.; MJGC Home Care; Institute for Applied Gerentology (Public Health Research Corp-closed)
Suzanne Cutler	**Martin S. Marcus**
Retired Exec VP, Federal Reserve Bank of New York (Central Banking) Affiliations: None	President, Marcus Brothers Textiles, Inc. (Textiles) Affiliations: Beth Israel Medical Center; MJHS Foundation
Steven J. Rotter, CPA	**David C. Weiner, CPA (NY and NJ)**
CFO, Jack Resnick and Sons, Inc. (Real Estate) Affiliations: None	Partner, David C. Weiner & Company Division of J. H. Cohn, LLP (CPA Firm) Affiliations: Jewish Health System, Inc;
Justin Yu Chairman, The Chinese Chamber of Commerce (NFP Civic Organization) Affiliations: None	

A search of all of the above named board members, employers, and affiliations revealed no matches on either the Medicaid Disqualified Provider List or the Office of the Inspector General's Provider Exclusion List. The Division of Residential Services indicates no issues with the licensure of the Nursing Home Administrators associated with this application. The Office of the Professions of the NYS Education Department, and the New Jersey Attorney General Division of Consumer Affairs indicate no issues with the licensure of the Certified Public Accountants associated with this application.

The Division of Hospital Certification and Surveillance reviewed the compliance history of the affiliated hospital for the time period 2002 to 2012. It has been determined that the hospital had provided a substantially consistent high level of care.

The Division of Residential Services reviewed the compliance history of all affiliated nursing homes for the time period 2002 to 2012, or for the time periods specified as the affiliations, whichever applied.

An enforcement action was taken in September, 2002, against MJG Nursing Home Company, Inc. based on the findings of an August, 2001, survey. Deficiencies were cited in Quality of Care - Pressure Sores, and Quality of Care - Range of Motion. A $4,000 civil penalty was assessed.

An enforcement action was taken in October, 2004, against Shorefront Jewish Geriatric Center, based on findings of a September, 2002, survey. Deficiencies were cited in Quality of Care - Pressure Sores. A $1000 civil penalty was assessed.

It has been determined that the affiliated nursing homes have all provided a substantially consistent high level of care. The Division of Home and Community Based Services reviewed the compliance history of the affiliated certified home health agencies, long term home health care programs, licensed home care service agencies, and hospice for the time period 2002 to 2012, or for the time periods specified as the affiliations, whichever applied.

An enforcement action was taken in October, 2007, against Jacob Perlow Hospice Corporation based on the findings of a November, 2006, survey. Deficiencies were cited in Governing Authority; Contracts; Administration; Staff and Services; Personnel; Patient / Family Rights; Plan of Care; and Medical Records Systems / Charts. A $24,000 civil penalty was assessed.

An enforcement action was taken in May, 2007, against Metropolitan Jewish Home Care, Inc., based on the findings of a November, 2006, survey. Deficiencies were cited in Patient's Rights; Policies and Procedures of Service Delivery; Patient Referral, Acceptance, and Discharge; Patient Assessment and Plan of Care; and Governing Authority. A $10,500 civil penalty was assessed.

An administrative hearing was conducted in 2003 and 2004 with First to Care Home Care, Inc., for Medicaid overpayment identified by NYSDOH during an audit the Department conducted for the period October 27, 1997 through April 30, 1999. In November, 2004, the Administrative Law Judge determined that First to Care Home Care, Inc., received a Medicaid overpayment of $420,017 which was repaid to the NYSDOH.

It has been determined that the certified home health agencies, long term home health care programs, licensed home care service agencies, and hospice have exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients to prevent the recurrence of any code violations. When code violations did occur, it was determined that the operators investigated the circumstances surrounding the violation, and took steps appropriate to the gravity of the violation that a reasonably prudent operator would take to promptly correct and prevent the recurrence of the violation.

The Office of Managed Care reviewed the compliance history of the affiliated managed long term care program and health maintenance organization for the time period 2002 to 2012, or for the time periods specified as the affiliations, whichever applied.

An administrative hearing was conducted in 2003 with Elder Plan for Medicaid overpayment identified by NYSDOH during an audit the Department conducted in February, 2001. In April, 2004, the Administrative Law Judge determined that Elder Plan received a Medicaid overpayment of $1,000,000 which was repaid to the NYSDOH.

It has been determined that the affiliated managed long term care program and health maintenance organization have operated in substantial compliance with all applicable codes, rules and regulations.

Recommendation
From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant submitted a draft asset purchase agreement, which is summarized below:

Seller:	Metropolitan Jewish Home Care, Inc.
Buyer:	Jacob Perlow Hospice Corporation
Assets Transferred:	All of the records, books, files, invoices, flow sheets, and other technical and non-technical data and information exclusively relating to or otherwise necessary for the operations and services being provided and the patients being served by the Hospice at the time of the Closing; all rights of MJHC relating to the operation of the Hospice arising from and after the Closing, including vendor agreements, managed care provider contracts and hospital transfer agreements; all credentials of need, licenses, operating certificates, permits, approvals, variances, waivers and consents, upon the request of JPH, the Hospice of Medicare and Medicaid provider agreements and related provider numbers, in each case relating exclusively to or otherwise required for the operation of the Hospice and all cash, accounts receivable and other assets relating to the Hospice.
Assumed Liabilities:	None
Purchase Price:	$0

The applicant has provided an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 36 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility.

Operating Budget

The applicant has submitted an operating budget for the hospice, in 2012 dollars, for the first year subsequent to the change in operator, summarized below:

Revenues:	
Inpatient	$35,409,159
Outpatient	22,983,632
Non-Operating Revenues	850,000
Total Revenues	$59,242,791
Expenses:	
Operating	$56,704,581
Capital	1,748,300
Total Expenses	$58,452,881
Excess of Revenues over Expenses	$789,910
Utilization:	
Patient Days	126,811
Visits	184,822

Utilization by payor source for inpatient services for the first year subsequent to the change in operator is as follows:

Medicaid Fee-For-Service	47.71%
Medicare Fee-For-Service	51.69%
Private Insurance	.60%

Utilization by payor source for outpatient services for the first year subsequent to the change in operator is as follows:

Medicaid Fee-For-Service	10.24%
Medicare Fee-For-Service	76.83%
Private Insurance	12.93%

Expense and utilization assumptions are based on the historical experience of JPH and MJHC, increased for inflation when appropriate, and modified when appropriate to their ability to achieve economies of scale when operating as one program.

Capability and Feasibility

There is no purchase price associated with this application.

Working capital requirements are estimated at $9,742,146, which appears reasonable based on two months of first year expenses. The working capital requirement will be met via equity from Metropolitan Jewish Health System Foundation. Presented as BFA Attachment A are the November 30, 2011 internal financial statements of Metropolitan Jewish Health System Foundation, which indicates the availability of sufficient funds for the equity contribution. Also, the Foundation continues to have sufficient funds to provide the equity for CON # 082022-C and CON# 101040-C, which are construction projects for hospice residence and hospice inpatient beds that the applicant will be assuming.

The submitted budget indicates an excess of revenues over expenses of $789,910 during the first year subsequent to the change in operator. Revenues are based on current Medicare and Medicaid reimbursement rates.

Presented as BFA Attachment B are the 2010 certified financial statements of Jacob Perlow Hospice Corporation d/b/a MJHS Hospice & Palliative Care. As shown on Attachment B, the facility had a negative working capital position and a negative net asset position during 2010. Also, the facility incurred an operating loss of $3,619,635. Also, presented as BFA Attachment E are the November 30, 2011 internal financial statements of Jacob Perlow Hospice Corporation d/b/a MJHS Hospice & Palliative Care. As shown on Attachment E, the entity had a negative working capital position and a negative net asset position through November 30, 2011. Also, the entity incurred an operating loss before branding of $1,536,658 through November 30, 2011. The applicant has indicated that the losses were primarily due to Medicaid reimbursement reductions, including the elimination of trend factors and reduced caps on allowable administrative and general costs. The applicant has indicated that the branding expense is associated with marketing costs to get the community aware of MJHS's unique and compelling services that they provide. The objective of the branding initiative is to leverage the history of MJHS to create a single unified brand that transcends all of their service offerings.

The facility in June 2010, became a participating agency of Metropolitan Jewish Home Care, Inc. d/b/a MJHS Hospice and Palliative Care of Greater New York and has collaborated to streamline operations, eliminate duplication, increase volume and achieve economies of scale.

Presented as BFA Attachment C are the 2009 and the 2010 certified financial statements of Metropolitan Jewish Home Care, Inc. As shown on Attachment C, the facility had an average negative working capital position and an average positive net asset position. Also, the facility incurred an average negative operating loss of $1,502,187 during 2009 through 2010. Also, the entity incurred an operating loss before branding of $992,693. Presented as BFA Attachment F are the November 30, 2011 internal financial statements of Metropolitan Jewish Home Care, Inc. As shown on Attachment G, the entity had a negative working capital position and a negative net asset position through November 30, 2011. Also, the applicant has indicated that the losses were primarily due to Medicaid reductions, including the eliminations of trend factors and reduced caps on allowable administrative and general costs. MJHS Long Term Home Care and MJHS Hospice and Palliative Care of Greater New York were moved under Metropolitan Jewish Home Care, in order that Lombardi and certified home health care operations could be consolidated and

improved. All three programs now do business under Metropolitan Jewish in order to optimize patient service utilization and reduce operational losses.

Presented as BFA Attachment D are the 2010 certified financial statements and the November 30, 2011 internal financial statements of Metropolitan Jewish Health System. As shown on Attachment D, the entity had an average positive working capital position and an average positive net asset position. Also, the entity incurred an average loss of $2,483,041 from 2010 through November 30, 2011. The applicant has indicated that the losses were primarily due to Medicaid reimbursement reductions, including the eliminations of trend factors and reduced caps on allowable administrative and general costs.

In June 2010, Jacob Perlow became a participating agency in Metropolitan Jewish Home Care, Inc. d/b/a MJHS Hospice and Palliative Care of Greater of New York and has collaborated to streamline operations, eliminate duplication, increased volume and achieve overall economies of scale.

As shown on BFA Attachment A is the November 30, 2011 internal financial statements and the 2010 certified financial statements of Metropolitan Jewish Health System Foundation. As shown on Attachment A, the entity had an average positive working capital position and an average positive net asset position through November 30, 2011. The entity achieved an average excess of revenues over expenses of $501,642 through November 30, 2011.

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

Recommendation
From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	November 30, 2011 internal financial statements of Metropolitan Jewish Health System Foundation
BFA Attachment B	2010 certified financial statements of Jacob Perlow Hospice Corporation d/b/a MJHS Hospice & Palliative Care
BFA Attachment C	2009 and 2010 certified financial statements of Metropolitan Jewish Home Care, Inc.
BFA Attachment D	2010 certified financial statements and the November 30, 2011 internal financial statements of Metropolitan Jewish Health System
BFA Attachment E	November 30, 2011 internal financial statements of Jacob Perlow Hospice Corporation d/b/a MJHS Hospice & Palliative Care
BFA Attachment F	November 30, 2011 internal financial statements of Metropolitan Jewish Home Care, Inc.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 5th day of April, 2012, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application for Jacob Perlow Hospice Corporation (JPH) d/b/a MJHS Hospice and Palliative Care to acquire the Article 40 hospice of Metropolitan Jewish Home Care d/b/a MJHS Hospice and Palliative Care of Greater New York, 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:
112211-B	Jacob Perlow Hospice Corporation d/b/a MJHS Hospice and Palliative Care

APPROVAL CONTINGENT UPON:

1. Submission to the NYS Department of Health of a NYS Department of State filed, stamped, receipted, state-sealed, and dated copy of the Certificate of Amendment to the Certificate of Incorporation for Jacob Perlow Hospital Corporation, to officially change its name to MJHS Hospice and Palliative Care, Inc. [LTC]
2. Submission of an executed asset purchase agreement that is acceptable to the Department of Health. [BFA, CSL]
3. Submission of the names of the officers and directors of the applicant corporation and indicate the position held by each that is acceptable to the Department. [CSL]
4. Submission of a completed Schedule 3B(III) that is acceptable to the Department. [CSL]
5. Submission of a completed and executed Schedule 22(C) that is acceptable to the Department. [CSL]
6. Submission of evidence of site control that is acceptable to the Department. [CSL]
7. Submission of a Certificate of Amendment to the Certificate of Incorporation in compliance with Section 803 of the Not for Profit Law that is acceptable to the Department. [CSL]
8. Submission of Bylaws that are 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 # 111413-E
Genesee Region Home Care Association, Inc. d/b/a Lifetime Care

County:	**Schuyler (Watkins Glen)**	***Program:***	**Certified Home Health Agency**
Purpose:	**Establishment**	***Submitted:***	**May 11, 2011**

Executive Summary

Description
Genesee Region Home Care Association, Inc. d/b/a Lifetime Care, an existing not-for-profit corporation, located at 3111 South Winton Rd., Rochester, seeks approval to purchase and become operator of the Schuyler County Certified Home Health Agency, located at 106 South Perry Street, Watkins Glen.

Lifetime Care currently operates an Article 36 Certified Home Healthcare Agency (CHHA) servicing Livingston, Monroe, Seneca, Ontario, Wayne and Yates Counties.

The Schuyler County CHHA currently operates under a management and administrative service agreement with Lifetime Care, approved by the Department on April 6, 2011. Lifetime Care plans to maintain all existing CHHA services.

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 all personal qualifying information indicates there is nothing in the background of the board members of Genesee Region Home Care Association, Inc. d/b/a Lifetime Care, North Star Home Health Management, Inc., Excellus Health Plan, Inc. and Lifetime Healthcare, Inc. to adversely effect their positions on the boards. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

Financial Summary
The total purchase price of $500,000 shall be paid via equity from the applicant.

Incremental Budget:	*Revenues:*	*$ 1,116,400*
	Expenses:	*952,160*
	Gain/(Loss):	*$ 164,240*

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

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

Recommendations

Health Systems Agency
The Finger Lakes HSA recommends approval of this project.

Office of Health Systems Management
Approval contingent upon:

1. Proper documentation of site control, by submission of a proposed lease agreement identifying the full address of the planned practice location in Schuyler County from which Lifetime will serve the residents of Schuyler County. [LTC]

Council Action Date
April 5, 2012.

Programmatic Analysis

Genesee Region Home Care Association, Inc. d/b/a Lifetime Care is a not-for-profit corporation which operates an Article 36 certified home health agency (CHHA) located in Rochester and approved to serve patients in Cayuga, Livingston, Monroe, Seneca and Wayne Counties. In addition, Lifetime Care also operates a long term home health care program (LTHHCP) approved to serve patients in Seneca, Wayne and Yates Counties, and a freestanding hospice facility. Lifetime Care seeks approval to purchase and become the new operator of the Schuyler County CHHA which is approved to serve patients in Schuyler County.

Genesee Region Home Care Association, Inc. d/b/a Lifetime Care proposes to serve its CHHA patients living in Schuyler County from a new practice location in Schuyler County. The Lifetime Care CHHA/LTHHCP main office will remain in Monroe County at 3111 South Winton Road, Rochester, New York 14623.

The Schuyler County CHHA currently operates under a Management and Administrative Services Agreement with Lifetime Care which was approved by the Department on April 6, 2011.

Lifetime Care, which would now be approved to serve Cayuga, Livingston, Monroe, Schuyler, Seneca and Wayne Counties, will continue to provide the services of home health aide, medical social services, medical supply, equipment and appliances, nursing, nutritional, occupational therapy, personal care, physical therapy, respiratory therapy and speech language pathology.

The sole corporate member of Genesee Region Home Care Association, Inc. d/b/a Lifetime Care, a not-for-profit corporation, is North Star Home Health Management, Inc., a not-for-profit corporation. The sole corporate member of North Star Home Health Management, Inc. is Excellus Health Plan, Inc. The sole corporate member of Excellus Health Plan, Inc. is Lifetime Healthcare, Inc., a not-for-profit holding company.

The Board of Directors of Genesee Region Home Care Association, Inc. d/b/a Lifetime Care consists of the following individuals:

Charles H. Stuart – Acting Chairman
Financial Advisor, Morgan Stanley Smith Barney

Affiliations:

- Director, Genesee Regional Health Care of Ontario County, Inc.

Jordon I. Brown – Treasurer
Executive VP, Lifetime Assistance, Inc. (Human Services)

Affiliations:

- Director, Genesee Regional Health Care of Ontario County, Inc.

John B. Bielmiller – Director
Senior VP, Whitney & Co. (Investment Management)

Affiliations:

- Director, GRIPA (HMO)
- Director, Genesee Regional Health Care of Ontario County, Inc.

Marilyn Dollinger, RN – Director
Associate Dean, St. John Fisher College

Affiliations:

- Board Member, St. Johns Senior Services
- Board Member, St. John's Health Care Corporation
- Director, Genesee Regional Health Care of Ontario County, Inc.

William A. Johnson, Jr. – Director
Professor, Rochester Institute of Technology

Affiliations:
- Director, Genesee Regional Health Care of Ontario County, Inc.

David H. Klein – Director President/CEO/COO, Excellus Health Plan, Inc

Affiliations:
- Director, Excellus Health Plan, Inc.
- Director, Genesee Regional Health Care of Ontario County, Inc.
- Director, Sibley Nursing Personnel Services, Inc.
- Director, Genesee Valley Group Health Association (D&T)

Mordecai J. Kolko – Director
Retired

John J. Mahoney – Director
Founder/Principal, Summit Business Group, LLC (consulting)

Affiliations:
- Director, Genesee Regional Health Care of Ontario County, Inc.

Jagat S. Mehta, M.D. – Director
Physician, Self-employed

Affiliations:
- Director, Genesee Region Home Care of Ontario County, Inc.

David D. Reh – Director
President, The Raytec Group, Inc. (administrative services)

Affiliations:
- Director, Excellus Health Plan, Inc.
- Director, Genesee Regional Health Care of Ontario County, Inc.

Hilda Rosario-Escher – Director
Vice President, Ibero American Action League

Affiliations:
- Board Member, Huther-Doyle (Substance Abuse)
- Director, Genesee Regional Health Care of Ontario County, Inc.
- Board Member, Rochester Psychiatric Center
- Member, Executive Director's Committee, Office of Mental Health

Manuel M. Matos, M.D. – Director
Division Chief, Unity Health System

Affiliations:
- Director, Genesee Regional Health Care of Ontario County, Inc.

Seymour M. Zivan – Director
Retired

The Board of Directors of North Star Home Health Management, Inc. consists of the following individuals:

Charles H. Stuart – Vice Chairperson
(Previously Disclosed)

Jordon I. Brown – Treasurer
(Previously Disclosed)

John B. Bielmiller – Director
(Previously Disclosed)

Marilyn Dollinger, RN – Director
(Previously Disclosed)

William A. Johnson, Jr. – Director
(Previously Disclosed)

David H. Klein – Director
(Previously Disclosed)

Mordecai J. Kolko – Director
(Previously Disclosed)

John J. Mahoney – Director
(Previously Disclosed)

Jagat S. Mehta, M.D. – Director
(Previously Disclosed)

David D. Reh – Director
(Previously Disclosed)

Hilda Rosario-Escher – Director
(Previously Disclosed)

Manuel M. Matos, M.D. – Director
(Previously Disclosed)

Seymour M. Zivan – Director
(Previously Disclosed)

The Board of Directors of Excellus Health Plan, Inc. consists of the following individuals:

Randall L. Clark – Chairperson
Chairman, Dunn Tire, LLC

John G. Doyle, Jr. – Director
President, Doyle Security Systems, Inc.

Hermes L. Ames, III – Director
Retired

Affiliations:
- Director, Well Choice, Inc. (Empire BCBS)

Natalie L. Brown – Director
Executive Director, YWCA Mohawk Valley

Affiliations:
- Board Chair, Faxton-St. Luke's Healthcare (2001-2004)

Austin T. Hildebrandt – Director
President, Hillside Children's Foundation

Thomas Y. Hobart, Jr. – Director
Retired

Dennis P. Kessler – Director
Owner, The Kessler Group, Inc.
Owner, The Kessler Family, LLC
Professor, University of Rochester

Affiliations:
- Director, Genesee Regional Health Care of Ontario County, Inc.
- Member, University of Rochester Medical Center (1/04 – 2/12)

Charles H. Stuart – Director
(Previously Disclosed)

David H. Klein – Director
(Previously Disclosed)

Joseph F. Kurnath, M.D. – Director
Physician/Partner, Partners in Internal Medicine

Affiliations:
- Director, Genesee Region Home Care of Ontario County, Inc.

Patrick A. Mannion – Director
Chairman, President, CEO, COO, EVP & SVP, Unity Mutual Life Insurance Company

Alfred D. Matt – Director
President and CEO, F.X. Matt Brewing Company

Colleen E. O'Leary, M.D. – Director
Professor, SUNY Upstate Medical University

Sandra A. Parker – Director
President and CEO, Rochester Business Alliance

Thomas E. Rattmann – Director
Chairman, CEO, President, Columbian Financial Group

George F.T. Yancey, Jr. – Director
Managing Director, Delta Point Capital

William H. Goodrich – Director
Chief Executive Officer/President, LeChase Construction

Affiliations:
- Director, Excellus Health Plan, Inc.

The Board of Directors of Lifetime Healthcare, Inc. consists of the following individuals:

Randall L. Clark – Chairperson
(Previously Disclosed)

Dennis P. Kessler – Director
(Previously Disclosed)

Hermes L. Ames, III – Director
(Previously Disclosed)

Natalie L. Brown – Director
(Previously Disclosed)

William H. Goodrich – Director
(Previously Disclosed)

John G. Doyle, Jr., – Director
(Previously Disclosed)

Austin T. Hildebrandt – Director
(Previously Disclosed)

Thomas Y. Hobart, Jr. – Director
(Previously Disclosed)

David H. Klein – Director
(Previously Disclosed)

Joseph F. Kurnath, M.D. – Director
(Previously Disclosed)

Patrick A. Mannion – Director
(Previously Disclosed)

Alfred D. Matt – Director
(Previously Disclosed)

Colleen E. O'Leary, M.D. – Director
(Previously Disclosed)

Sandra A. Parker – Director
(Previously Disclosed)

Thomas E. Rattmann – Director
(Previously Disclosed)

George F.T. Yancey, Jr. – Director
(Previously Disclosed)

Charles H. Stuart – Director
(Previously Disclosed)

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 State Physician Profile, and the Office of Professional Medical Conduct, where appropriate, indicate no issues with the licensure of the health professionals associated with this application. In addition, the attorneys have all submitted Certificates of Good Standing.

A ten year review of the operations of the agencies/facilities listed below was performed as part of this review (unless otherwise noted):

Genesee Region Home Care of Ontario County, Inc. d/b/a Home Care Plus (LHCSA)
Genesee Region Home Care Association, Inc. (hospice)
Genesee Region Home Care Association, Inc. d/b/a Lifetime Care (CHHA)
Genesee Region Home Care Association, Inc. d/b/a Lifetime Care (LTHHCP)
Sibley Nursing Personnel Services, Inc. (LHCSA) (2003 – present)
Visiting Nurse Service of New York Home Care (CHHA)
Partners in Care, Inc. (LHCSA)
Genesee Valley Group Health Association, Inc. d/b/a Lifetime Health Medical Group (2003 – present)
Excellus Health Plan, Inc. d/b/a Finger Lakes HMO, Upstate HMO & Univera Health Care (HMO)
Well Choice, Inc. (Empire BCBS) (HMO) (2000 – 2005)
Faxton-St. Luke's Healthcare (hospital) (2001 – 2004)
Loretto Geriatric Center (2000 – 2001)
Loretto – Oswego Health and Rehabilitation Center (2000 – 2001)
Nottingham RHCF (2000 – 2001)
Loretto Rest, Inc. (ACF) (2000 – 2001)
Churchill Manor, Inc. (ACF) (2000 – 2001)
Loretto Geriatric Community Residences, Inc. (ACF) (2000 – 2001)
Loretto Adult Community, Inc. (ACF) (2000 – 2001)
Elbridge Adult Community, Inc. (ACF) (2000 – 2001)
The Nottingham Retirement Community, Inc. (ACF) (2000 – 2001)
University of Rochester Medical Center (1/04 – 2/12)

The Division of Certification and Surveillance reviewed the compliance histories of the hospitals and diagnostic and treatment center for the time periods specified. It has been determined that these facilities have exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations. When code violations did occur, it was determined that the operators investigated the circumstances surrounding the violation and took steps appropriate to the gravity of the violation that a reasonably prudent operator would take to promptly correct and prevent the recurrence of the violation.

The Division of Residential Services reviewed the compliance history of the affiliated residential health care facilities for the time period specified as the affiliation. It has been determined that the residential health care facilities have been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

The information provided by the Bureau of Adult Care Facility Quality and Surveillance has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Bureau of Managed Care Certification and Surveillance has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The Division of Home and Community Based Services reviewed the compliance histories of the certified home health agencies, licensed home care services agencies, long term home health care program and hospice for the time periods specified. It has been determined that these agencies have exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations. When code violations did occur, it was determined that the operators investigated the circumstances surrounding the violation and took steps appropriate to the gravity of the violation that a reasonably prudent operator would take to promptly correct and prevent the recurrence of the violation.

A review of all personal qualifying information indicates there is nothing in the background of the board members of Genesee Region Home Care Association, Inc. d/b/a Lifetime Care, North Star Home Health Management, Inc., Excellus Health Plan, Inc. and Lifetime Healthcare, Inc. to adversely effect their positions on the boards. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Asset Purchase Agreement

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

Date:	May 2, 2011
Seller:	County of Schuyler
Buyer:	Genesee Region Home Care Association, Inc.
Assets Transferred:	The home care business consisting of books and records, any permits and similar rights to the extent transferable and related solely to the operation of the home care business, patient medical records, and any contracts, leases or licenses.
Assumed Liabilities:	None
Purchase Price:	$500,000
Payment of Purchase Price:	$500,000 in cash at time of closing.

The applicant submitted an affidavit in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently, there are no outstanding Medicaid overpayment liabilities.

Operating Budget

The applicant has provided an incremental operating budget in 2011 dollars, for the first year. The budget is summarized below:

	Year One
Revenues:	$1,116,400
Expenses:	
Operating:	$952,160
Capital:	0
Excess Revenues over Expenses:	$164,240

Expenses are broken down as follows:

Year One	Total Costs	Visits/Hours	Cost Per Visit
Nursing	$578,858	4,363	$132.67
Physical Therapy	189,495	1,540	$123.05
Speech Pathology	18,322	144	$127.24
Occupation Therapy	32,008	260	$123.11
*Home Health Aide	120,865	4,935	$24.49
Medical Social Services	7,714	61	$126.46
*Personal Care	4,898	200	$24.49
TOTAL:	*$952,160*		

** Reflects hourly data*

Utilization by payor source for the first year is as follows:

Medicaid	57%
Medicare	33%
Commercial	8%
Charity Care	2%

Expense and utilization assumptions are based on the applicant's experience in managing Schuyler County's CHHA and the applicant's historical experience in operating CHHA's.

Capability and Feasibility

The operational purchase price of $500,000 will be satisfied with equity from the applicant.

Working capital requirements estimated at $159,694 based on two months' of first year expenses will be provided by cash equity from the applicant. Presented as BFA Attachment B, is the financial summary of the Genesee Home Care Association, Inc., which indicated the availability of sufficient funds.

The submitted budget projects an excess of revenues over expenses of $164,240 during the first subsequent to the change in operator. The submitted budget, based on Lifetime Care's experience in the operation of its CHHA and current reimbursement rates, appears reasonable.

As shown on BFA Attachment B, a financial summary of Genesee Region Home Care Association, Inc. indicates that the facility has maintained positive working capital and net assets positions, and generated annual operating revenues of $3,903,000 and $1,827,000 for 2009 and 2010 respectively. Also, as presented on BFA Attachment D, a 2011 unaudited financial statement has been submitted. The statement indicates the facility has maintained a positive working capital and net asset position, and achieved an operating gain of $881,000 for the period shown.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Organizational Chart
BFA Attachment B	Financial Summary, Genesee Region Home Care Association, Inc.
BFA Attachment C	Combined Balance Sheet
BFA Attachment D	Financial Summary unaudited, Genesee Region Home Care Association, Inc.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 5th day of April, 2012, 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 transfer 100% ownership of Schuyler County Home Health Agency to Genesee Region Home Care Association, Inc. d/b/a Lifetime Care, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

RESOLVED, that 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
111413 E	Genesee Region Home Care Association, Inc. d/b/a Lifetime Care

APPROVAL CONTINGENT UPON:

1. Proper documentation of site control, by submission of a proposed lease agreement identifying the full address of the planned practice location in Schuyler County from which Lifetime will serve the residents of Schuyler County. [LTC]

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

Public Health and Health Planning Council

Project # 111456-E
4800 Bear Road Operating Company, LLC d/b/a Elderwood at Liverpool

County: **Onondaga (Liverpool)**
Purpose: **Establishment**
Program: **Residential Health Care Facility**
Submitted: **May 27, 2011**

Executive Summary

Description
4800 Bear Road Operating Company, LLC, d/b/a Elderwood at Liverpool, is seeking approval to be established as the new operator of Birchwood Health Care Center, Inc. d/b/a Elderwood Health Care at Birchwood, an existing 160-bed residential health care facility (RHCF) located at 4800 Bear Road, Liverpool. Maplewood Property Associates, L.P. is the current realty owner. Ownership of the operation before and after the requested change is as follows:

Before	
Birchwood Health Care Center, Inc. d/b/a Elderwood Health Care at Birchwood	
Member	Interest
-- Robert M. Chur	100.00%
After	
4800 Bear Road Operating Company, LLC d/b/a Elderwood at Liverpool	
Members	Interest
-- Warren Cole	50.00%
-- Dr. Jeffrey Rubin, D.D.S.	50.00%

The proposed change in ownership is part of an acquisition involving nine RHCFs, five adult care facilities, two independent housing companies, and related real property companies.

Post Acute Partners Acquisitions, LLC, an existing for-profit limited liability company, is the parent entity for this ultimate transaction. In this transaction however, the parent entity Post Acute Partners Acquisitions, LLC will not be acquiring the realty from Maplewood Property Associates, L.P., but will be acquiring the current lease and continuing that forward.

DOH Recommendation
Contingent approval

Need Summary
Elderwood Health Care at Birchwood's utilization for 2009 and 2010 was 96.6% and 96.6%, respectively. There will be no change in the beds or services of the Elderwood Health Care at Birchwood facility as a result of this project.

Program Summary
Based on actual documentation received from other states and on indications of acceptable operating experience where full documentation was not available, and on affidavits submitted by the applicants, a positive finding as to character and competence can be made.

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

Budget:	*Revenues:*	*$ 18,239,577*
	Expenses:	*16,733,027*
	Gain/(Loss):	*$ 1,506,550*

Subject to 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 documentation of project completion of CON #111085-L. [PMU]
2. Submission of a loan commitment for working capital that is acceptable to the Department of Health. [BFA]
3. Submission of a commitment that is acceptable to the Department, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
4. Submission of an executed building lease that is acceptable to the Department. [BFA]
5. Submission of an executed assignment agreement that is acceptable to the Department. [BFA]
6. Submission of photocopies of the applicant's Articles of Organization, as filed with the Department of State and of a fully executed and dated Certificate of Amendment to the applicant's Articles of Organization, which must be acceptable to the Department. [CSL]
7. Submission of a photocopy of the applicant's fully executed and dated Operating Agreement, which must be acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's fully executed Certificate of Assumed Name, which must be acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's fully executed and dated sublease agreement, including the consent of the Landlord (as such term is defined below), which must be acceptable to the Department. [CSL]
10. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of Post Acute Partners Acquisition, LLC (Post Acute Partners), as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
11. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of Post Acute Partners, which must be acceptable to the Department. [CSL]
12. Submission of a list of all members and managers of Post Acute Partners, which must be acceptable to the Department. [CSL]
13. Submission of a photocopy of that certain Amended and Restated Deposit Escrow Agreement, as described in "Whereas Clause D" of the Asset Purchase Agreement between Post Acute Partners, as Purchaser, and various other entities, as Seller, dated February 25, 2011, which must be acceptable to the Department. [CSL]
14. Submission of a photocopy of a fully executed and dated Assignment of Rights between Post Acute Partners, the applicant and the owner of the real property on which the facility is located (Landlord), which must be acceptable to the Department. [CSL]
15. Submission of a photocopy of the proposed Bill of Sale, and any other transfer documents, between the applicable Seller and the applicant, pursuant to which the operating assets of the facility will be transferred to the applicant, which must be acceptable to the Department. [CSL]
16. Submission of a photocopy of the Lease pursuant to which Post Acute Partners has a leasehold interest in the real property on which the facility is located and the detailed explanation as to why the real property will not be owned by an affiliate of the applicant as is the case with all of the related Elderwood applications, which must be acceptable to the Department. [CSL]
17. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of the Landlord, as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
18. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of the Landlord, which must be acceptable to the Department. [CSL]
19. Submission of a list of all members and managers of the Landlord, which must be acceptable to the Department. [CSL]
20. Submission of photocopies of any agreements, documents, or arrangements between or among the applicant, Post Acute Partners, the Landlord, and/or any other entity (including, but not limited to, any affiliate or subsidiary), jointly and severally, directly or indirectly, relating to the ownership or operation of the facility. [CSL]

Council Action Date

April 5, 2012.

Need Analysis

Background

4800 Bear Road Operating Company, LLC, d/b/a Elderwood at Liverpool, is seeking approval to be established as the new operator of Birchwood Health Care Center, Inc. d/b/a Elderwood Health Care at Birchwood, an existing 160- bed residential health care facility (RHCF) located at 4800 Bear Road, Liverpool, New York (Onondaga County).

There will be no change in the beds or services of the Elderwood Health Care at Birchwood facility as a result of this project.

Analysis

RHCF Bed Need – Onondaga County	
2016 Projected Need	2,416
Current Beds	2,986
Beds Under Construction	30
Total Resources	3,016
Unmet Need	- 600

Regional RHCF Occupancy	*2008*	*2009*	*2010*
Elderwood Health Care at Birchwood	**96.87%**	**96.60%**	**96.56**%
Jewish Home of Central New York	94.72%	93.95%	96.74%
Van Duyn Home and Hospital	96.82%	96.19%	95.34%
St Camillus Residential Health Care Facility	98.19%	97.65%	96.64%
James Square Health and Rehabilitation Centre	95.62%	94.86%	94.07%
Rosewood Heights Health Center	97.08%	95.40%	96.15%
Central Park Rehabilitation and Nursing Center	85.37%	95.11%	97.23%
Loretto Health and Rehabilitation Center	99.16%	98.79%	98.63%
Sunnyside Care Center	97.33%	96.63%	96.19%
Syracuse Home Association	93.46%	94.37%	93.18%
The Crossings Nursing and Rehabilitation Centre	84.30%	87.29%	90.04%
Iroquois Nursing Home Inc	98.76%	98.37%	98.46%
Nottingham RCHF	99.38%	96.16%	97.75%
Onondaga County	*96.20%*	*96.20%*	*96.16%*

Elderwood Health Care at Birchwood had utilization rates of 96.6% for 2009 and 96.6% 2010.

Conclusion

The acquisition of Elderwood Health Care at Birchwood by Post Acute Partners Acquisition, LLC will not result in any capacity or service changes.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Facility Information

	Existing	*Proposed*
Facility Name	Elderwood Health Care at Birchwood	Elderwood at Liverpool
Address	4800 Bear Road Liverpool, NY 13088	same
RHCF Capacity	160	same
ADHC Program Capacity	0	same
Type Of Operator	Corporation	Limited Liability Company
Class Of Operator	Proprietary	same
Operator	Birchwood Health Care Center, Inc. <u>Shareholders</u> Robert M. Chur	4800 Bear Road Operating Company, LLC <u>Members</u> Warren Cole 50% Jeffrey Rubin 50%

Character and Competence

- FACILITIES REVIEWED:

ACU-acute care/hospital	ICF-intermediate care facility/group home
ALF-assisted living facility	IRF-intermediate rehabilitation facility (similar to SNF short term rehab)
HHA-home health agency	LTA-long term acute care hospital (similar to TCU)
HOM-homecare	RX-pharmacy
HOS-hospice	SNF-skilled nursing facility/nursing home

(Note: actual dates of ownership may extend prior to 2003)

Alabama		
*Laurelton Rehabilitation and Nursing Center**	*SNF*	*10/2006 to 5/2008*
California		
San Joaquin Valley Rehabilitation Hospital	Hospital	7/2004-7/2004
Kenfield Rehabilitation Hospital	Hospital	8/2003-7/2004
Care Alternatives of California*	Hospice	2003-10/2009
Colorado		
North Valley Rehabilitation Hospital (Haven Behavioral Sr. Care)	ACU-PSYCH	7/2003-8/2004
North Valley Rehabilitation Hospital (Vibra LTACH)	LTA	7/2003-8/2004
North Valley Rehabilitation Hospital (Vista View Care Center)	SNF	7/2003-8/2004
Connecticut		
Danbury Health Care Center*	SNF	8/2003-10/2009
Darien Health Care Center*	SNF	8/2003-10/2009
Golden Hill Health Care Center*	SNF	8/2003-10/2009
Long Ridge of Stamford*	SNF	8/2003-10/2009
Newington Health Care Center*	SNF	8/2003-10/2009
Partners Pharmacy of Connecticut*	RX	2003-10/2009
River Glen Health Care Center (a/k/a Southbury HCC)*	SNF	8/2003-10/2009
The Highlands Health Care Center*	SNF	8/2003-10/2009
West River Health Care Center (a/k/a Milford North HCC)*	SNF	8/2003-10/2009

Westport Health Care Center*	SNF	8/2003-10/2009
Wethersfield Health Care Center*	SNF	8/2003-10/2009

Kansas

Care Alternatives of Kansas	HOS	2004-10/2009

Kentucky

Southern Kentucky Rehabilitation Hospital	IRF	5/2003-7/2004

Maryland

Montgomery Village Health Care Center	SNF	2003-10/2009

Massachusetts

Brookline Health Care Center*	SNF	8/2003-10/2009
Calvin Coolidge Nursing & Rehab Center for Northampton*	SNF	8/2003-10/2009
Care Alternatives of Massachusetts*	HOS	2005-10/2009
Concord Health Care Center*	SNF	8/2003-10/2009
Essex Park Rehabilitation & Nursing Center*	SNF	3/2005-10/2009
Holyoke Health Care Center*	SNF	8/2003-10/2009
Lexington Health Care Center*	SNF	8/2003-10/2009
Lowell Health Care Center*	SNF	8/2003-10/2009
Millbury Health Care Center*	SNF	8/2003-10/2009
New Bedford Health Care Center*	SNF	8/2003-10/2009
New Bedford Rehabilitation Hospital*	IRF	7/2003-8/2004
Newton Health Care Center*	SNF	8/2003-10/2009
North Shore Health Care Center*	SNF	8/2003-10/2009
Partners Pharmacy of Massachusetts*	RX	2004-10/2009
Peabody Glen Health Care Center*	SNF	8/2003-10/2009
Redstone Health Care Center (a/k/a East Longmeadow HCC)*	SNF	8/2003-10/2009
Weymouth Health Care Center*	SNF	8/2003-10/2009
Wilmington Health Care Center*	SNF	8/2003-10/2009

Michigan

Grand Blanc Rehabilitation & Nursing Center	SNF	10/2006-10/2009

Missouri

Care Alternatives of Missouri	HOS	2003-10/2009
Cliffview at Riverside Rehab & Nursing Center	SNF	10/2006-5/2008
Partners Pharmacy of Missouri*	RX	2003-10/2009

New Jersey

Bergen Care Home Health	HHA	2007-10/2009
Bergen Care Personal Touch	HOM	2007-10/2009
Care Alternatives of New Jersey	HOS	2001-10/2009
Care One at Dunroven	SNF	2001-10/2009
Care One at East Brunswick	SNF	2/2002-10/2009
Care One at Evesham	SNF	8/2000-10/2009
Care One at Evesham Assisted Living	ALF	10/2007-10/2009
Care One at Ewing	SNF	11/2004-10/2009
Care One at Hamilton	SNF	5/2002-10/2009
Care One at Holmdel	SNF	8/1997-10/2009
Care One at Jackson (a/k/a Jackson HCC)	SNF	2004-10/2009
Care One at King James	SNF	2003-10/2009
Care One at Livingston	SNF	10/2002-10/2009
Care One at Livingston Assisted Living	ALF	9/2005-10/2009
Care One at Madison Avenue	SNF	1/2005-10/2009
Care One at Moorestown	SNF	9/2003-10/2009
Care One at Harmony Village at Moorestown	ALF	8/2003-10/2009

Care One at Morris	SNF	8/2001-10/2009
Care One at Morris Assisted Living	ALF	3/2003-10/2009
Care One at Pine Rest	SNF	2001-10/2009
Care One at Raritan Bay MC	LTA	3/2004-10/2009
Care One Harmony Village at Moorestown	SNF	9/2003-10/2009
Care One at Teaneck	SNF	4/2007-10/2009
Care One at The Cupola	SNF	2001-10/2009
Care One at The Highlands	SNF	2001-10/2009
Care One at Valley	SNF	2001-10/2009
Care One at Wall	SNF	9/2004-10/2009
Care One at Wayne	SNF/ALF	6/2002-10/2009
Care One at Wellington	SNF	6/2002-10/2009
Marlton Rehabilitation Hospital	IRF	5/2003-7/2004
Oradell Health Care Center	SNF	2003-10/2009
Partners Pharmacy of New Jersey	RX	2001-10/2009
Somerset Valley Rehabilitation & Nursing Center	SNF	10/2009-10/2009
South Jersey Health Care Center	SNF	2003-10/2009
Woodcrest Health Care Center	SNF	2003-10/2009
North Carolina		
Blue Ridge Health Care Center	SNF	8/2002-10/2009
Ohio		
Bellbrook Health Care Center	SNF	2003-10/2009
The Rehabilitation & Nursing Center at Elm Creek	SNF	10/2006-10/2009
The Rehabilitation & Nursing Center at Firelands	SNF	10/2006-10/2009
The Rehabilitation & Nursing Center at Spring Creek	SNF	10/2006-10/2009
Pennsylvania		
Care Alternatives of Pennsylvania	HOS	2003-10/2009
Pediatric Specialty Care at Doylestown	SNF	2/2011-present
Pediatric Specialty Care at Hopewell	PED ICF	2/2011-present
Pediatric Specialty Care at Lancaster	PED ICF	2/2011-present
Pediatric Specialty Care at Point Pleasant	PED ICF	2/2011-present
Pediatric Specialty Care at Quakertown	PED ICF	2/2011-present
Presque Isle Rehabilitation & Nursing Center	SNF	10/2006-10/2009
Senior Living of Lancaster	HOM	2/2011-present
The Rehabilitation & Nursing Center at Greater Pittsburg	SNF	10/2006-10/2009
Puerto Rico		
Medicare Y Mucho Mas*	Medicare Agency	2005-11/2009
Rhode Island		
Scallop Shell Nursing & Rehabilitation Center	SNF	12/2010-present
Virginia		
Care Alternatives of Virginia*	HOS	4/2002-10/2009
Colonial Heights Health Care Center*	SNF	4/2002-10/2009
Glenburnie Rehabilitation & Nursing Center*	SNF	4/2002-10/2009
Hopewell Health Care Center*	SNF	4/2002/10/2009
Partners Pharmacy of Virginia*	RX	4/2002-10/2009
Valley Health Care Center*	SNF/ALF	4/2002-10/2009
Westport Health Care Center*	SNF	4/2002-10/2009

Individual Background Review

Jeffrey Rubin is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospital, home health agencies and institutional pharmacies. Prior to founding Post-Acute Partners, Dr. Rubin served as Executive Vice President Business Development for Care One Management, LLC/Healthbridge Management, LLC from 2000-2009. Previous to his involvement with Care One, Dr. Rubin served as President of Millenium Healthcare, Inc. which was the precursor to Care One. Dr. Rubin was formerly a practicing dentist, with his license currently inactive. Dr. Rubin has had extensive health facility operational and real estate interests, which are listed above.

Warren Cole is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospital, home health agencies and institutional pharmacies. Prior to founding Post Acute Partners, LLC Mr. Cole was involved with Care Ventures, Inc., an investment firm which acquires operational and real estate interests in nursing homes and provides financing to health care facilities throughout the United States. Mr. Cole also served as Chief Financial Officer at Aveta, Inc., a health insurance company, from 2007-2010. Dr. Cole has had extensive health facility operational and real estate interests, which are listed above.

Character and Competence – Analysis:
No adverse information for the proposed members has been received.

In order to make a determination on whether a substantially consistent high level of care has been provided at the health facilities/agencies subject to review, a ten year review of the enforcement history for each is undertaken. A positive finding would result from concluding that there were no repeat enforcement actions causing harm to residents of a facility/agency for the same issue, during the past ten years or for the years of ownership. For the subject application adequate surveillance documentation with which to make a global finding cannot be obtained due to staffing issues at multiple states. To date staff and the applicant have exhausted their efforts to obtain the necessary documentation, with the outcome that adequate information is available for only 60 out of the total 100 disclosed health facility interests.

For those health facilities/agency for which there is inadequate documentation, denoted by an asterisk (*) in the above listing, no negative information regarding the operator's track record has been received. In addition the applicants have submitted affidavits regarding the incomplete surveillance history, in which they attest to the following:

> *During the applicable period identified…, the Entities may have been surveyed by the applicable state regulatory authority. Statements of Deficiencies may have been issued, and enforcement action(s) resulting in the payment of a fine may have been assessed. However, to my knowledge, during the applicable period…, the Entities have not (i) received enforcement actions for repeat deficiencies that were not remedied within timeframes required by applicable law or (ii) had a license or certificate issued by a state or federal regulatory authority suspended, terminated, revoked, denied, or annulled. Further, to my knowledge, there are no currently pending federal or state enforcement actions against the Entities …*

For those facilities for which there was complete information available for review, staff concludes that a substantially consistent high level of care has been provided.

The following summarizes the review outcome for each state:

A review of the **Alabama** facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the **California** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of California for which there is insufficient documentation to make a finding.

A review of the **Colorado** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Connecticut** facilities noted above indicates there is insufficient documentation with which to make a finding. The following seven Connecticut facilities owned by the principles were the subject of a Chapter 11 bankruptcy action:

Danbury Health Care Center
Darien Health Care Center
Long Ridge of Stamford
Newington Health Care Center
West River Health Care Center
Westport Health Care Center
Wethersfield Health Care Center

A review of the **Kansas** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Kentucky** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Maryland** facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Massachusetts** facilities noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Missouri** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Partners Pharmacy of Missouri for which there is insufficient documentation to make a finding.

A review of the **New Jersey** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **North Carolina** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Ohio** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Pennsylvania** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of Pennsylvania, for which there is insufficient documentation to make a finding.

A review of the **Puerto Rico** health related agency noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Rhode Island** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Virginia** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Colonial Heights Health Care Center, Glenburnie Rehabilitation & Nursing Center, Hopewell Health Care Center, Valley Health Care Center and Westport Health Care Center, for which there is insufficient documentation to make a finding.

If able to base our judgment solely on the documentation received from other states, the Department would be able to render a positive finding as to the character and competence of the applicants. We must, however, deal with a larger record, one which lacks sufficient documentation, by the Department's standards for analysis, of the applicants' operation of 35 facilities in five different states. However, it should be made clear that while these five states could not

provide our customarily needed level of detail on operating history, we did not receive any negative findings that would warrant disapproval of this application; and we did receive indications of acceptable operating experience. The Department believes it reasonable to infer from these facts that the applicants have provided a sufficiently high level of care at the facilities they have operated.

Project Review

There are no proposed changes in either the program or physical environment of the facility. No administrative services/consulting agreement is proposed in this application.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Background

The proposed change in ownership is part of a nine residential health care facilities, five adult care facilities, two independent housing companies, and related real property companies, acquisition involving Birchwood Health Care Center, Inc., the operator and Maplewood Property Associates, L.P**,** the owner of the realty and the proposed new owner/operator Post Acute Partners Acquisitions, LLC, an existing for profit limited liability company that is the parent entity for this ultimate transaction. In this transaction however, the parent entity Post Acute Partners Acquisitions, LLC will not be acquiring the realty from Maplewood Property Associates, L.P., but will be acquiring the current lease and continuing that forward.

The five adult care facilities will be reviewed by the Division of Long Term Care and therefore, are being reviewed separately from the nursing home application. The independent housing companies as well, are not being addressed in these reviews. The information provided regarding the independent housing companies, is to delineate them from the total project cost for the overall application.

The proposed members are also seeking establishment approval to concurrently acquire ownership of the following related residential health care facilities, also part of the facilities acquisition, through the applications listed below:

CON	Applicant	Facility	Beds
111467-E	4459 Bailey Avenue Operating Company, LLC d/b/a Elderwood at Amherst	Wedgewood Health Care Center, Inc. d/b/a Elderwood Health Care at Wedgewood	92
111468-E	2850 Grand island Boulevard Operating Company, LLC d/b/a Elderwood at Grand Island	Riverwood Health Care Center, Inc. d/b/a Elderwood Health Care at Riverwood	90
111470-E	5775 Maelou Drive Operating Company, LLC d/b/a Elderwood at Hamburg	Lakewood Health Care Center, Inc. d/b/a Elderwood Health Care at Lakewood	166
111462-E	1818 Como Park Boulevard Operating Company, LLC d/b/a Elderwood at Lancaster	Linwood Health Care Center, Inc. d/b/a Elderwood Health Care at Linwood	94
111469-E	225 Bennett Road Operating Company, LLC d/b/a Elderwood at Cheektowaga	Maplewood Health Care Center, Inc. d/b/a Elderwood Health Care at Maplewood	170
111471-E	37 North Chemung Street Operating Company, LLC d/b/a Elderwood at Waverly	Elderwood Health Care at Tioga, LLC d/b/a Elderwood Health Care at Tioga	200
111466-E	2600 Niagara Falls Boulevard Operating	Crestwood Health Care Center, Inc. d/b/a	160

	Company, LLC d/b/a Elderwood at Wheatfield	Elderwood Health Care at Crestwood	
111463-E	200 Bassett Road Operating Company, LLC d/b/a Elderwood at Williamsville	Oakwood Health Care Center, Inc. d/b/a Elderwood Health Care at Oakwood	200

The applicant has provided an affidavit, which states that 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 the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently, the facility has no outstanding Medicaid audit liabilities.

All nine applications will be processed concurrently.

Asset Purchase Agreement

The change in ownership will be effectuated in accordance with the terms of the executed Asset Purchase Agreements, summarized below. This agreement is for the nine residential health care facility, five adult care facility, two independent housing company, and related real property companies acquisition.

Date:	February 25, 2011
Sellers (Nursing Home Operations):	Wedgewood Health Care Center, LLC, Maplewood Health Care Center, Inc., Riverwood Health Care Center, Inc., Lakewood Health Care Center, Inc., Linwood Health Care Center, Inc., Crestwood Health Care Center, Inc., Oakwood Health Care Center, Inc., Birchwood Health Care Center, Inc., Elderwood Health Care Center at Tioga, LLC
Sellers (Nursing Home Real Estate):	Wedgewood SNF Property Company, LLC, Maplewood Property Associates, L.P., Riverwood Property Associates, L.P., Elderwood Affiliates, Inc., LPC at Linwood LLC, Crestwood Development, LLC, Oakwood Property Associates, L.P., Tioga Property Company North, LLC
Purchaser:	Post Acute Partners Acquisition, LLC
Purchased Assets:	All right, title and interest of the above operations and Woodmark Services, Inc. in and to all supplies used in the facilities operations. All assumed Contracts, Admission agreements, assignable licenses, right, title and interest in trade marks, dress and names and services marks used in the facilities operations, specifically "Elderwood" and "Elderwood Senior Care" and the service mark "Care Without Compromise"; all phone and fax numbers, email addresses domain names, P.O. boxes and software used for the facilities operations. All books, data and records for the facilities, (except where transfer is prohibited) all employee records, but only for transitioned employees (excluding the seller's financial books and records). All right, title and interest in all vehicles located at the respective facilities owned or operated by it or used in connection therewith and in all furniture, furnishings, equipment, computers and office equipment and supplies located at the corporate offices. All right, title and interest of Elderwood Transportation Company, LLC in all tangible and intangible personal property and all right, title and interest of each seller in any and all other items of tangible and intangible personal property used or useful in connection with the facilities operations and all the facilities goodwill.
Excluded Assets:	The Heathwood and Penfield facilities owned and operated by affiliates of seller, including all assets, the names "Heathwood Health Care Center, Inc. d/b/a Elderwood Health Care at Heathwood" and "Elderwood Assisted Living at Penfield, LLC" and operations thereof; all assets relating to pharmacy operations of Woodmark pharmacy, Inc.; All assets of the KABA division of Woodmark services, Inc and the provider agreement and provider number of Woodmark services, Inc.; Real property comprising seller's corporate offices,

	located in Williamsville, NY at 7 Limestone Drive, 1142 Wehrle Drive and 1150 Wehrle Drive; all of seller's bank accounts, cash, cash equivalents and securities except to the extent any portion thereof is subject to the proration or reconciliation procedures set forth herein; all replacement and tax escrow reserves, utility deposits and workers compensation trust assets of seller; all prepaid expenses, all vehicles, office furniture, computers and cell phones used by Robert M. Chur and/or Carla Chur Suero; all accounts receivable prior to the effective time, except as otherwise expressly provided in this agreement, all refunds or reimbursements for the period prior to the effective time and all deposits, escrowed funds and similar funds; except otherwise expressly provided in this agreement, all claims, disputes and litigation, and all amounts of any nature or description relating thereto for the period prior to the effective time; all receivables from any affiliate of seller, all of seller's rights and benefits under this agreement; seller's organizational documents relating solely to the existence of each of the entities comprising seller as separate legal entity; seller's right to the grant proceeds associated with the HEAL projects; except to the extent included in the patient records or the employee records' seller's general ledgers and trial balances and all other financial journal and ledgers and statements, for any of the foregoing.
Liabilities Assumed :	The applicable Real liabilities under the mortgages listed on schedule 1.6(a)(the aggregate outstanding balance of any mortgage debt described on schedule 1.6(a) or (b) assumed or taken by applicable real estate purchaser referred to as the assumed debt") assume the obligations and liabilities under the Birchwood Lease for periods after the effective time, subject to obtaining required consents in respect of each of the mortgages comprising assumed debt and the Birchwood landlord under the Birchwood lease; (ii) New operator will assume the assumed contracts and admissions agreements, only to the extent they are for periods after the effective time and (iii) Each applicable real estate purchaser shall exercise its respective commercially reasonable efforts to assume or take title subject to the mortgages listed on schedule 1.6 (a) and obtain any and all required consents in connection therewith. Seller shall retain, promptly pay and discharge in the ordinary course all liabilities and obligations of seller other than the assumed liabilities.
Excluded Liabilities:	Seller's accounts payable and all obligations for the facilities operation prior to the effective time including costs, expenses and other liabilities and obligations from the facilities operation except as set forth in sections 4.1(b) and 4.12, obligation under any collective bargaining agreement, employment agreement, pension or retirement plan, profit sharing plan, stock plan, compensation obligation or agreement or severance pay plan or agreement and any other employee benefit plan and liability for any taxes (except taxes prorated in accordance with section 10.3 (a)) any accounts payable or other obligations accruing to and existing as of the effective time are and shall remain the seller's sole obligation and responsibility.
Purchase Price:	$141,150,000 for the Nine Residential Health Care facility, five adult care facility and two independent housing company and related real property companies acquisition.
Purchase Price for this Operation:	$7,730,857
Payment of Purchase Price:	Through a loan for $7,730,857 at 5 years at 10%

Below is the breakout of the purchase price for all of the facilities by facility category with a final table showing the total purchase price for the full operations and real estate transfer.

Residential Health Care Facilities

CON	Applicant	Facility	Real Estate Purchase Price	Operations Purchase Price	Total Purchase Price
111467-E	4459 Bailey Avenue Operating Company, LLC d/b/a Elderwood at Amherst	Wedgewood Health Care Center, Inc. d/b/a Elderwood Health Care at Wedgewood	$6,500,000	$3,383,566	$9,883,566
111468-E	2850 Grand Island Boulevard Operating Company, LLC d/b/a Elderwood at Grand Island	Riverwood Health Care Center, Inc. d/b/a Elderwood Health Care at Riverwood	$4,700,000	$2,951,514	$7,651,514
111470-E	5775 Maelou Drive Operating Company, LLC d/b/a Elderwood at Hamburg	Lakewood Health Care Center, Inc. d/b/a Elderwood Health Care at Lakewood	$6,700,000	$4,094,870	$10,794,870
111462-E	1818 Como Park Boulevard Operating Company, LLC d/b/a Elderwood at Lancaster	Linwood Health Care Center, Inc. d/b/a Elderwood Health Care at Linwood	$2,250,000	$1,423,042	$3,673,042
111456-E	4800 Bear Road Operating Company, LLC d/b/a Elderwood at Liverpool	Birchwood Health Care Center, Inc. d/b/a Elderwood Health Care at Birchwood	N/A	$7,730,857	$7,730,857
111469-E	225 Bennett Road Operating Company, LLC d/b/a Elderwood at Cheektowaga	Maplewood Health Care Center, Inc. d/b/a Elderwood Health Care at Maplewood	$8,300,000	$1,660,484	$9,960,484
111466-E	2600 Niagara Falls Boulevard Operating Company, LLC d/b/a Elderwood at Wheatfield	Crestwood Health Care Center, Inc. d/b/a Elderwood Health Care at Crestwood	$9,100,000	$1,182,776	$10,282,776
111463-E	200 Bassett Road Operating Company, LLC d/b/a Elderwood at Williamsville	Oakwood Health Care Center, Inc. d/b/a Elderwood Health Care at Oakwood	$6,800,000	$5,271,383	$12,071,383
111471-E	37 North Chemung Street Operating	Elderwood Health Care at Tioga, LLC d/b/a Elderwood	$5,400,000	$2,678,288	$8,078,288

Company, LLC d/b/a Elderwood at Waverly	Health Care at Tioga			
Total Residential Health Care Facilities		*$49,750,000*	*$30,376,780*	*$80,126,780*

Adult Care Facilities

Facility Name	Purchase Price
Glenwood	$10,024,265
Maplewood ALF	$7,028,868
Rosewood	$8,337,181
Tioga ALF	$3,904,780
Westwood	$14,494,740
Total Adult Care Facilities Purchase Price	$43,789,834

Independent Housing Facilities

Facility Name	Purchase Price
Crestwood ILF	$12,590,237
Maplewood ILF	$4,993,149
Total Independent Housing Facilities Purchase Price	$17,583,386

Total Purchase Price

Operations and Real Estate	Purchase Price
Residential Health Care Facilities	$80,126,780
Adult Care Facilities	$43,789,834
Independent Housing Facilities	$17,583,386
Total Purchase Price	$141,500,000

Assignment Agreement

The change in operational and realty ownership will be effectuated in accordance with a draft assignment agreement, the terms of which are summarized below:

Effective Date:	Upon CON Approval by DOH
Assignor:	Post Acute Partners Acquisition, LLC
Assignee:	4800 Bear Road, LLC
Operating Designee:	4800 Bear Road Operating Company, LLC, d/b/a Elderwood at Liverpool
Assets Assigned:	Assignor's right, title and interest as Buyer under the Purchase Agreement with respect to the Assigned Property.
Obligations Assigned:	Assumes all obligations on the part of the Buyer to be performed under Purchase Agreement relating to the Assigned Property.

The members of the proposed reality entities 2850 Grand Island Boulevard, LLC, 225 Bennett Road, LLC, 200 Bassett Road, LLC, 5775 Maelou Drive, LLC, 1818 Como Park Boulevard, LLC, 4800 Bear Road, LLC, 37 North Chemung Street, LLC, 2600 Niagara falls Boulevard, LLC and 4459 Bailey Avenue, LLC are as follows:

Proposed Members	Percentage Ownership
Warren Cole	50%
Dr. Jeffrey Rubin, D.D.S.	50%

Lease Agreement and Medicaid Capital Reimbursement

Facility occupancy is subject to a draft lease agreement, the terms of which are summarized as follows:

Effective Date:	Upon CON Approval by DOH
Premises:	A 160-bed RHCF located at 4800 Bear Road, Liverpool, NY (Onondaga County)
Lessor:	4800 Bear Road, LLC
Lessee:	4800 Bear Road Operating Company, LLC, d/b/a Elderwood at Liverpool
Term:	10 years commencing on the execution of the lease with four (5 year extensions)
Annual Rental:	Lease payment is equivalent to the annual mortgage debt service for the facility, which is $1,086,645.
Type:	Triple net lease.

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the landlord and operating entity.

Currently, the facility Medicaid capital reimbursement is based on the return of and return on equity for recent improvements, this methodology will not be altered upon change in ownership.

Operating Budget

Following is a summary of the submitted operating budget for the RHCF, presented in 2011 dollars, for the first year subsequent to change in ownership:

	Per Diem	Total
Revenues:		
Medicare Fee For Service	$484.81	$7,552,308
Medicaid Fee For Service	222.13	5,078,566
Private Pay	312.50	5,608,703
Total Revenue		18,239,577
Expenses:		
Operating		$14,318,500
Capital		2,414,527
Total Expense		$16,733,027
Net Income		$1,506,550
Utilization (Patient days)		56,389
Occupancy		96.56%

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

- Overall utilization is projected at 96.56%, which is consistent with historical. Utilization by payor source is expected as follows:

Medicaid	40.55%
Medicare	27.62%
Private Pay	31.83%

- Breakeven utilization is projected at 88.59%.

Capability and Feasibility

The purchase price and initiation of operations, as a financially viable entity, will be financed by a loan from Capital Funding, LLC of $7,730,857 at an interest rate of 10% for five years

Working capital requirements are estimated at $2,788,838, based on two months' of first year expenses. $1,394,421 will by satisfied from the proposed member's equity and the remaining $1,394,417 will be satisfied through a loan from Capital Funding, LLC at 5.00% over 5 years.

A letter of interest has been supplied by Capital Funding, LLC. An affidavit from each member, which states that he or she is willing to contribute resources disproportionate to ownership percentages, has been provided by both proposed members. Presented as BFA Attachment A, is the Net Worth of proposed members.

The issue of feasibility is centered on the applicant's ability to offset expenses with revenues and maintain a viable operating entity. The submitted budget indicates that a net income of $1,506,550 would be maintained during the first year following change in ownership. The budget appears reasonable.

Presented as BFA Attachment B, is the pro-forma balance sheet of, which indicates positive members' equity of $1,394,421 as of the first day of operations.

Following is a comparison of 2010 and projected revenue and expense:

Annual 2010 Income	$17,193,655
Annual 2010 Expense	15,202,274
Annual 2010 Net Income	$1,991,381
Projected incremental Income	$1,045,922
Projected incremental Expense	1,530,753
Projected incremental Net Income (Loss)	($484,831)
Incremental Net Income (Loss)	$1,506,550

Projected income includes revenues at budgeted occupancy and payor source to accommodate Medicaid access requirements, as well as the difference between current year and projected levels. Projected expenses include acquisition capital expenses, expenses at budgeted occupancy, and the difference between current year and projected levels.

As shown on BFA Attachment C, Elderwood Health Care at Birchwood, had an average positive working capital position and an average positive net asset position, and generated an average net Income of $1,815,752 for the period 2008-2010.

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	Pro-forma Balance Sheet
BFA Attachment C	Financial Summary Elderwood Health Care at Birchwood
BFA Attachment D	Organizational Chart
BFA Attachment E	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 5th day of April, 2012, 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 4800 Bear Road Operating Company, LLC d/b/a Elderwood at Liverpool as the new operator of Elderwood Health Care at Birchwood, 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:
111456-E	4800 Bear Road Operating Company, LLC d/b/a Elderwood at Liverpool

APPROVAL CONTINGENT UPON:

1. Submission of documentation of project completion of CON #111085-L. [PMU]
2. Submission of a loan commitment for working capital that is acceptable to the Department of Health. [BFA]
3. Submission of a commitment that is acceptable to the Department, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
4. Submission of an executed building lease that is acceptable to the Department. [BFA]
5. Submission of an executed assignment agreement that is acceptable to the Department. [BFA]
6. Submission of photocopies of the applicant's Articles of Organization, as filed with the Department of State and of a fully executed and dated Certificate of Amendment to the applicant's Articles of Organization, which must be acceptable to the Department. [CSL]
7. Submission of a photocopy of the applicant's fully executed and dated Operating Agreement, which must be acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's fully executed Certificate of Assumed Name, which must be acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's fully executed and dated sublease agreement, including the consent of the Landlord (as such term is defined below), which must be acceptable to the Department. [CSL]
10. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of Post Acute Partners Acquisition, LLC (Post Acute Partners), as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
11. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of Post Acute Partners, which must be acceptable to the Department. [CSL]
12. Submission of a list of all members and managers of Post Acute Partners, which must be acceptable to the Department. [CSL]
13. Submission of a photocopy of that certain Amended and Restated Deposit Escrow Agreement, as described in "Whereas Clause D" of the Asset Purchase Agreement between Post Acute Partners, as Purchaser, and various other entities, as Seller, dated February 25, 2011, which must be acceptable to the Department. [CSL]
14. Submission of a photocopy of a fully executed and dated Assignment of Rights between Post Acute Partners, the applicant and the owner of the real property on which the facility is located (Landlord), which must be acceptable to the Department. [CSL]
15. Submission of a photocopy of the proposed Bill of Sale, and any other transfer documents, between the applicable Seller and the applicant, pursuant to which the operating assets of the facility will be transferred to the applicant, which must be acceptable to the Department. [CSL]
16. Submission of a photocopy of the Lease pursuant to which Post Acute Partners has a leasehold interest in the real property on which the facility is located and the detailed explanation as to why the real property will not be owned by an affiliate of the applicant as is the case with all of the related Elderwood applications, which must be acceptable to the Department. [CSL]
17. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of the Landlord, as filed with the Secretary of State, which must be acceptable to the Department. [CSL]

18. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of the Landlord, which must be acceptable to the Department. [CSL]
19. Submission of a list of all members and managers of the Landlord, which must be acceptable to the Department. [CSL]
20. Submission of photocopies of any agreements, documents, or arrangements between or among the applicant, Post Acute Partners, the Landlord, and/or any other entity (including, but not limited to, any affiliate or subsidiary), jointly and severally, directly or indirectly, relating to the ownership or operation of the facility. [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 # 111462-E

1818 Como Park Boulevard Operating Company, LLC d/b/a Elderwood at Lancaster

County: **Erie (Lancaster)**
Purpose: **Establishment**
Program: **Residential Health Care Facility**
Submitted: **May 27, 2011**

Executive Summary

Description

1818 Como Park Boulevard Operating Company, LLC, d/b/a Elderwood at Lancaster, is seeking approval to be established as the new operator of Linwood Health Care Center, Inc. d/b/a Elderwood Health Care at Linwood, an existing 94-bed residential health care facility (RHCF) located at 1818 Como Park Boulevard, Lancaster. The facility will be 96 beds upon completion of CON #101086-B by the current operator. LPC at Linwood LLC is the current realty owner. Ownership before and after the requested change is as follows:

Operations:	
Before	
Linwood Health Care Center, Inc. d/b/a Elderwood Health Care at Linwood	
Member	Interest
-- Robert M. Chur	66.00%
-- Carol Chur	25.00%
-- Carla Chur Suero	4.50%
-- Kelly Chur Henry	4.50%
After	
1818 Como Park Boulevard Operating Company, LLC d/b/a Elderwood at Lancaster	
Members	Interest
-- Warren Cole	50.00%
-- Dr. Jeffrey Rubin, D.D.S.	50.00%

Real Estate:	
Before	
LPC at Linwood, LLC	
Member	Interest
-- Robert M. Chur	100.00%
After	
1818 Como Park Boulevard, LLC	
Members	Interest
-- Warren Cole	50.00%
-- Dr. Jeffrey Rubin, D.D.S.	50.00%

The proposed change in ownership is part of an acquisition involving nine RHCFs, five adult care facilities, two independent housing companies, and related real property companies.

Post Acute Partners Acquisitions, LLC, an existing for-profit limited liability company, will be assigning its right and title to the operations and real estate to 1818 Como Park Boulevard Operating Company, LLC, d/b/a Elderwood at Lancaster and 1818 Como Park Boulevard, LLC respectively.

DOH Recommendation

Contingent approval.

Need Summary

Elderwood Health Care at Linwood's utilization for 2009 and 2010 was 97.7% and 98.2%, respectively. There will be no change in the beds or services of the Elderwood Health Care at Linwood facility as a result of this project.

Program Summary

Based on actual documentation received from other states and on indications of acceptable operating experience where full documentation was not available, and on affidavits submitted by the applicants, a positive finding as to character and competence can be made.

Financial Summary

There are no project costs associated with this proposal.

Budget:		
	Revenues:	*$ 7,181,544*
	Expenses:	*6,830,341*
	Gain/(Loss):	*$ 351,203*

Subject to 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; Architectural review is not 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 documentation of project completion of CON #101086-B. [PMU]
2. Submission of a loan commitment for working capital that is acceptable to the Department of Health. [BFA]
3. Submission of a commitment that is acceptable to the Department, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
4. Submission of an executed building lease that is acceptable to the Department. [BFA]
5. Submission of an executed assignment agreement that is acceptable to the Department. [BFA]
6. Submission of an original affidavit from the applicant members (or stockholders or partners) making a commitment to personally fund the balloon payment on the proposed mortgage, should terms acceptable to the Department of Health be unavailable at the time of refinancing. [BFA]
7. Submission of photocopies of the applicant's Articles of Organization, as filed with the Department of State and of a fully executed and dated Certificate of Amendment to the applicant's Articles of Organization, which must be acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's fully executed and dated Operating Agreement, which must be acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's fully executed Certificate of Assumed Name, which must be acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's fully executed and dated sublease agreement, including the consent of the Landlord (as such term is defined below), which must be acceptable to the Department. [CSL]
11. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of Post Acute Partners Acquisition, LLC (Post Acute Partners), as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
12. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of Post Acute Partners, which must be acceptable to the Department. [CSL]
13. Submission of a list of all members and managers of Post Acute Partners, which must be acceptable to the Department. [CSL]
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15. Submission of a photocopy of a fully executed and dated Assignment of Rights between Post Acute Partners, the applicant and the owner of the real property on which the facility is located (Landlord), which must be acceptable to the Department. [CSL]
16. Submission of a photocopy of the proposed Bill of Sale, and any other transfer documents, between the applicable Seller and the applicant, pursuant to which the operating assets of the facility will be transferred to the applicant, which must be acceptable to the Department. [CSL]
17. Submission of a photocopy of the Lease pursuant to which Post Acute Partners has a leasehold interest in the real property on which the facility is located and the detailed explanation as to why the real property will not be owned by an affiliate of the applicant as is the case with all of the related Elderwood applications, which must be acceptable to the Department. [CSL]
18. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of the Landlord, as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
19. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of the Landlord, which must be acceptable to the Department. [CSL]
20. Submission of a list of all members and managers of the Landlord, which must be acceptable to the Department. [CSL]
21. Submission of photocopies of any agreements, documents, or arrangements between or among the applicant, Post Acute Partners, the Landlord, and/or any other entity (including, but not limited to, any affiliate or subsidiary), jointly and severally, directly or indirectly, relating to the ownership or operation of the facility. [CSL]

Council Action Date

April 5, 2012.

Need Analysis

Background

1818 Como Park Boulevard Operating Company, LLC, d/b/a Elderwood at Lancaster, is seeking approval to be established as the new operator of Linwood Health Care Center, Inc. d/b/a Elderwood Health Care at Linwood, an existing 94-bed residential health care facility (RHCF) located at 1818 Como Park Boulevard, Lancaster (Erie County).

There will be no change in the beds or services of the Elderwood Health Care at Linwood facility as a result of this project.

Analysis

RHCF Bed Need – Erie County	
2016 Projected Need	5,291
Current Beds	6,225
Beds Under Construction	- 332
Total Resources	5,893
Unmet Need	- 602

RHCF Occupancy	***2008***	***2009***	***2010***
Elderwood Health Care at Linwood	**98.50%**	**97.70%**	**98.20%**
Elderwood Health Care at Riverwood	97.50%	98.70%	97.20%
Elderwood Health Care at Lakewood	97.00%	97.00%	97.00%
Buffalo General Hospital Deaconess SNF Div	97.70%	98.20%	96.50%
Erie County Medical Center-SNF	94.50%	94.60%	94.10%
Mercy Hospital Skilled Nursing Facility	93.70%	99.80%	93.40%
Millard Fillmore Skilled Nursing Facility	98.00%	97.50%	97.70%
Niagara Lutheran Home & Rehabilitation Center Inc.	96.30%	96.90%	96.10%
Hawthorn Health Multicare Center for Living	90.80%	90.70%	90.50%
St Catherine Laboure Health Care Center	97.70%	99.00%	97.50%
Delaware Nursing & Rehabilitation Center	88.10%	89.00%	87.80%
Harbour Health Multicare Center for Living	95.70%	97.70%	95.40%
Waterfront Health Care Center, Inc	98.90%	98.60%	98.70%
Ridge View Manor LLC	Did not report	Did not report	
Sheridan Manor LLC	Did not report	Did not report	
Mcauley Residence	95.70%	94.40%	95.40%
Schofield Residence	99.70%	99.00%	99.30%
Harris Hill Nursing Facility, LLC	98.50%	98.10%	97.90%
Elderwood Health Care at Linwood	98.50%	97.70%	98.20%
Erie County Home	97.60%	96.10%	97.40%
St Francis Home of Williamsville	90.60%	90.10%	90.30%
Elderwood Health Care at Oakwood	97.10%	96.60%	96.80%
Canterbury Woods	95.80%	86.70%	95.50%
Williamsville Suburban LLC	Did not report	Did not report	Did not report
Absolut Center for Nursing and Rehabilitation at Aurora Park, LLC	92.00%	90.50%	91.70%
Jennie B Richmond Chaffee Nursing Home Company Inc.	96.00%	95.90%	Did not report
Fiddlers Green Manor Nursing Home	91.80%	94.30%	91.50%
Autumn View Health Care Facility, LLC	97.60%	97.20%	97.30%
Father Baker Manor	93.40%	95.20%	93.20%
Absolut Center for Nursing and Rehabilitation at Orchard Park, LLC	94.60%	96.30%	94.30%
Fox Run at Orchard Park	39.50%	Did not report	39.40%

RHCF Occupancy	*2008*	*2009*	*2010*
Rosa Coplon Jewish Home and Infirmary	96.90%	95.40%	96.70%
Elderwood Health Care at Wedgewood	95.40%	94.20%	95.10%
Beechwood Homes	91.80%	97.60%	91.60%
Garden Gate Health Care Facility	97.60%	98.20%	97.10%
Elderwood Health Care at Maplewood	101.10%	102.70%	100.90%
Brothers of Mercy Nursing & Rehabilitation Center	97.20%	95.80%	96.90%
Absolut Center for Nursing and Rehabilitation at Eden, LLC	91.60%	91.20%	91.40%
Greenfield Health & Rehab Center	93.60%	94.30%	93.40%
Seneca Health Care Center	97.90%	98.90%	97.70%
Erie County	*95.30%*	*96.00%*	*94.80%*

Elderwood Health Care at Linwood had utilization rates of 97.7% for 2009 and 98.2% 2010.

Conclusion

The acquisition of Elderwood Health Care at Linwood by Post Acute Partners Acquisition, LLC will not result in any capacity or service changes.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Facility Information

	Existing	*Proposed*
Facility Name	Elderwood Health Care at Linwood	Elderwood at Lancaster
Address	1818 Como Park Boulevard Lancaster, NY 14086	same
RHCF Capacity	94	96 (upon completion of CON #101086-B)
ADHC Program Capacity	N/A	same
Type Of Operator	Corporation	Limited Liability Company
Class Of Operator	Proprietary	same
Operator	Linwood Health Care Center, Inc. d/b/a Elderwood Health Care at Linwood Stockholders Robert M. Chur 66% Carol L. Chur 25% Carla Suero 4.5% Kelly Henry 4.5%	1818 Como Park Boulevard Operating Company, LLC d/b/a Elderwood at Lancaster Members Warren Cole 50% Jeffrey Rubin 50%

Character and Competence

- FACILITIES REVIEWED:

ACU-acute care/hospital	ICF-intermediate care facility/group home
ALF-assisted living facility	IRF-intermediate rehabilitation facility (similar to SNF short term rehab)
HHA-home health agency	LTA-long term acute care hospital (similar to TCU)
HOM-homecare	RX-pharmacy

HOS-hospice SNF-skilled nursing facility/nursing home

(Note: actual dates of ownership may extend prior to 2003)

Alabama

*Laurelton Rehabilitation and Nursing Center**	*SNF*	*10/2006 to 5/2008*

California

San Joaquin Valley Rehabilitation Hospital	Hospital	7/2004-7/2004
Kenfield Rehabilitation Hospital	Hospital	8/2003-7/2004
Care Alternatives of California*	Hospice	2003-10/2009

Colorado

North Valley Rehabilitation Hospital (Haven Behavioral Sr. Care)	ACU-PSYCH	7/2003-8/2004
North Valley Rehabilitation Hospital (Vibra LTACH)	LTA	7/2003-8/2004
North Valley Rehabilitation Hospital (Vista View Care Center)	SNF	7/2003-8/2004

Connecticut

Danbury Health Care Center*	SNF	8/2003-10/2009
Darien Health Care Center*	SNF	8/2003-10/2009
Golden Hill Health Care Center*	SNF	8/2003-10/2009
Long Ridge of Stamford*	SNF	8/2003-10/2009
Newington Health Care Center*	SNF	8/2003-10/2009
Partners Pharmacy of Connecticut*	RX	2003-10/2009
River Glen Health Care Center (a/k/a Southbury HCC)*	SNF	8/2003-10/2009
The Highlands Health Care Center*	SNF	8/2003-10/2009
West River Health Care Center (a/k/a Milford North HCC)*	SNF	8/2003-10/2009
Westport Health Care Center*	SNF	8/2003-10/2009
Wethersfield Health Care Center*	SNF	8/2003-10/2009

Kansas

Care Alternatives of Kansas	HOS	2004-10/2009

Kentucky

Southern Kentucky Rehabilitation Hospital	IRF	5/2003-7/2004

Maryland

Montgomery Village Health Care Center	SNF	2003-10/2009

Massachusetts

Brookline Health Care Center*	SNF	8/2003-10/2009
Calvin Coolidge Nursing & Rehab Center for Northampton*	SNF	8/2003-10/2009
Care Alternatives of Massachusetts*	HOS	2005-10/2009
Concord Health Care Center*	SNF	8/2003-10/2009
Essex Park Rehabilitation & Nursing Center*	SNF	3/2005-10/2009
Holyoke Health Care Center*	SNF	8/2003-10/2009
Lexington Health Care Center*	SNF	8/2003-10/2009
Lowell Health Care Center*	SNF	8/2003-10/2009
Millbury Health Care Center*	SNF	8/2003-10/2009
New Bedford Health Care Center*	SNF	8/2003-10/2009
New Bedford Rehabilitation Hospital*	IRF	7/2003-8/2004
Newton Health Care Center*	SNF	8/2003-10/2009
North Shore Health Care Center*	SNF	8/2003-10/2009
Partners Pharmacy of Massachusetts*	RX	2004-10/2009
Peabody Glen Health Care Center*	SNF	8/2003-10/2009
Redstone Health Care Center (a/k/a East Longmeadow HCC)*	SNF	8/2003-10/2009
Weymouth Health Care Center*	SNF	8/2003-10/2009
Wilmington Health Care Center*	SNF	8/2003-10/2009

Michigan

Grand Blanc Rehabilitation & Nursing Center	SNF	10/2006-10/2009

Missouri

Care Alternatives of Missouri	HOS	2003-10/2009
Cliffview at Riverside Rehab & Nursing Center	SNF	10/2006-5/2008
Partners Pharmacy of Missouri*	RX	2003-10/2009

New Jersey

Bergen Care Home Health	HHA	2007-10/2009
Bergen Care Personal Touch	HOM	2007-10/2009
Care Alternatives of New Jersey	HOS	2001-10/2009
Care One at Dunroven	SNF	2001-10/2009
Care One at East Brunswick	SNF	2/2002-10/2009
Care One at Evesham	SNF	8/2000-10/2009
Care One at Evesham Assisted Living	ALF	10/2007-10/2009
Care One at Ewing	SNF	11/2004-10/2009
Care One at Hamilton	SNF	5/2002-10/2009
Care One at Holmdel	SNF	8/1997-10/2009
Care One at Jackson (a/k/a Jackson HCC)	SNF	2004-10/2009
Care One at King James	SNF	2003-10/2009
Care One at Livingston	SNF	10/2002-10/2009
Care One at Livingston Assisted Living	ALF	9/2005-10/2009
Care One at Madison Avenue	SNF	1/2005-10/2009
Care One at Moorestown	SNF	9/2003-10/2009
Care One at Harmony Village at Moorestown	ALF	8/2003-10/2009
Care One at Morris	SNF	8/2001-10/2009
Care One at Morris Assisted Living	ALF	3/2003-10/2009
Care One at Pine Rest	SNF	2001-10/2009
Care One at Raritan Bay MC	LTA	3/2004-10/2009
Care One Harmony Village at Moorestown	SNF	9/2003-10/2009
Care One at Teaneck	SNF	4/2007-10/2009
Care One at The Cupola	SNF	2001-10/2009
Care One at The Highlands	SNF	2001-10/2009
Care One at Valley	SNF	2001-10/2009
Care One at Wall	SNF	9/2004-10/2009
Care One at Wayne	SNF/ALF	6/2002-10/2009
Care One at Wellington	SNF	6/2002-10/2009
Marlton Rehabilitation Hospital	IRF	5/2003-7/2004
Oradell Health Care Center	SNF	2003-10/2009
Partners Pharmacy of New Jersey	RX	2001-10/2009
Somerset Valley Rehabilitation & Nursing Center	SNF	10/2009-10/2009
South Jersey Health Care Center	SNF	2003-10/2009
Woodcrest Health Care Center	SNF	2003-10/2009

North Carolina

Blue Ridge Health Care Center	SNF	8/2002-10/2009

Ohio

Bellbrook Health Care Center	SNF	2003-10/2009
The Rehabilitation & Nursing Center at Elm Creek	SNF	10/2006-10/2009
The Rehabilitation & Nursing Center at Firelands	SNF	10/2006-10/2009
The Rehabilitation & Nursing Center at Spring Creek	SNF	10/2006-10/2009

Pennsylvania

Care Alternatives of Pennsylvania	HOS	2003-10/2009
Pediatric Specialty Care at Doylestown	SNF	2/2011-present
Pediatric Specialty Care at Hopewell	PED ICF	2/2011-present

Pediatric Specialty Care at Lancaster	PED ICF	2/2011-present
Pediatric Specialty Care at Point Pleasant	PED ICF	2/2011-present
Pediatric Specialty Care at Quakertown	PED ICF	2/2011-present
Presque Isle Rehabilitation & Nursing Center	SNF	10/2006-10/2009
Senior Living of Lancaster	HOM	2/2011-present
The Rehabilitation & Nursing Center at Greater Pittsburg	SNF	10/2006-10/2009
Puerto Rico		
Medicare Y Mucho Mas*	Medicare Agency	2005-11/2009
Rhode Island		
Scallop Shell Nursing & Rehabilitation Center	SNF	12/2010-present
Virginia		
Care Alternatives of Virginia*	HOS	4/2002-10/2009
Colonial Heights Health Care Center*	SNF	4/2002-10/2009
Glenburnie Rehabilitation & Nursing Center*	SNF	4/2002-10/2009
Hopewell Health Care Center*	SNF	4/2002/10/2009
Partners Pharmacy of Virginia*	RX	4/2002-10/2009
Valley Health Care Center*	SNF/ALF	4/2002-10/2009
Westport Health Care Center*	SNF	4/2002-10/2009

Individual Background Review

Jeffrey Rubin is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospital, home health agencies and institutional pharmacies. Prior to founding Post-Acute Partners, Dr. Rubin served as Executive Vice President Business Development for Care One Management, LLC/Healthbridge Management, LLC from 2000-2009. Previous to his involvement with Care One, Dr. Rubin served as President of Millenium Healthcare, Inc. which was the precursor to Care One. Dr. Rubin was formerly a practicing dentist, with his license currently inactive. Dr. Rubin has had extensive health facility operational and real estate interests, which are listed above.

Warren Cole is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospital, home health agencies and institutional pharmacies. Prior to founding Post Acute Partners, LLC Mr. Cole was involved with Care Ventures, Inc., an investment firm which acquires operational and real estate interests in nursing homes and provides financing to health care facilities throughout the United States. Mr. Cole also served as Chief Financial Officer at Aveta, Inc., a health insurance company, from 2007-2010. Dr. Cole has had extensive health facility operational and real estate interests, which are listed above.

Character and Competence – Analysis:
No adverse information for the proposed members has been received.

In order to make a determination on whether a substantially consistent high level of care has been provided at the health facilities/agencies subject to review, a ten year review of the enforcement history for each is undertaken. A positive finding would result from concluding that there were no repeat enforcement actions causing harm to residents of a facility/agency for the same issue, during the past ten years or for the years of ownership. For the subject application adequate surveillance documentation with which to make a global finding cannot be obtained due to staffing issues at multiple states. To date staff and the applicant have exhausted their efforts to obtain the necessary documentation, with the outcome that adequate information is available for only 60 out of the total 100 disclosed health facility interests.

For those health facilities/agency for which there is inadequate documentation, denoted by an asterisk (*) in the above listing, no negative information regarding the operator's track record has been received. In addition the applicants have submitted affidavits regarding the incomplete surveillance history, in which they attest to the following:

> *During the applicable period identified…, the Entities may have been surveyed by the applicable state regulatory authority. Statements of Deficiencies may have been issued, and enforcement action(s) resulting in the payment of a fine may have been assessed. However, to my knowledge, during the applicable period…, the Entities have not (i) received enforcement actions for repeat deficiencies that were not remedied within timeframes required by applicable law or (ii) had a license or certificate issued by a state or federal regulatory authority suspended, terminated, revoked, denied, or annulled. Further, to my knowledge, there are no currently pending federal or state enforcement actions against the Entities …*

For those facilities for which there was complete information available for review, staff concludes that a substantially consistent high level of care has been provided.

The following summarizes the review outcome for each state:

A review of the **Alabama** facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the **California** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of California for which there is insufficient documentation to make a finding.

A review of the **Colorado** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Connecticut** facilities noted above indicates there is insufficient documentation with which to make a finding. The following seven Connecticut facilities owned by the principles were the subject of a Chapter 11 bankruptcy action:

Danbury Health Care Center
Darien Health Care Center
Long Ridge of Stamford
Newington Health Care Center
West River Health Care Center
Westport Health Care Center
Wethersfield Health Care Center

A review of the **Kansas** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Kentucky** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Maryland** facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Massachusetts** facilities noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Missouri** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Partners Pharmacy of Missouri for which there is insufficient documentation to make a finding.

A review of the **New Jersey** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **North Carolina** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Ohio** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Pennsylvania** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of Pennsylvania, for which there is insufficient documentation to make a finding.

A review of the **Puerto Rico** health related agency noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Rhode Island** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Virginia** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Colonial Heights Health Care Center, Glenburnie Rehabilitation & Nursing Center, Hopewell Health Care Center, Valley Health Care Center and Westport Health Care Center, for which there is insufficient documentation to make a finding.

If able to base our judgment solely on the documentation received from other states, the Department would be able to render a positive finding as to the character and competence of the applicants. We must, however, deal with a larger record, one which lacks sufficient documentation, by the Department's standards for analysis, of the applicants' operation of 35 facilities in five different states. However, it should be made clear that while these five states could not provide our customarily needed level of detail on operating history, we did not receive any negative findings that would warrant disapproval of this application; and we did receive indications of acceptable operating experience. The Department believes it reasonable to infer from these facts that the applicants have provided a sufficiently high level of care at the facilities they have operated.

Project Review

There are no proposed changes in either the program or physical environment of the facility. No administrative services/consulting agreement is proposed in this application.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Background

The proposed change in ownership is part of a nine residential health care facilities, five adult care facilities, two independent housing companies, and related real property companies acquisition, involving Linwood Health Care Center, Inc., the operator, and LPC at Linwood LLC, the owner of the realty and the proposed new owner/operator Post Acute Partners Acquisitions, LLC, an existing for profit limited liability company, which will be assigning its right and title to the operations and the real estate to 1818 Como Park Boulevard Operating Company, LLC, d/b/a Elderwood at Lancaster and 1818 Como Park Boulevard, LLC respectively.

The five adult care facilities will be reviewed by the Division of Long Term Care and therefore, are being reviewed separately from the nursing home application. The independent housing companies as well, are not being addressed in these reviews. The information provided regarding the independent housing companies is to delineate them from the total project cost for the overall application.

The proposed members are also seeking establishment approval to concurrently acquire ownership of the following related residential health care facilities, also part of the facilities acquisition, through the applications listed below:

CON	Applicant	Facility	Beds
111456-E	4800 Bear Road Operating Company, LLC, d/b/a Elderwood at Liverpool	Birchwood Health Care Center, Inc. d/b/a Elderwood Health Care at Birchwood	160
111467-E	4459 Bailey Avenue Operating Company, LLC d/b/a Elderwood at Amherst	Wedgewood Health Care Center, Inc. d/b/a Elderwood Health Care at Wedgewood	92
111468-E	2850 Grand island Boulevard Operating Company, LLC d/b/a Elderwood at Grand Island	Riverwood Health Care Center, Inc. d/b/a Elderwood Health Care at Riverwood	90
111470-E	5775 Maelou Drive Operating Company, LLC d/b/a Elderwood at Hamburg	Lakewood Health Care Center, Inc. d/b/a Elderwood Health Care at Lakewood	166
111469-E	225 Bennett Road Operating Company, LLC d/b/a Elderwood at Cheektowaga	Maplewood Health Care Center, Inc. d/b/a Elderwood Health Care at Maplewood	170
111471-E	37 North Chemung Street Operating Company, LLC d/b/a Elderwood at Waverly	Elderwood Health Care at Tioga, LLC d/b/a Elderwood Health Care at Tioga	200
111466-E	2600 Niagara Falls Boulevard Operating Company, LLC d/b/a Elderwood at Wheatfield	Crestwood Health Care Center, Inc. d/b/a Elderwood Health Care at Crestwood	160
111463-E	200 Bassett Road Operating Company, LLC d/b/a Elderwood at Williamsville	Oakwood Health Care Center, Inc. d/b/a Elderwood Health Care at Oakwood	200

The applicant has provided an affidavit, which states that 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 the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently, the facility has no outstanding Medicaid audit liabilities.

All nine applications will be processed concurrently.

Asset Purchase Agreement

The change in ownership will be effectuated in accordance with the terms of the executed Asset Purchase Agreement, summarized below. This agreement is for the nine residential health care facility, five adult care facility, two independent housing company and related real property companies acquisition.

Date:	February 25, 2011
Sellers (Nursing Home Operations):	Wedgewood Health Care Center, LLC, Maplewood Health Care Center, Inc., Riverwood Health Care Center, Inc., Lakewood Health Care Center, Inc., Linwood Health Care Center, Inc., Crestwood Health Care Center, Inc., Oakwood Health Care Center, Inc., Birchwood Health Care Center, Inc., Elderwood Health Care Center at Tioga, LLC
Sellers (Nursing Home Real Estate):	Wedgewood SNF Property Company, LLC, Maplewood Property Associates,

	L.P., Riverwood Property Associates, L.P., Elderwood Affiliates, Inc., LPC at Linwood LLC, Crestwood Development, LLC, Oakwood Property Associates, L.P., Tioga Property Company North, LLC
Purchaser:	Post Acute Partners Acquisition, LLC
Purchased Assets:	All right, title and interest of the above operations and Woodmark Services, Inc. in and to all supplies used in the facilities operations. All assumed Contracts, Admission agreements, assignable licenses, right, title and interest in trade marks, dress and names and services marks used in the facilities operations, specifically "Elderwood" and "Elderwood Senior Care" and the service mark "Care Without Compromise"; all phone and fax numbers, email addresses domain names, P.O. boxes and software used for the facilities operations. All books, data and records for the facilities, (except where transfer is prohibited) all employee records, but only for transitioned employees (excluding the seller's financial books and records). All right, title and interest in all vehicles located at the respective facilities owned or operated by it or used in connection therewith and in all furniture, furnishings, equipment, computers and office equipment and supplies located at the corporate offices. All right, title and interest of Elderwood Transportation Company, LLC in all tangible and intangible personal property and all right, title and interest of each seller in any and all other items of tangible and intangible personal property used or useful in connection with the facilities operations and all the facilities goodwill.
Excluded Assets:	The Heathwood and Penfield facilities owned and operated by affiliates of seller, including all assets, the names "Heathwood Health Care Center, Inc. d/b/a Elderwood Health Care at Heathwood" and "Elderwood Assisted Living at Penfield, LLC" and operations thereof; all assets relating to pharmacy operations of Woodmark pharmacy, Inc.; All assets of the KABA division of Woodmark services, Inc and the provider agreement and provider number of Woodmark services, Inc.; Real property comprising seller's corporate offices, located in Williamsville, NY at 7 Limestone Drive, 1142 Wehrle Drive and 1150 Wehrle Drive; all of seller's bank accounts, cash, cash equivalents and securities except to the extent any portion thereof is subject to the proration or reconciliation procedures set forth herein; all replacement and tax escrow reserves, utility deposits and workers compensation trust assets of seller; all prepaid expenses, all vehicles, office furniture, computers and cell phones used by Robert M. Chur and/or Carla Chur Suero; all accounts receivable prior to the effective time, except as otherwise expressly provided in this agreement, all refunds or reimbursements for the period prior to the effective time and all deposits, escrowed funds and similar funds; except otherwise expressly provided in this agreement, all claims, disputes and litigation, and all amounts of any nature or description relating thereto for the period prior to the effective time; all receivables from any affiliate of seller, all of seller's rights and benefits under this agreement; seller's organizational documents relating solely to the existence of each of the entities comprising seller as separate legal entity; seller's right to the grant proceeds associated with the HEAL projects; except to the extent included in the patient records or the employee records' seller's general ledgers and trial balances and all other financial journal and ledgers and statements, for any of the foregoing.
Liabilities Assumed :	The applicable Real liabilities under the mortgages listed on schedule 1.6(a)(the aggregate outstanding balance of any mortgage debt described on schedule 1.6(a) or (b) assumed or taken by applicable real estate purchaser referred to as the assumed debt") assume the obligations and liabilities under the Birchwood Lease for periods after the effective time, subject to obtaining required consents in respect of each of the mortgages comprising assumed debt and the Birchwood landlord under the Birchwood lease; (ii) New operator will assume the assumed contracts and admissions agreements, only to the extent they are for periods after the effective time and (iii) Each applicable real estate purchaser shall exercise its respective commercially reasonable efforts to assume or take title subject to the mortgages listed on schedule 1.6 (a) and

	obtain any and all required consents in connection therewith. Seller shall retain, promptly pay and discharge in the ordinary course all liabilities and obligations of seller other than the assumed liabilities.
Excluded Liabilities:	Seller's accounts payable and all obligations for the facilities operation prior to the effective time including costs, expenses and other liabilities and obligations from the facilities operation except as set forth in sections 4.1(b) and 4.12, obligation under any collective bargaining agreement, employment agreement, pension or retirement plan, profit sharing plan, stock plan, compensation obligation or agreement or severance pay plan or agreement and any other employee benefit plan and liability for any taxes (except taxes prorated in accordance with section 10.3 (a)) any accounts payable or other obligations accruing to and existing as of the effective time are and shall remain the seller's sole obligation and responsibility.
Purchase Price:	$141,150,000 for the Nine Residential Health Care facility, five adult care facility and two independent housing company and related real property companies acquisition.
Purchase Price for this operation and real estate:	$3,673,042 with $1,423,042 allocated to the operations purchase price and $2,250,000 allocated to the real estate purchase price.
Payment of Purchase Price:	Through three loans one for $2,962,900 at 30 years at 5.5% interest, a subordinated loan for $536,673 at 10% for 7 Years and one for $173,469 for 7 years interest only.

Below is the breakout of the purchase price for all of the facilities by facility category with a final table showing the total purchase price for the full operations and real estate transfer.

Residential Health Care Facilities

CON	Applicant	Facility	Real Estate Purchase Price	Operations Purchase Price	Total Purchase Price
111467-E	4459 Bailey Avenue Operating Company, LLC d/b/a Elderwood at Amherst	Wedgewood Health Care Center, Inc. d/b/a Elderwood Health Care at Wedgewood	$6,500,000	$3,383,566	$9,883,566
111468-E	2850 Grand Island Boulevard Operating Company, LLC d/b/a Elderwood at Grand Island	Riverwood Health Care Center, Inc. d/b/a Elderwood Health Care at Riverwood	$4,700,000	$2,951,514	$7,651,514
111470-E	5775 Maelou Drive Operating Company, LLC d/b/a Elderwood at Hamburg	Lakewood Health Care Center, Inc. d/b/a Elderwood Health Care at Lakewood	$6,700,000	$4,094,870	$10,794,870
111462-E	1818 Como Park Boulevard Operating Company, LLC d/b/a Elderwood at Lancaster	Linwood Health Care Center, Inc. d/b/a Elderwood Health Care at Linwood	$2,250,000	$1,423,042	$3,673,042

111456-E	4800 Bear Road Operating Company, LLC d/b/a Elderwood at Liverpool	Birchwood Health Care Center, Inc. d/b/a Elderwood Health Care at Birchwood	N/A	$7,730,857	$7,730,857
111469-E	225 Bennett Road Operating Company, LLC d/b/a Elderwood at Cheektowaga	Maplewood Health Care Center, Inc. d/b/a Elderwood Health Care at Maplewood	$8,300,000	$1,660,484	$9,960,484
111466-E	2600 Niagara Falls Boulevard Operating Company, LLC d/b/a Elderwood at Wheatfield	Crestwood Health Care Center, Inc. d/b/a Elderwood Health Care at Crestwood	$9,100,000	$1,182,776	$10,282,776
111463-E	200 Bassett Road Operating Company, LLC d/b/a Elderwood at Williamsville	Oakwood Health Care Center, Inc. d/b/a Elderwood Health Care at Oakwood	$6,800,000	$5,271,383	$12,071,383
111471-E	37 North Chemung Street Operating Company, LLC d/b/a Elderwood at Waverly	Elderwood Health Care at Tioga, LLC d/b/a Elderwood Health Care at Tioga	$5,400,000	$2,678,288	$8,078,288
Total Residential Health Care Facilities			*$49,750,000*	*$30,376,780*	*$80,126,780*

Adult Care Facilities

Facility Name	Purchase Price
Glenwood	$10,024,265
Maplewood ALF	$7,028,868
Rosewood	$8,337,181
Tioga ALF	$3,904,780
Westwood	$14,494,740
Total Adult Care Facilities Purchase Price	$43,789,834

Independent Housing Facilities

Facility Name	Purchase Price
Crestwood ILF	$12,590,237
Maplewood ILF	$4,993,149
Total Independent Housing Facilities Purchase Price	$17,583,386

Total Purchase Price

Operations and Real Estate	Purchase Price
Residential Health Care Facilities	$80,126,780
Adult Care Facilities	$43,789,834
Independent Housing Facilities	$17,583,386
Total Purchase Price	$141,500,000

Assignment Agreement

The change in operational and realty ownership will be effectuated in accordance with a draft assignment agreement, the terms of which are summarized below:

Effective Date:	Upon CON Approval by DOH
Assignor:	Post Acute Partner's Acquisition, LLC
Assignee:	1818 Como Park Boulevard, LLC
Operating Designee:	1818 Como Park Boulevard Operating Company, LLC, d/b/a Elderwood at Lancaster
Assets Assigned:	Assignor's right, title and interest as Buyer under the Purchase Agreement with respect to the Assigned Property.
Obligations Assigned:	Assumes all obligations on the part of the Buyer to be performed under Purchase Agreement relating to the Assigned Property.

The members of the proposed reality entities 2850 Grand Island Boulevard, LLC, 225 Bennett Road, LLC, 200 Bassett Road, LLC, 5775 Maelou Drive, LLC,

1818 Como Park Boulevard, LLC, 4800 Bear Road, LLC, 37 North Chemung Street, LLC, 2600 Niagara falls Boulevard, LLC and 4459 Bailey Avenue, LLC; are as follows:

Proposed Members	Percentage Ownership
Warren Cole	50%
Dr. Jeffrey Rubin, D.D.S.	50%

Lease Agreement and Medicaid Capital Reimbursement

Facility occupancy is subject to a draft lease agreement, the terms of which are summarized as follows:

Effective Date:	Upon CON Approval by DOH
Premises:	A 94-bed RHCF located at 1818 Como Park Boulevard, Lancaster, NY (Erie County)
Lessor:	1818 Como Park Boulevard, LLC
Lessee:	1818 Como Park Boulevard Operating Company, LLC, d/b/a Elderwood at Lancaster
Term:	10 years commencing on the execution of the lease with four (5 year extensions)
Annual Rental:	Lease payment is equivalent to the annual mortgage debt service for the facility, which is $333,181.
Type:	Triple net lease.

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the landlord and operating entity.

Currently, the facility Medicaid capital reimbursement is based on the return of and return on equity for recent improvements. This methodology will not be altered upon change in ownership.

Operating Budget

Following is a summary of the submitted operating budget for the RHCF, presented in 2011 dollars, for the first year subsequent to change in ownership:

	Per Diem	Total
Revenues:		
Medicare Fee For Service	$346.93	$1,394,326
Medicaid Fee For Service	170.02	$4,151,311
Private Pay	322.64	$1,635,907
Total Revenue		$7,181,544
Expenses:		
Operating		$6,468,702
Capital		361,639
Total Expense		$6,830,341
Net Income		$351,203
Utilization (Patient days)		33,354
Occupancy		97.21%

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

- Overall utilization is projected at 97.21%, which is consistent with historical. Utilization by payor source is expected as follows:

Medicaid	73.21%
Medicare	12.05%
Private Pay	14.74%

- Breakeven utilization is projected at 93.10%.

Capability and Feasibility

The purchase price and initiation of operations, as a financially viable entity, will be financed by a loan from Capital Funding, LLC of $2,962,900 at an interest rate of 5.50% for 30 years, with the remaining $536,673 from a subordination loan at an interest rate of 10% for 7 years, and $173,469 seller's notes that is interest only.

Working capital requirements are estimated at $1,138,390, based on two months' of first year expenses. $569,223 will by satisfied from the proposed member's equity, and the remaining $569,167 will be satisfied through a loan from Capital Funding, LLC at 5.00% over 5 years. A letter of interest has been supplied by Capital Funding, LLC. Presented as BFA Attachment A, is the Net Worth of proposed members.

The issue of feasibility is centered on the applicant's ability to offset expenses with revenues and maintain a viable operating entity. The submitted budget indicates that a net income of $351,203 would be maintained during the first year following change in ownership. The budget appears reasonable.

Presented as BFA Attachment B, is the pro-forma balance sheet of, which indicates positive members' equity of $569,223 as of the first day of operations.

Following is a comparison of 2010, and projected revenue and expense:

Annual 2010 Income	$7,435,475
Annual 2010 Expense	6,974,316

Annual 2010 Net Income	$461,159
Projected incremental Income	($253,931)
Projected incremental Expense	($143,975)
Projected incremental Net Income (Loss)	($109,956)
Incremental Net Income (Loss)	$351,203

Projected income includes revenues at budgeted occupancy and payor source, to accommodate Medicaid access requirements, as well as the difference between current year and projected levels. Projected expenses include acquisition capital expenses, expenses at budgeted occupancy, and the difference between current year and projected levels.

As shown on BFA Attachment C, Elderwood Health Care at Linwood had an average negative working capital position, an average negative net asset position and generated an average net Income of $94,366 for the period 2008-2010.

The 2009 loss is attributable to an increase in expenses of approximately 11% from 2008 to 2009 with an approximate 4.4% increase in revenues from 2008. To rectify this, the facility instituted controls on its operating budget and decreased its expenses in 2010 by approximately 4.3% compared to 2009, which resulted in a positive net income for 2010.

Based on the proceeding, 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	Pro-forma Balance Sheet
BFA Attachment C	Financial Summary - Elderwood Health Care at Linwood
BFA Attachment D	Organizational Chart
BFA Attachment E	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 5th day of April, 2012, 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 1818 Como Park Boulevard Operating Company, LLC d/b/a Elderwood at Lancaster as the new operator of Elderwood Health Care at Linwood, 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:
111462-E	1818 Como Park Boulevard Operating Company, LLC d/b/a Elderwood at Lancaster

APPROVAL CONTINGENT UPON:

1. Submission of documentation of project completion of CON #101086-B. [PMU]
2. Submission of a loan commitment for working capital that is acceptable to the Department of Health. [BFA]
3. Submission of a commitment that is acceptable to the Department, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
4. Submission of an executed building lease that is acceptable to the Department. [BFA]
5. Submission of an executed assignment agreement that is acceptable to the Department. [BFA]
6. Submission of an original affidavit from the applicant members (or stockholders or partners) making a commitment to personally fund the balloon payment on the proposed mortgage, should terms acceptable to the Department of Health be unavailable at the time of refinancing. [BFA]
7. Submission of photocopies of the applicant's Articles of Organization, as filed with the Department of State and of a fully executed and dated Certificate of Amendment to the applicant's Articles of Organization, which must be acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's fully executed and dated Operating Agreement, which must be acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's fully executed Certificate of Assumed Name, which must be acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's fully executed and dated sublease agreement, including the consent of the Landlord (as such term is defined below), which must be acceptable to the Department. [CSL]
11. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of Post Acute Partners Acquisition, LLC (Post Acute Partners), as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
12. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of Post Acute Partners, which must be acceptable to the Department. [CSL]
13. Submission of a list of all members and managers of Post Acute Partners, which must be acceptable to the Department. [CSL]
14. Submission of a photocopy of that certain Amended and Restated Deposit Escrow Agreement, as described in "Whereas Clause D" of the Asset Purchase Agreement between Post Acute Partners, as Purchaser, and various other entities, as Seller, dated February 25, 2011, which must be acceptable to the Department. [CSL]
15. Submission of a photocopy of a fully executed and dated Assignment of Rights between Post Acute Partners, the applicant and the owner of the real property on which the facility is located (Landlord), which must be acceptable to the Department. [CSL]
16. Submission of a photocopy of the proposed Bill of Sale, and any other transfer documents, between the applicable Seller and the applicant, pursuant to which the operating assets of the facility will be transferred to the applicant, which must be acceptable to the Department. [CSL]
17. Submission of a photocopy of the Lease pursuant to which Post Acute Partners has a leasehold interest in the real property on which the facility is located and the detailed explanation as to why the real property will not be owned by an affiliate of the applicant as is the case with all of the related Elderwood applications, which must be acceptable to the Department. [CSL]

18. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of the Landlord, as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
19. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of the Landlord, which must be acceptable to the Department. [CSL]
20. Submission of a list of all members and managers of the Landlord, which must be acceptable to the Department. [CSL]
21. Submission of photocopies of any agreements, documents, or arrangements between or among the applicant, Post Acute Partners, the Landlord, and/or any other entity (including, but not limited to, any affiliate or subsidiary), jointly and severally, directly or indirectly, relating to the ownership or operation of the facility. [CSL]

<u>APPROVAL CONDITIONAL UPON:</u>

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 # 111463-E
20 Bassett Road Operating Company, LLC d/b/a Elderwood at Williamsville

County: **Erie (Williamsville)**
Purpose: **Establishment**
Program: **Residential Health Care Facility**
Submitted: **May 27, 2011**

Executive Summary

Description
200 Bassett Road Operating Company, LLC, d/b/a Elderwood at Williamsville, is seeking approval to be established as the new operator of Oakwood Health Care Center, Inc. d/b/a Elderwood Health Care at Oakwood, an existing 200-bed RHCF located at 200 Bassett Road, Williamsville. Oakwood Property Associates, LP is the current realty owner. Ownership before and after the requested change is as follows:

Operations:

Before	
Oakwood Health Care Center, Inc. d/b/a Elderwood Health Care at Oakwood	
Member	Interest
-- Robert M. Chur	66.00%
-- Carol Chur	25.00%
-- Carla Chur Suero	4.50%
-- Kelly Chur Henry	4.50%
After	
200 Bassett Road Operating Company, LLC. d/b/a Elderwood at Williamsville	
Members	Interest
-- Warren Cole	50.00%
-- Dr. Jeffrey Rubin, D.D.S.	50.00%

Real Estate:

Before	
Oakwood Property Associates, L.P.	
Member	Interest
-- Robert M. Chur	65.25%
-- Carol L. Chur	24.75%
-- Carla Chur Suero	4.50%
-- Kelly Chur Henry	4.50%
-- Elderwood Properties, LLC	1.00%
After	
200 Bassett Road, LLC	
Members	Interest
-- Warren Cole	50.00%
-- Dr. Jeffrey Rubin, D.D.S.	50.00%

The proposed change in ownership is part of an acquisition involving nine RHCFs, five adult care facilities, two independent housing companies, and related real property companies.

Post Acute Partners Acquisitions, LLC, an existing for-profit limited liability company, will be assigning its right and title to the operations and real estate to 200 Bassett Road Operating Company, LLC d/b/a Elderwood at Williamsville and 200 Bassett Road, LLC, respectively.

DOH Recommendation
Contingent approval

Need Summary
Elderwood Health Care at Oakwood's utilization for 2009 and 2010 was 96.6% and 96.8%, respectively. There will be no change in the beds or services of the Elderwood Health Care at Oakwood facility as a result of this project.

Program Summary
Based on actual documentation received from other states and on indications of acceptable operating experience where full documentation was not available, and on affidavits submitted by the applicants, a positive finding as to character and competence can be made.

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

Budget:		
	Revenues:	*$ 18,197,469*
	Expenses:	*16,323,319*
	Gain/(Loss):	*$ 1,874,150*

Subject to 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 documentation of project completion of CON #111093-L. [PMU]
2. Submission of a loan commitment for working capital that is acceptable to the Department of Health. [BFA]
3. Submission of a commitment that is acceptable to the Department, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
4. Submission of an executed building lease that is acceptable to the Department. [BFA]
5. Submission of an executed assignment agreement that is acceptable to the Department. [BFA]
6. Submission of an original affidavit from the applicant members (or stockholders or partners) making a commitment to personally fund the balloon payment on the proposed mortgage, should terms acceptable to the Department of Health be unavailable at the time of refinancing. [BFA]
7. Submission of photocopies of the applicant's Articles of Organization, as filed with the Department of State and of a fully executed and dated Certificate of Amendment to the applicant's Articles of Organization, which must be acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's fully executed and dated Operating Agreement, which must be acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's fully executed Certificate of Assumed Name, which must be acceptable to the Department. [CSL]
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20. Submission of a list of all members and managers of the Landlord, which must be acceptable to the Department. [CSL]
21. Submission of photocopies of any agreements, documents, or arrangements between or among the applicant, Post Acute Partners, the Landlord, and/or any other entity (including, but not limited to, any affiliate or subsidiary), jointly and severally, directly or indirectly, relating to the ownership or operation of the facility. [CSL]

Council Action Date

April 5, 2012.

Need Analysis

Background

200 Bassett Road Operating Company, LLC, d/b/a Elderwood at Williamsville, is seeking approval to be established as the new operator of Oakwood Health Care Center, Inc. d/b/a Elderwood Health Care at Oakwood, an existing 200-bed RHCF located at 200 Bassett Road, Williamsville (Erie County).

There will be no change in the beds or services of the Elderwood Health Care at Oakwood facility as a result of this project.

Analysis

RHCF Bed Need – Erie County	
2016 Projected Need	5,291
Current Beds	6,225
Beds Under Construction	- 332
Total Resources	5,893
Unmet Need	- 602

RHCF Occupancy	***2008***	***2009***	***2010***
Elderwood Health Care at Oakwood	**97.10%**	**96.60%**	**96.80%**
Elderwood Health Care at Linwood	98.50%	97.70%	98.20%
Elderwood Health Care at Riverwood	97.50%	98.70%	97.20%
Elderwood Health Care at Lakewood	97.00%	97.00%	97.00%
Buffalo General Hospital Deaconess SNF Div	97.70%	98.20%	96.50%
Erie County Medical Center-SNF	94.50%	94.60%	94.10%
Mercy Hospital Skilled Nursing Facility	93.70%	99.80%	93.40%
Millard Fillmore Skilled Nursing Facility	98.00%	97.50%	97.70%
Niagara Lutheran Home & Rehabilitation Center Inc	96.30%	96.90%	96.10%
Hawthorn Health Multicare Center for Living	90.80%	90.70%	90.50%
St Catherine Laboure Health Care Center	97.70%	99.00%	97.50%
Delaware Nursing & Rehabilitation Center	88.10%	89.00%	87.80%
Harbour Health Multicare Center for Living	95.70%	97.70%	95.40%
Waterfront Health Care Center, Inc	98.90%	98.60%	98.70%
Ridge View Manor LLC	Did not report	Did not report	
Sheridan Manor LLC	Did not report	Did not report	
Mcauley Residence	95.70%	94.40%	95.40%
Schofield Residence	99.70%	99.00%	99.30%
Harris Hill Nursing Facility, LLC	98.50%	98.10%	97.90%
Elderwood Health Care at Linwood	98.50%	97.70%	98.20%
Erie County Home	97.60%	96.10%	97.40%
St Francis Home of Williamsville	90.60%	90.10%	90.30%
Elderwood Health Care at Oakwood	97.10%	96.60%	96.80%
Canterbury Woods	95.80%	86.70%	95.50%
Williamsville Suburban LLC	Did not report	Did not report	Did not report
Absolut Center for Nursing and Rehabilitation at Aurora Park, LLC	92.00%	90.50%	91.70%
Jennie B Richmond Chaffee Nursing Home Company Inc	96.00%	95.90%	Did not report
Fiddlers Green Manor Nursing Home	91.80%	94.30%	91.50%
Autumn View Health Care Facility, LLC	97.60%	97.20%	97.30%
Father Baker Manor	93.40%	95.20%	93.20%
Absolut Center for Nursing and Rehabilitation at Orchard Park, LLC	94.60%	96.30%	94.30%
Fox Run at Orchard Park	39.50%	Did not report	39.40%

RHCF Occupancy	*2008*	*2009*	*2010*
Rosa Coplon Jewish Home and Infirmary	96.90%	95.40%	96.70%
Elderwood Health Care at Wedgewood	95.40%	94.20%	95.10%
Beechwood Homes	91.80%	97.60%	91.60%
Garden Gate Health Care Facility	97.60%	98.20%	97.10%
Elderwood Health Care at Maplewood	101.10%	102.70%	100.90%
Brothers of Mercy Nursing & Rehabilitation Center	97.20%	95.80%	96.90%
Absolut Center for Nursing and Rehabilitation at Eden, LLC	91.60%	91.20%	91.40%
Greenfield Health & Rehab Center	93.60%	94.30%	93.40%
Seneca Health Care Center	97.90%	98.90%	97.70%
Erie County	*95.30%*	*96.00%*	*94.80%*

Elderwood Health Care at Oakwood had utilization rates of 96.6% for 2009 and 96.8% 2010.

Conclusion

The acquisition of Elderwood Health Care at Oakwood by Post Acute Partners Acquisition, LLC will not result in any capacity or service changes.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Facility Information

	Existing	*Proposed*
Facility Name	Elderwood Health Care at Oakwood	Elderwood at Williamsville
Address	200 Bassett Road Williamsville, NY 14221	same
RHCF Capacity	200	200
ADHC Program Capacity	N/A	same
Type Of Operator	Corporation	Limited Liability Company
Class Of Operator	Proprietary	same
Operator	Oakwood Health Care Center, Inc. d/b/a Elderwood Health Care at Oakwood Stockholders Robert M. Chur 66% Carol L. Chur 25% Carla Suero 4.5% Kelly Henry 4.5%	200 Bassett Road Operating Company, LLC d/b/a Elderwood at Williamsville Members Warren Cole 50% Jeffrey Rubin 50%

Character and Competence

- FACILITIES REVIEWED:

ACU-acute care/hospital	ICF-intermediate care facility/group home
ALF-assisted living facility	IRF-intermediate rehabilitation facility (similar to SNF short term rehab)
HHA-home health agency	LTA-long term acute care hospital (similar to TCU)
HOM-homecare	RX-pharmacy
HOS-hospice	SNF-skilled nursing facility/nursing home

(Note: actual dates of ownership may extend prior to 2003)

Alabama

*Laurelton Rehabilitation and Nursing Center**	*SNF*	*10/2006 to 5/2008*

California

San Joaquin Valley Rehabilitation Hospital	Hospital	7/2004-7/2004
Kenfield Rehabilitation Hospital	Hospital	8/2003-7/2004
Care Alternatives of California*	Hospice	2003-10/2009

Colorado

North Valley Rehabilitation Hospital (Haven Behavioral Sr. Care)	ACU-PSYCH	7/2003-8/2004
North Valley Rehabilitation Hospital (Vibra LTACH)	LTA	7/2003-8/2004
North Valley Rehabilitation Hospital (Vista View Care Center)	SNF	7/2003-8/2004

Connecticut

Danbury Health Care Center*	SNF	8/2003-10/2009
Darien Health Care Center*	SNF	8/2003-10/2009
Golden Hill Health Care Center*	SNF	8/2003-10/2009
Long Ridge of Stamford*	SNF	8/2003-10/2009
Newington Health Care Center*	SNF	8/2003-10/2009
Partners Pharmacy of Connecticut*	RX	2003-10/2009
River Glen Health Care Center (a/k/a Southbury HCC)*	SNF	8/2003-10/2009
The Highlands Health Care Center*	SNF	8/2003-10/2009
West River Health Care Center (a/k/a Milford North HCC)*	SNF	8/2003-10/2009
Westport Health Care Center*	SNF	8/2003-10/2009
Wethersfield Health Care Center*	SNF	8/2003-10/2009

Kansas

Care Alternatives of Kansas	HOS	2004-10/2009

Kentucky

Southern Kentucky Rehabilitation Hospital	IRF	5/2003-7/2004

Maryland

Montgomery Village Health Care Center	SNF	2003-10/2009

Massachusetts

Brookline Health Care Center*	SNF	8/2003-10/2009
Calvin Coolidge Nursing & Rehab Center for Northampton*	SNF	8/2003-10/2009
Care Alternatives of Massachusetts*	HOS	2005-10/2009
Concord Health Care Center*	SNF	8/2003-10/2009
Essex Park Rehabilitation & Nursing Center*	SNF	3/2005-10/2009
Holyoke Health Care Center*	SNF	8/2003-10/2009
Lexington Health Care Center*	SNF	8/2003-10/2009
Lowell Health Care Center*	SNF	8/2003-10/2009
Millbury Health Care Center*	SNF	8/2003-10/2009
New Bedford Health Care Center*	SNF	8/2003-10/2009
New Bedford Rehabilitation Hospital*	IRF	7/2003-8/2004
Newton Health Care Center*	SNF	8/2003-10/2009
North Shore Health Care Center*	SNF	8/2003-10/2009
Partners Pharmacy of Massachusetts*	RX	2004-10/2009
Peabody Glen Health Care Center*	SNF	8/2003-10/2009
Redstone Health Care Center (a/k/a East Longmeadow HCC)*	SNF	8/2003-10/2009
Weymouth Health Care Center*	SNF	8/2003-10/2009
Wilmington Health Care Center*	SNF	8/2003-10/2009

Michigan

Grand Blanc Rehabilitation & Nursing Center	SNF	10/2006-10/2009

Missouri

Care Alternatives of Missouri	HOS	2003-10/2009
Cliffview at Riverside Rehab & Nursing Center	SNF	10/2006-5/2008
Partners Pharmacy of Missouri*	RX	2003-10/2009

New Jersey

Bergen Care Home Health	HHA	2007-10/2009
Bergen Care Personal Touch	HOM	2007-10/2009
Care Alternatives of New Jersey	HOS	2001-10/2009
Care One at Dunroven	SNF	2001-10/2009
Care One at East Brunswick	SNF	2/2002-10/2009
Care One at Evesham	SNF	8/2000-10/2009
Care One at Evesham Assisted Living	ALF	10/2007-10/2009
Care One at Ewing	SNF	11/2004-10/2009
Care One at Hamilton	SNF	5/2002-10/2009
Care One at Holmdel	SNF	8/1997-10/2009
Care One at Jackson (a/k/a Jackson HCC)	SNF	2004-10/2009
Care One at King James	SNF	2003-10/2009
Care One at Livingston	SNF	10/2002-10/2009
Care One at Livingston Assisted Living	ALF	9/2005-10/2009
Care One at Madison Avenue	SNF	1/2005-10/2009
Care One at Moorestown	SNF	9/2003-10/2009
Care One at Harmony Village at Moorestown	ALF	8/2003-10/2009
Care One at Morris	SNF	8/2001-10/2009
Care One at Morris Assisted Living	ALF	3/2003-10/2009
Care One at Pine Rest	SNF	2001-10/2009
Care One at Raritan Bay MC	LTA	3/2004-10/2009
Care One Harmony Village at Moorestown	SNF	9/2003-10/2009
Care One at Teaneck	SNF	4/2007-10/2009
Care One at The Cupola	SNF	2001-10/2009
Care One at The Highlands	SNF	2001-10/2009
Care One at Valley	SNF	2001-10/2009
Care One at Wall	SNF	9/2004-10/2009
Care One at Wayne	SNF/ALF	6/2002-10/2009
Care One at Wellington	SNF	6/2002-10/2009
Marlton Rehabilitation Hospital	IRF	5/2003-7/2004
Oradell Health Care Center	SNF	2003-10/2009
Partners Pharmacy of New Jersey	RX	2001-10/2009
Somerset Valley Rehabilitation & Nursing Center	SNF	10/2009-10/2009
South Jersey Health Care Center	SNF	2003-10/2009
Woodcrest Health Care Center	SNF	2003-10/2009

North Carolina

Blue Ridge Health Care Center	SNF	8/2002-10/2009

Ohio

Bellbrook Health Care Center	SNF	2003-10/2009
The Rehabilitation & Nursing Center at Elm Creek	SNF	10/2006-10/2009
The Rehabilitation & Nursing Center at Firelands	SNF	10/2006-10/2009
The Rehabilitation & Nursing Center at Spring Creek	SNF	10/2006-10/2009

Pennsylvania

Care Alternatives of Pennsylvania	HOS	2003-10/2009
Pediatric Specialty Care at Doylestown	SNF	2/2011-present

Pediatric Specialty Care at Hopewell	PED ICF	2/2011-present
Pediatric Specialty Care at Lancaster	PED ICF	2/2011-present
Pediatric Specialty Care at Point Pleasant	PED ICF	2/2011-present
Pediatric Specialty Care at Quakertown	PED ICF	2/2011-present
Presque Isle Rehabilitation & Nursing Center	SNF	10/2006-10/2009
Senior Living of Lancaster	HOM	2/2011-present
The Rehabilitation & Nursing Center at Greater Pittsburg	SNF	10/2006-10/2009
Puerto Rico		
Medicare Y Mucho Mas*	Medicare Agency	2005-11/2009
Rhode Island		
Scallop Shell Nursing & Rehabilitation Center	SNF	12/2010-present
Virginia		
Care Alternatives of Virginia*	HOS	4/2002-10/2009
Colonial Heights Health Care Center*	SNF	4/2002-10/2009
Glenburnie Rehabilitation & Nursing Center*	SNF	4/2002-10/2009
Hopewell Health Care Center*	SNF	4/2002/10/2009
Partners Pharmacy of Virginia*	RX	4/2002-10/2009
Valley Health Care Center*	SNF/ALF	4/2002-10/2009
Westport Health Care Center*	SNF	4/2002-10/2009

Individual Background Review

Jeffrey Rubin is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospital, home health agencies and institutional pharmacies. Prior to founding Post-Acute Partners, Dr. Rubin served as Executive Vice President Business Development for Care One Management, LLC/Healthbridge Management, LLC from 2000-2009. Previous to his involvement with Care One, Dr. Rubin served as President of Millenium Healthcare, Inc. which was the precursor to Care One. Dr. Rubin was formerly a practicing dentist, with his license currently inactive. Dr. Rubin has had extensive health facility operational and real estate interests, which are listed above.

Warren Cole is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospital, home health agencies and institutional pharmacies. Prior to founding Post Acute Partners, LLC Mr. Cole was involved with Care Ventures, Inc., an investment firm which acquires operational and real estate interests in nursing homes and provides financing to health care facilities throughout the United States. Mr. Cole also served as Chief Financial Officer at Aveta, Inc., a health insurance company, from 2007-2010. Dr. Cole has had extensive health facility operational and real estate interests, which are listed above.

Character and Competence – Analysis:
No adverse information for the proposed members has been received.

In order to make a determination on whether a substantially consistent high level of care has been provided at the health facilities/agencies subject to review, a ten year review of the enforcement history for each is undertaken. A positive finding would result from concluding that there were no repeat enforcement actions causing harm to residents of a facility/agency for the same issue, during the past ten years or for the years of ownership. For the subject application adequate surveillance documentation with which to make a global finding cannot be obtained due to staffing issues at multiple states. To date staff and the applicant have exhausted their efforts to obtain the necessary documentation, with the outcome that adequate information is available for only 60 out of the total 100 disclosed health facility interests.

For those health facilities/agency for which there is inadequate documentation, denoted by an asterisk (*) in the above listing, no negative information regarding the operator's track record has been received. In addition the applicants have submitted affidavits regarding the incomplete surveillance history, in which they attest to the following:

> *During the applicable period identified…, the Entities may have been surveyed by the applicable state regulatory authority. Statements of Deficiencies may have been issued, and enforcement action(s) resulting in the payment of a fine may have been assessed. However, to my knowledge, during the applicable period…, the Entities have not (i) received enforcement actions for repeat deficiencies that were not remedied within timeframes required by applicable law or (ii) had a license or certificate issued by a state or federal regulatory authority suspended, terminated, revoked, denied, or annulled. Further, to my knowledge, there are no currently pending federal or state enforcement actions against the Entities …*

For those facilities for which there was complete information available for review, staff concludes that a substantially consistent high level of care has been provided.

The following summarizes the review outcome for each state:

A review of the **Alabama** facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the **California** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of California for which there is insufficient documentation to make a finding.

A review of the **Colorado** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Connecticut** facilities noted above indicates there is insufficient documentation with which to make a finding. The following seven Connecticut facilities owned by the principles were the subject of a Chapter 11 bankruptcy action:

Danbury Health Care Center
Darien Health Care Center
Long Ridge of Stamford
Newington Health Care Center
West River Health Care Center
Westport Health Care Center
Wethersfield Health Care Center

A review of the **Kansas** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Kentucky** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Maryland** facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Massachusetts** facilities noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Missouri** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Partners Pharmacy of Missouri for which there is insufficient documentation to make a finding.

A review of the **New Jersey** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **North Carolina** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Ohio** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Pennsylvania** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of Pennsylvania, for which there is insufficient documentation to make a finding.

A review of the **Puerto Rico** health related agency noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Rhode Island** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Virginia** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Colonial Heights Health Care Center, Glenburnie Rehabilitation & Nursing Center, Hopewell Health Care Center, Valley Health Care Center and Westport Health Care Center, for which there is insufficient documentation to make a finding.

If able to base our judgment solely on the documentation received from other states, the Department would be able to render a positive finding as to the character and competence of the applicants. We must, however, deal with a larger record, one which lacks sufficient documentation, by the Department's standards for analysis, of the applicants' operation of 35 facilities in five different states. However, it should be made clear that while these five states could not provide our customarily needed level of detail on operating history, we did not receive any negative findings that would warrant disapproval of this application; and we did receive indications of acceptable operating experience. The Department believes it reasonable to infer from these facts that the applicants have provided a sufficiently high level of care at the facilities they have operated.

Project Review

There are no proposed changes in either the program or physical environment of the facility. No administrative services/consulting agreement is proposed in this application.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Background

The proposed change in ownership is part of a nine residential health care facilities, five adult care facilities, two independent housing companies, and related real property companies acquisition, involving Oakwood Health Care Center, Inc., the operator and Oakwood Property Associates, L.P, the owner of the realty and the proposed new owner/operator Post Acute Partners Acquisitions, LLC, an existing for profit limited liability company that will be assigning its rights and title of both the operations and the real estate to 200 Bassett Road Operating Company, LLC, d/b/a Elderwood at Williamsville and 200 Bassett Road, LLC, respectively.

The five adult care facilities will be reviewed by the Division of Long Term Care, and therefore are being reviewed separately from the nursing home application. The independent Housing companies as well, are not being addressed in these reviews. The information provided regarding the independent housing companies is to delineate them from the total project cost for the overall application.

The proposed members are also seeking establishment approval to concurrently acquire ownership of the following related residential health care facilities, also part of the facilities acquisition, through the applications listed below:

CON	Applicant	Facility	Beds
111456-E	4800 Bear Road Operating Company, LLC, d/b/a Elderwood at Liverpool	Birchwood Health Care Center, Inc. d/b/a Elderwood Health Care at Birchwood	160
111462-E	1818 Como Park Boulevard Operating Company, LLC d/b/a Elderwood at Lancaster	Linwood Health Care Center, Inc. d/b/a Elderwood Health Care at Linwood	94
111467-E	4459 Bailey Avenue Operating Company, LLC d/b/a Elderwood at Amherst	Wedgewood Health Care Center, Inc. d/b/a Elderwood Health Care at Wedgewood	92
111468-E	2850 Grand island Boulevard Operating Company, LLC d/b/a Elderwood at Grand Island	Riverwood Health Care Center, Inc. d/b/a Elderwood Health Care at Riverwood	90
111470-E	5775 Maelou Drive Operating Company, LLC d/b/a Elderwood at Hamburg	Lakewood Health Care Center, Inc. d/b/a Elderwood Health Care at Lakewood	166
111469-E	225 Bennett Road Operating Company, LLC d/b/a Elderwood at Cheektowaga	Maplewood Health Care Center, Inc. d/b/a Elderwood Health Care at Maplewood	170
111471-E	37 North Chemung Street Operating Company, LLC d/b/a Elderwood at Waverly	Elderwood Health Care at Tioga, LLC d/b/a Elderwood Health Care at Tioga	200
111466-E	2600 Niagara Falls Boulevard Operating Company, LLC d/b/a Elderwood at Wheatfield	Crestwood Health Care Center, Inc. d/b/a Elderwood Health Care at Crestwood	160

The applicant has provided an affidavit, which states that 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 the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently, the facility has no outstanding Medicaid audit liabilities.

All nine applications will be processed concurrently.

Asset Purchase Agreement

The change in ownership will be effectuated in accordance with the terms of the executed Asset Purchase Agreement, summarized below. This agreement is for the nine residential health care facility, five adult care facility, two independent housing company and related real property companies acquisition.

Date:	February 25, 2011
Sellers (Nursing Home Operations):	Wedgewood Health Care Center, LLC, Maplewood Health Care Center, Inc., Riverwood Health Care Center, Inc., Lakewood Health Care Center, Inc., Linwood Health Care Center, Inc., Crestwood Health Care Center, Inc., Oakwood Health Care Center, Inc., Birchwood Health Care Center, Inc., Elderwood Health Care Center at Tioga, LLC

Sellers (Nursing Home Real Estate): Wedgewood SNF Property Company, LLC, Maplewood Property Associates, L.P., Riverwood Property Associates, L.P., Elderwood Affiliates, Inc., LPC at Linwood LLC, Crestwood Development, LLC, Oakwood Property Associates, L.P., Tioga Property Company North, LLC

Purchaser: Post Acute Partners Acquisition, LLC

Purchased Assets: All right, title and interest of the above operations and Woodmark Services, Inc. in and to all supplies used in the facilities operations. All assumed Contracts, Admission agreements, assignable licenses, right, title and interest in trade marks, dress and names and services marks used in the facilities operations, specifically “Elderwood” and “Elderwood Senior Care” and the service mark “Care Without Compromise”; all phone and fax numbers, email addresses domain names, P.O. boxes and software used for the facilities operations. All books, data and records for the facilities, (except where transfer is prohibited) all employee records, but only for transitioned employees (excluding the seller’s financial books and records). All right, title and interest in all vehicles located at the respective facilities owned or operated by it or used in connection therewith and in all furniture, furnishings, equipment, computers and office equipment and supplies located at the corporate offices. All right, title and interest of Elderwood Transportation Company, LLC in all tangible and intangible personal property and all right, title and interest of each seller in any and all other items of tangible and intangible personal property used or useful in connection with the facilities operations and all the facilities goodwill.

Excluded Assets: The Heathwood and Penfield facilities owned and operated by affiliates of seller, including all assets, the names “Heathwood Health Care Center, Inc. d/b/a Elderwood Health Care at Heathwood” and “Elderwood Assisted Living at Penfield, LLC” and operations thereof; all assets relating to pharmacy operations of Woodmark pharmacy, Inc.; All assets of the KABA division of Woodmark services, Inc and the provider agreement and provider number of Woodmark services, Inc.; Real property comprising seller’s corporate offices, located in Williamsville, NY at 7 Limestone Drive, 1142 Wehrle Drive and 1150 Wehrle Drive; all of seller’s bank accounts, cash, cash equivalents and securities except to the extent any portion thereof is subject to the proration or reconciliation procedures set forth herein; all replacement and tax escrow reserves, utility deposits and workers compensation trust assets of seller; all prepaid expenses, all vehicles, office furniture, computers and cell phones used by Robert M. Chur and/or Carla Chur Suero; all accounts receivable prior to the effective time, except as otherwise expressly provided in this agreement, all refunds or reimbursements for the period prior to the effective time and all deposits, escrowed funds and similar funds; except otherwise expressly provided in this agreement, all claims, disputes and litigation, and all amounts of any nature or description relating thereto for the period prior to the effective time; all receivables from any affiliate of seller, all of seller’s rights and benefits under this agreement; seller’s organizational documents relating solely to the existence of each of the entities comprising seller as separate legal entity; seller’s right to the grant proceeds associated with the HEAL projects; except to the extent included in the patient records or the employee records’ seller’s general ledgers and trial balances and all other financial journal and ledgers and statements, for any of the foregoing.

Liabilities Assumed : The applicable Real liabilities under the mortgages listed on schedule 1.6(a)(the aggregate outstanding balance of any mortgage debt described on schedule 1.6(a) or (b) assumed or taken by applicable real estate purchaser referred to as the assumed debt”) assume the obligations and liabilities under the Birchwood Lease for periods after the effective time, subject to obtaining required consents in respect of each of the mortgages comprising assumed debt and the Birchwood landlord under the Birchwood lease; (ii) New operator will assume the assumed contracts and admissions agreements, only to the extent they are for periods after the effective time and (iii) Each applicable real

	estate purchaser shall exercise its respective commercially reasonable efforts to assume or take title subject to the mortgages listed on schedule 1.6 (a) and obtain any and all required consents in connection therewith. Seller shall retain, promptly pay and discharge in the ordinary course all liabilities and obligations of seller other than the assumed liabilities.
Excluded Liabilities:	Seller's accounts payable and all obligations for the facilities operation prior to the effective time including costs, expenses and other liabilities and obligations from the facilities operation except as set forth in sections 4.1(b) and 4.12, obligation under any collective bargaining agreement, employment agreement, pension or retirement plan, profit sharing plan, stock plan, compensation obligation or agreement or severance pay plan or agreement and any other employee benefit plan and liability for any taxes (except taxes prorated in accordance with section 10.3 (a)) any accounts payable or other obligations accruing to and existing as of the effective time are and shall remain the seller's sole obligation and responsibility.
Purchase Price:	$141,150,000 for the Nine Residential Health Care facility, five adult care facility and two independent housing company and related real property companies acquisition.
Purchase Price for this operation and real estate:	$12,071,383 with $5,271,383 allocated to the operations purchase price and $6,800,000 allocated to the real estate purchase price.
Payment of Purchase Price:	Through three loans; one for $10,074,000 at 30 years at 5.5% interest, a subordinated loan for $1,509,474 at 10% for 7 years, and a loan for $487,909 for 7 years interest only.

Below is the breakout of the purchase price for all of the facilities by facility category with a final table showing the total purchase price for the full operations and real estate transfer.

Residential Health Care Facilities

CON	Applicant	Facility	Real Estate Purchase Price	Operations Purchase Price	Total Purchase Price
111467-E	4459 Bailey Avenue Operating Company, LLC d/b/a Elderwood at Amherst	Wedgewood Health Care Center, Inc. d/b/a Elderwood Health Care at Wedgewood	$6,500,000	$3,383,566	$9,883,566
111468-E	2850 Grand Island Boulevard Operating Company, LLC d/b/a Elderwood at Grand Island	Riverwood Health Care Center, Inc. d/b/a Elderwood Health Care at Riverwood	$4,700,000	$2,951,514	$7,651,514
111470-E	5775 Maelou Drive Operating Company, LLC d/b/a Elderwood at Hamburg	Lakewood Health Care Center, Inc. d/b/a Elderwood Health Care at Lakewood	$6,700,000	$4,094,870	$10,794,870
111462-E	1818 Como Park Boulevard Operating Company, LLC d/b/a Elderwood at Lancaster	Linwood Health Care Center, Inc. d/b/a Elderwood Health Care at Linwood	$2,250,000	$1,423,042	$3,673,042

111456-E	4800 Bear Road Operating Company, LLC d/b/a Elderwood at Liverpool	Birchwood Health Care Center, Inc. d/b/a Elderwood Health Care at Birchwood	N/A	$7,730,857	$7,730,857
111469-E	225 Bennett Road Operating Company, LLC d/b/a Elderwood at Cheektowaga	Maplewood Health Care Center, Inc. d/b/a Elderwood Health Care at Maplewood	$8,300,000	$1,660,484	$9,960,484
111466-E	2600 Niagara Falls Boulevard Operating Company, LLC d/b/a Elderwood at Wheatfield	Crestwood Health Care Center, Inc. d/b/a Elderwood Health Care at Crestwood	$9,100,000	$1,182,776	$10,282,776
111463-E	200 Bassett Road Operating Company, LLC d/b/a Elderwood at Williamsville	Oakwood Health Care Center, Inc. d/b/a Elderwood Health Care at Oakwood	$6,800,000	$5,271,383	$12,071,383
111471-E	37 North Chemung Street Operating Company, LLC d/b/a Elderwood at Waverly	Elderwood Health Care at Tioga, LLC d/b/a Elderwood Health Care at Tioga	$5,400,000	$2,678,288	$8,078,288
Total Residential Health Care Facilities			*$49,750,000*	*$30,376,780*	*$80,126,780*

Adult Care Facilities

Facility Name	Purchase Price
Glenwood	$10,024,265
Maplewood ALF	$7,028,868
Rosewood	$8,337,181
Tioga ALF	$3,904,780
Westwood	$14,494,740
Total Adult Care Facilities Purchase Price	$43,789,834

Independent Housing Facilities

Facility Name	Purchase Price
Crestwood ILF	$12,590,237
Maplewood ILF	$4,993,149
Total Independent Housing Facilities Purchase Price	$17,583,386

Total Purchase Price

Operations and Real Estate	Purchase Price
Residential Health Care Facilities	$80,126,780
Adult Care Facilities	$43,789,834
Independent Housing Facilities	$17,583,386
Total Purchase Price	$141,500,000

Assignment Agreement

The change in operational and realty ownership will be effectuated in accordance with a draft assignment agreement, the terms of which are summarized below:

Effective Date:	Upon CON Approval by DOH
Assignor:	Post Acute Partners Acquisition, LLC
Assignee:	200 Bassett Road, LLC
Operating Designee:	200 Bassett Road Operating Company, LLC, d/b/a Elderwood at Williamsville
Assets Assigned:	Assignor's right, title and interest as Buyer under the Purchase Agreement with respect to the Assigned Property.
Obligations Assigned:	Assumes all obligations on the part of the Buyer to be performed under Purchase Agreement relating to the Assigned Property.

The members of the proposed reality entities 2850 Grand Island Boulevard, LLC, 225 Bennett Road, LLC, 200 Bassett Road, LLC, 5775 Maelou Drive, LLC, 1818 Como Park Boulevard, LLC, 4800 Bear Road, LLC, 37 North Chemung Street, LLC, 2600 Niagara falls Boulevard, LLC and 4459 Bailey Avenue, LLC are as follows:

Proposed Members	Percentage Ownership
Warren Cole	50%
Dr. Jeffrey Rubin, D.D.S.	50%

Lease Agreement and Medicaid Capital Reimbursement

Facility occupancy is subject to a draft lease agreement, the terms of which are summarized as follows:

Effective Date:	Upon CON Approval by DOH
Premises:	A 200-bed RHCF located at 200 Bassett Road, Williamsville (Erie County)
Lessor:	200 Bassett Road, LLC
Lessee:	200 Bassett Road Operating Company, LLC, d/b/a Elderwood at Williamsville
Term:	10 years commencing on the execution of the lease with four (5 year extensions)
Annual Rental:	Lease payment is equivalent to the annual mortgage debt service for the facility, which is $1,056,869.
Type:	Triple net lease.

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the landlord and operating entity.

Currently, the facility Medicaid capital reimbursement is based on the return of and return on equity for recent improvements. This methodology will not be altered upon change in ownership.

Operating Budget

Following is a summary of the submitted operating budget for the RHCF, presented in 2011 dollars, for the first year subsequent to change in ownership:

Revenues:	Per Diem	Total
Medicare Fee For Service	$379.38	$5,169,431
Medicaid Fee For Service	$188.18	$8,195,954
Private Pay	$357.11	$4,832,085
Total Revenue		$18,197,469
Expenses:		
Operating		$15,198,435
Capital		$1,124,884
Total Expense		$16,323,319
Net Income		$1,874,150
Utilization (Patient days)		70,709
Occupancy		96.86%

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

- Overall utilization is projected at 96.86%, which is consistent with historical. Utilization by payor source is expected as follows:

Medicaid	61.59%
Medicare	19.27%
Private Pay	19.14%

- Breakeven utilization is projected at 86.89%.

Capability and Feasibility

The purchase price and initiation of operations, as a financially viable entity, will be financed by a loan from Capital Funding, LLC of $ 10,074,000 at an interest rate of 5.50% for 30 years, with the remaining $1,509,474 from a subordination loan at an interest rate of 10% for 7 years, and 487,909 seller's notes that is interest only.

Working capital requirements are estimated at $2,720,553, based on two months' of first year expenses. $1,360,261 will by satisfied from the proposed member's equity, and the remaining $1,360,292 will be satisfied through a loan from Capital Funding, LLC at 5.00% over 5 years. A letter of interest has been supplied by Capital Funding, LLC. Presented as BFA Attachment A, is the Net Worth of proposed members.

The issue of feasibility is centered on the applicant's ability to offset expenses with revenues and maintain a viable operating entity. The submitted budget indicates that a net income of $1,874,150 would be maintained during the first year following change in ownership. The budget appears reasonable.

Presented as BFA Attachment B, is the pro-forma balance sheet of, which indicates positive members' equity of $1,360,261 as of the first day of operations.

Following is a comparison of 2010 and projected revenue and expense:

Annual 2010 Income	$17,990,015
Annual 2010 Expense	16,194,146
Annual 2010 Net Income	$1,795,869
Projected incremental Income	$207,454
Projected incremental Expense	129,173

Projected incremental Net Income	$78,281
Incremental Net Income (Loss)	$1,874,150

Projected income includes revenues at budgeted occupancy and payor source to accommodate Medicaid access requirements, as well as the difference between current year and projected levels.

Projected expenses include acquisition capital expenses, expenses at budgeted occupancy, and the difference between current year and projected levels.

As shown on BFA Attachment C, Elderwood Health Care at Oakwood, had an average negative working capital position and an average negative net asset position, and generated an average net Income of $426,481 for the period 2008-2010. The 2009 loss is attributable to an increase in expenses of approximately 6% from 2008, with an approximate 2% decrease in revenues.

The facility instituted controls on its operating budget and decreased expenses in 2010 by approximately 1%, along with a 10.2% increase in revenue, resulting in a positive net income for 2010.

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	Pro-forma Balance Sheet
BFA Attachment C	Financial Summary - Elderwood Health Care at Oakwood
BFA Attachment D	Organizational Chart
BFA Attachment E	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 5th day of April, 2012, 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 20 Bassett Road Operating Company, LLC d/b/a Elderwood at Williamsville as the new operator of Elderwood Health Care at Oakwood, 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:
111463-E	20 Bassett Road Operating Company, LLC d/b/a Elderwood at Williamsville

APPROVAL CONTINGENT UPON:

1. Submission of documentation of project completion of CON #111093-L. [PMU]
2. Submission of a loan commitment for working capital that is acceptable to the Department of Health. [BFA]
3. Submission of a commitment that is acceptable to the Department, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
4. Submission of an executed building lease that is acceptable to the Department. [BFA]
5. Submission of an executed assignment agreement that is acceptable to the Department. [BFA]
6. Submission of an original affidavit from the applicant members (or stockholders or partners) making a commitment to personally fund the balloon payment on the proposed mortgage, should terms acceptable to the Department of Health be unavailable at the time of refinancing. [BFA]
7. Submission of photocopies of the applicant's Articles of Organization, as filed with the Department of State and of a fully executed and dated Certificate of Amendment to the applicant's Articles of Organization, which must be acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's fully executed and dated Operating Agreement, which must be acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's fully executed Certificate of Assumed Name, which must be acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's fully executed and dated sublease agreement, including the consent of the Landlord (as such term is defined below), which must be acceptable to the Department. [CSL]
11. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of Post Acute Partners Acquisition, LLC (Post Acute Partners), as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
12. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of Post Acute Partners, which must be acceptable to the Department. [CSL]
13. Submission of a list of all members and managers of Post Acute Partners, which must be acceptable to the Department. [CSL]
14. Submission of a photocopy of that certain Amended and Restated Deposit Escrow Agreement, as described in "Whereas Clause D" of the Asset Purchase Agreement between Post Acute Partners, as Purchaser, and various other entities, as Seller, dated February 25, 2011, which must be acceptable to the Department. [CSL]
15. Submission of a photocopy of a fully executed and dated Assignment of Rights between Post Acute Partners, the applicant and the owner of the real property on which the facility is located (Landlord), which must be acceptable to the Department. [CSL]
16. Submission of a photocopy of the proposed Bill of Sale, and any other transfer documents, between the applicable Seller and the applicant, pursuant to which the operating assets of the facility will be transferred to the applicant, which must be acceptable to the Department. [CSL]
17. Submission of a photocopy of the Lease pursuant to which Post Acute Partners has a leasehold interest in the real property on which the facility is located and the detailed explanation as to why the real property will not be owned by an affiliate of the applicant as is the case with all of the related Elderwood applications, which must be acceptable to the Department. [CSL]

18. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of the Landlord, as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
19. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of the Landlord, which must be acceptable to the Department. [CSL]
20. Submission of a list of all members and managers of the Landlord, which must be acceptable to the Department. [CSL]
21. Submission of photocopies of any agreements, documents, or arrangements between or among the applicant, Post Acute Partners, the Landlord, and/or any other entity (including, but not limited to, any affiliate or subsidiary), jointly and severally, directly or indirectly, relating to the ownership or operation of the facility. [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 # 111466-E
2600 Niagara Falls Boulevard Operating Company, LLC d/b/a Elderwood at Wheatfield

County: **Niagara (Niagara Falls)**
Purpose: **Establishment**
Program: **Residential Health Care Facility**
Submitted: **May 27, 2011**

Executive Summary

Description
2600 Niagara Falls Boulevard Operating Company, LLC, d/b/a Elderwood at Wheatfield, is seeking approval to be established as the new operator of Crestwood Health Care Center, Inc. d/b/a Elderwood Health Care at Crestwood, an existing 160-bed residential health care facility (RHCF) at 2600 Niagara Falls Boulevard, Niagara Falls. Crestwood Development, LLC is the current realty owner. Ownership before and after the requested change is as follows:

Operations:

Before
Crestwood Health Care Center, Inc. d/b/a Elderwood Health Care at Crestwood.

Members	Interest
-- Robert M. Chur	66.00%
-- Carol Chur	25.00%
-- Carla Chur Suero	4.50%
-- Kelly Chur Henry	4.50%

After
2600 Niagara Falls Boulevard Operating Company, LLC, d/b/a Elderwood at Wheatfield

Members	Interest
-- Warren Cole	50.00%
-- Dr. Jeffrey Rubin, D.D.S.	50.00%

Real Estate:

Before
Crestwood Development, LLC

Members	Interest
-- Robert M. Chur	65.25%
-- Carol L. Chur	24.75%
-- Carla Chur Suero	4.50%
-- Kelly Chur Henry	4.50%
-- Elderwood Properties, LLC	1.00%

After
2600 Niagara Falls Boulevard, LLC

Members	Interest
-- Warren Cole	50.00%
-- Dr. Jeffrey Rubin, D.D.S.	50.00%

The proposed change in ownership is part of an acquisition involving nine RHCFs, five adult care facilities, two independent housing companies, and related real property companies.

Post Acute Partners Acquisitions, LLC, an existing for-profit limited liability company, will be assigning its rights and title to both the operations and the real estate to 2600 Niagara Falls Boulevard Operating Company, LLC, d/b/a Elderwood at Wheatfield and 2600 Niagara Falls Boulevard, LLC, respectively.

DOH Recommendation
Contingent approval.

Need Summary
Elderwood Health Care at Crestwood's utilization for 2009 and 2010 was 95.8% and 95.7%, respectively. There will be no change in the beds or services of the Elderwood Health Care at Crestwood facility as a result of this project.

Program Summary
Based on actual documentation received from other states and on indications of acceptable operating experience where full documentation was not available, and on affidavits submitted by the applicants, a positive finding as to character and competence can be made.

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

Budget:		
	Revenues:	*$ 13,598,625*
	Expenses:	*12,879,081*
	Gain/(Loss):	*$ 719,544*

Subject to 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; Architectural review is not 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 documentation of project completion of CON #111083-L. [PMU]
2. Submission of a loan commitment for working capital that is acceptable to the Department of Health. [BFA]
3. Submission of a commitment that is acceptable to the Department, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
4. Submission of an executed building lease that is acceptable to the Department. [BFA]
5. Submission of an executed assignment agreement that is acceptable to the Department. [BFA]
6. Submission of an original affidavit from the applicant members (or stockholders or partners) making a commitment to personally fund the balloon payment on the proposed mortgage, should terms acceptable to the Department of Health be unavailable at the time of refinancing. [BFA]
7. Submission of photocopies of the applicant's Articles of Organization, as filed with the Department of State and of a fully executed and dated Certificate of Amendment to the applicant's Articles of Organization, which must be acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's fully executed and dated Operating Agreement, which must be acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's fully executed Certificate of Assumed Name, which must be acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's fully executed and dated sublease agreement, including the consent of the Landlord (as such term is defined below), which must be acceptable to the Department. [CSL]
11. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of Post Acute Partners Acquisition, LLC (Post Acute Partners), as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
12. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of Post Acute Partners, which must be acceptable to the Department. [CSL]
13. Submission of a list of all members and managers of Post Acute Partners, which must be acceptable to the Department. [CSL]
14. Submission of a photocopy of that certain Amended and Restated Deposit Escrow Agreement, as described in "Whereas Clause D" of the Asset Purchase Agreement between Post Acute Partners, as Purchaser, and various other entities, as Seller, dated February 25, 2011, which must be acceptable to the Department. [CSL]
15. Submission of a photocopy of a fully executed and dated Assignment of Rights between Post Acute Partners, the applicant and the owner of the real property on which the facility is located (Landlord), which must be acceptable to the Department. [CSL]
16. Submission of a photocopy of the proposed Bill of Sale, and any other transfer documents, between the applicable Seller and the applicant, pursuant to which the operating assets of the facility will be transferred to the applicant, which must be acceptable to the Department. [CSL]
17. Submission of a photocopy of the Lease pursuant to which Post Acute Partners has a leasehold interest in the real property on which the facility is located and the detailed explanation as to why the real property will not be owned by an affiliate of the applicant as is the case with all of the related Elderwood applications, which must be acceptable to the Department. [CSL]
18. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of the Landlord, as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
19. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of the Landlord, which must be acceptable to the Department. [CSL]
20. Submission of a list of all members and managers of the Landlord, which must be acceptable to the Department. [CSL]
21. Submission of photocopies of any agreements, documents, or arrangements between or among the applicant, Post Acute Partners, the Landlord, and/or any other entity (including, but not limited to, any affiliate or subsidiary), jointly and severally, directly or indirectly, relating to the ownership or operation of the facility. [CSL]

Council Action Date
April 5, 2012.

Need Analysis

Background
2600 Niagara Falls Boulevard Operating Company, LLC, d/b/a Elderwood at Wheatfield, is seeking approval to be established as the new operator of Crestwood Health Care Center, Inc. d/b/a Elderwood Health Care at Crestwood, an existing 160-bed residential health care facility (RHCF) at 2600 Niagara Falls Boulevard, Niagara Falls (Niagara County).

There will be no change in the beds or services of the Elderwood Health Care at Crestwood facility as a result of this project.

Analysis

RHCF Bed Need – Niagara County	
2016 Projected Need	1,377
Current Beds	1,536
Beds Under Construction	- 159
Total Resources	1,536
Unmet Need	- 159

RHCF Occupancy	***2008***	***2009***	***2010***
Elderwood Health Care at Crestwood	**96.05%**	**95.84%**	**95.68%**
Briody Health Care Facility	95.39%	95.97%	93.90%
Odd Fellow & Rebekah Rehabilitation&Health Care Center Inc	97.23%	96.56%	97.63%
Schoellkopf Health Center	97.26%	97.25%	98.10%
Niagara Rehabilitation and Nursing Center	92.50%	85.61%	94.64%
Degraff Memorial Hospital-Skilled Nursing Facility	98.94%	97.65%	97.90%
Our Lady of Peace Nursing Care Residence	99.38%	98.81%	99.17%
Newfane Rehab & Health Care Center	96.02%	95.30%	95.76%
Absolut Center for Nursing and Rehabilitation at Gasport, LLC	91.70%	93.27%	91.45%
North Gate Health Care Facility	98.24%	98.21%	97.25%
Niagara County	*96.60%*	*95.60%*	*96.52%*

Elderwood Health Care at Crestwood had utilization rates of 95.8% for 2009 and 95.7 % 2010.

Conclusion
The acquisition of Elderwood Health Care at Crestwood by Post Acute Partners Acquisition, LLC will not result in any capacity or service changes.

Recommendation
From a need perspective, approval is recommended.

Programmatic Analysis

Facility Information

	Existing	*Proposed*
Facility Name	Elderwood Health Care at Crestwood	Elderwood at Wheatfield
Address	2600 Niagara Falls Boulevard Niagara Falls, NY 14304	same
RHCF Capacity	123	123
ADHC Program Capacity	N/A	same
Type Of Operator	Corporation	Limited Liability Company
Class Of Operator	Proprietary	same
Operator	Crestwood Health Care Center, Inc. d/b/a Elderwood Health Care at Crestwood <u>Stockholders</u> Robert M. Chur 66% Carol L. Chur 25% Carla Suero 4.5% Kelly Henry 4.5%	2600 Niagara Falls Boulevard Operating Company, LLC d/b/a Elderwood at Wheatfield <u>Members</u> Warren Cole 50% Jeffrey Rubin 50%

Character and Competence

- FACILITIES REVIEWED:

ACU-acute care/hospital	ICF-intermediate care facility/group home
ALF-assisted living facility	IRF-intermediate rehabilitation facility (similar to SNF short term rehab)
HHA-home health agency	LTA-long term acute care hospital (similar to TCU)
HOM-homecare	RX-pharmacy
HOS-hospice	SNF-skilled nursing facility/nursing home

(Note: actual dates of ownership may extend prior to 2003)

<u>Alabama</u>

*Laurelton Rehabilitation and Nursing Center**	*SNF*	*10/2006 to 5/2008*

<u>California</u>

San Joaquin Valley Rehabilitation Hospital	Hospital	7/2004-7/2004
Kenfield Rehabilitation Hospital	Hospital	8/2003-7/2004
Care Alternatives of California*	Hospice	2003-10/2009

<u>Colorado</u>

North Valley Rehabilitation Hospital (Haven Behavioral Sr. Care)	ACU-PSYCH	7/2003-8/2004
North Valley Rehabilitation Hospital (Vibra LTACH)	LTA	7/2003-8/2004
North Valley Rehabilitation Hospital (Vista View Care Center)	SNF	7/2003-8/2004

<u>Connecticut</u>

Danbury Health Care Center*	SNF	8/2003-10/2009
Darien Health Care Center*	SNF	8/2003-10/2009
Golden Hill Health Care Center*	SNF	8/2003-10/2009
Long Ridge of Stamford*	SNF	8/2003-10/2009
Newington Health Care Center*	SNF	8/2003-10/2009
Partners Pharmacy of Connecticut*	RX	2003-10/2009

River Glen Health Care Center (a/k/a Southbury HCC)*	SNF	8/2003-10/2009
The Highlands Health Care Center*	SNF	8/2003-10/2009
West River Health Care Center (a/k/a Milford North HCC)*	SNF	8/2003-10/2009
Westport Health Care Center*	SNF	8/2003-10/2009
Wethersfield Health Care Center*	SNF	8/2003-10/2009
Kansas		
Care Alternatives of Kansas	HOS	2004-10/2009
Kentucky		
Southern Kentucky Rehabilitation Hospital	IRF	5/2003-7/2004
Maryland		
Montgomery Village Health Care Center	SNF	2003-10/2009
Massachusetts		
Brookline Health Care Center*	SNF	8/2003-10/2009
Calvin Coolidge Nursing & Rehab Center for Northampton*	SNF	8/2003-10/2009
Care Alternatives of Massachusetts*	HOS	2005-10/2009
Concord Health Care Center*	SNF	8/2003-10/2009
Essex Park Rehabilitation & Nursing Center*	SNF	3/2005-10/2009
Holyoke Health Care Center*	SNF	8/2003-10/2009
Lexington Health Care Center*	SNF	8/2003-10/2009
Lowell Health Care Center*	SNF	8/2003-10/2009
Millbury Health Care Center*	SNF	8/2003-10/2009
New Bedford Health Care Center*	SNF	8/2003-10/2009
New Bedford Rehabilitation Hospital*	IRF	7/2003-8/2004
Newton Health Care Center*	SNF	8/2003-10/2009
North Shore Health Care Center*	SNF	8/2003-10/2009
Partners Pharmacy of Massachusetts*	RX	2004-10/2009
Peabody Glen Health Care Center*	SNF	8/2003-10/2009
Redstone Health Care Center (a/k/a East Longmeadow HCC)*	SNF	8/2003-10/2009
Weymouth Health Care Center*	SNF	8/2003-10/2009
Wilmington Health Care Center*	SNF	8/2003-10/2009
Michigan		
Grand Blanc Rehabilitation & Nursing Center	SNF	10/2006-10/2009
Missouri		
Care Alternatives of Missouri	HOS	2003-10/2009
Cliffview at Riverside Rehab & Nursing Center	SNF	10/2006-5/2008
Partners Pharmacy of Missouri*	RX	2003-10/2009
New Jersey		
Bergen Care Home Health	HHA	2007-10/2009
Bergen Care Personal Touch	HOM	2007-10/2009
Care Alternatives of New Jersey	HOS	2001-10/2009
Care One at Dunroven	SNF	2001-10/2009
Care One at East Brunswick	SNF	2/2002-10/2009
Care One at Evesham	SNF	8/2000-10/2009
Care One at Evesham Assisted Living	ALF	10/2007-10/2009
Care One at Ewing	SNF	11/2004-10/2009
Care One at Hamilton	SNF	5/2002-10/2009
Care One at Holmdel	SNF	8/1997-10/2009
Care One at Jackson (a/k/a Jackson HCC)	SNF	2004-10/2009
Care One at King James	SNF	2003-10/2009
Care One at Livingston	SNF	10/2002-10/2009
Care One at Livingston Assisted Living	ALF	9/2005-10/2009

Care One at Madison Avenue	SNF	1/2005-10/2009
Care One at Moorestown	SNF	9/2003-10/2009
Care One at Harmony Village at Moorestown	ALF	8/2003-10/2009
Care One at Morris	SNF	8/2001-10/2009
Care One at Morris Assisted Living	ALF	3/2003-10/2009
Care One at Pine Rest	SNF	2001-10/2009
Care One at Raritan Bay MC	LTA	3/2004-10/2009
Care One Harmony Village at Moorestown	SNF	9/2003-10/2009
Care One at Teaneck	SNF	4/2007-10/2009
Care One at The Cupola	SNF	2001-10/2009
Care One at The Highlands	SNF	2001-10/2009
Care One at Valley	SNF	2001-10/2009
Care One at Wall	SNF	9/2004-10/2009
Care One at Wayne	SNF/ALF	6/2002-10/2009
Care One at Wellington	SNF	6/2002-10/2009
Marlton Rehabilitation Hospital	IRF	5/2003-7/2004
Oradell Health Care Center	SNF	2003-10/2009
Partners Pharmacy of New Jersey	RX	2001-10/2009
Somerset Valley Rehabilitation & Nursing Center	SNF	10/2009-10/2009
South Jersey Health Care Center	SNF	2003-10/2009
Woodcrest Health Care Center	SNF	2003-10/2009
North Carolina		
Blue Ridge Health Care Center	SNF	8/2002-10/2009
Ohio		
Bellbrook Health Care Center	SNF	2003-10/2009
The Rehabilitation & Nursing Center at Elm Creek	SNF	10/2006-10/2009
The Rehabilitation & Nursing Center at Firelands	SNF	10/2006-10/2009
The Rehabilitation & Nursing Center at Spring Creek	SNF	10/2006-10/2009
Pennsylvania		
Care Alternatives of Pennsylvania	HOS	2003-10/2009
Pediatric Specialty Care at Doylestown	SNF	2/2011-present
Pediatric Specialty Care at Hopewell	PED ICF	2/2011-present
Pediatric Specialty Care at Lancaster	PED ICF	2/2011-present
Pediatric Specialty Care at Point Pleasant	PED ICF	2/2011-present
Pediatric Specialty Care at Quakertown	PED ICF	2/2011-present
Presque Isle Rehabilitation & Nursing Center	SNF	10/2006-10/2009
Senior Living of Lancaster	HOM	2/2011-present
The Rehabilitation & Nursing Center at Greater Pittsburg	SNF	10/2006-10/2009
Puerto Rico		
Medicare Y Mucho Mas*	Medicare Agency	2005-11/2009
Rhode Island		
Scallop Shell Nursing & Rehabilitation Center	SNF	12/2010-present
Virginia		
Care Alternatives of Virginia*	HOS	4/2002-10/2009
Colonial Heights Health Care Center*	SNF	4/2002-10/2009
Glenburnie Rehabilitation & Nursing Center*	SNF	4/2002-10/2009
Hopewell Health Care Center*	SNF	4/2002/10/2009
Partners Pharmacy of Virginia*	RX	4/2002-10/2009
Valley Health Care Center*	SNF/ALF	4/2002-10/2009
Westport Health Care Center*	SNF	4/2002-10/2009

Individual Background Review

Jeffrey Rubin is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospital, home health agencies and institutional pharmacies. Prior to founding Post-Acute Partners, Dr. Rubin served as Executive Vice President Business Development for Care One Management, LLC/Healthbridge Management, LLC from 2000-2009. Previous to his involvement with Care One, Dr. Rubin served as President of Millenium Healthcare, Inc. which was the precursor to Care One. Dr. Rubin was formerly a practicing dentist, with his license currently inactive. Dr. Rubin has had extensive health facility operational and real estate interests, which are listed above.

Warren Cole is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospital, home health agencies and institutional pharmacies. Prior to founding Post Acute Partners, LLC Mr. Cole was involved with Care Ventures, Inc., an investment firm which acquires operational and real estate interests in nursing homes and provides financing to health care facilities throughout the United States. Mr. Cole also served as Chief Financial Officer at Aveta, Inc., a health insurance company, from 2007-2010. Dr. Cole has had extensive health facility operational and real estate interests, which are listed above.

Character and Competence – Analysis:
No adverse information for the proposed members has been received.

In order to make a determination on whether a substantially consistent high level of care has been provided at the health facilities/agencies subject to review, a ten year review of the enforcement history for each is undertaken. A positive finding would result from concluding that there were no repeat enforcement actions causing harm to residents of a facility/agency for the same issue, during the past ten years or for the years of ownership. For the subject application adequate surveillance documentation with which to make a global finding cannot be obtained due to staffing issues at multiple states. To date staff and the applicant have exhausted their efforts to obtain the necessary documentation, with the outcome that adequate information is available for only 60 out of the total 100 disclosed health facility interests.

For those health facilities/agency for which there is inadequate documentation, denoted by an asterisk (*) in the above listing, no negative information regarding the operator's track record has been received. In addition the applicants have submitted affidavits regarding the incomplete surveillance history, in which they attest to the following:

> *During the applicable period identified…, the Entities may have been surveyed by the applicable state regulatory authority. Statements of Deficiencies may have been issued, and enforcement action(s) resulting in the payment of a fine may have been assessed. However, to my knowledge, during the applicable period…, the Entities have not (i) received enforcement actions for repeat deficiencies that were not remedied within timeframes required by applicable law or (ii) had a license or certificate issued by a state or federal regulatory authority suspended, terminated, revoked, denied, or annulled. Further, to my knowledge, there are no currently pending federal or state enforcement actions against the Entities …*

For those facilities for which there was complete information available for review, staff concludes that a substantially consistent high level of care has been provided.

The following summarizes the review outcome for each state:

A review of the **Alabama** facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the **California** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of California for which there is insufficient documentation to make a finding.

A review of the **Colorado** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Connecticut** facilities noted above indicates there is insufficient documentation with which to make a finding. The following seven Connecticut facilities owned by the principles were the subject of a Chapter 11 bankruptcy action:

Danbury Health Care Center
Darien Health Care Center
Long Ridge of Stamford
Newington Health Care Center
West River Health Care Center
Westport Health Care Center
Wethersfield Health Care Center

A review of the **Kansas** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Kentucky** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Maryland** facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Massachusetts** facilities noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Missouri** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Partners Pharmacy of Missouri for which there is insufficient documentation to make a finding.

A review of the **New Jersey** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **North Carolina** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Ohio** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Pennsylvania** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of Pennsylvania, for which there is insufficient documentation to make a finding.

A review of the **Puerto Rico** health related agency noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Rhode Island** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Virginia** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Colonial Heights Health Care Center, Glenburnie Rehabilitation & Nursing Center, Hopewell Health Care Center, Valley Health Care Center and Westport Health Care Center, for which there is insufficient documentation to make a finding.

If able to base our judgment solely on the documentation received from other states, the Department would be able to render a positive finding as to the character and competence of the applicants. We must, however, deal with a larger record, one which lacks sufficient documentation, by the Department's standards for analysis, of the applicants' operation of 35 facilities in five different states. However, it should be made clear that while these five states could not

provide our customarily needed level of detail on operating history, we did not receive any negative findings that would warrant disapproval of this application; and we did receive indications of acceptable operating experience. The Department believes it reasonable to infer from these facts that the applicants have provided a sufficiently high level of care at the facilities they have operated.

Project Review

There are no proposed changes in either the program or physical environment of the facility. No administrative services/consulting agreement is proposed in this application.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Background

The proposed change in ownership is part of a nine residential health care facilities, five adult care facilities, two independent housing companies and related real property companies acquisition involving Crestwood Health Care Center, Inc., the operator and Crestwood Development, LLC, the owner of the realty and the proposed new owner/operator Post Acute Partners Acquisitions, LLC an existing for profit limited liability company that will be assigning its rights and title to both the operations and the real estate to 2600 Niagara Falls Boulevard Operating Company, LLC, d/b/a Elderwood at Wheatfield and 2600 Niagara Falls Boulevard, LLC, respectively.

The five adult care facilities will be reviewed by the Division of Long Term Care and therefore are being reviewed separately from the nursing home application. The independent Housing companies as well are not being addressed in these reviews. The information provided regarding the independent housing companies is to delineate them from the total project cost for the overall application.

The proposed members are also seeking establishment approval to concurrently acquire ownership of the following related residential health care facilities, also part of the facilities acquisition, through the applications listed below:

CON	Applicant	Facility	Beds
111456-E	4800 Bear Road Operating Company, LLC, d/b/a Elderwood at Liverpool	Birchwood Health Care Center, Inc. d/b/a Elderwood Health Care at Birchwood	160
111462-E	1818 Como Park Boulevard Operating Company, LLC, d/b/a Elderwood at Lancaster	Linwood Health Care Center, Inc. d/b/a Elderwood Health Care at Linwood	94
111468-E	2850 Grand island Boulevard Operating Company, LLC d/b/a Elderwood at Grand Island	Riverwood Health Care Center, Inc. d/b/a Elderwood Health Care at Riverwood	90
111470-E	5775 Maelou Drive Operating Company, LLC d/b/a Elderwood at Hamburg	Lakewood Health Care Center, Inc. d/b/a Elderwood Health Care at Lakewood	166
111469-E	225 Bennett Road Operating Company, LLC d/b/a Elderwood at Cheektowaga	Maplewood Health Care Center, Inc. d/b/a Elderwood Health Care at Maplewood	170
111471-E	37 North Chemung Street Operating Company, LLC d/b/a Elderwood at Waverly	Elderwood Health Care at Tioga, LLC d/b/a Elderwood Health Care at Tioga	200
111467-E	4459 Bailey Avenue Operating Company, LLC d/b/a Elderwood at	Wedgewood Health Care Center, Inc. d/b/a Elderwood Health Care at Wedgewood	92

	Amherst		
111463-E	200 Bassett Road Operating Company, LLC d/b/a Elderwood at Williamsville	Oakwood Health Care Center, Inc. d/b/a Elderwood Health Care at Oakwood	200

The applicant has provided an affidavit, which states that 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 the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently, the facility has no outstanding Medicaid audit liabilities.

All nine applications will be processed concurrently.

Asset Purchase Agreement

The change in ownership will be effectuated in accordance with the terms of the executed Asset Purchase Agreement, summarized below. This agreement is for the nine residential health care facility, five adult care facility, two independent housing company and related real property companies acquisition.

Date:	February 25, 2011
Sellers (Nursing Home Operations):	Wedgewood Health Care Center, LLC, Maplewood Health Care Center, Inc., Riverwood Health Care Center, Inc., Lakewood Health Care Center, Inc., Linwood Health Care Center, Inc., Crestwood Health Care Center, Inc., Oakwood Health Care Center, Inc., Birchwood Health Care Center, Inc., Elderwood Health Care Center at Tioga, LLC
Sellers (Nursing Home Real Estate):	Wedgewood SNF Property Company, LLC, Maplewood Property Associates, L.P., Riverwood Property Associates, L.P., Elderwood Affiliates, Inc., LPC at Linwood LLC, Crestwood Development, LLC, Oakwood Property Associates, L.P., Tioga Property Company North, LLC
Purchaser:	Post Acute Partners Acquisition, LLC
Purchased Assets:	All right, title and interest of the above operations and Woodmark Services, Inc. in and to all supplies used in the facilities operations. All assumed Contracts, Admission agreements, assignable licenses, right, title and interest in trade marks, dress and names and services marks used in the facilities operations, specifically "Elderwood" and "Elderwood Senior Care" and the service mark "Care Without Compromise"; all phone and fax numbers, email addresses domain names, P.O. boxes and software used for the facilities operations. All books, data and records for the facilities, (except where transfer is prohibited) all employee records, but only for transitioned employees (excluding the seller's financial books and records). All right, title and interest in all vehicles located at the respective facilities owned or operated by it or used in connection therewith and in all furniture, furnishings, equipment, computers and office equipment and supplies located at the corporate offices. All right, title and interest of Elderwood Transportation Company, LLC in all tangible and intangible personal property and all right, title and interest of each seller in any and all other items of tangible and intangible personal property used or useful in connection with the facilities operations and all the facilities goodwill.
Excluded Assets:	The Heathwood and Penfield facilities owned and operated by affiliates of seller, including all assets, the names "Heathwood Health Care Center, Inc. d/b/a Elderwood Health Care at Heathwood" and "Elderwood Assisted Living at Penfield, LLC" and operations thereof; all assets relating to pharmacy operations of Woodmark pharmacy, Inc.; All assets of the KABA division of Woodmark services, Inc and the provider agreement and provider number of Woodmark services, Inc.; Real property comprising seller's corporate offices, located in Williamsville, NY at 7 Limestone Drive, 1142 Wehrle Drive and 1150 Wehrle Drive; all of seller's bank accounts, cash, cash equivalents and

	securities except to the extent any portion thereof is subject to the proration or reconciliation procedures set forth herein; all replacement and tax escrow reserves, utility deposits and workers compensation trust assets of seller; all prepaid expenses, all vehicles, office furniture, computers and cell phones used by Robert M. Chur and/or Carla Chur Suero; all accounts receivable prior to the effective time, except as otherwise expressly provided in this agreement, all refunds or reimbursements for the period prior to the effective time and all deposits, escrowed funds and similar funds; except otherwise expressly provided in this agreement, all claims, disputes and litigation, and all amounts of any nature or description relating thereto for the period prior to the effective time; all receivables from any affiliate of seller, all of seller's rights and benefits under this agreement; seller's organizational documents relating solely to the existence of each of the entities comprising seller as separate legal entity; seller's right to the grant proceeds associated with the HEAL projects; except to the extent included in the patient records or the employee records' seller's general ledgers and trial balances and all other financial journal and ledgers and statements, for any of the foregoing.
Liabilities Assumed :	The applicable Real liabilities under the mortgages listed on schedule 1.6(a)(the aggregate outstanding balance of any mortgage debt described on schedule 1.6(a) or (b) assumed or taken by applicable real estate purchaser referred to as the assumed debt") assume the obligations and liabilities under the Birchwood Lease for periods after the effective time, subject to obtaining required consents in respect of each of the mortgages comprising assumed debt and the Birchwood landlord under the Birchwood lease; (ii) New operator will assume the assumed contracts and admissions agreements, only to the extent they are for periods after the effective time and (iii) Each applicable real estate purchaser shall exercise its respective commercially reasonable efforts to assume or take title subject to the mortgages listed on schedule 1.6 (a) and obtain any and all required consents in connection therewith. Seller shall retain, promptly pay and discharge in the ordinary course all liabilities and obligations of seller other than the assumed liabilities.
Excluded Liabilities:	Seller's accounts payable and all obligations for the facilities operation prior to the effective time including costs, expenses and other liabilities and obligations from the facilities operation except as set forth in sections 4.1(b) and 4.12, obligation under any collective bargaining agreement, employment agreement, pension or retirement plan, profit sharing plan, stock plan, compensation obligation or agreement or severance pay plan or agreement and any other employee benefit plan and liability for any taxes (except taxes prorated in accordance with section 10.3 (a)) any accounts payable or other obligations accruing to and existing as of the effective time are and shall remain the seller's sole obligation and responsibility.
Purchase Price:	$141,150,000 for the Nine Residential Health Care facility, five adult care facility and two independent housing company and related real property companies acquisition.
Purchase Price for this operation and real estate:	$10,282,776 with $1,182,776 allocated to the operations purchase price and $9,100,000 allocated to the real estate purchase price.
Payment of Purchase Price:	Through three loans, one for $7,111,100 at 30 years at 5.5% interest, a subordinated loan for $2,396,918 at 10% for 7 years, and a loan for $774,758 for 7 years interest only.

Below is the breakout of the purchase price for all of the facilities by facility category with a final table showing the total purchase price for the full operations and real estate transfer.

Residential Health Care Facilities

CON	Applicant	Facility	Real Estate Purchase Price	Operations Purchase Price	Total Purchase Price
111467-E	4459 Bailey Avenue Operating Company, LLC d/b/a Elderwood at Amherst	Wedgewood Health Care Center, Inc. d/b/a Elderwood Health Care at Wedgewood	$6,500,000	$3,383,566	$9,883,566
111468-E	2850 Grand Island Boulevard Operating Company, LLC d/b/a Elderwood at Grand Island	Riverwood Health Care Center, Inc. d/b/a Elderwood Health Care at Riverwood	$4,700,000	$2,951,514	$7,651,514
111470-E	5775 Maelou Drive Operating Company, LLC d/b/a Elderwood at Hamburg	Lakewood Health Care Center, Inc. d/b/a Elderwood Health Care at Lakewood	$6,700,000	$4,094,870	$10,794,870
111462-E	1818 Como Park Boulevard Operating Company, LLC d/b/a Elderwood at Lancaster	Linwood Health Care Center, Inc. d/b/a Elderwood Health Care at Linwood	$2,250,000	$1,423,042	$3,673,042
111456-E	4800 Bear Road Operating Company, LLC d/b/a Elderwood at Liverpool	Birchwood Health Care Center, Inc. d/b/a Elderwood Health Care at Birchwood	N/A	$7,730,857	$7,730,857
111469-E	225 Bennett Road Operating Company, LLC d/b/a Elderwood at Cheektowaga	Maplewood Health Care Center, Inc. d/b/a Elderwood Health Care at Maplewood	$8,300,000	$1,660,484	$9,960,484
111466-E	2600 Niagara Falls Boulevard Operating Company, LLC d/b/a Elderwood at Wheatfield	Crestwood Health Care Center, Inc. d/b/a Elderwood Health Care at Crestwood	$9,100,000	$1,182,776	$10,282,776
111463-E	200 Bassett Road Operating Company, LLC d/b/a Elderwood at Williamsville	Oakwood Health Care Center, Inc. d/b/a Elderwood Health Care at Oakwood	$6,800,000	$5,271,383	$12,071,383

111471-E	37 North Chemung Street Operating Company, LLC d/b/a Elderwood at Waverly	Elderwood Health Care at Tioga, LLC d/b/a Elderwood Health Care at Tioga	$5,400,000	$2,678,288	$8,078,288
Total Residential Health Care Facilities			*$49,750,000*	*$30,376,780*	*$80,126,780*

Adult Care Facilities

Facility Name	Purchase Price
Glenwood	$10,024,265
Maplewood ALF	$7,028,868
Rosewood	$8,337,181
Tioga ALF	$3,904,780
Westwood	$14,494,740
Total Adult Care Facilities Purchase Price	$43,789,834

Independent Housing Facilities

Facility Name	Purchase Price
Crestwood ILF	$12,590,237
Maplewood ILF	$4,993,149
Total Independent Housing Facilities Purchase Price	$17,583,386

Total Purchase Price

Operations and Real Estate	Purchase Price
Residential Health Care Facilities	$80,126,780
Adult Care Facilities	$43,789,834
Independent Housing Facilities	$17,583,386
Total Purchase Price	$141,500,000

Assignment Agreement

The change in operational and realty ownership will be effectuated in accordance with a draft assignment agreement, the terms of which are summarized below:

Effective Date:	Upon CON Approval by DOH
Assignor:	Post Acute Partners Acquisition, LLC
Assignee:	2600 Niagara Falls Boulevard, LLC
Operating Designee:	2600 Niagara Falls Boulevard Operating Company, LLC, d/b/a Elderwood at Wheatfield
Assets Assigned:	Assignor's right, title and interest as Buyer under the Purchase Agreement with respect to the Assigned Property.
Obligations Assigned:	Assumes all obligations on the part of the Buyer to be performed under Purchase Agreement relating to the Assigned Property.

The members of the proposed reality entities 2850 Grand Island Boulevard, LLC, 225 Bennett Road, LLC, 200 Bassett Road, LLC, 5775 Maelou Drive, LLC, 1818 Como Park Boulevard, LLC, 4800 Bear Road, LLC, 37 North Chemung Street, LLC, 2600 Niagara falls Boulevard, LLC and 4459 Bailey Avenue, LLC are as follows:

Proposed Members	Percentage Ownership
Warren Cole	50%
Dr. Jeffrey Rubin, D.D.S.	50%

Lease Agreement and Medicaid Capital Reimbursement

Facility occupancy is subject to a draft lease agreement, the terms of which are summarized as follows:

Effective Date:	Upon CON Approval by DOH
Premises:	A 160-bed RHCF located at 2600 Niagara Falls Boulevard, Niagara Falls (Niagara County)
Lessor:	2600 Niagara Falls Boulevard, LLC
Lessee:	2600 Niagara Falls Boulevard Operating Company, LLC, d/b/a Elderwood at Wheatfield
Term:	10 years commencing on the execution of the lease with four (5 year extensions)
Annual Rental:	Lease payment is equivalent to the annual mortgage debt service for the facility, which is $1,066,845.
Type:	Triple net lease.

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the landlord and operating entity.

Currently, the facility Medicaid capital reimbursement is based on the return of and return on equity for recent improvements. This methodology will not be altered upon change in ownership.

Operating Budget

Following is a summary of the submitted operating budget for the RHCF, presented in 2011 dollars, for the first year subsequent to change in ownership:

	Per Diem	Total
Revenues:		
Medicare Fee For Service	$380.04	$2,797,094
Medicaid Fee For Service	$187.05	$7,393,742
Private Pay	$379.15	$3,407,790
Total Revenue		13,598,625
Expenses:		
Operating		$11,758,573
Capital		$1,120,508
Total Expense		$12,879,081
Net Income		$719,544
Utilization (Patient days)		55,877
Occupancy		95.68%

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

- Overall utilization is projected at 95.68%, which is consistent with historical. Utilization by payor source is expected as follows:

Medicaid	13.17%
Medicare	70.74%
Private Pay	16.09%

- Breakeven utilization is projected at 90.61%.

Capability and Feasibility

The purchase price and initiation of operations as a financially viable entity will be financed by a loan from Capital Funding, LLC of $7,111,100 at an interest rate of 5.50% for 30 years, with the remaining $2,396,918 from a subordination loan at an interest rate of 10% for 7 years, and $774,758 seller's notes that is interest only.

Working capital requirements are estimated at $2,146,514, based on two months' of first year expenses. $1,073,256 will by satisfied from the proposed member's equity, and the remaining $1,073,258 will be satisfied through a loan from Capital Funding LLC at 5.00% over 5 years. A letter of interest has been supplied by Capital Funding LLC. Presented as BFA Attachment A, is the Net Worth of proposed members.

The issue of feasibility is centered on the applicant's ability to offset expenses with revenues and maintain a viable operating entity. The submitted budget indicates that a net income of $719,544 would be maintained during the first year following change in ownership. The budget appears reasonable.

Presented as BFA Attachment B, is the pro-forma balance sheet, which indicates positive members' equity of $1,073,256 as of the first day of operations.

Following is a comparison of 2010 and projected revenue and expense:

Annual 2010 Income	$13,534,449
Annual 2010 Expense	13,024,695
Annual 2010 Net Income	$509,754
Projected incremental Income	$64,176
Projected incremental Expense	(145,614)
Projected incremental Net Income	$209,790
Incremental Net Income (Loss)	$719,544

Projected income includes revenues at budgeted occupancy and payor source, to accommodate Medicaid access requirements as well as the difference between current year and projected levels.
Projected expenses include acquisition capital expense, expenses at budgeted occupancy, and the difference between current year and projected levels.

As shown on BFA Attachment C, Elderwood Health Care at Crestwood had an average positive working capital position and an average positive net asset position, and generated an average net income of $ 83,624 for the period 2008-2010. In 2009, the facility shows a loss; the loss is attributable to a reduction in private pay days from 2008 to 2009, which caused the reduction in revenue. In order to rectify this, the facility increased their admissions of Medicaid patients in order to address the decline in private pay admissions, which resulted in a positive net income for 2010.

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	Pro-forma Balance Sheet
BFA Attachment C	Financial Summary - Elderwood Health Care at Crestwood
BFA Attachment D	Organizational Chart
BFA Attachment E	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 5th day of April, 2012, 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 2600 Niagara Falls Boulevard Operating Company, LLC d/b/a Elderwood at Wheatfield as the new operator of Elderwood Health Care at Crestwood, 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:
111466-E	2600 Niagara Falls Boulevard Operating Company, LLC d/b/a Elderwood at Wheatfield

APPROVAL CONTINGENT UPON:

1. Submission of documentation of project completion of CON #111083-L. [PMU]
2. Submission of a loan commitment for working capital that is acceptable to the Department of Health. [BFA]
3. Submission of a commitment that is acceptable to the Department, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
4. Submission of an executed building lease that is acceptable to the Department. [BFA]
5. Submission of an executed assignment agreement that is acceptable to the Department. [BFA]
6. Submission of an original affidavit from the applicant members (or stockholders or partners) making a commitment to personally fund the balloon payment on the proposed mortgage, should terms acceptable to the Department of Health be unavailable at the time of refinancing. [BFA]
7. Submission of photocopies of the applicant's Articles of Organization, as filed with the Department of State and of a fully executed and dated Certificate of Amendment to the applicant's Articles of Organization, which must be acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's fully executed and dated Operating Agreement, which must be acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's fully executed Certificate of Assumed Name, which must be acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's fully executed and dated sublease agreement, including the consent of the Landlord (as such term is defined below), which must be acceptable to the Department. [CSL]
11. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of Post Acute Partners Acquisition, LLC (Post Acute Partners), as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
12. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of Post Acute Partners, which must be acceptable to the Department. [CSL]
13. Submission of a list of all members and managers of Post Acute Partners, which must be acceptable to the Department. [CSL]
14. Submission of a photocopy of that certain Amended and Restated Deposit Escrow Agreement, as described in "Whereas Clause D" of the Asset Purchase Agreement between Post Acute Partners, as Purchaser, and various other entities, as Seller, dated February 25, 2011, which must be acceptable to the Department. [CSL]
15. Submission of a photocopy of a fully executed and dated Assignment of Rights between Post Acute Partners, the applicant and the owner of the real property on which the facility is located (Landlord), which must be acceptable to the Department. [CSL]
16. Submission of a photocopy of the proposed Bill of Sale, and any other transfer documents, between the applicable Seller and the applicant, pursuant to which the operating assets of the facility will be transferred to the applicant, which must be acceptable to the Department. [CSL]
17. Submission of a photocopy of the Lease pursuant to which Post Acute Partners has a leasehold interest in the real property on which the facility is located and the detailed explanation as to why the real property will not be owned by an affiliate of the applicant as is the case with all of the related Elderwood applications, which must be acceptable to the Department. [CSL]

18. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of the Landlord, as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
19. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of the Landlord, which must be acceptable to the Department. [CSL]
20. Submission of a list of all members and managers of the Landlord, which must be acceptable to the Department. [CSL]
21. Submission of photocopies of any agreements, documents, or arrangements between or among the applicant, Post Acute Partners, the Landlord, and/or any other entity (including, but not limited to, any affiliate or subsidiary), jointly and severally, directly or indirectly, relating to the ownership or operation of the facility. [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 # 111467-E
4459 Bailey Avenue Operating Company, LLC
d/b/a Elderwood at Amherst

County: **Erie (Amherst)**
Purpose: **Establishment**
Program: **Residential Health Care Facility**
Submitted: **May 27, 2011**

Executive Summary

Description

4459 Bailey Avenue Operating Company, LLC, d/b/a Elderwood at Amherst, is seeking approval to be established as the new operator of Wedgewood Health Care Center, Inc. d/b/a Elderwood Health Care at Wedgewood, an existing 92-bed residential health care facility (RHCF) located at 4459 Bailey Avenue, Amherst. Wedgewood SNF Property Company, LLC is the current realty owner. Ownership before and after the requested change is as follows:

Operations:	
Before	
Wedgewood Health Care Center, Inc. d/b/a Elderwood Health Care at Wedgewood	
Members	Interest
-- Robert M. Chur	66.00%
-- Carol Chur	25.00%
-- Carla Chur Suero	4.50%
-- Kelly Chur Henry	4.50%
After	
4459 Bailey Avenue Operating Company, LLC d/b/a Elderwood at Wedgewood	
Members	Interest
-- Warren Cole	50.00%
-- Dr. Jeffrey Rubin, D.D.S.	50.00%

Real Estate:	
Before	
Wedgewood SNF Property Company, LLC	
Members	Interest
-- Robert M. Chur	65.25%
-- Carol L. Chur	24.75%
-- Carla Chur Suero	4.50%
-- Kelly Chur Henry	4.50%
-- Elderwood Properties, LLC	1.00%
After	
4459 Bailey Avenue, LLC	
Members	Interest
-- Warren Cole	50.00%
-- Dr. Jeffrey Rubin, D.D.S.	50.00%

The proposed change in ownership is part of an acquisition involving nine RHCFs, five adult care facilities, two independent housing companies, and related real property companies.

Post Acute Partners Acquisitions, LLC, an existing for-profit limited liability company, will be assigning its rights and title to both the operations and the real estate to 4459 Bailey Avenue Operating Company, LLC, d/b/a Elderwood at Wedgewood and 4459 Bailey Avenue, LLC, respectively.

DOH Recommendation

Contingent approval.

Need Summary

Elderwood Health Care at Wedgewood utilization for 2009 and 2010 was 94.2% and 95.1%, respectively. There will be no change in the beds or services of the Wedgewood Health Care Center facility as a result of this project.

Program Summary

Based on actual documentation received from other states and on indications of acceptable operating experience where full documentation was not available, and on affidavits submitted by the applicants, a positive finding as to character and competence can be made.

Financial Summary

There are no project costs associated with this proposal.

Budget:		
	Revenues:	*$ 8,749,674*
	Expenses:	*7,866,882*
	Gain/(Loss):	*$ 882,792*

Subject to 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; Architectural review is not 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 loan commitment for working capital that is acceptable to the Department of Health. [BFA]
2. Submission of a commitment that is acceptable to the Department, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
3. Submission of an executed building lease that is acceptable to the Department. [BFA]
4. Submission of an executed assignment agreement that is acceptable to the Department. [BFA]
5. Submission of an original affidavit from the applicant members (or stockholders or partners) making a commitment to personally fund the balloon payment on the proposed mortgage, should terms acceptable to the Department of Health be unavailable at the time of refinancing. [BFA]
6. Submission of photocopies of the applicant's Articles of Organization, as filed with the Department of State and of a fully executed and dated Certificate of Amendment to the applicant's Articles of Organization, which must be acceptable to the Department. [CSL]
7. Submission of a photocopy of the applicant's fully executed and dated Operating Agreement, which must be acceptable to the Department. [CSL]
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16. Submission of a photocopy of the Lease pursuant to which Post Acute Partners has a leasehold interest in the real property on which the facility is located and the detailed explanation as to why the real property will not be owned by an affiliate of the applicant as is the case with all of the related Elderwood applications, which must be acceptable to the Department. [CSL]
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20. Submission of photocopies of any agreements, documents, or arrangements between or among the applicant, Post Acute Partners, the Landlord, and/or any other entity (including, but not limited to, any affiliate or subsidiary), jointly and severally, directly or indirectly, relating to the ownership or operation of the facility. [CSL]

Council Action Date

April 5, 2012.

Need Analysis

Background
4459 Bailey Avenue Operating Company, LLC, d/b/a Elderwood at Amherst, is seeking approval to be established as the new operator of Wedgewood Health Care Center, Inc. d/b/a Elderwood Health Care at Wedgewood, an existing 92-bed residential health care facility (RHCF) located at 4459 Bailey Avenue, Amherst (Erie County), New York 14226.

There will be no change in the beds or services of the Elderwood Health Care at Wedgewood facility as a result of this project.

Analysis

RHCF Bed Need – Erie County	
2016 Projected Need	5,291
Current Beds	6,225
Beds Under Construction	- 332
Total Resources	5,893
Unmet Need	- 602

RHCF Occupancy	***2008***	***2009***	***2010***
Elderwood Health Care at Wedgewood	**95.40%**	**94.20%**	**95.10%**
Elderwood Health Care at Lakewood	97.00%	97.00%	97.00%
Buffalo General Hospital Deaconess SNF Div	97.70%	98.20%	96.50%
Erie County Medical Center-SNF	94.50%	94.60%	94.10%
Mercy Hospital Skilled Nursing Facility	93.70%	99.80%	93.40%
Millard Fillmore Skilled Nursing Facility	98.00%	97.50%	97.70%
Niagara Lutheran Home & Rehabilitation Center Inc	96.30%	96.90%	96.10%
Hawthorn Health Multicare Center for Living	90.80%	90.70%	90.50%
St Catherine Laboure Health Care Center	97.70%	99.00%	97.50%
Delaware Nursing & Rehabilitation Center	88.10%	89.00%	87.80%
Harbour Health Multicare Center for Living	95.70%	97.70%	95.40%
Waterfront Health Care Center, Inc	98.90%	98.60%	98.70%
Ridge View Manor LLC	Did not report	Did not report	
Sheridan Manor LLC	Did not report	Did not report	
Mcauley Residence	95.70%	94.40%	95.40%
Schofield Residence	99.70%	99.00%	99.30%
Harris Hill Nursing Facility, LLC	98.50%	98.10%	97.90%
Elderwood Health Care at Linwood	98.50%	97.70%	98.20%
Erie County Home	97.60%	96.10%	97.40%
St Francis Home of Williamsville	90.60%	90.10%	90.30%
Elderwood Health Care at Oakwood	97.10%	96.60%	96.80%
Canterbury Woods	95.80%	86.70%	95.50%
Williamsville Suburban LLC	Did not report	Did not report	Did not report
Absolut Center for Nursing and Rehabilitation at Aurora Park, LLC	92.00%	90.50%	91.70%
Jennie B Richmond Chaffee Nursing Home Company Inc	96.00%	95.90%	Did not report
Fiddlers Green Manor Nursing Home	91.80%	94.30%	91.50%
Autumn View Health Care Facility, LLC	97.60%	97.20%	97.30%
Father Baker Manor	93.40%	95.20%	93.20%
Absolut Center for Nursing and Rehabilitation at Orchard Park, LLC	94.60%	96.30%	94.30%
Fox Run at Orchard Park	39.50%	Did not report	39.40%
Rosa Coplon Jewish Home and Infirmary	96.90%	95.40%	96.70%

RHCF Occupancy	*2008*	*2009*	*2010*
Beechwood Homes	91.80%	97.60%	91.60%
Garden Gate Health Care Facility	97.60%	98.20%	97.10%
Elderwood Health Care at Maplewood	101.10%	102.70%	100.90%
Brothers of Mercy Nursing & Rehabilitation Center	97.20%	95.80%	96.90%
Absolut Center for Nursing and Rehabilitation at Eden, LLC	91.60%	91.20%	91.40%
Elderwood Health Care at Riverwood	97.50%	98.70%	97.20%
Greenfield Health & Rehab Center	93.60%	94.30%	93.40%
Seneca Health Care Center	97.90%	98.90%	97.70%
Erie County	*95.30%*	*96.00%*	*94.80%*

Elderwood Health Care Wedgewood did not meet the 97% planning optimum for either year in question 2009 or 2010.

Conclusion

The acquisition of Wedgewood Health Care Center by Post Acute Partners Acquisition, LLC will not result in any capacity or service changes.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Facility Information

	Existing	*Proposed*
Facility Name	Elderwood Health Care at Wedgewood	Elderwood at Amherst
Address	4459 Bailey Avenue Amherst, NY 14226	same
RHCF Capacity	92	92
ADHC Program Capacity	N/A	same
Type of Operator	Corporation	Limited Liability Company
Class of Operator	Proprietary	same
Operator	Wedgewood Health Care Center, Inc. d/b/a Elderwood Health Care at Wedgewood Stockholders Robert M. Chur 66% Carol L. Chur 25% Carla Suero 4.5% Kelly Henry 4.5%	4459 Bailey Avenue Operating Company, LLC d/b/a Elderwood at Amherst Members Warren Cole 50% Jeffrey Rubin 50%

Character and Competence

- FACILITIES REVIEWED:

ACU-acute care/hospital	ICF-intermediate care facility/group home
ALF-assisted living facility	IRF-intermediate rehabilitation facility (similar to SNF short term rehab)
HHA-home health agency	LTA-long term acute care hospital (similar to TCU)
HOM-homecare	RX-pharmacy

HOS-hospice SNF-skilled nursing facility/nursing home

(Note: actual dates of ownership may extend prior to 2003)

<u>Alabama</u>

*Laurelton Rehabilitation and Nursing Center**	*SNF*	*10/2006 to 5/2008*

<u>California</u>

San Joaquin Valley Rehabilitation Hospital	Hospital	7/2004-7/2004
Kenfield Rehabilitation Hospital	Hospital	8/2003-7/2004
Care Alternatives of California*	Hospice	2003-10/2009

<u>Colorado</u>

North Valley Rehabilitation Hospital (Haven Behavioral Sr. Care)	ACU-PSYCH	7/2003-8/2004
North Valley Rehabilitation Hospital (Vibra LTACH)	LTA	7/2003-8/2004
North Valley Rehabilitation Hospital (Vista View Care Center)	SNF	7/2003-8/2004

<u>Connecticut</u>

Danbury Health Care Center*	SNF	8/2003-10/2009
Darien Health Care Center*	SNF	8/2003-10/2009
Golden Hill Health Care Center*	SNF	8/2003-10/2009
Long Ridge of Stamford*	SNF	8/2003-10/2009
Newington Health Care Center*	SNF	8/2003-10/2009
Partners Pharmacy of Connecticut*	RX	2003-10/2009
River Glen Health Care Center (a/k/a Southbury HCC)*	SNF	8/2003-10/2009
The Highlands Health Care Center*	SNF	8/2003-10/2009
West River Health Care Center (a/k/a Milford North HCC)*	SNF	8/2003-10/2009
Westport Health Care Center*	SNF	8/2003-10/2009
Wethersfield Health Care Center*	SNF	8/2003-10/2009

<u>Kansas</u>

Care Alternatives of Kansas	HOS	2004-10/2009

<u>Kentucky</u>

Southern Kentucky Rehabilitation Hospital	IRF	5/2003-7/2004

<u>Maryland</u>

Montgomery Village Health Care Center	SNF	2003-10/2009

<u>Massachusetts</u>

Brookline Health Care Center*	SNF	8/2003-10/2009
Calvin Coolidge Nursing & Rehab Center for Northampton*	SNF	8/2003-10/2009
Care Alternatives of Massachusetts*	HOS	2005-10/2009
Concord Health Care Center*	SNF	8/2003-10/2009
Essex Park Rehabilitation & Nursing Center*	SNF	3/2005-10/2009
Holyoke Health Care Center*	SNF	8/2003-10/2009
Lexington Health Care Center*	SNF	8/2003-10/2009
Lowell Health Care Center*	SNF	8/2003-10/2009
Millbury Health Care Center*	SNF	8/2003-10/2009
New Bedford Health Care Center*	SNF	8/2003-10/2009
New Bedford Rehabilitation Hospital*	IRF	7/2003-8/2004
Newton Health Care Center*	SNF	8/2003-10/2009
North Shore Health Care Center*	SNF	8/2003-10/2009
Partners Pharmacy of Massachusetts*	RX	2004-10/2009
Peabody Glen Health Care Center*	SNF	8/2003-10/2009
Redstone Health Care Center (a/k/a East Longmeadow HCC)*	SNF	8/2003-10/2009
Weymouth Health Care Center*	SNF	8/2003-10/2009
Wilmington Health Care Center*	SNF	8/2003-10/2009

Michigan		
Grand Blanc Rehabilitation & Nursing Center	SNF	10/2006-10/2009
Missouri		
Care Alternatives of Missouri	HOS	2003-10/2009
Cliffview at Riverside Rehab & Nursing Center	SNF	10/2006-5/2008
Partners Pharmacy of Missouri*	RX	2003-10/2009
New Jersey		
Bergen Care Home Health	HHA	2007-10/2009
Bergen Care Personal Touch	HOM	2007-10/2009
Care Alternatives of New Jersey	HOS	2001-10/2009
Care One at Dunroven	SNF	2001-10/2009
Care One at East Brunswick	SNF	2/2002-10/2009
Care One at Evesham	SNF	8/2000-10/2009
Care One at Evesham Assisted Living	ALF	10/2007-10/2009
Care One at Ewing	SNF	11/2004-10/2009
Care One at Hamilton	SNF	5/2002-10/2009
Care One at Holmdel	SNF	8/1997-10/2009
Care One at Jackson (a/k/a Jackson HCC)	SNF	2004-10/2009
Care One at King James	SNF	2003-10/2009
Care One at Livingston	SNF	10/2002-10/2009
Care One at Livingston Assisted Living	ALF	9/2005-10/2009
Care One at Madison Avenue	SNF	1/2005-10/2009
Care One at Moorestown	SNF	9/2003-10/2009
Care One at Harmony Village at Moorestown	ALF	8/2003-10/2009
Care One at Morris	SNF	8/2001-10/2009
Care One at Morris Assisted Living	ALF	3/2003-10/2009
Care One at Pine Rest	SNF	2001-10/2009
Care One at Raritan Bay MC	LTA	3/2004-10/2009
Care One Harmony Village at Moorestown	SNF	9/2003-10/2009
Care One at Teaneck	SNF	4/2007-10/2009
Care One at The Cupola	SNF	2001-10/2009
Care One at The Highlands	SNF	2001-10/2009
Care One at Valley	SNF	2001-10/2009
Care One at Wall	SNF	9/2004-10/2009
Care One at Wayne	SNF/ALF	6/2002-10/2009
Care One at Wellington	SNF	6/2002-10/2009
Marlton Rehabilitation Hospital	IRF	5/2003-7/2004
Oradell Health Care Center	SNF	2003-10/2009
Partners Pharmacy of New Jersey	RX	2001-10/2009
Somerset Valley Rehabilitation & Nursing Center	SNF	10/2009-10/2009
South Jersey Health Care Center	SNF	2003-10/2009
Woodcrest Health Care Center	SNF	2003-10/2009
North Carolina		
Blue Ridge Health Care Center	SNF	8/2002-10/2009
Ohio		
Bellbrook Health Care Center	SNF	2003-10/2009
The Rehabilitation & Nursing Center at Elm Creek	SNF	10/2006-10/2009
The Rehabilitation & Nursing Center at Firelands	SNF	10/2006-10/2009
The Rehabilitation & Nursing Center at Spring Creek	SNF	10/2006-10/2009
Pennsylvania		
Care Alternatives of Pennsylvania	HOS	2003-10/2009
Pediatric Specialty Care at Doylestown	SNF	2/2011-present
Pediatric Specialty Care at Hopewell	PED ICF	2/2011-present

Pediatric Specialty Care at Lancaster	PED ICF	2/2011-present
Pediatric Specialty Care at Point Pleasant	PED ICF	2/2011-present
Pediatric Specialty Care at Quakertown	PED ICF	2/2011-present
Presque Isle Rehabilitation & Nursing Center	SNF	10/2006-10/2009
Senior Living of Lancaster	HOM	2/2011-present
The Rehabilitation & Nursing Center at Greater Pittsburg	SNF	10/2006-10/2009
Puerto Rico		
Medicare Y Mucho Mas*	Medicare Agency	2005-11/2009
Rhode Island		
Scallop Shell Nursing & Rehabilitation Center	SNF	12/2010-present
Virginia		
Care Alternatives of Virginia*	HOS	4/2002-10/2009
Colonial Heights Health Care Center*	SNF	4/2002-10/2009
Glenburnie Rehabilitation & Nursing Center*	SNF	4/2002-10/2009
Hopewell Health Care Center*	SNF	4/2002/10/2009
Partners Pharmacy of Virginia*	RX	4/2002-10/2009
Valley Health Care Center*	SNF/ALF	4/2002-10/2009
Westport Health Care Center*	SNF	4/2002-10/2009

Individual Background Review

Jeffrey Rubin is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospital, home health agencies and institutional pharmacies. Prior to founding Post-Acute Partners, Dr. Rubin served as Executive Vice President Business Development for Care One Management, LLC/Healthbridge Management, LLC from 2000-2009. Previous to his involvement with Care One, Dr. Rubin served as President of Millenium Healthcare, Inc. which was the precursor to Care One. Dr. Rubin was formerly a practicing dentist, with his license currently inactive. Dr. Rubin has had extensive health facility operational and real estate interests, which are listed above.

Warren Cole is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospital, home health agencies and institutional pharmacies. Prior to founding Post Acute Partners, LLC Mr. Cole was involved with Care Ventures, Inc., an investment firm which acquires operational and real estate interests in nursing homes and provides financing to health care facilities throughout the United States. Mr. Cole also served as Chief Financial Officer at Aveta, Inc., a health insurance company, from 2007-2010. Dr. Cole has had extensive health facility operational and real estate interests, which are listed above.

Character and Competence – Analysis:
No adverse information for the proposed members has been received.

In order to make a determination on whether a substantially consistent high level of care has been provided at the health facilities/agencies subject to review, a ten year review of the enforcement history for each is undertaken. A positive finding would result from concluding that there were no repeat enforcement actions causing harm to residents of a facility/agency for the same issue, during the past ten years or for the years of ownership. For the subject application adequate surveillance documentation with which to make a global finding cannot be obtained due to staffing issues at multiple states. To date staff and the applicant have exhausted their efforts to obtain the necessary documentation, with the outcome that adequate information is available for only 60 out of the total 100 disclosed health facility interests.

For those health facilities/agency for which there is inadequate documentation, denoted by an asterisk (*) in the above listing, no negative information regarding the operator's track record has been received. In addition the applicants have submitted affidavits regarding the incomplete surveillance history, in which they attest to the following:

> *During the applicable period identified…, the Entities may have been surveyed by the applicable state regulatory authority. Statements of Deficiencies may have been issued, and enforcement action(s) resulting in the payment of a fine may have been assessed. However, to my knowledge, during the applicable period…, the Entities have not (i) received enforcement actions for repeat deficiencies that were not remedied within timeframes required by applicable law or (ii) had a license or certificate issued by a state or federal regulatory authority suspended, terminated, revoked, denied, or annulled. Further, to my knowledge, there are no currently pending federal or state enforcement actions against the Entities …*

For those facilities for which there was complete information available for review, staff concludes that a substantially consistent high level of care has been provided.

The following summarizes the review outcome for each state:

A review of the **Alabama** facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the **California** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of California for which there is insufficient documentation to make a finding.

A review of the **Colorado** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Connecticut** facilities noted above indicates there is insufficient documentation with which to make a finding. The following seven Connecticut facilities owned by the principles were the subject of a Chapter 11 bankruptcy action:

Danbury Health Care Center
Darien Health Care Center
Long Ridge of Stamford
Newington Health Care Center
West River Health Care Center
Westport Health Care Center
Wethersfield Health Care Center

A review of the **Kansas** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Kentucky** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Maryland** facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Massachusetts** facilities noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Missouri** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Partners Pharmacy of Missouri for which there is insufficient documentation to make a finding.

A review of the **New Jersey** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **North Carolina** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Ohio** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Pennsylvania** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of Pennsylvania, for which there is insufficient documentation to make a finding.

A review of the **Puerto Rico** health related agency noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Rhode Island** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Virginia** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Colonial Heights Health Care Center, Glenburnie Rehabilitation & Nursing Center, Hopewell Health Care Center, Valley Health Care Center and Westport Health Care Center, for which there is insufficient documentation to make a finding.

If able to base our judgment solely on the documentation received from other states, the Department would be able to render a positive finding as to the character and competence of the applicants. We must, however, deal with a larger record, one which lacks sufficient documentation, by the Department's standards for analysis, of the applicants' operation of 35 facilities in five different states. However, it should be made clear that while these five states could not provide our customarily needed level of detail on operating history, we did not receive any negative findings that would warrant disapproval of this application; and we did receive indications of acceptable operating experience. The Department believes it reasonable to infer from these facts that the applicants have provided a sufficiently high level of care at the facilities they have operated.

Project Review

There are no proposed changes in either the program or physical environment of the facility. No administrative services/consulting agreement is proposed in this application.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Background

The proposed change in ownership is part of a nine residential health care facilities, five adult care facilities, two independent housing companies, and related real property companies acquisition, involving Wedgewood Health Care Center, Inc., the operator, and Wedgewood SNF Property Company LLC, the owner of the realty and the proposed new owner/operator Post Acute Partners Acquisitions, LLC, an existing for profit limited liability company, which will be assigning its right and title to the operations and the real estate to 4459 Bailey Avenue Operating Company, LLC, d/b/a Elderwood at Wedgewood and 4459 Bailey Avenue, LLC respectively.

The five adult care facilities will be reviewed by the Division of Long Term Care and therefore, are being reviewed separately from the nursing home application. The independent housing companies as well, are not being addressed in these reviews. The information provided regarding the independent housing companies is to delineate them from the total project cost for the overall application.

The proposed members are also seeking establishment approval to concurrently acquire ownership of the following related residential health care facilities, also part of the facilities acquisition, through the applications listed below:

CON	Applicant	Facility	Beds
111456-E	4800 Bear Road Operating Company, LLC, d/b/a Elderwood at Liverpool	Birchwood Health Care Center, Inc. d/b/a Elderwood Health Care at Birchwood	160
111462-E	1818 Como Park Boulevard Operating Company, LLC, d/b/a Elderwood at Lancaster	Linwood Health Care Center, Inc. d/b/a Elderwood Health Care at Linwood	94
111468-E	2850 Grand island Boulevard Operating Company, LLC d/b/a Elderwood at Grand Island	Riverwood Health Care Center, Inc. d/b/a Elderwood Health Care at Riverwood	90
111470-E	5775 Maelou Drive Operating Company, LLC d/b/a Elderwood at Hamburg	Lakewood Health Care Center, Inc. d/b/a Elderwood Health Care at Lakewood	166
111469-E	225 Bennett Road Operating Company, LLC d/b/a Elderwood at Cheektowaga	Maplewood Health Care Center, Inc. d/b/a Elderwood Health Care at Maplewood	170
111471-E	37 North Chemung Street Operating Company, LLC d/b/a Elderwood at Waverly	Elderwood Health Care at Tioga, LLC d/b/a Elderwood Health Care at Tioga	200
111466-E	2600 Niagara Falls Boulevard Operating Company, LLC d/b/a Elderwood at Wheatfield	Crestwood Health Care Center, Inc. d/b/a Elderwood Health Care at Crestwood	160
111463-E	200 Bassett Road Operating Company, LLC d/b/a Elderwood at Williamsville	Oakwood Health Care Center, Inc. d/b/a Elderwood Health Care at Oakwood	200

The applicant has provided an affidavit, which states that 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 the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently, the facility has no outstanding Medicaid audit liabilities.

All nine applications will be processed concurrently.

Asset Purchase Agreement

The change in ownership will be effectuated in accordance with the terms of the executed Asset Purchase Agreement, summarized below. This agreement is for the nine residential health care facility, five adult care facility, two independent housing company and related real property companies acquisition.

Date:	February 25, 2011
Sellers (Nursing Home Operations):	Wedgewood Health Care Center, LLC, Maplewood Health Care Center, Inc., Riverwood Health Care Center, Inc., Lakewood Health Care Center, Inc., Linwood Health Care Center, Inc., Crestwood Health Care Center, Inc., Oakwood Health Care Center, Inc., Birchwood Health Care Center, Inc., Elderwood Health Care Center at Tioga, LLC
Sellers (Nursing Home Real Estate):	Wedgewood SNF Property Company, LLC, Maplewood Property Associates, L.P., Riverwood Property Associates, L.P., Elderwood Affiliates, Inc., LPC at Linwood LLC, Crestwood Development, LLC, Oakwood Property Associates,

	L.P., Tioga Property Company North, LLC
Purchaser:	Post Acute Partners Acquisition, LLC
Purchased Assets:	All right, title and interest of the above operations and Woodmark Services, Inc. in and to all supplies used in the facilities operations. All assumed Contracts, Admission agreements, assignable licenses, right, title and interest in trade marks, dress and names and services marks used in the facilities operations, specifically "Elderwood" and "Elderwood Senior Care" and the service mark "Care Without Compromise"; all phone and fax numbers, email addresses domain names, P.O. boxes and software used for the facilities operations. All books, data and records for the facilities, (except where transfer is prohibited) all employee records, but only for transitioned employees (excluding the seller's financial books and records). All right, title and interest in all vehicles located at the respective facilities owned or operated by it or used in connection therewith and in all furniture, furnishings, equipment, computers and office equipment and supplies located at the corporate offices. All right, title and interest of Elderwood Transportation Company, LLC in all tangible and intangible personal property and all right, title and interest of each seller in any and all other items of tangible and intangible personal property used or useful in connection with the facilities operations and all the facilities goodwill.
Excluded Assets:	The Heathwood and Penfield facilities owned and operated by affiliates of seller, including all assets, the names "Heathwood Health Care Center, Inc. d/b/a Elderwood Health Care at Heathwood" and "Elderwood Assisted Living at Penfield, LLC" and operations thereof; all assets relating to pharmacy operations of Woodmark pharmacy, Inc.; All assets of the KABA division of Woodmark services, Inc and the provider agreement and provider number of Woodmark services, Inc.; Real property comprising seller's corporate offices, located in Williamsville, NY at 7 Limestone Drive, 1142 Wehrle Drive and 1150 Wehrle Drive; all of seller's bank accounts, cash, cash equivalents and securities except to the extent any portion thereof is subject to the proration or reconciliation procedures set forth herein; all replacement and tax escrow reserves, utility deposits and workers compensation trust assets of seller; all prepaid expenses, all vehicles, office furniture, computers and cell phones used by Robert M. Chur and/or Carla Chur Suero; all accounts receivable prior to the effective time, except as otherwise expressly provided in this agreement, all refunds or reimbursements for the period prior to the effective time and all deposits, escrowed funds and similar funds; except otherwise expressly provided in this agreement, all claims, disputes and litigation, and all amounts of any nature or description relating thereto for the period prior to the effective time; all receivables from any affiliate of seller, all of seller's rights and benefits under this agreement; seller's organizational documents relating solely to the existence of each of the entities comprising seller as separate legal entity; seller's right to the grant proceeds associated with the HEAL projects; except to the extent included in the patient records or the employee records' seller's general ledgers and trial balances and all other financial journal and ledgers and statements, for any of the foregoing.
Liabilities Assumed :	The applicable Real liabilities under the mortgages listed on schedule 1.6(a)(the aggregate outstanding balance of any mortgage debt described on schedule 1.6(a) or (b) assumed or taken by applicable real estate purchaser referred to as the assumed debt") assume the obligations and liabilities under the Birchwood Lease for periods after the effective time, subject to obtaining required consents in respect of each of the mortgages comprising assumed debt and the Birchwood landlord under the Birchwood lease; (ii) New operator will assume the assumed contracts and admissions agreements, only to the extent they are for periods after the effective time and (iii) Each applicable real estate purchaser shall exercise its respective commercially reasonable efforts to assume or take title subject to the mortgages listed on schedule 1.6 (a) and obtain any and all required consents in connection therewith. Seller shall retain, promptly pay and discharge in the ordinary course all liabilities and obligations

	of seller other than the assumed liabilities.
Excluded Liabilities:	Seller's accounts payable and all obligations for the facilities operation prior to the effective time including costs, expenses and other liabilities and obligations from the facilities operation except as set forth in sections 4.1(b) and 4.12, obligation under any collective bargaining agreement, employment agreement, pension or retirement plan, profit sharing plan, stock plan, compensation obligation or agreement or severance pay plan or agreement and any other employee benefit plan and liability for any taxes (except taxes prorated in accordance with section 10.3 (a)) any accounts payable or other obligations accruing to and existing as of the effective time are and shall remain the seller's sole obligation and responsibility.
Purchase Price:	$141,150,000 for the Nine Residential Health Care facility, five adult care facility and two independent housing company and related real property companies acquisition.
Purchase Price for this operation and real estate:	$9,883,566 with $3,383,566 allocated to the operations purchase price and $6,500,000 allocated to the real estate purchase price.
Payment of Purchase Price:	Through three loans one for $8,444,400 at 30 years at 5.5% interest, a subordinated loan for $1,087,615 at 10% for 7 years, and a loan for $351,551 for 7 years interest only.

Below is the breakout of the purchase price for all of the facilities by facility category with a final table showing the total purchase price for the full operations and real estate transfer.

Residential Health Care Facilities

CON	Applicant	Facility	Real Estate Purchase Price	Operations Purchase Price	Total Purchase Price
111467-E	4459 Bailey Avenue Operating Company, LLC d/b/a Elderwood at Amherst	Wedgewood Health Care Center, Inc. d/b/a Elderwood Health Care at Wedgewood	$6,500,000	$3,383,566	$9,883,566
111468-E	2850 Grand Island Boulevard Operating Company, LLC d/b/a Elderwood at Grand Island	Riverwood Health Care Center, Inc. d/b/a Elderwood Health Care at Riverwood	$4,700,000	$2,951,514	$7,651,514
111470-E	5775 Maelou Drive Operating Company, LLC d/b/a Elderwood at Hamburg	Lakewood Health Care Center, Inc. d/b/a Elderwood Health Care at Lakewood	$6,700,000	$4,094,870	$10,794,870
111462-E	1818 Como Park Boulevard Operating Company, LLC d/b/a Elderwood at Lancaster	Linwood Health Care Center, Inc. d/b/a Elderwood Health Care at Linwood	$2,250,000	$1,423,042	$3,673,042

111456-E	4800 Bear Road Operating Company, LLC d/b/a Elderwood at Liverpool	Birchwood Health Care Center, Inc. d/b/a Elderwood Health Care at Birchwood	N/A	$7,730,857	$7,730,857
111469-E	225 Bennett Road Operating Company, LLC d/b/a Elderwood at Cheektowaga	Maplewood Health Care Center, Inc. d/b/a Elderwood Health Care at Maplewood	$8,300,000	$1,660,484	$9,960,484
111466-E	2600 Niagara Falls Boulevard Operating Company, LLC d/b/a Elderwood at Wheatfield	Crestwood Health Care Center, Inc. d/b/a Elderwood Health Care at Crestwood	$9,100,000	$1,182,776	$10,282,776
111463-E	200 Bassett Road Operating Company, LLC d/b/a Elderwood at Williamsville	Oakwood Health Care Center, Inc. d/b/a Elderwood Health Care at Oakwood	$6,800,000	$5,271,383	$12,071,383
111471-E	37 North Chemung Street Operating Company, LLC d/b/a Elderwood at Waverly	Elderwood Health Care at Tioga, LLC d/b/a Elderwood Health Care at Tioga	$5,400,000	$2,678,288	$8,078,288
Total Residential Health Care Facilities			*$49,750,000*	*$30,376,780*	*$80,126,780*

Adult Care Facilities

Facility Name	Purchase Price
Glenwood	$10,024,265
Maplewood ALF	$7,028,868
Rosewood	$8,337,181
Tioga ALF	$3,904,780
Westwood	$14,494,740
Total Adult Care Facilities Purchase Price	$43,789,834

Independent Housing Facilities

Facility Name	Purchase Price
Crestwood ILF	$12,590,237
Maplewood ILF	$4,993,149
Total Independent Housing Facilities Purchase Price	$17,583,386

Total Purchase Price

Operations and Real Estate	Purchase Price
Residential Health Care Facilities	$80,126,780

Adult Care Facilities	$43,789,834
Independent Housing Facilities	$17,583,386
Total Purchase Price	$141,500,000

Assignment Agreement

The change in operational and realty ownership will be effectuated in accordance with a draft assignment agreement, the terms of which are summarized below:

Effective Date:	Upon CON Approval by DOH
Assignor:	Post Acute Partners Acquisition, LLC
Assignee:	4459 Bailey Avenue, LLC
Operating Designee:	4459 Bailey Avenue Operating Company, LLC, d/b/a Elderwood at Wedgewood
Assets Assigned:	Assignor's right, title and interest as Buyer under the Purchase Agreement with respect to the Assigned Property.
Obligations Assigned:	Assumes all obligations on the part of the Buyer to be performed under Purchase Agreement relating to the Assigned Property.

The members of the proposed reality entities 2850 Grand Island Boulevard, LLC, 225 Bennett Road, LLC, 200 Bassett Road, LLC, 5775 Maelou Drive, LLC, 1818 Como Park Boulevard, LLC, 4800 Bear Road, LLC, 37 North Chemung Street, LLC, 2600 Niagara falls Boulevard, LLC and 4459 Bailey Avenue, LLC are as follows:

Proposed Members	Percentage Ownership
Warren Cole	50%
Dr. Jeffrey Rubin, D.D.S.	50%

Lease Agreement and Medicaid Capital Reimbursement

Facility occupancy is subject to a draft lease agreement, the terms of which are summarized as follows:

Date:	Upon CON Approval by DOH
Premises:	A 92-bed RHCF located at 4459 Bailey Avenue, Amherst, NY (Erie County)
Lessor:	4459 Bailey Avenue, LLC
Lessee:	4459 Bailey Avenue Operating Company, LLC, d/b/a Elderwood at Wedgewood
Term:	10 years commencing on the execution of the lease with 4 additional (5 years extensions)
Annual Rental:	Lease payment is equivalent to the annual mortgage debt service for the facility, which is $843,093.
Type:	Triple net lease

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the landlord and operating entity.

Currently, the facility Medicaid capital reimbursement is based on the return of and return on equity for recent improvements. This methodology will not be altered upon change in ownership.

Operating Budget

Following is a summary of the submitted operating budget for the RHCF, presented in 2011 dollars, for the first year subsequent to change in ownership:

	Per Diem	Total
Revenues:		
Medicare Fee For Service	$370.15	$2,489,614
Medicaid Fee For Service	$198.22	$2,773,616

Private Pay	$320.24	$3,486,444
Total Revenue		$8,749,674
Expenses:		
Operating		$6,991,010
Capital		$875,872
Total Expense		$7,866,882
Net Income		$882,792
Utilization (Patient days)		31,606
Occupancy		94.12%

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

- Overall utilization is projected at 94.12%, which is consistent with historical. Utilization by payor source is expected as follows:

Medicaid	44.27%
Medicare	21.28%
Private Pay	34.45%

- Breakeven utilization is projected at 84.63%.

Capability and Feasibility

The purchase price and initiation of operations, as a financially viable entity, will be financed by a loan from Capital Funding, LLC of $8,444,400 at an interest rate of 5.50% for 30 years, with the remaining $1,087,615 from a subordination loan at an interest rate of 10% for 7 years and $351,551 seller's notes that is interest only.

Working capital requirements are estimated at $1,311,147, based on two months' of first year expenses. $655,564 will by satisfied from the proposed member's equity and the remaining $655,583 will be satisfied through a loan from Capital Funds, LLC at 5.00% over 5 years. A letter of interest has been supplied by Capital Funds, LLC. Presented as BFA Attachment A, is the Net Worth of proposed members.

The issue of feasibility is centered on the applicant's ability to offset expenses with revenues and maintain a viable operating entity. The submitted budget indicates that a net income of $882,792 would be maintained during the first year following change in ownership. The budget appears reasonable.

Presented as BFA Attachment B is the pro-forma balance sheet of 4459 Bailey Avenue Operating Company, LLC, d/b/a Elderwood at Wedgewood, which indicates positive members' equity of $655,564 as of the first day of operations.

Following is a comparison of 2010 and projected revenue and expense:

Annual 2010 Income	$8,523,084
Annual 2010 Expense	7,704,367
Annual 2010 Net Income	$818,717
Projected incremental Income	$226,590
Projected incremental Expense	162,515
Projected incremental Net Income	$64,075
Incremental Net Income (Loss)	$882,792

Projected income includes revenues at budgeted occupancy and payor source, to accommodate Medicaid access requirements as well as the difference between current year and projected levels.
Projected expenses include acquisition capital expenses, expenses at budgeted occupancy, and the difference between current year and projected levels.

As shown on BFA Attachment C Elderwood Health Care at Wedgewood, had an average positive working capital position and an average positive net asset position, and generated an average net Income of $760,381 for the period 2008-2010.

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	Pro-forma Balance Sheet
BFA Attachment C	Financial Summary - Elderwood Health Care at Wedgewood
BFA Attachment D	Organizational Chart
BFA Attachment E	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 5th day of April, 2012, 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 4459 Bailey Avenue Operating Company, LLC d/b/a Elderwood at Amherst as the new operator of Elderwood Health Care at Amherst, 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:
111467-E	4459 Bailey Avenue Operating Company, LLC d/b/a Elderwood at Amherst

APPROVAL CONTINGENT UPON:

1. Submission of a loan commitment for working capital that is acceptable to the Department of Health. [BFA]
2. Submission of a commitment that is acceptable to the Department, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
3. Submission of an executed building lease that is acceptable to the Department. [BFA]
4. Submission of an executed assignment agreement that is acceptable to the Department. [BFA]
5. Submission of an original affidavit from the applicant members (or stockholders or partners) making a commitment to personally fund the balloon payment on the proposed mortgage, should terms acceptable to the Department of Health be unavailable at the time of refinancing. [BFA]
6. Submission of photocopies of the applicant's Articles of Organization, as filed with the Department of State and of a fully executed and dated Certificate of Amendment to the applicant's Articles of Organization, which must be acceptable to the Department. [CSL]
7. Submission of a photocopy of the applicant's fully executed and dated Operating Agreement, which must be acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's fully executed Certificate of Assumed Name, which must be acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's fully executed and dated sublease agreement, including the consent of the Landlord (as such term is defined below), which must be acceptable to the Department. [CSL]
10. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of Post Acute Partners Acquisition, LLC (Post Acute Partners), as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
11. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of Post Acute Partners, which must be acceptable to the Department. [CSL]
12. Submission of a list of all members and managers of Post Acute Partners, which must be acceptable to the Department. [CSL]
13. Submission of a photocopy of that certain Amended and Restated Deposit Escrow Agreement, as described in "Whereas Clause D" of the Asset Purchase Agreement between Post Acute Partners, as Purchaser, and various other entities, as Seller, dated February 25, 2011, which must be acceptable to the Department. [CSL]
14. Submission of a photocopy of a fully executed and dated Assignment of Rights between Post Acute Partners, the applicant and the owner of the real property on which the facility is located (Landlord), which must be acceptable to the Department. [CSL]
15. Submission of a photocopy of the proposed Bill of Sale, and any other transfer documents, between the applicable Seller and the applicant, pursuant to which the operating assets of the facility will be transferred to the applicant, which must be acceptable to the Department. [CSL]
16. Submission of a photocopy of the Lease pursuant to which Post Acute Partners has a leasehold interest in the real property on which the facility is located and the detailed explanation as to why the real property will not be owned by an affiliate of the applicant as is the case with all of the related Elderwood applications, which must be acceptable to the Department. [CSL]

17. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of the Landlord, as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
18. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of the Landlord, which must be acceptable to the Department. [CSL]
19. Submission of a list of all members and managers of the Landlord, which must be acceptable to the Department. [CSL]
20. Submission of photocopies of any agreements, documents, or arrangements between or among the applicant, Post Acute Partners, the Landlord, and/or any other entity (including, but not limited to, any affiliate or subsidiary), jointly and severally, directly or indirectly, relating to the ownership or operation of the facility. [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 # 111468-E
2850 Grand Island Boulevard Operating Company, LLC d/b/a Elderwood at Grand Island

County: **Erie (Grand Island)**
Purpose: **Establishment**
Program: **Residential Health Care Facility**
Submitted: **May 29, 2011**

Executive Summary

Description

2850 Grand Island Boulevard Operating Company, LLC, d/b/a Elderwood at Grand Island, is seeking approval to be established as the new operator of Riverwood Health Care Center, Inc. d/b/a Elderwood Health Care at Riverwood, an existing 90-bed RHCF located at 2850 Grand Island Boulevard, Grand Island. Riverwood Property Associates, LP is the current realty owner. Ownership before and after the requested change is as follows:

Operations:	
Before	
Riverwood Health Care Center, Inc. d/b/a Elderwood Health Care at Riverwood	
Members	Interest
-- Robert M. Chur	66.00%
-- Carol Chur	25.00%
-- Carla Chur Suero	4.50%
-- Kelly Chur Henry	4.50%
After	
2850 Grand Island Boulevard Operating Company, LLC d/b/a Elderwood at Grand Island	
Members	Interest
-- Warren Cole	50.00%
-- Dr. Jeffrey Rubin, D.D.S.	50.00%

Real Estate:	
Before	
Riverwood Property Associates, L.P.	
Members	Interest
-- Robert M. Chur	65.25%
-- Carol L. Chur	24.75%
-- Carla Chur Suero	4.50%
-- Kelly Chur Henry	4.50%
-- Elderwood Properties, LLC	1.00%
After	
Post Acute Partner Acquisition, LLC	
Members	Interest
-- Warren Cole	50.00%
-- Dr. Jeffrey Rubin, D.D.S.	50.00%

The proposed change in ownership is part of an acquisition involving nine RHCFs, five adult care facilities, two independent housing companies, and related real property companies.

Post Acute Partners Acquisitions, LLC, an existing for-profit limited liability company, is the parent entity for this ultimate transaction.

DOH Recommendation

Contingent approval.

Need Summary

Elderwood Health Care at Riverwood's utilization for 2009 and 2010 was 98.7% and 97.2%, respectively. There will be no change in the beds or services of the Elderwood Health Care at Riverwood facility as a result of this project.

Program Summary

Based on actual documentation received from other states and on indications of acceptable operating experience where full documentation was not available, and on affidavits submitted by the applicants, a positive finding as to character and competence can be made.

Financial Summary

There are no project costs associated with this proposal.

Budget:		
	Revenues:	*$ 7,396,826*
	Expenses:	*7,020,333*
	Gain/(Loss):	*$ 376,493*

Subject to 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; Architectural review is not 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 loan commitment for working capital that is acceptable to the Department of Health. [BFA]
2. Submission of a commitment that is acceptable to the Department, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
3. Submission of an executed building lease that is acceptable to the Department. [BFA]
4. Submission of an executed assignment agreement that is acceptable to the Department. [BFA]
5. Submission of an original affidavit from the applicant members (or stockholders or partners) making a commitment to personally fund the balloon payment on the proposed mortgage, should terms acceptable to the Department of Health be unavailable at the time of refinancing. [BFA]
6. Submission of photocopies of the applicant's Articles of Organization, as filed with the Department of State and of a fully executed and dated Certificate of Amendment to the applicant's Articles of Organization, which must be acceptable to the Department. [CSL]
7. Submission of a photocopy of the applicant's fully executed and dated Operating Agreement, which must be acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's fully executed Certificate of Assumed Name, which must be acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's fully executed and dated sublease agreement, including the consent of the Landlord (as such term is defined below), which must be acceptable to the Department. [CSL]
10. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of Post Acute Partners Acquisition, LLC (Post Acute Partners), as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
11. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of Post Acute Partners, which must be acceptable to the Department. [CSL]
12. Submission of a list of all members and managers of Post Acute Partners, which must be acceptable to the Department. [CSL]
13. Submission of a photocopy of that certain Amended and Restated Deposit Escrow Agreement, as described in "Whereas Clause D" of the Asset Purchase Agreement between Post Acute Partners, as Purchaser, and various other entities, as Seller, dated February 25, 2011, which must be acceptable to the Department. [CSL]
14. Submission of a photocopy of a fully executed and dated Assignment of Rights between Post Acute Partners, the applicant and the owner of the real property on which the facility is located (Landlord), which must be acceptable to the Department. [CSL]
15. Submission of a photocopy of the proposed Bill of Sale, and any other transfer documents, between the applicable Seller and the applicant, pursuant to which the operating assets of the facility will be transferred to the applicant, which must be acceptable to the Department. [CSL]
16. Submission of a photocopy of the Lease pursuant to which Post Acute Partners has a leasehold interest in the real property on which the facility is located and the detailed explanation as to why the real property will not be owned by an affiliate of the applicant as is the case with all of the related Elderwood applications, which must be acceptable to the Department. [CSL]
17. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of the Landlord, as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
18. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of the Landlord, which must be acceptable to the Department. [CSL]
19. Submission of a list of all members and managers of the Landlord, which must be acceptable to the Department. [CSL]
20. Submission of photocopies of any agreements, documents, or arrangements between or among the applicant, Post Acute Partners, the Landlord, and/or any other entity (including, but not limited to, any affiliate or subsidiary), jointly and severally, directly or indirectly, relating to the ownership or operation of the facility. [CSL]

Council Action Date

April 5, 2012.

Need Analysis

Background

2850 Grand Island Boulevard Operating Company, LLC, d/b/a Elderwood at Grand Island, is seeking approval to be established as the new operator of Riverwood Health Care Center, Inc. d/b/a Elderwood Health Care at Riverwood, an existing 90-bed RHCF located at 2850 Grand Island Boulevard, Grand Island (Erie County).

There will be no change in the beds or services of the Elderwood Health Care at Riverwood facility as a result of this project.

Analysis

RHCF Bed Need – Erie County	
2016 Projected Need	5,291
Current Beds	6,225
Beds Under Construction	- 332
Total Resources	5,893
Unmet Need	- 602

RHCF Occupancy	***2008***	***2009***	***2010***
Elderwood Health Care at Riverwood	97.50%	98.70%	97.20%
Elderwood Health Care at Lakewood	97.00%	97.00%	97.00%
Buffalo General Hospital Deaconess SNF Div	97.70%	98.20%	96.50%
Erie County Medical Center-SNF	94.50%	94.60%	94.10%
Mercy Hospital Skilled Nursing Facility	93.70%	99.80%	93.40%
Millard Fillmore Skilled Nursing Facility	98.00%	97.50%	97.70%
Niagara Lutheran Home & Rehabilitation Center Inc	96.30%	96.90%	96.10%
Hawthorn Health Multicare Center for Living	90.80%	90.70%	90.50%
St Catherine Laboure Health Care Center	97.70%	99.00%	97.50%
Delaware Nursing & Rehabilitation Center	88.10%	89.00%	87.80%
Harbour Health Multicare Center for Living	95.70%	97.70%	95.40%
Waterfront Health Care Center, Inc	98.90%	98.60%	98.70%
Ridge View Manor LLC	Did not report	Did not report	
Sheridan Manor LLC	Did not report	Did not report	
Mcauley Residence	95.70%	94.40%	95.40%
Schofield Residence	99.70%	99.00%	99.30%
Harris Hill Nursing Facility, LLC	98.50%	98.10%	97.90%
Elderwood Health Care at Linwood	98.50%	97.70%	98.20%
Erie County Home	97.60%	96.10%	97.40%
St Francis Home of Williamsville	90.60%	90.10%	90.30%
Elderwood Health Care at Oakwood	97.10%	96.60%	96.80%
Canterbury Woods	95.80%	86.70%	95.50%
Williamsville Suburban LLC	Did not report	Did not report	Did not report
Absolut Center for Nursing and Rehabilitation at Aurora Park, LLC	92.00%	90.50%	91.70%
Jennie B Richmond Chaffee Nursing Home Company Inc	96.00%	95.90%	Did not report
Fiddlers Green Manor Nursing Home	91.80%	94.30%	91.50%
Autumn View Health Care Facility, LLC	97.60%	97.20%	97.30%
Father Baker Manor	93.40%	95.20%	93.20%
Absolut Center for Nursing and Rehabilitation at Orchard Park, LLC	94.60%	96.30%	94.30%
Fox Run at Orchard Park	39.50%	Did not report	39.40%
Rosa Coplon Jewish Home and Infirmary	96.90%	95.40%	96.70%
Elderwood Health Care at Wedgewood	95.40%	94.20%	95.10%

RHCF Occupancy	*2008*	*2009*	*2010*
Beechwood Homes	91.80%	97.60%	91.60%
Garden Gate Health Care Facility	97.60%	98.20%	97.10%
Elderwood Health Care at Maplewood	101.10%	102.70%	100.90%
Brothers of Mercy Nursing & Rehabilitation Center	97.20%	95.80%	96.90%
Absolut Center for Nursing and Rehabilitation at Eden, LLC	91.60%	91.20%	91.40%
Greenfield Health & Rehab Center	93.60%	94.30%	93.40%
Seneca Health Care Center	97.90%	98.90%	97.70%
Erie	*95.30%*	*96.00%*	*94.80%*

Elderwood Health Care at Riverwood exceeded the 97% planning optimum for 2008, 2009, and 2010.

Conclusion

The acquisition of Elderwood Health Care at Riverwood by Post Acute Partners Acquisition, LLC will not result in any capacity or service changes.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Facility Information

	Existing	*Proposed*
Facility Name	Elderwood Health Care at Riverwood	Elderwood at Grand Island
Address	2850 Grand Island Boulevard Grand Island, NY 14072	same
RHCF Capacity	90	90
ADHC Program Capacity	N/A	same
Type Of Operator	Corporation	Limited Liability Company
Class Of Operator	Proprietary	same
Operator	Riverwood Health Care Center, Inc. d/b/a Elderwood Health Care at Riverwood Stockholders Robert M. Chur 66% Carol L. Chur 25% Carla Suero 4.5% Kelly Henry 4.5%	2850 Grand Island Boulevard Operating Company, LLC d/b/a Elderwood at Grand Island Members Warren Cole 50% Jeffrey Rubin 50%

Character and Competence

- FACILITIES REVIEWED:

ACU-acute care/hospital	ICF-intermediate care facility/group home
ALF-assisted living facility	IRF-intermediate rehabilitation facility (similar to SNF short term rehab)
HHA-home health agency	LTA-long term acute care hospital (similar to TCU)
HOM-homecare	RX-pharmacy
HOS-hospice	SNF-skilled nursing facility/nursing home

(Note: actual dates of ownership may extend prior to 2003)

Alabama

*Laurelton Rehabilitation and Nursing Center**	*SNF*	*10/2006 to 5/2008*

California

San Joaquin Valley Rehabilitation Hospital	Hospital	7/2004-7/2004
Kenfield Rehabilitation Hospital	Hospital	8/2003-7/2004
Care Alternatives of California*	Hospice	2003-10/2009

Colorado

North Valley Rehabilitation Hospital (Haven Behavioral Sr. Care)	ACU-PSYCH	7/2003-8/2004
North Valley Rehabilitation Hospital (Vibra LTACH)	LTA	7/2003-8/2004
North Valley Rehabilitation Hospital (Vista View Care Center)	SNF	7/2003-8/2004

Connecticut

Danbury Health Care Center*	SNF	8/2003-10/2009
Darien Health Care Center*	SNF	8/2003-10/2009
Golden Hill Health Care Center*	SNF	8/2003-10/2009
Long Ridge of Stamford*	SNF	8/2003-10/2009
Newington Health Care Center*	SNF	8/2003-10/2009
Partners Pharmacy of Connecticut*	RX	2003-10/2009
River Glen Health Care Center (a/k/a Southbury HCC)*	SNF	8/2003-10/2009
The Highlands Health Care Center*	SNF	8/2003-10/2009
West River Health Care Center (a/k/a Milford North HCC)*	SNF	8/2003-10/2009
Westport Health Care Center*	SNF	8/2003-10/2009
Wethersfield Health Care Center*	SNF	8/2003-10/2009

Kansas

Care Alternatives of Kansas	HOS	2004-10/2009

Kentucky

Southern Kentucky Rehabilitation Hospital	IRF	5/2003-7/2004

Maryland

Montgomery Village Health Care Center	SNF	2003-10/2009

Massachusetts

Brookline Health Care Center*	SNF	8/2003-10/2009
Calvin Coolidge Nursing & Rehab Center for Northampton*	SNF	8/2003-10/2009
Care Alternatives of Massachusetts*	HOS	2005-10/2009
Concord Health Care Center*	SNF	8/2003-10/2009
Essex Park Rehabilitation & Nursing Center*	SNF	3/2005-10/2009
Holyoke Health Care Center*	SNF	8/2003-10/2009
Lexington Health Care Center*	SNF	8/2003-10/2009
Lowell Health Care Center*	SNF	8/2003-10/2009
Millbury Health Care Center*	SNF	8/2003-10/2009
New Bedford Health Care Center*	SNF	8/2003-10/2009
New Bedford Rehabilitation Hospital*	IRF	7/2003-8/2004
Newton Health Care Center*	SNF	8/2003-10/2009
North Shore Health Care Center*	SNF	8/2003-10/2009
Partners Pharmacy of Massachusetts*	RX	2004-10/2009
Peabody Glen Health Care Center*	SNF	8/2003-10/2009
Redstone Health Care Center (a/k/a East Longmeadow HCC)*	SNF	8/2003-10/2009
Weymouth Health Care Center*	SNF	8/2003-10/2009
Wilmington Health Care Center*	SNF	8/2003-10/2009

Michigan

Grand Blanc Rehabilitation & Nursing Center	SNF	10/2006-10/2009

Missouri

Care Alternatives of Missouri	HOS	2003-10/2009
Cliffview at Riverside Rehab & Nursing Center	SNF	10/2006-5/2008
Partners Pharmacy of Missouri*	RX	2003-10/2009

New Jersey

Bergen Care Home Health	HHA	2007-10/2009
Bergen Care Personal Touch	HOM	2007-10/2009
Care Alternatives of New Jersey	HOS	2001-10/2009
Care One at Dunroven	SNF	2001-10/2009
Care One at East Brunswick	SNF	2/2002-10/2009
Care One at Evesham	SNF	8/2000-10/2009
Care One at Evesham Assisted Living	ALF	10/2007-10/2009
Care One at Ewing	SNF	11/2004-10/2009
Care One at Hamilton	SNF	5/2002-10/2009
Care One at Holmdel	SNF	8/1997-10/2009
Care One at Jackson (a/k/a Jackson HCC)	SNF	2004-10/2009
Care One at King James	SNF	2003-10/2009
Care One at Livingston	SNF	10/2002-10/2009
Care One at Livingston Assisted Living	ALF	9/2005-10/2009
Care One at Madison Avenue	SNF	1/2005-10/2009
Care One at Moorestown	SNF	9/2003-10/2009
Care One at Harmony Village at Moorestown	ALF	8/2003-10/2009
Care One at Morris	SNF	8/2001-10/2009
Care One at Morris Assisted Living	ALF	3/2003-10/2009
Care One at Pine Rest	SNF	2001-10/2009
Care One at Raritan Bay MC	LTA	3/2004-10/2009
Care One Harmony Village at Moorestown	SNF	9/2003-10/2009
Care One at Teaneck	SNF	4/2007-10/2009
Care One at The Cupola	SNF	2001-10/2009
Care One at The Highlands	SNF	2001-10/2009
Care One at Valley	SNF	2001-10/2009
Care One at Wall	SNF	9/2004-10/2009
Care One at Wayne	SNF/ALF	6/2002-10/2009
Care One at Wellington	SNF	6/2002-10/2009
Marlton Rehabilitation Hospital	IRF	5/2003-7/2004
Oradell Health Care Center	SNF	2003-10/2009
Partners Pharmacy of New Jersey	RX	2001-10/2009
Somerset Valley Rehabilitation & Nursing Center	SNF	10/2009-10/2009
South Jersey Health Care Center	SNF	2003-10/2009
Woodcrest Health Care Center	SNF	2003-10/2009

North Carolina

Blue Ridge Health Care Center	SNF	8/2002-10/2009

Ohio

Bellbrook Health Care Center	SNF	2003-10/2009
The Rehabilitation & Nursing Center at Elm Creek	SNF	10/2006-10/2009
The Rehabilitation & Nursing Center at Firelands	SNF	10/2006-10/2009
The Rehabilitation & Nursing Center at Spring Creek	SNF	10/2006-10/2009

Pennsylvania

Care Alternatives of Pennsylvania	HOS	2003-10/2009
Pediatric Specialty Care at Doylestown	SNF	2/2011-present
Pediatric Specialty Care at Hopewell	PED ICF	2/2011-present
Pediatric Specialty Care at Lancaster	PED ICF	2/2011-present
Pediatric Specialty Care at Point Pleasant	PED ICF	2/2011-present
Pediatric Specialty Care at Quakertown	PED ICF	2/2011-present

Presque Isle Rehabilitation & Nursing Center	SNF	10/2006-10/2009
Senior Living of Lancaster	HOM	2/2011-present
The Rehabilitation & Nursing Center at Greater Pittsburg	SNF	10/2006-10/2009
Puerto Rico		
Medicare Y Mucho Mas*	Medicare Agency	2005-11/2009
Rhode Island		
Scallop Shell Nursing & Rehabilitation Center	SNF	12/2010-present
Virginia		
Care Alternatives of Virginia*	HOS	4/2002-10/2009
Colonial Heights Health Care Center*	SNF	4/2002-10/2009
Glenburnie Rehabilitation & Nursing Center*	SNF	4/2002-10/2009
Hopewell Health Care Center*	SNF	4/2002/10/2009
Partners Pharmacy of Virginia*	RX	4/2002-10/2009
Valley Health Care Center*	SNF/ALF	4/2002-10/2009
Westport Health Care Center*	SNF	4/2002-10/2009

Individual Background Review

Jeffrey Rubin is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospital, home health agencies and institutional pharmacies. Prior to founding Post-Acute Partners, Dr. Rubin served as Executive Vice President Business Development for Care One Management, LLC/Healthbridge Management, LLC from 2000-2009. Previous to his involvement with Care One, Dr. Rubin served as President of Millenium Healthcare, Inc. which was the precursor to Care One. Dr. Rubin was formerly a practicing dentist, with his license currently inactive. Dr. Rubin has had extensive health facility operational and real estate interests, which are listed above.

Warren Cole is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospital, home health agencies and institutional pharmacies. Prior to founding Post Acute Partners, LLC Mr. Cole was involved with Care Ventures, Inc., an investment firm which acquires operational and real estate interests in nursing homes and provides financing to health care facilities throughout the United States. Mr. Cole also served as Chief Financial Officer at Aveta, Inc., a health insurance company, from 2007-2010. Dr. Cole has had extensive health facility operational and real estate interests, which are listed above.

Character and Competence – Analysis:
No adverse information for the proposed members has been received.

In order to make a determination on whether a substantially consistent high level of care has been provided at the health facilities/agencies subject to review, a ten year review of the enforcement history for each is undertaken. A positive finding would result from concluding that there were no repeat enforcement actions causing harm to residents of a facility/agency for the same issue, during the past ten years or for the years of ownership. For the subject application adequate surveillance documentation with which to make a global finding cannot be obtained due to staffing issues at multiple states. To date staff and the applicant have exhausted their efforts to obtain the necessary documentation, with the outcome that adequate information is available for only 60 out of the total 100 disclosed health facility interests.

For those health facilities/agency for which there is inadequate documentation, denoted by an asterisk (*) in the above listing, no negative information regarding the operator's track record has been received. In addition the applicants have submitted affidavits regarding the incomplete surveillance history, in which they attest to the following:

During the applicable period identified…, the Entities may have been surveyed by the applicable state regulatory authority. Statements of Deficiencies may have been issued, and enforcement action(s) resulting in the payment of a fine may have been assessed. However, to my knowledge, during the applicable period…, the Entities have not (i) received enforcement actions for repeat deficiencies that were not remedied within timeframes required by applicable law or (ii) had a license or certificate issued by a state or federal regulatory authority suspended, terminated, revoked, denied, or annulled. Further, to my knowledge, there are no currently pending federal or state enforcement actions against the Entities …

For those facilities for which there was complete information available for review, staff concludes that a substantially consistent high level of care has been provided.

The following summarizes the review outcome for each state:

A review of the **Alabama** facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the **California** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of California for which there is insufficient documentation to make a finding.

A review of the **Colorado** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Connecticut** facilities noted above indicates there is insufficient documentation with which to make a finding. The following seven Connecticut facilities owned by the principles were the subject of a Chapter 11 bankruptcy action:

Danbury Health Care Center
Darien Health Care Center
Long Ridge of Stamford
Newington Health Care Center
West River Health Care Center
Westport Health Care Center
Wethersfield Health Care Center

A review of the **Kansas** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Kentucky** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Maryland** facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Massachusetts** facilities noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Missouri** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Partners Pharmacy of Missouri for which there is insufficient documentation to make a finding.

A review of the **New Jersey** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **North Carolina** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Ohio** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Pennsylvania** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of Pennsylvania, for which there is insufficient documentation to make a finding.

A review of the **Puerto Rico** health related agency noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Rhode Island** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Virginia** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Colonial Heights Health Care Center, Glenburnie Rehabilitation & Nursing Center, Hopewell Health Care Center, Valley Health Care Center and Westport Health Care Center, for which there is insufficient documentation to make a finding.

If able to base our judgment solely on the documentation received from other states, the Department would be able to render a positive finding as to the character and competence of the applicants. We must, however, deal with a larger record, one which lacks sufficient documentation, by the Department's standards for analysis, of the applicants' operation of 35 facilities in five different states. However, it should be made clear that while these five states could not provide our customarily needed level of detail on operating history, we did not receive any negative findings that would warrant disapproval of this application; and we did receive indications of acceptable operating experience. The Department believes it reasonable to infer from these facts that the applicants have provided a sufficiently high level of care at the facilities they have operated.

Project Review

There are no proposed changes in either the program or physical environment of the facility. No administrative services/consulting agreement is proposed in this application.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Background

The proposed change in ownership is part of a nine residential health care facilities, five adult care facilities, two independent housing companies, and related real property companies acquisition, involving Riverwood Health Care Center, Inc., the operator, and Riverwood Property Associates, LP, the owner of the realty and the proposed new owner/operator Post Acute Partners Acquisitions, LLC, an existing for profit limited liability company that is the parent entity for this ultimate transaction.

The five adult care facilities will be reviewed by the Division of Long Term Care and therefore, are being reviewed separately from the nursing home application. The independent housing companies as well, are not being addressed in these reviews. The information provided regarding the independent housing companies is to delineate them from the total project cost for the overall application.

The proposed members are also seeking establishment approval to concurrently acquire ownership of the following related residential health care facilities, also part of the facilities acquisition, through the applications listed below:

CON	Applicant	Facility	Beds
111456-E	4800 Bear Road Operating Company, LLC, d/b/a Elderwood at Liverpool	Birchwood Health Care Center, Inc. d/b/a Elderwood Health Care at Birchwood	160
111462-E	1818 Como Park Boulevard Operating Company, LLC, d/b/a Elderwood at Lancaster	Linwood Health Care Center, Inc. d/b/a Elderwood Health Care at Linwood	94
111467-E	4459 Bailey Avenue Operating Company, LLC d/b/a Elderwood at Amherst	Wedgewood Health Care Center, Inc. d/b/a Elderwood Health Care at Wedgewood	92
111470-E	5775 Maelou Drive Operating Company, LLC d/b/a Elderwood at Hamburg	Lakewood Health Care Center, Inc. d/b/a Elderwood Health Care at Lakewood	166
111469-E	225 Bennett Road Operating Company, LLC d/b/a Elderwood at Cheektowaga	Maplewood Health Care Center, Inc. d/b/a Elderwood Health Care at Maplewood	170
111471-E	37 North Chemung Street Operating Company, LLC d/b/a Elderwood at Waverly	Elderwood Health Care at Tioga, LLC d/b/a Elderwood Health Care at Tioga	200
111466-E	2600 Niagara Falls Boulevard Operating Company, LLC d/b/a Elderwood at Wheatfield	Crestwood Health Care Center, Inc. d/b/a Elderwood Health Care at Crestwood	160
111463-E	200 Bassett Road Operating Company, LLC d/b/a Elderwood at Williamsville	Oakwood Health Care Center, Inc. d/b/a Elderwood Health Care at Oakwood	200

The applicant has provided an affidavit, which states that 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 the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently, the facility has no outstanding Medicaid audit liabilities.

All nine applications will be processed concurrently.

Asset Purchase Agreement

The change in ownership will be effectuated in accordance with the terms of the executed Asset Purchase Agreement, summarized below. This agreement is for the nine residential health care facility, five adult care facility, two independent housing company and related real property companies acquisition.

Date:	February 25, 2011
Sellers (Nursing Home Operations):	Wedgewood Health Care Center, LLC, Maplewood Health Care Center, Inc., Riverwood Health Care Center, Inc., Lakewood Health Care Center, Inc., Linwood Health Care Center, Inc., Crestwood Health Care Center, Inc., Oakwood Health Care Center, Inc., Birchwood Health Care Center, Inc., Elderwood Health Care Center at Tioga, LLC
Sellers (Nursing Home Real Estate):	Wedgewood SNF Property Company, LLC, Maplewood Property Associates, L.P., Riverwood Property Associates, L.P., Elderwood Affiliates, Inc., LPC at Linwood LLC, Crestwood Development, LLC, Oakwood Property Associates,

	L.P., Tioga Property Company North, LLC
Purchaser:	Post Acute Partners Acquisition, LLC
Purchased Assets:	All right, title and interest of the above operations and Woodmark Services, Inc. in and to all supplies used in the facilities operations. All assumed Contracts, Admission agreements, assignable licenses, right, title and interest in trade marks, dress and names and services marks used in the facilities operations, specifically “Elderwood” and “Elderwood Senior Care” and the service mark “Care Without Compromise”; all phone and fax numbers, email addresses domain names, P.O. boxes and software used for the facilities operations. All books, data and records for the facilities, (except where transfer is prohibited) all employee records, but only for transitioned employees (excluding the seller’s financial books and records). All right, title and interest in all vehicles located at the respective facilities owned or operated by it or used in connection therewith and in all furniture, furnishings, equipment, computers and office equipment and supplies located at the corporate offices. All right, title and interest of Elderwood Transportation Company, LLC in all tangible and intangible personal property and all right, title and interest of each seller in any and all other items of tangible and intangible personal property used or useful in connection with the facilities operations and all the facilities goodwill.
Excluded Assets:	The Heathwood and Penfield facilities owned and operated by affiliates of seller, including all assets, the names “Heathwood Health Care Center, Inc. d/b/a Elderwood Health Care at Heathwood” and “Elderwood Assisted Living at Penfield, LLC” and operations thereof; all assets relating to pharmacy operations of Woodmark pharmacy, Inc.; All assets of the KABA division of Woodmark services, Inc and the provider agreement and provider number of Woodmark services, Inc.; Real property comprising seller’s corporate offices, located in Williamsville, NY at 7 Limestone Drive, 1142 Wehrle Drive and 1150 Wehrle Drive; all of seller’s bank accounts, cash, cash equivalents and securities except to the extent any portion thereof is subject to the proration or reconciliation procedures set forth herein; all replacement and tax escrow reserves, utility deposits and workers compensation trust assets of seller; all prepaid expenses, all vehicles, office furniture, computers and cell phones used by Robert M. Chur and/or Carla Chur Suero; all accounts receivable prior to the effective time, except as otherwise expressly provided in this agreement, all refunds or reimbursements for the period prior to the effective time and all deposits, escrowed funds and similar funds; except otherwise expressly provided in this agreement, all claims, disputes and litigation, and all amounts of any nature or description relating thereto for the period prior to the effective time; all receivables from any affiliate of seller, all of seller’s rights and benefits under this agreement; seller’s organizational documents relating solely to the existence of each of the entities comprising seller as separate legal entity; seller’s right to the grant proceeds associated with the HEAL projects; except to the extent included in the patient records or the employee records’ seller’s general ledgers and trial balances and all other financial journal and ledgers and statements, for any of the foregoing.
Liabilities Assumed :	The applicable Real liabilities under the mortgages listed on schedule 1.6(a)(the aggregate outstanding balance of any mortgage debt described on schedule 1.6(a) or (b) assumed or taken by applicable real estate purchaser referred to as the assumed debt”) assume the obligations and liabilities under the Birchwood Lease for periods after the effective time, subject to obtaining required consents in respect of each of the mortgages comprising assumed debt and the Birchwood landlord under the Birchwood lease; (ii) New operator will assume the assumed contracts and admissions agreements, only to the extent they are for periods after the effective time and (iii) Each applicable real estate purchaser shall exercise its respective commercially reasonable efforts to assume or take title subject to the mortgages listed on schedule 1.6 (a) and obtain any and all required consents in connection therewith. Seller shall retain, promptly pay and discharge in the ordinary course all liabilities and obligations

	of seller other than the assumed liabilities.
Excluded Liabilities:	Seller's accounts payable and all obligations for the facilities operation prior to the effective time including costs, expenses and other liabilities and obligations from the facilities operation except as set forth in sections 4.1(b) and 4.12, obligation under any collective bargaining agreement, employment agreement, pension or retirement plan, profit sharing plan, stock plan, compensation obligation or agreement or severance pay plan or agreement and any other employee benefit plan and liability for any taxes (except taxes prorated in accordance with section 10.3 (a)) any accounts payable or other obligations accruing to and existing as of the effective time are and shall remain the seller's sole obligation and responsibility.
Purchase Price:	$141,150,000 for the Nine Residential Health Care facility, five adult care facility and two independent housing company and related real property companies acquisition.
Purchase Price for this operation and real estate:	$7,651,514 with $2,951,514 allocated to the operations purchase price and $4,700,000 allocated to the real estate purchase price.
Payment of Purchase Price:	Through three loans; one for 5,925,900 at 30 years at 5.5% interest, a subordinated loan for 1,304,092 at 10% for 7 years, and a loan for $421,522 for 7 years interest only.

Below is the breakout of the purchase price for all of the facilities by facility category with a final table showing the total purchase price for the full operations and real estate transfer.

Residential Health Care Facilities

CON	Applicant	Facility	Real Estate Purchase Price	Operations Purchase Price	Total Purchase Price
111467-E	4459 Bailey Avenue Operating Company, LLC d/b/a Elderwood at Amherst	Wedgewood Health Care Center, Inc. d/b/a Elderwood Health Care at Wedgewood	$6,500,000	$3,383,566	$9,883,566
111468-E	2850 Grand Island Boulevard Operating Company, LLC d/b/a Elderwood at Grand Island	Riverwood Health Care Center, Inc. d/b/a Elderwood Health Care at Riverwood	$4,700,000	$2,951,514	$7,651,514
111470-E	5775 Maelou Drive Operating Company, LLC d/b/a Elderwood at Hamburg	Lakewood Health Care Center, Inc. d/b/a Elderwood Health Care at Lakewood	$6,700,000	$4,094,870	$10,794,870
111462-E	1818 Como Park Boulevard Operating Company, LLC d/b/a Elderwood at Lancaster	Linwood Health Care Center, Inc. d/b/a Elderwood Health Care at Linwood	$2,250,000	$1,423,042	$3,673,042

111456-E	4800 Bear Road Operating Company, LLC d/b/a Elderwood at Liverpool	Birchwood Health Care Center, Inc. d/b/a Elderwood Health Care at Birchwood	N/A	$7,730,857	$7,730,857
111469-E	225 Bennett Road Operating Company, LLC d/b/a Elderwood at Cheektowaga	Maplewood Health Care Center, Inc. d/b/a Elderwood Health Care at Maplewood	$8,300,000	$1,660,484	$9,960,484
111466-E	2600 Niagara Falls Boulevard Operating Company, LLC d/b/a Elderwood at Wheatfield	Crestwood Health Care Center, Inc. d/b/a Elderwood Health Care at Crestwood	$9,100,000	$1,182,776	$10,282,776
111463-E	200 Bassett Road Operating Company, LLC d/b/a Elderwood at Williamsville	Oakwood Health Care Center, Inc. d/b/a Elderwood Health Care at Oakwood	$6,800,000	$5,271,383	$12,071,383
111471-E	37 North Chemung Street Operating Company, LLC d/b/a Elderwood at Waverly	Elderwood Health Care at Tioga, LLC d/b/a Elderwood Health Care at Tioga	$5,400,000	$2,678,288	$8,078,288
Total Residential Health Care Facilities			*$49,750,000*	*$30,376,780*	*$80,126,780*

Adult Care Facilities

Facility Name	Purchase Price
Glenwood	$10,024,265
Maplewood ALF	$7,028,868
Rosewood	$8,337,181
Tioga ALF	$3,904,780
Westwood	$14,494,740
Total Adult Care Facilities Purchase Price	$43,789,834

Independent Housing Facilities

Facility Name	Purchase Price
Crestwood ILF	$12,590,237
Maplewood ILF	$4,993,149
Total Independent Housing Facilities Purchase Price	$17,583,386

Total Purchase Price

Operations and Real Estate	Purchase Price
Residential Health Care Facilities	$80,126,780

Adult Care Facilities	$43,789,834
Independent Housing Facilities	$17,583,386
Total Purchase Price	$141,500,000

Assignment Agreement

The change in operational and realty ownership will be effectuated in accordance with a draft assignment agreement, the terms of which are summarized below:

Effective Date:	Upon CON Approval by DOH
Assignor:	Post Acute Partner Acquisition , LLC
Assignee:	2850 Grand Island Boulevard, LLC
Operating Designee:	2850 Grand Island Boulevard Operating Company, LLC, d/b/a Elderwood at Grand Island
Assets Assigned:	Assignor's right, title and interest as Buyer under the Purchase Agreement with respect to the Assigned Property.
Obligations Assigned:	Assumes all obligations on the part of the Buyer to be performed under Purchase Agreement relating to the Assigned Property.

The members of the proposed realty entities, 2850 Grand Island Boulevard, LLC, 225 Bennett Road, LLC, 200 Bassett Road, LLC, 5775 Maelou Drive, LLC, 1818 Como Park Boulevard, LLC, 4800 Bear Road, LLC, 37 North Chemung Street, LLC, 2600 Niagara Falls Boulevard, LLC and 4459 Bailey Avenue, LLC are as follows:

Proposed Members	Percentage Ownership
Warren Cole	50.00%
Dr. Jeffrey Rubin, D.D.S.	50.00%

Lease Agreement and Medicaid Capital Reimbursement

Facility occupancy is subject to a draft lease agreement, the terms of which are summarized as follows:

Effective Date:	Upon CON Approval by DOH
Premises:	A 90-bed RHCF located at 2850 Grand Island Boulevard, Grand Island (Erie County)
Lessor:	2850 Grand Island Boulevard, LLC
Lessee:	2850 Grand Island Boulevard Operating Company, LLC, d/b/a Elderwood at Grand Island
Term:	10 years commencing on the execution of the lease and with four (5 year extensions)
Annual Rental:	Lease payment is equivalent to the annual mortgage debt service for the facility, which is $721,969.
Type:	Triple net lease.

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the landlord and operating entity.

Currently, the facility Medicaid capital reimbursement is based on the return of and return on equity for recent improvements; this methodology will not be altered upon change in ownership.

Operating Budget

Following is a summary of the submitted operating budget for the RHCF, presented in 2011 dollars, for the first year subsequent to change in ownership:

	Per Diem	Total
Revenues:		
Medicare Fee For Service	$321.21	$1,288,045
Medicaid Fee For Service	$187.25	$3,763,013
Private Pay	$305.84	$2,345,768
Total Revenue		$7,396,826
Expenses:		
Operating		$6,269,112
Capital		$751,221
Total Expense		$7,020,333
Net Income		$376,493
Utilization (Patient days)		31,776
Occupancy		96.73%

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

- Overall utilization is projected at 96.73%, which is consistent with historical. Utilization by payor source is expected as follows:

Medicaid	63.24%
Medicare	12.62%
Private Pay	24.14%

- Breakeven utilization is projected at 92.96%.

Capability and Feasibility

The purchase price and initiation of operations as a financially viable entity will be financed by a loan from Capital Funding, LLC of $ 5,925,900, at an interest rate of 5.50% for 30 years, with the remaining $1,304,092 from a subordination loan at an interest rate of 10% for 7 years, and $421,522 seller's notes that is interest only.

Working capital requirements are estimated at $1,170,056, based on two months' of first year expenses. $585,014 will by satisfied from the proposed member's equity, and the remaining $585,042 will be satisfied through a loan from Capital Funding, LLC at 5.50% over 5 years. A letter of interest has been supplied by Capital Funding, LLC. Presented as BFA Attachment A, is the Net Worth of proposed members.

The issue of feasibility is centered on the applicant's ability to offset expenses with revenues and maintain a viable operating entity. The submitted budget indicates that a net income of $376,493 would be maintained during the first year following change in ownership. The budget appears reasonable.

Presented as BFA Attachment B, is the pro-forma balance sheet, which indicates positive members' equity of $585,014 as of the first day of operations.

Following is a comparison of 2010 and projected revenue and expense:

Annual 2010 Income	$7,162,482
Annual 2010 Expense	6,726,387
Annual 2010 Net Income	$436,095
Projected incremental Income	$234,344
Projected incremental Expense	293,946

Projected incremental Net Income	($59,602)
Incremental Net Income (Loss)	$376,493

Projected income includes revenues at budgeted occupancy and payor source, to accommodate Medicaid access requirements, as well as the difference between current year and projected levels.

Projected expenses include acquisition capital expenses, expenses at budgeted occupancy, and the difference between current year and projected levels.

As shown on BFA Attachment C, Elderwood Health Care at Riverwood, had an average positive working capital position and an average positive net asset position, and generated an average net Income of $435,731 for the period 2008-2010.

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	Pro-forma Balance Sheet
BFA Attachment C	Financial Summary - Elderwood Health Care at Riverwood
BFA Attachment D	Organizational Chart
BFA Attachment E	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 5th day of April, 2012, 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 2850 Grand island Boulevard Operating Company, LLC d/b/a Elderwood at Grand Island as the new operator of Elderwood at Health Care at Riverwood, 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:
111468 E	2850 Grand Island Boulevard Operating Company, LLC d/b/a Elderwood at Grand Island

APPROVAL CONTINGENT UPON:

1. Submission of a loan commitment for working capital that is acceptable to the Department of Health. [BFA]
2. Submission of a commitment that is acceptable to the Department, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
3. Submission of an executed building lease that is acceptable to the Department. [BFA]
4. Submission of an executed assignment agreement that is acceptable to the Department. [BFA]
5. Submission of an original affidavit from the applicant members (or stockholders or partners) making a commitment to personally fund the balloon payment on the proposed mortgage, should terms acceptable to the Department of Health be unavailable at the time of refinancing. [BFA]
6. Submission of photocopies of the applicant's Articles of Organization, as filed with the Department of State and of a fully executed and dated Certificate of Amendment to the applicant's Articles of Organization, which must be acceptable to the Department. [CSL]
7. Submission of a photocopy of the applicant's fully executed and dated Operating Agreement, which must be acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's fully executed Certificate of Assumed Name, which must be acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's fully executed and dated sublease agreement, including the consent of the Landlord (as such term is defined below), which must be acceptable to the Department. [CSL]
10. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of Post Acute Partners Acquisition, LLC (Post Acute Partners), as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
11. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of Post Acute Partners, which must be acceptable to the Department. [CSL]
12. Submission of a list of all members and managers of Post Acute Partners, which must be acceptable to the Department. [CSL]
13. Submission of a photocopy of that certain Amended and Restated Deposit Escrow Agreement, as described in "Whereas Clause D" of the Asset Purchase Agreement between Post Acute Partners, as Purchaser, and various other entities, as Seller, dated February 25, 2011, which must be acceptable to the Department. [CSL]
14. Submission of a photocopy of a fully executed and dated Assignment of Rights between Post Acute Partners, the applicant and the owner of the real property on which the facility is located (Landlord), which must be acceptable to the Department. [CSL]
15. Submission of a photocopy of the proposed Bill of Sale, and any other transfer documents, between the applicable Seller and the applicant, pursuant to which the operating assets of the facility will be transferred to the applicant, which must be acceptable to the Department. [CSL]
16. Submission of a photocopy of the Lease pursuant to which Post Acute Partners has a leasehold interest in the real property on which the facility is located and the detailed explanation as to why the real property will not be owned by an affiliate of the applicant as is the case with all of the related Elderwood applications, which must be acceptable to the Department. [CSL]

17. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of the Landlord, as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
18. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of the Landlord, which must be acceptable to the Department. [CSL]
19. Submission of a list of all members and managers of the Landlord, which must be acceptable to the Department. [CSL]
20. Submission of photocopies of any agreements, documents, or arrangements between or among the applicant, Post Acute Partners, the Landlord, and/or any other entity (including, but not limited to, any affiliate or subsidiary), jointly and severally, directly or indirectly, relating to the ownership or operation of the facility. [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 # 111469-E
225 Bennett Road Operating Company, LLC d/b/a Elderwood at Cheektowaga

County: **Erie (Cheektowaga)**
Purpose: **Establishment**
Program: **Residential Health Care Facility**
Submitted: **May 29, 2011**

Executive Summary

Description

225 Bennett Road Operating Company, LLC, d/b/a Elderwood at Cheektowaga, is seeking approval to be established as the new operator of Maplewood Health Care Center, Inc. d/b/a Elderwood Health Care at Maplewood, an existing 170-bed residential health care facility (RHCF) located at 225 Bennett Road, Cheektowaga. The facility will be 172 beds upon completion of CON #101088-B by the current operator. Maplewood Property Associates, LP is the current realty owner. Ownership before and after the requested change is as follows:

Operations:	
Before	
Maplewood Health Care Center, Inc. d/b/a Elderwood Health Care at Maplewood	
Members	Interest
-- Robert M. Chur	75.00%
-- Carol Chur	25.00%
After	
225 Bennett Road Operating Company, LLC. d/b/a Elderwood At Cheektowaga	
Members	Interest
-- Warren Cole	50.00%
-- Dr. Jeffrey Rubin, D.D.S.	50.00%

Real Estate:	
Before	
Maplewood Property Associates, L.P	
Members	Interest
-- Robert M. Chur	65.25%
-- Carol Chur	24.75%
-- Carla Chur Suero	4.50%
-- Kelly Chur Henry	4.50%
-- Elderwood Properties, LLC	1.00%
After	
225 Bennett Road, LLC	
Members	Interest
-- Warren Cole	50.00%
-- Dr. Jeffrey Rubin, D.D.S.	50.00%

The proposed change in ownership is part of an acquisition involving nine RHCFs, five adult care facilities, two independent housing companies, and related real property companies.

Post Acute Partners Acquisitions, LLC, an existing for- profit limited liability company, will be assigning its rights and title to both the operations and the real estate to 225 Bennett Road Operating Company, LLC, d/b/a Elderwood at Cheektowaga and 225 Bennett Road, LLC, respectively.

DOH Recommendation

Contingent approval

Need Summary

Elderwood Health Care at Maplewood's utilization for 2009 and 2010 was 102.7% and 100.9%, respectively. There will be no change in the beds or services of the Elderwood Health Care at Maplewood facility as a result of this project.

Program Summary

Based on actual documentation received from other states and on indications of acceptable operating experience where full documentation was not available, and on affidavits submitted by the applicants, a positive finding as to character and competence can be made.

Financial Summary

There are no project costs associated with this proposal.

Budget:		
	Revenues:	*$ 14,809,738*
	Expenses:	*13,971,377*
	Gain/(Loss):	*$ 838,361*

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

Architectural Summary

This project is more 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 documentation of project completion of CON #101088-B. [PMU]
2. Submission of a loan commitment for working capital that is acceptable to the Department of Health. [BFA]
3. Submission of a commitment that is acceptable to the Department, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
4. Submission of an executed building lease that is acceptable to the Department. [BFA]
5. Submission of an executed assignment agreement that is acceptable to the Department. [BFA]
6. Submission of an original affidavit from the applicant members (or stockholders or partners) making a commitment to personally fund the balloon payment on the proposed mortgage, should terms acceptable to the Department of Health be unavailable at the time of refinancing. [BFA]
7. Submission of photocopies of the applicant's Articles of Organization, as filed with the Department of State and of a fully executed and dated Certificate of Amendment to the applicant's Articles of Organization, which must be acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's fully executed and dated Operating Agreement, which must be acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's fully executed Certificate of Assumed Name, which must be acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's fully executed and dated sublease agreement, including the consent of the Landlord (as such term is defined below), which must be acceptable to the Department. [CSL]
11. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of Post Acute Partners Acquisition, LLC (Post Acute Partners), as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
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15. Submission of a photocopy of a fully executed and dated Assignment of Rights between Post Acute Partners, the applicant and the owner of the real property on which the facility is located (Landlord), which must be acceptable to the Department. [CSL]
16. Submission of a photocopy of the proposed Bill of Sale, and any other transfer documents, between the applicable Seller and the applicant, pursuant to which the operating assets of the facility will be transferred to the applicant, which must be acceptable to the Department. [CSL]
17. Submission of a photocopy of the Lease pursuant to which Post Acute Partners has a leasehold interest in the real property on which the facility is located and the detailed explanation as to why the real property will not be owned by an affiliate of the applicant as is the case with all of the related Elderwood applications, which must be acceptable to the Department. [CSL]
18. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of the Landlord, as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
19. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of the Landlord, which must be acceptable to the Department. [CSL]
20. Submission of a list of all members and managers of the Landlord, which must be acceptable to the Department. [CSL]
21. Submission of photocopies of any agreements, documents, or arrangements between or among the applicant, Post Acute Partners, the Landlord, and/or any other entity (including, but not limited to, any affiliate or subsidiary), jointly and severally, directly or indirectly, relating to the ownership or operation of the facility. [CSL]

Council Action Date

April 5, 2012.

Need Analysis

Background

225 Bennett Road Operating Company, LLC, d/b/a Elderwood at Cheektowaga, is seeking approval to be established as the new operator of Maplewood Health Care Center, Inc. d/b/a Elderwood Health Care at Maplewood, an existing 170-bed residential health care facility (RHCF) located at 225 Bennett Road, Cheektowaga (Erie County).

There will be no change in the beds or services of the Elderwood Health Care at Maplewood facility as a result of this project.

Analysis

RHCF Bed Need – Erie County	
2016 Projected Need	5,291
Current Beds	6,225
Beds Under Construction	- 332
Total Resources	5,893
Unmet Need	- 602

RHCF Occupancy	***2008***	***2009***	***2010***
Elderwood Health Care at Maplewood	101.10%	102.70%	100.90%
Elderwood Health Care at Wedgewood	95.40%	94.20%	95.10%
Elderwood Health Care at Lakewood	97.00%	97.00%	97.00%
Buffalo General Hospital Deaconess SNF Div	97.70%	98.20%	96.50%
Erie County Medical Center-SNF	94.50%	94.60%	94.10%
Mercy Hospital Skilled Nursing Facility	93.70%	99.80%	93.40%
Millard Fillmore Skilled Nursing Facility	98.00%	97.50%	97.70%
Niagara Lutheran Home & Rehabilitation Center Inc	96.30%	96.90%	96.10%
Hawthorn Health Multicare Center for Living	90.80%	90.70%	90.50%
St Catherine Laboure Health Care Center	97.70%	99.00%	97.50%
Delaware Nursing & Rehabilitation Center	88.10%	89.00%	87.80%
Harbour Health Multicare Center for Living	95.70%	97.70%	95.40%
Waterfront Health Care Center, Inc	98.90%	98.60%	98.70%
Ridge View Manor LLC	Did not report	Did not report	
Sheridan Manor LLC	Did not report	Did not report	
Mcauley Residence	95.70%	94.40%	95.40%
Schofield Residence	99.70%	99.00%	99.30%
Harris Hill Nursing Facility, LLC	98.50%	98.10%	97.90%
Elderwood Health Care at Linwood	98.50%	97.70%	98.20%
Erie County Home	97.60%	96.10%	97.40%
St Francis Home of Williamsville	90.60%	90.10%	90.30%
Elderwood Health Care at Oakwood	97.10%	96.60%	96.80%
Canterbury Woods	95.80%	86.70%	95.50%
Williamsville Suburban LLC	Did not report	Did not report	Did not report
Absolut Center for Nursing and Rehabilitation at Aurora Park, LLC	92.00%	90.50%	91.70%
Jennie B Richmond Chaffee Nursing Home Company Inc	96.00%	95.90%	Did not report
Fiddlers Green Manor Nursing Home	91.80%	94.30%	91.50%
Autumn View Health Care Facility, LLC	97.60%	97.20%	97.30%
Father Baker Manor	93.40%	95.20%	93.20%
Absolut Center for Nursing and Rehabilitation at Orchard Park, LLC	94.60%	96.30%	94.30%
Fox Run at Orchard Park	39.50%	Did not report	39.40%

Rosa Coplon Jewish Home and Infirmary	96.90%	95.40%	96.70%
Elderwood Health Care at Wedgewood	95.40%	94.20%	95.10%
Beechwood Homes	91.80%	97.60%	91.60%
Garden Gate Health Care Facility	97.60%	98.20%	97.10%
Brothers of Mercy Nursing & Rehabilitation Center	97.20%	95.80%	96.90%
Absolut Center for Nursing and Rehabilitation at Eden, LLC	91.60%	91.20%	91.40%
Elderwood Health Care at Riverwood	97.50%	98.70%	97.20%
Greenfield Health & Rehab Center	93.60%	94.30%	93.40%
Seneca Health Care Center	97.90%	98.90%	97.70%
Erie County	*95.30%*	*96.00%*	*94.80%*

Elderwood Health Care at Maplewood had utilization rates above 100% for 2009 and 2010. This issue was addressed by the addition of 10 RHCF beds.

Conclusion

The acquisition of Elderwood Health Care at Maplewood by Post Acute Partners Acquisition, LLC will not result in any capacity or service changes.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Facility Information

	Existing	*Proposed*
Facility Name	Elderwood Health Care at Maplewood	Elderwood at Cheektowaga
Address	225 Bennett Road Cheektowaga, NY 14227	same
RHCF Capacity	170	172 (upon completion of CON #101088-B)
ADHC Program Capacity	N/A	same
Type Of Operator	Corporation	Limited Liability Company
Class Of Operator	Proprietary	same
Operator	Maplewood Health Care Center, Inc. d/b/a Elderwood Health Care at Riverwood <u>Stockholders</u> Robert M. Chur 75% Carol L. Chur 25%	225 Bennett Road Operating Company, LLC d/b/a Elderwood at Cheektowaga <u>Members</u> Warren Cole 50% Jeffrey Rubin 50%

Character and Competence

- FACILITIES REVIEWED:

ACU-acute care/hospital	ICF-intermediate care facility/group home
ALF-assisted living facility	IRF-intermediate rehabilitation facility (similar to SNF short term rehab)
HHA-home health agency	LTA-long term acute care hospital (similar to TCU)
HOM-homecare	RX-pharmacy

HOS-hospice SNF-skilled nursing facility/nursing home

(Note: actual dates of ownership may extend prior to 2003)

Alabama

*Laurelton Rehabilitation and Nursing Center**	*SNF*	*10/2006 to 5/2008*

California

San Joaquin Valley Rehabilitation Hospital	Hospital	7/2004-7/2004
Kenfield Rehabilitation Hospital	Hospital	8/2003-7/2004
Care Alternatives of California*	Hospice	2003-10/2009

Colorado

North Valley Rehabilitation Hospital (Haven Behavioral Sr. Care)	ACU-PSYCH	7/2003-8/2004
North Valley Rehabilitation Hospital (Vibra LTACH)	LTA	7/2003-8/2004
North Valley Rehabilitation Hospital (Vista View Care Center)	SNF	7/2003-8/2004

Connecticut

Danbury Health Care Center*	SNF	8/2003-10/2009
Darien Health Care Center*	SNF	8/2003-10/2009
Golden Hill Health Care Center*	SNF	8/2003-10/2009
Long Ridge of Stamford*	SNF	8/2003-10/2009
Newington Health Care Center*	SNF	8/2003-10/2009
Partners Pharmacy of Connecticut*	RX	2003-10/2009
River Glen Health Care Center (a/k/a Southbury HCC)*	SNF	8/2003-10/2009
The Highlands Health Care Center*	SNF	8/2003-10/2009
West River Health Care Center (a/k/a Milford North HCC)*	SNF	8/2003-10/2009
Westport Health Care Center*	SNF	8/2003-10/2009
Wethersfield Health Care Center*	SNF	8/2003-10/2009

Kansas

Care Alternatives of Kansas	HOS	2004-10/2009

Kentucky

Southern Kentucky Rehabilitation Hospital	IRF	5/2003-7/2004

Maryland

Montgomery Village Health Care Center	SNF	2003-10/2009

Massachusetts

Brookline Health Care Center*	SNF	8/2003-10/2009
Calvin Coolidge Nursing & Rehab Center for Northampton*	SNF	8/2003-10/2009
Care Alternatives of Massachusetts*	HOS	2005-10/2009
Concord Health Care Center*	SNF	8/2003-10/2009
Essex Park Rehabilitation & Nursing Center*	SNF	3/2005-10/2009
Holyoke Health Care Center*	SNF	8/2003-10/2009
Lexington Health Care Center*	SNF	8/2003-10/2009
Lowell Health Care Center*	SNF	8/2003-10/2009
Millbury Health Care Center*	SNF	8/2003-10/2009
New Bedford Health Care Center*	SNF	8/2003-10/2009
New Bedford Rehabilitation Hospital*	IRF	7/2003-8/2004
Newton Health Care Center*	SNF	8/2003-10/2009
North Shore Health Care Center*	SNF	8/2003-10/2009
Partners Pharmacy of Massachusetts*	RX	2004-10/2009
Peabody Glen Health Care Center*	SNF	8/2003-10/2009
Redstone Health Care Center (a/k/a East Longmeadow HCC)*	SNF	8/2003-10/2009
Weymouth Health Care Center*	SNF	8/2003-10/2009
Wilmington Health Care Center*	SNF	8/2003-10/2009

Michigan

Grand Blanc Rehabilitation & Nursing Center	SNF	10/2006-10/2009

Missouri

Care Alternatives of Missouri	HOS	2003-10/2009
Cliffview at Riverside Rehab & Nursing Center	SNF	10/2006-5/2008
Partners Pharmacy of Missouri*	RX	2003-10/2009

New Jersey

Bergen Care Home Health	HHA	2007-10/2009
Bergen Care Personal Touch	HOM	2007-10/2009
Care Alternatives of New Jersey	HOS	2001-10/2009
Care One at Dunroven	SNF	2001-10/2009
Care One at East Brunswick	SNF	2/2002-10/2009
Care One at Evesham	SNF	8/2000-10/2009
Care One at Evesham Assisted Living	ALF	10/2007-10/2009
Care One at Ewing	SNF	11/2004-10/2009
Care One at Hamilton	SNF	5/2002-10/2009
Care One at Holmdel	SNF	8/1997-10/2009
Care One at Jackson (a/k/a Jackson HCC)	SNF	2004-10/2009
Care One at King James	SNF	2003-10/2009
Care One at Livingston	SNF	10/2002-10/2009
Care One at Livingston Assisted Living	ALF	9/2005-10/2009
Care One at Madison Avenue	SNF	1/2005-10/2009
Care One at Moorestown	SNF	9/2003-10/2009
Care One at Harmony Village at Moorestown	ALF	8/2003-10/2009
Care One at Morris	SNF	8/2001-10/2009
Care One at Morris Assisted Living	ALF	3/2003-10/2009
Care One at Pine Rest	SNF	2001-10/2009
Care One at Raritan Bay MC	LTA	3/2004-10/2009
Care One Harmony Village at Moorestown	SNF	9/2003-10/2009
Care One at Teaneck	SNF	4/2007-10/2009
Care One at The Cupola	SNF	2001-10/2009
Care One at The Highlands	SNF	2001-10/2009
Care One at Valley	SNF	2001-10/2009
Care One at Wall	SNF	9/2004-10/2009
Care One at Wayne	SNF/ALF	6/2002-10/2009
Care One at Wellington	SNF	6/2002-10/2009
Marlton Rehabilitation Hospital	IRF	5/2003-7/2004
Oradell Health Care Center	SNF	2003-10/2009
Partners Pharmacy of New Jersey	RX	2001-10/2009
Somerset Valley Rehabilitation & Nursing Center	SNF	10/2009-10/2009
South Jersey Health Care Center	SNF	2003-10/2009
Woodcrest Health Care Center	SNF	2003-10/2009

North Carolina

Blue Ridge Health Care Center	SNF	8/2002-10/2009

Ohio

Bellbrook Health Care Center	SNF	2003-10/2009
The Rehabilitation & Nursing Center at Elm Creek	SNF	10/2006-10/2009
The Rehabilitation & Nursing Center at Firelands	SNF	10/2006-10/2009
The Rehabilitation & Nursing Center at Spring Creek	SNF	10/2006-10/2009

Pennsylvania

Care Alternatives of Pennsylvania	HOS	2003-10/2009
Pediatric Specialty Care at Doylestown	SNF	2/2011-present
Pediatric Specialty Care at Hopewell	PED ICF	2/2011-present

Pediatric Specialty Care at Lancaster	PED ICF	2/2011-present
Pediatric Specialty Care at Point Pleasant	PED ICF	2/2011-present
Pediatric Specialty Care at Quakertown	PED ICF	2/2011-present
Presque Isle Rehabilitation & Nursing Center	SNF	10/2006-10/2009
Senior Living of Lancaster	HOM	2/2011-present
The Rehabilitation & Nursing Center at Greater Pittsburg	SNF	10/2006-10/2009
Puerto Rico		
Medicare Y Mucho Mas*	Medicare Agency	2005-11/2009
Rhode Island		
Scallop Shell Nursing & Rehabilitation Center	SNF	12/2010-present
Virginia		
Care Alternatives of Virginia*	HOS	4/2002-10/2009
Colonial Heights Health Care Center*	SNF	4/2002-10/2009
Glenburnie Rehabilitation & Nursing Center*	SNF	4/2002-10/2009
Hopewell Health Care Center*	SNF	4/2002/10/2009
Partners Pharmacy of Virginia*	RX	4/2002-10/2009
Valley Health Care Center*	SNF/ALF	4/2002-10/2009
Westport Health Care Center*	SNF	4/2002-10/2009

Individual Background Review

Jeffrey Rubin is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospital, home health agencies and institutional pharmacies. Prior to founding Post-Acute Partners, Dr. Rubin served as Executive Vice President Business Development for Care One Management, LLC/Healthbridge Management, LLC from 2000-2009. Previous to his involvement with Care One, Dr. Rubin served as President of Millenium Healthcare, Inc. which was the precursor to Care One. Dr. Rubin was formerly a practicing dentist, with his license currently inactive. Dr. Rubin has had extensive health facility operational and real estate interests, which are listed above.

Warren Cole is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospital, home health agencies and institutional pharmacies. Prior to founding Post Acute Partners, LLC Mr. Cole was involved with Care Ventures, Inc., an investment firm which acquires operational and real estate interests in nursing homes and provides financing to health care facilities throughout the United States. Mr. Cole also served as Chief Financial Officer at Aveta, Inc., a health insurance company, from 2007-2010. Dr. Cole has had extensive health facility operational and real estate interests, which are listed above.

Character and Competence – Analysis:
No adverse information for the proposed members has been received.

In order to make a determination on whether a substantially consistent high level of care has been provided at the health facilities/agencies subject to review, a ten year review of the enforcement history for each is undertaken. A positive finding would result from concluding that there were no repeat enforcement actions causing harm to residents of a facility/agency for the same issue, during the past ten years or for the years of ownership. For the subject application adequate surveillance documentation with which to make a global finding cannot be obtained due to staffing issues at multiple states. To date staff and the applicant have exhausted their efforts to obtain the necessary documentation, with the outcome that adequate information is available for only 60 out of the total 100 disclosed health facility interests.

For those health facilities/agency for which there is inadequate documentation, denoted by an asterisk (*) in the above listing, no negative information regarding the operator's track record has been received. In addition the applicants have submitted affidavits regarding the incomplete surveillance history, in which they attest to the following:

> *During the applicable period identified…, the Entities may have been surveyed by the applicable state regulatory authority. Statements of Deficiencies may have been issued, and enforcement action(s) resulting in the payment of a fine may have been assessed. However, to my knowledge, during the applicable period…, the Entities have not (i) received enforcement actions for repeat deficiencies that were not remedied within timeframes required by applicable law or (ii) had a license or certificate issued by a state or federal regulatory authority suspended, terminated, revoked, denied, or annulled. Further, to my knowledge, there are no currently pending federal or state enforcement actions against the Entities …*

For those facilities for which there was complete information available for review, staff concludes that a substantially consistent high level of care has been provided.

<u>The following summarizes the review outcome for each state</u>:

A review of the **Alabama** facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the **California** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of California for which there is insufficient documentation to make a finding.

A review of the **Colorado** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Connecticut** facilities noted above indicates there is insufficient documentation with which to make a finding. The following seven Connecticut facilities owned by the principles were the subject of a Chapter 11 bankruptcy action:

Danbury Health Care Center
Darien Health Care Center
Long Ridge of Stamford
Newington Health Care Center
West River Health Care Center
Westport Health Care Center
Wethersfield Health Care Center

A review of the **Kansas** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Kentucky** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Maryland** facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Massachusetts** facilities noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Missouri** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Partners Pharmacy of Missouri for which there is insufficient documentation to make a finding.

A review of the **New Jersey** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **North Carolina** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Ohio** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Pennsylvania** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of Pennsylvania, for which there is insufficient documentation to make a finding.

A review of the **Puerto Rico** health related agency noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Rhode Island** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Virginia** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Colonial Heights Health Care Center, Glenburnie Rehabilitation & Nursing Center, Hopewell Health Care Center, Valley Health Care Center and Westport Health Care Center, for which there is insufficient documentation to make a finding.

If able to base our judgment solely on the documentation received from other states, the Department would be able to render a positive finding as to the character and competence of the applicants. We must, however, deal with a larger record, one which lacks sufficient documentation, by the Department's standards for analysis, of the applicants' operation of 35 facilities in five different states. However, it should be made clear that while these five states could not provide our customarily needed level of detail on operating history, we did not receive any negative findings that would warrant disapproval of this application; and we did receive indications of acceptable operating experience. The Department believes it reasonable to infer from these facts that the applicants have provided a sufficiently high level of care at the facilities they have operated.

Project Review

There are no proposed changes in either the program or physical environment of the facility. No administrative services/consulting agreement is proposed in this application.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Background

The proposed change in ownership is part of a nine residential health care facilities, five adult care facilities, two independent housing companies, and related real property companies. Acquisition involving Maplewood Health Care Center, Inc., the operator and Maplewood Property Associates, L.P, the owner of the realty and the proposed new owner/operator Post Acute Partners Acquisitions, LLC, an existing for profit limited liability company, will be assigning its rights and title to both the operations and the real estate to 225 Bennett Road Operating Company, LLC, d/b/a Elderwood at Cheektowaga and 225 Bennett Road, LLC, respectively.

The five adult care facilities will be reviewed by the Division of Long Term Care and therefore are being reviewed separately from the nursing home application. The independent Housing companies as well are not being addressed in these reviews. The information provided regarding the independent housing companies is to delineate them from the total project cost for the overall application.

The proposed members are also seeking establishment approval to concurrently acquire ownership of the following related residential health care facilities, also part of the facilities acquisition, through the applications listed below:

CON	Applicant	Facility	Beds
111456-E	4800 Bear Road Operating Company, LLC, d/b/a Elderwood at Liverpool	Birchwood Health Care Center, Inc. d/b/a Elderwood Health Care at Birchwood	160
111462-E	1818 Como Park Boulevard Operating Company, LLC d/b/a Elderwood at Lancaster	Linwood Health Care Center, Inc. d/b/a Elderwood Health Care at Linwood	94
111467-E	4459 Bailey Avenue Operating Company, LLC d/b/a Elderwood at Amherst	Wedgewood Health Care Center, Inc. d/b/a Elderwood Health Care at Wedgewood	92
111468-E	2850 Grand island Boulevard Operating Company, LLC d/b/a Elderwood at Grand Island	Riverwood Health Care Center, Inc. d/b/a Elderwood Health Care at Riverwood	90
111470-E	5775 Maelou Drive Operating Company, LLC d/b/a Elderwood at Hamburg	Lakewood Health Care Center, Inc. d/b/a Elderwood Health Care at Lakewood	166
111471-E	37 North Chemung Street Operating Company, LLC d/b/a Elderwood at Waverly	Elderwood Health Care at Tioga, LLC d/b/a Elderwood Health Care at Tioga	200
111466-E	2600 Niagara Falls Boulevard Operating Company, LLC d/b/a Elderwood at Wheatfield	Crestwood Health Care Center, Inc. d/b/a Elderwood Health Care at Crestwood	160
111463-E	200 Bassett Road Operating Company, LLC d/b/a Elderwood at Williamsville	Oakwood Health Care Center, Inc. d/b/a Elderwood Health Care at Oakwood	200

The applicant has provided an affidavit, which states that 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 the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently, the facility has no outstanding Medicaid audit liabilities.

All nine applications will be processed concurrently.

Asset Purchase Agreement

The change in ownership will be effectuated in accordance with the terms of the executed Asset Purchase Agreement, summarized below. This agreement is for the nine residential health care facility, five adult care facility, two independent housing company and related real property companies acquisition.

Date:	February 25, 2011
Sellers (Nursing Home Operations):	Wedgewood Health Care Center, LLC, Maplewood Health Care Center, Inc., Riverwood Health Care Center, Inc., Lakewood Health Care Center, Inc., Linwood Health Care Center, Inc., Crestwood Health Care Center, Inc., Oakwood Health Care Center, Inc., Birchwood Health Care Center, Inc., Elderwood Health Care Center at Tioga, LLC
Sellers (Nursing Home Real Estate):	Wedgewood SNF Property Company, LLC, Maplewood Property Associates,

	L.P., Riverwood Property Associates, L.P., Elderwood Affiliates, Inc., LPC at Linwood LLC, Crestwood Development, LLC, Oakwood Property Associates, L.P., Tioga Property Company North, LLC
Purchaser:	Post Acute Partners Acquisition, LLC
Purchased Assets:	All right, title and interest of the above operations and Woodmark Services, Inc. in and to all supplies used in the facilities operations. All assumed Contracts, Admission agreements, assignable licenses, right, title and interest in trade marks, dress and names and services marks used in the facilities operations, specifically “Elderwood” and “Elderwood Senior Care” and the service mark “Care Without Compromise”; all phone and fax numbers, email addresses domain names, P.O. boxes and software used for the facilities operations. All books, data and records for the facilities, (except where transfer is prohibited) all employee records, but only for transitioned employees (excluding the seller’s financial books and records). All right, title and interest in all vehicles located at the respective facilities owned or operated by it or used in connection therewith and in all furniture, furnishings, equipment, computers and office equipment and supplies located at the corporate offices. All right, title and interest of Elderwood Transportation Company, LLC in all tangible and intangible personal property and all right, title and interest of each seller in any and all other items of tangible and intangible personal property used or useful in connection with the facilities operations and all the facilities goodwill.
Excluded Assets:	The Heathwood and Penfield facilities owned and operated by affiliates of seller, including all assets, the names “Heathwood Health Care Center, Inc. d/b/a Elderwood Health Care at Heathwood” and “Elderwood Assisted Living at Penfield, LLC” and operations thereof; all assets relating to pharmacy operations of Woodmark pharmacy, Inc.; All assets of the KABA division of Woodmark services, Inc and the provider agreement and provider number of Woodmark services, Inc.; Real property comprising seller’s corporate offices, located in Williamsville, NY at 7 Limestone Drive, 1142 Wehrle Drive and 1150 Wehrle Drive; all of seller’s bank accounts, cash, cash equivalents and securities except to the extent any portion thereof is subject to the proration or reconciliation procedures set forth herein; all replacement and tax escrow reserves, utility deposits and workers compensation trust assets of seller; all prepaid expenses, all vehicles, office furniture, computers and cell phones used by Robert M. Chur and/or Carla Chur Suero; all accounts receivable prior to the effective time, except as otherwise expressly provided in this agreement, all refunds or reimbursements for the period prior to the effective time and all deposits, escrowed funds and similar funds; except otherwise expressly provided in this agreement, all claims, disputes and litigation, and all amounts of any nature or description relating thereto for the period prior to the effective time; all receivables from any affiliate of seller, all of seller’s rights and benefits under this agreement; seller’s organizational documents relating solely to the existence of each of the entities comprising seller as separate legal entity; seller’s right to the grant proceeds associated with the HEAL projects; except to the extent included in the patient records or the employee records’ seller’s general ledgers and trial balances and all other financial journal and ledgers and statements, for any of the foregoing.
Liabilities Assumed :	The applicable Real liabilities under the mortgages listed on schedule 1.6(a)(the aggregate outstanding balance of any mortgage debt described on schedule 1.6(a) or (b) assumed or taken by applicable real estate purchaser referred to as the assumed debt”) assume the obligations and liabilities under the Birchwood Lease for periods after the effective time, subject to obtaining required consents in respect of each of the mortgages comprising assumed debt and the Birchwood landlord under the Birchwood lease; (ii) New operator will assume the assumed contracts and admissions agreements, only to the extent they are for periods after the effective time and (iii) Each applicable real estate purchaser shall exercise its respective commercially reasonable efforts to assume or take title subject to the mortgages listed on schedule 1.6 (a) and

	obtain any and all required consents in connection therewith. Seller shall retain, promptly pay and discharge in the ordinary course all liabilities and obligations of seller other than the assumed liabilities.
Excluded Liabilities:	Seller's accounts payable and all obligations for the facilities operation prior to the effective time including costs, expenses and other liabilities and obligations from the facilities operation except as set forth in sections 4.1(b) and 4.12, obligation under any collective bargaining agreement, employment agreement, pension or retirement plan, profit sharing plan, stock plan, compensation obligation or agreement or severance pay plan or agreement and any other employee benefit plan and liability for any taxes (except taxes prorated in accordance with section 10.3 (a)) any accounts payable or other obligations accruing to and existing as of the effective time are and shall remain the seller's sole obligation and responsibility.
Purchase Price:	$141,150,000 for the Nine Residential Health Care facility, five adult care facility and two independent housing company and related real property companies acquisition.
Purchase Price for this operation and real estate:	$9,960,484 with 1,660,484 allocated to the operations purchase price and 8,300,000 allocated to the real estate purchase price.
Payment of Purchase Price:	Through three loans; one for $8,592,500 at 30 years at 5.5% interest, a subordinated loan for $1,033,821 at 10% for 7 years, and a loan for $334,163 for 7 years interest only.

Below is the breakout of the purchase price for all of the facilities by facility category with a final table showing the total purchase price for the full operations and real estate transfer.

Residential Health Care Facilities

CON	Applicant	Facility	Real Estate Purchase Price	Operations Purchase Price	Total Purchase Price
111467-E	4459 Bailey Avenue Operating Company, LLC d/b/a Elderwood at Amherst	Wedgewood Health Care Center, Inc. d/b/a Elderwood Health Care at Wedgewood	$6,500,000	$3,383,566	$9,883,566
111468-E	2850 Grand Island Boulevard Operating Company, LLC d/b/a Elderwood at Grand Island	Riverwood Health Care Center, Inc. d/b/a Elderwood Health Care at Riverwood	$4,700,000	$2,951,514	$7,651,514
111470-E	5775 Maelou Drive Operating Company, LLC d/b/a Elderwood at Hamburg	Lakewood Health Care Center, Inc. d/b/a Elderwood Health Care at Lakewood	$6,700,000	$4,094,870	$10,794,870
111462-E	1818 Como Park Boulevard Operating Company, LLC d/b/a Elderwood at Lancaster	Linwood Health Care Center, Inc. d/b/a Elderwood Health Care at Linwood	$2,250,000	$1,423,042	$3,673,042

111456-E	4800 Bear Road Operating Company, LLC d/b/a Elderwood at Liverpool	Birchwood Health Care Center, Inc. d/b/a Elderwood Health Care at Birchwood	N/A	$7,730,857	$7,730,857
111469-E	225 Bennett Road Operating Company, LLC d/b/a Elderwood at Cheektowaga	Maplewood Health Care Center, Inc. d/b/a Elderwood Health Care at Maplewood	$8,300,000	$1,660,484	$9,960,484
111466-E	2600 Niagara Falls Boulevard Operating Company, LLC d/b/a Elderwood at Wheatfield	Crestwood Health Care Center, Inc. d/b/a Elderwood Health Care at Crestwood	$9,100,000	$1,182,776	$10,282,776
111463-E	200 Bassett Road Operating Company, LLC d/b/a Elderwood at Williamsville	Oakwood Health Care Center, Inc. d/b/a Elderwood Health Care at Oakwood	$6,800,000	$5,271,383	$12,071,383
111471-E	37 North Chemung Street Operating Company, LLC d/b/a Elderwood at Waverly	Elderwood Health Care at Tioga, LLC d/b/a Elderwood Health Care at Tioga	$5,400,000	$2,678,288	$8,078,288
Total Residential Health Care Facilities			*$49,750,000*	*$30,376,780*	*$80,126,780*

Adult Care Facilities

Facility Name	Purchase Price
Glenwood	$10,024,265
Maplewood ALF	$7,028,868
Rosewood	$8,337,181
Tioga ALF	$3,904,780
Westwood	$14,494,740
Total Adult Care Facilities Purchase Price	$43,789,834

Independent Housing Facilities

Facility Name	Purchase Price
Crestwood ILF	$12,590,237
Maplewood ILF	$4,993,149
Total Independent Housing Facilities Purchase Price	$17,583,386

Total Purchase Price

Operations and Real Estate	Purchase Price
Residential Health Care Facilities	$80,126,780
Adult Care Facilities	$43,789,834
Independent Housing Facilities	$17,583,386
Total Purchase Price	$141,500,000

Assignment Agreement

The change in operational and realty ownership will be effectuated in accordance with a draft assignment agreement, the terms of which are summarized below:

Effective Date:	Upon CON Approval by DOH
Assignor:	Post Acute Partners Acquisition, LLC
Assignee:	225 Bennett Road, LLC
Operating Designee:	225 Bennett Road Operating Company, LLC. d/b/a Elderwood at Cheektowaga
Assets Assigned:	Assignor's right, title and interest as Buyer under the Purchase Agreement with respect to the Assigned Property.
Obligations Assigned:	Assumes all obligations on the part of the Buyer to be performed under Purchase Agreement relating to the Assigned Property.

The members of the proposed reality entities 2850 Grand Island Boulevard, LLC, 225 Bennett Road, LLC, 200 Bassett Road, LLC, 5775 Maelou Drive, LLC, 1818 Como Park Boulevard, LLC, 4800 Bear Road, LLC, 37 North Chemung Street, LLC, 2600 Niagara falls Boulevard, LLC and 4459 Bailey Avenue, LLC; are as follows:

Proposed Members	Percentage Ownership
Warren Cole	50%
Dr. Jeffrey Rubin, D.D.S.	50%

Lease Agreement and Medicaid Capital Reimbursement

Facility occupancy is subject to a draft lease agreement, the terms of which are summarized as follows:

Effective Date:	Upon CON Approval by DOH
Premises:	A 170-bed RHCF located at 225 Bennett Road, Cheektowaga (Erie County)
Lessor:	225 Bennett Road, LLC
Lessee:	225 Bennett Road Operating Company, LLC. d/b/a Elderwood at Cheektowaga
Term:	10 years commencing on the execution of the lease with four (5 year extensions)
Annual Rental:	Lease payment is equivalent to the annual mortgage debt service for the facility, which is $862,773.
Type:	Triple net lease.

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the landlord and operating entity.

Currently, the facility Medicaid capital reimbursement is based on the return of and return on equity for recent improvements. This methodology will not be altered upon change in ownership.

Operating Budget

Following is a summary of the submitted operating budget for the RHCF, presented in 2011 dollars, for the first year subsequent to change in ownership:

	Per Diem	Total
Revenues:		
Medicare Fee For Service	$406.39	$4,271,569

Medicaid Fee For Service	179.27	6,820,669
Private Pay	327.74	3,717,500
Total Revenue		$14,809,738
Expenses:		
Operating		$13,030,472
Capital		940,905
Total Expense		$13,971,377
Net Income		$838,361
Utilization (Patient days)		59,901
Occupancy		96.54%

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

- Overall utilization is projected at 96.54%, which is consistent with historical. Utilization by payor source is expected as follows:

Medicaid	63.52%
Medicare	17.55%
Private Pay	18.93%

- Breakeven utilization is projected at 91.07%.

Capability and Feasibility

The purchase price and initiation of operations, as a financially viable entity, will be financed by a loan from Capital Funding, LLC of $8,592,500 at an interest rate of 5.50% for 30 years, with the remaining $1,033,821 from a subordination loan a at an interest rate of 10% for 7 years and $334,163 seller's notes that is interest only

Working capital requirements are estimated at $2,328,563, based on two months' of first year expenses. $1,165,896 will by satisfied from the proposed member's equity and the remaining $1,162,667 will be satisfied through a loan from Capital Funding, LLC at 5.00% over 5 years. A letter of interest has been supplied by Capital Funding, LLC. Presented as BFA Attachment A, is the Net Worth of proposed members.

The issue of feasibility is centered on the applicant's ability to offset expenses with revenues and maintain a viable operating entity. The submitted budget indicates that a net income of $838,361 would be maintained during the first year following change in ownership. The budget appears reasonable.

Presented as BFA Attachment B is the pro-forma balance sheet of 225 Bennett Road Operating Company, LLC d/b/a Elderwood at Cheektowaga, which indicates positive members' equity of $1,165,896 as of the first day of operations.

Following is a comparison of 2010 and projected revenue and expense:

Annual 2010 Income	$14,867,082
Annual 2010 Expense	14,543,478
Annual 2010 Net Income	$323,604
Projected incremental Income	($57,343)
Projected incremental Expense	(572,100)
Projected incremental Net Income	$514,757
Incremental Net Income (Loss)	$838,361

Projected income includes revenues at budgeted occupancy and payor source, to accommodate Medicaid access requirements as well as the difference between current year and projected levels. Projected expenses include acquisition capital expenses; expenses at budgeted occupancy and the difference between current year and projected levels.

As shown on BFA Attachment C Elderwood Health Care at Maplewood, had an average positive working capital position and an average positive net asset position, and generated an average net Income of $568,685 for the period 2008-2010.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Net Worth of Proposed Members
BFA Attachment B	Pro-forma Balance Sheet
BFA Attachment C	Financial Summary - Elderwood Health Care at Maplewood
BFA Attachment D	Organizational Chart
BFA Attachment E	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 5th day of April, 2012, 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 225 Bennett Road Operating Company d/b/a Elderwood at Cheektowaga as the new operator of Elderwood Health Care at Maplewood, 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:
111469 E	225 Bennett Road Operating Company, LLC d/b/a Elderwood at Cheektowaga

APPROVAL CONTINGENT UPON:

1. Submission of documentation of project completion of CON #101088-B. [PMU]
2. Submission of a loan commitment for working capital that is acceptable to the Department of Health. [BFA]
3. Submission of a commitment that is acceptable to the Department, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
4. Submission of an executed building lease that is acceptable to the Department. [BFA]
5. Submission of an executed assignment agreement that is acceptable to the Department. [BFA]
6. Submission of an original affidavit from the applicant members (or stockholders or partners) making a commitment to personally fund the balloon payment on the proposed mortgage, should terms acceptable to the Department of Health be unavailable at the time of refinancing. [BFA]
7. Submission of photocopies of the applicant's Articles of Organization, as filed with the Department of State and of a fully executed and dated Certificate of Amendment to the applicant's Articles of Organization, which must be acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's fully executed and dated Operating Agreement, which must be acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's fully executed Certificate of Assumed Name, which must be acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's fully executed and dated sublease agreement, including the consent of the Landlord (as such term is defined below), which must be acceptable to the Department. [CSL]
11. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of Post Acute Partners Acquisition, LLC (Post Acute Partners), as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
12. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of Post Acute Partners, which must be acceptable to the Department. [CSL]
13. Submission of a list of all members and managers of Post Acute Partners, which must be acceptable to the Department. [CSL]
14. Submission of a photocopy of that certain Amended and Restated Deposit Escrow Agreement, as described in "Whereas Clause D" of the Asset Purchase Agreement between Post Acute Partners, as Purchaser, and various other entities, as Seller, dated February 25, 2011, which must be acceptable to the Department. [CSL]
15. Submission of a photocopy of a fully executed and dated Assignment of Rights between Post Acute Partners, the applicant and the owner of the real property on which the facility is located (Landlord), which must be acceptable to the Department. [CSL]
16. Submission of a photocopy of the proposed Bill of Sale, and any other transfer documents, between the applicable Seller and the applicant, pursuant to which the operating assets of the facility will be transferred to the applicant, which must be acceptable to the Department. [CSL]
17. Submission of a photocopy of the Lease pursuant to which Post Acute Partners has a leasehold interest in the real property on which the facility is located and the detailed explanation as to why the real property will not be owned by an affiliate of the applicant as is the case with all of the related Elderwood applications, which must be acceptable to the Department. [CSL]

18. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of the Landlord, as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
19. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of the Landlord, which must be acceptable to the Department. [CSL]
20. Submission of a list of all members and managers of the Landlord, which must be acceptable to the Department. [CSL]
21. Submission of photocopies of any agreements, documents, or arrangements between or among the applicant, Post Acute Partners, the Landlord, and/or any other entity (including, but not limited to, any affiliate or subsidiary), jointly and severally, directly or indirectly, relating to the ownership or operation of the facility. [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 # 111470-E
5775 Maelou Drive Operating Company, LLC
d/b/a Elderwood at Hamburg

County: **Erie (Hamburg)**
Purpose: **Establishment**
Program: **Residential Health Care Facility**
Submitted: **May 29, 2011**

Executive Summary

Description

5775 Maelou Drive Operating Company, LLC, d/b/a Elderwood at Hamburg, is seeking approval to be established as the new operator of Lakewood Health Care Center, Inc. d/b/a Elderwood Health Care at Lakewood, an existing 166-bed residential health care facility (RHCF) located at 5775 Maelou Drive, Hamburg. Elderwood Affiliates, Inc. is the current realty owner. Ownership before and after the requested change is as follows:

Operations:	
Before	
Lakewood Health Care Center, Inc. d/b/a Elderwood Health Care at Lakewood	
Member	Interest
-- Robert M. Chur	100.00%
After	
5775 Maelou Drive Operating Company, LLC. d/b/a Elderwood at Hamburg	
Members	Interest
-- Warren Cole	50.00%
-- Dr. Jeffrey Rubin, D.D.S.	50.00%

Real Estate:	
Before	
Elderwood Affiliates, Inc.	
Member	Interest
-- Robert M. Chur	100.00%
After	
5775 Maelou Drive, LLC	
Members	Interest
-- Warren Cole	50.00%
-- Dr. Jeffrey Rubin, D.D.S.	50.00%

The proposed change in ownership is part of an acquisition involving nine RHCFs, five adult care facilities, two independent housing companies, and related real property companies.

Post Acute Partners Acquisitions, LLC, an existing for profit limited liability company, which assigns all rights and title to both the operations and the real estate to 5775 Maelou Drive Operating Company, LLC, d/b/a Elderwood at Hamburg and 5775 Maelou Drive, LLC respectively.

DOH Recommendation

Contingent approval.

Need Summary

Elderwood Health Care at Lakewood's utilization for 2009 and 2010 was 97.0% and 97.0%, respectively. There will be no change in the beds or services of the Elderwood Health Care at Lakewood facility as a result of this project.

Program Summary

Based on actual documentation received from other states and on indications of acceptable operating experience where full documentation was not available, and on affidavits submitted by the applicants, a positive finding as to character and competence can be made.

Financial Summary

There are no project costs associated with this proposal.

Budget:		
	Revenues:	*$ 15,106,931*
	Expenses:	*13,688,243*
	Gain/(Loss):	*$ 1,418,688*

Subject to 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; Architectural review is not 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 documentation of project completion of CON #111091-L. [PMU]
2. Submission of a loan commitment for working capital that is acceptable to the Department of Health. [BFA]
3. Submission of a commitment that is acceptable to the Department, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
4. Submission of an executed building lease that is acceptable to the Department. [BFA]
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7. Submission of photocopies of the applicant's Articles of Organization, as filed with the Department of State and of a fully executed and dated Certificate of Amendment to the applicant's Articles of Organization, which must be acceptable to the Department. [CSL]
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21. Submission of photocopies of any agreements, documents, or arrangements between or among the applicant, Post Acute Partners, the Landlord, and/or any other entity (including, but not limited to, any affiliate or subsidiary), jointly and severally, directly or indirectly, relating to the ownership or operation of the facility. [CSL]

Council Action Date
April 5, 2012.

Need Analysis

Background

5775 Maelou Drive Operating Company, LLC, d/b/a Elderwood at Hamburg, is seeking approval to be established as the new operator of Lakewood Health Care Center, Inc. d/b/a Elderwood Health Care at Lakewood, an existing 166-bed residential health care facility (RHCF) located at 5775 Maelou Drive, Hamburg (Erie County).

There will be no change in the beds or services of the Elderwood Health Care at Lakewood facility as a result of this project.

Analysis

RHCF Bed Need – Erie County	
2016 Projected Need	5,291
Current Beds	6,225
Beds Under Construction	- 332
Total Resources	5,893
Unmet Need	- 602

RHCF Occupancy	*2008*	*2009*	*2010*
Elderwood Health Care at Lakewood	**97.0%**	**97.0%**	**97.0%**
Buffalo General Hospital Deaconess SNF Div	97.7%	98.2%	96.5%
Erie County Medical Center-SNF	94.5%	94.6%	94.1%
Mercy Hospital Skilled Nursing Facility	93.7%	99.8%	93.4%
Millard Fillmore Skilled Nursing Facility	98.0%	97.5%	97.7%
Niagara Lutheran Home & Rehabilitation Center Inc	96.3%	96.9%	96.1%
Hawthorn Health Multicare Center for Living	90.8%	90.7%	90.5%
St Catherine Laboure Health Care Center	97.7%	99.0%	97.5%
Delaware Nursing & Rehabilitation Center	88.1%	89.0%	87.8%
Harbour Health Multicare Center for Living	95.7%	97.7%	95.4%
Waterfront Health Care Center, Inc	98.9%	98.6%	98.7%
Ridge View Manor LLC	Did not report	Did not report	
Sheridan Manor LLC	Did not report	Did not report	
Mcauley Residence	95.7%	94.4%	95.4%
Schofield Residence	99.7%	99.0%	99.3%
Harris Hill Nursing Facility, LLC	98.5%	98.1%	97.9%
Elderwood Health Care at Linwood	98.5%	97.7%	98.2%
Erie County Home	97.6%	96.1%	97.4%
St Francis Home of Williamsville	90.6%	90.1%	90.3%
Elderwood Health Care at Oakwood	97.1%	96.6%	96.8%
Canterbury Woods	95.8%	86.7%	95.5%
Williamsville Suburban LLC	Did not report	Did not report	Did not report
Absolut Center for Nursing and Rehabilitation at Aurora Park, LLC	92.0%	90.5%	91.7%
Jennie B Richmond Chaffee Nursing Home Company Inc	96.0%	95.9%	Did not report
Fiddlers Green Manor Nursing Home	91.8%	94.3%	91.5%
Autumn View Health Care Facility, LLC	97.6%	97.2%	97.3%
Father Baker Manor	93.4%	95.2%	93.2%
Absolut Center for Nursing and Rehabilitation at Orchard Park, LLC	94.6%	96.3%	94.3%
Fox Run at Orchard Park	39.5%	Did not report	39.4%
Rosa Coplon Jewish Home and Infirmary	96.9%	95.4%	96.7%
Elderwood Health Care at Wedgewood	95.4%	94.2%	95.1%
Beechwood Homes	91.8%	97.6%	91.6%

RHCF Occupancy	*2008*	*2009*	*2010*
Garden Gate Health Care Facility	97.6%	98.2%	97.1%
Elderwood Health Care at Maplewood	101.1%	102.7%	100.9%
Brothers of Mercy Nursing & Rehabilitation Center	97.2%	95.8%	96.9%
Absolut Center for Nursing and Rehabilitation at Eden, LLC	91.6%	91.2%	91.4%
Elderwood Health Care at Riverwood	97.5%	98.7%	97.2%
Greenfield Health & Rehab Center	93.6%	94.3%	93.4%
Seneca Health Care Center	97.9%	98.9%	97.7%
Erie	*95.3%*	*96.0%*	*94.8%*

Elderwood Health Care at Lakewood had utilization rates at or above the 97% planning optimum for 2009 and 2010. They exceeded the county average for both years.

Conclusion

The acquisition of Elderwood Health Care at Lakewood by Post Acute Partners Acquisition, LLC will not result in any capacity or service changes.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Facility Information

	Existing	*Proposed*
Facility Name	Elderwood Health Care at Lakewood	Elderwood at Hamburg
Address	5775 Maelou Drive Hamburg, NY 14075	same
RHCF Capacity	166	166
ADHC Program Capacity	N/A	same
Type of Operator	Corporation	Limited Liability Company
Class of Operator	Proprietary	same
Operator	Lakewood Health Care Center, Inc. d/b/a Elderwood Health Care at Lakewood Stockholder Robert M. Chur 100%	5775 Maelou Drive Operating Company, LLC d/b/a Elderwood at Cheektowaga Members Warren Cole 50% Jeffrey Rubin 50%

Character and Competence

- FACILITIES REVIEWED:

ACU-acute care/hospital	ICF-intermediate care facility/group home
ALF-assisted living facility	IRF-intermediate rehabilitation facility (similar to SNF short term rehab)
HHA-home health agency	LTA-long term acute care hospital (similar to TCU)
HOM-homecare	RX-pharmacy
HOS-hospice	SNF-skilled nursing facility/nursing home

(Note: actual dates of ownership may extend prior to 2003)

Alabama

*Laurelton Rehabilitation and Nursing Center**	*SNF*	*10/2006 to 5/2008*

California

San Joaquin Valley Rehabilitation Hospital	Hospital	7/2004-7/2004
Kenfield Rehabilitation Hospital	Hospital	8/2003-7/2004
Care Alternatives of California*	Hospice	2003-10/2009

Colorado

North Valley Rehabilitation Hospital (Haven Behavioral Sr. Care)	ACU-PSYCH	7/2003-8/2004
North Valley Rehabilitation Hospital (Vibra LTACH)	LTA	7/2003-8/2004
North Valley Rehabilitation Hospital (Vista View Care Center)	SNF	7/2003-8/2004

Connecticut

Danbury Health Care Center*	SNF	8/2003-10/2009
Darien Health Care Center*	SNF	8/2003-10/2009
Golden Hill Health Care Center*	SNF	8/2003-10/2009
Long Ridge of Stamford*	SNF	8/2003-10/2009
Newington Health Care Center*	SNF	8/2003-10/2009
Partners Pharmacy of Connecticut*	RX	2003-10/2009
River Glen Health Care Center (a/k/a Southbury HCC)*	SNF	8/2003-10/2009
The Highlands Health Care Center*	SNF	8/2003-10/2009
West River Health Care Center (a/k/a Milford North HCC)*	SNF	8/2003-10/2009
Westport Health Care Center*	SNF	8/2003-10/2009
Wethersfield Health Care Center*	SNF	8/2003-10/2009

Kansas

Care Alternatives of Kansas	HOS	2004-10/2009

Kentucky

Southern Kentucky Rehabilitation Hospital	IRF	5/2003-7/2004

Maryland

Montgomery Village Health Care Center	SNF	2003-10/2009

Massachusetts

Brookline Health Care Center*	SNF	8/2003-10/2009
Calvin Coolidge Nursing & Rehab Center for Northampton*	SNF	8/2003-10/2009
Care Alternatives of Massachusetts*	HOS	2005-10/2009
Concord Health Care Center*	SNF	8/2003-10/2009
Essex Park Rehabilitation & Nursing Center*	SNF	3/2005-10/2009
Holyoke Health Care Center*	SNF	8/2003-10/2009
Lexington Health Care Center*	SNF	8/2003-10/2009
Lowell Health Care Center*	SNF	8/2003-10/2009
Millbury Health Care Center*	SNF	8/2003-10/2009
New Bedford Health Care Center*	SNF	8/2003-10/2009
New Bedford Rehabilitation Hospital*	IRF	7/2003-8/2004
Newton Health Care Center*	SNF	8/2003-10/2009
North Shore Health Care Center*	SNF	8/2003-10/2009
Partners Pharmacy of Massachusetts*	RX	2004-10/2009
Peabody Glen Health Care Center*	SNF	8/2003-10/2009
Redstone Health Care Center (a/k/a East Longmeadow HCC)*	SNF	8/2003-10/2009
Weymouth Health Care Center*	SNF	8/2003-10/2009
Wilmington Health Care Center*	SNF	8/2003-10/2009

Michigan

Grand Blanc Rehabilitation & Nursing Center	SNF	10/2006-10/2009

Missouri

Care Alternatives of Missouri	HOS	2003-10/2009
Cliffview at Riverside Rehab & Nursing Center	SNF	10/2006-5/2008
Partners Pharmacy of Missouri*	RX	2003-10/2009

New Jersey

Bergen Care Home Health	HHA	2007-10/2009
Bergen Care Personal Touch	HOM	2007-10/2009
Care Alternatives of New Jersey	HOS	2001-10/2009
Care One at Dunroven	SNF	2001-10/2009
Care One at East Brunswick	SNF	2/2002-10/2009
Care One at Evesham	SNF	8/2000-10/2009
Care One at Evesham Assisted Living	ALF	10/2007-10/2009
Care One at Ewing	SNF	11/2004-10/2009
Care One at Hamilton	SNF	5/2002-10/2009
Care One at Holmdel	SNF	8/1997-10/2009
Care One at Jackson (a/k/a Jackson HCC)	SNF	2004-10/2009
Care One at King James	SNF	2003-10/2009
Care One at Livingston	SNF	10/2002-10/2009
Care One at Livingston Assisted Living	ALF	9/2005-10/2009
Care One at Madison Avenue	SNF	1/2005-10/2009
Care One at Moorestown	SNF	9/2003-10/2009
Care One at Harmony Village at Moorestown	ALF	8/2003-10/2009
Care One at Morris	SNF	8/2001-10/2009
Care One at Morris Assisted Living	ALF	3/2003-10/2009
Care One at Pine Rest	SNF	2001-10/2009
Care One at Raritan Bay MC	LTA	3/2004-10/2009
Care One Harmony Village at Moorestown	SNF	9/2003-10/2009
Care One at Teaneck	SNF	4/2007-10/2009
Care One at The Cupola	SNF	2001-10/2009
Care One at The Highlands	SNF	2001-10/2009
Care One at Valley	SNF	2001-10/2009
Care One at Wall	SNF	9/2004-10/2009
Care One at Wayne	SNF/ALF	6/2002-10/2009
Care One at Wellington	SNF	6/2002-10/2009
Marlton Rehabilitation Hospital	IRF	5/2003-7/2004
Oradell Health Care Center	SNF	2003-10/2009
Partners Pharmacy of New Jersey	RX	2001-10/2009
Somerset Valley Rehabilitation & Nursing Center	SNF	10/2009-10/2009
South Jersey Health Care Center	SNF	2003-10/2009
Woodcrest Health Care Center	SNF	2003-10/2009

North Carolina

Blue Ridge Health Care Center	SNF	8/2002-10/2009

Ohio

Bellbrook Health Care Center	SNF	2003-10/2009
The Rehabilitation & Nursing Center at Elm Creek	SNF	10/2006-10/2009
The Rehabilitation & Nursing Center at Firelands	SNF	10/2006-10/2009
The Rehabilitation & Nursing Center at Spring Creek	SNF	10/2006-10/2009

Pennsylvania

Care Alternatives of Pennsylvania	HOS	2003-10/2009
Pediatric Specialty Care at Doylestown	SNF	2/2011-present
Pediatric Specialty Care at Hopewell	PED ICF	2/2011-present
Pediatric Specialty Care at Lancaster	PED ICF	2/2011-present
Pediatric Specialty Care at Point Pleasant	PED ICF	2/2011-present

Pediatric Specialty Care at Quakertown	PED ICF	2/2011-present
Presque Isle Rehabilitation & Nursing Center	SNF	10/2006-10/2009
Senior Living of Lancaster	HOM	2/2011-present
The Rehabilitation & Nursing Center at Greater Pittsburg	SNF	10/2006-10/2009
Puerto Rico		
Medicare Y Mucho Mas*	Medicare Agency	2005-11/2009
Rhode Island		
Scallop Shell Nursing & Rehabilitation Center	SNF	12/2010-present
Virginia		
Care Alternatives of Virginia*	HOS	4/2002-10/2009
Colonial Heights Health Care Center*	SNF	4/2002-10/2009
Glenburnie Rehabilitation & Nursing Center*	SNF	4/2002-10/2009
Hopewell Health Care Center*	SNF	4/2002/10/2009
Partners Pharmacy of Virginia*	RX	4/2002-10/2009
Valley Health Care Center*	SNF/ALF	4/2002-10/2009
Westport Health Care Center*	SNF	4/2002-10/2009

Individual Background Review

Jeffrey Rubin is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospital, home health agencies and institutional pharmacies. Prior to founding Post-Acute Partners, Dr. Rubin served as Executive Vice President Business Development for Care One Management, LLC/Healthbridge Management, LLC from 2000-2009. Previous to his involvement with Care One, Dr. Rubin served as President of Millenium Healthcare, Inc. which was the precursor to Care One. Dr. Rubin was formerly a practicing dentist, with his license currently inactive. Dr. Rubin has had extensive health facility operational and real estate interests, which are listed above.

Warren Cole is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospital, home health agencies and institutional pharmacies. Prior to founding Post Acute Partners, LLC Mr. Cole was involved with Care Ventures, Inc., an investment firm which acquires operational and real estate interests in nursing homes and provides financing to health care facilities throughout the United States. Mr. Cole also served as Chief Financial Officer at Aveta, Inc., a health insurance company, from 2007-2010. Dr. Cole has had extensive health facility operational and real estate interests, which are listed above.

Character and Competence – Analysis:
No adverse information for the proposed members has been received.

In order to make a determination on whether a substantially consistent high level of care has been provided at the health facilities/agencies subject to review, a ten year review of the enforcement history for each is undertaken. A positive finding would result from concluding that there were no repeat enforcement actions causing harm to residents of a facility/agency for the same issue, during the past ten years or for the years of ownership. For the subject application adequate surveillance documentation with which to make a global finding cannot be obtained due to staffing issues at multiple states. To date staff and the applicant have exhausted their efforts to obtain the necessary documentation, with the outcome that adequate information is available for only 60 out of the total 100 disclosed health facility interests.

For those health facilities/agency for which there is inadequate documentation, denoted by an asterisk (*) in the above listing, no negative information regarding the operator's track record has been received. In addition the applicants have submitted affidavits regarding the incomplete surveillance history, in which they attest to the following:

During the applicable period identified…, the Entities may have been surveyed by the applicable state regulatory authority. Statements of Deficiencies may have been issued, and enforcement action(s) resulting in the payment of a fine may have been assessed. However, to my knowledge, during the applicable period…, the Entities have not (i) received enforcement actions for repeat deficiencies that were not remedied within timeframes required by applicable law or (ii) had a license or certificate issued by a state or federal regulatory authority suspended, terminated, revoked, denied, or annulled. Further, to my knowledge, there are no currently pending federal or state enforcement actions against the Entities …

For those facilities for which there was complete information available for review, staff concludes that a substantially consistent high level of care has been provided.

The following summarizes the review outcome for each state:

A review of the **Alabama** facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the **California** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of California for which there is insufficient documentation to make a finding.

A review of the **Colorado** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Connecticut** facilities noted above indicates there is insufficient documentation with which to make a finding. The following seven Connecticut facilities owned by the principles were the subject of a Chapter 11 bankruptcy action:

Danbury Health Care Center
Darien Health Care Center
Long Ridge of Stamford
Newington Health Care Center
West River Health Care Center
Westport Health Care Center
Wethersfield Health Care Center

A review of the **Kansas** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Kentucky** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Maryland** facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Massachusetts** facilities noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Missouri** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Partners Pharmacy of Missouri for which there is insufficient documentation to make a finding.

A review of the **New Jersey** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **North Carolina** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Ohio** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Pennsylvania** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of Pennsylvania, for which there is insufficient documentation to make a finding.

A review of the **Puerto Rico** health related agency noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Rhode Island** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Virginia** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Colonial Heights Health Care Center, Glenburnie Rehabilitation & Nursing Center, Hopewell Health Care Center, Valley Health Care Center and Westport Health Care Center, for which there is insufficient documentation to make a finding.

If able to base our judgment solely on the documentation received from other states, the Department would be able to render a positive finding as to the character and competence of the applicants. We must, however, deal with a larger record, one which lacks sufficient documentation, by the Department's standards for analysis, of the applicants' operation of 35 facilities in five different states. However, it should be made clear that while these five states could not provide our customarily needed level of detail on operating history, we did not receive any negative findings that would warrant disapproval of this application; and we did receive indications of acceptable operating experience. The Department believes it reasonable to infer from these facts that the applicants have provided a sufficiently high level of care at the facilities they have operated.

Project Review

There are no proposed changes in either the program or physical environment of the facility. No administrative services/consulting agreement is proposed in this application.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Background

The proposed change in ownership is part of a nine residential health care facilities, five adult care facilities, two independent housing companies, and related real property companies, acquisition involving Lakewood Health Care Center, Inc., the operator and Elderwood Affiliates, Inc., the owner of the realty and the proposed new owner/operator Post Acute Partners Acquisitions, LLC, an existing for profit limited liability company, which assigns all rights and title to both the operations and the real estate to 5775 Maelou Drive Operating Company, LLC, d/b/a Elderwood at Hamburg and 5775 Maelou Drive, LLC respectively.

The five adult care facilities will be reviewed by the Division of Long Term Care and therefore, are being reviewed separately from the nursing home application. The independent Housing companies as well are not being addressed in these reviews. The information provided regarding the independent housing companies is to delineate them from the total project cost for the overall application.

The proposed members are also seeking establishment approval to concurrently acquire ownership of the following related residential health care facilities, also part of the facilities acquisition, through the applications listed below:

CON	Applicant	Facility	Beds
111456-E	4800 Bear Road Operating Company, LLC, d/b/a Elderwood at Liverpool	Birchwood Health Care Center, Inc. d/b/a Elderwood Health Care at Birchwood	160
111462-E	1818 Como Park Boulevard Operating Company, LLC, d/b/a Elderwood at Lancaster	Linwood Health Care Center, Inc. d/b/a Elderwood Health Care at Linwood	94
111467-E	4459 Bailey Avenue Operating Company, LLC d/b/a Elderwood at Amherst	Wedgewood Health Care Center, Inc. d/b/a Elderwood Health Care at Wedgewood	92
111468-E	2850 Grand island Boulevard Operating Company, LLC d/b/a Elderwood at Grand Island	Riverwood Health Care Center, Inc. d/b/a Elderwood Health Care at Riverwood	90
111469-E	225 Bennett Road Operating Company, LLC d/b/a Elderwood at Cheektowaga	Maplewood Health Care Center, Inc. d/b/a Elderwood Health Care at Maplewood	170
111471-E	37 North Chemung Street Operating Company, LLC d/b/a Elderwood at Waverly	Elderwood Health Care at Tioga, LLC d/b/a Elderwood Health Care at Tioga	200
111466-E	2600 Niagara Falls Boulevard Operating Company, LLC d/b/a Elderwood at Wheatfield	Crestwood Health Care Center, Inc. d/b/a Elderwood Health Care at Crestwood	160
111463-E	200 Bassett Road Operating Company, LLC d/b/a Elderwood at Williamsville	Oakwood Health Care Center, Inc. d/b/a Elderwood Health Care at Oakwood	200

The applicant has provided an affidavit, which states that 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 the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently, the facility has no outstanding Medicaid audit liabilities.

All nine applications will be processed concurrently.

Asset Purchase Agreement

The change in ownership will be effectuated in accordance with the terms of the executed Asset Purchase Agreement, summarized below. This agreement is for the nine residential health care facility, five adult care facility, two independent housing company and related real property companies acquisition.

Date:	February 25, 2011
Sellers (Nursing Home Operations):	Wedgewood Health Care Center, LLC, Maplewood Health Care Center, Inc., Riverwood Health Care Center, Inc., Lakewood Health Care Center, Inc., Linwood Health Care Center, Inc., Crestwood Health Care Center, Inc., Oakwood Health Care Center, Inc., Birchwood Health Care Center, Inc., Elderwood Health Care Center at Tioga, LLC
Sellers (Nursing Home Real Estate):	Wedgewood SNF Property Company, LLC, Maplewood Property Associates, L.P., Riverwood Property Associates, L.P., Elderwood Affiliates, Inc., LPC at Linwood LLC, Crestwood Development, LLC, Oakwood Property Associates, L.P., Tioga Property Company North, LLC
Purchaser:	Post Acute Partners Acquisition, LLC
Purchased Assets:	All right, title and interest of the above operations and Woodmark Services, Inc.

in and to all supplies used in the facilities operations. All assumed Contracts, Admission agreements, assignable licenses, right, title and interest in trade marks, dress and names and services marks used in the facilities operations, specifically "Elderwood" and "Elderwood Senior Care" and the service mark "Care Without Compromise"; all phone and fax numbers, email addresses domain names, P.O. boxes and software used for the facilities operations. All books, data and records for the facilities, (except where transfer is prohibited) all employee records, but only for transitioned employees (excluding the seller's financial books and records). All right, title and interest in all vehicles located at the respective facilities owned or operated by it or used in connection therewith and in all furniture, furnishings, equipment, computers and office equipment and supplies located at the corporate offices. All right, title and interest of Elderwood Transportation Company, LLC in all tangible and intangible personal property and all right, title and interest of each seller in any and all other items of tangible and intangible personal property used or useful in connection with the facilities operations and all the facilities goodwill.

Excluded Assets: The Heathwood and Penfield facilities owned and operated by affiliates of seller, including all assets, the names "Heathwood Health Care Center, Inc. d/b/a Elderwood Health Care at Heathwood" and "Elderwood Assisted Living at Penfield, LLC" and operations thereof; all assets relating to pharmacy operations of Woodmark pharmacy, Inc.; All assets of the KABA division of Woodmark services, Inc and the provider agreement and provider number of Woodmark services, Inc.; Real property comprising seller's corporate offices, located in Williamsville, NY at 7 Limestone Drive, 1142 Wehrle Drive and 1150 Wehrle Drive; all of seller's bank accounts, cash, cash equivalents and securities except to the extent any portion thereof is subject to the proration or reconciliation procedures set forth herein; all replacement and tax escrow reserves, utility deposits and workers compensation trust assets of seller; all prepaid expenses, all vehicles, office furniture, computers and cell phones used by Robert M. Chur and/or Carla Chur Suero; all accounts receivable prior to the effective time, except as otherwise expressly provided in this agreement, all refunds or reimbursements for the period prior to the effective time and all deposits, escrowed funds and similar funds; except otherwise expressly provided in this agreement, all claims, disputes and litigation, and all amounts of any nature or description relating thereto for the period prior to the effective time; all receivables from any affiliate of seller, all of seller's rights and benefits under this agreement; seller's organizational documents relating solely to the existence of each of the entities comprising seller as separate legal entity; seller's right to the grant proceeds associated with the HEAL projects; except to the extent included in the patient records or the employee records' seller's general ledgers and trial balances and all other financial journal and ledgers and statements, for any of the foregoing.

Liabilities Assumed : The applicable Real liabilities under the mortgages listed on schedule 1.6(a)(the aggregate outstanding balance of any mortgage debt described on schedule 1.6(a) or (b) assumed or taken by applicable real estate purchaser referred to as the assumed debt") assume the obligations and liabilities under the Birchwood Lease for periods after the effective time, subject to obtaining required consents in respect of each of the mortgages comprising assumed debt and the Birchwood landlord under the Birchwood lease; (ii) New operator will assume the assumed contracts and admissions agreements, only to the extent they are for periods after the effective time and (iii) Each applicable real estate purchaser shall exercise its respective commercially reasonable efforts to assume or take title subject to the mortgages listed on schedule 1.6 (a) and obtain any and all required consents in connection therewith. Seller shall retain, promptly pay and discharge in the ordinary course all liabilities and obligations of seller other than the assumed liabilities.

Excluded Liabilities:	Seller's accounts payable and all obligations for the facilities operation prior to the effective time including costs, expenses and other liabilities and obligations from the facilities operation except as set forth in sections 4.1(b) and 4.12, obligation under any collective bargaining agreement, employment agreement, pension or retirement plan, profit sharing plan, stock plan, compensation obligation or agreement or severance pay plan or agreement and any other employee benefit plan and liability for any taxes (except taxes prorated in accordance with section 10.3 (a)) any accounts payable or other obligations accruing to and existing as of the effective time are and shall remain the seller's sole obligation and responsibility.
Purchase Price:	$141,150,000 for the Nine Residential Health Care facility, five adult care facility and two independent housing company and related real property companies acquisition.
Purchase Price for this operation and real estate:	$10,794,870 with $4,094,870 allocated to the operations purchase price and $6,700,000 allocated to the real estate purchase price.
Payment of Purchase Price:	Through three loans; one for $8,888,800 at 30 years at 5.5% interest, a subordinated loan for $1,440,467 at 10% for 7 years, and a loan for $465,603 for 7 years interest only.

Below is the breakout of the purchase price for all of the facilities by facility category with a final table showing the total purchase price for the full operations and real estate transfer.

Residential Health Care Facilities

CON	Applicant	Facility	Real Estate Purchase Price	Operations Purchase Price	Total Purchase Price
111467-E	4459 Bailey Avenue Operating Company, LLC d/b/a Elderwood at Amherst	Wedgewood Health Care Center, Inc. d/b/a Elderwood Health Care at Wedgewood	$6,500,000	$3,383,566	$9,883,566
111468-E	2850 Grand Island Boulevard Operating Company, LLC d/b/a Elderwood at Grand Island	Riverwood Health Care Center, Inc. d/b/a Elderwood Health Care at Riverwood	$4,700,000	$2,951,514	$7,651,514
111470-E	5775 Maelou Drive Operating Company, LLC d/b/a Elderwood at Hamburg	Lakewood Health Care Center, Inc. d/b/a Elderwood Health Care at Lakewood	$6,700,000	$4,094,870	$10,794,870
111462-E	1818 Como Park Boulevard Operating Company, LLC d/b/a Elderwood at Lancaster	Linwood Health Care Center, Inc. d/b/a Elderwood Health Care at Linwood	$2,250,000	$1,423,042	$3,673,042
111456-E	4800 Bear Road Operating Company, LLC d/b/a Elderwood at	Birchwood Health Care Center, Inc. d/b/a Elderwood Health Care at	N/A	$7,730,857	$7,730,857

	Liverpool	Birchwood			
111469-E	225 Bennett Road Operating Company, LLC d/b/a Elderwood at Cheektowaga	Maplewood Health Care Center, Inc. d/b/a Elderwood Health Care at Maplewood	$8,300,000	$1,660,484	$9,960,484
111466-E	2600 Niagara Falls Boulevard Operating Company, LLC d/b/a Elderwood at Wheatfield	Crestwood Health Care Center, Inc. d/b/a Elderwood Health Care at Crestwood	$9,100,000	$1,182,776	$10,282,776
111463-E	200 Bassett Road Operating Company, LLC d/b/a Elderwood at Williamsville	Oakwood Health Care Center, Inc. d/b/a Elderwood Health Care at Oakwood	$6,800,000	$5,271,383	$12,071,383
111471-E	37 North Chemung Street Operating Company, LLC d/b/a Elderwood at Waverly	Elderwood Health Care at Tioga, LLC d/b/a Elderwood Health Care at Tioga	$5,400,000	$2,678,288	$8,078,288
Total Residential Health Care Facilities			*$49,750,000*	*$30,376,780*	*$80,126,780*

Adult Care Facilities

Facility Name	Purchase Price
Glenwood	$10,024,265
Maplewood ALF	$7,028,868
Rosewood	$8,337,181
Tioga ALF	$3,904,780
Westwood	$14,494,740
Total Adult Care Facilities Purchase Price	$43,789,834

Independent Housing Facilities

Facility Name	Purchase Price
Crestwood ILF	$12,590,237
Maplewood ILF	$4,993,149
Total Independent Housing Facilities Purchase Price	$17,583,386

Total Purchase Price

Operations and Real Estate	Purchase Price
Residential Health Care Facilities	$80,126,780
Adult Care Facilities	$43,789,834
Independent Housing Facilities	$17,583,386
Total Purchase Price	$141,500,000

Assignment Agreement

The change in operational and realty ownership will be effectuated in accordance with a draft assignment agreement, the terms of which are summarized below:

Effective Date:	Upon CON Approval by DOH
Assignor:	Post Acute Partners Acquisition, LLC
Assignee:	5775 Maelou Drive, LLC
Operating Designee:	5775 Maelou Drive Operating Company, LLC, d/b/a Elderwood at Hamburg
Assets Assigned:	Assignor's right, title and interest as Buyer under the Purchase Agreement with respect to the Assigned Property.
Obligations Assigned:	Assumes all obligations on the part of the Buyer to be performed under Purchase Agreement relating to the Assigned Property.

The members of the proposed realty entities, 2850 Grand Island Boulevard, LLC, 225 Bennett Road, LLC, 200 Bassett Road, LLC, 5775 Maelou Drive, LLC, 1818 Como Park Boulevard, LLC, 4800 Bear Road, LLC, 37 North Chemung Street, LLC, 2600 Niagara Falls Boulevard, LLC and 4459 Bailey Avenue, LLC are as follows:

Proposed Members	Percentage Ownership
Warren Cole	50%
Dr. Jeffrey Rubin, D.D.S.	50%

Lease Agreement and Medicaid Capital Reimbursement

Facility occupancy is subject to a draft lease agreement, the terms of which are summarized as follows.

Date:	Upon CON Approval by DOH
Premises:	A 166-bed RHCF located at 5775 Maelou Drive, Hamburg, NY (Erie County)
Lessor:	5775 Maelou Drive, LLC
Lessee:	5775 Maelou Drive Operating Company, LLC, d/b/a Elderwood at Hamburg
Term:	10 years commencing on the execution of the lease with 4 additional (5 year extensions)
Annual Rental:	Lease payment is equivalent to the annual mortgage debt service for the facility, which is $958,693.
Type:	Triple net lease.

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the landlord and operating entity.

Currently, the facilities's Medicaid capital reimbursement is based on the return of and return on equity for recent improvements. This methodology will not be altered upon change in ownership.

Operating Budget

Following is a summary of the submitted operating budget for the RHCF, presented in 2011 dollars, for the first year subsequent to change in ownership:

	Per Diem	Total
Revenues:		
Medicare Fee For Service	$368.01	$4,511,490
Medicaid Fee For Service	$187.75	$5,922,002
Private Pay	$316.54	$4,673,439
Total Revenue		$15,106,931
Expenses:		
Operating		$12,672,516

Capital	$1,015,727
Total Expense	$13,688,243
Net Income	$1,418,688
Utilization (Patient days)	58,565
Occupancy	96.09%

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

- Overall utilization is projected at 96.09%, which is consistent with historical. Utilization by payor source is expected as follows:

Medicaid	53.86%
Medicare	20.93%
Private Pay	25.21%

- Breakeven utilization is projected at 87.59%.

Capability and Feasibility

The purchase price and initiation of operations, as a financially viable entity, will be financed by a loan from Capital Funding, LLC of $ 8,888,800 at an interest rate of 5.50% for 30 years, with the remaining $1,440,467 from a subordination loan at an interest rate of 10% for 7 years, and $465,603 seller's notes that is interest only.

Working capital requirements are estimated at $2,281,374, based on two months' of first year expenses, which $1,140,686 will by satisfied from the proposed member's equity, and the remaining $1,140,688 will be satisfied through a loan from Capital Funding, LLC at 5.00% over 5 years. A letter of interest has been supplied by Capital Funding LLC. Presented as BFA Attachment A, is the Net Worth of proposed members.

The issue of feasibility is centered on the applicant's ability to offset expenses with revenues and maintain a viable operating entity. The submitted budget indicates that a net income of $1,418,688 would be maintained during the first year, following change in ownership. The budget appears reasonable.

Presented as BFA Attachment B, is the pro-forma balance sheet of, which indicates positive members' equity of $1,140,686 as of the first day of operations.

Following is a comparison of 2010 and projected revenue and expense:

Annual 2010 Income	$14,323,996
Annual 2010 Expense	13,298,541
Annual 2010 Net Income	$1,025,455
Projected incremental Income	$782,935
Projected incremental Expense	389,702
Projected incremental Net Income	$393,233
Incremental Net Income (Loss)	$1,418,688

Projected income includes revenues at budgeted occupancy and payor source, to accommodate Medicaid access requirements, as well as the difference between current year and projected levels. Projected expenses include acquisition capital expenses, expenses at budgeted occupancy, and the difference between current year and projected levels.

As shown on BFA Attachment C, Elderwood at Lakewood, had an average positive working capital position and an average positive net asset position, and generated an average net Income of $450,752 for the period 2008-2010.

Based on the proceeding, 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	Pro-forma Balance Sheet
BFA Attachment C	Financial Summary - Elderwood Health Care at Lakewood
BFA Attachment D	Organizational Chart
BFA Attachment E	Establishment Checklist

<u>RESOLUTION</u>

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 5th day of April, 2012, 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 5775 Maelou Drive Operating Company, LLC d/b/a Elderwood at Hamburg as the new operator of Elderwood Health Care at Lakewood, 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.

<u>NUMBER</u>:	<u>FACILITY/APPLICANT</u>:
111470 E	5775 Maelou Drive Operating Company, LLC d/b/a Elderwood at Hamburg

APPROVAL CONTINGENT UPON:

1. Submission of documentation of project completion of CON #111091-L. [PMU]
2. Submission of a loan commitment for working capital that is acceptable to the Department of Health. [BFA]
3. Submission of a commitment that is acceptable to the Department, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
4. Submission of an executed building lease that is acceptable to the Department. [BFA]
5. Submission of an executed assignment agreement that is acceptable to the Department. [BFA]
6. Submission of an original affidavit from the applicant members (or stockholders or partners) making a commitment to personally fund the balloon payment on the proposed mortgage, should terms acceptable to the Department of Health be unavailable at the time of refinancing. [BFA]
7. Submission of photocopies of the applicant's Articles of Organization, as filed with the Department of State and of a fully executed and dated Certificate of Amendment to the applicant's Articles of Organization, which must be acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's fully executed and dated Operating Agreement, which must be acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's fully executed Certificate of Assumed Name, which must be acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's fully executed and dated sublease agreement, including the consent of the Landlord (as such term is defined below), which must be acceptable to the Department. [CSL]
11. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of Post Acute Partners Acquisition, LLC (Post Acute Partners), as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
12. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of Post Acute Partners, which must be acceptable to the Department. [CSL]
13. Submission of a list of all members and managers of Post Acute Partners, which must be acceptable to the Department. [CSL]
14. Submission of a photocopy of that certain Amended and Restated Deposit Escrow Agreement, as described in "Whereas Clause D" of the Asset Purchase Agreement between Post Acute Partners, as Purchaser, and various other entities, as Seller, dated February 25, 2011, which must be acceptable to the Department. [CSL]
15. Submission of a photocopy of a fully executed and dated Assignment of Rights between Post Acute Partners, the applicant and the owner of the real property on which the facility is located (Landlord), which must be acceptable to the Department. [CSL]
16. Submission of a photocopy of the proposed Bill of Sale, and any other transfer documents, between the applicable Seller and the applicant, pursuant to which the operating assets of the facility will be transferred to the applicant, which must be acceptable to the Department. [CSL]
17. Submission of a photocopy of the Lease pursuant to which Post Acute Partners has a leasehold interest in the real property on which the facility is located and the detailed explanation as to why the real property will not be owned by an affiliate of the applicant as is the case with all of the related Elderwood applications, which must be acceptable to the Department. [CSL]

18. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of the Landlord, as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
19. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of the Landlord, which must be acceptable to the Department. [CSL]
20. Submission of a list of all members and managers of the Landlord, which must be acceptable to the Department. [CSL]
21. Submission of photocopies of any agreements, documents, or arrangements between or among the applicant, Post Acute Partners, the Landlord, and/or any other entity (including, but not limited to, any affiliate or subsidiary), jointly and severally, directly or indirectly, relating to the ownership or operation of the facility. [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 # 111471-E
37 North Chemung Operating Company, LLC d/b/a Elderwood at Waverly

County: **Tioga (Waverly)**
Purpose: **Establishment**
Program: **Residential Health Care Facility**
Submitted: **May 29, 2011**

Executive Summary

Description

37 North Chemung Street Operating Company, LLC d/b/a Elderwood at Waverly, is seeking approval to be established as the new operator of Elderwood Health Care at Tioga, LLC d/b/a Elderwood Health Care at Tioga, an existing 200-bed residential health care facility (RHCF) located at 37 Chemung Street, Waverly. Tioga Property Company North, LLC is the current realty owner. Ownership before and after the requested change is as follows:

Operations:	
Before	
Elderwood Health Care at Tioga, LLC d/b/a Elderwood Health Care at Tioga	
Member	Interest
-- Robert M. Chur	100.00%
After	
37 North Chemung Street Operating Company, LLC d/b/a Elderwood at Waverly	
Members	Interest
-- Warren Cole	50.00%
-- Dr. Jeffrey Rubin, D.D.S.	50.00%

Real Estate:	
Before	
Elderwood Health Care at Tioga, LLC. d/b/a Elderwood Health Care at Tioga	
Members	Interest
-- Robert M. Chur	75.00%
-- Carol L. Chur	25.00%
After	
37 North Chemung Street, LLC	
Members	Interest
-- Warren Cole	50.00%
-- Dr. Jeffrey Rubin, D.D.S.	50.00%

The proposed change in ownership is part of an acquisition involving nine RHCFs, five adult care facilities, two independent housing companies, and related real property companies.

Post Acute Partners Acquisitions, LLC, an existing for profit limited liability company, will be assigning its rights and title to both the operations and the real estate to 37 North Chemung Street Operating Company, LLC d/b/a Elderwood at Waverly, and 37 North Chemung Street, LLC respectively.

DOH Recommendation

Contingent approval.

Need Summary

Elderwood Health Care at Tioga's utilization for 2009 and 2010 was 91.4% and 91.4%, respectively. There will be no change in the beds or services of the Elderwood Health Care at Tioga facility as a result of this project.

Program Summary

Based on actual documentation received from other states and on indications of acceptable operating experience where full documentation was not available, and on affidavits submitted by the applicants, a positive finding as to character and competence can be made.

Financial Summary

There are no project costs associated with this proposal.

Budget:		
	Revenues:	*$ 8,749,674*
	Expenses:	*7,866,882*
	Gain/(Loss):	*$ 882,792*

Subject to 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; Architectural review is not 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 documentation of project completion of CON #111100-L. [PMU]
2. Submission of a loan commitment for working capital that is acceptable to the Department of Health. [BFA]
3. Submission of a commitment that is acceptable to the Department, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
4. Submission of an executed building lease that is acceptable to the Department. [BFA]
5. Submission of an executed assignment agreement that is acceptable to the Department. [BFA]
6. Submission of an original affidavit from the applicant members (or stockholders or partners) making a commitment to personally fund the balloon payment on the proposed mortgage, should terms acceptable to the Department of Health be unavailable at the time of refinancing. [BFA]
7. Submission of photocopies of the applicant's Articles of Organization, as filed with the Department of State and of a fully executed and dated Certificate of Amendment to the applicant's Articles of Organization, which must be acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's fully executed and dated Operating Agreement, which must be acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's fully executed Certificate of Assumed Name, which must be acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's fully executed and dated sublease agreement, including the consent of the Landlord (as such term is defined below), which must be acceptable to the Department. [CSL]
11. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of Post Acute Partners Acquisition, LLC (Post Acute Partners), as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
12. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of Post Acute Partners, which must be acceptable to the Department. [CSL]
13. Submission of a list of all members and managers of Post Acute Partners, which must be acceptable to the Department. [CSL]
14. Submission of a photocopy of that certain Amended and Restated Deposit Escrow Agreement, as described in "Whereas Clause D" of the Asset Purchase Agreement between Post Acute Partners, as Purchaser, and various other entities, as Seller, dated February 25, 2011, which must be acceptable to the Department. [CSL]
15. Submission of a photocopy of a fully executed and dated Assignment of Rights between Post Acute Partners, the applicant and the owner of the real property on which the facility is located (Landlord), which must be acceptable to the Department. [CSL]
16. Submission of a photocopy of the proposed Bill of Sale, and any other transfer documents, between the applicable Seller and the applicant, pursuant to which the operating assets of the facility will be transferred to the applicant, which must be acceptable to the Department. [CSL]
17. Submission of a photocopy of the Lease pursuant to which Post Acute Partners has a leasehold interest in the real property on which the facility is located and the detailed explanation as to why the real property will not be owned by an affiliate of the applicant as is the case with all of the related Elderwood applications, which must be acceptable to the Department. [CSL]
18. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of the Landlord, as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
19. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of the Landlord, which must be acceptable to the Department. [CSL]
20. Submission of a list of all members and managers of the Landlord, which must be acceptable to the Department. [CSL]
21. Submission of photocopies of any agreements, documents, or arrangements between or among the applicant, Post Acute Partners, the Landlord, and/or any other entity (including, but not limited to, any affiliate or subsidiary), jointly and severally, directly or indirectly, relating to the ownership or operation of the facility. [CSL]

Council Action Date
April 5, 2012.

Need Analysis

Background
37 North Chemung Street Operating Company, LLC d/b/a Elderwood at Waverly, is seeking approval to be established as the new operator of Elderwood Health Care at Tioga, LLC d/b/a Elderwood Health Care at Tioga, an existing 200-bed residential health care facility (RHCF) located at 37 Chemung Street, Waverly (Tioga County).

There will be no change in the beds or services of the Elderwood Health Care at Tioga facility as a result of this project.

Analysis

RHCF Bed Need – Tioga County	
2016 Projected Need	352
Current Beds	277
Beds Under Construction	0
Total Resources	277
Unmet Need	75

RHCF Occupancy	***2008***	***2009***	***2010***
Elderwood Health Care Tioga	**91.77%**	**91.38%**	**91.52%**
Riverview Manor Health Care Center	97.98%	95.44%	97.71%
Tioga County	*93.40%*	*92.50%*	*93.18%*

Elderwood Health Care at Tioga had utilization rates of 91.4% for 2009 and 91.5% 2010.

Conclusion
The acquisition of Elderwood Health Care at Tioga by Post Acute Partners Acquisition, LLC will not result in any capacity or service changes.

Recommendation
From a need perspective, approval is recommended.

Programmatic Analysis

Facility Information

	Existing	*Proposed*
Facility Name	Elderwood Health Care at Tioga	Elderwood at Waverly
Address	37 North Chemung Street Waverly, NY 14892	same
RHCF Capacity	200	200
ADHC Program Capacity	15	same
Type of Operator	Limited Liability Company	Limited Liability Company
Class of Operator	Proprietary	same

Operator	Elderwood Health Care at Tioga, LLC <u>Stockholders</u> Robert M. Chur 100%	37 North Chemung Street Operating Company, LLC d/b/a Elderwood at Cheektowaga <u>Members</u> Warren Cole 50% Jeffrey Rubin 50%

Character and Competence

- FACILITIES REVIEWED:

ACU-acute care/hospital	ICF-intermediate care facility/group home
ALF-assisted living facility	IRF-intermediate rehabilitation facility (similar to SNF short term rehab)
HHA-home health agency	LTA-long term acute care hospital (similar to TCU)
HOM-homecare	RX-pharmacy
HOS-hospice	SNF-skilled nursing facility/nursing home

(Note: actual dates of ownership may extend prior to 2003)

Alabama		
*Laurelton Rehabilitation and Nursing Center**	*SNF*	*10/2006 to 5/2008*
California		
San Joaquin Valley Rehabilitation Hospital	Hospital	7/2004-7/2004
Kenfield Rehabilitation Hospital	Hospital	8/2003-7/2004
Care Alternatives of California*	Hospice	2003-10/2009
Colorado		
North Valley Rehabilitation Hospital (Haven Behavioral Sr. Care)	ACU-PSYCH	7/2003-8/2004
North Valley Rehabilitation Hospital (Vibra LTACH)	LTA	7/2003-8/2004
North Valley Rehabilitation Hospital (Vista View Care Center)	SNF	7/2003-8/2004
Connecticut		
Danbury Health Care Center*	SNF	8/2003-10/2009
Darien Health Care Center*	SNF	8/2003-10/2009
Golden Hill Health Care Center*	SNF	8/2003-10/2009
Long Ridge of Stamford*	SNF	8/2003-10/2009
Newington Health Care Center*	SNF	8/2003-10/2009
Partners Pharmacy of Connecticut*	RX	2003-10/2009
River Glen Health Care Center (a/k/a Southbury HCC)*	SNF	8/2003-10/2009
The Highlands Health Care Center*	SNF	8/2003-10/2009
West River Health Care Center (a/k/a Milford North HCC)*	SNF	8/2003-10/2009
Westport Health Care Center*	SNF	8/2003-10/2009
Wethersfield Health Care Center*	SNF	8/2003-10/2009
Kansas		
Care Alternatives of Kansas	HOS	2004-10/2009
Kentucky		
Southern Kentucky Rehabilitation Hospital	IRF	5/2003-7/2004
Maryland		
Montgomery Village Health Care Center	SNF	2003-10/2009

Massachusetts

Brookline Health Care Center*	SNF	8/2003-10/2009
Calvin Coolidge Nursing & Rehab Center for Northampton*	SNF	8/2003-10/2009
Care Alternatives of Massachusetts*	HOS	2005-10/2009
Concord Health Care Center*	SNF	8/2003-10/2009
Essex Park Rehabilitation & Nursing Center*	SNF	3/2005-10/2009
Holyoke Health Care Center*	SNF	8/2003-10/2009
Lexington Health Care Center*	SNF	8/2003-10/2009
Lowell Health Care Center*	SNF	8/2003-10/2009
Millbury Health Care Center*	SNF	8/2003-10/2009
New Bedford Health Care Center*	SNF	8/2003-10/2009
New Bedford Rehabilitation Hospital*	IRF	7/2003-8/2004
Newton Health Care Center*	SNF	8/2003-10/2009
North Shore Health Care Center*	SNF	8/2003-10/2009
Partners Pharmacy of Massachusetts*	RX	2004-10/2009
Peabody Glen Health Care Center*	SNF	8/2003-10/2009
Redstone Health Care Center (a/k/a East Longmeadow HCC)*	SNF	8/2003-10/2009
Weymouth Health Care Center*	SNF	8/2003-10/2009
Wilmington Health Care Center*	SNF	8/2003-10/2009

Michigan

Grand Blanc Rehabilitation & Nursing Center	SNF	10/2006-10/2009

Missouri

Care Alternatives of Missouri	HOS	2003-10/2009
Cliffview at Riverside Rehab & Nursing Center	SNF	10/2006-5/2008
Partners Pharmacy of Missouri*	RX	2003-10/2009

New Jersey

Bergen Care Home Health	HHA	2007-10/2009
Bergen Care Personal Touch	HOM	2007-10/2009
Care Alternatives of New Jersey	HOS	2001-10/2009
Care One at Dunroven	SNF	2001-10/2009
Care One at East Brunswick	SNF	2/2002-10/2009
Care One at Evesham	SNF	8/2000-10/2009
Care One at Evesham Assisted Living	ALF	10/2007-10/2009
Care One at Ewing	SNF	11/2004-10/2009
Care One at Hamilton	SNF	5/2002-10/2009
Care One at Holmdel	SNF	8/1997-10/2009
Care One at Jackson (a/k/a Jackson HCC)	SNF	2004-10/2009
Care One at King James	SNF	2003-10/2009
Care One at Livingston	SNF	10/2002-10/2009
Care One at Livingston Assisted Living	ALF	9/2005-10/2009
Care One at Madison Avenue	SNF	1/2005-10/2009
Care One at Moorestown	SNF	9/2003-10/2009
Care One at Harmony Village at Moorestown	ALF	8/2003-10/2009
Care One at Morris	SNF	8/2001-10/2009
Care One at Morris Assisted Living	ALF	3/2003-10/2009
Care One at Pine Rest	SNF	2001-10/2009
Care One at Raritan Bay MC	LTA	3/2004-10/2009
Care One Harmony Village at Moorestown	SNF	9/2003-10/2009
Care One at Teaneck	SNF	4/2007-10/2009
Care One at The Cupola	SNF	2001-10/2009
Care One at The Highlands	SNF	2001-10/2009
Care One at Valley	SNF	2001-10/2009
Care One at Wall	SNF	9/2004-10/2009
Care One at Wayne	SNF/ALF	6/2002-10/2009
Care One at Wellington	SNF	6/2002-10/2009

Marlton Rehabilitation Hospital	IRF	5/2003-7/2004
Oradell Health Care Center	SNF	2003-10/2009
Partners Pharmacy of New Jersey	RX	2001-10/2009
Somerset Valley Rehabilitation & Nursing Center	SNF	10/2009-10/2009
South Jersey Health Care Center	SNF	2003-10/2009
Woodcrest Health Care Center	SNF	2003-10/2009
North Carolina		
Blue Ridge Health Care Center	SNF	8/2002-10/2009
Ohio		
Bellbrook Health Care Center	SNF	2003-10/2009
The Rehabilitation & Nursing Center at Elm Creek	SNF	10/2006-10/2009
The Rehabilitation & Nursing Center at Firelands	SNF	10/2006-10/2009
The Rehabilitation & Nursing Center at Spring Creek	SNF	10/2006-10/2009
Pennsylvania		
Care Alternatives of Pennsylvania	HOS	2003-10/2009
Pediatric Specialty Care at Doylestown	SNF	2/2011-present
Pediatric Specialty Care at Hopewell	PED ICF	2/2011-present
Pediatric Specialty Care at Lancaster	PED ICF	2/2011-present
Pediatric Specialty Care at Point Pleasant	PED ICF	2/2011-present
Pediatric Specialty Care at Quakertown	PED ICF	2/2011-present
Presque Isle Rehabilitation & Nursing Center	SNF	10/2006-10/2009
Senior Living of Lancaster	HOM	2/2011-present
The Rehabilitation & Nursing Center at Greater Pittsburg	SNF	10/2006-10/2009
Puerto Rico		
Medicare Y Mucho Mas*	Medicare Agency	2005-11/2009
Rhode Island		
Scallop Shell Nursing & Rehabilitation Center	SNF	12/2010-present
Virginia		
Care Alternatives of Virginia*	HOS	4/2002-10/2009
Colonial Heights Health Care Center*	SNF	4/2002-10/2009
Glenburnie Rehabilitation & Nursing Center*	SNF	4/2002-10/2009
Hopewell Health Care Center*	SNF	4/2002/10/2009
Partners Pharmacy of Virginia*	RX	4/2002-10/2009
Valley Health Care Center*	SNF/ALF	4/2002-10/2009
Westport Health Care Center*	SNF	4/2002-10/2009

Individual Background Review

Jeffrey Rubin is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospital, home health agencies and institutional pharmacies. Prior to founding Post-Acute Partners, Dr. Rubin served as Executive Vice President Business Development for Care One Management, LLC/Healthbridge Management, LLC from 2000-2009. Previous to his involvement with Care One, Dr. Rubin served as President of Millenium Healthcare, Inc. which was the precursor to Care One. Dr. Rubin was formerly a practicing dentist, with his license currently inactive. Dr. Rubin has had extensive health facility operational and real estate interests, which are listed above.

Warren Cole is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric

specialty care hospital, home health agencies and institutional pharmacies. Prior to founding Post Acute Partners, LLC Mr. Cole was involved with Care Ventures, Inc., an investment firm which acquires operational and real estate interests in nursing homes and provides financing to health care facilities throughout the United States. Mr. Cole also served as Chief Financial Officer at Aveta, Inc., a health insurance company, from 2007-2010. Dr. Cole has had extensive health facility operational and real estate interests, which are listed above.

Character and Competence – Analysis:
No adverse information for the proposed members has been received.

In order to make a determination on whether a substantially consistent high level of care has been provided at the health facilities/agencies subject to review, a ten year review of the enforcement history for each is undertaken. A positive finding would result from concluding that there were no repeat enforcement actions causing harm to residents of a facility/agency for the same issue, during the past ten years or for the years of ownership. For the subject application adequate surveillance documentation with which to make a global finding cannot be obtained due to staffing issues at multiple states. To date staff and the applicant have exhausted their efforts to obtain the necessary documentation, with the outcome that adequate information is available for only 60 out of the total 100 disclosed health facility interests.

For those health facilities/agency for which there is inadequate documentation, denoted by an asterisk (*) in the above listing, no negative information regarding the operator's track record has been received. In addition the applicants have submitted affidavits regarding the incomplete surveillance history, in which they attest to the following:

> *During the applicable period identified…, the Entities may have been surveyed by the applicable state regulatory authority. Statements of Deficiencies may have been issued, and enforcement action(s) resulting in the payment of a fine may have been assessed. However, to my knowledge, during the applicable period…, the Entities have not (i) received enforcement actions for repeat deficiencies that were not remedied within timeframes required by applicable law or (ii) had a license or certificate issued by a state or federal regulatory authority suspended, terminated, revoked, denied, or annulled. Further, to my knowledge, there are no currently pending federal or state enforcement actions against the Entities …*

For those facilities for which there was complete information available for review, staff concludes that a substantially consistent high level of care has been provided.

The following summarizes the review outcome for each state:

A review of the **Alabama** facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the **California** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of California for which there is insufficient documentation to make a finding.

A review of the **Colorado** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Connecticut** facilities noted above indicates there is insufficient documentation with which to make a finding. The following seven Connecticut facilities owned by the principles were the subject of a Chapter 11 bankruptcy action:

Danbury Health Care Center
Darien Health Care Center
Long Ridge of Stamford
Newington Health Care Center
West River Health Care Center
Westport Health Care Center
Wethersfield Health Care Center

A review of the **Kansas** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Kentucky** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Maryland** facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Massachusetts** facilities noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Missouri** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Partners Pharmacy of Missouri for which there is insufficient documentation to make a finding.

A review of the **New Jersey** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **North Carolina** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Ohio** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Pennsylvania** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of Pennsylvania, for which there is insufficient documentation to make a finding.

A review of the **Puerto Rico** health related agency noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Rhode Island** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Virginia** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Colonial Heights Health Care Center, Glenburnie Rehabilitation & Nursing Center, Hopewell Health Care Center, Valley Health Care Center and Westport Health Care Center, for which there is insufficient documentation to make a finding.

If able to base our judgment solely on the documentation received from other states, the Department would be able to render a positive finding as to the character and competence of the applicants. We must, however, deal with a larger record, one which lacks sufficient documentation, by the Department's standards for analysis, of the applicants' operation of 35 facilities in five different states. However, it should be made clear that while these five states could not provide our customarily needed level of detail on operating history, we did not receive any negative findings that would warrant disapproval of this application; and we did receive indications of acceptable operating experience. The Department believes it reasonable to infer from these facts that the applicants have provided a sufficiently high level of care at the facilities they have operated.

Project Review

There are no proposed changes in either the program or physical environment of the facility. No administrative services/consulting agreement is proposed in this application.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Background
The proposed change in ownership is part of a nine residential health care facilities, five adult care facilities, two independent housing companies, and related realty property companies, acquisition involving Elderwood Health Care at Tioga, LLC, the operator, and Tioga Property Company North, LLC, the owner of the realty, and the proposed new owner/operator Post Acute Partners Acquisitions, LLC, an existing for profit limited liability company, will be assigning its rights and title to both the operations and the real estate to 37 North Chemung Street Operating Company, LLC d/b/a Elderwood at Waverly, and 37 North Chemung Street, LLC respectively.

The five adult care facilities will be reviewed by the Division of Long Term Care and therefore, are being reviewed separately from the nursing home application. The independent housing companies, as well, are not being addressed in these reviews. The information provided regarding the independent housing companies is to delineate them from the total project cost for the overall application.

The proposed members also are seeking establishment approval to concurrently acquire ownership of the following related residential health care facilities, also part of the facilities acquisition; through the applications listed below:

CON	Applicant	Facility	Beds
111456-E	4800 Bear Road Operating Company, LLC, d/b/a Elderwood at Liverpool	Birchwood Health Care Center, Inc. d/b/a Elderwood Health Care at Birchwood	160
111462-E	1818 Como Park Boulevard Operating Company, LLC, d/b/a Elderwood at Lancaster	Linwood Health Care Center, Inc. d/b/a Elderwood Health Care at Linwood	94
111468-E	2850 Grand island Boulevard Operating Company, LLC d/b/a Elderwood at Grand Island	Riverwood Health Care Center, Inc. d/b/a Elderwood Health Care at Riverwood	90
111470-E	5775 Maelou Drive Operating Company, LLC d/b/a Elderwood at Hamburg	Lakewood Health Care Center, Inc. d/b/a Elderwood Health Care at Lakewood	166
111469-E	225 Bennett Road Operating Company, LLC d/b/a Elderwood at Cheektowaga	Maplewood Health Care Center, Inc. d/b/a Elderwood Health Care at Maplewood	170
111467-E	4459 Bailey Avenue Operating Company, LLC d/b/a Elderwood at Amherst	Wedgewood Health Care Center, Inc. d/b/a Elderwood Health Care at Wedgewood	92
111466-E	2600 Niagara Falls Boulevard Operating Company, LLC d/b/a Elderwood at Wheatfield	Crestwood Health Care Center, Inc. d/b/a Elderwood Health Care at Crestwood	160
111463-E	200 Bassett Road Operating Company, LLC d/b/a Elderwood at Williamsville	Oakwood Health Care Center, Inc. d/b/a Elderwood Health Care at Oakwood	200

The applicant has provided an affidavit, which states that 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 the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently, the facility has no outstanding Medicaid audit liabilities.

All nine applications will be processed concurrently.

Asset Purchase Agreement

The change in ownership will be effectuated in accordance with the terms of the executed Asset Purchase Agreement, summarized below. This agreement is for the nine residential health care facility, five adult care facility, two independent housing company and related real property companies acquisition.

Date:	February 25, 2011
Sellers (Nursing Home Operations):	Wedgewood Health Care Center, LLC, Maplewood Health Care Center, Inc., Riverwood Health Care Center, Inc., Lakewood Health Care Center, Inc., Linwood Health Care Center, Inc., Crestwood Health Care Center, Inc., Oakwood Health Care Center, Inc., Birchwood Health Care Center, Inc., Elderwood Health Care Center at Tioga, LLC
Sellers (Nursing Home Real Estate):	Wedgewood SNF Property Company, LLC, Maplewood Property Associates, L.P., Riverwood Property Associates, L.P., Elderwood Affiliates, Inc., LPC at Linwood LLC, Crestwood Development, LLC, Oakwood Property Associates, L.P., Tioga Property Company North, LLC
Purchaser:	Post Acute Partners Acquisition, LLC
Purchased Assets:	All right, title and interest of the above operations and Woodmark Services, Inc. in and to all supplies used in the facilities operations. All assumed Contracts, Admission agreements, assignable licenses, right, title and interest in trade marks, dress and names and services marks used in the facilities operations, specifically "Elderwood" and "Elderwood Senior Care" and the service mark "Care Without Compromise"; all phone and fax numbers, email addresses domain names, P.O. boxes and software used for the facilities operations. All books, data and records for the facilities, (except where transfer is prohibited) all employee records, but only for transitioned employees (excluding the seller's financial books and records). All right, title and interest in all vehicles located at the respective facilities owned or operated by it or used in connection therewith and in all furniture, furnishings, equipment, computers and office equipment and supplies located at the corporate offices. All right, title and interest of Elderwood Transportation Company, LLC in all tangible and intangible personal property and all right, title and interest of each seller in any and all other items of tangible and intangible personal property used or useful in connection with the facilities operations and all the facilities goodwill.
Excluded Assets:	The Heathwood and Penfield facilities owned and operated by affiliates of seller, including all assets, the names "Heathwood Health Care Center, Inc. d/b/a Elderwood Health Care at Heathwood" and "Elderwood Assisted Living at Penfield, LLC" and operations thereof; all assets relating to pharmacy operations of Woodmark pharmacy, Inc.; All assets of the KABA division of Woodmark services, Inc and the provider agreement and provider number of Woodmark services, Inc.; Real property comprising seller's corporate offices, located in Williamsville, NY at 7 Limestone Drive, 1142 Wehrle Drive and 1150 Wehrle Drive; all of seller's bank accounts, cash, cash equivalents and securities except to the extent any portion thereof is subject to the proration or reconciliation procedures set forth herein; all replacement and tax escrow reserves, utility deposits and workers compensation trust assets of seller; all prepaid expenses, all vehicles, office furniture, computers and cell phones used by Robert M. Chur and/or Carla Chur Suero; all accounts receivable prior to the effective time, except as otherwise expressly provided in this agreement, all refunds or reimbursements for the period prior to the effective time and all deposits, escrowed funds and similar funds; except otherwise expressly provided in this agreement, all claims, disputes and litigation, and all amounts of any nature or description relating thereto for the period prior to the effective time; all receivables from any affiliate of seller, all of seller's rights and benefits under this agreement; seller's organizational documents relating solely to the

	existence of each of the entities comprising seller as separate legal entity; seller's right to the grant proceeds associated with the HEAL projects; except to the extent included in the patient records or the employee records' seller's general ledgers and trial balances and all other financial journal and ledgers and statements, for any of the foregoing.
Liabilities Assumed :	The applicable Real liabilities under the mortgages listed on schedule 1.6(a)(the aggregate outstanding balance of any mortgage debt described on schedule 1.6(a) or (b) assumed or taken by applicable real estate purchaser referred to as the assumed debt") assume the obligations and liabilities under the Birchwood Lease for periods after the effective time, subject to obtaining required consents in respect of each of the mortgages comprising assumed debt and the Birchwood landlord under the Birchwood lease; (ii) New operator will assume the assumed contracts and admissions agreements, only to the extent they are for periods after the effective time and (iii) Each applicable real estate purchaser shall exercise its respective commercially reasonable efforts to assume or take title subject to the mortgages listed on schedule 1.6 (a) and obtain any and all required consents in connection therewith. Seller shall retain, promptly pay and discharge in the ordinary course all liabilities and obligations of seller other than the assumed liabilities.
Excluded Liabilities:	Seller's accounts payable and all obligations for the facilities operation prior to the effective time including costs, expenses and other liabilities and obligations from the facilities operation except as set forth in sections 4.1(b) and 4.12, obligation under any collective bargaining agreement, employment agreement, pension or retirement plan, profit sharing plan, stock plan, compensation obligation or agreement or severance pay plan or agreement and any other employee benefit plan and liability for any taxes (except taxes prorated in accordance with section 10.3 (a)) any accounts payable or other obligations accruing to and existing as of the effective time are and shall remain the seller's sole obligation and responsibility.
Purchase Price:	$141,150,000 for the Nine Residential Health Care facility, five adult care facility and two independent housing company and related real property companies acquisition.
Purchase Price for this operation and real estate:	$8,078,288 with $2,678,288 allocated to the operations purchase price and $5,400,000 allocated to the real estate purchase price.
Payment of Purchase Price:	Through three loans; one for $3,851,800 at 30 years at 5.5% interest, a subordinated loan for $3,194,067 at 10% for 7 years, and a loan for $1,032,421 for 7 years interest only.

Below is the breakout of the purchase price for all of the facilities by facility category with a final table showing the total purchase price for the full operations and real estate transfer.

Residential Health Care Facilities

CON	Applicant	Facility	Real Estate Purchase Price	Operations Purchase Price	Total Purchase Price
111467-E	4459 Bailey Avenue Operating Company, LLC d/b/a Elderwood at Amherst	Wedgewood Health Care Center, Inc. d/b/a Elderwood Health Care at Wedgewood	$6,500,000	$3,383,566	$9,883,566
111468-E	2850 Grand Island Boulevard Operating Company, LLC d/b/a Elderwood at	Riverwood Health Care Center, Inc. d/b/a Elderwood Health Care at Riverwood	$4,700,000	$2,951,514	$7,651,514

	Grand Island				
111470-E	5775 Maelou Drive Operating Company, LLC d/b/a Elderwood at Hamburg	Lakewood Health Care Center, Inc. d/b/a Elderwood Health Care at Lakewood	$6,700,000	$4,094,870	$10,794,870
111462-E	1818 Como Park Boulevard Operating Company, LLC d/b/a Elderwood at Lancaster	Linwood Health Care Center, Inc. d/b/a Elderwood Health Care at Linwood	$2,250,000	$1,423,042	$3,673,042
111456-E	4800 Bear Road Operating Company, LLC d/b/a Elderwood at Liverpool	Birchwood Health Care Center, Inc. d/b/a Elderwood Health Care at Birchwood	N/A	$7,730,857	$7,730,857
111469-E	225 Bennett Road Operating Company, LLC d/b/a Elderwood at Cheektowaga	Maplewood Health Care Center, Inc. d/b/a Elderwood Health Care at Maplewood	$8,300,000	$1,660,484	$9,960,484
111466-E	2600 Niagara Falls Boulevard Operating Company, LLC d/b/a Elderwood at Wheatfield	Crestwood Health Care Center, Inc. d/b/a Elderwood Health Care at Crestwood	$9,100,000	$1,182,776	$10,282,776
111463-E	200 Bassett Road Operating Company, LLC d/b/a Elderwood at Williamsville	Oakwood Health Care Center, Inc. d/b/a Elderwood Health Care at Oakwood	$6,800,000	$5,271,383	$12,071,383
111471-E	37 North Chemung Street Operating Company, LLC d/b/a Elderwood at Waverly	Elderwood Health Care at Tioga, LLC d/b/a Elderwood Health Care at Tioga	$5,400,000	$2,678,288	$8,078,288
Total Residential Health Care Facilities			*$49,750,000*	*$30,376,780*	*$80,126,780*

Adult Care Facilities

Facility Name	Purchase Price
Glenwood	$10,024,265
Maplewood ALF	$7,028,868

Rosewood	$8,337,181
Tioga ALF	$3,904,780
Westwood	$14,494,740
Total Adult Care Facilities Purchase Price	$43,789,834

Independent Housing Facilities

Facility Name	Purchase Price
Crestwood ILF	$12,590,237
Maplewood ILF	$4,993,149
Total Independent Housing Facilities Purchase Price	$17,583,386

Total Purchase Price

Operations and Real Estate	Purchase Price
Residential Health Care Facilities	$80,126,780
Adult Care Facilities	$43,789,834
Independent Housing Facilities	$17,583,386
Total Purchase Price	$141,500,000

Assignment Agreement

The change in operational and realty ownership will be effectuated in accordance with a draft assignment agreement, the terms of which are summarized below:

Effective Date:	Upon CON Approval by DOH
Assignor:	Post Acute Partners Acquisition, LLC
Assignee:	37 North Chemung Street, LLC
Operating Designee:	37 North Chemung Street Operating Company, LLC d/b/a Elderwood at Waverly
Assets Assigned:	Assignor's right, title and interest as Buyer under the Purchase Agreement with respect to the Assigned Property.
Obligations Assigned:	Assumes all obligations on the part of the Buyer to be performed under Purchase Agreement relating to the Assigned Property.

The members of the proposed realty entities, 2850 Grand Island Boulevard, LLC, 225 Bennett Road, LLC, 200 Bassett Road, LLC, 5775 Maelou Drive, LLC, 1818 Como Park Boulevard, LLC, 4800 Bear Road, LLC, 37 North Chemung Street, LLC, 2600 Niagara Falls Boulevard, LLC, and 4459 Bailey Avenue, LLC are as follows:

Proposed Members	Percentage Ownership
Warren Cole	50%
Dr. Jeffrey Rubin, D.D.S.	50%

Lease Agreement and Medicaid Capital Reimbursement

Facility occupancy is subject to a draft lease agreement, the terms of which are summarized as follows:

Effective Date:	Upon CON Approval by DOH
Premises:	A 200-bed RHCF located at 37 North Chemung Street, Waverly, New York (Tioga County)
Lessor:	37 North Chemung Street, LLC
Lessee:	37 North Chemung Street Operating Company, LLC d/b/a Elderwood at Waverly
Term:	10 years commencing on the execution of the lease with 4 additional (5) Year extensions

Annual Rental: Lease payment is equivalent to the annual mortgage debt service for the facility, which is $1,034,670.

Type: Triple net lease.

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the landlord and operating entity.

Currently, the facility Medicaid capital reimbursement is based on the return of and return on equity for recent improvement. This methodology will not be altered upon change in ownership.

Operating Budget

Following is a summary of the submitted operating budget for the RHCF, presented in 2011 dollars, for the first year subsequent to change in ownership:

	Per Diem/Per Visit	Total
Revenues :		
	$470.57	
Medicare Fee-For-Service		$4,479,402
Medicaid Fee-For-Service	165.08	9,062,956
Private Pay	363.74	2,200,633
Medicaid Fee-For-Service Ambulatory Service	65.51	177,863
Private Pay Ambulatory Service	125.00	13,875
Total Revenue		$15,934,729
Expenses:		
Operating		$14,731,399
Capital		1,100,639
Total Expense		$15,832,038
Net Income		102,691
Utilization (Patient days)		70,471
Utilization (Visits)		2,826
Occupancy		96.54%

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

- Overall utilization is projected at 96.54%, which is consistent with historical. Utilization by payor source is expected as follows:

Medicaid	77.91%
Medicare	13.51%
Private Pay	8.58%

- Breakeven utilization is projected at 97.08%. The reason that it is higher than the overall utilization is due to the fact that without the ambulatory service revenue, the facility would have a loss of $89,047.

Ambulatory Services:

Medicaid	96.07%
Private Pay	3.93%

Capability and Feasibility

The purchase price and initiation of operations, as a financially viable entity, will be financed by a loan from Capital Funding, LLC of $3,851,800 at an interest rate of 5.50% for 30 years, with the remaining $3,194,067 from a subordination loan at an interest rate of 10% for 7 years, and $1,032,421 seller's notes that is interest only.

Working capital requirements are estimated at $2,368,673, based on two months' of first year expenses. $1,319,298 will by satisfied from the proposed member's equity and the remaining $1,319,375 will be satisfied through a loan from Capital Funding, LLC at 5.00% over 5 years. A letter of interest has been supplied by Capital Funding, LLC. An affidavit from each member, which states that he or she is willing to contribute resources disproportionate to ownership percentages, has been provided by both proposed members. Presented as BFA Attachment A, is the Net Worth of proposed members.

The issue of feasibility is centered on the applicant's ability to offset expenses with revenues and maintain a viable operating entity. The submitted budget indicates that a net income of $102,691 would be maintained during the first year following change in ownership. The budget appears reasonable.

Presented as BFA Attachment B, is the pro-forma balance sheet of, which indicates positive members' equity of $1,319,298 as of the first day of operations.

Following is a comparison of 2010 and projected revenue and expense:

Annual 2010 Income	$16,365,454
Annual 2010 Expense	15,602,522
Annual 2010 Net Income	$762,932
Projected incremental Income	($430,725)
Projected incremental Expense	229,516
Projected incremental Net Income	($660,241)
Incremental Net Income (Loss)	$102,691

Projected income includes revenues at budgeted occupancy and payor source, to accommodate Medicaid access requirements as well as the difference between current year and projected levels. Projected expenses include acquisition capital expenses; expenses at budgeted occupancy and the difference between current year and projected levels.

As shown on BFA Attachment C, Elderwood at Tioga, LLC, had an average negative working capital position and an average negative net asset position, and generated an average net Income of $88,345 for the period 2008-2010. The 2009 loss is attributable to an increase in expenses of approximately 2% from 2008, with a 1% decrease in revenue. In order to correct this, the facility has instituted control on its operating budget and maintained approximately 1.0% increase in expenses from 2009 to 2010, while also increasing revenue by approximately 7.8%, which resulted in a positive net income for 2010.

Based on the proceeding, 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	Pro-forma Balance Sheet
BFA Attachment C	Financial Summary - Elderwood at Tioga, LLC
BFA Attachment D	Organizational Chart
BFA Attachment E	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 5th day of April, 2012, 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 37 North Chemung Operating Company, LLC d/b/a Elderwood at Waverly as the new operator of Elderwood Health Care at Tioga, 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:
111471 E	37 North Chemung Operating Company, LLC d/b/a Elderwood at Waverly

APPROVAL CONTINGENT UPON:

1. Submission of documentation of project completion of CON #111100-L. [PMU]
2. Submission of a loan commitment for working capital that is acceptable to the Department of Health. [BFA]
3. Submission of a commitment that is acceptable to the Department, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
4. Submission of an executed building lease that is acceptable to the Department. [BFA]
5. Submission of an executed assignment agreement that is acceptable to the Department. [BFA]
6. Submission of an original affidavit from the applicant members (or stockholders or partners) making a commitment to personally fund the balloon payment on the proposed mortgage, should terms acceptable to the Department of Health be unavailable at the time of refinancing. [BFA]
7. Submission of photocopies of the applicant's Articles of Organization, as filed with the Department of State and of a fully executed and dated Certificate of Amendment to the applicant's Articles of Organization, which must be acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's fully executed and dated Operating Agreement, which must be acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's fully executed Certificate of Assumed Name, which must be acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's fully executed and dated sublease agreement, including the consent of the Landlord (as such term is defined below), which must be acceptable to the Department. [CSL]
11. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of Post Acute Partners Acquisition, LLC (Post Acute Partners), as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
12. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of Post Acute Partners, which must be acceptable to the Department. [CSL]
13. Submission of a list of all members and managers of Post Acute Partners, which must be acceptable to the Department. [CSL]
14. Submission of a photocopy of that certain Amended and Restated Deposit Escrow Agreement, as described in "Whereas Clause D" of the Asset Purchase Agreement between Post Acute Partners, as Purchaser, and various other entities, as Seller, dated February 25, 2011, which must be acceptable to the Department. [CSL]
15. Submission of a photocopy of a fully executed and dated Assignment of Rights between Post Acute Partners, the applicant and the owner of the real property on which the facility is located (Landlord), which must be acceptable to the Department. [CSL]
16. Submission of a photocopy of the proposed Bill of Sale, and any other transfer documents, between the applicable Seller and the applicant, pursuant to which the operating assets of the facility will be transferred to the applicant, which must be acceptable to the Department. [CSL]
17. Submission of a photocopy of the Lease pursuant to which Post Acute Partners has a leasehold interest in the real property on which the facility is located and the detailed explanation as to why the real property will not be owned by an affiliate of the applicant as is the case with all of the related Elderwood applications, which must be acceptable to the Department. [CSL]

18. Submission of photocopies of the Articles of Organization, any amendments thereto, or restatements thereof, of the Landlord, as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
19. Submission of photocopies of the fully executed and dated Operating Agreement, any amendments thereto, or restatements thereof, of the Landlord, which must be acceptable to the Department. [CSL]
20. Submission of a list of all members and managers of the Landlord, which must be acceptable to the Department. [CSL]
21. Submission of photocopies of any agreements, documents, or arrangements between or among the applicant, Post Acute Partners, the Landlord, and/or any other entity (including, but not limited to, any affiliate or subsidiary), jointly and severally, directly or indirectly, relating to the ownership or operation of the facility. [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 # 112218-E
Waterfront Operations Associates, LLC d/b/a Waterfront Center for Rehabilitation and Health Care

County: **Erie (Buffalo)**
Purpose: **Establishment**
Program: **Residential Health Care Facility**
Submitted: **October 12, 2011**

Executive Summary

Description

Waterfront Operations Associates, LLC d/b/a Waterfront Center for Rehabilitation and Health Care is seeking approval to be established as the new operator of Waterfront Health Care Center, an existing 160-bed not-for-profit residential health care facility (RHCF) located at 200 Seventh Street, Buffalo.

Waterfront Health Care Center, Inc. entered into a voluntary receivership agreement with Waterfront Operations Associates LLC, which became effective August 15, 2011. In addition to the receivership agreement, Waterfront Health Care Center, Inc. also entered into an asset purchase agreement with Waterfront Operations Associates, LLC in order to transfer the total operating interest of the 160-bed RHCF. A separate real estate company, Waterfront Operations Associates, LLC, will acquire the facility's property. Ownership of the operation before and after the requested change is as follows:

Current Owner	
Waterfront Health Care Inc.	
MEMBER:	
-- Kaleida Health	100%
Receiver	
Waterfront Operations Associates, LLC d/b/a Waterfront Center for Rehabilitation and Health Care	
MEMBER:	
-- Kenneth Rozenberg	100%
New Owner/Operator	
Waterfront Operations Associates, LLC d/b/a Waterfront Center for Rehabilitation and Health Care	
MEMBER:	
-- Kenneth Rozenberg	60%
-- Jeremy Strauss	30%
-- Jeffrey Sicklick	10%

DOH Recommendation

Contingent approval

Need Summary

The facility has achieved occupancy rates above the 97% planning optimum for 2008 and 2009. While the RHCF's occupancy decreased slightly in 2010, it remains above the occupancy level for Erie County as a whole.

Program Summary

No changes in the program or physical environment are proposed in this application. No adverse information has been received concerning the character and competency of any of the applicants.

Financial Summary

The facility assets have been sold in accordance with the Asset Purchase Agreement effective August 1, 2011. This CON is effectively changing the status of the current receiver/operator to owner/operator and is adjusting the current ownership of Waterfront Operations Associates, LLC d/b/a Waterfront Center for Rehabilitation and Health Care. There are no project costs associated with this proposal.

Budget:		
	Revenues:	*$ 10,695,651*
	Expenses:	*10,489,406*
	Gain/(Loss):	*$ 206,245*

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

Architectural Summary

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

Recommendations

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

Office of Health Systems Management
Approval contingent upon:

1. Submission of a Loan commitment for working capital that is acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of the executed Certificate of Amendment of Articles of Organization of Waterfront Operations Associates, LLC, acceptable to the Department. [CSL]

Council Action Date
April 5, 2012.

Need Analysis

Background
Waterfront Health Care Center, a voluntary not-for-profit corporation, submitted a closure plan to the Department of Health, which was not approved because the facility is a necessary healthcare resource. As a result, Waterfront Health Care Center entered into a receivership agreement with Waterfront Operations Associates, LLC and is now seeking to concurrently enter into an asset purchase agreement to transfer its operating interests to that entity.

County RHCF Bed Need	*Erie*
2016 Projected Need	5,291
Current Beds	6,340
Beds under Const.	- 332
Total Resources	6,008
Unmet Need	- 717

Analysis
As indicated below, Waterfront Health Care Center has achieved occupancy rates above the 97 percent planning optimum for 2008 and 2009. Waterfront's occupancy decreased slightly below to 95.8 percent in 2010 but remains above the occupancy for Erie County.

RHCF Utilization	*2008*	*2009*	*2010*
Waterfront Rehab	98.7%	98.6%	95.8%
Erie County	94.8%	95.4%	93.9%

**2010 Data may be incomplete*

Conclusion
There will be no change in beds or services upon approval.

Recommendation
From a need perspective, approval is recommended.

Programmatic Analysis

Facility Information

	Existing	*Proposed*
Facility Name	Waterfront Health Care Center, Inc.	Waterfront Center for Rehabilitation and Healthcare
Address	200 Seventh Street Buffalo, NY 14201	Same
RHCF Capacity	160	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Corporation	Limited Liability Company
Class of Operator	Voluntary	Proprietary
Operator	Waterfront Operations Associates, LLC Receivership Kenneth Rozenberg 100% *Previously* Kaleida Health and Waterfront Health Care Center, Inc.	Waterfront Operations Associates, LLC Membership Kenneth Rozenberg 60% (managing member) Jeremy Strauss 30% Jeffrey Sicklick 10%

Character and Competence

- FACILITIES REVIEWED:

Residential Health Care Facilities	
Williamsbridge Manor Nursing Home	1/1/02 to present
Bronx Center for Rehabilitation & Health	1/1/02 to present
University Nursing Home	1/1/02 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

Receiverships	
Stonehedge Health & Rehabilitation Center-Rome	7/08 to 4/11
Stonehedge Health & Rehabilitation Center-Chittenango	7/08 to 4/11
Wartburg Nursing Home	6/08 to 5/11
Holliswood Care Center, Inc.	11/1/10 to present
Waterfront Health Care Center, Inc.	8/15/11 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:

Facility	Dates
Williamsbridge Manor Nursing Home	11/19/96 to present
Bronx Center for Rehabilitation & Health	10/1/97 to present
University Nursing Home	8/16/01 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. (receiver)	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. (receiver)	8/15/11 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

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.

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.

A review of operations of 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.

A review of the operations of Chittenango Center for Rehabilitation and Health Care for the period reveals the following:

- The facility was fined $20,000 pursuant to a Stipulation and Order issued February 17, 2012 for surveillance findings on January 20, 2011. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores and NYCRR 415.12(d)(1) Quality of Care: Catheters

The review of operations for Williamsbridge Manor Nursing Home, Bronx Center for Rehabilitation & Health Care, LLC, Stonehedge Health and Rehabilitation Center-Chittenango and Chittenango Center for Rehabilitation and Health Care for the time periods indicated 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, Bushwick Center for Rehabilitation and Health Care, Boro Park Center for Rehabilitation, Stonehedge Health & Rehabilitation Center-Rome, Suffolk Center for Rehabilitation, Holliswood Care Center, Inc., Wartburg Nursing Home and Waterfront Health Care Center, Inc. for the time periods indicated reveals 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 reveals 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. reveals that a substantially consistent high level of care has been provided, since there were no enforcements.

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:	August 1, 2011
Seller:	Waterfront Health Care Center, Inc.
Purchaser:	Waterfront Operations Associates, LLC
Purchased Assets:	All of the seller's right, title and interest in the business and operation of the facility, all leasehold improvements, furniture, fixtures and equipment owned or leased by seller, all inventory, supplies and other articles of personal property. All transferable contracts specifically agreed by buyer at closing, all residents funds held in trust, the name "Waterfront Health Care Center" and all other trade names, logos, marks and services marks associated with the facility. All security deposits and prepayments for future services. All books, data and records for

	the facilities, (except where transfer is prohibited) and does not include software associated with Kaleida Health. All phone and fax number, To the extent transferrable all licenses and permits relating to the ownership or operation of the facility as well as the Medicare and Medicaid provider numbers and the provider agreements. All accounts receivable, the leases all cash deposits and cash equivalents, all assets of seller existing on or after the date hereof, other than excluded assets.
Excluded Assets:	Real Estate, all insurance policies, all union contracts and collective bargaining agreements and all pension plans. Any reimbursement received for services prior to receivership. All real estate tax refunds relating to a period or periods prior to the receivership date. The personal property listed on schedule 1.2.7.All amounts due from parties related to the seller.
Liabilities Assumed :	All liabilities and obligations exclusively arising with respect to the operation of the facility and/or basic assets on and after receivership date, including buyer loans set forth in section 4.1 and the balance sheet liabilities limited to the specific liabilities and amounts therefore, but excluding the assumption of any liabilities relating to any mortgage on the real estate, excluding retained liabilities, which includes all liabilities arising from the ownership or operation prior to the receivership date.
Purchase Price:	$806,718; $706,218 assumption of liabilities, $100,000 additional purchase price.
Payment of Purchase Price:	$706,718 payable at closing, $16,666.70 payable December 5, 2011, $16,666.66 due 30 days after December 5th, payment, $16,666.66 due 30 days after second payment, $16,666.66 due 30 days after third payment, $16,666.66 due 30 days fourth payment and $16,666.66 due 30 days after fifth payment.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility.

Currently, the facility has no outstanding Medicaid audit liabilities.

The member of the realty entity, Waterfront Land Associates, LLC, is as follows:

Proposed Members	Ownership
Daryl Hagler	100%

Lease Agreement and Medicaid Capital Reimbursement

Facility occupancy will continue to be subject to a lease agreement, the terms of which are summarized as follows:

Date:	August 1, 2011
Premises:	160-bed not–for–profit residential health care facility (RHCF), located at 200 Seventh Street, Buffalo, New York (Erie County).
Lessor:	Waterfront Land Associates, LLC
Lessee:	Waterfront Operations Associates, LLC
Term:	30 years commencing on the execution of the lease.
Rental:	$200,000 per year ($16,666.67 per month)
Provisions:	Triple Net Lease

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the Landlord and operating entity.

The facility was being reimbursed for both interest and Depreciation, based on the current mortgage. With this change from a voluntary to a proprietary facility, the reimbursement methodology is going to be changed to interest and amortization for the remainder of the facility's mortgage term of 1 year, which ends in 2012.

Operating Budget

The following is a summary of the submitted operating budget, presented in 2011 dollars, for the first year subsequent to change in ownership:

	Per Diem	Total
Revenues:		
Medicaid	156.28	$7,523,724
Medicare	373.80	2,101,146
Private Pay	355.03	1,070,781
Total		$10,695,651
Expenses:		
Operating		$10,110,858
Capital		378,548
Total		$10,489,406
Net Income		$206,245
Utilization: (patient days)		56,780
Occupancy		97.23%

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

- Overall utilization is projected at 97.23%, while utilization by payor source is expected as follows:

Medicaid	84.79%
Medicare	9.90%
Private Pay	5.31%

- Breakeven utilization is projected at 95.36%.

Capability and Feasibility

The purchase price and initiation of operations as a financially viable entity will be done by the applicant taking over the facility's liabilities of $706,718, and also paying an additional $100,000 for the operations. This will be accomplished through the member's equity. Presented as BFA Attachment A, is the summary net worth statement for the proposed members, which shows adequate resources to initiate operations.

Working capital requirements are estimated at $1,748,234, based on two months' of first year expenses, which $874,117 will be satisfied from the proposed member's equity. The remaining $874,117 will be satisfied through a loan from Rockland Capital Funding, LLC at 7.00% over 5 years. Presented as BFA Attachment A, is the Net Worth of proposed members, which shows adequate resources.

The submitted budget indicates that a net income of $206,245 would be maintained during the first year following change in ownership. Presented as BFA Attachment B, is the pro-forma balance sheet of Waterfront Operations Associates, LLC d/b/a Waterfront Center for Rehabilitation and Health Care (The Center), which indicates positive members' equity of $1,016,407 as of the first day of operations.

The issue of feasibility is centered on the applicant's ability to offset expenses with revenues and maintain a viable operating entity. The submitted budget indicates that a net income of $206,245 would be maintained during the first year following change in ownership.

The following is a comparison of 2010 and projected revenue and expense:

Annual 2010 Income	$10,552,656
Annual 2010 Expense	12,368,295
Annual 2010 Net Income	($1,815,639)
Projected Incremental Income	$142,995
Projected Incremental Expense	(1,878,889)
Projected Incremental Net Income	$2,021,884
Incremental Net Income (Loss)	$206,245

Projected income includes revenues at budgeted occupancy and payor source to accommodate Medicaid access requirements as well as the difference between current year and projected levels. Projected expenses include acquisition capital expense, expenses at budgeted occupancy, and the difference between current year and projected levels.

As shown on BFA Attachment C, Waterfront Center for Rehabilitation and Health Care (The Center) experienced average negative working capital and equity positions and an average net operating loss of $2,447,825 for the years 2008-2010. The losses are primarily due to a low case mix, particularly in the non-Medicaid population, which results in a low Medicare Reimbursement, particularly in relation to the facility's expenses. In order to rectify this, the facility attempted to reduce their operating expenses so they would be more in line with the revenues. Expense reductions were unsuccessful, and the facility then decided to close. They tried to sell the facility and the operations, which did not occur, and they eventually submitted a voluntary receivership application to transfer the operation to a new operator, which became effective August 15th, 2011.

The 2010 loss of $5,224,522 as shown on BFA Attachment C is extraordinary due to the fact that the facility included the loss on impairment of assets of $3,408,882 in the balance sheet. The actual operating loss for 2010 was $1,815,639, which the new owners have come up with ways to correct it. In the first year of operations, the facility has reduced employee's salaries, wages, employee benefits, professional fees, other direct expenses, as well as reducing their interest, depreciation and rent amounts. This overall reduction in costs is due in part to negotiations with the unions and through leasing the facility instead of owning it, as before. The overall reduction in costs is over 1.8 million dollars. They also increase revenues slightly by approximately $143,000, which allows the facility to make a profit.

As shown on BFA Attachment D, Dutchess Center for Rehabilitation had an average negative working capital position and average positive net asset position, and generated an average net income of $440,648 during the period 2008 through 2010.

As shown on BFA Attachment E, University Nursing Home had an average positive working capital position and average positive net asset position, and generated an average net income of $415,645 during the period 2008 through 2010.

BFA Attachment F, Wartburg Lutheran Home for the Aging, in June 2008, had a receiver appointed and did not file cost reports for 2008-2010, therefore, there is no financial summary available for this facility.

In May 2010, the facility changed its name to Bushwick Center for Rehab and had the operations of both Wartburg Lutheran Home for the Aging and Wartburg Nursing Home, Inc. merged into one operation.

As shown on BFA Attachment G, Holliswood Care Center had an average positive working capital position and average positive net asset position, and generated an average net income of $538,439 during the period 2008 through 2010.

As shown on BFA Attachment H, Queens Center for Rehabilitation had an average negative working capital position and average positive net asset position, and generated an average net income of $566,019 during the period 2008 through 2010.

As shown on BFA Attachment I, Brooklyn Center for Rehabilitation had an average negative working capital position and average positive net asset position, and generated an average net income of $270,803 during the period 2008 through 2010. The facility incurred a net loss of $907,483 for 2008. This facility was acquired in March 2007. The applicant indicates that the facility has a rate appeal with the Department for Medicaid rebasing, which would offset the losses. This was not promulgated until 2009, and was subsequently approved, creating positive net income in both 2009 and 2010 of $465,887 and $1,254,006, respectively.

As shown on BFA Attachment J, Suffolk Center for Rehabilitation had an average negative working capital position and average negative net asset position, and generated an average net income of $122,845 during the period 2008 through 2010. The 2008 loss was due to the facility still awaiting rebasing of their Medicaid rate as a result of their change of ownership and name change from Patchogue Center to Suffolk Center for Rehabilitation in 2007. The facility has now received its rebased rate and as can be seen in 2009 and 2010, it has achieved and maintained a positive net income.

As shown on BFA Attachment K, Boro Park Center for Rehabilitation had an average negative working capital position and average positive net asset position, and generated an average net income of $1,672,823 during the period 2008 through 2010.

As shown on BFA Attachment L, in May 2010, Bushwick Center for Rehabilitation, the facility changed its name to Bushwick Center for Rehab, from Wartburg Lutheran Home for the Aging, and had the operations of both Wartburg Lutheran Home for the Aging and Wartburg Nursing Home, Inc. merged into one operation.

Due to this, the facility has not submitted a cost report and therefore there is no financial summary available for this facility.

As shown on BFA Attachment M, Rome Center for Rehabilitation had an average negative working capital position and average negative net asset position, and generated an average net income of $277,272 during the period 2008 through 2010.

As shown on BFA Attachment N, Chittenango Center for Rehabilitation had an average negative working capital position and average positive net asset position, and generated an average net income of $455,723 during the period 2008 through 2010.

As shown on BFA Attachment O, Williamsbridge Manor had an average negative working capital position and average positive net asset position, and generated an average net income of $250,812 during the period 2008 through 2010.

As shown on BFA Attachment P, Bronx Center for Rehabilitation and Health had an average positive working capital position and average positive net asset position, and generated an average net income of $ 1,130,270 during the period 2008 through 2010.

Based on the preceding, and subject to the noted contingency, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and contingent approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Net Worth of Proposed Members
BFA Attachment B	Pro-forma Balance Sheet
BFA Attachment C	Financial Summary Waterfront Center for Rehabilitation and Health Care (The Center)
BFA Attachment D	Financial Summary, Dutchess Center for Rehabilitation
BFA Attachment E	Financial Summary University Nursing Home
BFA Attachment G	Financial Summary Holliswood Care Center
BFA Attachment H	Financial Summary, Queens Center for Rehabilitation
BFA Attachment I	Financial Summary, Brooklyn Center for Rehabilitation
BFA Attachment J	Financial Summary Suffolk Center for Rehabilitation
BFA Attachment K	Financial Summary Boro Park Center for Rehabilitation
BFA Attachment M	Financial Summary Rome Center for Rehabilitation
BFA Attachment N	Financial Summary Chittenango Center for Rehabilitation
BFA Attachment O	Financial Summary Williamsbridge Manor
BFA Attachment P	Financial Summary Bronx Center for Rehabilitation and Health
BFA Attachment Q	Establishment Checklist
BFA Attachment R	Organizational Chart

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 5th day of April, 2012, 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 Waterfront Operations Associates, LLC d/b/a Waterfront Center for Rehabilitation and Healthcare as the operator of Waterfront Health Care 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:
112218 E	Waterfront Operations Associations, LLC d/b/a Waterfront Center for Rehabilitation and Healthcare

APPROVAL CONTINGENT UPON:

1. Submission of a Loan commitment for working capital that is acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of the executed Certificate of Amendment of Articles of Organization of Waterfront Operations Associates, LLC, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

N/A

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York 12180-2299

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	ABC Home Care, Inc.
Address:	Brooklyn
County:	Kings
Structure:	For-Profit
Application Number:	1691-L

Description of Project:

ABC Home Care, 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:

Miroslava Kautsis, DDS – 200 Shares
Dentist, EZ Dental Care

The proposed board member of ABC Home Care, Inc. comprises the following individual:

Miroslava Kautsis, DDS – President, Vice
President, Secretary and Treasurer

The Office of the Professions of the State Education Department indicates no issues with the licensure of the health professional associated with this application.

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 3865 Surf Avenue, Brooklyn, New York, 11224:

Bronx	Kings	New York	Queens
Richmond			

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: February 28, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	BaCOR Healthcare Solutions Group, LLC DBA BaCOR Care for Life
Address:	Bardonia
County:	Rockland
Structure:	Limited Liability Company
Application Number:	1822-L

Description of Project:

BaCOR Healthcare Solutions Group, LLC DBA BaCOR Care for Life, 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 BaCOR Healthcare Solutions Group, LLC DBA BaCOR Care for Life, comprises the following individuals:

Raul Coronado, MD, MS – President/Chief Executive Officer – 45%
Retired

Dov Bash, MD – Chief Operating Officer – 45%
Director of Medical Management, New Jersey Property-Liability Insurance Guaranty Association (NJPLIGA)

Catherine Lopez, MD – Director of Operations – 5%
Manager Healthcare Operations, UnitedHealthcare Community Plan

Ishmael Carter, Director of Marketing – 5%
Vice President Marketing, Royal Health Care, LLC

The Office of the Professions of the State Education Department and the Office of Professional Medical Conduct, where appropriate, indicate no issues with the licensure of the health professional associated with this application.

Dov Bash, MD reports that he has a medical degree from Genova, Italy but has not become licensed in the United States nor does he practice as a physician.

Catherine Lopez, MD reports that she has a medical degree from Quito, Ecuador but has not become licensed in the United States nor does she practice as a physician.

The applicant has confirmed that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate.

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 23 Village Green, Bardonia, New York 10954:

Nassau　　Rockland

The applicant proposes to provide the following health care services:

Nursing　　Home Health Aide　　Personal Care

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: January 17, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Elite Home Care Service Agency, Inc.
Address:	Glendale
County:	Queens
Structure:	For-Profit Corporation
Application Number:	1716-L

Description of Project:

Elite Home Care Service 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: 100 shares owned by Rosemary Bianchi and 100 shares owned by Nancy A. Rahi.

The Board of Directors of Elite Home Care Service Agency, Inc. comprises the following individuals:

Rosemary Bianchi, R.N., President, Treasurer
Nursing Supervisor, Utopia Home Care, Inc.

Nancy A. Rahi, L.M.S.W., Vice President, Secretary
Administrator, Utopia Home Care, Inc.
(resigned January 2011)

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the licenses of the healthcare professionals associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 88-25 81st Avenue, Glendale, New York 11385:

New York	Kings	Queens	Bronx	Richmond
Nassau				

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeper	

Review of the Disclosure Information indicates that the applicant has no affiliations with other health care facilities.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: February 28, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Healing Touch Home Care, Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 1634-L

Description of Project:

Healing Touch Home Care, 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:

Marina Kaplun – 200 shares

The proposed board members of Healing Touch Home Care, Inc. comprise the following individuals:

Marina Kaplun, PA – President
Physician Assistant, Coney Island Hospital

Izabella Gendelman – Vice President
Research and Development, Toys-R-Us Corporate

Renata Trost – Secretary/Treasurer
Executive Director, Shostakovich School of Music, Art and Dance

Anastasia Lavitman, RN – Board Member
Registered Nurse, New York Community Hospital of Brooklyn

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 130 Whitman Drive, Brooklyn, New York 11234:

Bronx Kings New York Queens Richmond

The applicant will provide the following health care services:

Nursing Home Health Aide Personal Care

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: February 28, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Louis Career Development Center, Inc. d/b/a Smart Home Care Agency
Address:	Flushing
County:	Queens
Structure:	For-Profit Corporation
Application Number:	1962-L

Description of Project:

Louis Career Development Center, Inc., d/b/a Smart Home Care Agency, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. Louis Career Development Center, Inc. d/b/a Smart Home Care Agency is an existing medical and nursing career training school.

The applicant has authorized 200 shares of stock which are owned as follows:

Wenhuan Lu, 180 shares
President/Teacher, Louis Career Development Center, Inc.d/b/a Smart Home Care Agency

Ping Huang, R.N., 20 shares
Homecare Nursing Specialist, Bioscrip Nursing Services
Teacher/Nursing Instructor, Louis Career Development Center, Inc.
RN charge nurse, North Shore University Hospital

The Board of Directors of Louis Career Development Center, Inc. d/b/a Smart Home Care Agency comprises the following individuals:

Wenhuan Lu, President
(disclosed above)

Ping Huang, R.N., Vice President and Treasurer
(disclosed above)

Jiaxuan (Kathy) Liang, R.N., Secretary
Staff Nurse, Summit Home Health Care

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the licenses of the healthcare professionals associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 41-61 Kissena Boulevard, Concourse Level, Suite 29, Flushing, New York 11355:

New York, Kings, Queens, Bronx, Richmond
Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech Language Pathology	Audiology	Medical Social Services
Nutrition		

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: March 6, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Steps in Home Care, Inc.
Address:	Scarsdale
County:	Westchester
Structure:	For-Profit Corporation
Application Number:	1996-L

Description of Project:

Steps in Home Care, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are owned by Lisa Wade (100 shares) and Mary Martire (100 shares).

The Board of Directors of Steps in Home Care, Inc. comprises the following individuals:

Lisa Wade, President
Executive Director, Steps Therapy, Inc. (CA)
Affiliation: Steps Home Care, LLC d/b/a All Steps Home Care (FL)

Mary Martire, Secretary, Treasurer
Manager, Steps Home Care, LLC d/b/a All Steps Home Care (FL)

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 184 Boulder Ridge Road, Scarsdale, New York 10583:

Westchester Nassau

The applicant proposes to serve the residents of the following counties from an office located in Bronx County:

Bronx New York

The applicant proposes to provide the following health care services:

Nursing Home Health Aide

A review of the following agency was performed as part of this review:

Steps Home Care, LLC d/b/a All Steps Home Care (FL)

The information provided by the Agency for Health Care Administration, Tallahassee, Florida has indicated that the home care agency reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: February 3, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	JS Homecare Agency of NY, Inc.
Address:	Brooklyn
County:	Kings
Structure:	For-Profit Corporation
Application Number:	1906-L

Description of Project:

JS Homecare Agency of NY, 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:

Janette Shtaynberg, HHA, PCA – President – 200 Shares
Home Attendant, Helping Hands

The sole board member of JS Homecare Agency of NY, Inc. is Janette Shtaynberg.

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 2268 56 Drive, Brooklyn, New York 11234:

Bronx	Kings	New York	Queens
Richmond	Westchester		

The applicant proposes to serve the residents of the following counties from a second office to be located within the New Rochelle region:

Dutchess	Nassau	Orange	Putnam
Suffolk	Sullivan	Rockland	Ulster

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:	February 28, 2012

Division of Home and Community Based Services
Character and Competence Staff Review

Name of Agency: Heritage Christian Services, Inc
Address: East Rochester
County: Monroe
Structure: Not-For-Profit Corporation
Application Number: 1901L

Description of Project:

Heritage Christian Services, Inc, a not-for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The Board of Directors of Heritage Christian Services, Inc comprise of the following individuals:

Peter Sear – Chair
Retired

George-Ann Schauffele – Vice Chair

Julie K. Gerstenberger – Secretary
Engineer, Eastman Kodak

John (Jack) K. Best – Treasurer
Retired

Ward C. Donahue
Retired

Rev. David L. Donner
Retired

Leslie A. Hulbert, RN – Vice Chair
Unemployed

Daniel (Dan) W. Matthaidess
Retired

Forrestine (Tina) A. McNeary
Retired

Edward (Ted) M. O'Brien, Esq.
Partner, Harris, Chesworth, O'Brien, Johnstone, Welch & Leone, LLP

Gail B. Otto
Retired

Mary Lynn Smart, RN
Certified Tumor Registrar, Highland Hospital

William (Bill) K. Stanbro
Owner/President, Lakeland Supply, Inc.

Richard G. Vander Horst – Member at Large
IT Manager, Wegman's Food Markets

Joan Van De Wall
Associate in Ministry, Reformation Lutheran Church

George Kerson joined Heritage Christian Services Board of Directors as a Board Advisor in 2011. Mr. Kerson is a non-voting member whose role is to represent individuals with developmental disabilities who live within their residential program. As a non-voting member he is exempt from a character and competence review.

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.

A Certificate of Good Standing has been received for Edward O'Brien.

The applicant has indicated that they run 68 OPWDD residential programs, 16 OPWDD day habilitation programs and 2 OPWDD respite programs. At this time, OPWDD does not enforce any of these types of programs.

The applicant proposes to serve the residents of the following counties from an office located at, 349 West Commercial Street, Suite 2795, East Rochester, New York 14445:

Genesee	Livingston	Monroe	Ontario
Wayne			

The applicant proposes to open a second site to serve the residents of the following counties from an office located at, 3790 Commerce Court, Suite 800, North Tonawanda, New York 14120:

Erie	Niagara

The applicant proposes to provide the following health care services:

Nursing	Personal Care	Speech-Language Pathology

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: February 28, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Niagara County Department of Health
Address:	Niagara Falls
County:	Niagara
Structure:	Public
Application Number:	2107-L

Description of Project:

Niagara 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 (CHHA), a long term home health care program (LTHHCP) and a diagnostic and treatment center. Niagara County is in the process of selling the CHHA and LTHHCP. Niagara 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 Niagara County from an office located at: 1001 11th Street, 3rd Floor, Niagara Falls, New York 14301.

The applicant proposes to provide the following health care services:

Nursing

The information provided by the Division of Home and Community Based Services 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: March 5, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Tompkins County Health Department
Address:	Ithaca
County:	Tompkins
Structure:	Public
Application Number:	2108-L

Description of Project:

Tompkins County Health Department, 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 (CHHA) and a diagnostic and treatment center. Tompkins County is in the process of selling the CHHA. Tompkins County Health Department 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 Tompkins County from an office located at:
55 Brown Road, Ithaca, New York 14850.

The applicant proposes to provide the following health care services:

Nursing   Medical Social Services

The information provided by the Division of Home and Community Based Services has indicated that the certified home health care agency (CHHA) reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the Division of Certification and Surveillance has 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: March 5, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Yates County Public Health
Address:	Penn Yan
County:	Yates
Structure:	Public
Application Number:	2096-L

Description of Project:

Yates 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. Yates County is requesting approval to open a licensed home care services agency to enable the county to continue to provide essential public health nursing services.

The applicant proposes to serve the residents of Yates County from an office located at 417 Liberty Street, Suite 2120, Penn Yan, New York 14527.

The applicant proposes to provide the following health care services:

Nursing Nutrition

Yates County currently operates a Certified Home Health Agency and a Diagnostic and Treatment Center.

The information provided by the Division of Home and Community Based Services has indicated that the certified home health agency reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the Division of Certification and Surveillance has indicated that the diagnostic and treatment center reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

Since the applicant is a public entity, it is not subject to a character and competence review.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: January 9, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: Samaritan Senior Village, Inc.
Address: Watertown
County: Jefferson
Structure: Not-For-Profit Corporation
Application Number: 2010-L

Description of Project:

Samaritan Senior Village, Inc., a not-for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

This application is to establish a licensed home care service agency associated with a new Assisted Living Program (ALP). This LHCSA will be associated with Glen at Maple Pointe Assisted Living Program.

The Board of Trustees of Samaritan Senior Village comprises the following individuals:

Joan Treadwell-Woods – Chairman
Retired

Affiliations:
- Vice Chairperson, Samaritan Keep Nursing Home, Inc. (2005-Present)

Paul A. Kraeger – Treasurer
Senior Vice President, Chief Financial Officer, Samaritan Medical Center

Affiliations:
- Treasurer, Samaritan Keep Nursing Home, Inc. (June 1980 – Present)

Collene D. Alexander – Trustee
Executive Director, Family Counseling Services of Northern NY, Inc.

Thomas H. Carman, Pharmacist – Trustee
President and Chief Executive Officer, Samaritan Medical Center

Affiliations:
- Member, Groton Community Health Care Center Residential Care Facility (March 1997- February 2004)
- Member, E.J. Noble Hospital of Alexandria Bay (April 2004 – Present)
- Member, Samaritan Keep Nursing Home, Inc. (April 2004 – Present)

Katherine F. Fenlon – Trustee
Vice President for Academic Affairs, Jefferson Community College

Affiliations:
- Trustee, Samaritan Medical Center (2006 – Present)

Thomas F. Hanley – Trustee
President/General Manager, St. Lawrence Valley Educational TV Council

Affiliations:
- Trustee, Samaritan Medical Center (March 2007 – Present)
- Chairman, Samaritan Keep Nursing Home, Inc. (June 2004 – Present)

Collins F. Kellogg, Jr., M.D. – Trustee
President, Watertown Internists, PC
Attending Physician, Samaritan Keep Home

Addison F. Vars, III, Esq. – Trustee
Attorney, Menter, Rudin & Trivelpiece, PC

Affiliations:

- Trustee, Samaritan Medical Center (03/04-11/07)

Daniel J. Villa, Pharmacist – Trustee
Executive Director, American Red Cross of Northern N.Y.

Affiliations:

- Trustee, Samaritan Medical Center (March 2003 – Present)
- Trustee, Samaritan Keep Nursing Home, Inc. (March 2009 - Present)

Peter L. Walton, Esq. – Trustee
Partner, Conboy, McKay, Bachman & Kendall

Affiliations:

- Director, Samaritan Keep Nursing Home, Inc. (1999 – Present)

The sole member of Samaritan Senior Village is Samaritan Medical Center. The Board of Trustees of Samaritan Medical Center comprises the following individuals:

Thomas Carman – Trustee
(Previously Disclosed)

Paul G. Carr, Ph.D. – Trustee
Adjunct Professor, Cornell University

Bruce Dines, D.M.D. – Trustee
Self-employed, North Country Oral Surgery Group

Affiliations:

- Director, Samaritan Keep Nursing Home, Inc. (2004 – Present)

Katherine F. Fenlon – Trustee
(Previously Disclosed)

Elizabeth C. Fipps – Trustee
Market Manager, Senior Vice President, HSBC

David J. Flint, M.D. – Trustee
Hospitalist/Program Director, Samaritan Medical Center

Judith J. Foster – Trustee
No Employment History

Frederic G. Garry – Trustee
Senior Pastor, First Presbyterian Church

Kathleen H. Gebo, RN – Trustee
Instructor, Jefferson-Lewis BOCES

Lu Green – Trustee
Branch Service Manager, RBC Wealth Management

Thomas Hanley – Trustee
(Previously Disclosed)

Melanie A. Parker-Geurtsen, Veterinarian – Trustee
Owner, Cowcalls Incorporated

Ronald G. Perciaccante, M.D. – Trustee
Pediatrician, Child & Adolescent Health Associates

Robert O. Kimball, M.D. – Trustee
Surgeon, Robert O. Kimball, MD PC

Catherine Burns Quencer, Esq. – Trustee
Lawyer and Principal Shareholder, Schwerzmann & Wise, P.C.

Affiliations:

- Trustee, Samaritan Keep Nursing Home, Inc.

Karl J. Komar, M.D. – Trustee
Neurologist, Upstate Neonatal Care PC

Jack Rush, M.D. – Trustee
Physician, Samaritan Medical Center

Affiliations:
- Trustee, Samaritan Keep Nursing Home, Inc. (2003 – Present)

Daniel Villa – Trustee
(Previously Disclosed)

Lisa A. Weber – Trustee
Chief Executive Officer & Manager, LCO Destiny, LLC

John J. Wheeler – Trustee
Principal Consultant, JJW Consulting

Affiliations:
- Director, Samaritan Keep Nursing Home, Inc. (April 2003 – April 2010)

The Office of the Professions of the State Education Department, the New York State Physician Profile and the Office of Professional Medical Conduct, where appropriate, indicate no issues with the licensure of the health professionals associated with this application.

A search of the individuals (and entities, where appropriate) named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A Certificate of Good Standing has been received for all attorneys.

The applicant has confirmed that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate.

A 10 year review of the operations of the following facilities was performed as part of this review (unless otherwise noted):

Samaritan Keep Nursing Home, Inc.
Samaritan Medical Center
Groton Community Health Care Center (March 1997- February 2004)
E.J. Noble Hospital of Alexandria Bay (April 2004 – Present)

Samaritan Keep Nursing Home, Inc. was fined four thousand dollars ($4,000.00) pursuant to a stipulation and order dated October 10, 2010 for inspection findings of October 29, 2009 for violations 10 NYCRR Sections 415.12 Quality of Care: Nutrition; 415.15(b)(2)(i-iii) Medical Services: Physician Services.

Groton Community Health Care Center, Inc. was fined two thousand dollars ($2,000.00) pursuant to a stipulation and order dated August 13, 2002 for inspection findings of June 28, 2001 for violations 10 NYCRR Sections 415.12 Quality of Care.

Groton Community Health Care Center, Inc. was fined two thousand dollars ($2,000.00) pursuant to a stipulation and order dated October 28, 2004 for inspection findings of December 10, 2003 for violations 10 NYCRR Sections 415.12 (h) Quality of Care: Accidents.

The Information provided by the Bureau of Quality and Surveillance has 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 Hospital and Primary Care Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

A review of the above listed facilities has determined that all of the facilities have exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations. When code violations have occurred, it was determined that the operators investigated the circumstances surrounding the violation and took steps appropriate to the gravity of the violation which a reasonably prudent operator would take to promptly correct and prevent the recurrence of the violation.

The applicant proposes to serve the residents of the following counties from an office located at 1515 Washington Street, Watertown, New York 13601:

Jefferson	Lewis	St. Lawrence

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Physical Therapy
Occupational Therapy	Respiratory Therapy	Audiology	Speech-Language Pathology
Nutrition	Medical Social Services	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: February 29, 2012

Division of Home & Community Based Care
Character and Competence Staff Review

Name of Agency:	229 Bennett Road Operating Company, LLC d/b/a Elderwood Home Care at Cheektowaga
Address:	Cheektowaga
County:	Erie
Structure:	Limited Liability Company
Application Number:	2028-L

Description of Project:

229 Bennett Road Operating Company, LLC d/b/a Elderwood Home Care at Cheektowaga, a limited liability company, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Elderwood Village at Maplewood LLC was previously approved as a home care services agency by the Public Health Council at its May 24, 2002 meeting and subsequently licensed as 1117L001. At that time the membership was as follows: Robert Chur, Member – 75% and Carol Chur, Member – 25%.

The members of the 229 Bennett Road Operating Company, LLC d/b/a Elderwood Home Care at Cheektowaga comprises the following individuals:

Warren D. Cole, Member, Co-CEO – 50%
Partner, Post Acute Partners, LLC

Jeffrey Rubin, Member, Co-CEO – 50%
Partner, Post Acute Partners, LLC

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant will continue to serve the residents of the Erie from an office located at 229 Bennett Road, Cheektowaga, New York 14227

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Speech-Language Pathology
Physical Therapy	Occupational Therapy		

A review of the operations of the following facilities was performed as part of this review for the time periods specified:

ACU-acute care/hospital	ICF-intermediate care facility/group home
ALF-assisted living facility	IRF-intermediate rehabilitation facility (similar to SNF short term rehab)
HHA-home health agency	LTA-long term acute care hospital (similar to TCU)
HOM-homecare	RX-pharmacy
HOS-hospice	SNF-skilled nursing facility/nursing home

(Note: actual dates of ownership may extend prior to 2003)

Alabama

*Laurelton Rehabilitation and Nursing Center**	*SNF*	*10/2006 to 5/2008*

California

San Joaquin Valley Rehabilitation Hospital	Hospital	7/2004-7/2004
Kenfield Rehabilitation Hospital	Hospital	8/2003-7/2004
Care Alternatives of California*	Hospice	2003-10/2009

Colorado

North Valley Rehabilitation Hospital (Haven Behavioral Sr. Care)	ACU-PSYCH	7/2003-8/2004
North Valley Rehabilitation Hospital (Vibra LTACH)	LTA	7/2003-8/2004
North Valley Rehabilitation Hospital (Vista View Care Center)	SNF	7/2003-8/2004

Connecticut

Danbury Health Care Center*	SNF	8/2003-10/2009
Darien Health Care Center*	SNF	8/2003-10/2009
Golden Hill Health Care Center*	SNF	8/2003-10/2009
Long Ridge of Stamford*	SNF	8/2003-10/2009
Newington Health Care Center*	SNF	8/2003-10/2009
Partners Pharmacy of Connecticut*	RX	2003-10/2009
River Glen Health Care Center (a/k/a Southbury HCC)*	SNF	8/2003-10/2009
The Highlands Health Care Center*	SNF	8/2003-10/2009
West River Health Care Center (a/k/a Milford North HCC)*	SNF	8/2003-10/2009
Westport Health Care Center*	SNF	8/2003-10/2009
Wethersfield Health Care Center*	SNF	8/2003-10/2009

Kansas

Care Alternatives of Kansas	HOS	2004-10/2009

Kentucky

Southern Kentucky Rehabilitation Hospital	IRF	5/2003-7/2004

Maryland

Montgomery Village Health Care Center	SNF	2003-10/2009

Massachusetts

Brookline Health Care Center*	SNF	8/2003-10/2009
Calvin Coolidge Nursing & Rehab Center for Northampton*	SNF	8/2003-10/2009
Care Alternatives of Massachusetts*	HOS	2005-10/2009
Concord Health Care Center*	SNF	8/2003-10/2009
Essex Park Rehabilitation & Nursing Center*	SNF	3/2005-10/2009
Holyoke Health Care Center*	SNF	8/2003-10/2009
Lexington Health Care Center*	SNF	8/2003-10/2009
Lowell Health Care Center*	SNF	8/2003-10/2009
Millbury Health Care Center*	SNF	8/2003-10/2009
New Bedford Health Care Center*	SNF	8/2003-10/2009
New Bedford Rehabilitation Hospital*	IRF	7/2003-8/2004
Newton Health Care Center*	SNF	8/2003-10/2009
North Shore Health Care Center*	SNF	8/2003-10/2009
Partners Pharmacy of Massachusetts*	RX	2004-10/2009
Peabody Glen Health Care Center*	SNF	8/2003-10/2009
Redstone Health Care Center (a/k/a East Longmeadow HCC)*	SNF	8/2003-10/2009
Weymouth Health Care Center*	SNF	8/2003-10/2009
Wilmington Health Care Center*	SNF	8/2003-10/2009

Michigan

Grand Blanc Rehabilitation & Nursing Center	SNF	10/2006-10/2009

Missouri

Care Alternatives of Missouri	HOS	2003-10/2009
Cliffview at Riverside Rehab & Nursing Center	SNF	10/2006-5/2008
Partners Pharmacy of Missouri*	RX	2003-10/2009

New Jersey

Bergen Care Home Health	HHA	2007-10/2009
Bergen Care Personal Touch	HOM	2007-10/2009
Care Alternatives of New Jersey	HOS	2001-10/2009
Care One at Dunroven	SNF	2001-10/2009
Care One at East Brunswick	SNF	2/2002-10/2009
Care One at Evesham	SNF	8/2000-10/2009
Care One at Evesham Assisted Living	ALF	10/2007-10/2009
Care One at Ewing	SNF	11/2004-10/2009
Care One at Hamilton	SNF	5/2002-10/2009
Care One at Holmdel	SNF	8/1997-10/2009
Care One at Jackson (a/k/a Jackson HCC)	SNF	2004-10/2009
Care One at King James	SNF	2003-10/2009
Care One at Livingston	SNF	10/2002-10/2009
Care One at Livingston Assisted Living	ALF	9/2005-10/2009
Care One at Madison Avenue	SNF	1/2005-10/2009
Care One at Moorestown	SNF	9/2003-10/2009
Care One at Harmony Village at Moorestown	ALF	8/2003-10/2009
Care One at Morris	SNF	8/2001-10/2009
Care One at Morris Assisted Living	ALF	3/2003-10/2009
Care One at Pine Rest	SNF	2001-10/2009
Care One at Raritan Bay MC	LTA	3/2004-10/2009
Care One Harmony Village at Moorestown	SNF	9/2003-10/2009
Care One at Teaneck	SNF	4/2007-10/2009
Care One at The Cupola	SNF	2001-10/2009
Care One at The Highlands	SNF	2001-10/2009
Care One at Valley	SNF	2001-10/2009
Care One at Wall	SNF	9/2004-10/2009
Care One at Wayne	SNF/ALF	6/2002-10/2009
Care One at Wellington	SNF	6/2002-10/2009
Marlton Rehabilitation Hospital	IRF	5/2003-7/2004
Oradell Health Care Center	SNF	2003-10/2009
Partners Pharmacy of New Jersey	RX	2001-10/2009
Somerset Valley Rehabilitation & Nursing Center	SNF	10/2009-10/2009
South Jersey Health Care Center	SNF	2003-10/2009
Woodcrest Health Care Center	SNF	2003-10/2009

North Carolina

Blue Ridge Health Care Center	SNF	8/2002-10/2009

Ohio

Bellbrook Health Care Center	SNF	2003-10/2009
The Rehabilitation & Nursing Center at Elm Creek	SNF	10/2006-10/2009
The Rehabilitation & Nursing Center at Firelands	SNF	10/2006-10/2009
The Rehabilitation & Nursing Center at Spring Creek	SNF	10/2006-10/2009

Pennsylvania

Care Alternatives of Pennsylvania	HOS	2003-10/2009
Pediatric Specialty Care at Doylestown	SNF	2/2011-present
Pediatric Specialty Care at Hopewell	PED ICF	2/2011-present
Pediatric Specialty Care at Lancaster	PED ICF	2/2011-present
Pediatric Specialty Care at Point Pleasant	PED ICF	2/2011-present
Pediatric Specialty Care at Quakertown	PED ICF	2/2011-present
Presque Isle Rehabilitation & Nursing Center	SNF	10/2006-10/2009
Senior Living of Lancaster	HOM	2/2011-present
The Rehabilitation & Nursing Center at Greater Pittsburg	SNF	10/2006-10/2009

Puerto Rico		
Medicare Y Mucho Mas*	Medicare Agency	2005-11/2009
Rhode Island		
Scallop Shell Nursing & Rehabilitation Center	SNF	12/2010-present
Virginia		
Care Alternatives of Virginia*	HOS	4/2002-10/2009
Colonial Heights Health Care Center*	SNF	4/2002-10/2009
Glenburnie Rehabilitation & Nursing Center*	SNF	4/2002-10/2009
Hopewell Health Care Center*	SNF	4/2002/10/2009
Partners Pharmacy of Virginia*	RX	4/2002-10/2009
Valley Health Care Center*	SNF/ALF	4/2002-10/2009
Westport Health Care Center*	SNF	4/2002-10/2009

In order to make a determination on whether a substantially consistent high level of care has been provided at the health facilities/agencies subject to review, a ten year review of the enforcement history for each is undertaken. A positive finding would result from concluding that there were no repeat enforcement actions causing harm to residents of a facility/agency for the same issue, during the past ten years or for the years of ownership. For the subject application adequate surveillance documentation with which to make a global finding cannot be obtained due to staffing issues at multiple states. To date staff and the applicant have exhausted their efforts to obtain the necessary documentation, with the outcome that adequate information is available for only 60 out of the total 100 disclosed health facility interests.

For those health facilities/agency for which there is inadequate documentation, denoted by an asterisk (*) in the above listing, no negative information regarding the operator's track record has been received. In addition the applicants have submitted affidavits regarding the incomplete surveillance history, in which they attest to the following:

During the applicable period identified…, the Entities may have been surveyed by the applicable state regulatory authority. Statements of Deficiencies may have been issued, and enforcement action(s) resulting in the payment of a fine may have been assessed. However, to my knowledge, during the applicable period…, the Entities have not (i) received enforcement actions for repeat deficiencies that were not remedied within timeframes required by applicable law or (ii) had a license or certificate issued by a state or federal regulatory authority suspended, terminated, revoked, denied, or annulled. Further, to my knowledge, there are no currently pending federal or state enforcement actions against the Entities …

For those facilities for which there was complete information available for review, staff concludes that a substantially consistent high level of care has been provided.

The following summarizes the review outcome for each state:

A review of the **Alabama** facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the **California** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of California for which there is insufficient documentation to make a finding.

A review of the **Colorado** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Connecticut** facilities noted above indicates there is insufficient documentation with which to make a finding. The following seven Connecticut facilities owned by the principles were the subject of a Chapter 11 bankruptcy action:

Danbury Health Care Center
Darien Health Care Center
Long Ridge of Stamford
Newington Health Care Center
West River Health Care Center
Westport Health Care Center
Wethersfield Health Care Center

A review of the **Kansas** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Kentucky** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Maryland** facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Massachusetts** facilities noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Missouri** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Partners Pharmacy of Missouri for which there is insufficient documentation to make a finding.

A review of the **New Jersey** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **North Carolina** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Ohio** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Pennsylvania** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of Pennsylvania, for which there is insufficient documentation to make a finding.

A review of the **Puerto Rico** health related agency noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Rhode Island** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Virginia** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Colonial Heights Health Care Center, Glenburnie Rehabilitation & Nursing Center, Hopewell Health Care Center, Valley Health Care Center and Westport Health Care Center, for which there is insufficient documentation to make a finding.

If able to base our judgment solely on the documentation received from other states, the Department would be able to render a positive finding as to the character and competence of the applicants. We must, however, deal with a larger record, one which lacks sufficient documentation, by the Department's standards for analysis, of the applicants' operation of 35 facilities in five different states. However, it

should be made clear that while these five states could not provide our customarily needed level of detail on operating history, we did not receive any negative findings that would warrant disapproval of this application; and we did receive indications of acceptable operating experience. The Department believes it reasonable to infer from these facts that the applicants have provided a sufficiently high level of care at the facilities they have operated.

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: March 16, 2012

Division of Home & Community Based Care
Character and Competence Staff Review

Name of Agency:	580 Orchard Park Road Operating Company, LLC d/b/a Elderwood Home Care at West Seneca
Address:	West Seneca
County:	Erie
Structure:	Limited Liability Company
Application Number:	2029-L

Description of Project:

580 Orchard Park Road Operating Company, LLC d/b/a Elderwood Home Care at West Seneca, a limited liability company, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Westwood Village, Inc. d/b/a Elderwood Village at Westwood was previously approved as a home care services agency by the Public Health Council at its January 24, 2003 meeting and subsequently licensed as 1171L001. At that time the membership was as follows: Robert Chur, Member – 75% and Carol Chur, Member – 25%.

The members of the 580 Orchard Park Road Operating Company, LLC d/b/a Elderwood Home Care at West Seneca comprises the following individuals:

Warren D. Cole, Member, Co-CEO – 50%
Partner, Post Acute Partners, LLC

Jeffrey Rubin, Member, Co-CEO – 50%
Partner, Post Acute Partners, LLC

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant will continue to serve the residents of the Erie from an office located at 580 Orchard Park Road, West Seneca, New York 14224.

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Physical Therapy	Speech-Language Pathology
Occupational Therapy			

A review of the operations of the following facilities was performed as part of this review for the time periods specified:

ACU-acute care/hospital	ICF-intermediate care facility/group home
ALF-assisted living facility	IRF-intermediate rehabilitation facility (similar to SNF short term rehab)
HHA-home health agency	LTA-long term acute care hospital (similar to TCU)
HOM-homecare	RX-pharmacy
HOS-hospice	SNF-skilled nursing facility/nursing home

(Note: actual dates of ownership may extend prior to 2003)

Alabama

*Laurelton Rehabilitation and Nursing Center**	*SNF*	*10/2006 to 5/2008*

California

San Joaquin Valley Rehabilitation Hospital	Hospital	7/2004-7/2004
Kenfield Rehabilitation Hospital	Hospital	8/2003-7/2004

Care Alternatives of California*	Hospice	2003-10/2009

Colorado

North Valley Rehabilitation Hospital (Haven Behavioral Sr. Care)	ACU-PSYCH	7/2003-8/2004
North Valley Rehabilitation Hospital (Vibra LTACH)	LTA	7/2003-8/2004
North Valley Rehabilitation Hospital (Vista View Care Center)	SNF	7/2003-8/2004

Connecticut

Danbury Health Care Center*	SNF	8/2003-10/2009
Darien Health Care Center*	SNF	8/2003-10/2009
Golden Hill Health Care Center*	SNF	8/2003-10/2009
Long Ridge of Stamford*	SNF	8/2003-10/2009
Newington Health Care Center*	SNF	8/2003-10/2009
Partners Pharmacy of Connecticut*	RX	2003-10/2009
River Glen Health Care Center (a/k/a Southbury HCC)*	SNF	8/2003-10/2009
The Highlands Health Care Center*	SNF	8/2003-10/2009
West River Health Care Center (a/k/a Milford North HCC)*	SNF	8/2003-10/2009
Westport Health Care Center*	SNF	8/2003-10/2009
Wethersfield Health Care Center*	SNF	8/2003-10/2009

Kansas

Care Alternatives of Kansas	HOS	2004-10/2009

Kentucky

Southern Kentucky Rehabilitation Hospital	IRF	5/2003-7/2004

Maryland

Montgomery Village Health Care Center	SNF	2003-10/2009

Massachusetts

Brookline Health Care Center*	SNF	8/2003-10/2009
Calvin Coolidge Nursing & Rehab Center for Northampton*	SNF	8/2003-10/2009
Care Alternatives of Massachusetts*	HOS	2005-10/2009
Concord Health Care Center*	SNF	8/2003-10/2009
Essex Park Rehabilitation & Nursing Center*	SNF	3/2005-10/2009
Holyoke Health Care Center*	SNF	8/2003-10/2009
Lexington Health Care Center*	SNF	8/2003-10/2009
Lowell Health Care Center*	SNF	8/2003-10/2009
Millbury Health Care Center*	SNF	8/2003-10/2009
New Bedford Health Care Center*	SNF	8/2003-10/2009
New Bedford Rehabilitation Hospital*	IRF	7/2003-8/2004
Newton Health Care Center*	SNF	8/2003-10/2009
North Shore Health Care Center*	SNF	8/2003-10/2009
Partners Pharmacy of Massachusetts*	RX	2004-10/2009
Peabody Glen Health Care Center*	SNF	8/2003-10/2009
Redstone Health Care Center (a/k/a East Longmeadow HCC)*	SNF	8/2003-10/2009
Weymouth Health Care Center*	SNF	8/2003-10/2009
Wilmington Health Care Center*	SNF	8/2003-10/2009

Michigan

Grand Blanc Rehabilitation & Nursing Center	SNF	10/2006-10/2009

Missouri

Care Alternatives of Missouri	HOS	2003-10/2009
Cliffview at Riverside Rehab & Nursing Center	SNF	10/2006-5/2008
Partners Pharmacy of Missouri*	RX	2003-10/2009

New Jersey

Bergen Care Home Health	HHA	2007-10/2009
Bergen Care Personal Touch	HOM	2007-10/2009
Care Alternatives of New Jersey	HOS	2001-10/2009
Care One at Dunroven	SNF	2001-10/2009
Care One at East Brunswick	SNF	2/2002-10/2009
Care One at Evesham	SNF	8/2000-10/2009
Care One at Evesham Assisted Living	ALF	10/2007-10/2009
Care One at Ewing	SNF	11/2004-10/2009
Care One at Hamilton	SNF	5/2002-10/2009
Care One at Holmdel	SNF	8/1997-10/2009
Care One at Jackson (a/k/a Jackson HCC)	SNF	2004-10/2009
Care One at King James	SNF	2003-10/2009
Care One at Livingston	SNF	10/2002-10/2009
Care One at Livingston Assisted Living	ALF	9/2005-10/2009
Care One at Madison Avenue	SNF	1/2005-10/2009
Care One at Moorestown	SNF	9/2003-10/2009
Care One at Harmony Village at Moorestown	ALF	8/2003-10/2009
Care One at Morris	SNF	8/2001-10/2009
Care One at Morris Assisted Living	ALF	3/2003-10/2009
Care One at Pine Rest	SNF	2001-10/2009
Care One at Raritan Bay MC	LTA	3/2004-10/2009
Care One Harmony Village at Moorestown	SNF	9/2003-10/2009
Care One at Teaneck	SNF	4/2007-10/2009
Care One at The Cupola	SNF	2001-10/2009
Care One at The Highlands	SNF	2001-10/2009
Care One at Valley	SNF	2001-10/2009
Care One at Wall	SNF	9/2004-10/2009
Care One at Wayne	SNF/ALF	6/2002-10/2009
Care One at Wellington	SNF	6/2002-10/2009
Marlton Rehabilitation Hospital	IRF	5/2003-7/2004
Oradell Health Care Center	SNF	2003-10/2009
Partners Pharmacy of New Jersey	RX	2001-10/2009
Somerset Valley Rehabilitation & Nursing Center	SNF	10/2009-10/2009
South Jersey Health Care Center	SNF	2003-10/2009
Woodcrest Health Care Center	SNF	2003-10/2009

North Carolina

Blue Ridge Health Care Center	SNF	8/2002-10/2009

Ohio

Bellbrook Health Care Center	SNF	2003-10/2009
The Rehabilitation & Nursing Center at Elm Creek	SNF	10/2006-10/2009
The Rehabilitation & Nursing Center at Firelands	SNF	10/2006-10/2009
The Rehabilitation & Nursing Center at Spring Creek	SNF	10/2006-10/2009

Pennsylvania

Care Alternatives of Pennsylvania	HOS	2003-10/2009
Pediatric Specialty Care at Doylestown	SNF	2/2011-present
Pediatric Specialty Care at Hopewell	PED ICF	2/2011-present
Pediatric Specialty Care at Lancaster	PED ICF	2/2011-present
Pediatric Specialty Care at Point Pleasant	PED ICF	2/2011-present
Pediatric Specialty Care at Quakertown	PED ICF	2/2011-present
Presque Isle Rehabilitation & Nursing Center	SNF	10/2006-10/2009
Senior Living of Lancaster	HOM	2/2011-present

The Rehabilitation & Nursing Center at Greater Pittsburg	SNF	10/2006-10/2009
Puerto Rico		
Medicare Y Mucho Mas*	Medicare Agency	2005-11/2009
Rhode Island		
Scallop Shell Nursing & Rehabilitation Center	SNF	12/2010-present
Virginia		
Care Alternatives of Virginia*	HOS	4/2002-10/2009
Colonial Heights Health Care Center*	SNF	4/2002-10/2009
Glenburnie Rehabilitation & Nursing Center*	SNF	4/2002-10/2009
Hopewell Health Care Center*	SNF	4/2002/10/2009
Partners Pharmacy of Virginia*	RX	4/2002-10/2009
Valley Health Care Center*	SNF/ALF	4/2002-10/2009
Westport Health Care Center*	SNF	4/2002-10/2009

In order to make a determination on whether a substantially consistent high level of care has been provided at the health facilities/agencies subject to review, a ten year review of the enforcement history for each is undertaken. A positive finding would result from concluding that there were no repeat enforcement actions causing harm to residents of a facility/agency for the same issue, during the past ten years or for the years of ownership. For the subject application adequate surveillance documentation with which to make a global finding cannot be obtained due to staffing issues at multiple states. To date staff and the applicant have exhausted their efforts to obtain the necessary documentation, with the outcome that adequate information is available for only 60 out of the total 100 disclosed health facility interests.

For those health facilities/agency for which there is inadequate documentation, denoted by an asterisk (*) in the above listing, no negative information regarding the operator's track record has been received. In addition the applicants have submitted affidavits regarding the incomplete surveillance history, in which they attest to the following:

During the applicable period identified…, the Entities may have been surveyed by the applicable state regulatory authority. Statements of Deficiencies may have been issued, and enforcement action(s) resulting in the payment of a fine may have been assessed. However, to my knowledge, during the applicable period…, the Entities have not (i) received enforcement actions for repeat deficiencies that were not remedied within timeframes required by applicable law or (ii) had a license or certificate issued by a state or federal regulatory authority suspended, terminated, revoked, denied, or annulled. Further, to my knowledge, there are no currently pending federal or state enforcement actions against the Entities …

For those facilities for which there was complete information available for review, staff concludes that a substantially consistent high level of care has been provided.

<u>The following summarizes the review outcome for each state</u>:

A review of the **Alabama** facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the **California** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of California for which there is insufficient documentation to make a finding.

A review of the **Colorado** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Connecticut** facilities noted above indicates there is insufficient documentation with which to make a finding. The following seven Connecticut facilities owned by the principles were the subject of a Chapter 11 bankruptcy action:

Danbury Health Care Center
Darien Health Care Center
Long Ridge of Stamford
Newington Health Care Center
West River Health Care Center
Westport Health Care Center
Wethersfield Health Care Center

A review of the **Kansas** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Kentucky** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Maryland** facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Massachusetts** facilities noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Missouri** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Partners Pharmacy of Missouri for which there is insufficient documentation to make a finding.

A review of the **New Jersey** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **North Carolina** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Ohio** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Pennsylvania** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of Pennsylvania, for which there is insufficient documentation to make a finding.

A review of the **Puerto Rico** health related agency noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Rhode Island** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Virginia** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Colonial Heights Health Care Center, Glenburnie Rehabilitation & Nursing Center, Hopewell Health Care Center, Valley Health Care Center and Westport Health Care Center, for which there is insufficient documentation to make a finding.

If able to base our judgment solely on the documentation received from other states, the Department would be able to render a positive finding as to the character and competence of the applicants. We must, however, deal with a larger record, one which lacks sufficient documentation, by the Department's standards for analysis, of the applicants' operation of 35 facilities in five different states. However, it

should be made clear that while these five states could not provide our customarily needed level of detail on operating history, we did not receive any negative findings that would warrant disapproval of this application; and we did receive indications of acceptable operating experience. The Department believes it reasonable to infer from these facts that the applicants have provided a sufficiently high level of care at the facilities they have operated.

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: March 16, 2012

Division of Home & Community Based Care
Character and Competence Staff Review

Name of Agency:	76 Buffalo Street Operating Company, LLC d/b/a Elderwood Home Care at Hamburg
Address:	Hamburg
County:	Erie
Structure:	Limited Liability Company
Application Number:	2030-L

Description of Project:

76 Buffalo Street Operating Company, LLC d/b/a Elderwood Home Care at Hamburg, a limited liability company, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Rosewood Village, Inc. was previously approved as a home care services agency by the Public Health Council at its September 25, 1998 meeting and subsequently licensed as 0784L001. At that time the membership was as follows: Robert Chur, Member – 75% and Carol Chur, Member – 25%.

The members of the 229 76 Buffalo Street Operating Company, LLC d/b/a Elderwood Home Care at Hamburg comprises the following individuals:

Warren D. Cole, Member, Co-CEO – 50%
Partner, Post Acute Partners, LLC

Jeffrey Rubin, Member, Co-CEO – 50%
Partner, Post Acute Partners, LLC

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant will continue to serve the residents of the Erie from an office located at 76 Buffalo Street, Hamburg, New York 14075.

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Speech-Language Pathology
Physical Therapy	Occupational Therapy		

A review of the operations of the following facilities was performed as part of this review for the time periods specified:

ACU-acute care/hospital	ICF-intermediate care facility/group home
ALF-assisted living facility	IRF-intermediate rehabilitation facility (similar to SNF short term rehab)
HHA-home health agency	LTA-long term acute care hospital (similar to TCU)
HOM-homecare	RX-pharmacy
HOS-hospice	SNF-skilled nursing facility/nursing home

(Note: actual dates of ownership may extend prior to 2003)

Alabama

*Laurelton Rehabilitation and Nursing Center**	*SNF*	*10/2006 to 5/2008*

California

San Joaquin Valley Rehabilitation Hospital	Hospital	7/2004-7/2004
Kenfield Rehabilitation Hospital	Hospital	8/2003-7/2004
Care Alternatives of California*	Hospice	2003-10/2009

Colorado

North Valley Rehabilitation Hospital (Haven Behavioral Sr. Care)	ACU-PSYCH	7/2003-8/2004
North Valley Rehabilitation Hospital (Vibra LTACH)	LTA	7/2003-8/2004
North Valley Rehabilitation Hospital (Vista View Care Center)	SNF	7/2003-8/2004

Connecticut

Danbury Health Care Center*	SNF	8/2003-10/2009
Darien Health Care Center*	SNF	8/2003-10/2009
Golden Hill Health Care Center*	SNF	8/2003-10/2009
Long Ridge of Stamford*	SNF	8/2003-10/2009
Newington Health Care Center*	SNF	8/2003-10/2009
Partners Pharmacy of Connecticut*	RX	2003-10/2009
River Glen Health Care Center (a/k/a Southbury HCC)*	SNF	8/2003-10/2009
The Highlands Health Care Center*	SNF	8/2003-10/2009
West River Health Care Center (a/k/a Milford North HCC)*	SNF	8/2003-10/2009
Westport Health Care Center*	SNF	8/2003-10/2009
Wethersfield Health Care Center*	SNF	8/2003-10/2009

Kansas

Care Alternatives of Kansas	HOS	2004-10/2009

Kentucky

Southern Kentucky Rehabilitation Hospital	IRF	5/2003-7/2004

Maryland

Montgomery Village Health Care Center	SNF	2003-10/2009

Massachusetts

Brookline Health Care Center*	SNF	8/2003-10/2009
Calvin Coolidge Nursing & Rehab Center for Northampton*	SNF	8/2003-10/2009
Care Alternatives of Massachusetts*	HOS	2005-10/2009
Concord Health Care Center*	SNF	8/2003-10/2009
Essex Park Rehabilitation & Nursing Center*	SNF	3/2005-10/2009
Holyoke Health Care Center*	SNF	8/2003-10/2009
Lexington Health Care Center*	SNF	8/2003-10/2009
Lowell Health Care Center*	SNF	8/2003-10/2009
Millbury Health Care Center*	SNF	8/2003-10/2009
New Bedford Health Care Center*	SNF	8/2003-10/2009
New Bedford Rehabilitation Hospital*	IRF	7/2003-8/2004
Newton Health Care Center*	SNF	8/2003-10/2009
North Shore Health Care Center*	SNF	8/2003-10/2009
Partners Pharmacy of Massachusetts*	RX	2004-10/2009
Peabody Glen Health Care Center*	SNF	8/2003-10/2009
Redstone Health Care Center (a/k/a East Longmeadow HCC)*	SNF	8/2003-10/2009
Weymouth Health Care Center*	SNF	8/2003-10/2009
Wilmington Health Care Center*	SNF	8/2003-10/2009

Michigan

Grand Blanc Rehabilitation & Nursing Center	SNF	10/2006-10/2009

Missouri

Care Alternatives of Missouri	HOS	2003-10/2009
Cliffview at Riverside Rehab & Nursing Center	SNF	10/2006-5/2008
Partners Pharmacy of Missouri*	RX	2003-10/2009

New Jersey

Bergen Care Home Health	HHA	2007-10/2009
Bergen Care Personal Touch	HOM	2007-10/2009
Care Alternatives of New Jersey	HOS	2001-10/2009
Care One at Dunroven	SNF	2001-10/2009
Care One at East Brunswick	SNF	2/2002-10/2009
Care One at Evesham	SNF	8/2000-10/2009
Care One at Evesham Assisted Living	ALF	10/2007-10/2009
Care One at Ewing	SNF	11/2004-10/2009
Care One at Hamilton	SNF	5/2002-10/2009
Care One at Holmdel	SNF	8/1997-10/2009
Care One at Jackson (a/k/a Jackson HCC)	SNF	2004-10/2009
Care One at King James	SNF	2003-10/2009
Care One at Livingston	SNF	10/2002-10/2009
Care One at Livingston Assisted Living	ALF	9/2005-10/2009
Care One at Madison Avenue	SNF	1/2005-10/2009
Care One at Moorestown	SNF	9/2003-10/2009
Care One at Harmony Village at Moorestown	ALF	8/2003-10/2009
Care One at Morris	SNF	8/2001-10/2009
Care One at Morris Assisted Living	ALF	3/2003-10/2009
Care One at Pine Rest	SNF	2001-10/2009
Care One at Raritan Bay MC	LTA	3/2004-10/2009
Care One Harmony Village at Moorestown	SNF	9/2003-10/2009
Care One at Teaneck	SNF	4/2007-10/2009
Care One at The Cupola	SNF	2001-10/2009
Care One at The Highlands	SNF	2001-10/2009
Care One at Valley	SNF	2001-10/2009
Care One at Wall	SNF	9/2004-10/2009
Care One at Wayne	SNF/ALF	6/2002-10/2009
Care One at Wellington	SNF	6/2002-10/2009
Marlton Rehabilitation Hospital	IRF	5/2003-7/2004
Oradell Health Care Center	SNF	2003-10/2009
Partners Pharmacy of New Jersey	RX	2001-10/2009
Somerset Valley Rehabilitation & Nursing Center	SNF	10/2009-10/2009
South Jersey Health Care Center	SNF	2003-10/2009
Woodcrest Health Care Center	SNF	2003-10/2009

North Carolina

Blue Ridge Health Care Center	SNF	8/2002-10/2009

Ohio

Bellbrook Health Care Center	SNF	2003-10/2009
The Rehabilitation & Nursing Center at Elm Creek	SNF	10/2006-10/2009
The Rehabilitation & Nursing Center at Firelands	SNF	10/2006-10/2009
The Rehabilitation & Nursing Center at Spring Creek	SNF	10/2006-10/2009

Pennsylvania

Care Alternatives of Pennsylvania	HOS	2003-10/2009
Pediatric Specialty Care at Doylestown	SNF	2/2011-present
Pediatric Specialty Care at Hopewell	PED ICF	2/2011-present
Pediatric Specialty Care at Lancaster	PED ICF	2/2011-present
Pediatric Specialty Care at Point Pleasant	PED ICF	2/2011-present
Pediatric Specialty Care at Quakertown	PED ICF	2/2011-present
Presque Isle Rehabilitation & Nursing Center	SNF	10/2006-10/2009
Senior Living of Lancaster	HOM	2/2011-present
The Rehabilitation & Nursing Center at Greater Pittsburg	SNF	10/2006-10/2009

Puerto Rico		
Medicare Y Mucho Mas*	Medicare Agency	2005-11/2009
Rhode Island		
Scallop Shell Nursing & Rehabilitation Center	SNF	12/2010-present
Virginia		
Care Alternatives of Virginia*	HOS	4/2002-10/2009
Colonial Heights Health Care Center*	SNF	4/2002-10/2009
Glenburnie Rehabilitation & Nursing Center*	SNF	4/2002-10/2009
Hopewell Health Care Center*	SNF	4/2002/10/2009
Partners Pharmacy of Virginia*	RX	4/2002-10/2009
Valley Health Care Center*	SNF/ALF	4/2002-10/2009
Westport Health Care Center*	SNF	4/2002-10/2009

In order to make a determination on whether a substantially consistent high level of care has been provided at the health facilities/agencies subject to review, a ten year review of the enforcement history for each is undertaken. A positive finding would result from concluding that there were no repeat enforcement actions causing harm to residents of a facility/agency for the same issue, during the past ten years or for the years of ownership. For the subject application adequate surveillance documentation with which to make a global finding cannot be obtained due to staffing issues at multiple states. To date staff and the applicant have exhausted their efforts to obtain the necessary documentation, with the outcome that adequate information is available for only 60 out of the total 100 disclosed health facility interests.

For those health facilities/agency for which there is inadequate documentation, denoted by an asterisk (*) in the above listing, no negative information regarding the operator's track record has been received. In addition the applicants have submitted affidavits regarding the incomplete surveillance history, in which they attest to the following:

During the applicable period identified…, the Entities may have been surveyed by the applicable state regulatory authority. Statements of Deficiencies may have been issued, and enforcement action(s) resulting in the payment of a fine may have been assessed. However, to my knowledge, during the applicable period…, the Entities have not (i) received enforcement actions for repeat deficiencies that were not remedied within timeframes required by applicable law or (ii) had a license or certificate issued by a state or federal regulatory authority suspended, terminated, revoked, denied, or annulled. Further, to my knowledge, there are no currently pending federal or state enforcement actions against the Entities …

For those facilities for which there was complete information available for review, staff concludes that a substantially consistent high level of care has been provided.

The following summarizes the review outcome for each state:

A review of the **Alabama** facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the **California** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of California for which there is insufficient documentation to make a finding.

A review of the **Colorado** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Connecticut** facilities noted above indicates there is insufficient documentation with which to make a finding. The following seven Connecticut facilities owned by the principles were the subject of a Chapter 11 bankruptcy action:

Danbury Health Care Center
Darien Health Care Center
Long Ridge of Stamford
Newington Health Care Center
West River Health Care Center
Westport Health Care Center
Wethersfield Health Care Center

A review of the **Kansas** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Kentucky** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Maryland** facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Massachusetts** facilities noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Missouri** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Partners Pharmacy of Missouri for which there is insufficient documentation to make a finding.

A review of the **New Jersey** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **North Carolina** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Ohio** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Pennsylvania** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of Pennsylvania, for which there is insufficient documentation to make a finding.

A review of the **Puerto Rico** health related agency noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Rhode Island** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Virginia** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Colonial Heights Health Care Center, Glenburnie Rehabilitation & Nursing Center, Hopewell Health Care Center, Valley Health Care Center and Westport Health Care Center, for which there is insufficient documentation to make a finding.

If able to base our judgment solely on the documentation received from other states, the Department would be able to render a positive finding as to the character and competence of the applicants. We must, however, deal with a larger record, one which lacks sufficient documentation, by the Department's standards for analysis, of the applicants' operation of 35 facilities in five different states. However, it

should be made clear that while these five states could not provide our customarily needed level of detail on operating history, we did not receive any negative findings that would warrant disapproval of this application; and we did receive indications of acceptable operating experience. The Department believes it reasonable to infer from these facts that the applicants have provided a sufficiently high level of care at the facilities they have operated.

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: March 16, 2012

Division of Home & Community Based Care
Character and Competence Staff Review

Name of Agency:	44 Ball Street Operating Company, LLC d/b/a Elderwood Home Care at Waverly
Address:	Waverly
County:	Tioga
Structure:	Limited Liability Company
Application Number:	2031-L

Description of Project:

44 Ball Street Operating Company, LLC d/b/a Elderwood Home Care at Waverly, a limited liability company, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Elderwood Assisted Living at Tioga, LLC was previously approved as a home care services agency by the Public Health Council at its November 16, 2007 meeting and subsequently licensed as 1626L001. At that time the membership was as follows: Robert Chur, Member – 75% and Carol Chur, Member – 25%.

The members of the 44 Ball Street Operating Company, LLC d/b/a Elderwood Home Care at Waverly comprises the following individuals:

Warren D. Cole, Member, Co-CEO – 50%
Partner, Post Acute Partners, LLC

Jeffrey Rubin, Member, Co-CEO – 50%
Partner, Post Acute Partners, LLC

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant will continue to serve the residents of the Tioga from an office located at 44 Ball Street, Waverly New York 14892.

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Speech-Language Pathology
Physical Therapy	Occupational Therapy	Audiology	Respiratory Therapy
Nutrition	Homemaker	Housekeeper	Medical Social Services

A review of the operations of the following facilities was performed as part of this review for the time periods specified:

ACU-acute care/hospital	ICF-intermediate care facility/group home
ALF-assisted living facility	IRF-intermediate rehabilitation facility (similar to SNF short term rehab)
HHA-home health agency	LTA-long term acute care hospital (similar to TCU)
HOM-homecare	RX-pharmacy
HOS-hospice	SNF-skilled nursing facility/nursing home

(Note: actual dates of ownership may extend prior to 2003)

Alabama

*Laurelton Rehabilitation and Nursing Center**	*SNF*	*10/2006 to 5/2008*

California

San Joaquin Valley Rehabilitation Hospital	Hospital	7/2004-7/2004
Kenfield Rehabilitation Hospital	Hospital	8/2003-7/2004

Care Alternatives of California*	Hospice	2003-10/2009

Colorado

North Valley Rehabilitation Hospital (Haven Behavioral Sr. Care)	ACU-PSYCH	7/2003-8/2004
North Valley Rehabilitation Hospital (Vibra LTACH)	LTA	7/2003-8/2004
North Valley Rehabilitation Hospital (Vista View Care Center)	SNF	7/2003-8/2004

Connecticut

Danbury Health Care Center*	SNF	8/2003-10/2009
Darien Health Care Center*	SNF	8/2003-10/2009
Golden Hill Health Care Center*	SNF	8/2003-10/2009
Long Ridge of Stamford*	SNF	8/2003-10/2009
Newington Health Care Center*	SNF	8/2003-10/2009
Partners Pharmacy of Connecticut*	RX	2003-10/2009
River Glen Health Care Center (a/k/a Southbury HCC)*	SNF	8/2003-10/2009
The Highlands Health Care Center*	SNF	8/2003-10/2009
West River Health Care Center (a/k/a Milford North HCC)*	SNF	8/2003-10/2009
Westport Health Care Center*	SNF	8/2003-10/2009
Wethersfield Health Care Center*	SNF	8/2003-10/2009

Kansas

Care Alternatives of Kansas	HOS	2004-10/2009

Kentucky

Southern Kentucky Rehabilitation Hospital	IRF	5/2003-7/2004

Maryland

Montgomery Village Health Care Center	SNF	2003-10/2009

Massachusetts

Brookline Health Care Center*	SNF	8/2003-10/2009
Calvin Coolidge Nursing & Rehab Center for Northampton*	SNF	8/2003-10/2009
Care Alternatives of Massachusetts*	HOS	2005-10/2009
Concord Health Care Center*	SNF	8/2003-10/2009
Essex Park Rehabilitation & Nursing Center*	SNF	3/2005-10/2009
Holyoke Health Care Center*	SNF	8/2003-10/2009
Lexington Health Care Center*	SNF	8/2003-10/2009
Lowell Health Care Center*	SNF	8/2003-10/2009
Millbury Health Care Center*	SNF	8/2003-10/2009
New Bedford Health Care Center*	SNF	8/2003-10/2009
New Bedford Rehabilitation Hospital*	IRF	7/2003-8/2004
Newton Health Care Center*	SNF	8/2003-10/2009
North Shore Health Care Center*	SNF	8/2003-10/2009
Partners Pharmacy of Massachusetts*	RX	2004-10/2009
Peabody Glen Health Care Center*	SNF	8/2003-10/2009
Redstone Health Care Center (a/k/a East Longmeadow HCC)*	SNF	8/2003-10/2009
Weymouth Health Care Center*	SNF	8/2003-10/2009
Wilmington Health Care Center*	SNF	8/2003-10/2009

Michigan

Grand Blanc Rehabilitation & Nursing Center	SNF	10/2006-10/2009

Missouri

Care Alternatives of Missouri	HOS	2003-10/2009
Cliffview at Riverside Rehab & Nursing Center	SNF	10/2006-5/2008
Partners Pharmacy of Missouri*	RX	2003-10/2009

New Jersey

Bergen Care Home Health	HHA	2007-10/2009
Bergen Care Personal Touch	HOM	2007-10/2009
Care Alternatives of New Jersey	HOS	2001-10/2009
Care One at Dunroven	SNF	2001-10/2009
Care One at East Brunswick	SNF	2/2002-10/2009
Care One at Evesham	SNF	8/2000-10/2009
Care One at Evesham Assisted Living	ALF	10/2007-10/2009
Care One at Ewing	SNF	11/2004-10/2009
Care One at Hamilton	SNF	5/2002-10/2009
Care One at Holmdel	SNF	8/1997-10/2009
Care One at Jackson (a/k/a Jackson HCC)	SNF	2004-10/2009
Care One at King James	SNF	2003-10/2009
Care One at Livingston	SNF	10/2002-10/2009
Care One at Livingston Assisted Living	ALF	9/2005-10/2009
Care One at Madison Avenue	SNF	1/2005-10/2009
Care One at Moorestown	SNF	9/2003-10/2009
Care One at Harmony Village at Moorestown	ALF	8/2003-10/2009
Care One at Morris	SNF	8/2001-10/2009
Care One at Morris Assisted Living	ALF	3/2003-10/2009
Care One at Pine Rest	SNF	2001-10/2009
Care One at Raritan Bay MC	LTA	3/2004-10/2009
Care One Harmony Village at Moorestown	SNF	9/2003-10/2009
Care One at Teaneck	SNF	4/2007-10/2009
Care One at The Cupola	SNF	2001-10/2009
Care One at The Highlands	SNF	2001-10/2009
Care One at Valley	SNF	2001-10/2009
Care One at Wall	SNF	9/2004-10/2009
Care One at Wayne	SNF/ALF	6/2002-10/2009
Care One at Wellington	SNF	6/2002-10/2009
Marlton Rehabilitation Hospital	IRF	5/2003-7/2004
Oradell Health Care Center	SNF	2003-10/2009
Partners Pharmacy of New Jersey	RX	2001-10/2009
Somerset Valley Rehabilitation & Nursing Center	SNF	10/2009-10/2009
South Jersey Health Care Center	SNF	2003-10/2009
Woodcrest Health Care Center	SNF	2003-10/2009

North Carolina

Blue Ridge Health Care Center	SNF	8/2002-10/2009

Ohio

Bellbrook Health Care Center	SNF	2003-10/2009
The Rehabilitation & Nursing Center at Elm Creek	SNF	10/2006-10/2009
The Rehabilitation & Nursing Center at Firelands	SNF	10/2006-10/2009
The Rehabilitation & Nursing Center at Spring Creek	SNF	10/2006-10/2009

Pennsylvania

Care Alternatives of Pennsylvania	HOS	2003-10/2009
Pediatric Specialty Care at Doylestown	SNF	2/2011-present
Pediatric Specialty Care at Hopewell	PED ICF	2/2011-present
Pediatric Specialty Care at Lancaster	PED ICF	2/2011-present
Pediatric Specialty Care at Point Pleasant	PED ICF	2/2011-present
Pediatric Specialty Care at Quakertown	PED ICF	2/2011-present
Presque Isle Rehabilitation & Nursing Center	SNF	10/2006-10/2009
Senior Living of Lancaster	HOM	2/2011-present

The Rehabilitation & Nursing Center at Greater Pittsburg	SNF	10/2006-10/2009
Puerto Rico		
Medicare Y Mucho Mas*	Medicare Agency	2005-11/2009
Rhode Island		
Scallop Shell Nursing & Rehabilitation Center	SNF	12/2010-present
Virginia		
Care Alternatives of Virginia*	HOS	4/2002-10/2009
Colonial Heights Health Care Center*	SNF	4/2002-10/2009
Glenburnie Rehabilitation & Nursing Center*	SNF	4/2002-10/2009
Hopewell Health Care Center*	SNF	4/2002/10/2009
Partners Pharmacy of Virginia*	RX	4/2002-10/2009
Valley Health Care Center*	SNF/ALF	4/2002-10/2009
Westport Health Care Center*	SNF	4/2002-10/2009

In order to make a determination on whether a substantially consistent high level of care has been provided at the health facilities/agencies subject to review, a ten year review of the enforcement history for each is undertaken. A positive finding would result from concluding that there were no repeat enforcement actions causing harm to residents of a facility/agency for the same issue, during the past ten years or for the years of ownership. For the subject application adequate surveillance documentation with which to make a global finding cannot be obtained due to staffing issues at multiple states. To date staff and the applicant have exhausted their efforts to obtain the necessary documentation, with the outcome that adequate information is available for only 60 out of the total 100 disclosed health facility interests.

For those health facilities/agency for which there is inadequate documentation, denoted by an asterisk (*) in the above listing, no negative information regarding the operator's track record has been received. In addition the applicants have submitted affidavits regarding the incomplete surveillance history, in which they attest to the following:

During the applicable period identified…, the Entities may have been surveyed by the applicable state regulatory authority. Statements of Deficiencies may have been issued, and enforcement action(s) resulting in the payment of a fine may have been assessed. However, to my knowledge, during the applicable period…, the Entities have not (i) received enforcement actions for repeat deficiencies that were not remedied within timeframes required by applicable law or (ii) had a license or certificate issued by a state or federal regulatory authority suspended, terminated, revoked, denied, or annulled. Further, to my knowledge, there are no currently pending federal or state enforcement actions against the Entities …

For those facilities for which there was complete information available for review, staff concludes that a substantially consistent high level of care has been provided.

<u>The following summarizes the review outcome for each state</u>:

A review of the **Alabama** facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the **California** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of California for which there is insufficient documentation to make a finding.

A review of the **Colorado** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Connecticut** facilities noted above indicates there is insufficient documentation with which to make a finding. The following seven Connecticut facilities owned by the principles were the subject of a Chapter 11 bankruptcy action:

Danbury Health Care Center
Darien Health Care Center
Long Ridge of Stamford
Newington Health Care Center
West River Health Care Center
Westport Health Care Center
Wethersfield Health Care Center

A review of the **Kansas** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Kentucky** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Maryland** facility noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Massachusetts** facilities noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Missouri** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Partners Pharmacy of Missouri for which there is insufficient documentation to make a finding.

A review of the **New Jersey** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **North Carolina** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Ohio** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Pennsylvania** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Care Alternatives of Pennsylvania, for which there is insufficient documentation to make a finding.

A review of the **Puerto Rico** health related agency noted above indicates there is insufficient documentation with which to make a finding.

A review of the **Rhode Island** facility noted above for the periods indicated reveals that a substantially consistent high level of care has been provided.

A review of the **Virginia** facilities noted above for the periods indicated reveals that a substantially consistent high level of care has been provided with the exception of Colonial Heights Health Care Center, Glenburnie Rehabilitation & Nursing Center, Hopewell Health Care Center, Valley Health Care Center and Westport Health Care Center, for which there is insufficient documentation to make a finding.

If able to base our judgment solely on the documentation received from other states, the Department would be able to render a positive finding as to the character and competence of the applicants. We must, however, deal with a larger record, one which lacks sufficient documentation, by the Department's standards for analysis, of the applicants' operation of 35 facilities in five different states. However, it

should be made clear that while these five states could not provide our customarily needed level of detail on operating history, we did not receive any negative findings that would warrant disapproval of this application; and we did receive indications of acceptable operating experience. The Department believes it reasonable to infer from these facts that the applicants have provided a sufficiently high level of care at the facilities they have operated.

<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: March 16, 2012

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 5th day of April, 2012, 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:
1691-L	ABC Home Care, Inc. (Bronx, Richmond, Kings, New York and Queens Counties)
1882-L	BaCOR Healthcare Solutions Group, LLC d/b/a BaCOR Care for Life (Nassau and Richmond Counties)
1716-L	Elite Home Care Service Agency, Inc. (New York, Nassau, Kings, Queens, Bronx and Richmond Counties)
1634-L	Healing Touch Home Care, Inc. (Bronx, Kings, New York, Queens and Richmond Counties)

1901-L	Heritage Christian Services, Inc. Genesee, Wayne, Livingston, Monroe, Erie, Niagara, and Ontario Counties)
1906-L	JS Homecare Agency of NY, Inc. (Bronx, Richmond, Kings, Westchester, New York, Queens, Dutchess, Suffolk, Nassau, Sullivan, Orange, Rockland, Putnam and Ulster Counties)
1962-L	Louis Career Development Center, Inc., d/b/a Smart Home Care Agency (New York, Nassau, Kings, Queens, Bronx, and Richmond Counties)
1996-L	Steps in Home Care, Inc. (Westchester, Nassau, Bronx, and New York Counties)
2107-L	Niagara County Department of Health (Niagara County)
2106-L	St. Lawrence County Public Health Department (St. Lawrence County)
2108-L	Tompkins County Health Department (Tomkins County)
2096-L	Yates County Public Health (Yates County)
2068-L	Hudson Valley Home Health Care, LLC (Westchester, Putnam, Ulster, Rockland, Dutchess, Orange, and Sullivan Counties)
2010-L	Samaritan Senior Village, Inc. (Jefferson, Lewis, and St. Lawrence Counties)

2075-L	Golden Acres Home for Adults SP, LLC (Rockland, Putnam, Bronx, Orange, Ulster, Sullivan, Dutchess and Westchester Counties)
2034-L	Robynwood, LLC d/b/a Robynwood Home Care (Chenango, Delaware, Otsego, and Schoharie Counties)
2028-L	229 Bennett Road Operating Company, LLC d/b/a Elderwood Home Care at Cheektowaga (Erie County)
2029-L	580 Orchard Park Road Operating Company, LLC d/b/a Elderwood Home Care at West Seneca (Erie County)
2030-L	76 Buffalo Street Operating Company, LLC d/b/a Elderwood Home Care at Hamburg (Erie County)
2031-L	44 Ball Street Operating Company, LLC d/b/a Elderwood Home Care at Waverly (Tioga County)

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

April 5, 2012

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 4: Applications Recommended for Approval with the Following:

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

Ambulatory Surgery Center – Establish/Construct **Exhibit #19**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	112382 B	North Country Eye Center (Saratoga County)	Contingent Approval

Public Health and Health Planning Council

Project # 112382-B

North Country EC, LLC
d/b/a North Country Eye Center

County: **Saratoga (Wilton)**
Purpose: **Establishment and Construction**
Program: **Ambulatory Surgery Center**
Submitted: **December 30, 2011**

Executive Summary

Description

North Country EC, LLC d/b/a North Country Eye Center (NCEC) is a joint venture between Glens Falls Hospital (30%) and NCEC Holdings, LLC (70%) and is requesting approval for the establishment and construction of a single-specialty ophthalmology freestanding ambulatory surgery center, to be located at North Road, Wilton. Glens Falls Hospital will construct the building shell and lease it to the applicant who will construct the leasehold improvements.

The proposed members of NCEC Holdings, LLC are four physicians: Dr. Amjad Hammad, Dr. Mark Hite, Dr. Steven Solomon and Dr. David Westfall, each with 25% membership interests.

Total project costs are estimated at $2,354,870.

DOH Recommendation

Contingent approval for a 5-year limited life.

Need Summary

NCEC has four members, all ophthalmologists, who are members of Glens Falls Hospital's (GFH) medical staff. GFH currently needs additional operating room capacity, and the proposed project will address this need, in part, by moving ophthalmology cases from GFH to NCEC.

The majority of the patients of the proposed facility are expected to come from Warren County, which does not have a single specialty-ophthalmology ambulatory surgery center.

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 $586,670 in cash and a $1,768,200 in bank loans.

Budget:		
	Revenues:	*$ 2,110,580*
	Expenses:	*1,512,703*
	Gain/(Loss):	*$ 597,877*

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

Architectural Summary

The 5,840 SF surgery center will be located in a one-story building, and will include two procedure rooms accommodating the current and future needs of the community.

Recommendations

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

Office of Health Systems Management
Approval for 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. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the Department of Health beginning in the second year of operation. Said reports shall include:
    - Data showing actual utilization including procedures;
    - Data showing breakdown of visits by payor source;
    - Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
    - Data showing number of emergency transfers to a hospital;
    - Data showing percentage of charity care provided, and
    - Number of nosocomial infections recorded during the year in question. [RNR]
3. Submission by the governing body of the ambulatory surgery center of an organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women, and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
4. Submission of 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 appropriate information on the operating hours of NCEC. [RNR]
6. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
7. Submission of an executed building lease that is acceptable to the Department. [BFA, CSL]
8. Submission of both loan commitments for project costs 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 a photocopy of the applicant's executed proposed amended articles of organization, acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant's executed proposed amended operating agreement, acceptable to the Department. [CSL]
12. Submission of a list of name, membership interest and percentage ownership interest for each member of NCEC Holdings, LLC, including the indirect ownership percentage each will have in the applicant.
13. Submission of a photocopy of an executed amendment to NCEC Holdings, LLC articles of organization, acceptable to the Department. [CSL]
14. Submission of a photocopy of an executed amendment to NCEC Holdings, LLC operating agreement, acceptable to the Department. [CSL]
15. Submission of a photocopy of the certificate of incorporation of Glens Falls Hospital, acceptable to the Department. [CSL]

Approval conditional upon:

1. The staff of the facility must be separate and distinct from staff of other entities. [HSP]

2. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
3. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
4. The clinical space must be used exclusively for the approved purpose. [HSP]
5. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
6. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's request for, and Department's granting approval for the start of construction. [AER]
7. The applicant shall start construction on or before November 1, 2012 and complete construction by May 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
April 5, 2012.

Need Analysis

Background
North Country Eye Center, LLC (NCEC) requests approval to establish and construct a single specialty ophthalmology ambulatory surgery center (ASC) that will be located at North Road, Wilton, Saratoga County.

NCEC's service area will be consistent with the service areas of the four ophthalmologists. The majority of patients will come from Warren County. Approximately 25 percent of the patients will come from Washington County, and the remainder will be from Albany, Saratoga, and Montgomery Counties, and Vermont.

The number of projected visits is as follows:

Current Year:	0
First Year:	2,622
Third Year:	2,780

The table below shows that Albany County is the only county in the proposed service area that has a single specialty ophthalmology ASC.

Diagnostic & Treatment Centers	*Single Specialty- Ophthalmology*	*Multi Specialty*
Warren County D&TCs	0	0
Albany County D&TCs	1	2
Saratoga County D&TCs	0	0
Montgomery County D&TCs	0	0
Washington County D&TCs	0	0

Source: NYS Department of Health, HFIS

Between 2009 and 2010, the number of patients for ophthalmology surgery procedures, cataract, glaucoma, and other eye disorders in Warren County increased by 5.1%.

NCEC has an existing transfer and affiliation agreement for backup and emergency services with GFH, which is located 12 miles and 17 minutes travel time from the proposed NCEC.

The four ophthalmologists primarily perform their outpatient surgical cases at GFH. The proposed project will enable these physicians to perform more procedures than at GFH, which will improve access to ophthalmologic surgery services by expanding capacity within the region.

Recommendation
From a need perspective, contingent approval is recommended for a limited life of five years.

Programmatic Analysis

Background
Establish a diagnostic and treatment center that will also be federally certified as an ambulatory surgery center.

Proposed Operator	**North Country EC, LLC**
Facility Name	North Country Eye Center
Site Address	North Road, Wilton
Surgical Specialties	Ophthalmology
Operating Rooms	0

Procedure Rooms	2
Hours of Operation	Monday through Friday from 7:00 am to 3:00 pm (Extended as necessary to accommodate patient needs).
Staffing (1st Year / 3rd Year)	10 FTEs/ 10 FTEs
Medical Director(s)	Steven Solomon
Emergency, In-Patient and Backup Support Services Agreement and Distance	Will be provided by Glens Falls Hospital, 12 miles and 17 minutes away
On-call service	Access to the facility's on-call physician during hours when the facility is closed.

Character and Competence

The members of the LLC are:

NCEC Holdings LLC	70%
-- Amjad Hammad	
-- Mark Hite	
-- Steven Solomon	
-- David Westfall	
Glens Falls Hospital	30%

The members of NCEC Holdings, LLC are all practicing ophthalmologists and members of the Hospital's medical staff.

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.

Integration with Community Resources

The center will encourage the establishment of a primary care relationship for those surgical patients who do not have one. The center will reach out to all primary care physicians/groups in its service area both to inform them of the center and to facilitate the coordination of care for common patients.

The center believes it will be an important component in on or more of the new delivery models, including those in which Glens Falls Hospital participates. The center will use an electronic medical record system and will participate in HIXNY, the regional health information organization servicing the area.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Lease Rental Agreement

The applicant will lease approximately 5,840 square feet of space at 100 Park Street, Glens Falls, under the terms of the proposed lease agreement summarized below:

Date:	October 1, 2011
Lessor:	Glens Falls Hospital
Lessee:	North Country EC, LLC
Term:	15 Years with two additional five year renewal options
Rental:	$102,000 ($12.00 per sq. ft) per year for the initial term. The first five year renewal term will be $112,200 per year and the second renewal term will be $119,000 per year
Provisions:	Triple Net Lease

The applicant has indicated that the lease will be an arm's length lease arrangement, and has submitted letters from real estate brokers attesting to the reasonableness of the per square foot rental.

Total Project Cost and Financing

Total project costs for leasehold Improvements and the acquisition of movable equipment is estimated at $2,354,870, itemized as follows:

New Construction	$ 1,366,560
Design Contingency	136,656
Construction Contingency	68,328
Planning Consultant Fees	74,500
Architect/Engineering Fees	74,500
Other Fees (Consulting)	30,000
Movable Equipment	553,000
Interim Interest Expense	36,456
Application Fee	2,000
Additional Processing Fee	12,870
Total Project Cost	$2,354,870

Project costs are based on a May 1, 2012 construction start date and a six month construction period. The applicant's financing plan appears as follows:

Equity	$ 586,670
Bank Loan for improvements @ 5% over fifteen years	1,215,200
Bank Loan for equipment @ 4.5% over five years	553,000

A letter of interest has been submitted by NBT Bank for both loans.

Operating Budget

The applicant has submitted an operating budget in 2012 dollars, for the first and third years of operation, summarized below:

	Year One	Year Three
Revenues:	$1,991,410	$2,110,580
Expenses:		
Operating	$1,118,417	$1,185,522
Interest	102.030	83,043
Depreciation and Rent	244,138	244,138
Total Expenses	$1,464,585	$1,512,703
Net Income	$526,825	$597,877
Utilization: (procedures)	2,622	2,780
Cost Per Procedure	$558.58	$544.14

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

	Years One and Three
Commercial Insurance-Managed Care	18.0%
Medicare Fee-For-Service	77.0%
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 members of NCEC Holdings, LLC and Glens Falls Hospital.

Capability and Feasibility

Project cost will be satisfied by two loans from NBT Bank for $1,768,200 at stated terms, with the remaining $586,670 from proposed member's equity.

Working capital requirements, estimated at $252,117, appear reasonable based on two months of third year expenses and will be provided through a $126,000 loan over 5 years @ 4.5% and the remaining $126,117 through equity of the proposed members. Dr. Amjad Hammad will obtain a personal loan from the bank for $40,000 to complete his equity requirement. A letter of interest has been submitted. Presented as BFA Attachment A, is a summary of net worth statement of the proposed members of NCEC Holdings, LLC, which indicates the availability of sufficient funds for the stated levels of equity. Presented as BFA Attachment B, is a summary of Glens Falls Hospital, which indicates the availability of sufficient funds for the stated levels of equity.

Glens Falls Hospital maintained positive working capital, positive net equity and a net profit from operations of $6,263,000 for the year 2011, and achieved an average net profit of $709,020 for 2009-2010, respectively. Presented as BFA Attachment D, is the pro-forma balance sheet of North Country Eye Center as of the first day of operation, which indicates positive member's equity position of $712,790.

The submitted budget indicates a net income of $526,825 and $597,877 during the first and third years of operation, respectively. The budget appears reasonable.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Architectural Analysis

Background

The applicant is proposing to build a new freestanding Ambulatory Surgery Center as a one story building, a full sprinkler system installed, with a total of 5,840 SF; the applicant being the single occupant. The space will include a waiting/reception area with a patient toilet room before entering a pre/post operatory area including seven (7) pre/post-op bays, a nurse station, janitor's closet, and clean and soiled storage rooms.

The semi-restricted core will include two (2) Class C operating rooms, and soiled and clean processing workrooms located between the operating rooms for sterilization. Also proposed within this core space, is an equipment storage room, a sterile supplies storage room, a unisex locker room with shower, and a second janitor's closet dedicated to the semi-restricted core.

Additional support areas will include a staff break room, and various mechanical and utility rooms such as electrical, mechanical and vacuum, medical gas room, and a generator provided for emergency power.

Environmental Review
The Department has deemed this project to be a TYPE I Action and the lead agency shall be the county of Saratoga or the authority having jurisdiction.

Recommendation
From an architectural perspective, approval is recommended.

Attachments

BFA Attachment A	Summary Net Worth Statement of Proposed Members of NCEC Holdings, LLC
BFA Attachment B	Financial Summary of Glens Falls Hospital 2011 Internals
BFA Attachment C	Financial Summary of Glens Falls Hospital 2009/2010 - Audited
BFA Attachment D	Pro- forma Balance Sheet
BFA Attachment E	Establishment Checklist
BHFP Attachment	Map

<u>RESOLUTION</u>

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 5th day of April, 2012, 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 ophthalmology ambulatory surgery center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

<u>NUMBER</u>:	<u>FACILITY/APPLICANT</u>:
112382-B	North Country Eye Center

APPROVAL CONTINGENT UPON:

Approval for 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. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the Department of Health beginning in the second year of operation. Said reports shall include:

    - Data showing actual utilization including procedures;
    - Data showing breakdown of visits by payor source;
    - Data showing number of patients who need follow-up care in a hospital within seven days
      after ambulatory surgery;
    - Data showing number of emergency transfers to a hospital;
    - Data showing percentage of charity care provided, and
    - Number of nosocomial infections recorded during the year in question. [RNR]

3. Submission by the governing body of the ambulatory surgery center of an organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women, and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
4. Submission of 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 appropriate information on the operating hours of NCEC. [RNR]
6. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
7. Submission of an executed building lease that is acceptable to the Department. [BFA, CSL]
8. Submission of both loan commitments for project costs 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 a photocopy of the applicant's executed proposed amended articles of organization, acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant's executed proposed amended operating agreement, acceptable to the Department. [CSL]
12. Submission of a list of name, membership interest and percentage ownership interest for each member of NCEC Holdings, LLC, including the indirect ownership percentage each will have in the applicant.

13. Submission of a photocopy of an executed amendment to NCEC Holdings, LLC articles of organization, acceptable to the Department. [CSL]
14. Submission of a photocopy of an executed amendment to NCEC Holdings, LLC operating agreement, acceptable to the Department. [CSL]
15. Submission of a photocopy of the certificate of incorporation of Glens Falls Hospital, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
2. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
3. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
4. The clinical space must be used exclusively for the approved purpose. [HSP]
5. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
6. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's request for, and Department's granting approval for the start of construction. [AER]
7. The applicant shall start construction on or before November 1, 2012 and complete construction by May 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]

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
Public Health and Health Planning Council

April 5, 2012

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 6: Applications for Individual Consideration/Discussion

Ambulatory Surgery Center – Establish/Construct **Exhibit # 20**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	112086 B	1504 Richmond, LLC d/b/a Richmond Surgery Center (Richmond County) Mr. Kraut – Recusal	No Recommendation

Public Health and Health Planning Council

Project # 112086-B

1504 Richmond, LLC
d/b/a Richmond Surgery Center

County: **Richmond (Staten Island)**
Purpose: **Establishment and Construction**
Program: **Ambulatory Surgery Center**
Submitted: **August 10, 2011**

Executive Summary

Description
1504 Richmond, LLC d/b/a Richmond Surgery Center, a to-be-formed proprietary limited liability company, requests approval to establish and construct a freestanding multi-specialty ambulatory surgery center (FASC) to serve the residents of Richmond County. The FASC will be located in leased space at 1504 Richmond Road, Staten Island, and will provide the following surgical services: plastic surgery, gastroenterology, gynecology, ophthalmology, orthopedics, otolaryngology and urology.

The proposed members of Richmond Surgery Center, and their ownership percentages, are as follows:

Todd Vitolo	25%
Noreen Vitolo	75%

Michael Costes, MD will be employed with the practice and has accepted the position as the Medical Director.

In response to the Department's inquiry to local hospitals regarding the impact of the proposed ASC in the service area, two objections were received (Richmond University Medical Center and Staten Island University Hospital). The information submitted by the objecting hospitals seem not to be cognizant of the fact that 85% of the cases projected for the proposed ASC are currently performed in an office-based setting, not in hospitals or hospital-based ambulatory surgery centers. The Department does not find the comments of the two hospitals sufficient to warrant reversal or modification of the recommendation for five-year limited life approval.

DOH Recommendation
Contingent approval for a 5-year limited life.

Need Summary
Eleven surgeons have committed to perform an estimated 2,981 procedures at the proposed FASC. There are currently no existing freestanding ambulatory surgery centers on Staten Island.

Program Summary
Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

Financial Summary
There is no project cost associated with this application.

Budget:		
	Revenues:	*$ 2,376,790*
	Expenses:	*1,858,376*
	Gain/(Loss):	*$ 518,414*

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

Architectural Summary
The proposed FASC will entirely occupy an existing 5,320 SF two-story building, and will have two operating rooms, along with and a pre-op and recovery area with four recovery bays. The proposed center has previously been constructed to be in compliance with all applicable regulations, including the current AIA guidelines for freestanding ambulatory surgery centers.

Upon review by the applicants architect/engineer, there is no need for any modifications to the existing center.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

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

1. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the Department of Health beginning in the second year of operation. Said reports shall include:
   - Data showing actual utilization including procedures;
   - Data showing breakdown of visits by payor source;
   - Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
   - Data showing number of emergency transfers to a hospital;
   - Data showing percentage of charity care provided, and
   - Number of nosocomial infections recorded during the year in question. [RNR]
2. 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]
3. 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]
4. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
5. Submission of an executed building lease that is acceptable to the Department. [BFA]
6. Submission of a working capital loan commitment that is acceptable to the Department. [BFA]
7. Submission of an original signed and dated first page of Schedule 1A which must be acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's Articles of Organization, as filed with the Secretary of State, which must be acceptable to the Department. [CSL]
9. Submission of a photocopy of a fully executed and dated amendment to the applicant's Articles of Organization, which must be acceptable to the Department. [CSL]
10. Submission of a photocopy of a fully executed and dated amendment to the applicant's Operating Agreement, which must be acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant's revised Certificate of Doing Business under an Assumed Name, which must be acceptable to the Department. [CSL]
12. Submission of a photocopy of a fully executed and dated Lease between Landmark 1504, LLC, as landlord, and the applicant, as tenant, which must be acceptable to the Department. [CSL]
13. Submission of documentation verifying the list of the applicant's managers, which must be 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 Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]

Council Action Date

April 5, 2012.

Need Analysis

Background
The applicant requests approval to establish and construct a freestanding multi-specialty ambulatory surgery center at 1504 Richmond Road, Staten Island. The proposed center will have 2 operating rooms, 4 exam rooms, and 4 pre/postoperative and recovery bays.

The proposed services to be offered are: plastic surgery, gastroenterology, gynecology, ophthalmology, orthopedics, otolaryngology, and urology.

The following surgeons have submitted letters of support for this application.

Physician	Specialty	Volume
Robert V. Vitolo, M.D.	Plastic Surgery	450
Jospeh L. Assim, DPM	Podiatry	40
Peter Albert, M.D.	Urologist	111
Louis C. Cutolo, Jr., M.D.	Plastic Surgery	250
Vinod Bopaiah, M.D.	Colon-rectal Surgery	450
Hakan Usal, M.D.	Plastic Surgery	200
Joseph A. Racanelli, D.O.	Plastic Surgery	850
George Ferzli, M.D.	General Surgery	300
Sean Rim, M.D.	General Surgery	50
Corneliu T. Vulpe, M.D.	General Surgery	80
Mukund Patel, M.D.	Hand Surgery	200
	Total	*2,981*

These eleven surgeons expect to perform 2,981 procedures at the proposed ASC.

There are no existing freestanding ambulatory surgery centers on Staten Island.

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	**1504 Richmond, LLC**
Operator Type	LLC
Doing Business As	Richmond Surgery Center
Site Address	1504 Richmond Road, Staten Island
Surgical Specialties	Multi-Specialty, including: Plastic Surgery Gastroenterology Gynecology Ophthalmology Orthopedics Otolaryngology Urology
Operating Rooms	2
Procedure Rooms	0

Hours of Operation	Monday through Friday from 8:00 am to 6:00 pm (Extended as necessary to accommodate additional procedures).
Staffing (1st Year / 3rd Year)	15.75 FTEs / 16.50 FTEs
Medical Director(s)	Michel Costes
Emergency, In-Patient and Backup Support Services Agreement	Expected to be provided by Staten Island University Hospital.
Distance	8.15 miles / 14 minutes
On-call service	Patients will be provided with surgeon contact information as well as the facility's on-call service during hours when the facility is closed.

Character and Competence

The members of the LLC are:

Todd Vitolo	25% member
Noreen Vitolo	75% member

Todd Vitolo is an attorney currently employed as a licensed associate broker for a real estate company. Noreen Vitolo, a licensed esthetician, is the owner/operator of a skin care business.

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.

Integration with Community Resources

Should any patients present themselves at the center in need of primary care services, the center hopes to work with Staten Island University Hospital to provide such services. The proposed operators indicate they have reached out to SIUH in an effort to establish a mutual network relationship. Additionally, the operators intend to participate in community health events and local religious institution events to make sure the community is aware of their services.

The center intends to utilize electronic medical records and hopes to integrate in the regional health information organization or health information exchange.

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.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Lease Rental Agreement

The applicant has submitted a draft lease rental agreement for the site to be occupied. The terms of which are summarized below:

Premises:	5,760 square feet located at 1504 Richmond Road, Staten Island, New York, Richmond County
Lessor:	Landmark 1504, LLC
Lessee:	1504 Richmond, LLC d/b/a Richmond Surgery Center
Rental:	$96,000 annually/$8,000 monthly ($16.67 per sq. ft.)
Term:	(5) year term
Provisions:	The lessee is responsible for paying 100% of the property taxes.

The applicant has provided two letters indicating the rent reasonableness. The applicant has indicated that the lease agreement will be an arms length lease agreement and provided an affidavit indicating the disclosure.

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	$2,163,352	$2,376,790
Expenses:		
Operating	$1,562,995	$1,750,376
Capital	108,000	108,000
Total Expenses	$1,670,995	$1,858,376
Net Income	$492,357	$518,414
Utilization: (Procedures)	1,980	2,183
Cost Per Visit	$843.94	$851.29

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

	Year One	Year Three
Commercial Fee-for-Service	20.11%	20.18%
Commercial Managed Care	19.15%	19.22%
Medicare Fee-for-Service	38.31%	38.44%
Medicaid Fee-for-Service	5.27%	5.29%
Medicaid Managed Care	10.06%	10.09%
Charity Care	3.94%	3.60%
Private Pay	3.16%	3.18%

Expense and utilization assumptions are based on projected need study by the applicant and current reimbursement methodologies.

Capability and Feasibility

There is no project cost associated with this application.

Working capital requirements, estimated at $309,730 which appear reasonable based on two months' of third year expenses.

The proposed members will provide equity in the amount of $154,865 to meet the working capital requirement. Presented as BFA Attachment, A is a summary net worth statement of the proposed members of Richmond Surgery Center, LLC which indicates the availability of sufficient funds for the stated equity levels. Also, a disproportionate resources affidavit has been submitted by proposed member Todd Vitolo, indicating he will provide proposed member Noreen Vitolo resources needed to meet the working capital requirements.

The residual $154,865 will be provided by a bank to 1504 Richmond, LLC at a rate of 7% for a term of (5) years. A letter of interest from Capital One Bank has been submitted. Presented as BFA Attachment B, is the pro-forma balance sheet of Richmond Surgery Center, which indicates a positive shareholders' equity position of $154,865 as of the first day of operation.

The submitted budget projects a net income of $492,357 and $518,414 during the first year and third year of operation, respectively. Revenues are based on current reimbursement methodologies for ambulatory surgery services.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Architectural Analysis

Background

- Cellar floor (2,681 sf existing)

The cellar floor consists of 2,681 sf which includes two (2) operating rooms, a pre-op and recovery room with four (4) bays, a nurse station, a patient toilet room, a soiled workroom, a clean supply storage room, a sterilization and clean assembly room, and a staff lounge with a staff toilet and lockers.

- First floor (2,639 sf existing)

The first floor consists of 2,639 sf and includes a waiting room, reception area, patient and staff toilet rooms, offices, four (4) exam rooms, a multi-purpose room, a staff lounge, and storage rooms.

Environmental Review

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

Recommendation

From an architectural perspective, approval is recommended.

Attachments

BFA Attachment A	Personal Net Worth Statement
BFA Attachment B	Pro Forma Balance Sheet of Richmond Surgery Center, LLC
BFA Attachment C	Detailed Budget of Richmond Surgery Center

BFA Attachment D	Establishment Checklist for 1504 Richmond, LLC
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: Richmond University Medical Center
355 Bard Avenue
Staten Island, NY 10310

Operating Room utilization at Richmond University Medical Center (RUMC):

Current OR Use	Surgery Cases[1]		Amb. Surg. Cases by Applicant Physicians	Reserved OR Time for Applicant Physicians
60%-90%	**Ambulatory** 85%	**Inpatient** 15%	164	Not specified

RUMC opposes the application but does not specify the number of cases from the applicant surgeons that may be lost to the proposed ASC, nor does it attach a dollar amount to any expected loss of ambulatory surgical volume. The hospital states that its current surgical revenues help support vital services, such as its primary care and subspecialty clinics, its 911 ambulance and trauma services and its CPEP psychiatric coordination. The hospital does not quantify the impact that a loss of surgical revenues to the proposed ASC would have on these or any other of its services or operations.

RUMC had a working capital ratio of 1.1 in both 2009 and 2010. In 2009, RUMC had an operating gain of $7.2 million on revenues of 304.9 million. In 2010, the facility had an operating gain of $6.5 million on revenues of $305.5 million. In 2009, RUMC provided charity care of $23.4 million and experienced bad debt of $16.4 million. In 2010, the facility provided $18.3 million in charity care and had $16.0 million in bad debt.

Facility: Staten Island University Hospital
475 Seaview Avenue
Staten Island, NY 10305

Operating Room utilization at Richmond University Medical Center (RUMC):

[1] Number of cases not specified.

Current OR Use	Surgery Cases[2]		Amb. Surg. Cases by Applicant Physicians	Reserved OR Time for Applicant Physicians
North Campus OR: 69% (inpatient only) South Campus OR: 55% Ctr. for Ambulatory Surgery: 72%	**Ambulatory** S. Campus: 87% Ctr. for Amb. Surgery: 99%	**Inpatient** S. Campus: 13% Ctr. for Amb. Surgery: 1%	458	Yes[3]

The hospital opposes the application, based on its assumption that all 458 cases performed by applicant physicians at SIUH in 2011 would be transferred to the proposed ASC. The hospital projects that this would result in a loss of $1 million in revenues, which would put "great pressure" on the facility's $5.3 million worth of community health improvement services, such as health education events, chronic disease screening, flu vaccinations, smoking cessation programs, and similar activities. The hospital does not specify the specific impact that the projected loss would have on any individual service.

SIUH had working capital ratios of 1.7 and 1.8 in 2009 and 2010, respectively. In 2009, the hospital had an operating gain of $18.8 million on operating revenue of $700.8 million. In 2010, the facility's operating gain was $24.4 million on operating revenue of $757.8 million. SIUH provided uncompensated care at established charges of approximately $56,880,000 and $56,169,000 in 2011 and 2010, respectively. This amount consisted of charity care of $51,080,000 and $49,619,000 in 2011 and 2010, respectively, and uncollectible charges written off as bed debt of $5,800,000 and $6,550,000 for 2011 and 2010, respectively.

Supplemental Information from Applicant

- Need and Sources of Cases

The applicant states that the projected volume of cases is based on the actual experience of the physicians who have expressed an interest in performing procedures at the proposed facility. The vast majority of these cases (85 percent) are currently performed in office-based settings. The applicant also expects the demand for ambulatory surgical services to continue to grow. The applicant further expects that patients will be attracted to the proposed ASC because of its convenience in scheduling and the fact that it will be located in an out-of-hospital setting.

- Office-Based Cases

As noted, 85 percent of the cases projected for the proposed ASC are currently performed in an office-based setting.

- Staff Recruitment and Retention

The applicant expects to employ existing staff of the current office-based practice. To the extent that additional staff is needed, the proposed operators are committed to not actively seeking staff from local hospitals.

OHSM Comment

Although two hospitals oppose this application, their objections seem not to be cognizant of the fact that 85 percent of the cases projected for the proposed ASC are currently performed in an office-based setting, not in hospitals or hospital-based ambulatory surgery centers. In addition, neither hospital furnished information on its current annual

[2] The hospital did not furnish the number of surgical cases. The percentages show the distribution of cases between inpatient and ambulatory surgery at each site.

[3] Four of the seven applicant physicians who performed ambulatory surgery cases at the hospital in 2011 have OR block time.

number of ambulatory surgery cases. The Department does not find the comments of the two hospitals sufficient to warrant 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 5th day of April, 2012, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a free standing multi-specialty ambulatory surgery center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:	FACILITY/APPLICANT:
112086-B	1504 Richmond, LLC d/b/a Richmond Surgery Center

APPROVAL CONTINGENT UPON:

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

1. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the Department of Health beginning in the second year of operation. Said reports shall include:

    - Data showing actual utilization including procedures;
    - Data showing breakdown of visits by payor source;
    - Data showing number of patients who need follow-up care in a hospital within seven days
    after ambulatory surgery;
    - Data showing number of emergency transfers to a hospital;
    - Data showing percentage of charity care provided, and
    - Number of nosocomial infections recorded during the year in question. [RNR]

2. 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]
3. 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]
4. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
5. Submission of an executed building lease that is acceptable to the Department. [BFA]
6. Submission of a working capital loan commitment that is acceptable to the Department. [BFA]
7. Submission of an original signed and dated first page of Schedule 1A which must be acceptable to the Department. [CSL]
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12. Submission of a photocopy of a fully executed and dated Lease between Landmark 1504, LLC, as landlord, and the applicant, as tenant, which must be acceptable to the Department. [CSL]
13. Submission of documentation verifying the list of the applicant's managers, which must be 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 Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01. [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